

Corruption and the Law in Colonial Myanmar

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1. Introduction

Post-colonial Myanmar is strongly associated with corruption. Non-governmental organisations concerned with ‘good governance’, such as Transparency International, routinely place the nation-state at the foot of indexes measuring perceptions of corruption.¹ This policy brief aims to give greater historical depth to this contemporary association by examining corrupt practices in the colonial period. In doing so, I put forward the argument that corruption should not be considered simply as an aberration from the law, but as a set of practices that were inherent to legal structures and resources.² The purpose of drawing out this longer history of corruption’s entanglement with the law is to emphasise the extent to which these practices are embedded within modern forms of governance, rather than resulting from the imperfect development of government.

Such an understanding is not to place sole responsibility for the prevalence of corruption into the past and onto the shoulders of the erstwhile British rulers. It is, more banally, an understanding that highlights an underlying continuity in the role played by corruption in state formation; a continuity within which we can also be attentive to the changes between different governing regimes.

2. Colonial Corruption

From the outset, however, there is a note of caution that must be sounded over the meanings encompassed by the word ‘corruption’ itself. The term does not have a historically stable set of meanings, nor does it connote a fixed set of practices. As recent scholarship on corruption and anti-corruption has shown, corruption might be best thought of

as a polyvalent set of normative discourses that has different registers at varying scales and contexts.³

In this policy brief, I am not concerned with the vernacular understandings of extra-judicial, informal arrangements that operated in colonial Myanmar, and still operate today.⁴ This type of ethnographic detail, that could provide insights into an underlying moral economy of corrupt transactions, is not accessible through the archive produced by the imperial bureaucracy.⁵ Instead, I am using the terms and their associated meanings that the colonial regime and its state archive were working with. White, British imperial bureaucrats framed corruption as a problem endemic within the subordinate ranks of officialdom; that is, the mostly Burmese and Indian government servants who served administrative, policing, judicial, clerical, and menial functions. As such, ‘corruption’ or, as it was frequently categorised in the official record, ‘misconduct’ was a disciplinary category used by covenanted imperial civil servants to monitor and punish colonised state employees.⁶

³ Akhil Gupta, “Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State”, in *American Ethnologist*, 1995, vol. 22, no. 2, pp. 375–402; Craig Jeffrey, “Caste, Class, and Clientelism: A Political Economy of Everyday Corruption in Rural North India”, in *Economic Geography*, 2002, vol. 78, no. 1, pp. 21–41; Steven Pierce, *Moral Economies of Corruption*, Duke University Press, Durham, 2016; William Gould, Taylor C. Sherman and Sarah Ansari, “The Flux of the Matter: Loyalty, Corruption and the ‘Everyday State’ in the Post-Partition Government Services of India and Pakistan”, in *Past & Present*, 2013, vol. 219, no. 1, pp. 237–79.

⁴ Helene Maria Kyed, “Introduction to Special Issue on Everyday Justice in Myanmar”, in *Independent Journal of Burmese Scholarship*, 2018, vol. 1, no. 2, pp. ii–xxii.

⁵ Jonathan Saha, “Devious Documents: Corruption and Paperwork in Colonial Burma, c. 1900”, in Will Jackson and Emily Manktelow (eds.), *Subverting Empire: Deviance and Disorder in the British Colonial World*, Palgrave Macmillan, Basingstoke, 2015, pp. 167–84.

⁶ Jonathan Saha, *Law, Disorder, and the Colonial State: Corruption in Burma c. 1900*, Palgrave Macmillan, Basingstoke,

¹ Transparency International, “Myanmar” (available on its web site).

² Monique Nuijten and Gerhard Anders, “Corruption and the Secret of Law: An Introduction”, in *idem* (eds.), *Corruption and the Secret of Law: A Legal Anthropological Perspective*, Ashgate, Aldershot, 2007, pp. 9–12; Dieter Haller and Cris Shore, “Introduction – Sharp Practice: Anthropology and the Study of Corruption”, in Dieter Haller and Cris Shore (eds.), *Corruption: Anthropological Perspectives*, Pluto, London, 2005, pp. 1–26.

This focus on Burmese and Indian officials meant that only certain types of practices were scrutinised and subsequently documented. Most of these were already illegal practices identified and defined in the Indian Penal Code (much of which post-colonial Myanmar has inherited) – such as bribery, extortion and falsifying evidence – but investigating officials were also trying to examine more ambiguous practices such as gift giving, and to interpret more nebulous acts such as wilfully ignoring criminality or keeping irregular paperwork. Importantly, the policing of this misconduct and corruption was largely informal. Except in extreme cases where the state sought recourse to criminal law, officials tended to deal with accusations through internal investigations and a quasi-judicial process. The culprits were punished with bureaucratic sanctions, such as demotions, suspensions, transfers and, for gross misconduct or repeated offences, dismissal. The research for my monograph on the subject, *Law, Disorder and the Colonial State*, indicates that there was substantial leeway given to subordinate officials found to have engaged in corruption. Even in cases in which township officers abused their judicial powers to intimidate witnesses, high-ranking civil servants were willing to tolerate these acts of corruption and inflict only minor punishments. In this way, it is apparent that the colonial regime was itself acquiescent in corruption.⁷

But more than merely being acquiescent in corruption, it is my contention that corruption was intrinsic to the state, particularly within its legal sphere.⁸ Focusing on these low-level forms of corruption draws out how these acts of official malfeasance were a commonplace experience for colonised people that shaped their understanding of how the law worked in practice. In addition, many of these acts of corruption required the wider legal apparatus of the colonial state to function in order for them to be successful. In the following two sections I revisit cases that I have previously studied in my book and subsequent publications, to illustrate these two points: firstly, that corruption constituted people's everyday experiences of the legal system; and secondly, that corruption enacted (as opposed to disrupted) the legal system.

All of the cases are taken from the Ayeyarwady Delta at the turn of the twentieth century. Due to the vagaries of archival survivals, this region of Myanmar has a large collection of low-level government correspondence held at the National Archives in Yangon. This serendipity notwithstanding, the delta at this time makes for a useful case study due to the region's economic importance to colonial Myanmar. In this time, Myanmar became the world's largest rice producing country, transforming the delta economically,

demographically and environmentally.⁹ Corruption within the colonial state's legal system was entangled with these changes, particularly the illicit co-option of the law to aid land-grabbing – practices that remain widespread in sites of economic development in Myanmar today.¹⁰

3. Everyday Experiences of the Law

As noted above, corruption regarding landownership was a common occurrence in the Ayeyarwady Delta at the end of the nineteenth century. The ubiquity of corruption meant that it shaped people's experience of trying to acquire legal evidence of landownership. It also mediated access to courts to defend or contest ownership. Of particular importance in performing acts of corruption were village headmen. This was an administrative role that made it possible for them to illicitly gain from the colonial state's regulation of land. Headmen were able to use their positions to acquire land as well as to embezzle funds and fabricate documents. Other officials, whose roles were occasionally unconnected with the regulation of land, were nevertheless able to use their influence and status as state actors to grab land.

Some examples drawn from the annually published and updated lists of officials dismissed from government service give an indicator of how pervasive these practices were. Given how much was tolerated, these cases merely scratch the surface of misconduct. They represent the tip of the iceberg. A recurring strategy was for headmen to obtain land for themselves – against the government's standing order prohibiting them owning land in their jurisdictions – and then have this ownership disguised under the name of a relative. This strategy was frequently exposed when the ostensible owners were found to be minors. A village headman in Pegu district was dismissed in 1893 for obtaining grants of land under the name of his son, who was only six years of age. In the same district, the following year, another

⁹ Michael Adas, *The Burma Delta: Economic Development and Social Change on an Asian Rice Frontier, 1852-1941*, University of Wisconsin Press, Madison 1974; Judith Richell, *Disease and Demography in Colonial Burma*, Nordic Institute of Asian Studies Press, Copenhagen, 2005; Ian Brown, *A Colonial Economy in Crisis: Burma's Rice Delta and the World Depression of the 1930s*, RoutledgeCurzon, London, 2005, p. 28; Michael Adas, "Continuity and Transformation: Colonial Rice Frontiers and Their Environmental Impact on the Great River Deltas of Mainland Southeast Asia", in Edmund Burke and Kenneth Pomeranz (eds.), *The Environment and World History*, University of California Press, Berkeley, 2009, pp. 191–208; Peter A. Coclanis, "Metamorphosis: The Rice Boom, Environmental Transformation, and the Problem of Truncation in Colonial Lower Burma, 1850–1940", in *Agricultural History*, 2019, vol. 93, no. 1, pp. 35–67.

¹⁰ Jonathan Saha, "Paperwork as Commodity, Corruption as Accumulation: Land Records and Licences in Colonial Myanmar, c. 1900", in Ronald Kroeze, Pol Dalmau, and Frédéric Monier (eds.), *Corruption, Empire and Colonialism: A Global Perspective*, Palgrave Macmillan (forthcoming); Kevin M. Woods, "Smaller-Scale Land Grabs and Accumulation from below: Violence, Coercion and Consent in Spatially Uneven Agrarian Change in Shan State, Myanmar", in *World Development*, 2020, vol. 127, pp. 1–16.

2013.

⁷ *Ibid.*

⁸ Jonathan Saha, "A Mockery of Justice? Colonial Law, the Everyday State and Village Politics in the Burma Delta c. 1900", in *Past & Present*, 2012 vol. 217, pp. 187–212; Nick Cheesman, "Rule-of-Law Lineages in Colonial and Early Post-Colonial Burma", in *Modern Asian Studies*, 2016 vol. 50, no. 2, pp. 564–601.

headman was also dismissed for the same misdemeanour, in this case acquiring land for his daughter and son, both of whom were minors. The practices through which these illicit land acquisitions were made were more apparent from another case in Pegu in 1898. In this instance, the headman was dismissed for falsifying land records so that land that had been resumed by government because of the owners' revenue arrears were made over to his own relatives. A year later, again in Pegu, the headman Maung Ngè was dismissed for illegally occupying the land of Maung Chein. He then entered this land in the registry under the names of his children.¹¹ These headmen in Pegu district were likely dismissed because of the strength of the evidence against them. Many more who were engaged in similar practices would have avoided this fate.

In addition to land-grabbing and falsification, Maung Ngè also defrauded the government by assessing this land at fallow rates for three years.¹² His case illustrates a second way that corruption was used to benefit illicit landowners; it could also be used to misrepresent the value of the land. Like Maung Ngè, Maung Pan Pyu Aung, a headman in Kyaukphyu district, was dismissed in 1904 for both acquiring land under his children's names and for under-assessing the revenue due from it, this time through falsely recording the measurements of the plots. Three years later, another headman in the same district, Maung Than Lôn, was dismissed for favouring a friend in a similar fashion to this. For ten years he had deliberately not assessed over 300 acres of land belonging to one Maung San Dun.¹³ Clerks and revenue surveyors were dismissed for similar acts, although often with the implication that this was done in exchange for an illegal fee. For instance, in 1908 a township clerk called Maung Po Tha was dismissed for charging and receiving a fee for remissions in land revenue.¹⁴ In 1903 another clerk was dismissed for helping his brother, a revenue surveyor, extract illegal fees.¹⁵ Illegal gratification was a recurrent and frequent cause for concern.¹⁶

Corruption was also a barrier for those pursuing litigation to establish their ownership of property. Perhaps the most notorious case illustrating how corruption could be an obstacle to those attempting to access the law occurred in 1901, and involved a European secretarial subordinate of Dutch descent called E. Vanspall. Vanspall had pretended to be the Chief Secretary to the Government of Burma in order to induce cultivators embroiled in land disputes to pay him to resolve the disputes in their favour. The outrageous aspect of his case was that he had no authority, legal or otherwise,

to resolve such disputes. In fact, he had absolutely no influence on the allocation of land. He was employed only as the superintendent of an office of largely clerical powers. But irrespective of his minor bureaucratic role, Vanspall had used his limited state position to create in the minds of the duped cultivators a truly imaginary state. The secretariat office became the "high court", he used procedural terms such as "court-fees" and "stamps" as a guise through which he could extort illegal payments, and he gave himself an outrageous promotion to one of the top administrative positions in colonial Burma.¹⁷

The ubiquity of corruption in relation to the legal processes of acquiring and defending land ownership reveals the extent to which corruption was not experienced as antithetical to the law. State actors were frequently using the law to illicitly gain land or to extort bribes from those attempting to obtain legal recognition for their property. It was often through corruption that the law was directly experienced.

4. Corruption of the Law, Corruption as the Law

The constitutive aspect of subordinate officials' everyday corruption is illustrated in my monograph principally through the misconduct charges brought against an inspector of the civil police called Fakir Pakiri. Though an example *in extremis* it is illustrative of wider practices. The case against Pakiri was the largest investigation into misconduct made in the Ayeyarwady Delta between 1897 and 1909. The majority of the charges against him alleged that he had fabricated evidence in order to have people falsely imprisoned. The scale of his misconduct was unequalled, although the crimes he was accused of were not rare. Nonetheless, despite the exceptional gravity of his case, Pakiri's case illustrates how corruption enacted the wider legal system.¹⁸

Pakiri's was successful only because of his role in the colonial state. Indeed, his acts of misconduct relied on the legal system functioning. The official investigating Pakiri uncovered nine cases in which opium had been planted on wealthy individuals in order to extract bribes. In four of the cases the victims were described as well-to-do Chinese men. In one of these cases two of Pakiri's sergeants, Maung Myo and Maung Lu Gale, allegedly planted opium in the home of a Chinese man in Bogale. They later returned to the house, 'found' the opium, and arrested the servant of the house but not the master. The logic behind the arrest of servant was that the master, having had previously been charged, would face jail, whereas they could hold the servant more easily in order to extort a bribe of seven hundred rupees from the master.¹⁹ Their actions were calculated to maximise the potential for extorting a bribe. Extortion of this kind operated through the implicit threat of disciplinary state intervention. Pakiri and his sergeants were manufacturing situations in

¹¹ National Archives of Myanmar ('NAM'), 1/15 (E), 7350, 1908 File No. 7M-10.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ NAM, 1/15 (E), 7377, 1909 File No. 7M-10.

¹⁵ NAM, 1/15 (E), 7350, 1908 File No. 7M-10.

¹⁶ The above cases are explored in relation to the manipulation of paperwork in Saha, "Paperwork as Commodity, Corruption as Accumulation", see above note 10.

¹⁷ This case is explored at greater length in Saha, 2013, pp. 10–11, see above note 6.

¹⁸ This section draws heavily on my chapter on Pakiri's career. See *ibid.*, pp. 47–71.

¹⁹ *Ibid.*

which police power could be brought to bear in order to induce their victims to pay bribes to escape charges for crimes that they had not committed. It was not so much Pakiri that was the threat, but prospect of the force of the Indian Penal Code being brought to bear on them.²⁰

In the dozens of cases of fabricating evidence for bribery and extortion levelled against Pakiri, he was able to achieve his ends only by using his policing powers to invoke the threat of the broader legal system of the colonial state. In most cases this involved creating intricate scenarios in which to entangle his victims, most commonly through fabricating robberies. The lengths to which Pakiri would go to stage his misconduct was apparent in the one case for which he was ultimately convicted. In this case Pakiri had elaborately and successfully framed Saw Ke. Having orchestrated the theft of some pearls and rubies from the house of one Po Myaing, Pakiri gave the pearls to one of his followers to deposit with a moneylender in the name of Saw Ke. Pakiri then employed someone else to hide the remaining rubies in Saw Ke's house. He then arrested Saw Ke for house breaking by night and theft, and used the rubies in Saw Ke's house and the testimony of the moneylender as evidence.²¹ Having gathered evidence and located witnesses, Pakiri then handed the case to the judiciary to convict Saw Ke (the crimes he was accused of carried a sentence of over seven years' imprisonment) and the prison officials to confine him. As in the other cases against him, Pakiri had used his police powers to appropriate the colonial systems of justice and incarceration. His corruption was based upon enacting the law, rather than upon evading it.

5. Conclusion

Hopefully this policy brief has indicated the limitations to conceptualising corruption as a bureaucratic pathology that can be treated as a temporary ailment afflicting only a part of the body politic. Corruption was part and parcel to how the law was experienced and enacted in the colonial period. This embeddedness is what I argue constitutes the deeper continuity within which we might trace the shifts and changes in Myanmar's post-colonial regimes' approaches to corruption. It is almost self-evident that the history of corruption in Myanmar has not been static. This is immediately apparent in the history of anti-corruption rhetoric, which has perennially been part of post-colonial political discourse. Corruption was perceived to be one of the many challenges to the credibility of U Nu's democratic government. In response,

²⁰ NAM, 1/15 (E), 7113, 1903 File No. 7M-21.

²¹ NAM, 1/15 (E), 7075, 1902 File No. 7M-1, 12 April 1902.

Ne Win's military regime justified its coup, in part, through the stated need to fight corruption.²² Not that the advent of military rule quelled accusations of corruption; indeed, corruption has frequently featured amongst the charges made by democracy movements indicting the junta, in its various guises.

It is true that anti-corruption is no longer principally concerned with the daily, low-level abuses of subordinate officials; acts that were the focus of state interventions during the period up to 1940 and in the run up to 1962. Criticisms are now levelled at the open secret of the military's illicit relationships with drug lords, as well as the rampant cronyism that has accompanied the privatisation of state enterprises.²³ Yet, in spite of these important shifts and fluctuations – the effects of which this policy brief does not mean to downplay or detract from – corruption is still an intrinsic aspect to how the law is experienced and enacted. While it is beyond the scope of my own expertise to offer insights on what might constitute effective policy to remedy this, these historical insights suggest a reformulation of anti-corruption approaches, away from eliminatory impulses aiming to stamp out corruption, and towards considering corruption as a part of the legal ecology that needs acknowledging and managing.

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²² Michael W. Charney, *A History of Modern Burma*, Cambridge University Press, 2009.

²³ Patrick Meehan, "Drugs, Insurgency and State-Building in Burma: Why the Drugs Trade Is Central to Burma's Changing Political Order", in *Journal of Southeast Asian Studies*, 2011, vol. 42, no. 3, pp. 376–404; Michele Ford, Michael Gillan and Htwe Htwe Thein, "From Cronyism to Oligarchy? Privatisation and Business Elites in Myanmar", in *Journal of Contemporary Asia*, 2016, vol. 46, no. 1, pp. 18–41; Tim G. Andrews *et al.*, "Responsible Cronyism in Transition: Understanding Changing Attitudes to Business Corruption in Myanmar", in *Asia Pacific Business Review*, 2019, vol. 25, no. 4, pp. 554–70.



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