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MYANMAR'S COURTS AND THE SOUNDS MONEY MAKES

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In 2007, Deputy Township Judge U Sein Lwin lost his job and went to jail. His alleged crime was to have solicited bribes so that three women would not become co-accused in a case before him. A prosecutor charged the judge under the 1948 Prevention of Corruption Act, and a court in Taunggyi promptly sentenced him to seven years in prison. The Supreme Court dismissed him from office immediately (Supreme Court 2007a).

If the facts of the case were more or less as set out on paper, then, frankly, the judge should have known better. The cases against the three women fell under the Unlawful Associations Act (1908). In other words, their alleged crimes had a political character — and if there is one type of case in which a judge ought under no circumstances solicit or accept bribes in Myanmar, it is a political case.

In contrast with political cases, judges can and do accept money in exchange for adjustments to rulings in most other types of cases. From the accounts of people intimately involved in Myanmar's judicial system, it appears that perhaps the majority of judges are open to offers. Kyaw Min



San in his chapter in this publication writes that one experienced lawyer estimated to him that currently over 50 per cent of courts are riddled with corruption. Others privately reckon that some 70 per cent of judges issue orders in part or in full on the basis of payments received from parties coming before them.

Such estimates should not come as any surprise. While successive governments in Myanmar (and in Burma before it) have rhetorically condemned judicial corruption, instead of stamping out the activities described as corrupt what they have done has, rather, merely encouraged the development of alternative language and practices which enable people to engage in and negotiate the justice trade more effectively.

The official and unofficial languages and practices of the justice trade, the sounds that money makes in and around Myanmar's courts, are the subject of this chapter. To examine them, I draw upon James Scott's study of public and hidden transcripts, where the former consists of gestures, speech, and practices in open interaction between dominant and subordinate groups, whereas the latter takes place beyond direct observation (Scott 1990, pp. 2, 4). Broadly speaking, the anti-corruption speechifying of officeholders, media reports, and government records constitutes the public transcript. The language and methods adopted among legal professionals to describe and negotiate their financial wheeling and dealing constitute the hidden transcript.

I examine these transcripts in two sections. In the following section, I sketch the public transcript on bribery and the judiciary, beginning with a quick survey of earlier periods, and then I concentrate on anti-corruption talk from the 1990s to the present day. In the second section, I look at how the hidden transcript variously accommodates, inverts, and contradicts its public counterpart. I explore a little of the language in the hidden transcript, and briefly illustrate a couple of its methods.

As the public transcript engages with the hidden transcript by conditionally conceding to the interests of subordinates, far from prohibiting the making of money in the courts, it establishes guidelines. In turn, the hidden transcript accommodates and interprets the public transcript to the extent that legal professionals find it in their interests to acquiesce. Beyond this point, the hidden transcript takes on subversive tones, through double meanings, reinterpretation of elite moralizing, and critique. Such dissident talk, however, mostly remains offstage, even when all that it expresses are matters of public knowledge.

HOMILIES, REPRIMANDS, AND ELITE SELF-PORTRAITURE

Scott describes the public transcript as “the *self*-portrait of dominant elites as they would have themselves seen”, and, he continues, “While it is unlikely to be merely a skein of lies and misrepresentations, it is, on the other hand, a highly partisan and partial narrative. It is designed to be impressive, to affirm and naturalize the power of dominant elites, and to conceal or euphemize the dirty linen of their rule” (1990, p. 18).

The official narrative on money-making in Myanmar's courts fits Scott's description precisely. The country's rulers portray themselves as benevolent, enlightened men who must constantly exhort their subordinates to aspire to their own high standards. They do not deny the existence of corruption; on the contrary, they acknowledge it and, in a sense, they celebrate it. The existence of something called “corruption” enables the dominant elite to naturalize its own authority. Its anti-corruption talk affirms its inherent superiority: rulers are ethical, subordinates not; rulers establish clean government, while subordinates sully it. This language does not conceal the dirty linen, but euphemizes it by shifting the blame to everyone except those who have seized the mantle of authority.¹

The modern narrative of corruption and counter-corruption has its roots in the British conquest of Mandalay. The colonial rulers initially treated corruption as in part the residue of earlier power relations based upon patronage, in part a consequence of the presumed inferiority of subject races to European masters. Later, following developments in society and government in Britain, they framed corruption more as a legal and institutional problem of the colony. In 1940 a Rangoon-based committee wrote that corruption was widespread, because of impunity, secrecy, and a lack of courage among superior officers to address it (Bribery and Corruption Enquiry Committee 1941, pp. 44–46).

Once Burma had won its struggle for independence, Prime Minister U Nu declared that national survival depended upon eliminating bribery, which he warned had spread across all sectors of politics, government, and business (U Nu 1951). The parliament passed an act establishing the Bureau of Special Investigation as a counter-corruption agency under the prime minister's office, with a supervisory board answerable to the president (Act No. 50/1951). The Bureau took its mandate head on; however, it was weakened by divisive politics and economic exigencies.

After the 1962 coup, the usurper regime placed the Bureau under a new national intelligence agency. It abolished the supervisory board, and assigned managerial responsibility to the home affairs ministry (Ministry of Home Affairs 2000, p. 277). The bureau's original purpose defeated, it has since operated in effect as a specialized, autonomous police department.

During the period of General Ne Win's military council and its successor one-party legislature, the public transcript on corruption turned increasingly moralistic. Both regimes expressed their resolve to end the exploitation of man by man, and with it, the old "have money, get justice" system (Burma Socialist Programme Party 1980, p. 49). The government classed bribery and misuse of state resources among offences damaging to socialist society and morality, along with gambling, drug use, prostitution, and outrages to the modesty of women and children (Council of People's Justices 1975). No attempt was made to introduce further institutional or legal measures to address profiteering from official positions. According to professionals who worked in the courts at this time, bribery was widespread, although modest in size when compared to the present day, and payment was mostly in kind rather than cash.

Following the collapse of the one-party regime in 1988, successive military-run governments have amplified the moralistic tone of their counter-corruption rhetoric. They have as their recurrent theme that the state is trying its best to eliminate wrongdoing. To the extent that corruption exists, it is a consequence of human weakness. The public transcript turns on the failures of judges, judicial bureaucrats, and others in exploring the moral hazards of their professional activities, and the need for uprightness when shouldering the burden of national responsibilities, so that people can trust and rely upon the justice system. Above all, it avoids systemic critique, which would imply failure on the part of the state to address corruption, and would also imply that senior officials share responsibility for wrongdoing, something the rhetoric now assigns almost exclusively to their subordinates.

The public transcript has changed little in substance over the last two decades, although the manner of its expression has altered somewhat. During the 1990s and early 2000s, former spymaster Lieutenant-General Khin Nyunt regularly chastized judges, judicial bureaucrats, and other personnel at length and in some detail for corrupt practices. In 1993 he said:

I have time and again ordered to take steps to eliminate undesirable things once found around courts, to eradicate malpractice and self-serving behaviour from court environs. However, it is observed that judicial personnel, including judges, prosecutors, and police force personnel at some state, division, district and township courts are colluding and acting as case brokers, telling that they will cut short days in detention if a case is prosecuted, will cut the fine, not to hire a lawyer as that would prolong the case, which lawyer to hire, which judge to approach, etc., and that civil servants and lawyers alike are operating fraudulently outside the boundaries of the law. It is heard that at some courts, detainees expecting to have their case examined on the appointed day can only get brought up to the front of the courtroom from the court holding cell after giving money to the guard. It must be said that because of this type of malpractice and self-serving behaviour, the people lack trust in the judicial system, and are in a kind of loathsome and fearful situation. (*Myanmar Law Reports* 1993, n.p.)

In 2002, Khin Nyunt warned of possible sanctions for wrongdoing, but as usual stressed the need for judges to be supervised well and to comport themselves appropriately.

It is learned that some judges are acting immorally and violating civil service discipline, behaving so as to cause public doubt, and are notorious for taking bribes. Therefore, matters have often arisen where action has been taken against judges not adequately fulfilling their duties, judges violating civil service regulations, and immoral judges. If we review the numbers for actions taken annually, it is known that there were 24 persons in 1999, 28 in 2000 and 66 in 2001. Therefore, be warned that the number of judges against whom actions have been taken and fault laid has been increasing year by year, and it needs to be stressed that superior organizations unceasingly closely supervise and admonish [judges] and that judges also reform themselves. (*Judicial Journal* 2002, p. 14)

In 2004 Khin Nyunt lost his own job due to alleged corruption.² His successors have since continued the moralistic counter-corruption narrative, although in a more circumspect manner. In 2007, the then prime minister, General Soe Win, stated that people outside of the courts were commonly discussing the taking of bribes and the behaviour of judges, and that for this reason all judicial personnel needed to be upstanding in their qualities and work practices. He added:

Up to the present day complaint letters are still arriving regarding the judiciary, about weaknesses, omissions, judges' and prosecutors' impoliteness and malpractice in cases sent up for prosecution ... [and] that if the weaknesses and flaws are examined, it can be observed that generally

they are resulting not from inadequacies and weaknesses in the system, codes of conduct and working procedures, but are flaws and weaknesses of the individual; although it has been found that some weaknesses are not related to individuals' moral character but to lack of expertise, sloppiness, negligence and ill-discipline ... (*Myanma Alin* 2007, p. 6)

Prime Minister, General Thein Sein, during 2009 read from literally the same script (or at least from the same scriptwriters, who must have cut and pasted their earlier message, since a paragraph of his speech as reported in the press was a word-for-word repeat of his predecessor's) when he again told assembled judges that the weaknesses were not systemic but individualistic, insisting that "judges are receiving appropriate salaries from the public budget to carry out judicial work, and that therefore it is necessary that they not make verdicts on receipt of bribes" (*Myanma Alin* 2009, p. 3). In March 2011, during his inaugural oration as President U Thein Sein, the former general did not address the problem of judicial corruption explicitly, but he did speak to the importance of the rule of law and avoidance of corrupt practices in order to ensure clean government.³ At the time of writing, his new administration has made no major announcements or initiatives concerning these issues.

Up to this point, I have restricted my remarks to the contents of the elite-generated public transcript itself — but the transcript can be sustained only when an audience exists that tacitly goes along with it. Where a major official delivers a homily about corruption, it will not do to have a crowd of manifestly uninterested subordinates yawning or dozing off.⁴ The assembled body must at least appear attentive and alert. Also, when government newspapers report on efforts to eliminate wrongdoing from the courts, it will not do to have private media outlets revealing that such efforts either do not exist or are futile. They must report in a way that contributes to, rather than undermines, the public transcript, as Nwe Nwe Aye explains in her chapter of this publication.

Judges, judicial bureaucrats, and lawyers in Myanmar conspire with senior figures to sustain the public transcript, both because of warnings against defiance and because of incentives for compliance. From these warnings and incentives, the hidden transcript is derived. I close this section with some comments about the sorts of warnings employed, before turning in the following section to a discussion of the incentives.

The compliance of subordinates is obtained in part through reprimands and threats of disciplinary and legal action. Warnings about disciplinary action, like those Khin Nyunt issued, are not usually made if there are

absolutely no grounds to warrant an accusation. Official records show that in most years the Supreme Court removes small numbers of judges for accepting bribes, as well as removing some lawyers for offering them.⁵ A few, like Sein Lwin, are prosecuted by the attorney general. Some are demoted, or denied promotion. More are reprimanded. Nevertheless, the number of judges, judicial bureaucrats, and lawyers who are disciplined is miniscule when compared to the incidence of money-making.⁶ What is more, the records suggest that what motivates disciplinary action is not of itself concern over the making of money, but concern over the failure of some personnel to maintain the *appearances* required of them.

Since the public transcript identifies the root cause of corruption as immorality, a judge needs to have an air of decorum. He should avoid doing anything that will cause public outrage and make him a liability to the institutions that he represents. Coerced sex with a defendant's sister in the courtroom chambers, as allegedly happened in at least one instance, is far outside acceptable standards (*Myanmar Law Reports* 1994, n.p.). So too are extramarital affairs or "abnormal" relations, particularly where the other person involved is also among judicial personnel.⁷ Turning up to court drunk and yelling "incivilities" at judicial staff and the police, as one judge in the delta allegedly was in the habit of doing, is also regarded as inappropriate (Supreme Court 2005).

Similarly, the public transcript encourages professionals to be sensible about *how* they earn from their positions, so as to avoid public recrimination, official reprimand, or worse. Deputy Township Judge U Win Nyunt in Tachilek became one example of how not to operate, when the Supreme Court accused him of soliciting bribes in exchange for rulings. In regard to the act of soliciting bribes itself, Win Nyunt was probably not any different from the majority of judges at his and nearby courts. However, he did so in a manner that was "well known, and furthermore, he went in person to the parties' houses to demand bribes", even after district-level judges had already issued warnings to their subordinates about bribe taking (Supreme Court 2003a). Win Nyunt's crime, the order dismissing him suggests, was not that he took bribes, but that he had not mastered the hidden transcript.

PAY RESPECTS, PAY THE JUDGE OFF

Judges, prosecutors, and lawyers in Myanmar are somewhat hollow authority figures. Since the defeat of judicial independence in the 1960s and

1970s, about which I have written elsewhere (Cheesman 2011), courts have steadily lost credibility. In many trials, the most powerful person present is the police officer bringing the case. Judicial personnel know that they have little sway compared even to their administrative counterparts, as do members of the general public. “Nobody,” a retired judge admitted to me, “Looks up to the courts.”⁸

The hidden transcript of legal professionals in Myanmar reflects their subordinate status. In many respects, it accommodates and adapts to the public transcript, in tacit acknowledgement that the latter conditionally concedes to their interests. But in doing this, it also adopts and perverts the language of law, making a mockery out of legalism. It inverts the moralistic tone of the public transcript by finding ethical reasons for the taking of bribes. And underneath, it runs a dissident strain through which professionals express bitterness at the hypocrisy of their superiors and the dismal condition of the institutions on which they depend for their livelihoods.

Public transcripts intersect with hidden transcripts at official events, such as refresher training programmes for judges and prosecutors, where euphemism from above is reinterpreted and filtered to down below. The chief justice — in speeches at these events — exhorts subordinates to apply the law cleanly and without bias, and to become people working for the benefit of the country who “do not lose sight of matters concerning state policy” (Supreme Court 2003d).⁹ As the chief justice cannot say “If ordered to jail someone, make sure you do it”, or “Don’t be so stupid as to take bribes in political cases”, he instead alludes to the applying of policy. But to make sure that the message has been fully understood, trainers — according to former participants at these programmes — thereafter offer additional nuggets of advice, such as “So as to avoid money problems, it is essential to follow orders from above”; and “If an official wants [the accused] imprisoned, don’t be a stickler about the law; convict this time for value next time”, meaning that a grateful official will help a cooperative judge by pushing lucrative cases in his direction later. Others offer warnings, such as “If you have to imprison in a political case, don’t release for lack of evidence. If you do, it’ll be your ruin.”¹⁰ Trainers also advise attendees that “To avoid problems, feed your clerks and staff”, since well-fed staff will look the other way from their superior’s transgressions — unless, of course, they are actively involved as intermediaries.

In any event, all participants are encouraged to heed the maxim “When eating figs, listen for the sound of the slingshot”, meaning that

just as an inattentive bird can get hit while enjoying the fruit of the tree, an inattentive official can be hit by a complaint if too concentrated upon profiting from his post.

Lawyers, prosecutors, and court clerks employ a wide variety of euphemistic language when discussing the justice trade in their daily work. Some of it is generic slang, such as the expression “to water” something as a reference to the giving of a bribe. For instance, if somebody loses a case, his friend may ask, “Didn’t you water it?”, or a lawyer may advise a client that if she wants to win a case then, “You’ll have to water it well.” Other expressions like “no oil without beans” are used to stress to a client that without money being put into a case, it will not get resolved favourably. Among themselves, legal professionals sometimes allude to commonplace expressions, such as “A wise person can earn money”, by asking, “Have you got wise?” as a way of asking whether or not the other has received bribes.

These expressions are widely understood and are useful for facilitating straightforward exchanges. Where professionals prefer to communicate among themselves, they may resort instead to perverted legalese, the language of “a politics of disguise ... that takes place in public view but is designed to have a double meaning” (Scott 1990, p. 19). While the bending and inverting of legalese for the most part adapts to the public transcript, it is also subversive, inasmuch as it undermines the legality on which the professionals using it are supposed to rely. It reveals a cynicism that is rooted in disillusionment with the legal system as a whole.

Among this type of legalese, a good example is “Section 870”. A lawyer talking with another in front of the courthouse might suggest Section 870 as a means to get the client released from the charges against him. To the by-passer unversed in law, it sounds as if the two are talking about some technical and learned matter. To anyone familiar with the statute books, there is no Section 870 anywhere to be found, the highest being Section 565 of the Criminal Procedure Code. Section 870 is a different type of code: code for three letters of the alphabet that resemble the three Burmese numerals for 8, 7 and 0, which when spelled out mean “to pay respects”, a euphemism for a pay-off.¹¹ Section 870 thus precisely captures the simultaneously integrative yet subversive quality of the hidden transcript among legal professionals, since it inverts the notion of respect for a superior, and respect for the law, by situating both in a money-making discourse that feigns legality. It gives the appearance of respectful adherence to the contents of law while in fact ridiculing them.

Another legalistic euphemism that follows a similar logic is “Part 4”. Many legal forms consist of parts that must be completed for the purposes of a case. A court clerk filling out a form may instruct the defence lawyer that Parts 1, 2, and 3 are completed, now it is time to do Part 4. However, the “part” to which she is referring is not in the documents. Rather, it is word play in which the vowel sounds associated with the words “part” and “four” are swapped with one another to take on a meaning that it is time to give something.¹² So far as usage of “Part 4” in the courts is concerned, some lawyers also interpret Parts 1 to 3 as the investigation, the laying of charges, and submissions to the court, with Part 4 being payment of money for the desired verdict.

Sometimes, a euphemism describes a particular practice that enables the making of money in a specific manner. “Double cropping” is a good example. This term comes not from the law but from paddy farming, when cultivators follow a monsoon crop with an irrigated one. In trials, the term designates the practice of lower court judges accepting payments not to acquit but to impose a lesser sentence on conviction and to arrange for the sentence to be overturned or revised upon further payments made on appeal in a higher court.¹³ As both the court of first instance and the appeal court make money from the same case, it is a double crop. Simultaneously, both boost the statistics on cases handled, and even at the appeal level a judge has some way to collect money as well as ensuring that an accused person still serves some jail time, so as to keep up statistics on convictions and sentencing.

“Sentence-release” pithily designates a similarly useful method. Sentence-release, like double cropping, enables judges to satisfy competing demands by giving the appearance of efficiency while also making money. Using this technique, judges convict accused persons but hand down sentences that come to less than, or equal to, the total amount of time that the accused has already been in custody awaiting trial. For example, an accused may be brought before a judge charged with a minor theft. From the date of arrest, he may be remanded for two weeks before the case is heard, and then again while the case is tried, which may come to another couple of weeks. If his lawyer has watered the case, but the judge for whatever reason does not want to acquit, she can add up the total number of days that the accused has been in custody already, which in this scenario comes to twenty-eight, and then convict the defendant but impose a four-week sentence with time served deducted, so that the accused is immediately released. The accused goes home, the judge and prosecutor both make

money and obtain a conviction to add to their statistics, and the defence lawyer has a satisfied client.

As the counter-corruption discourse proceeds from the singular assertion that legal professionals are unethical because they make money illicitly from their positions, the hidden transcript retorts that the taking of money in exchange for verdicts is sometimes morally superior to the applying of law. For example, in one case that a lawyer was handling just at the time I met him, police had charged the defendant with attempted suicide, which remains an offence under the colonial-era Penal Code. The lawyer went to see the judge assigned to hear the case, and the latter warned that he would probably have to impose a prison term. The lawyer explained that the defendant had attempted suicide because she has seven children whom she could not feed. The judge, who had evidently threatened to imprison the accused so as to open negotiations with the lawyer, agreed to release the accused with a fine, in exchange for a payment equivalent to around 30 U.S. dollars. Because the client had attempted suicide for want of money to feed her kids, not surprisingly she also could not come up with that amount of money. Subsequently, the lawyer — who was handling the case free of charge — again went to talk with the judge, who advised that anyhow, he would release her on fine for “however much she can give”, which eventually came to the equivalent of only a few dollars.

This judge, if asked, would perhaps justify the taking of a small amount of money for the release of the accused on grounds that he took pity on her: that this was a better course of action than to apply the law strictly, but also that he cannot just give cases away for nothing, as it will create problems in subsequent negotiations with defendants who can afford to pay. Another judge reasoned, along similar lines, that he took money for rulings because of pity for the accused or his family, compounded by the insistent nagging of lawyers or prosecutors:

As for bribe money, we don't want to take it. But how can we survive on the monthly salary? I sometimes don't take it ... They [the defence lawyer] say, “Sir, if the accused goes to jail, his whole family will be in trouble. If he goes to jail, his wife will have to prostitute herself. It's already sorted out with the prosecutor. The prosecutor said that if sir says okay then he'll okay it too. He won't go up for revision or appeal,” and so on, and so I have to release the accused.¹⁴

In the hidden transcript, no moral question adheres to whether or not to buy and sell cases, only to how best to conduct transactions. Some lawyers speak favourably of judges who try to identify the party who

in their opinion should win a case according to law, and then invite that party to offer something for the correct verdict. One remarked fondly of a judge who refuses to accept bribes when deciding a case, but afterwards is open to the receipt of gifts from the winning party. Through the filter of the hidden transcript, her behaviour does not for this lawyer constitute unethical conduct of the sort condemned in the public transcript, since she decides cases fairly, even if she expects the successful party to understand that she should obtain a reward for doing so.

Although most legal professionals seem to be able to point to peers and superiors whom they admire for their attempts to retain some integrity, few express any respect for those at the apex of the legal system, and fewer still express respect for the system itself. Lawyers share sardonic humour about malfeasance and ineptitude on the part of Supreme Court justices as, for example, by referring to the former long-standing Chief Justice, U Aung Toe as “U Toe Aung”, or, roughly, “Mr. Push ‘n’ Win”, meaning that if someone with real authority gave him a shove, they would get whatever verdict they wanted.¹⁵ While this joke is simple and seemingly light-hearted, its inferences go directly to the remark of the former judge quoted above, that nobody respects the courts. His name inverted, the pathetic Chief Justice was the embodiment of a pathetic system, and his high court the height of corruption, as the judge who asked rhetorically how he could survive on a judge’s salary noted acerbically:

The Supreme Court and leadership say, “Don’t take bribes. If you don’t have enough food, rear livestock, cultivate crops.” How can we do that kind of work in Yangon? ... The Supreme Court says don’t take bribes. They take hundreds of millions, thousands of millions.

Like the French tenant farmer meeting his landlord, whom Scott quotes, this judge would perhaps have attended events where, on meeting justices of the Supreme Court, he would have forced himself “to appear amiable, in spite of the contempt” he felt for them (Scott 1990, p. 2). For many professionals, such contempt is reserved not only for the Supreme Court bench, but is directed towards the system as a whole. One lawyer said:

Whether or not a defendant is released ... doesn’t depend on the evidence or the lawyer. A penniless defendant can’t get released easily. No matter how much a lawyer tries for a penniless defendant, it’s pointless. It’s not education but money that counts. Lawyers have become brokers between judges and clients.

Another expressed similar sentiments:

We know in advance who's going to win and who's going to lose a case. It's clear. Whoever can't pay the judge will lose. However many precedents you rely on in your application [to court], however many legal texts you cite, if you don't pay, you're bound to lose. That's why in the period of military government, lawyers earning a living from the courts no longer closely study the law.

These remarks are the reverse image of officialdom's counter-corruption rhetoric. They are subversive rather than sanctioned; not disciplinary but despairing; not euphemistic, but frank. They are not statements that can be assimilated into the public transcript, since they do not accommodate its discourse but defy it, through the very fact that they serve no other purpose than to state the facts. They do not affirm the elite self-portrait but destroy it, since they ultimately assign the failures of the justice system to the system itself. They constitute a critique of precisely the sort that the public transcript prohibits, since they unavoidably place blame for failure on those in charge. For this reason they are necessarily, and unremittingly, hidden.

CONCLUSION

The public transcript on corruption in Myanmar's judicial system does not aim primarily to address practices identified as corrupt, but to affirm an elite self-portrait in which the dominant group appears innately superior to its subordinates. Its model of probity is a judicial officer who follows orders as required, who pretends to subscribe to the values of official propaganda, and who successfully maintains the appearance of being free from practices identified as corrupt.

In exchange for going along with the public transcript, the elite grants conditional concessions to the interests of subordinates. Subordinates interpret and accommodate these concessions through the language and practices of the hidden transcript. The hidden transcript sustains its public counterpart to the extent that legal professionals find it in their interest to give the appearance of compliance, but the hidden transcript also inverts and undermines much of the public transcript, even as it seemingly accommodates it, and underneath it prickles with rancour at the hypocrisy of senior officials who preach virtue as they practice vice.

Nwe Nwe Aye in her chapter of this publication expresses cautious optimism that the role of the media as a watchdog against corruption will increase as government censorship lessens. From study of the language and methods of money-making in and around the courts, I interpret this to mean that more of the hidden transcript will seep into the public domain through the media. Indeed, a few offstage happenings are already being broadcast on foreign-based radio stations, such as the BBC Burmese Service's *Pyithugyaga Pyithuzaga* programme, which airs listeners' letters and recorded messages about official malfeasance around the country.

If in the future Myanmar's domestic media also become able to report on public complaints of the sort heard on the BBC, it might well be a sign of lessened censorship — but it will not, I would say, indicate that money-making through the courts will be lessened. Even if more of the hidden transcript is taken up by the public transcript, money-making will not dissipate. The incentives are too many, the disincentives too few, and as the business of commerce expands around the country with very little restraint, so too does it penetrate and stimulate the business of the courts. Daily, new language and methods accommodate and conceal new types of transactions. Indeed, by the time this chapter is published, the expressions I have mentioned above to illustrate the hidden transcript might already be redundant. The hidden transcript is always on the move, from one time to the next, from one place to the next. The sounds that money makes in and around Myanmar's courts will not readily diminish. They will merely change their tone.

Notes

1. Moralizing about corruption is of course neither new nor unique to Myanmar. Colin Leys wrote decades ago that “the question of corruption in the contemporary world has so far been taken up almost solely by moralists” (1965, p. 216). To the present day, many anti-corruption campaigns have a strong moralistic tone. Arguably, Myanmar is distinguished by the extent to which moralizing precludes other discourses, and by the extent to which it excludes senior officials from responsibility, except when, for political reasons, an advantage is to be had in doing otherwise.
2. For a summary of the reasons given for Khin Nyunt's removal, see Kyaw Yin Hlaing 2004, pp. 174–75.
3. Kyaw Min San, Nwe Nwe Aye, and Richard Horsey all remark on the president's inaugural speech in their chapters of this publication. See “President U Thein

Sein speaks to members of the Union Government, Heads of Union level organizations", *New Light of Myanmar*, 1 April 2011, pp. 1, 7–10 <<http://www.burmalibrary.org/docs11/NLM2011-04-01.pdf>> (accessed 1 June 2012).

4. In 2003 two deputy township judges did in fact receive reprimands for "yawning/dozing off ... not having interest [and] being distracted" during the Chief Justice's address at a training programme they attended (Supreme Court 2003c).
5. No independent professional body exists for lawyers in Myanmar. The Bar Council consists of the Attorney General and the director-general of his office, the director-general of the Supreme Court, a Supreme Court judge and six lawyers approved by the Supreme Court (Law Amending the Bar Council Act 1989). The Supreme Court has responsibility for issuing orders concerning lawyers, and therefore in this chapter I refer to disciplinary actions against lawyers alongside those against judicial bureaucrats and judges.
6. From a count of the most recent set of records available to me at time of writing, in 2009 the Supreme Court ordered official disciplinary action against a total of 50 judges and 4 judicial bureaucrats, out of which 36 were at the township level. Of these actions, 48 were reprimands, and 4 were demotions. Two deputy township judges were dismissed from office; neither was prosecuted. So far as lawyers are concerned, fewer faced disciplinary action, but the action was more severe. Out of the fifteen lawyers named in the records, three were reprimanded by the Supreme Court. Seven were suspended for periods of two to five years, and six were disbarred from practice. All six disbarred lawyers had been convicted of criminal offences, at least two for political reasons.
7. In 2009 the Supreme Court dismissed a judge after he took a second wife while still married; in 2003 it dismissed a judge who allegedly slept with his court clerk (Supreme Court 2009, 2003b). A deputy district judge it accused of engaging in "abnormal" relations with her senior clerk despite repeated reprimands. The order that she be suspended from promotion for two years does not spell out the abnormality, but indicates that as a woman judge she had a particular responsibility to keep her marital affairs in order (Supreme Court 2007b).
8. All quotes from legal professionals in this chapter I have translated from Burmese. All are from research conducted in the last three years.
9. I am here citing the former Chief Justice, but am referring to the office of chief justice, hence the use of the present tense, since I assume that speeches by the new incumbent — none of which I have yet had an opportunity to read — cover similar ground to those of his predecessor.
10. In the original, "ruin" also is idiomatic speech, meaning literally that the person's rice pot will be broken — a particularly apt idiom given the context.
11. The numerals 8-7-0 resemble the consonants *ga-ya-wa*, hence *gayawa-pyu*, to pay respects.

12. “Part four” is *apaing-le*. When the vowels are switched it becomes *ape-laing*, or literally, “giving line”, where “line” connotes an illicit method of working or gaining something. The numerical reference also is sometimes dropped so that the officer requesting payment can simply say something along the lines of, “My part is done; only your part is needed.”
13. The practice has a long pedigree. According to the 1940 committee, a “Court may deliberately give judgment against the bribe-giver, knowing, and explaining to him, that it will be reversed on appeal” (Bribery and Corruption Enquiry Committee 1941, pp. 11–12). In the present day, some professionals also use the term “double cropping” to refer to cases where accused persons have to pay twice to complete the process in the lower court; for instance, once to obtain bail and again to obtain acquittal.
14. The monthly salary for a judge at the lowest level was listed in 2009 as K59,000 to K64,000 per month, or a little over US\$2 per day. The highest-ranked judicial officer on the circulated salary scale officially received K210,000 to K220,000 per month; at the time, around US\$7 per day (figures based on tabulated civil service salaries in Ministry of Finance 2009). As far as I am aware, these figures still applied in 2010–11.
15. For comments on Aung Toe’s tenure as chief justice, see Myint Zan’s chapter in this publication.

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