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# Burma and the Road Forward: Lessons from Next Door and Possible Avenues Towards Constitutional and Democratic Development

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**BURMA AND THE ROAD FORWARD: LESSONS  
FROM NEXT DOOR AND POSSIBLE AVENUES  
TOWARDS CONSTITUTIONAL AND  
DEMOCRATIC DEVELOPMENT**

**Connie Ng\***

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\*J.D. Candidate, 2013, Santa Clara University School of Law. I would like to thank Professor Stephen Diamond for his guidance on this Comment. I am also thankful for his seminar, *Globalization and the Rule of Law: Constituting Revolutions*, as it allowed me to revisit my pre-law school studies on international development.

## INTRODUCTION

The chapter of authoritarian rule may finally be ending in Burma's<sup>1</sup> complicated narrative. The Burmese government has taken visible steps towards democratic reform. Despite reports of military control and intimidation at the polls,<sup>2</sup> the country transitioned to civilian rule in 2010<sup>3</sup> after fifty years of control by a military junta. The government also released the country's preeminent democratic leader and icon, Aung San Suu Kyi,<sup>4</sup> who has been on house arrest sporadically since 1989.<sup>5</sup> Rapid political reforms soon followed.<sup>6</sup>

The ability to reconcile Burma's political history and transition to a democracy will be a challenging one. A successful transformation requires more than legal formalism; legal formalism cannot work without the development of a civil society. However, legal formalism, as Suu Kyi has urged,<sup>7</sup> ensures a rule of law that will allow Burmese citizens, including minority groups, to protect themselves from their government's historical abuse of power. This Comment discusses how the expansion of legal rights for individuals and minorities is the direct way for Burma to secure a democratic future.

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1. The official name is the Republic of the Union of Myanmar. See CONSTITUTION OF THE REPUBLIC OF THE UNION OF MYAN. (2008) (HeinOnline, current) [hereinafter MYAN. CONST.]. As a personal preference, I will use "Burma." See *Should it be Burma or Myanmar?*, BBC NEWS MAGAZINE, <http://news.bbc.co.uk/2/hi/7013943.stm> (last updated Sept. 26, 2007, 12:21 PM).

2. See *Myanmar Votes in Election Controlled by Military*, N.Y. TIMES (Nov. 6, 2010), [http://www.nytimes.com/2010/11/07/world/asia/07myanmar.html?\\_r=0](http://www.nytimes.com/2010/11/07/world/asia/07myanmar.html?_r=0).

3. Seth Mydans, *Myanmar Junta Members Go Civilian*, N.Y. TIMES (May 1, 2010), <http://www.nytimes.com/2010/05/02/world/asia/02myanmar.html>.

4. *Myanmar Dissident Calls for Change*, N.Y. TIMES (Nov. 14, 2010), <http://www.nytimes.com/2010/11/15/world/asia/15myanmar.html>. See also Kathleen Hennessey & Danielle Ryan, *Aung San Suu Kyi Receives Congressional Gold Medal*, L.A. TIMES (Sept. 19, 2012), <http://articles.latimes.com/2012/sep/19/world/la-fg-suu-kyi-obama-20120920> (reporting on the democratic leader's recent acceptance of Congress' highest honor).

5. *The Nobel Peace Prize 1991: Aung San Suu Kyi*, NOBELPRIZE.ORG, [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/1991/kyi-bio.html](http://www.nobelprize.org/nobel_prizes/peace/laureates/1991/kyi-bio.html) (last updated Oct. 20, 2012) [hereinafter NOBEL PRIZE].

6. See Thomas Fuller, *For a Changing Myanmar, the Real Tests Lie Ahead*, N.Y. TIMES (Nov. 18, 2011), <http://www.nytimes.com/2011/11/19/world/asia/for-a-changing-myanmar-the-real-challenges-lie-ahead.html>.

7. AUNG SAN SUU KYI, *In Quest of Democracy*, in FREEDOM FROM FEAR AND OTHER WRITINGS 167, 168 (Michael Aris ed., 1991) (advocating "representative government, human rights and the rule of law").

Part I provides a foundation to understand the recent changes: it summarizes Burma's political development history, the Asian values theory, and the right-to-development argument. The historical section examines four periods: 1) precolonial and colonial Burma; 2) the attempt at democracy following independence; 3) the military-socialist takeover; and 4) the current period following the 1988 democratic movements. This background validates the significance of Burma's recent reforms and emphasizes the challenges that Burma must tackle moving forward.

The section then goes on to discuss the Asian values theory, which is based on a claimed existence of a pan-Asian emphasis of communitarianism<sup>8</sup> over individualism that purportedly accounts for the differences between Western and Asian standards of governance. The reevaluation of this cultural argument is particularly important to Burma because of the country's infamous human rights record and its apparent desire to correct that.

Another critical theory supported by many Asian nations is the right-to-development argument. This is premised on the idea that economic development is a prerequisite to political development. Any expansion of political liberties must be subordinate to economic growth. Like the Asian values discourse, many states have also used this argument to defend their human rights abuses.

Part II considers the merits and flaws of the Asian human rights discourse. It is useful to retrace the praises and criticisms that confronted the development phases of Burma's Asian neighbors, particularly the relationship between human rights and economic modernization. This section unearths the Asian values debate, examining whether there is an Asian type of democracy. It goes on to question whether the low development of political rights is excusable because, as the argument goes, the priority appropriately remains with economic development.

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8. I believe that "communitarianism" is a term of art to provide a comparison with the more Western notion of individualism. In this Comment's context, communitarianism is generally the belief that the individual is subordinate to the community, often resulting in less individual rights, rights that a Western political thinker may believe to be more valuable. Elements of communitarianism will be discussed throughout the Comment.

Part III applies the arguments discussed in Part II to Burma and assesses Burma's potential to establish a democratic future and a safe haven for individual rights. While some economic principles will be addressed, this Comment's overall scope is limited to the political and legal assessment of Burma's future. Accordingly, this section will also explore Suu Kyi's influence on her people and her government.

## I. BACKGROUND

### A. *Burma's Political Development History*

Political scientist Lucian Pye once wrote that “[i]f Burma does not succeed in developing a modern economic, political, and social structure, it will be a failure of human effort, a matter of social and cultural variables, a case of organizational and ideological inadequacy.”<sup>9</sup> So far, this appears to be the case. For most of its existence, Burma has been limited to extreme forms of government—from absolute monarchy, to colonialism, to militarized socialism. Suspicion of those in power is the norm in Burmese society.<sup>10</sup> Historically, this has led people to trust only close associations like tribes and clans.<sup>11</sup> Any reliance on broader government and political institutions, if any that exists currently, is a recent development in Burma.

#### 1. *Precolonial and Colonial Burma: Approximately 1075–1948*

Before Burma was made a British province in 1824,<sup>12</sup> the Burmese lived under an absolute monarchy where the king ruled with unchecked power.<sup>13</sup> Even the royal council lived in

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9. Lucian W. Pye, *Asian Power and Politics, The Cultural Dimensions of Authority* 100 (1985).

10. See Stephen McCarthy, *The Political Theory of Tyranny in Singapore and Burma* 196 (2006).

11. *Id.* at 127. Pye also notes that “[i]n Southeast Asia the politics of entourages and cliques, of personal networks and associations, are critical for the building of coherent national power structures.” Pye, *supra* note 9, at 127.

12. U.S. Cent. Intelligence Agency, *East & Southeast Asia: Burma*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html> (last updated Oct. 4, 2012).

13. See Myint Zan, *Judicial Independence in Burma: No March Backwards Towards the Past*, 1 *Asian-Pac. L. & Pol'y J.* 5, 6 (2000) (writing that

fear of being thrown into jail for displeasing the king.<sup>14</sup> The source of the king's power arose from Buddhist beliefs, which provided limitations and taught kings to maintain order and justice.<sup>15</sup> Legally, however, there were no controls on the king's power and such religious limitations were often ignored.<sup>16</sup> During this time, the administration of justice was "marked by a high degree of personalized behaviour, with little procedure other than prevailing notions of status and etiquette."<sup>17</sup>

The British introduced the Burmese to the rule of law.<sup>18</sup> During the monarchy period, law and custom had little distinction.<sup>19</sup> The British imported foundational legal principles such as contract, property, trusts, sale of goods, the penal code, and criminal procedure.<sup>20</sup> The British also established a court system, yet the courts worked mainly to the advantage of colonial administrators.<sup>21</sup> There was a mixed reaction to the British rule of law. To some, the system instilled new confidence in the government by providing equality and uniformity.<sup>22</sup> To others, the prevalence of form and technicality produced a system that worked without sympathy and soul.<sup>23</sup>

## 2. *A Brief Experiment with Democracy: 1948–1962*

After achieving independence, the Burmese established a multiparty, parliamentary democracy,<sup>24</sup> marking Burma's greatest period of judicial independence and protection for individual rights.<sup>25</sup> Provincial elections established a 111-member assembly that drafted Burma's first constitution in

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"governance of Burmese King was generally autocratic").

14. See PYE, *supra* note 9, at 98.

15. See MCCARTHY, *supra* note 10, at 140.

16. See Zan, *supra* note 13, at 5.

17. ROBERT H. TAYLOR, *THE STATE IN BURMA* 53 (1987).

18. MYINT ZAN, *Law and Legal Culture, and Constitutions and Constitutionalism in Burma*, in *EAST ASIA—HUMAN RIGHTS, NATION-BUILDING, TRADE* 180, 196 (Alice Tay ed., 1993).

19. *Id.* at 190.

20. *Id.* at 200.

21. *Id.*

22. *Id.* at 197.

23. *Id.*

24. See MCCARTHY, *supra* note 10, at 123–24.

25. See Zan, *supra* note 13, at 16.

1947.<sup>26</sup> While there was considerable British influence,<sup>27</sup> the 1947 Constitution also adopted the French and American notions of an elected president, a bicameral parliament, fundamental rights, and the principle of popular sovereignty.<sup>28</sup> At the same time, the constitution was also founded on a type of democratic socialism where “people work[ed] together to the best of their power and ability to strive to convert the natural resources and produce of the land, both above and below ground, into consumer commodities to which everybody would be entitled according to his need.”<sup>29</sup>

The Burmese Supreme Court was able to exert influence during this period. In addition to having the authority to issue writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto*, and *certiorari*,<sup>30</sup> the court issued notable decisions, indicating a wide degree of protection for citizens. For example, the court held that the distribution of communist party propaganda leaflets did not constitute the basis of preventive detention.<sup>31</sup> The court also invalidated rubber-stamping detention orders and limited the delegation of preventive detention to certain officers.<sup>32</sup> Even the executive branch came under scrutiny when the court struck down a number of executive actions and declared a particular presidential action to be *ultra vires* (“beyond the powers”).<sup>33</sup>

### 3. *Military-Run, Postcolonial Period: 1962–1988*

By the late 1950s, Burma spiraled into political mismanagement.<sup>34</sup> Power was too centralized and minority-dominated states became resistant to the central government.<sup>35</sup> The government perceived such resistance a

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26. ZAN, *supra* note 18, at 201.

27. See Zan, *supra* note 13, at 10.

28. ZAN, *supra* note 18, at 203.

29. *Id.* at 203–04. For example, constitutional provisions qualified private property ownership “within limits which conformed to the public interest and which prohibited monopolies and price dictation.” *Id.* at 205.

30. *Id.* at 216.

31. Zan, *supra* note 13, at 13.

32. *Id.* at 14–15.

33. *Id.* at 15.

34. See David C. Williams, *Constitutionalism before Constitutions: Burma’s Struggle to Build a New Order*, 87 TEX. L. REV. 1657, 1660 (2009).

35. See *id.* at 1665 (“[E]very major ethnic group would field a significant resistance force.”).

serious risk to national unity.<sup>36</sup> The 1947 Constitution provided any Burmese state the right to secession,<sup>37</sup> and though no state actually exercised its right, a military coup nonetheless responded to the perceived threat and replaced the government in 1962.<sup>38</sup> This marked the end to democracy in Burma for at least the next fifty years.

From 1962 to 2010, a military junta ruled Burma in a one-party, socialist system. The Burma Socialist Programme Party (BSSP), adopting socialist elements from the Soviet Union,<sup>39</sup> dissolved parliament and established the Revolutionary Council under its control.<sup>40</sup> Lasting until 1988,<sup>41</sup> the “People’s Judicial System” replaced all previous professional judges.<sup>42</sup> The new judges were all appointed by BSSP and ninety percent of them had no legal qualifications.<sup>43</sup> Though never formally abolished, the practice of issuing writs ended with the dissolution of the Supreme Court and the High Court of Burma, which had served as the guardian of the 1947 Constitution.<sup>44</sup>

The new constitution of 1974 was an effort to be “more in harmony with Burma.”<sup>45</sup> Through this new constitution, a monolithic power structure emerged.<sup>46</sup> Single-party elections, in which voters either checked for or against a *single* BSSP candidate,<sup>47</sup> created the People’s Assembly, the country’s highest legal authority.<sup>48</sup> From among its ranks, the People’s Assembly elected lower coordinate councils, the president, the

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36. ZAN, *supra* note 18, at 219 (“General Ne Win claimed that ‘if we [the Army] did not intervene [in March 1962], the country, if it did not split into many parts, would certainly have split into two.’”).

37. CONST. OF THE UNION OF BURMA, ch. 10, § 201 (HeinOnline, current) [hereinafter 1947 CONST.] (“[E]very state shall have the right to secede from the Union in accordance with the conditions hereinafter prescribed.”).

38. ZAN, *supra* note 18, at 218–19.

39. *Id.* at 217.

40. *Id.* at 219–20 (Revolutionary Council as the law-making body).

41. *Id.* at 234.

42. *Id.* at 232.

43. *Id.*

44. *Id.* at 227.

45. *Id.* at 236. David Steinberg noted that the 1974 Constitution drew heavily from Eastern European legal models (i.e., constitutions of Poland, East Germany, and Romania). *Id.* at 240. Williams wrote that the constitution resembled the Yugoslavian constitution. Williams, *supra* note 34, at 1665.

46. ZAN, *supra* note 18, at 239.

47. *Id.* at 238 (“Virtually all of the single representatives to the unicameral *Pyithu Hluttaw* were elected on the first ballot.”).

48. *Id.* at 239.

prime minister, and the judges.<sup>49</sup>

Though the coup occurred with no initial resistance,<sup>50</sup> the new government soon faced opposition and responded to it in a brutal fashion for decades to come.<sup>51</sup> As early as two months after the takeover, the army fired bullets at students who protested the new government's assumption of power and policies against student activism.<sup>52</sup> Thousands of arrests and "protective custodies" (detention without charge and trial) followed during the ensuing period.<sup>53</sup> The absence of individual protection and recurring government brutality became the norm.

#### 4. *Impetus for Change, Stalemate, and Renewed Hope: 1988–2011*

In 1988, a wave of unprecedented protests swept Burma, reacting to twenty-six years of military tyranny.<sup>54</sup> In the same year, Suu Kyi founded the National League for Democracy (NLD).<sup>55</sup> In 1989, Suu Kyi was put on house arrest<sup>56</sup> following her participation in the antigovernment protests and her frequent and outright criticism of the military leadership.<sup>57</sup> In response to these demonstrations, the State Law and Order Restoration Council (SLORC),<sup>58</sup> replacing the BSSP, nullified the 1974 Constitution and promised to hold a multiparty election in 1990.<sup>59</sup>

The election resulted in an overwhelming loss by SLORC to the NLD.<sup>60</sup> The parties competed for 492 seats based on geographical distribution in the election;<sup>61</sup> however, the

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49. *Id.*

50. *Id.* at 220.

51. See generally John Arendshorst, *The Dilemma of Non-Interference: Myanmar, Human Rights, and the ASEAN Charter*, 8 NW. J. INT'L HUM. RTS. 102 (2009).

52. ZAN, *supra* note 18, at 220.

53. *Id.* at 228.

54. *Id.* at 251.

55. *Id.* at 255.

56. *Id.* at 256.

57. See NOBEL PRIZE, *supra* note 5.

58. Arendshorst, *supra* note 51, at 103.

59. ZAN, *supra* note 18, at 254.

60. See *id.* at 257 (Seventy-three percent of the eligible voted; twenty-five percent of the ballots were declared to be "invalid" or "informal ballots;" the NLD grabbed sixty percent of the votes while twenty-five percent had voted for the NUP). The NUP, the National Unity Party, was formerly BSSP. *Id.* at 254.

61. *Id.* at 256.

winner were not immediately put in power. SLORC refused to grant the NLD their new legislative seats until after a new SLORC-approved constitution was drafted.<sup>62</sup>

Reformers soon realized that the SLORC-imposed constituent assembly was a means for SLORC to retain control. Drafters were unable to speak or discuss freely.<sup>63</sup> As a result, many pro-democratic members walked out.<sup>64</sup> Many members were also arrested for disobeying SLORC policies.<sup>65</sup> Because the government continued to restrict open dialogue, the NLD boycotted and members were expelled from follow-up constitutional conventions in 1995 and in 2004.<sup>66</sup>

In 2008, a new constitution was drafted and approved.<sup>67</sup> The State Peace and Development Council (SLORC was renamed in 1997)<sup>68</sup> handpicked the drafters who constitutionalized a military presence in the government.<sup>69</sup> That May, a year after the government's bloody suppression of a Buddhist-led movement,<sup>70</sup> a majority referendum approved the draft,<sup>71</sup> and the new constitution went into effect in 2010 with the civilian transition.<sup>72</sup> Reports of coercion and military intimidation, coupled with the disorder that resulted from Cyclone Nargis, indicated that the referendum was largely a sham.<sup>73</sup>

And then, without a stir, the government implemented top-down, democratic reforms in the fall of 2011. In September, public pressure prompted President Thein Sein to

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62. *Id.* at 257.

63. Williams, *supra* note 34, at 1666.

64. *Id.*

65. ZAN, *supra* note 18, at 257 (adding that 181 out of 392 elected representatives had either been disqualified, forced to resign, died, detained, or were in exile).

66. MCCARTHY, *supra* note 10, at 137–38.

67. Williams, *supra* note 34, at 1669.

68. Arendshorst, *supra* note 51, at 104.

69. Williams, *supra* note 34, at 1669–70. *See infra* Part III.A.

70. Arendshorst, *supra* note 51, at 104.

71. *See id.* (noting that the referendum experienced premarked ballot papers, threats of physical violence, forced voting, and a low voter turnout and that such allegations of corruption was “widespread”). “Despite reports of low voter turnout, the government eventually announced that 98.12 percent of eligible voters had voted, with the SPDC’s new constitution receiving an overwhelming 92.48 percent of the vote.” *Id.*

72. *See* Mydans, *supra* note 3.

73. *See* Arendshorst, *supra* note 51, at 104; Williams, *supra* note 34, at 1669.

suspend a controversial dam partnership with China, reasoning that the project was against “the aspirations and wishes of the people.”<sup>74</sup> In October, the government began freeing political prisoners amid long-time pressure from its foreign critics.<sup>75</sup> The government abolished the practice of direct media censorship,<sup>76</sup> and legalized trade unions and the right to strike.<sup>77</sup> New and pending reforms continue to attract attention,<sup>78</sup> including the eventual dissolution of the press censorship office,<sup>79</sup> and the release of more political prisoners.<sup>80</sup> In December, the NLD re-registered as an official party, and Suu Kyi has since announced her candidacy for a parliamentary position.<sup>81</sup> In a by-election in April 2012, the NLD won forty-three of the forty-five contested parliamentary seats, including a victory seat for Suu Kyi.<sup>82</sup> She has since been appointed to lead the “Rule of Law and Tranquility Committee,” which is responsible for establishing a legal

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74. Thomas Fuller, *Myanmar Backs Down, Suspending Dam Project*, N.Y. TIMES (Sept. 30, 2011), [http://www.nytimes.com/2011/10/01/world/asia/myanmar-suspends-construction-of-controversial-dam.html?\\_r=1](http://www.nytimes.com/2011/10/01/world/asia/myanmar-suspends-construction-of-controversial-dam.html?_r=1).

75. Seth Mydans, *Myanmar Begins to Release Some of its Political Prisoners*, N.Y. TIMES (Oct. 12, 2011), <http://www.nytimes.com/2011/10/13/world/asia/myanmar-begins-releasing-some-political-prisoners.html>.

76. Aung Hla Tun, *Myanmar Government Abolishes Direct Media Censorship*, REUTERS (Aug. 21, 2012, 1:14 AM), <http://in.reuters.com/article/2012/08/20/myanmARCensorshipIDINL4E8JK35920120820>.

77. Joseph Allchin, *New Law Gives Burmese Right to Strike*, DEMOCRATIC VOICE OF BURMA (Oct. 13, 2011), <http://www.dvb.no/news/new-law-gives-burmese-right-to-strike/18174>.

78. See Jason Szep, *Emboldened by Obama, Myanmar Maps Out Reforms*, REUTERS (Nov. 19, 2011, 8:57 AM), <http://www.reuters.com/article/2011/11/19/us-myanmar-reformsidUSL3E7MJ05Q20111119>.

79. *Myanmar's Censor Calls for Press Freedom*, UPI.COM (Oct. 11, 2011, 6:10 AM), [http://www.upi.com/Top\\_News/Special/2011/10/11/Myanmars-censor-calls-for-press-freedom/UPI-89641318327800/](http://www.upi.com/Top_News/Special/2011/10/11/Myanmars-censor-calls-for-press-freedom/UPI-89641318327800/) (reporting that the director of the Press Scrutiny and Registration Department foresees that his department may soon be disbanded as his country trends towards democracy).

80. Dean Nelson, *Hillary Clinton Burma Visit Raises Hopes Political Prisoners will be Released*, THE TELEGRAPH (U.K.) (Dec. 2, 2011, 1:06 PM), <http://www.telegraph.co.uk/news/worldnews/asia/burmamyanmar/8931107/Hillary-Clinton-Burma-visit-raises-hopes-political-prisoners-will-be-released.html>.

81. *Aung San Suu Kyi Party Unveils Logo in Burma Politics Run*, THE TELEGRAPH (U.K.) (Dec. 12, 2011, 11:02 AM), <http://www.telegraph.co.uk/news/worldnews/asia/burmamyanmar/8950472/Aung-San-Suu-Kyi-party-unveils-logo-in-Myanmar-politics-run.html>.

82. Peter Popham, *Aung San Suu Kui Will Join Burma Parliament and Hopes to Reform Constitution*, THE DAILY BEAST (Apr. 20, 2012, 4:15 PM), <http://www.thedailybeast.com/articles/2012/04/30/aung-san-suu-kyi-will-join-burma-parliament-and-hopes-to-reform-constitution.html>.

culture as the country continues to transition.<sup>83</sup>

The reforms have garnered positive international attention for Burma. The Association of Southeast Asian Nations (ASEAN) approved Burma's bid for the 2014 chairmanship.<sup>84</sup> Burma held bilateral discussions with India,<sup>85</sup> Japan,<sup>86</sup> and Indonesia<sup>87</sup> in order to rekindle economic and political support. Most radically, U.S. Secretary of State Hilary Clinton met with Burmese leaders, including Suu Kyi, to praise and assess the reforms; however, Secretary Clinton stressed that more than a "rhetorical commitment to reform" was necessary before lifting sanctions.<sup>88</sup> Britain soon followed with a similar meeting, encouraging the country to continue democratic reforms.<sup>89</sup>

Many observers, however, have remained hesitant to validate the sudden reforms.<sup>90</sup> Intrastate violence between

83. Associated Press, *Myanmar's Suu Kyi to Chair Parliamentary Committee*, AP (Aug. 7, 2012, 5:18 AM), <http://bigstory.ap.org/article/myanmars-suu-kyi-chair-parliamentary-committee>.

84. *Asean Leaders Approve Burma Chairmanship Bid*, BBC NEWS ASIA (Nov. 17, 2011, 7:16 AM), <http://www.bbc.co.uk/news/world-asia-15771531>.

85. Chandrasahas Choudhury, *Can India Push Burma on the Road to Liberty?*, BLOOMBERG (June 27, 2012, 2:26 PM), <http://www.bloomberg.com/news/2012-06-27/can-india-push-burma-on-the-road-to-liberty.html>.

86. The Mainichi, *Japan Vows to Help Myanmar's Transition Toward Democracy*, BURMA RIVERS NETWORK (Oct. 22, 2011), <http://www.burmariversnetwork.org/news/11-news/729-japan-vows-to-help-myanmars-transition-toward-democracy.html>.

87. Agence France-Presse, *Indonesian Foreign Minister Meets Suu Kyi in Myanmar*, GOOGLE (Dec. 28, 2011), <http://www.google.com/hostednews/afp/article/AleqM5iupK1UgON9uUkyFHvRQkBL5wPACQ?docId=CNG.55799cfbd389f865660da24bb02616c9.411>.

88. Interview by Kim Ghattas with Hilary Rodham Clinton, U.S. Sec'y of State, in Rangoon, Burma (Dec. 2, 2011), available at <http://www.state.gov/secretary/rm/2011/12/178110.htm>. As this Comment goes to press, the Obama Administration has significantly lifted all of the economic sanctions against Burma. See Sam Holmes & Celine Fernandez, *Myanmar Awaits Sanction-Lift Effect*, WALL ST. J. (Sept. 28, 2012, 12:04 AM), <http://online.wsj.com/article/SB10000872396390444549204578022193120833754.html>. See also Matthew Pennington, *US Lifts Myanmar International Lending Restriction*, HUFFINGTONPOST.COM (Oct. 10, 2012, 4:42 PM), <http://www.huffingtonpost.com/huff-wires/20121010/us-us-myanmar-sanctions/> (writing that President Obama has lifted the U.S. restriction against Burma's ability to lend from international financial institutions like the World Bank).

89. Jason Burke & Julian Borger, *Aung San Suu Kyi Calls for Change as Hague Makes Historic Visit to Burma*, THE GUARDIAN (U.K.) (Jan. 4, 2012), <http://www.guardian.co.uk/world/2012/jan/05/aung-san-suu-kyi-hague-burma>.

90. See Kelly McParland, *Burmese Generals Put on a Show of Democracy for Audience of Skeptics*, NAT'L POST (Canada) (Oct. 11, 2011, 11:45 AM), <http://fullcomment.nationalpost.com/2011/10/11/burmese-generals-put-on-a->

resistance groups and the national army is still a major issue.<sup>91</sup> In June 2012, communal violence between Buddhist Rakhine and Rohingya Muslims prompted President Thein Sein to announce the expulsion of the Rohingyas from Burma as the only solution to the ethnic conflict.<sup>92</sup> Even if the government is given the benefit of the doubt, how does Burma go about achieving a lasting democracy?

*B. The Asian Human Rights Conundrum*

In Asia, the contest between a state's desire to maintain stability and the citizens' demand for greater individual rights is a well-established issue.<sup>93</sup> Governments, particularly those of China, Singapore, Malaysia, and Indonesia, have argued that human rights policies, including political and civil liberties, are a matter of national sovereignty and should not be subject to international standards.<sup>94</sup> Developing states have a legitimate concern when it comes to stability. It would be hypocritical and unproductive, however, to legitimize repeated violence and suppression against dissidents in the name of stability. As a result, human rights advocates believe that such intolerant governments invoke the argument only to maintain tight control over its people.

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show-of-democracy-for-audience-of-skeptics/.

91. Saw Yan Naing, *And Now the Ethnic Crisis*, THE IRRAWADDY (Thai.) (Oct. 20, 2011), [http://www2.irrawaddy.org/article.php?art\\_id=22297](http://www2.irrawaddy.org/article.php?art_id=22297).

92. See *'Campaign of Violence' in Burma State-Rights Group*, BBC NEWS ASIA (Aug. 1, 2012, 9:06 AM), <http://www.bbc.co.uk/news/world-asia-19074383>. See also *Burma Blocks Opening of Office for Islamic Body OIC*, BBC NEWS ASIA (Oct. 15, 2012, 8:47 AM), <http://www.bbc.co.uk/news/world-asia-19949414> (reporting on the government's disallowance of an Islamic organization to establish an office in Burma to assist local Muslims in the aftermath of the Rakhine-Rohingya conflict). But see *Myanmar President Urges Change of Attitude Toward Muslim Minority*, THE NATION (Thai.) (Oct. 22, 2012, 2:04 PM), <http://www.nationmultimedia.com/breakingnews/Myanmar-president-urges-change-of-attitude-toward--30192795.html>. The two preceding articles represent the stark reality of minorities living in Burma and perhaps, the beginning glimpses of a government thinking twice about its past as it tries to move its country forward.

93. See Yash Ghai, *Human Rights and Governance: The Asia Debate*, 15 AUSTL. Y.B. INT'L L. 1, 6 (1994).

94. *Id.* at 7–8.

### 1. *Asian Values*

Singapore's former Prime Minister Lee Kuan Yew famously posed the Asian values theory. The theory states that Western emphasis on individual rights has no place in the Asian heritage.<sup>95</sup> Claiming Confucian principles and speaking on behalf of East Asian societies,<sup>96</sup> Lee believes that the Western expansion of individual rights is bad policy:<sup>97</sup> "The expansion of the right of the individual to behave or misbehave as he pleases has come at the expense of orderly society."<sup>98</sup> Lee explained that "guns, drugs, violent crime, vagrancy, [and] unbecoming behavior in public" are sources of the American erosion of a well-ordered society.<sup>99</sup> Without a well-ordered society, no one can achieve maximum freedom.<sup>100</sup> "This freedom can only exist in an ordered state and not in a natural state of contention and anarchy."<sup>101</sup>

Lee compared the drug policies of the United States and Singapore to underscore the difference. In the United States, the government sends antinarcotic forces across the globe to combat the source of the drugs.<sup>102</sup> Instead, Lee directly resolved the problem with a national law that gives an officer

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95. See generally Fareed Zakaria, *Culture is Destiny*, 73 FOREIGN AFF. 109 (1994).

96. See *id.* at 113. See also Ghai, *supra* note 93, at 11–12 (noting a strong Confucian element in a 1991 Singaporean white paper stating, "The concept of government by honourable men (*junzi*) who have a duty to do right for the people, and who have the trust and respect of the population, fits us better than the Western idea that a government should be given as limited powers as possible, and should always be treated with suspicion unless proven otherwise."). This is at clear odds with the American judicial standard of review of particular governmental actions as "immediately suspect" subject to the "most rigid scrutiny." *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

97. See Zakaria, *supra* note 95, at 111.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* The legal ramifications arising from certain individual behavior in Singapore and the United States are indeed different. Compare *You Can Cage the Singer*, THE ECONOMIST (Nov. 4, 2010), <http://www.economist.com/node/17419873> (discussing how a Singaporean judge found a British journalist "guilty of scandalizing the judiciary"), with *Snyder v. Phelps*, 131 S.Ct. 1207, 1220 (2011) ("As a nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.").

102. Zakaria, *supra* note 95, at 111. See also Henry Chu, *U.S., China Agree to Anti-Drug Pact / Cooperation Pledge Signed by McCaffrey During Beijing Visit*, SFGATE.COM (June 20, 2000, 4:00 AM), [http://articles.sfgate.com/2000-06-20/news/17651842\\_1\\_so-called-golden-triangle-countries-joint-ties-crime-rings-dealing-drugs](http://articles.sfgate.com/2000-06-20/news/17651842_1_so-called-golden-triangle-countries-joint-ties-crime-rings-dealing-drugs).

the discretion to search and test anyone the officer *believes* to be under the influence of drugs.<sup>103</sup> “In America if you did that it would be an invasion of the individual’s rights and you would be sued.”<sup>104</sup>

Lee also believes that moral decay is another result of this sort of lawlessness: “Man needs a certain moral sense of right and wrong.”<sup>105</sup> Because individuals are allowed to do whatever they want, “Westerners have abandoned an ethical basis for society . . . .”<sup>106</sup> In comparing the views between Lee and Suu Kyi, Professor Myint Zan stated that:

[Suu Kyi] may not entirely disagree with Lee that, in many countries of the West and especially the United States “individualism” has in certain aspects become too rampant and disturbing from the perspective of Asian societies and that the assertion of rights of the society with the attendant instillation of moral responsibility are needed to redress this.<sup>107</sup>

Duties to the community are paramount in Asia, Lee further noted. Lee admonished the West for improperly assuming the responsibility to remedy social ills.<sup>108</sup> In Asia, the individual “is not pristine and separate. The family is part of the extended family, and then friends and the wider society. The ruler or the government does not try to provide for a person what the family best provides.”<sup>109</sup> At first blush, Lee’s statement is seemingly odd because the Singaporean government is in fact very imposing.<sup>110</sup> However, the notion of individual duty may iron out this apparent conflict. Lee would argue that, unlike what is happening in the West, individual duty provides support to the community,

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103. Zakaria, *supra* note 95, at 112.

104. *Id.* While there is greater protection of individual rights in the United States, those rights certainly are not absolute. See *United States v. Robinson*, 414 U.S. 218, 225 (1973) (validating a search without a warrant when it is a “search incident to lawful arrest”).

105. Zakaria, *supra* note 95, at 112.

106. *Id.*

107. Myint Zan, *Position of Power and Notions of Empowerment: Comparing the Views of Lee Kuan Yew and Aung San Suu Kyi on Human Rights and Democratic Governance*, 2 NEWCASTLE L. REV. 49, 56 (1997).

108. Zakaria, *supra* note 95, at 113–14.

109. *Id.* at 113.

110. Kim Dae Jung, *Is Culture Destiny? The Myth of Asia’s Anti-Democratic Values*, 73 FOREIGN AFF. 189, 190 (1994) (describing Lee’s regulation of individual action as “an Orwellian extreme of social engineering”).

preventing social problems and precluding the need for the state to intervene.<sup>111</sup>

## 2. *The Bangkok Declaration*

Notwithstanding criticism, Asian nations<sup>112</sup> convened and signed the Bangkok Declaration of Human Rights<sup>113</sup> in 1993 (hereinafter “Bangkok Declaration”), an attempt to validate the cultural relativity of human rights.<sup>114</sup> Forty Asian nations<sup>115</sup> agreed to memorialize the assertion that although human rights are universal in nature, the policy of human rights “must be considered in the context of a dynamic and evolving process of international norm setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds.”<sup>116</sup>

The Bangkok Declaration stressed other notable features that mirrored the defensive tone of the Asian values discourse. The delegates agreed to respect “national sovereignty, territorial integrity and noninterference in internal affairs of the States.”<sup>117</sup> The delegates also recognized the right to development as a fundamental part of human rights, while discouraging the use of “human rights as a conditionality for extending development assistance.”<sup>118</sup> Nor should human rights be used “as an instrument of political pressure.”<sup>119</sup> The delegates also agreed that the principle of self-determination is limited to those under alien, colonial, or foreign occupation, and is not extended to “undermine the territorial integrity, national sovereignty,

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111. See Zakaria, *supra* note 95, at 113 (describing the differences between the West’s and Singapore’s response in dealing with single-parent families). See also Ghai, *supra* note 93, at 12 (explaining that “[t]he cohesion of society as well as the fulfillment of the individual is secured through a chain and hierarchy of duties” in Asian values).

112. All Asian nations that convened at the Asian regional preparatory meeting for the Vienna World Conference on Human Rights signed the document. Ghai, *supra* note 93, at 6.

113. Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, March 29–April 2, 1993, U.N. Doc. A/CONF.157/ASRM/8 (April 7, 1993) [hereinafter Bangkok Declaration].

114. See MCCARTHY, *supra* note 10, at 91.

115. *Id.*

116. Bangkok Declaration, *supra* note 113, at 5.

117. *Id.* at 3.

118. *Id.* at 4. See also *infra* Part I.B.3.

119. Bangkok Declaration, *supra* note 113, at 4.

and political independence of States.”<sup>120</sup>

The Bangkok Declaration, however, was not the only Asian perspective at the meeting. Dozens of Asian NGOs endorsed an alternative view, believing that the agreement was just another justification for the perpetuation of abuse in their region.<sup>121</sup> The NGOs believed that a faulty international economic order—collusion amongst international aid agencies, political elites, and multinational corporations—played a role in abusing human rights.<sup>122</sup> They also favored an equitable distribution of resources and eradication of poverty through empowerment of minorities.<sup>123</sup> The NGO views sound very similar to those of Suu Kyi who stressed:

The provision of basic material needs is not sufficient to make minority groups and indigenous peoples feel they are truly part of the greater national entity. For they have to be confident that they too have an active role to play in shaping the destiny of the state that demands their allegiance.<sup>124</sup>

As later discussions of this Comment will show, Suu Kyi advocates political integration of the Burmese people and a system of legal recourse to ensure legitimacy in the government, and stability for the country.

### 3. *Right to Development*

While many see Asian values as pretext for authoritarian control,<sup>125</sup> other Asian states have adopted an “economic development first” argument to explain their lackluster human rights record.<sup>126</sup> They argue that democracy has no

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120. *Id.* at 5.

121. *See* Ghai, *supra* note 93, at 13–14.

122. *Id.* at 14.

123. *Id.*

124. Aung San Suu Kyi, *Empowerment for a Culture of Peace and Development*, Address at the World Commission Culture and Development 7 (Nov. 21, 1994) (transcript available in the Cornell University Library).

125. *See infra* Part II.B.

126. Although the right-to-development argument finds a rationale not entirely separate from the Asian values discourse, the rhetorical effect is important with respect to various nations. Singapore may likely emphasize Asian values more steadfastly as it has. While China, with weaker economic conditions, may emphasize its right to development. Political scientist Mark Thompson has argued that Germany articulated a similar argument against democracy during its imperial history. *See* Mark R. Thompson, *Whatever Happened to “Asian Values?”* 12 J. DEMOCRACY 154, 158 (2001).

place in an environment of poverty and thus that economic development is the precondition to political rights development.<sup>127</sup> The theory implies that economic development requires a restriction on human rights because the government must have a seamless framework to remove obstacles.<sup>128</sup>

In 1986, the United Nations General Assembly adopted the Declaration on the Right to Development<sup>129</sup> (hereinafter “Development Declaration”). The Development Declaration was seen by Western critics as a concession to human rights abuses.<sup>130</sup> The main force of the declaration emphasized that “international co-operation is essential” in assisting developing countries.<sup>131</sup> The Development Declaration vaguely describes the right to development as “an inalienable human right.”<sup>132</sup> But it is conceptually difficult to understand what development really means or how such a right would be exercised.<sup>133</sup> Constitutional scholar Yash Ghai put it simply, “the rich countries must provide economic assistance to the poor countries, but must not question their human rights situation.”<sup>134</sup>

The right-to-development argument implies that the secret to economic success lies in an authoritarian political system.<sup>135</sup> Indeed, many Asian nations did prosper without a democratic political structure.<sup>136</sup> The role of the state in Japan, South Korea, and Taiwan played a key role in their

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127. See Ghai, *supra* note 93, at 9. The Chinese argued, “to eat their fill and dress warmly were the fundamental demands of the Chinese people who had long suffered cold and hunger.” *Id.* at 8.

128. *Id.* at 9.

129. Declaration on the Right to Development, 97th plenary meeting, U.N. Doc. A/RES/41/128 (Dec. 4, 1986) [hereinafter Development Declaration].

130. See Ghai, *supra* note 93, at 10.

131. Development Declaration, *supra* note 129, at art. 4 § 2.

132. *Id.* at art. 1 § 1.

133. “[The] inalienable right to full sovereignty over all their natural wealth and resources” sounds more like the needs of the state, rather than of the individual. *Id.* at art. 1 § 2.

134. Ghai, *supra* note 93, at 10.

135. See Thompson, *supra* note 126, at 156 (“This view led Singaporean senior minister Lee Kuan Yew to warn Manila business leaders that their country needed ‘discipline more than democracy.’”).

136. See AMARTYA SEN, DEVELOPMENT AS FREEDOM 149 (1999) (noting that South Korea, Singapore and postreform China have experienced faster rates of economic growth than less authoritarian ones like India, Costa Rica, and Jamaica).

economies.<sup>137</sup> In contrast, Hong Kong's success can be attributed to a mostly unregulated market. Democracy and political freedoms were mostly irrelevant during its development stage.<sup>138</sup> Ghai raised the important distinction that "it was the market which shaped the State in the West, but it is the State which has shaped the market in Asia."<sup>139</sup> Professor Francis Fukuyama, on the other hand, doubted the economic efficacy of authoritarian governments and remarked "[w]hen such governments function well, as in the case of Singapore and South Korea under military rule, they can indeed be very effective at promoting rapid growth; but when they function badly, like Brazil or Peru during the 1970's, their economies tend to perform much more poorly than democracies."<sup>140</sup> Indeed, the Burmese government tried to mimic the Indonesian "developmentalist dictatorship" to further economic growth.<sup>141</sup>

Contrary to some antistate views of the International Monetary Fund (IMF), the role of the state is in fact crucial at the development stage, as the "East Asian Miracle" suggests.<sup>142</sup> Caution should be exercised when exposing nascent economies to the well-known risks of full-fledged capitalism.<sup>143</sup> Even Adam Smith recommended a sort of "interventionist logic" because the free market and individual pursuit of private gains have dire consequences,<sup>144</sup> as evidenced by the 1997 Asian Crisis.<sup>145</sup>

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137. See Francis Fukuyama, *Asian Values and the Asian Crisis*, 105 COMMENT. MAG. 23, 24 (1998).

138. Yash Ghai, *The Rule of Law and Capitalism: Reflections on the Basic Law*, in HONG KONG, CHINA AND 1997, ESSAYS IN LEGAL THEORY 343, 344 (Raymond Wacks ed., 1993).

139. Ghai, *supra* note 93, at 32.

140. Fukuyama, *supra* note 137, at 24. See also SEN, *supra* note 136, at 15 ("[C]omprehensive intercountry comparisons have not provided any confirmation of this thesis, and there is little evidence that authoritarian politics actually helps economic growth.").

141. Thompson, *supra* note 126, at 156.

142. See JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 91 (2002). The "East Asian Miracle" is known as the remarkable economic rise of particular East Asian states in the last three decades of the twentieth century. *Id.* at 90.

143. See SEN, *supra* note 136, at 124 ("Even Adam Smith . . . did not hesitate to investigate economic circumstances in which particular restrictions may be sensibly proposed, or economic fields in which nonmarket institutions would be badly needed to supplement what the markets can do.").

144. *Id.* at 124-25.

145. See STIGLITZ, *supra* note 142, at 18.

Asian governments have also been the pioneering example of promoting human development, the process of expanding education, health and other conditions of human life.<sup>146</sup> Nobel Laureate Amartya Sen notes that the developed Asian states established high literacy rates through expansion of education and reduced mortality rates through health care *before* seeing a decline in poverty.<sup>147</sup> Prime Minister Lee stated, “If you have a culture that doesn’t place much value in learning and scholarship and hard work and thrift and deferment of present enjoyment for future gain, the going will be much slower.”<sup>148</sup> As Burma continues its path of reform, the government must reevaluate the proper role of the state—where it should intervene and where it should not.

## II. ANALYSIS

### A. *Asian Values Theory and Its Legitimacy*

Lee Kuan Yew and other Asian leaders,<sup>149</sup> by promoting communitarianism over individualism, maintained authoritarian policies that have resulted in an alarming suppression of civil liberties. In his defense, Lee stated emphatically, “It is not my business to tell people what’s wrong with their system. It is my business to tell people not to foist their system indiscriminately on societies in which it will not work.”<sup>150</sup> In his view, the suppression of civil liberties is a necessary condition to Singapore’s stability.

In support of Lee’s contention, the West had hundreds of years to groom democracy and capitalism. This was done on a trial and error basis.<sup>151</sup> Along the way, the United States

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146. See SEN, *supra* note 136, at 41.

147. *Id.* at 150.

148. Zakaria, *supra* note 95, at 116–17.

149. See Fukuyama, *supra* note 137, at 23 (attributing the subject of Asian values to Lee Kuan Yew and former Prime Minister Mahathir Mohamad of Malaysia); Kishore Mahbubani, *The Dangers of Decadence*, 72 FOREIGN AFF. 10 (1993); Thompson, *supra* note 126, at 155–56, 163 (noting that Indonesia’s Suharto was the “leading regional advocate” of “Asian values as a doctrine of developmentalism” and that pro-Beijing Chief Executive Tung Chee Hwa “attempted to use ‘Asian values’ against democracy” upon Hong Kong’s return to China in 1997).

150. Zakaria, *supra* note 95, at 110.

151. The following are famous American Supreme Court decisions that reflect the changing norms in U.S. society: *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (holding that the “separate but equal” principle with regard to race

and Europe had their own brushes with human rights abuses. One must only look to slavery, the treatment of Native Americans, colonialism, and women's rights to see how the West has evolved.<sup>152</sup> And while such abuses faced opposition at the time, those actions were condoned by government policy, only to be reversed through a combination of democratic vehicles and an eventual shift in popular opinion.<sup>153</sup> The West's criticism of human rights abuses is a product, at least in part, of norms developed over the millennia.

It is safe to say that a government's ability to recognize community interests and individual interests most likely rest on a continuum.<sup>154</sup> There may, however, exist a subtle but notable distinction between Western individualism and Asian group consciousness, at least from a historical standpoint.<sup>155</sup> Pye stated, "it is necessary to acknowledge the importance of both individual freedom and society's needs, and to recognize that Westerners are likely to be more sensitive to the first issue and Asians to the second."<sup>156</sup> The weight of either communitarianism or individualism cannot be measured in absolutes. Perhaps long ago, Asian nations favored

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has no place in public education for children); *Korematsu v. United States*, 323 U.S. 214, 223 (1945) (validating the American government's internment camps of Japanese Americans during World War II); *Plessy v. Ferguson*, 163 U.S. 537, 543 (1896) (holding that the segregation of black and white Americans "do not necessarily imply the inferiority of either race to the other"), *overruled by Brown*, 347 U.S. 483; *Dred Scott v. Sandford*, 60 U.S. 393 (1856), *superseded by constitutional amendment*, U.S. CONST. amend. XIV. *See also* Stephen Breyer, "For Their Own Good," *The Cherokees, the Supreme Court and the Early History of American Conscience*, THE NEW REPUBLIC (Dec. 4, 2008, 12:00 AM), <http://www.tnr.com/article/politics/their-own-good>.

152. *See* Ghai, *supra* note 93, at 14 ("There is no reason why contemporary concerns and fads in the West should define the parameters of international discourse in, and aspirations, of human rights.").

153. *See* STEPHEN BREYER, MAKING OUR DEMOCRACY WORK 22 (2010) (In responding to a question posed, "[w]hy do Americans do what the courts say?" Breyer writes, "[f]ollowing the law is a matter of custom, of habit, of widely shared understandings as to how those in government and members of the public should, and will, act when faced with a court decision they strongly dislike.").

154. *See* PYE, *supra* note 9, at 26.

155. *Id.* at 352 n.38 ("The distinction between Western individualism and Asian group consciousness has been a dominant theme in Sir George Sansom's interpretation of Japan, John K. Fairbank's description of China, Louis Dumont's work on India, and the work of such general theorists as Michael Polyani, Sir Thomas Maine, and of course both Max Weber and Karl Marx.").

156. *Id.* at 27.

communitarianism, but today a trend toward individualism may better serve the needs of the people.<sup>157</sup> In writing about her own country, Suu Kyi wrote, “[i]t was natural that a people who have suffered much from the consequences of bad government should be preoccupied with theories of good government.”<sup>158</sup> It is for this very reason that the former Burmese Chairman U Ne Win decided to hold multiparty elections in 1990.<sup>159</sup>

### B. Asian Values Theory and Its Criticism

Critics have pointed out several flaws with the Asian values theory, beginning with its religious scope.<sup>160</sup> To confine the political governance theory to a single philosophy (Confucianism) ignores the diversity of religions and philosophies in Asia.<sup>161</sup> Islam in Malaysia and Indonesia, Buddhism in China and Burma, and Christianity in Korea and the Philippines. Even among these religious traditions, one can find sources of liberal democracy. For the purposes of this Comment, the discussion will be limited to specific Buddhist tenets and how Suu Kyi has relied on them as her foundation for Burma’s realization of democracy.<sup>162</sup>

From absolute monarchy to socialism, the Burmese have always associated their way of life with Buddhism.<sup>163</sup> During the Burmese monarchy, a king had the duty to rule according to moral teachings revealed in the *Dhamma*.<sup>164</sup> The myth of *Mahasammata* described a Hobbesian account of men, “in a

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157. See Ghai, *supra* note 93, at 21 (“Societies are constantly changing, and with economical and social changes, there are also changes in the perception of what is important and valuable to a community or a group.”).

158. SUU KYI, *supra* note 7, at 168.

159. See ZAN, *supra* note 18, at 251 (writing that Ne Win said, “recent events had indicated a lack of confidence in the Government [*sic*],” and that he needed to know whether this view was shared by a “majority or minority”).

160. See generally Kim, *supra* note 110; Ghai, *supra* note 93, at 7; MCCARTHY, *supra* note 10, at 139 (“[P]romotion of Buddhism during times of political crisis is a long-standing cultural tradition in Burmese politics, dating back to the eleventh-century kingdom of Pagan: ‘Where a government has faced erosion of political legitimacy, whether it be Anawratha, U Nu, or Ne Win, it returns to Buddhism.’”). Asian NGOs also attacked the Asian values theory at the Vienna World Conference on human rights. See *supra* Part I.B.2.

161. See Ghai, *supra* note 93, at 6.

162. Many scholars have pointed to several other religious traditions to undermine Lee’s argument. See generally Kim, *supra* note 110, at 191–92.

163. See MCCARTHY, *supra* note 10, at 139.

164. *Id.* at 140.

state of want,” and their need for a social contract with an elected sovereign in exchange for protection.<sup>165</sup> Suu Kyi disputes suggestions that Buddhist myths about kings reinforce personalized forms of authority that are antithetical to the modern state, writing that “because *Mahasammata* was chosen by popular consent and required to govern in accordance with just laws, the concept of government elective and *sub lege* is not alien to traditional Burmese thought.”<sup>166</sup>

Burmese kings were morally bound to abide by ten moral precepts (also known as the Ten Duties): “almsgiving, observance of Buddhist precepts, liberality, rectitude, gentleness, self-restriction, control of anger, avoidance of the use of violence in his relationship with the people or avoidance of maltreatment of the people, forbearance, and ‘non-opposition’ against the people’s will.”<sup>167</sup> Suu Kyi frequently references the last precept to reinforce her belief in Burma’s democratic potential. “The real duty of non-opposition is a reminder that the legitimacy of government is founded on the consent of the people, who may withdraw their mandate at any time if they lose confidence in the ability of the ruler to serve their best interests.”<sup>168</sup>

Aside from religious limitations, critics also find the Asian values rhetoric both self-serving and hypocritical. Authoritarian leaders have crushed whole communities in the name of “state stability:”<sup>169</sup> China and the Tibetans;<sup>170</sup> Burma and the Karen, Kachin, Shan, and Rohingya communities;<sup>171</sup> and Indonesia and the communists.<sup>172</sup> Though its actions have not been as wide scale as its neighbors, Singapore has

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165. *Id.*

166. SUU KYI, *supra* note 7, at 170.

167. MCCARTHY, *supra* note 10, at 142.

168. SUU KYI, *supra* note 7, at 173.

169. *See* Ghai, *supra* note 93, at 17 (“Governments have destroyed many communities in the name of development or State stability, and the consistent refusal of most of them to recognise that there are indigenous peoples among their population . . . is but a demonstration of their lack of commitment to the real community.”).

170. Edward Wong, *Study Points to Heavy-Handed Repression of Tibetan Area in China*, N.Y. TIMES (Oct. 12, 2011), [http://www.nytimes.com/2011/10/13/world/asia/study-points-to-heavy-handed-repression-of-tibetan-area-in-china.html?ref=edwardwong&\\_r=0](http://www.nytimes.com/2011/10/13/world/asia/study-points-to-heavy-handed-repression-of-tibetan-area-in-china.html?ref=edwardwong&_r=0).

171. *See* Naing, *supra* note 91; *see supra* text accompanying note 92.

172. Marilyn Berger, *Suharto Dies at 86, Indonesian Dictator Brought Order and Bloodshed*, N.Y. TIMES (Jan. 28, 2008), <http://www.nytimes.com/2008/01/28/world/asia/28suharto.html?pagewanted=all>.

reportedly taped and doctored confessions extracted from activists under coercion and presented those confessions to national television as proof of guilt.<sup>173</sup> Often falsely equating the “community” with the “state,”<sup>174</sup> autocratic regimes have claimed that they directly advance national stability by preventing secession and disunity.<sup>175</sup> Burma thus repealed the right to secession from its 1947 Constitution<sup>176</sup> and the 2008 Constitution expressly prohibits such a right.<sup>177</sup>

Another criticism leveled against the Asian values theory is that its characterization of “excessive individualism” in the West is overbroad. The United States does provide expansive individual rights in areas ranging from speech to gun ownership, especially when compared to its Asian counterparts, but those rights are not absolute. For example, the right to free speech is evidence against Lee’s characterization of the West. Americans do not enjoy protection when their expression involves obscenity, fighting words, or incitement to violence.<sup>178</sup> Furthermore, individual states can prescribe their own standards for regulating libel.<sup>179</sup> Child pornography, though it can be viewed as individual expression, is categorically unprotected.<sup>180</sup>

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173. Ghai, *supra* note 93, at 9.

174. *Id.* at 17.

175. Regarding its preventive detention of activists, Singapore’s Minister of Home Affairs responded, “[i]n our short history, Singapore has repeatedly encountered subversive threats from within and without. . . . To combat these threats to the nation, the usual procedures of court trials . . . have proved totally inadequate. . . . Preventive detention is not a blemish marring our record; it is a necessary power underpinning our freedom.” *Id.* at 9.

176. See 1947 CONST., *supra* note 37, at ch. 10, § 201 (“[E]very State shall have the right to secede from the Union in accordance with the conditions hereinafter prescribed.”).

177. MYAN. CONST., *supra* note 1, at ch. 1, § 10 (“No part of the territory constituted in the Union such as Regions, States, Union Territories and Self-Administered Areas shall ever secede from the Union.”).

178. See *Miller v. California*, 413 U.S. 15 (1973) (defining the standards of what constitutes obscenity); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (distinguishing between mere advocacy and advocacy that “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action,” the latter being constitutionally unprotected); *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942) (holding that “fighting words” are “those which by their very utterance inflict injury or tend to incite an immediate breach of the peace”).

179. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 324 (1974).

180. *New York v. Ferber*, 458 U.S. 747, 759 (1982) (“[T]he distribution network for pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled.”).

Similarly, an individual's expression through public nudity has also been invalidated.<sup>181</sup> Moreover, the United States Supreme Court has routinely validated the government's regulation of an individual's free speech rights on public grounds under "time, place and manner" restrictions.<sup>182</sup> Lee's description of the Western individual's right to "unbecoming behavior" in the public space is far from the truth.<sup>183</sup> By ignoring the actual state of rights throughout the world, the cultural arguments of Asian values have conveniently served to suppress opposition in countries like Burma.<sup>184</sup>

### C. *Rights vs. Duties*

While many have addressed the defensive tone of Asian values, there may nonetheless be some subtle merit in the distinction between the Western emphasis of rights and the Asian notion of duties. In the West, the evolution of rights correlated strongly with the evolution of the market economy.<sup>185</sup> Duties, on the other hand, may be a product of Asian socialization, a nuanced norm dictated by the Asian

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181. See *City of Erie v. Pap's A.M.*, 529 U.S. 277, 291 (2000) (holding that the prohibition of public nudity in public places targets secondary effects of the conduct such as public health, safety and welfare).

182. See *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288 (1984) (ruling that the prohibition against sleeping overnight, even as a form of protest, in a designated park area was not unconstitutional); *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 795 (1984) (ruling that the prohibition of hanging signs over certain public property is a "reasonable regulation affecting the time, place, and manner of expression" because it protects utility workers and eliminates traffic hazards).

183. See discussion *supra* Part I.B.1.

184. Other American constitutional rights also carry restrictions. The right to bear arms does not mean that an individual can carry a handgun for any purpose. See *Dist. of Columbia v. Heller*, 554 U.S. 570, 595 (2008). Additionally, an individual cannot practice her religion if her practice runs contrary to other laws. See *Emp't Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 878-79 (1990) ("We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate."). With respect to criminal procedure, an individual can avail herself of Fourth Amendment protection against a warrantless search only if she can demonstrate 1) that she has an actual subjective expectation of privacy, and 2) that society is willing to recognize that expectation as reasonable. See *Kyllo v. United States*, 533 U.S. 27, 27-28 (2001) (applying Justice Harlan's concurrence in *Katz v. United States*, 389 U.S. 347, 361 (1967)).

185. Ghai has provided both a logical and historical connection between democracy and the market, and both connections explain the foundation of rights in Western society. See Ghai, *supra* note 93, at 31.

emphasis on hierarchy and chain of command.<sup>186</sup>

From both a historical and logical standpoint, the West's emphasis on individual rights is inherent in the market economy and its evolution. Private property ownership necessitates decentralization and individual decision making through freedom of choice.<sup>187</sup> Judicially cognizable rights ensure predictability and legal security of such autonomous decisions.<sup>188</sup> Similarly, the departure from traditional forms of economic tools such as labor (from "status" to "contract") required the utility of rights and democratic vehicles.<sup>189</sup> Sen stated, "conceptualization of economic needs depends crucially on open public debates and discussions, the guaranteeing of which requires insistence on basic political liberty and civil rights."<sup>190</sup> The United States' Occupy movement is an example of the democratic response to capitalist forces.<sup>191</sup>

In Asia, however, it is believed that individual duties have a higher priority. While it is not clear what the precise duties are and where they come from, it is at least clear from Lee's criticism of American excess that such duties are related to personal responsibility.<sup>192</sup> If Lee argued correctly that the "liberal, intellectual tradition" heedlessly views that "everybody would be better off if they were allowed to do their own thing,"<sup>193</sup> then self-restraint is a better fit in the Asian tradition. It could be that duty is intrinsically tied to the "Asian orientation toward the group . . . [that] elevates tests of loyalty and commitment . . . while downplaying the legitimacy of using politics to advance special interests."<sup>194</sup> To understand Asian values against the Western liberal, intellectual tradition, the notion of rights is necessarily individual centric and the notion of duties is necessarily community centric.

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186. *Id.* at 12.

187. *See id.* at 31.

188. *See id.*

189. *Id.*

190. SEN, *supra* note 136, at 148.

191. Chrystia Freeland, *Inequality, but Without the Villains*, N.Y. TIMES (Dec. 8, 2011), <http://www.nytimes.com/2011/12/09/us/09iht-letter09.html>.

192. *See* Zakaria, *supra* note 95, at 112.

193. *Id.*

194. PYE, *supra* note 9, at 27.

It must necessarily follow that the notion of duties must also be extended to the state. Like Suu Kyi, who has stressed the kingly *duty* to rule by the consent of the people, Ghai has also noted that “the notion of duty can be truly revolutionary.”<sup>195</sup> Furthermore, Pye pointed out that the concept of paternalism does not have the stigma in Asia as it does in the West.<sup>196</sup> “In most Asian cultures leaders are expected to be nurturing, benevolent, kind, sympathetic figures who inspire commitment and dedication.”<sup>197</sup>

While there is no clear answer to the priority of rights or duties, it is at least clear that in repressive regimes like Burma, there is both a deprivation of rights on the one hand, and a neglect of government duty on the other.<sup>198</sup> Ghai cautioned that in practice, however, the notion of duties creates social, economic, and political subordination,<sup>199</sup> particularly in the hands of an intolerant government. “The West has, to some extent, separated civil society from the State, creating a ‘neutral’ public area and space for communities”<sup>200</sup> where individuals can exercise their political rights. In Asia, the tendency has been towards a “convergence of the two, regarded perhaps as necessary for the legitimacy of the State but ultimately destructive of the community.”<sup>201</sup>

#### D. Feasibility of the Right-to-Development Argument

From an economic historical perspective, the West and the East share similar paths. Like many Asian nations during their developmental periods,<sup>202</sup> the United States and Japan engaged in similar protectionist economic strategies during the beginning days of capitalist development.<sup>203</sup> It was

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195. Ghai, *supra* note 93, at 19.

196. PYE, *supra* note 9, at 27.

197. *Id.* at 27–28.

198. SUU KYI, *supra* note 7, at 176 (“Democracy acknowledges the right to differ as well as the duty to settle differences peacefully.”).

199. Ghai, *supra* note 93, at 19.

200. *Id.*

201. *Id.* (citation omitted).

202. See STIGLITZ, *supra* note 142, at 91 (remarking that the East Asian Miracle became successful because they had *not* followed the dictates of the Washington Consensus that demanded “minimalist roles” of the government).

203. See *id.* at 16 (“[M]ost of the advanced industrialist countries—including the United States and Japan—had built up their economies by wisely and selectively protecting some of their industries until they were strong enough to

not until the United States reached the pinnacle of its economic prosperity during post–World War II that the American government was finally responding to the disenfranchisement of millions of African-Americans at home. Was the United States exercising its right to development? I would respond with a resounding “no.” Instead, it is more likely that economic modernization and democracy develop along a continuum, overlapping sometimes as a country responds to various social and historical forces. Neither needs to be a precondition of the other.

The sequencing of economic and political rights is indeed problematic. Sen has urged the recognition of “interconnections [that exist] between political freedoms and the understanding and fulfillment of economic needs.”<sup>204</sup> A society requires a democratic framework *first* before they can decide basic needs.<sup>205</sup> While some Asian states have achieved economic success without democracy, there is no reason to believe that a country needs to restrict political freedoms in order to achieve economic modernity.<sup>206</sup> The democratic movements in South Korea, Thailand, Bangladesh, and Pakistan serve to counter certain governments’ shortsighted belief that their people care more about economic livelihood than political participation.<sup>207</sup> Burma clearly saw the symbiotic relationship between economic development and political rights in 2007 when Buddhist monks took to the streets after a drastic rise in fuel prices.<sup>208</sup>

### III. BURMA’S NEW FUTURE

While Burma has undergone reforms at an unprecedented rate, the country faces a long journey ahead before it can achieve any recognizable form of democracy. Whether Burma can politically reform to achieve a level of confidence, sustainability, and international recognition is the million-dollar question. Burma’s potential for success can be predicted by the histories of its Asian neighbors—what has worked and what has not worked. Suu Kyi’s influential role

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compete with foreign companies.”).

204. SEN, *supra* note 136, at 147.

205. Ghai, *supra* note 93, at 30.

206. See SEN, *supra* note 136, at 150.

207. *Id.* at 151.

208. See Arendshorst, *supra* note 51, at 104.

in Burmese politics may precipitate the movement and usher in a new era for one of Asia's most troubled nations.

A. *Constitution of 2008*

The tug-of-war between rights and duties is apparent in the 2008 Constitution. With respect to individual rights, Burma's latest constitution remains suspiciously vague. Chapter eight, entitled "Citizen, Fundamental Rights and Duties of the Citizens," codifies both an equal protection and a due process clause.<sup>209</sup> However, both of these fundamental rights are subject to suspension upon a state of emergency.<sup>210</sup> Moreover, while the constitution provides the right to practice political liberties such as free exercise of religion, free speech, and right to association, these rights cannot be exercised "contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality."<sup>211</sup> An individual also has the duty to preserve community peace.<sup>212</sup> "Necessary law" shall be enacted to effectuate "citizens' freedoms, rights, benefits, responsibility and restrictions . . ."<sup>213</sup> This last provision is strikingly similar to the Asian values argument that stresses community stability at the expense of individual rights. The relaxation or even elimination of the present restrictions against these individual rights must occur in order to transition Burma into a new state.

Considering Burma's history, the most troubling aspect of the 2008 Constitution is the role of the military. The military, acting on any perceived threat to national security, can independently reverse the new reforms. As stated in the preamble, the country's principle objectives are defensive in nature, specifically "non-disintegration of the Union,"

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209. Burma's equal protection clause states, "The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection." MYAN. CONST., *supra* note 1, at ch. 8, § 347. The due process clause states, "Except in the following situations and time, no citizen shall be denied redress by due process of law for grievances entitled under law: (a) in time of foreign invasion; (b) in time of insurrection; (c) in time of emergency." *Id.* at ch. 8, § 381.

210. *Id.* at ch. 8, § 420, ch. 11, § 414(b).

211. *Id.* at ch. 8, § 354.

212. *Id.* at ch. 1, § 21(c) ("Every citizen is responsible for public peace and tranquility and prevalence of law and order.").

213. *Id.* at ch. 1, § 21(d).

“[n]ational solidarity,” and “perpetuation of sovereignty.”<sup>214</sup> The military is “mainly responsible” for maintaining these objectives,<sup>215</sup> and thus responsible for upholding the constitution.

Not only does it have express authority from the constitution to act, the military is also guaranteed seats in both the national<sup>216</sup> and local legislatures.<sup>217</sup> A state of emergency allows the military to assume all legislative, executive, and judicial powers.<sup>218</sup> Any amendment affecting individual rights or the organization of the government requires an initial approval of seventy-five percent of the national legislature.<sup>219</sup> Because the military dominates so many seats, it would be impossible to obtain constitutional muster without at least minimal military support.

While it is not likely to happen soon, a constitutional amendment in Burma is possible. Although military entrenchment in Burma’s constitutional procedure is undeniable, it is possible that Burma’s military generals are in agreement with the current movement for change. The old military guard is no longer in power, and the current generals are all much younger men.<sup>220</sup> Suu Kyi has indicated that she finds President Thein Sein, a former military general, to be “an honest man . . . a man capable of taking risks if he thinks they are worth taking.”<sup>221</sup> The power transitions in the military appear to favor the potential for real change in

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214. *Id.* at Preamble.

215. *Id.* at ch. 1, § 20(e).

216. In Burma’s bicameral legislature, the military is guaranteed 110 seats in the *Pyithu Hluttaw*, an assembly similar to the American Congress whose members are based on population. *Id.* at ch. 4, § 109. The *Amyotha Hluttaw*, similar to the American Senate based on equal representation from the Burmese states and regions, reserves fifty-six seats for the military. *Id.* at ch. 4, § 141.

217. The military is guaranteed an equal number of seats as one-third of the non-military representatives of the region and state legislatures. *Id.* at ch. 4, § 161(d). Burma is comprised of seven states, seven regions, and territories called the “Union territories.” MYAN. CONST., *supra* note 1, at ch. 2, § 49.

218. *Id.* at ch. 11, §§ 413(b), 419.

219. *Id.* at ch. 12, § 436(a).

220. Nirupama Subramanian, *Towards Reconciliation in Myanmar*, THE HINDU (Nov. 3, 2011), <http://www.thehindu.com/opinion/interview/article2592036.ece> (calling the military generals “junior partners in government” today).

221. Jason Burke, *Aung San Suu Kyi’s Party Could Rule Burma One Day, Says Presidential Aide*, THE GUARDIAN (U.K.) (Jan. 5, 2012, 7:45 AM), <http://www.guardian.co.uk/world/2012/jan/05/aung-san-suu-kyi-burma>.

Burma.

*B. Aung San Suu Kyi and Burma's Future Civil Society*

The development of civil society, which is at a historical low in Burma,<sup>222</sup> is necessary to provide lasting change. As the Burmese government begins to loosen up restrictions on political liberties, it is inevitable that the people will seize the opportunity to put forth their grievances. Indeed, since the 1990 election, interest groups began appearing throughout the Burmese political scene, some of which championed alternative constitutions.<sup>223</sup> While ethnic violence persists, the government recently established a cease-fire agreement with the Shan state, a major ethnic minority.<sup>224</sup> The Burmese people are more optimistic about the civilian government, marveling at their ability to speak openly about their political views.<sup>225</sup>

Suu Kyi remains the beacon of hope for so many Burmese. The Burmese government would do well to seriously consider her ideas. Her involvement with the government and the reform process is extremely visible. The positions Suu Kyi has taken in the last twenty years may provide hints as to how she plans on influencing the current government. First and foremost, Suu Kyi has been a vociferous critic of the cultural argument advanced by Lee and his supporters, and has directly addressed the arguments made in this Comment.<sup>226</sup> She accuses authoritarian governments of wrongly considering themselves better suited to enjoy more rights and privileges than the governments of democratic countries. This, Suu Kyi argues, leads the authoritarian government to assume “so wide a gulf between the government and the people that they have to be judged by

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222. See MCCARTHY, *supra* note 10, at 198.

223. See Williams, *supra* note 34, at 1673.

224. Agence France-Presse, *Burma Reaches Ceasefire with Major Rebel Group*, ABC NEWS (Dec. 3, 2011, 11: 21 PM), <http://www.abc.net.au/news/2011-12-03/burma-ceasefire-with-major-rebel-group/3711274>.

225. Myo Thein & Dean Nelson, *Burmese Dare to Believe Dash to Democracy Will Set Them Free*, THE VANCOUVER SUN (Oct. 15, 2011), <http://www.vancouversun.com/news/Burmese+dare+believe+dash+democracy+will+them+free/5555477/story.html>.

226. See Suu Kyi, *supra* note 124, at 2 (“In the light of such arguments culture and development need to be carefully examined and defined that they may not be used, or rather, misused to block the aspirations of peoples for democratic institutions and human rights.”).

different norms.”<sup>227</sup>

Second, Suu Kyi has challenged the right-to-development argument. She believes that the key to unlocking human potential cannot be limited to economic concerns; such concerns are necessarily related to different value systems understood by the privileged and unprivileged.

The differing views ultimately reflect differences in how the valuation of the various components of social and national unity are made; how such basic concepts as poverty, progress, culture, freedom, democracy, and human rights are defined and, of crucial importance, who has the power to determine such values and definitions.<sup>228</sup>

For a poor person, the alleviation of her status is not simply to make more money, but to also be involved in the decision-making process that allows her to shape her present and future destiny in her country.<sup>229</sup> For Suu Kyi, the sequencing of economic rights and political rights is simply not acceptable.

Third, Suu Kyi has always supported Western sanctions against her country,<sup>230</sup> suggesting that the Burmese need more than just an economic solution.<sup>231</sup> She has said, “It is assumed that economic measures can resolve all the problems facing their countries.”<sup>232</sup> Historian Thant Myint-U ardently disagrees, believing that the sanctions have been extremely counterproductive to the democratic movement, slowing “the emergence of the sort of independent middle class on which any sustainable democratic transition will depend.”<sup>233</sup> The problem with receiving aid conditioned on human rights is

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227. SUU KYI, *supra* note 7, at 175.

228. Suu Kyi, *supra* note 124, at 3.

229. *Id.* at 3–4. This view goes against a position that Pye has taken when comparing the American and Asian notions of power: “In most of Asia . . . to have power was to be spared the chore of decision-making . . . Making decisions means taking risks, while security lies in having no choices to make.” PYE, *supra* note 9, at 21–22.

230. *Aung San Suu Kyi Calls for Sanctions on Burma to Remain*, THE TELEGRAPH (U.K.) (Feb. 8, 2011, 7:00 AM), <http://www.telegraph.co.uk/news/worldnews/asia/burmamyanmar/8310214/Aung-San-Suu-Kyi-calls-forsanctions-on-Burma-to-remain.html>.

231. *See* Suu Kyi, *supra* note 124, at 3 (“[T]he Market Economy, not merely adorned with capital letters but seen in an almost mystic haze, is increasingly regarded by many governments as the quick and certain way to material prosperity.”).

232. *See id.*

233. *See* Subramanian, *supra* note 220.

that there is no universal standard.<sup>234</sup> This confrontation between national sovereignty and the international community leaves millions in the dark. It is the absence of Western aid in Burma, as well as a looming Chinese influence, that some believe is the motivation for reform.<sup>235</sup>

Lastly, Suu Kyi is devoted to transitioning Burma into a liberal democracy. Long ago she wrote, “[a]t its most basic and intermediate level, liberal democracy would mean in institutional terms a representative government appointed for a constitutionally limited term through free and fair elections.”<sup>236</sup> While Westerners may take democratic institutions for granted, for a country like Burma that has been historically blemished by brutality, “democracy, like liberty, justice and other social and political rights, is not ‘given,’ it is *earned* through courage, resolution and sacrifice.”<sup>237</sup> Suu Kyi has also advocated a federalist structure for increased sovereignty and protection of ethnic-dominated states.<sup>238</sup> Recently tasked with establishing a rule of law in Burma,<sup>239</sup> Suu Kyi has a long road ahead to revamp Burmese society, but fortunately has a wealth of ideas ready for her people that she has long yearned to share.

#### CONCLUSION

Is Aung San Suu Kyi too idealistic and Singapore’s Lee Kuan Yew too pragmatic? Historian Myint Zan reminisced a remark by one of his students who said, “Aung San Suu Kyi is idealistic, she has never been in political power. Lee Kuan

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234. See Ghai, *supra* note 93, at 25. Ghai wrote:

[p]overty is a great cause of the denial of human rights. The international system refuses to accept this reality—for largely political reasons. It refuses to acknowledge that poverty destroys human dignity; and without human dignity there can be no human rights; or indeed the capacity to challenge the system of oppression.

*Id.* at 23. Certainly Suu Kyi would agree with this statement, but it is unclear whether the two would reach the same agreement on the issue of Western sanctions against Burma.

235. See Bertil Lintner, *China Behind Myanmar’s Course Shift*, ASIA TIMES ONLINE (Oct. 19, 2011), [http://www.atimes.com/atimes/Southeast\\_Asia/MJ19Ae03.html](http://www.atimes.com/atimes/Southeast_Asia/MJ19Ae03.html).

236. SUU KYI, *supra* note 7, at 169.

237. *Id.* at 176 (emphasis added).

238. Ba Kaung, *Suu Kyi Asks for Federalism Theses*, THE IRRAWADDY (Thai.) (May 12, 2011), [http://www2.irrawaddy.org/article.php?art\\_id=21287](http://www2.irrawaddy.org/article.php?art_id=21287).

239. See Associated Press, *supra* note 83.

Yew is a seasoned politician. I would take Lee any time over Aung San Suu Kyi.”<sup>240</sup> Perhaps the answer is not so clear cut. While Lee’s pragmatism certainly cannot be denied considering the rapid prosperity he brought to his country, Singapore embarked on a different path following its independence<sup>241</sup> from Britain.<sup>242</sup> Burma’s path was mired by isolationism and repression. It is because of this experience that Suu Kyi believes democracy “is not given” but must be “earned.”<sup>243</sup> When faced with Lee’s communitarian approach and the West’s individualism, Suu Kyi may very well advocate a “Middle Way,” a Buddhist approach to avoid both extremes.<sup>244</sup> The various paths of its Asian neighbors will be an invaluable source for Burma in the coming years. Avoiding the failures and learning the successes of the past will aid Burma, as it desires to move forward to achieve a lasting democracy.

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240. Zan, *supra* note 107, at 66.

241. Technically, Singapore seceded from Malaysia. U.S. Cent. Intelligence Agency, *East & Southeast Asia: Singapore*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/sn.html>. (last updated Oct. 16, 2012).

242. Inquiring what was the difference between the Malaysian and Burmese path from independence, Myint Zan wrote, “‘history [has] been less kind’ to Burma than, say Malaysia and other countries which at least compared to Burma has accountable representative governments[.]” ZAN, *supra* note 18, at 225.

243. See SUU KYI, *supra* note 7, at 176.

244. Zan, *supra* note 107, at 63.