

ESSAY

THE INDEPENDENT LAWYERS' ASSOCIATION OF  
MYANMAR (ILAM):

CHALLENGES FACING THE LEGAL TRANSPLANT OF  
INTERNATIONAL EXPECTATIONS FOR A BAR  
ASSOCIATION INTO A LOCAL CONTEXT

*Jonathan Liljeblad\**

ABSTRACT

*The Independent Lawyers' Association of Myanmar (ILAM) is an attempt to create an independent national bar association within Myanmar. ILAM is a product of efforts by international entities such as the International Bar Association (IBA) and domestic lawyers throughout Myanmar to form a nation-wide bar association that follows international ideas regarding a legal profession independent of state control. The introduction of such ideas deviates from Myanmar's history, which placed lawyers under the control of the state and made the legal system an instrument of authoritarian rule. The growth of ILAM is a testament to legal reform currently taking place in Myanmar, but it is also a mirror to the challenges of transplanting international notions of an independent legal profession into a formerly closed developing country emerging into a larger global community. The experiences of ILAM offer insights regarding theories of legal transplants, particularly for Gunther Tuebner's notion of a legal irritant. The analysis uses ILAM as a case study to draw out implications regarding the nuances of legal transplant theory and generate lessons for similar efforts elsewhere to promote international ideas in local contexts.*

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\* Senior Lecturer, School of Law, Australia National University.

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### *I. INTRODUCTION*

The Independent Lawyers' Association of Myanmar ("ILAM") is a product of the International Bar Association ("IBA") Human Rights Initiative ("IBAHRI") conducted in 2014-2016 in Myanmar, the country formerly known as Burma. ILAM represents an attempt to create an independent national bar association in terms of being a nation-wide organization for the Myanmar legal profession operating outside the control of the Myanmar state.<sup>1</sup> Throughout its history under British colonial rule and post-colonial independence, Myanmar did not host an independent national bar association. As a result, in advancing the development of ILAM, the IBAHRI effectively sought to introduce some form of an independent national bar association into Myanmar. As an initiative of the IBA, the IBAHRI held to IBA perspectives regarding the legal profession and so exemplified an attempted transmission of international expectations for an independent national bar association into a domestic context.

The discussion in the following sections treats the IBAHRI's efforts for ILAM as a case study involving a legal transplant of a legal institution. The discussion analyzes the events surrounding the creation of ILAM, not just as a testament to legal reform currently taking place in Myanmar, but also as a mirror reflecting the challenges facing aspirations of transplanting international notions of legal institutions into a formerly closed developing

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1. *Myanmar, Capacity-Building 2014-2016*, INT'L BAR ASS'N (Apr. 15, 2015), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=B0DFF549-F0F3-4A90-83D5-40B902FEDBF9> [https://perma.cc/EBV9-QNBT] [hereinafter IBA 2015b].

country emerging into a larger global community. In doing so, the analysis places ILAM within the context of the theoretical discourse regarding legal transplants between Alan Watson and Pierre Legrand, and asserts ILAM as a permutation of Gunther Teubner's notion of a *legal irritant*. The analysis seeks to use the case of ILAM to draw out implications regarding nuances of legal transplant theory with a goal of improving its applicability for similar cases elsewhere.

The discussion begins with a review of legal transplant theory demarcating the major points of debate and the position of Teubner's notion of legal irritants. The discussion then turns to a summary offering background regarding the IBAHRI's work in the formation of ILAM. This is subsequently followed by commentary about the issues that arose in the course of the IBAHRI's activities, with attendant analysis of the significance of such issues for legal transplant theory. A conclusion finishes the analysis with a summary of the implications ILAM's experiences pose for legal transplant theory, a statement regarding applicability for other situations similar to Myanmar involving the promotion of ideas from an international level to local contexts, and a proposal for future directions of research.

Methodologically, the analysis in the following sections is part of an ongoing research project on the experiences of ILAM. The discussion utilizes field research conducted during 2014-2017 involving observations of ILAM events, interviews with participants in IBAHRI events regarding ILAM, and documents made available by the IBA, ILAM, Myanmar government ministries, and civil society organizations ("CSOs"). Due to the sensitivity of the ongoing process of legal reforms in Myanmar—including reforms for an independent national bar association—precautions are taken to protect the institutions and individuals used for this study. Such precautions pose a challenge since the limited number of participants involved in the formation of ILAM increases the risk of inference regarding identities. As a result, the analysis makes an effort to avoid information that could be used to determine the identities of participants associated with the formation of ILAM, including affiliations with government offices, non-government organizations, private entities, or any individual representatives. In addition, direct quotes are avoided to prevent possible inferences about the identity of the speakers. When possible, the

analysis avoids interview data and makes use of documents acquired through news media, internet sources, or in-person visits to relevant government and civil society offices. The nature of the risk is exemplified by the loss of U Ko Ni, a lawyer who served as a prominent figure in the effort to create ILAM.<sup>2</sup> U Ko Ni was assassinated in January 2017,<sup>3</sup> and his loss inflicted a blow to both the advancement of ILAM and the movement for legal reform in Myanmar. His death highlights the continuing dangers that persist for Myanmar lawyers, the magnitude of the sensitivity tied to legal reform in Myanmar, and the significance of the issues related to the rule of law in Myanmar.

## II. THEORY

The discourse on legal transplants predates the framework of Alan Watson and Pierre LeGrand raised by Andrew Harding.<sup>4</sup> In his review of the concept of legal transplants,<sup>5</sup> John Cairns finds the first scholarly application of the term “transplants” in relation to law occurring in a 1927 speech by Frederick P. Walton to the International Academy of Comparative Law that addressed cases where countries discarded their own legal heritage and adopted foreign legal systems.<sup>6</sup> The term persisted, with Cairns finding examples from the 1930s in the works of R.W. Lee on the spread of Roman-Dutch law to European colonies, Hermann Mannheim’s study on the European adoption of juries in criminal trials from England, and Henri Levy Ullmann’s observation of Turkey’s legal

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2. *IBAHRI Decries Fatal Shooting of Prominent Lawyer U Ko Ni in Myanmar and Calls for an Investigation*, INT’L BAR ASS’N (Jan. 31, 2017), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=115d3918-3b50-4fef-b7ba-3fa75dc680ab> [<https://perma.cc/U2LX-H5TG>].

3. Ei Ei Toe Lwin & Shoon Naing, “*The Death of the Rule of Law*”: *Coming to Terms With the Loss of U Ko Ni*, MYANMAR TIMES (Feb. 2, 2017), <https://www.mmtimes.com/national-news/24784-the-death-of-the-rule-of-law-coming-to-terms-with-the-loss-of-u-ko-ni.html> [<https://perma.cc/U8N5-DLCH>]; Wai Moe, *U Ko Ni, A Prominent Muslim Lawyer in Myanmar, is Fatally Shot*, N.Y. TIMES (Jan. 29, 2017), <https://nyti.ms/2jGmFSU> [<https://perma.cc/8VPP-7ZWP>].

4. See generally ANDREW HARDING, *LEGAL TRANSPLANTS IN EAST ASIA AND OCEANIA* (2018) [hereinafter Harding 2018].

5. See generally John Cairns, *Watson, Walton, and the History of Legal Transplants*, 41 G.A. J. INT’L & COMP. L. 687 (2013) [hereinafter Cairns 2013].

6. Frederick Walton, *The Historical School of Jurisprudence and Transplantations of Law*, 9 J. COMP. LEGIS. & INT’L L. 183 (1927).

development.<sup>7</sup> The metaphor of transplantation continued into the 1950s, with examples in B.A. Watley's report on the 1950 Rome UNIDROIT conference<sup>8</sup> and C.J. Hamson's summary of the International 1955 Istanbul meeting for the Committee on Comparative Law.<sup>9</sup> Even at the time of Alan Watson's seminal book on *Legal Transplants*,<sup>10</sup> the idea of legal transplants appeared contemporaneously in Otto Kahn-Freund's Chorley Lecture of 1973,<sup>11</sup> John Beckstrom's work on the transplantation of legal systems from 1973,<sup>12</sup> and Jean Rivero's metaphor of medical organ transplants to describe local imitation of foreign legal models from 1980.<sup>13</sup> Hence, the term *legal transplants* and the corresponding discourse over its meaning precede the more current tensions between Watson and Legrand.

In conceptualizing legal transplants, there is a range of approaches that help to clarify its implications. With respect to Watson and LeGrand, Watson sees legal concepts as autonomous from context and so readily transferable across different locations, while LeGrand sees legal concepts as unique to each context and hence wholly non-transferable from one place to another.<sup>14</sup> In contrast, Anna Dolidze describes legal transplants as being horizontal in terms of a transnational diffusion of ideas between states, or vertical in terms of ideas that are either diffused up from domestic law to international law or diffused down from international law to domestic law.<sup>15</sup> An additional example is John Gillespie, who views legal transplants from the perspective of discourse analysis to identify the nature of power structures and individual agency in communications and interactions in

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7. Cairns 2013, *supra* note 5, at 694.

8. See generally B.A. Wortley, *Report on the Rome Conference 1950*, 32 J. COMP. LEGIS. & INT'L L., 91 (1950).

9. C.J. Hamson, *The Istanbul Conference of 1955*, 5 INT'L & COMP. L. Q. 26, 27 (1956).

10. See generally ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (1993) [hereinafter Watson 1993].

11. *Id.*

12. See generally John Beckstrom, *Transplantation of Legal Systems*, 21 AM. J. COM. L. 557 (1973).

13. Jean Rivero, *Les Phenomenes D'imitation des Modeles Etrangers en Droit Administrative*, 2 PAGES DE DOCTRINE 459 (1980).

14. Harding 2018, *supra* note 4; see also Pierre Legrand, *The Impossibility of Legal Transplants*, MAASTRICHT J. COMP. L. 4(2), 111-24 (1997); Watson 1993, *supra* note 10.

15. Anna Dolidze, *Bridging Comparative and International Law: Amicus Curiae Participation as a Vertical Legal Transplant*, 26 EUROPEAN J. INT'L L. 4, 851-80 (2016).

lawmaking.<sup>16</sup> Jonathan Miller sees legal transplants as falling into one of several categories in a typology: cost-saving, where a drafter of a law tries to save time and costs in experimentation by using a solution employed elsewhere; externally-dictated, where dominant foreign actors hold sufficient power to dictate the adoption of foreign legal models in a country; entrepreneurial, where domestic actors encourage the adoption of foreign legal ideas in their own country; or legitimacy-generating, where domestic actors seek to use prestigious foreign legal ideas to bolster their domestic legitimacy.<sup>17</sup> John Wise eschews the term “transplant” because of its tendency to use a dichotomy of internal versus external, and favors instead terms like “borrowing,” “circulation,” and “diffusion” that reflect what he considers to be a more accurate notion of general movements of ideas in cultural networks operating independently of national borders.<sup>18</sup> John Gillespie, Sally Low, and Penelope Nicholson posit that the success or failure of legal transfers is a function of social demand in recipient countries, and so highlights the need by development actors to listen to local experiences.<sup>19</sup>

While the perspectives on legal transplants are diverse, the positions of Watson and Legrand present an interesting dynamic in that they form a theoretical framework of opposing views about the existential nature of legal transplants, with Watson’s position accommodating the idea of legal transplants and Legrand’s position rendering it impractical or at most inappropriate. Watson and Legrand, in effect, represent the logical extremes of Otto Kahn-Freund’s conceptualization of a spectrum encompassing legal institutions that are mechanical in the sense of being insulated from culture versus legal institutions that are organic in the sense

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16. See generally John Gillespie, *Towards a Discursive Analysis of Legal Transfers into Developing East Asia*, 40 INT’L L. & POL. 683 (2008).

17. Jonathan Miller, *A Typology of Legal Transplants: Using Sociology, Legal History, and Argentine Examples to Explain the Transplant Process*, 51 AM. J. COMP. L. 839-86 (2003).

18. Edward Wise, *The Transplant of Legal Patterns*, 38 AM. J. COMP. L. Supplement: 1, 1-22 (1990).

19. Pip Nicholson & Sally Low, *Local Accounts of Rule of Law Aid: Implications for Donors*, 5 HAGUE J. RULE L. 1, 1-43 (2013); Penelope Nicholson & John Gillespie, *Interpreting Legal Transfers: The Implications for Law and Development*, in LAW AND DEVELOPMENT AND THE GLOBAL DISCOURSES OF LEGAL TRANSFERS (2012).

of being culturally embedded.<sup>20</sup> Otto Kahn-Freund postulated that more mechanical legal institutions are relatively easy to transfer between cultures, while organic ones are more difficult to transfer to alien cultures. More recent scholarship has sought a way between Watson and Legrand, with scholars like Melissa Crouch and David Nelken finding that the concept of legal transplants can be useful in understanding the transnational spread of legal ideas so long as it is qualified by some consideration of their association with context.<sup>21</sup>

Gunther Teubner represents an additional alternative between Watson and Legrand, which differs from Crouch and Nelken in exercising a dialectical approach that interprets a legal transplant as affecting change within a new context but also being subject to change by the forces within it.<sup>22</sup> Teubner, looking beyond the Watson-Legrand dichotomy of integration or repulsion of legal ideas across cultures, adopts the idea of legal irritants that cause unexpected consequences via an “evolutionary dynamic in which the external rule’s meaning will be reconstructed and the internal context will undergo fundamental change.”<sup>23</sup> Teubner conceives of legal irritants as operating in two ways: (1) a legal transformation, where a legal idea is recontextualized by new conditions but may still be recognizable even though its legal interpretation changes from the original; and (2) a social transformation, where the recognition of a legal idea will cause changes in a social system even as the idea is reconstructed by the system. Teubner goes further to assert that these two processes are inter-related in that they form a “circular co-evolutionary dynamic” of “mutual irritations” upon each other that will fundamentally alter the identity of the legal idea.<sup>24</sup>

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20. Cairns 2013, *supra* note 5, at 643-45; Otto Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1, 13 (1974); Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences*, 61 MOD. L. REV. 1, 11-32 (1998) [hereinafter Teubner 1998].

21. Melissa Crouch, *Asian Legal Transplants and Rule of Law Reform: National Human Rights Commission in Myanmar and Indonesia*, 5 HAGUE J. RULE L. 146-77 (2013); David Nelken, *Legal Transplants and Beyond: of Disciplines and Metaphors*, in COMPARATIVE LAW IN THE 21ST CENTURY (2002).

22. Teubner 1998, *supra* note 20.

23. *Id.* at 12.

24. *Id.* at 28.

### III. BACKGROUND

In relating legal transplant theory to the case of ILAM, it is useful to review the IBAHRI program in Myanmar that led to the formation of ILAM. Fact-finding reports from the IBA and International Commission of Jurists (“ICJ”), subsequently corroborated by scholarly reviews and independent studies, found that the legal profession in Myanmar suffers from a history of constraints upon its independence.<sup>25</sup> In Myanmar, the legal profession is divided into pleaders, who are licensed to practice in civil and criminal matters in district and township courts, and advocates, who are licensed to practice in all courts including the Supreme Court.<sup>26</sup> During the British colonial era, pleaders were subject to the Legal Practitioners Act of 1879, which gave authority for regulation, licensing, and discipline to the High Court of British Burma,<sup>27</sup> and advocates were subject to the Bar Council Act of 1929, which placed authority over rules, licenses, and discipline in the High Court but made the High Court subject to the authority of the Bar Council.<sup>28</sup> The Bar Council was originally composed of fifteen members chaired by the Attorney General and filled with four nominees from the High Court and ten members elected by

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25. See generally Melissa Crouch, *The Layers of Legal Development in Myanmar*, in LAW, SOCIETY AND TRANSITION IN MYANMAR (2014); *The Rule of Law in Myanmar: Challenges and Prospects*, INT’L BAR ASS’N (2012), available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUid=DE0EE11D-9878-4685-A20F-9A0AAF6C3F3E> [https://perma.cc/GM2D-GLU7] [hereinafter IBA 2012a]; *Right to Counsel: Independence of Lawyers in Myanmar*, INT’L COMM’N OF JURISTS, (2013), <https://www.icj.org/wp-content/uploads/2013/12/MYANMAR-Right-to-Counsel-electronic.pdf> [https://perma.cc/6C9C-6HVE] [hereinafter ICJ 2013]; Nang Yin Kham, *An Introduction to the Law and Judicial System of Myanmar*, INT’L MARITIME ORG. (2014), available at <https://law.nus.edu.sg/cals/pdfs/wps/CALS-WPS-1402.pdf> [https://perma.cc/F39R-CHPY] [hereinafter Kham 2014].

26. *Bar Council Act of 1929* (Union of the Republic of Myanmar 1929), available at: <https://www.icj.org/wp-content/uploads/2014/03/Myanmar-Bar-Council-Act-and-amendments-legislation-1926-eng.pdf> [https://perma.cc/297F-6HL6] [hereinafter Bar Council Act 1929]; *Courts Manual of 1999* (Myanmar Supreme Court 1999), available at: [http://www.burmalibrary.org/docs14/Courts\\_Manual-ocr-en.pdf](http://www.burmalibrary.org/docs14/Courts_Manual-ocr-en.pdf) [https://perma.cc/B36G-CWBX] [hereinafter Courts Manual 1999]; *Legal Practitioners Act of 1879* (Myanmar Constitutional Tribunal 1879), available at: <https://www.icj.org/wp-content/uploads/2014/03/Myanmar-Legal-Practitioners-Act-legislation-1879-eng.pdf> [https://perma.cc/74LZ-VJPS] [hereinafter Legal Practitioners Act 1879].

27. Legal Practitioners Act 1879, *supra* note 26, at sec. 6.

28. Bar Council Act 1929, *supra* note 26, at sec. 15; Courts Manual 1999, *supra* note 26, at part 1, sec. 1-2.

practicing advocates.<sup>29</sup> This arrangement continued into post-independence through much of the military era until 1989, when the Bar Council was amended to have eleven members comprised of the Attorney General as Chair, Deputy Attorney General as Vice-Chair, the Director-General of the Attorney General's Office as Secretary, a Supreme Court Judge nominated by the Chief Justice, the Director-General of the Supreme Court, and six advocates chosen by the Supreme Court.<sup>30</sup> Myanmar's judicial system places the High Court at the administrative state or region level and the Supreme Court at the national level,<sup>31</sup> so the Bar Council Act Amendment of 1989 served to centralize control over the country's lawyers within national state authority. There were local bar associations entirely separate from the Myanmar state, with examples such as the Yangon Bar Association, Mandalay Bar Association, and Mon Bar Association, but these never held powers to regulate the legal profession and were denied legal registration when the State Law and Order Restoration Council ("SLORC") seized power.<sup>32</sup> These entities continue to exist, but as local bar associations without the power to regulate the legal profession, they fall short of the ideal for an independent national bar association.

In such a context, ILAM is an attempt to rectify the lack of an independent legal profession in Myanmar and reflects a number of separate but related efforts involving the IBA, the Myanmar government, and pre-existing Myanmar regional bar associations and lawyer groups. Covering the years 2014-2016, the IBAHRI program sought to (1) gather support in Myanmar for a national bar association, (2) establish and build capacity for a national bar association as a legally registered independent professional body, and (3) encourage reforms regarding the legal profession allowing an independent national bar association.<sup>33</sup> The program came in the wake of prior exploratory activities by the IBA in Myanmar

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29. Bar Council Act 1929, *supra* note 26.

30. *Bar Council Act Amendment of 1989* (Union of the Republic of Myanmar 1989), available at: <https://www.icj.org/wp-content/uploads/2014/03/Myanmar-Bar-Council-Act-and-amendments-legislation-1926-eng.pdf> [<https://perma.cc/7A23-Z5K5>] [hereinafter Bar Council Act Amendment 1989]; Courts Manual 1999, *supra* note 26.

31. Kham 2014, *supra* note 25.

32. IBA 2012a, *supra* note 25; ICJ 2013, *supra* note 25.

33. IBA 2015b, *supra* note 1.

which included an August 2012 fact-finding mission that led to a December 2012 report and subsequent January 2013 panel to discuss the state of rule-of-law in Myanmar.<sup>34</sup> The impetus for IBA efforts in regards to an independent national bar association in Myanmar grew with a July 2013 scoping mission that assessed the ways in which the IBA could aid reform in support of the legal profession.<sup>35</sup> It was after the scoping mission that the IBA committed to promoting through its IBAHRI an independent national bar association in Myanmar.

For its part, beginning in 2014, the IBAHRI program oversaw a series of events that progressed towards the formation of ILAM. In partnership with the Myanmar Parliament's Committee on Law and Tranquility, which was led by its Chair Daw Aung San Suu Kyi, the IBAHRI hosted a February 2014 seminar in the capital of Naypidaw addressing international standards for bar associations.<sup>36</sup> Accompanied by a report on the roles of bar associations, the seminar assembled international experts and Myanmar stakeholders to discuss globally accepted best practices for bar associations, different models for bar associations, and generate recommendations for the reform of Myanmar's legal profession.<sup>37</sup> The outcomes of the seminar included a statement to form an independent national bar association for Myanmar and the assembly of a steering committee to lead a national effort towards

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34. *Panel Discussion—The Rule of Law in Myanmar: Challenges and Prospects*, INT'L BAR ASS'N (2013), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=c68828b3-9c10-48a7-a1c7-f5d394b63cc9> [<https://perma.cc/Y6US-DKBH>]; *Myanmar/Burma Fact-finding Mission*, INT'L BAR ASS'N (2012), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=DEBA1058-8D8D-47E3-B8DB-1BA2BA82E40E> [<https://perma.cc/4YUS-NQW7>].

35. *Myanmar/Burma Country Visit 2013*, INT'L BAR ASS'N (2013), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=7481efba-7855-4bd2-9af7-7cf71fe1ab43> [<https://perma.cc/D2SN-RCX4>].

36. *Myanmar: Major Legal Seminar on Bar Associations' Best Practices to be Hosted by IBAHRI*, INT'L BAR ASS'N (2014f), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=ce33cd81-eb78-4209-9ca2-8a9338c17327> [<https://perma.cc/D3KE-46KT>] [hereinafter IBA 2014f].

37. *Understanding Bar Associations and Their Roles and Responsibilities*, INT'L BAR ASS'N (2014e), available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUid=6a0a6d72-09ef-4976-8cec-df30c9674f05> [<https://perma.cc/JJ2T-VJ9T>] [hereinafter Understanding Bar Associations].

that goal.<sup>38</sup> The steering committee, composed of representatives from Myanmar's regional bar associations and lawyer groups, held three meetings over the course of 2014 to draft a constitution for an independent national bar association.<sup>39</sup> Concurrent to the steering committee meetings, in conjunction with Daw Aung San Suu Kyi and the Myanmar Parliament's Committee on Rule of Law and Tranquility, the IBAHRI held an October 2014 workshop on reform of Myanmar laws regarding the legal profession. The workshop provided a comparative review of laws from other countries with discussions on enacting Myanmar legislation more consistent with international standards for the regulation of lawyers.<sup>40</sup>

The work of the steering committee led to a general assembly in March 2015 to endorse a draft constitution for an independent, representative national bar association that would be called ILAM.<sup>41</sup> In support of ILAM, the IBAHRI held fifteen workshops throughout the various states and administrative regions of Myanmar to prepare the first elections for ILAM's leadership.<sup>42</sup> The elections were held in September 2015,<sup>43</sup> and in January 2016, the IBA, along with Daw Aung San Suu Kyi, opened the inaugural

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38. *Myanmar's Legal Profession Moves to Establish a National Bar Association*, INT'L BAR ASS'N (2014d), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4670e898-428b-440d-b986-52b35593d40d> [https://perma.cc/9UPJ-CTDZ].

39. *Myanmar Lawyers Advance in Mission to Build a Representative National Bar Association*, INT'L BAR ASS'N (2014c), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=2efce9cc-5ef9-4dde-86e4-024648d54b93> [https://perma.cc/UNR8-RKK7] [hereinafter *Myanmar Lawyers Advance*].

40. *Laws Regulating the Legal Profession: A Comparative Review from Around the World*, INT'L BAR ASS'N (2014a), available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUid=14490A0D-F6C4-4E12-AE48-A4D730D0CDE4> [https://perma.cc/9ENH-DYWC] [hereinafter *A Comparative Review*]; *Myanmar: IBAHRI Host Workshop on Laws Governing Legal Profession with Daw Aung San Suu Kyi* (2014b), INT'L BAR ASS'N available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=5d4e7549-e00e-46ed-8c4c-2a0c421db55a> [https://perma.cc/L4L4-WZKM].

41. *IBAHRI and Myanmar Lawyers Prepare for First Independent Lawyers' Association Elections* (2015a), INT'L BAR ASS'N available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=96554c4d-8391-4f10-9955-d5c1ba10f019> [https://perma.cc/W32Y-X9NE] [hereinafter *IBAHRI and Myanmar Lawyers Prepare*].

42. *Id.*

43. *Id.*

meeting of ILAM.<sup>44</sup> At its first meeting, ILAM's Central Committee adopted its constitution, elected a Central Executive Committee, and set an agenda for committees and attendant action plans.<sup>45</sup> The IBA maintained its presence during the remainder of 2016, with IBA representatives participating in ILAM events later in the year.<sup>46</sup> ILAM became a legally registered entity in November 2016,<sup>47</sup> effectively marking the culmination of the IBAHRI's three-year program in Myanmar.

A number of observations should be noted regarding the IBAHRI program for ILAM. First, the work of the IBAHRI should not be construed as the only effort in Myanmar for an independent bar association. The IBA's three-year program for the IBAHRI was driven in part by a desire to instigate progress on an issue that the IBA perceived as suffering from a lack of action by local actors.<sup>48</sup> The accuracy of such sentiments, however, is uncertain in that the IBAHRI's program overlaid pre-existing endemic efforts within Myanmar for a nation-wide bar association independent of state control. For example, organizations in Myanmar's various administrative regions such as the Yangon Bar Association, Mandalay Bar Association, and Mon Bar Association in the time prior to the IBAHRI's arrival had sought in various ways to lead their own diverse campaigns for their respective conceptions of an independent national association of lawyers.<sup>49</sup> In addition, at the time of the IBA's activities in 2012 and 2013, there had been ongoing efforts to promote a Myanmar Lawyers' Association ("MLA") sometimes also called the Myanmar Lawyers' Network or MLN) and a Myanmar Legal Aid Network ("MLAN").<sup>50</sup> As part of

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44. *IBA President and Aung San Suu Kyi Open Inaugural Meeting of Myanmar's First National Independent Lawyers' Association*, INT'L BAR ASS'N (2016b), available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=67923557-0f67-403c-ad67-ff04adc4ac52> [<https://perma.cc/AQ6Z-8427>].

45. *Id.*

46. *Myanmar Lawyers Attend Workshop Promoting Legal Ethics*. (2016a), INT'L BAR ASS'N available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=aaf379c9-100a-4403-b06b-ca659db6646f> [<https://perma.cc/3FEZ-GGSE>].

47. *Independent Lawyers' Association of Myanmar (ILAM)*, available at: <http://www.ilam.org.mm/en/pages/1> [<https://perma.cc/GB65-CJYP>] [hereinafter cited as ILAM 2017].

48. Interviews IBA 2014; Interviews IBA 2015; Interviews IBA 2016.

49. Interviews ILAM 2015.

50. Nick Cheesman & Kyaw Min San, *Not Just Defending; Advocating for Law in Myanmar*, 31 WIS. INT'L L. J. 718-19 (2014).

their respective organizational purposes, both the MLA and MLAN held goals similar to the IBA's aspiration to advocate for an independent bar and reform of laws regarding the legal profession.<sup>51</sup> The MLA had gone so far as to convene its first meeting in June 2012 and MLAN had used its connections to the South East Asia Legal Aid Network to hold workshops throughout 2012.<sup>52</sup> As a result, the notion of an independent bar association in Myanmar was not unique to the IBA, such that the work of the IBAHRI actually represented an introduction of an additional foreign presence to a domestic space of local actors espousing different interpretations of the same idea.

Second, the activities of the IBAHRI were not without tension in relation to domestic Myanmar perspectives. The tensions between IBAHRI and local perspectives manifested themselves in multiple ways. For example, the introduction of the IBAHRI's program over pre-existing local efforts for an independent national bar association appeared to some Myanmar actors as an effort to supplant a foreign actor over domestic perspectives.<sup>53</sup> IBAHRI representatives asserted that the program was a Myanmar-driven initiative that sought to be inclusive in its approach by involving representatives of lawyer organizations from Myanmar's various administrative regions, but the sentiments over foreign intrusion extended to the IBAHRI's seminars and workshops. In particular, some Myanmar attendees in the IBAHRI's 2014 events saw them as being controlled by foreign experts following an agenda that was unresponsive to local concerns and which impeded initiatives of Myanmar participants to further those concerns.<sup>54</sup> These perceptions may have arisen from the nature of IBAHRI's program, which sought to balance IBA desires for the inclusion of diverse local perspectives, both from Myanmar government and civil society, while still conforming to IBA goals to promote international standards for the legal profession. The IBAHRI's compromise, however, was still perceived by a number of Myanmar participants in the February 2014 seminar and October 2014 workshop as weighted against Myanmar perspectives since (1) many, if not the majority, of seminar participants were experts

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51. *Id.*

52. *Id.*

53. Interviews ILAM 2015; Interviews ILAM 2016; Interviews ILAM 2017.

54. Interviews ILAM 2015; Interviews ILAM 2016; Interviews ILAM 2017.

from the West rather than Asia, and hence were perceived as being less responsive to the contextual challenges in Myanmar, and (2) much, if not most, of the seminar, seemed to be more focused on instruction delivered by Western experts to Myanmar participants, rather than being a collaborative endeavor involving Myanmar actors in the development of an action plan affecting their interests.<sup>55</sup>

The disjuncture between IBAHRI and Myanmar views carried over into the 2014 steering committee meetings for ILAM. Some Myanmar participants indicated an appreciation for the presence of the IBA because of its international stature and attendant capacity to muster consultative resources, legitimacy with domestic and foreign actors, and approval from the Myanmar state, but they also noted that the IBA's stature pushed IBA goals at the expense of local concerns.<sup>56</sup> Myanmar participants perceived IBAHRI activities as adhering to a "checklist" of preferences invariably tied to IBA conceptions of international standards for the legal profession.<sup>57</sup> This contrasted with local desires to structure the organization and procedures of ILAM in a way that could alleviate discontent from potentially competing for pre-existing domestic efforts to create an independent national bar association and appease the concerns of potentially obstructive actions from Myanmar government concerned about the threat of ILAM to government authority.<sup>58</sup> The division, in essence, reflected a divergence between foreign IBA interests ostensibly advancing international ideals versus local Myanmar interests seeking to respond to local political realities. The tensions arose over perceptions that, in the formation of ILAM, the IBAHRI was directing the agenda to favor IBA ideals without regard for local realities.

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55. Interviews ILAM 2015; Interviews ILAM 2016.

56. Interviews ILAM 2015; Interviews ILAM 2016.

57. *IBA International Principles on Conduct for the Legal Profession*, INT'L BAR ASS'N (2011), available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C> [<https://perma.cc/M6F5-KWNF>]; *IBA Standards for the Independence of the Legal Profession*, INT'L BAR ASS'N (1990), available at: <https://www.ibanet.org/Document/Default.aspx?DocumentUid=F68BBBA5-FD1F-426F-9AA5-48D26B5E72E7> [<https://perma.cc/964C-GXRU>].

58. Interviews ILAM 2015.

Third, the conclusion of the IBAHRI program did not represent the conclusion of ILAM's formation. As of November 2018, the status of ILAM was still unfinished in several respects. To begin with, representatives of ILAM's leadership observe that the organization is not fixed and that it will continue to evolve in response to the needs of its constituency and changes in Myanmar's regulation of the legal profession.<sup>59</sup> For example, the ILAM constitution was amended in December 2017 and is subject to further amendments in the future.<sup>60</sup> In addition, the nature of ILAM is not assured. While ILAM may be independent in terms of being outside state control, it is not independent in terms of being self-sufficient. ILAM relies upon membership revenues,<sup>61</sup> and so must justify its membership dues to a market of Myanmar lawyers whose financial resources are constrained by Myanmar's economic underdevelopment.

Further, ILAM is not a sole actor, as the bar associations and lawyer organizations present at the start of the IBAHRI program continue to operate. While the IBAHRI sought to include these entities in the formation of ILAM, their persistence as concurrent entities means that ILAM must find a way to justify its presence alongside their presence to the same community of Myanmar lawyers. This requires that ILAM identify a role that differentiates ILAM from Myanmar's other bar associations and lawyer organizations to a degree sufficient to garner enough membership dues to sustain ILAM's existence.<sup>62</sup> In addition, ILAM's role is uncertain. ILAM seeks to justify its existence to Myanmar lawyers not just in terms of its distinction from other bar associations or lawyer organizations but also in terms of its base value. For example, in an attempt to match the powers of independent bar associations in other countries, ILAM sought a role in legal education. This effort, however, was rejected by Myanmar universities.<sup>63</sup> Because of the Bar Council Act, ILAM lacks the authority of comparable independent bar associations in other countries to control licensing, standards, or discipline of the legal profession. As a result, as of November 2018, ILAM has sought to

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59. Interviews ILAM Secretariat 2017.

60. *Id.*

61. *Id.*

62. Interviews ILAM Secretariat 2017.

63. Interviews ILAM Secretariat 2017.

orient its activities around an agenda that includes skills training for practicing lawyers, advocacy on behalf of the legal profession, promotion of pro bono services, certification of quality standards, and liaison with international organizations.<sup>64</sup> These functions, however, are subject to change as a matter of supporting ILAM's future existence.

Last, the formation of ILAM was tied to an attendant IBAHRI goal of reforming Myanmar's laws to reduce state control over the legal profession. As much as ILAM is outside state control, Myanmar's legal profession continues to be held under state authority by the constraints of the Bar Council Act of 1929 and the Bar Council Act Amendment of 1989. While the Myanmar government has acknowledged the IBAHRI's call for reform of the two acts to reduce the power of the Bar Council over Myanmar's lawyers, the government as of November 2018 has not amended the acts or pursued further change in Myanmar's laws regarding the legal profession.<sup>65</sup> As a result, ILAM is still advocates for powers held by independent bar associations in other countries regarding the regulation of the legal profession.<sup>66</sup>

#### *IV. ILAM AS A LEGAL TRANSPLANT*

The work of the IBAHRI in nurturing the formation of ILAM exhibits a number of nuances with implications for Tuebner's conception of legal transplants: the distinction between an institution versus an idea in the transplant of a legal concept, the different motivations driving divergent interpretations of a transplanted idea, and the proportionality of the dialectic between legal and social transformation. In making comments on each, it is useful to highlight particular elements in the events tied to the rise of ILAM. The association between nuances and respective events is discussed individually below.

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64. Interviews ILAM Secretariat 2017.

65. Aung Kyaw Min, *Move to Amend Bar Law Gains Steam*, MYANMAR TIMES (May 26, 2018), <https://www.mmtimes.com/news/move-amend-bar-law-gains-steam.html> [<https://perma.cc/BJP8-Z9SN>].

66. *Id.*

*A. Transplant of an Institution Versus an Idea*

To begin with, a discussion of ILAM within the framework of legal transplants should be conducted with a distinction between a transplant of a legal institution versus a transplant of a legal idea.<sup>67</sup> The efforts of the IBAHRI program involved different components, with the IBAHRI's pursuit of ILAM as an organization being an institutional expression of an idea regarding an independent national bar association.<sup>68</sup> The distinction is relevant because it points to a source for the tensions between the IBA and Myanmar actors in the formation of ILAM.<sup>69</sup> The IBAHRI program was launched in the space of pre-existing local bar associations and lawyer organizations which had been engaged in their own respective efforts to create an independent national bar association before the instigation of the IBAHRI.<sup>70</sup> This means that in its basic form, the notion of an independent national bar association was already being held in principle by Myanmar actors prior to the arrival of the IBA.<sup>71</sup> In addition, it was also accepted by the Myanmar state, with both the government before the 2015 election and the government after the 2015 election supporting the concept of a nationwide bar association outside of state control.<sup>72</sup> As a result, the issues raised by Myanmar actors with the IBAHRI program were less about the IBAHRI's work to promote a legal idea and more about the IBAHRI's agenda to implant a legal institution.

For its part, the IBAHRI program held to a goal of fostering a Myanmar-led movement, but Myanmar participants in the program indicated issues with regard to (1) the relationship between ILAM and ongoing local efforts for an independent national bar association, and (2) the differences between IBA and local preferences for the organizational composition of ILAM in structure, procedures, and agenda. With respect to the relationship between ILAM and local efforts, the IBAHRI program sought to encourage a pluralist process inclusive of pre-existing bar associations and lawyer organizations in Myanmar.<sup>73</sup> This did not,

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67. IBA 2014f, *supra* note 36.

68. Understanding Bar Associations, *supra* note 37.

69. Myanmar Lawyers Advance, *supra* note 39.

70. IBAHRI and Myanmar Lawyers Prepare, *supra* note 41.

71. Interviews IBA 2014.

72. Cheesman & Min San, *supra* note 50.

73. Interviews IBA 2014; Interviews IBA 2015; Interviews IBA 2016.

however, result in Myanmar legal actors subsuming their efforts for their own respective plans for an independent national bar association. Rather, they supported the creation of ILAM to the extent that it existed concurrent with ongoing local lawyer organizations. With respect to the differences between IBA and local preferences for ILAM itself, Myanmar participants in the IBAHRI program noted the IBA's disapproval of the drafts of the ILAM constitution, with the IBAHRI's insistence on IBA articulation of international standards for bar associations being seen by Myanmar participants as conflicting with the work of Myanmar actors on the ILAM constitution.<sup>74</sup> Specifically, IBA preferences were for an egalitarian structure that favored qualities such as decentralized authority, collective decision-making, direct elections of executives, and inclusive opportunities that proactively sought the participation of women and youth in leadership positions.<sup>75</sup> In contrast, Myanmar members of the ILAM constitution's steering committee sought a hierarchical organization with centralized authority, leadership tied to seniority and experience, and an aversion or delay in diversity initiatives.<sup>76</sup>

Myanmar participants had attempted to engage with the IBAHRI program over such differences but argued that the IBA directed the IBAHRI agenda in ways that afforded little room to address local concerns. The disjuncture between the IBA and Myanmar participants in the IBAHRI program were great enough that Myanmar legal actors felt compelled to hold their own discussions informally independent of the IBAHRI to demarcate their positions relative to the IBA on both the question of ILAM's relationship with concurrent local efforts for an independent national bar association and ILAM's composition as an organization.<sup>77</sup> Ultimately, their positions turned to essentially making ILAM indeterminate, with ILAM left to define its own role among existing bar associations and lawyer organizations and ILAM having a constitution that would initially adhere to Myanmar preferences but would be subject to potential later amendments.<sup>78</sup>

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74. Interviews ILAM 2015; Interviews ILAM 2016.

75. Interviews IBA 2014; Interviews IBA 2015; Interviews IBA 2016.

76. Interviews ILAM 2015; Interviews ILAM 2016; Interviews ILAM 2017.

77. Interviews ILAM 2015; Interviews ILAM 2016.

78. Interviews ILAM Secretariat 2017.

Such a scenario suggests that the changes foreseen by Tuebner's conception of legal irritants do not always result in an identifiable transformation, at least in the sense of being a transformation with a conclusion.<sup>79</sup> Tuebner sees legal irritants as spurring an evolutionary dynamic in which an external idea is reconstructed and an internal context is changed in responding to the external idea.<sup>80</sup> As much as the IBAHRI's work to develop ILAM was an external idea of the IBA spurring movement internal to Myanmar, it did not lead entirely to reconstruction or internal change.<sup>81</sup> Myanmar legal actors agreed with the IBA on the idea of an independent national bar association and engaged with the IBAHRI to advance the idea.<sup>82</sup> As a result, the issues were less about reconstruction and more acceptance of ILAM as the institutional representation of a shared idea.<sup>83</sup> The formation of ILAM, however, fomented limited internal change among Myanmar legal actors, in that (1) local bar associations and lawyer organizations continued to exist concurrent to ILAM, (2) the Myanmar government did not change the laws regarding the legal profession, and (3) ILAM did not achieve the goal of an independent national bar association.<sup>84</sup> It is possible to place the IBAHRI and ILAM as expressions of unexpected consequences that Tuebner expects to arise from legal irritants, but their experiences do not entirely reflect the changes in external ideas or internal contexts he envisioned.<sup>85</sup> It is possible to resolve such apparent inconsistency by noting that the state of both the idea of an independent national bar association and the institution of ILAM is not resolved, with both still part of ongoing, unfinished efforts to advance them in Myanmar. As a result, neither status is static, suggesting that they are still undergoing the evolutionary dynamic posed by Tuebner. In this case, the IBAHRI's work to form ILAM should be seen as demonstrating an interpretation of Tuebner's legal irritants as involved in a continual, ongoing evolutionary dynamic that should not be expected to end.<sup>86</sup>

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79. See generally Crouch, *supra* note 21.

80. IBA 2015b, *supra* note 1.

81. IBA 2014f, *supra* note 36.

82. Understanding Bar Associations, *supra* note 37.

83. Myanmar Lawyers Advance, *supra* note 39.

84. IBAHRI and Myanmar Lawyers Prepare, *supra* note 41.

85. Cheesman & Min San, *supra* note 50.

86. *Id.*

*B. Motivations Underlying Divergent Interpretations*

The disjuncture between IBA and Myanmar perspectives in the IBAHRI program reflected differences in motivations.<sup>87</sup> It is useful to recognize these differences since they identify another source of tension in the formation of ILAM.<sup>88</sup> In instigating a project for an independent national bar association in the midst of pre-existing local efforts for the same idea, the IBAHRI program sought to provide IBA support for a concept that it perceived as suffering from a lack of local action.<sup>89</sup> The IBAHRI program was not directed solely towards technical support, since it also provided alternative means of support in the form of consultation and advocacy for Myanmar participants and Myanmar government towards international standards for bar associations.<sup>90</sup> The Myanmar participants in the IBAHRI program acknowledged that in the decades of Myanmar's isolation, their respective efforts had struggled to coalesce into substantive progress against the Myanmar state.<sup>91</sup> They also recognized the value of support from an international organization with the stature of the IBA, in that as an international entity with an established global reputation for advocacy on legal issues the IBA had the legitimacy to (1) muster international donors to provide financial support for legal reform efforts such as ILAM, (2) assemble international expertise in forums convening foreign and local actors for networking, agenda-setting, discussion, and training; (3) supersede existing local conflicts between rival voices—both between and amongst state and non-state actors—regarding the idea of an independent national bar and work to provoke a common forum for contending local actors; and (4) nurture support from the Myanmar state for progress towards an independent national bar association.<sup>92</sup>

Such recognition, however, did not avert the tensions between the IBA and the Myanmar perspectives regarding ILAM. The agenda of the IBAHRI program and its preferences for ILAM were a reflection of the IBA's purpose as a global advocate promoting international standards for the legal profession. As a

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87. Understanding Bar Associations, *supra* note 37.

88. A Comparative Review, *supra* note 40.

89. IBAHRI and Myanmar Lawyers Prepare, *supra* note 41.

90. Interviews IBA 2014; Interviews IBA 2015; Interviews IBA 2016.

91. Interviews ILAM 2016.

92. Interviews ILAM 2016.

result, despite its goals for a Myanmar-led movement, the IBAHRI program also sought to advance IBA priorities in keeping with IBA ideals for an independent national bar association.<sup>93</sup> In contrast, the concerns of Myanmar participants in the program were tied to the potential challenges posed by both pre-existing domestic legal actors with their respective interests and a Myanmar state that had historically denied independence to the legal profession.<sup>94</sup> These concerns have not abated: even with the formal inauguration of ILAM, the pre-existing local efforts for independent bar associations continued, and the Myanmar state did not change the status quo in its laws to allow an independent bar association. As a result, in drafting the ILAM constitution the members of the steering committee diverged from the IBA's priorities and instead held to concerns they saw as necessary to address such local realities.<sup>95</sup> This meant mitigating potential dangers by leaving ILAM indeterminate in role or composition such that it had the flexibility to exercise pragmatic actions to ensure its survival. This included having the initial constitution for ILAM subordinate diversity initiatives in lieu of a hierarchical management structure that appeased local legal actors by offering positions of authority to their senior leadership.

For Teubner, the issues in differing motivations offer further depth in the study of legal irritants. In identifying the interests driving the behavior of actors involved in the evolutionary dynamic of external idea and internal context, the attention to motivation also helps to highlight the character of such a dynamic in terms of its contentiousness.<sup>96</sup> In the case of ILAM, sympathetic interests for the idea of an independent national bar association led to engagement by Myanmar legal actors—both the government and non-state entities—in the IBAHRI, while divergent interests with respect to ILAM as the organizational expression of that idea led to tensions regarding the composition of ILAM and left uncertainties in its role in the Myanmar legal landscape.<sup>97</sup> Even as much as these outcomes continue to be unresolved, they suggest that the changes, whether upon an external idea or an internal

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93. IBA 2015b, *supra* note 1.

94. IBA International Principles on Conduct, *supra* note 55.

95. Interviews ILAM 2015.

96. See generally Crouch, *supra* note 24.

97. Interviews ILAM 2015; Interviews ILAM 2016.

context, spurred by a legal irritant can vary in character, with the nature of change affected by the alignment of interests among the various external and internal agents of change. Following the experiences of the IBAHRI and ILAM, in areas where motivations are parallel the character of change is relatively tranquil, but in areas where motivations are divergent the character of change is more contentious.

*C. Proportionality in the Dialectic Between Legal and Social Transformation*

The formation of ILAM arguably represented Teubner's conception of a legal transplant via a legal irritant. The IBAHRI program can be construed as an irritant that motivated action among Myanmar legal actors towards the idea of an independent national bar association.<sup>98</sup> Teubner saw the process of irritation as involving a mechanism that affected change within a local context but which was also affected by that context.<sup>99</sup> The creation of ILAM was consistent with this, in the sense that the IBAHRI program sought to follow IBA ideals for an independent national bar association but was affected by Myanmar participants to produce an ILAM that reflected local concerns.<sup>100</sup>

Teubner, however, also saw irritation as having two components: legal transformation and social transformation, with the two involved in a circular co-evolutionary dynamic. Such a conception suggests a proportional dialectic, as much between law and society, as it is between foreign and domestic.<sup>101</sup> The development of ILAM diverges from this. The ulterior motive of the IBAHRI program was to install an independent national bar association in Myanmar.<sup>102</sup> ILAM, however, offers only an incomplete step towards this goal. ILAM is an organization for Myanmar's lawyers operating outside state control, but the possibility of an independent national bar association that is fully capable of regulating the legal profession continues to be limited by the Myanmar Bar Council Act of 1929 and its Amendment of

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98. Crouch, *supra* note 21, at 28.

99. IBA 2015b, *supra* note 1.

100. IBA International Principles on Conduct, *supra* note 56.

101. Bar Council Act 1929, *supra* note 26.

102. Bar Council Act Amendment 1989, *supra* note 30.

1989.<sup>103</sup> As a result, the achievement of IBA ideals in Myanmar requires a change in Myanmar law that amends or supersedes the status quo. The lack of such change suggests that the development of ILAM falls short of Teubner's expectation for legal transformation.

As much as ILAM may fall short with respect to legal transformation, however, it arguably does represent a measure of social transformation. The IBAHRI program occurred within a social space constituted by the Myanmar government, bar associations, and lawyer organizations and IBA associates.<sup>104</sup> In driving its agenda, the IBAHRI program influenced the actors in the social space by advancing the idea of an independent national bar association.<sup>105</sup> The idea existed in Myanmar prior to the instigation of the IBAHRI, but the program served as a catalyst that assembled the disparate actors and focused their efforts on a common process.<sup>106</sup> As a result, it changed the social system of Myanmar legal actors by coalescing their efforts into a collective activity, such that there was engagement between Myanmar legal actors, the Myanmar state, and foreign experts.<sup>107</sup> Such engagement was constructive, as it led to a native Myanmar agenda that altered the formation of ILAM away from IBA preferences. In doing so, the creation of ILAM reflected Teubner's conception of a social transformation wherein an idea such as an independent national bar association spurs changes in a social system even as the idea is changed by that system.

The disparity in the development of ILAM between the components of legal transformation and social transformation serves to qualify Teubner's conception of legal transplants, in that it indicates the co-evolutionary dynamic posed by Teubner is not necessarily equal between legal and social changes. Rather, the case of ILAM demonstrates a legal transplant that so far has been led by a social transformation for the goal of producing an eventual legal transformation. The experiences of the IBAHRI program in the creation of ILAM suggest that a legal irritant may cause legal and social transformation, but that the two processes are not

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103. *Id.*

104. IBA 2015b, *supra* note 1.

105. IBA 2014f, *supra* note 36.

106. Cheesman & Min San, *supra* note 50.

107. Interviews ILAM 2015; Interviews ILAM 2016.

necessarily proportional, such that change can be skewed towards one over the other. Teubner's notion of a legal irritant, in other words, is not purely represented by cases involving concurrent legal and social components but can encompass scenarios where irritation is driven by an unequal balance between the two.

#### *V. CONCLUSION AND FUTURE DIRECTIONS*

The preceding sections used the IBAHRI's work to develop ILAM as a case exemplifying an attempted legal transplant of international expectations for an independent national bar association into a domestic Myanmar context. The analysis used the events associated with the formation of ILAM to draw insights regarding nuances in Teubner's notion of legal irritants. As a process separate from state authority promoting a legal institution outside of state control, the IBAHRI's work on ILAM represents an attempted legal transplant via non-state processes. The nature of ILAM's experiences, however, highlight contextual factors in Myanmar that indicate a basis for several interventions in Teubner's conception of legal transplant theory: (1) Teubner's idea of legal irritants driving an evolutionary dynamic fostering reconstruction of an external legal concept and transformation of an internal context is not something that necessarily culminates with definable change, but can instead in cases like ILAM continue—potentially in perpetuity—without a clearly identifiable end and with uncertain manifestations of change; (2) Teubner's sense of an evolutionary dynamic can exhibit character in terms of the levels of contention associated with reconstruction of an external idea and transformation of local context, with the development of ILAM demonstrating how divergent views among foreign and local actors drove the tensions associated with the IBAHRI's work behind ILAM; and (3) Teubner's perspective of legal irritants encompassing both legal and social change does not necessarily entail an equal measure of both, since ILAM's experiences demonstrate a case more reflective of social transformation and less reflective of legal transformation, with the latter being left as a potential future prospect.

Beyond theory, the case of ILAM proffers insights for other situations involving attempts to transplant legal ideas from an international level to local contexts. To begin, the experiences of ILAM indicate the extent to which local factors within a given

context can affect the work of foreign actors to promote international ideals. In particular, as much as the IBAHRI sought to create an independent national bar association consistent with IBA expectations such as decentralized authority, collective decision-making, direct elections of executives, and leadership opportunities for women and youth, the Myanmar participants working within the IBAHRI activities for ILAM produced an organization favoring centralized authority, leadership tied to seniority and experience, and a postponement in diversity initiatives. Such a divergence shows how local actors, even ones that share with foreign entities ideas for legal institutions like an independent national bar association, can exert themselves in ways that alter the efforts of international aid away from their original aspirations. As demonstrated by the case of ILAM, local actors possess their own interests and perspectives and have the ability to exercise them—even when working in concert with foreign voices in mechanisms like the IBAHRI—in ways that generate outcomes that differ from international ideals.

In addition, the experience of ILAM indicates the need for greater scope in pursuing a legal transplant of international ideas into a local context. ILAM resulted from IBAHRI efforts to create an independent national bar association, but the manifestation of ILAM as an organization was not by itself sufficient to establish IBA aspirations for an independent national bar association in Myanmar. The shortfall was not due entirely to the dynamics of foreign and local actors involved in the formation of ILAM: during the time of the IBAHRI initiative for ILAM Myanmar's political environment accommodated the creation and existence of organizations like ILAM, but the body of Myanmar laws host an environment that adheres to historical restrictions on the idea of an independent national bar association. The Bar Council Act of 1929 and the Bar Council Act Amendment of 1989 collectively maintain centralized control over Myanmar's lawyers under the Attorney General's Office and Supreme Court. As a result, while ILAM may be a national association for lawyers independent of the Myanmar state, it does not have the power of bar associations in other countries to regulate the legal profession, and so leaves Myanmar's lawyers subject to the continuing authority of the Myanmar state. Aspirations to allow greater independence for Myanmar lawyers outside state control calls for attention to the

legal constraints on the legal profession. Such a call implies that the work to create ILAM was only part of a need for broader reforms of Myanmar's legal system as a whole and that efforts to promote ideas like ILAM need to be seen as an element of a larger suite of strategies to foster change. Specifically, the case of ILAM shows that the transplantation of a legal idea requires more than just the installation of a legal institution but rather a concert of activities encompassing a holistic overview of coordinated reforms that bring systemic change sufficient to allow the growth and realization of the transplanted idea.

The topic of large-scale change to support the promotion of international ideals points to directions for further research. In particular, sociology literature provides a body of scholarship addressing transnational means of large-scale change, with potential areas of research on transnational social movements, transnational advocacy networks, and cross-border intermediaries that detail how international ideas are propagated into local contexts.<sup>108</sup> Hence, it would be worthwhile to explore the potential for the literature in these areas to offer potential insights for the field of legal transplants, particularly with respect to non-state legal transplants.

Another potential direction for further studies is with respect to historical analysis. The IBAHRI's efforts to create ILAM was part of an effort to reform the status quo of Myanmar laws regarding the legal profession. The Myanmar status quo, however, is a result of reforms to laws that existed under British colonial rule, which in turn were a reform of a pre-colonial legal system predating British Burma. Such a series points to a succession of legal transplants over time that raise the question as to the relationships and legacies left by prior legal systems upon later ones. Following from Teubner's conceptions of legal transplants both changing and being changed by local contexts, each legal system in history influences society and thereby alters the context facing later legal

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108. See generally TRANSNATIONAL PROTEST AND GLOBAL ACTIVISM (Donatella Della Porta & Sidney Tarrow eds.) (2005); SIDNEY TARROW, THE NEW TRANSACTIONAL ACTIVISM (2005); SANJEEV KHAGRAM, JAMES RIKER & KATHRYN SIKKINK, RESTRUCTURING WORLD POLITICS: TRANSNATIONAL SOCIAL MOVEMENTS, NETWORKS, AND NORMS (2002); YVES DEZALAY & BRYANT GARTH, THE IMPORT AND EXPORT OF LAW AND LEGAL INSTITUTIONS: INTERNATIONAL STRATEGIES IN NATIONAL PALACE WARS, IN ADAPTING LEGAL CULTURES (David Nelken & Johannes Feest eds., 2001); MARGARET KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS (1998).

transplants. In this case, the study of legal transplants would be enriched by greater consideration of the longitudinal path of a country's legal history and unpacking of the connections between different stages in the progression of legal systems encompassed by that history.

