Review Article

Misremembrance of an Uprising:

Dr Maung Maung, *The 1988 Uprising in Burma* (Foreword by Franklin Mark Osanka), Monograph 49/Yale Southeast Asia Studies.

By Myint Zan*

Dr Maung Maung's last book was posthumously published in late 1999/early 2000 more than five years after his death in July 1994. It can perhaps be presumed that even before his death the author must have tried to publish it with an overseas publisher. In his foreword, Dr Franklin Mark Osanka recounts how he undertook the task of publishing Dr Maung's Maung's manuscript when he went to Burma/Myanmar in 1995. He obtained the manuscript from Dr Maung Maung's widow. It was another four years before Yale University's Southeast Asia Monograph Series published it.

Dr Osanka admits that he is not an "expert on Myanmar".[1] It shows. U Saw, the convicted assassin of General Aung San, Burma's independence leader and father of Nobel Peace Laureate Aung San Suu Kyi, was repeatedly mentioned as "U San."[2] Osanka states without elaboration that "Dr Maung Maung was elected President of the Union of Burma on August 19, 1988". The word "election" should be used advisedly since for the general reader it could conjure up conceptions of democratic, multiparty elections being held to "elect" Maung Maung as President. In fact, he was "selected" by the ruling coterie (the central committee) of the Burma Socialist Program Party as Party Chairman and the "rubber-stamp" *Pyithu Hluttaw* (somewhat misleadingly used by Maung Maung in the book as 'parliament') "selected" him as President. Also, the formal name of the country then was not "Union of Burma" but "the Socialist Republic of the Union of Burma".

Osanka admits that Maung Maung's book "may be seen as a self-justification for his actions while president" but praises him for "admitting the failure of the economic system of socialism and that ordinary people were justified in demanding change."[3] One should add that the people's uprising in that fateful year of 1988 was at least as much a protest against the political system of oppression and misgovernance- if not more so. For Osanaka, the fact that Maung Maung avoids blam[ing] any member of the 1988 government" is another credit in the author's favour, as Maung Maung "was not a blame-maker.[4] Yet Maung Maung did at least partially blame most if not all of the leading opposition figures during the 1988 uprising, including Aung Gyi, Aung San Suu Kyi, U Nu and U Tin U (former General), as well as "hooligans, looters, arsonists, headhunters and all"[5] for not being able to fulfill his "mandate" for democratic change in the country.

Osanka also claims (not quite correctly) that "there are no comments on the events past September 18, 1988 when the Tatmadaw [Armed Forces] assumed total control of Burma."[6] Though sporadic and sparse, there are comments by Dr Maung Maung on events post September 18, 1988, including a reproduction of the late General (later self-promoted to 'Senior General') Saw Maung's speech of 10 November 1989 with full approval.[7] Maung

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[1] Maung Maung at vii.
[2] Above, n 1 at xiv.
[3] Above, n 1 at xviii.
[4] Above, n1 at xvii.
[5] Above, n 1 at 277.
[6] Above, n 1 at xviii.
[7] Above, n 1 at 219-220.

Maung also expressed his approval of the election commission's disqualification of Aung San Suu Kyi's nomination in the 1990 elections.[8] Maung Maung even made a sarcastic, if not almost sneering, comment on the 1991 Nobel Peace Prize that was awarded to Aung San Suu Kyi.[9]

In the "Introduction", as indeed in quite a few parts of the book, Dr Maung Maung tried to sound "philosophical" and wrote almost romantically about "change" and how "1988 was the year of change in Myanmar". At this juncture one recalls that in a similar 'affecting' fashion he wrote about change and impermanence in his 1969 book *Burma and General Ne Win* and how the General's accession to power (ever so reluctantly on General Ne Win's part according to Maung Maung) was part of the process of change or *Anicca*- a theme he repeated in this book.[10]

He stated that during the 1988 crisis in Burma he helped "bring about the change" and was himself "part of the change" and that there are "already many excited accounts and hasty analyses". [11] However this reviewer is aware of only one other full-length book in the English language that deals with the 1988 uprising, and that is Bertil Lintner's *Outrage* first published around 1989. Since Maung Maung made some critical, even unsavoury comments on Lintner's book,[12] one wonders whether Maung Maung regarded *Outrage* not only as "excited and hasty" but even as an outrageous account of that "brief, hectic, unique period in Myanmar". He averred that his account "must also be a limited and subjective account."[13]

While the author's "humility" is appreciated, his lack of objectivity and his obfuscation can be found, among others, in his legalistic and fastidious (in the uncomplimentary sense of the words) description, defence and deference of the 1974 Burmese Constitution which legalised and 'constitutionalised' one-Party rule. In the "Introduction", and throughout his book, Maung Maung repeatedly referred to the 1974 Constitution not only in defence of his actions during his presidency, but also in denigrating the opposition's aspiration for democracy- especially their demand for an interim government which would supervise multi-party elections. When the 1947 liberal Constitution (in contrast to the 1974 one-Party Constitution) was in force, Maung Maung wrote and published a treatise entitled *Burma's Constitution*[14] wherein he gave fulsome praise to the 1947 Charter. Nowhere in this book nor in any of his writings did Maung Maung deem it fit to mention that the 1962 military coup which brought General Ne Win into power (indeed it was General Ne Win who successfully initiated the coup) was in direct violation of the 1947 Constitution.[15] Instead, Maung Maung praised the 1962 coup. Yet, in the pre 1962 days, he published an entire book and many other writings praising the 1947 Charter. Additionally, Maung Maung did not elaborate on the nature of the "referendum" that was held in December 1973 to adopt the one-Party (1974)

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[8] Above, n 1 at 275.
[9] Above, n 1 at 274.
[10] Above, n 1 at 29.
[11] Above, n 1 at 5.
[12] Above, n 1 at pp. 173-74, 205.
[13] Above, n 1 at pp 5-6.
[14] Maung Maung, *Burma's Constitution*, (Martinus Nijhoff, The Hague, 1959, Revised edition 1961).
[15] A jurisprudential analysis as to whether the coup was 'illegal' in a generic sense will not be discussed here beyond saying that in this reviewer's opinion due to the complete success of the coup it was 'legal' based on grounds of effectiveness. Unlike other Asian countries which partially share the common law legal system and where the validity of the laws issued by a 'revolutionary regime' has been challenged (See, for example, *The State v Dosso* (1958) 2 *Pakistan Supreme Court Report*, 180) there never was any legal - that is by litigation in the courts - challenge of the Revolutionary Council and Revolutionary Government nor of its laws. However this does not detract from the fact that at the very least since a military takeover was nowhere provided in the 1947 Constitution, the 1962 coup was in violation of the Constitution. (The English text of the 1947 Constitution can be found in Maung Maung's *Burma's Constitution*, above note 14).

Constitution. The choice given to the voters in the 1973 referendum was not at all a choice in any meaningful sense of the word. If the voters had said "no" to the draft Constitution, the ruling Revolutionary Council would have continued to rule by military decree. If they had said "yes" to the draft Constitution the Revolutionary Council would have transferred power to the *Pyithu Hluttaw* (a unicameral Legislature), which would then be "elected. In each constituency there would only be one candidate from the ruling Burma Socialist Programme Party (BSPP). Article 11 of the 1974 Constitution stated that:

> "The State shall adopt a single Party system. The Burma Socialist Programme Party is the single Party and it shall lead the State."[16]

The Chairman of both the Revolutionary Council and the Burma Socialist Programme Party was U Ne Win. After the adoption of the 1974 Constitution, U Ne Win became the President of the Socialist Republic of the Union of Burma and retained Chairmanship of the BSPP until his resignation in July 1988.[17]

Moreover, the 1988 military takeover was also carried out in violation of the 1974 one-Party Constitution. Nowhere in the 1974 Constitution was it mentioned that the Army could takeover power. Hence, the military coups of both 1962 and 1974 were in violations of the Basic Laws in force during those times.[18] Yet Maung Maung in this book praised both military coups. At the same time, and inconsistently, he was a great "constitutionalist" in that he found the opposition's demand for an interim government during the 1988 crisis to be preposterous, a constitutional impossibility so to speak and therefore he was unable to accede to since he was a "creature" of the Constitution[19] and doing so would do "fatal violence to the [1974] Constitution."[20] Yet he has nothing but praise for the military coups of 1962 and 1988 which had done fatal violence to the existing Charters.

Even though Maung Maung wrote that the "the Constitution of 1947 had been nullified by the military coup of 1962", he had found it expedient to quote from it, and regarded it as a yardstick by which to judge the legality or legitimacy of acts or events which occurred long after the 1947 Constitution became defunct. Maung Maung referred to the 1947 Constitution at the very end of the book in endorsing the election commission's refusal to allow Aung San Suu Kyi to stand as a candidate in the 1990 general elections.[21]

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[16] The English version of the 1974 Constitution can be found in Blaustein and Flanz, *Constitutions of the World,* New York: Oceana publications, 1990. By 1990, as a result of the 1988 military coup, the 1974 (one-Party) Constitution was no longer in force.

[17] The reviewer has written more extensively on the adoption of the 1974 Constitution and some of the provisions of the 1974 Constitution - at times in comparison with its 1947 predecessor. See Myint Zan, "Law and Legal Culture, Constitutions and Constitutionalism in Burma" in Alice Tay (Ed*) East Asia: Human Rights, Nation-building, Trade* (Baden-Baden: Nomos Publications, 1999) at 181, 236-51.

[18] The current Burmese military government apparently has learned the "lesson" or at the least has tried to avoid 'unconstitutional' military coups in the future. Principle 29 of the "Basic Principles, The principles laid down to serve as bases in prescribing State Fundamental Principles adopted by the National Convention" in the booklet *The Basic Principles and Detailed Basic Principles laid down by the National Convention Plenary Sessions up to 30 March 1996* states that "when there arises a state of emergency that could cause disintegration of the Union, disintegration of national solidarity, and loss of national sovereignty, due to takeover of sovereign State power or attempts therefor [sic for thereof] by wrongful forcible means such as insurgency or violence, the Defence Services Commander-in-Chief has the right to takeover and exercise State power in accord [sic] with provisions of State Constitution".

[19] Above, n 1 at 7.

[20] Above, n 1 at 204.

[21] Above, n 1 at 276.

Dr Maung Maung, the learned legal scholar with doctoral degrees from Utrecht and Yale Universities, gave a short discourse on comparative constitutional law when he wrote that even though the popularity of an American president may dip to "as low as 10% or 20% he does not, cannot resign until his term is over."[22] Perhaps Dr Maung Maung should refamilarise himself with Richard Nixon's resignation from the United States presidency in August 1974. In another part of the book, Dr Maung Maung continued the comparison of his presidency with those of the United States. When US Congressmen Stephen Solarz visited President Maung Maung during his presidency, the Burmese president jokingly referred to the US Congressman about Solarz's presidential ambitions. Solarz replied that he would invite Dr Maung Maung to lunch if "he made it to the White House" and if Dr Maung Maung "happened to be in Washington". Dr Maung Maung wrote:

> "I replied that if I came to lunch and found demonstrators out in the streets or on his lawn, I would advise him to resign and hand over to an interim government. He did not find that funny."[23]

Neither does this reviewer. To equate the 1988 people's uprising in Burma which spread to over forty cities and towns throughout the country, where hundreds of thousands of people from many walks of life demonstrated daily for about forty days against the BSPP regime, as a moral equivalent so to speak of almost run of the mill demonstrations outside the White House is at best tendentious and at worst almost puerile.

Maung Maung's comparison between the United States and Burma is not restricted to the system of governance and Constitutions, but apparently extended to personalities such as the author himself and a particularly famous and respected American president. To be precise, the learned author stated (at least obliquely) that he was trying to emulate Abraham Lincoln, when he quoted from this US President and inferred that he, like Abraham Lincoln, had done "the very best I know how, the very best I can."[24] The reviewer's opinion is that Maung Maung's role could more profitably be contrasted, rather than compared with that of another transitional figure from another oppressive regime: that of the role of former President De Clerk of South Africa who, together with Nelson Mandela, helped bring about the end of apartheid. The author inferred that but for the exploitative, power-hungry opposition leaders, the mobs in the streets, "the opportunists, the brazen-faced bandwagon climbers"[25] he could have achieved his mandate of bringing democratic change in Burma. Dr Maung Maung wrote that if only the agitators would have allowed his government to hold general elections without demands being made that an interim government rather than his BSPP government supervise the elections:

> "All that would [have] take[en] [was] three or four months, and, by year's end, we hoped, a peaceful and smooth transition would have been over."[26]

The former president blamed the agitators and the "opportunists" for not being able to perform his mission. While stating that he was "not repeating what the leaders of the military government [which had succeeded him] said", he rhetorically asked whether the opposition leaders who were demanding the formation of an interim government during the 1988 crisis "would have been happy and willing to leave after 3 months and make way for the incoming people?"[27] What is sauce for the goose should be sauce for the gander too. What was asked of the opposition in 1988 should also have been all the more and with full justification directed to his military successors.

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[22] Above, n 1 at 204.
[23] Above, n 1 at 166.
[24] Above, n 1 at 247.
[25] Above, n 1 at 186.
[26] Above, n 1 at 163.
[27] Above, n 1 at 240.

One wonders why the late President did not ask this question to the current *Tatmadaw* (Army) leaders who "temporarily" took power in September 1988, organised an election in May 1990 in which the opposition National League for Democracy overwhelmingly won both the popular votes and the seats in the National Assembly which was never convened. Some of the leaders of the NLD were those "agitating" for an "extra-constitutional" interim government in 1988. The opposition during the 1988 uprising "extra-constitutionally" demanded an interim government and did not get their wish. The Army also took over power extra-constitutionally to restore law and order and in 1990 the people of Burma expressed their desire for basic changes. Why didn't the author ask the Army leaders whether they were willing to "leave" for "the incoming people", especially when a solid majority of the people had so unambiguously expressed their wishes? Since the late president has made the statement that he would not comment on what happened after September 1988 – a fact reiterated by the writer of the foreword- it might be replied that the author should not be taken to task for his silence for not making a statement about the 1990 elections and the military's refusal to honour it. But Dr Maung Maung had deemed it fit to mention post-1988 events in Burma, including Aung San Suu Kyi's Nobel Peace Prize,[28] U Ne Win's retirement from politics and of him "having found peace and detachment"[29] and the *Tatmadaw's* exemplary service to the nation after 1988. Hence, a query or negative comment as to why he had refrained from asking the same questions to his military successors or raised the same points that he had almost contemptuously hurled at the opposition is entirely logical and fully justified.

But to return briefly to the comparisons with (or at least allusions to) great men... Throughout the book Buddhist terms and concepts such as those of *Anicca* ("impermanence") were mentioned repeatedly, indeed almost lyrically and ritualistically, thereby creating the impression of the author as a pious person. The author's piety is non-denominational, so to speak. Jesus Christ was mentioned at least twice in the book (pp. 136 and 275). When Jesus was mentioned the second time it was in the context of "a strange but beautiful dream". Dr Maung Maung recounted his dream that he brought "Jesus down from the cross on his lap and in his arms". A medical friend of the author "was impressed" and stated that he was "a kind man... those dreams" indicated that he had "missions to perform for the people."[30] Dr Maung Maung was not that kind to Aung San Suu Kyi, though, when he wrote in relation to Aung San Suu Kyi's Nobel Peace prize money that:

> "…One million dollars is not something to sniff at… She can go on lucrative lecture circuits at least for a time... it should be fun, if that is the way she decides to go."[31]

It is to the great credit of Daw Aung San Suu Kyi that although she probably had, or if she wished she could have had, numerous offers for her to give lucrative lecture circuits abroad, she had steadfastly refused to leave her homeland enduring separation from her children and late husband Dr Michael Aris. Patronisingly, indeed condescendingly Maung Maung made the observation that Aris was "mild, house-trained."[32]

There was no such sarcasm but instead, unstinting praise and a totally lily-white, squeaky-clean image was painted throughout the book for the author's revered subjects: the *Tatmadaw* and U Ne Win. Maung Maung in effect asserts that not a scintilla of wrong has ever been committed (or would ever be committed) by this institution and that person. Moreover, nothing but good things were achieved by them. The Army had shown the utmost "restraint and discipline"[33] and it had always been its "tradition to faithfully perform the

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[28] Above, n 1 at 274.
[29] Above, n 1 at 251.
[30] Above, n 1 at 275.
[31] Above, n 1 at 274.
[32] Above, n 1 at 274.
[33] Above, n 1 at 165.

duties assigned to it by a constitutionally elected government acting lawfully."[34] Not a sentence was said about the shootings and massacres that took place in Rangoon, Sagaing, Moulmein, and many other cities by first the military police and later the Army during 1988.

Instead, the headhunting, anarchy and violence of the mobs were repeated again and again throughout the book. The reviewer is not claiming that there were no such violence on the part of the "mobs", nor is he in any way defending these acts. Maung Maung's distortion of the record by stating in effect there were virtually no shootings, killings the by the Army except in "grave self-defence", however, amounts to a whitewash of the record and displays an intellectual dishonesty that is shocking in its disregard of truth and callous in its deception, even if there was also an element of self-deception in it. The Burmese military authorities showed videotapes of mobs beheading alleged government agents during the 1988 crisis to almost every official foreign visitor including former US Secretary of State Madeline Albright and the writer of the foreword Franklin Mark Osanka. Yet due to the closure of the country, for a long time there was apparently only one video of shootings by the government security forces, though there were many photos and eyewitnesses to these events.

Maung Maung inferred that the sensationalist international media was partly responsible for the uprising as "1988 was a dull year for the international media and events in Myanmar drew their full attention."[35] In fact almost the opposite was true. The Tiananmen Square massacre in Beijing (which seems mild when compared to the sporadic nation-wide massacres that occurred from the period of March to September 1988 in Burma) occurred in full or at least in partial view of the foreign media in June 1989. Several months earlier there were massacres throughout Burma which were more wide-spread than that which occurred in Tiananmen Square. It was not the sensationalist international media which caused, contributed to or "magnified" the 1988 uprising. Rather, it was the unaccustomed savagery (even by previous harsh standards) in which demonstrations, at least initially led by students and largely peaceful were "put down" by the Military Police (*Lone-Htein*) and later, military troops that attracted the international media's attention notwithstanding the strict control by the government of local and foreign media's access to, and reportage of events.

Space constraints made the reviewer be selective and notwithstanding the considerable indulgence the editor would, one hopes, give this review article, one feels frustrated that not all the tangential, part-truths, distortions and,at times, plainly false claims and assertions that are made in the book can be rebutted or even mentioned.

Dr Maung Maung wrote that the 1974 one-Party Constitution "granted not too little democracy but too much."[36] When the reviewer reads this he is reminded of a friend who wrote in one of his essays that he had not laughed so much since he heard that Henry Kissinger won the Nobel Peace Prize. But in many senses this is a sad comment- and indeed, in many parts it is a sad and disturbing book. As regards the 1947 (liberal) Constitution, Maung Maung wrote in 1961:

> "The peoples of Burma keep going on to the chosen path, holding on to certain faiths and beliefs, placing their hopes in the Constitution and the essential goodness of man. Whether they will reach the Promised Land, or whether the circumstances of the outside world will let them, it is for the future to tell."[37]

Writing about 30 years "in the future", Maung Maung stated that the 1974 one- Party Constitution provided too much democracy".[38] This reviewer has not come across two more radically different Constitutions which had been in force in different times in the same country. Dr Maung Maung' s statements regarding the 1974 Constitution when read in

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[34]Above, n 1 at 200.
[35] Above, n 1 at 93.
[36] Above, n 1 at 6.
[37] Maung Maung, *Burma's Constitution*, Martinus Nijhoff: The Hague, 1959, Revised edition, 1961 at 217.
[38] Above, n 1 at 43.

conjunction with his earlier comments on the 1947 Charter is, one of the factors that made this book a sad one.

In the Chapter "Cycles of Change" Maung Maung stated that during the Parliamentary era:

> "AFPFL's [Anti Fascist People's Freedom League that was in power in the 1950s] "nationalis[ation] of agricultural land… stirr[ed] up sensitive social and economic problems of land policy and distribution… with the immediate result that production fell, with land parceled out in smaller lots than was economically feasible."[39]

Yet the author failed to mention that in the 1960s the Revolutionary Government led by General Ne Win nationalised not only banks, schools, and cinemas but also many small retail shops with even more disastrous effects on the economy. The reviewer recalls there was a joke going around in those days that if the government nationalised water there would be a drought.

In the same chapter, Maung Maung wrote that "if peasants had been out on the streets shouting slogans in 1988 instead of quietly tending to their crops… we will have starved."[40] This is somewhat akin to the BSPP's claim that the 1988 uprising[41] was merely an urban phenomenon and the false and subsequently disproved claim that the BSPP could easily win a nation-wide poll. That was also one of the reasons why the State Law and Order Restoration Council (SLORC) allowed the 1990 elections to proceed, believing that since there were 93 parties, there would be a split in the vote and the former BSPP now known under the new name National Unity Party (NUP) would at least win a plurality of the vote. As it was, the opposition NLD and parties allied to it won about 75% of the popular votes and the NUP won 25% of the votes. So much for the contention of the BSPP coterie that the 1988 "disturbances" were merely an "urban phenomenon".

In the Chapter "Let the People Choose Again" Maung Maung wrote that "the [1974] Constitution and laws must be obeyed, and the government must set an example in doing so; being under, not above the law."[42] This "rule of law" argument may appear perfectly reasonable under a democratic system of governance such as those embodied in the 1947 Constitution but as this reviewer has pointed out, in one-Party States "the Constitution itself can be an 'empowering' document for the Government and for formalising and legalising – though not necessarily legitimating- dictatorships."[43] Maung Maung's comment had an ironic tone in the light of another observation he made in the next Chapter "May Truth and Compassion Prevail". He wrote that he told "president designate U Sein Lwin":[44]

> "That the party, namely he and those of the so-called inner circle, were reputed to openly interfere in the administration of justice and the rendering of legal advice in the name of exercising the party's "leading role."[45]

One can only comment that the "Party's interference" in judicial matters was perhaps mandated or required under the 1974 Constitution and that – unlike under the 1947 Charter – members of the "Council of People's Justices" an "organ of state power" in charge of the judiciary were also members of the *Pyithu Hluttaw* ("People's Assembly") and most if not all

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[39] Above, n 1 at 14.
[40] Above, n 1 at 16.
[41] "Disturbances" or "riots", as the author would have insultingly termed it, see text accompanying footnote 97 below. .

[42] Above, n 1 at 48.
[43] Myint Zan, above note 17 at 226, footnote 168. .
[44] U Sein Lwin, Dr Maung Maung's predecessor was President for 17 days from 26 July 1988 to 12 August 1988.
[45] Above, n 1 at 56.

of them were members of the Central Committee of the then ruling BSPP as well. Maung Maung wrote that General Ne Win, who appointed him as Chief Justice in June 1965, told him "to uphold law and justice without fear or favour, not to bend the law and stretch it to please him or anyone else."[46] Acting in his capacity as judicial minister, in 1973, Maung Maung also wrote that the "Peoples Judges" in the Peoples' Judicial System[47] which he instituted "should follow the advice of the Party Chairman U Ne Win".[48] Dr Maung Maung stated that he had written the profiles of two of his predecessors as Chief Justice, one of whom was the second Chief Justice of independent Burma U Thein Maung, the other being U Thein Maung's successor, U Myint Thein.[49] As Maung Maung himself stated, U Myint Thein was "detained" at the time of the 1962 military takeover,[50] though Maung Maung did not mention that U Myint Thein was later removed from his position as Chief Justice by a decree of the Revolutionary Council and that he spent nearly six years in "protective custody" or more appropriately under detention.[51] The author also wrote that he filled U Thein Maung's "chair" (as Chief Justice) "for ten years – with honour I hope."[52] One should point out at this juncture that while serving as Chief Justice Dr Maung Maung wrote and published a book about General Ne Win in both Burmese and English.[53] The Burmese version of the book won the National Literature Prize (Political Literature Category)[54] None of his predecessors as Chief Justice have written books giving unstinting praise to the Head of Government and Head of State of the day (for General Ne Win was both during the Revolutionary Council period of March 1962 to March 1974) either before, during or after their tenures.

In another comparative political science observation Dr Maung Maung wrote that the term "people's power" (borrowed from the events in the Philippines that overthrew President Ferdinand Marcos in February 1986) was a strained analogy vis-à-vis the events in Burma of 1988.[55] Why is it strained? Is it as strained as the analogy he made to Stephen Solarz that an American president should resign and hand over power to an interim government if there are demonstrations outside the White House?[56]

The Filipinos had it much, much easier than the Burmese did. The People's Power that overthrew Ferdinand Marcos was restricted to Manila and it ended peacefully and successfully in three days. There were demonstrations in more than forty cities and towns throughout Burma in the days of August and September 1988. After the loss at the very least

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[46] Above, n 1 at 56-57.

[47] For this reviewer's discussion of the introduction and operation of the People's Judicial System see above note 17 at 232-36.

[48] See Foreword (*Ah- Hmar-Sar*) in *Taya Yone Myar Let Swei* ("Courts Manual") Rangoon 1973.

[49] Above, n 1 at 139.

[50] Above, n 1 at 34.

[51] For the reviewer's obituary-tribute of U Myint Thein see Myint Zan, "U Myint Thein, MA, LLB, LLD" in (1995) 69 *Australian Law Journal* 225.

[52]Above, n 1 at 139. The first three Chief Justices of independent Burma were appointed by the President after they were nominated and recommended for appointment, to the President by a joint session of Parliament in accordance with the provisions of the 1947 Constitution. Dr Maung Maung was appointed as Chief Justice by the Revolutionary Council Chairman General Ne Win in 1965. It is not true as he had claimed that Maung Maung was Chief Justice "for ten years".As Maung Maung himself stated, he was appointed as a "Supreme Court Judge" (actually the English nomenclature at that time was "Chief Court") – not Chief Justice on 11 July 1962 (at 56) and as Chief Justice in June 1965 (at 56).. He was appointed as a member of the Revolutionary Council in July 1971 (at 58) and relinquished his position as Chief Justice at that time. Hence he was Chief Justice for a total of six not ten years.

[53] The English version is entitled *Burma and General Ne Win,* London:(Asia Publishing House, 1969).

[54] See Myint Zan, above note 17 at 207.

[55] Above, n 1 at 93.

[56] Above, n 1 at 166.

of hundreds if not thousands of lives, the Burmese "People's Power" achieved much less than the Filipino one while paying a much greater price. If the analogy was strained, it is so only in the sense of the price that the Burmese people had to pay. The sacrifices they, and especially the young students who spearheaded the uprising, had to make were so much greater than those who poured into the streets of Manila for three brief days and yet achieved so much less than what their Filipino brothers and sisters accomplished.

The differences between Filipino and Burmese "Peoples Power" movements were only in terms of their extent and the totally different outcomes- not in their moral standings so to speak. Whereas the Filipino people were able to get rid of Marcos fairly easily, the Burmese, after such poignant sacrifices, failed to achieve even a semblance of democracy.

That leads us to Dr Maung Maung's justification of U Ne Win's infamous threat to "shoot straight" in his valedictory address to the nation via his speech to the Party Congress on 23 July 1988. Dr Maung Maung justified U Ne Win's "stern note of warning"[57] with reference to *The Riot Manual* of 1940 that was enacted during the British colonial era.[58] When the laws of the colonial era would fit the purpose at hand they would be referred to; if they did not then they would be criticised as "relics" of the colonial era. In the same vein, when Maung Maung could not justify his position even by reference to arcane colonial laws, he obfuscated. This can be seen in the Chapter "We'll Restore the Students' Union" where another infamous legacy of the Revolutionary Council was discussed. On the early morning hours of 8 July 1962, several hours after troops opened fire at demonstrating students at the Rangoon University campus the day before, the Rangoon University Students' Union Building was dynamited. In discussing the destruction of the Student Union Building, Maung Maung bowed to the inevitable and acknowledged that it was a blunder but refused to apportion blame on any person (least of all General Ne Win). He wrote that the "blowing down of the Students' Union must remain in Myanmar history a fatherless child."[59]

Maung Maung gave a hearsay account of what happened during the days and nights of 7 and 8 July 1962 where student demonstrations, shootings and eventually dynamiting of the historic Students' Union Building took place. The author did not mention that these events were "capped" by General Ne Win's radio address to the nation on the night of 8 July 1962 after the Students' Union Building was dynamited and after troops had opened fire on the demonstrating students on what has generally come to be known, at least among some students throughout all these years, as "the unforgettable 7 July". The last words of Ne Win's speech were "if the disturbances were intended to challenge us we will fight sword with sword and spear with spear".[60] In July 1962, July 1988 was still a long way (in Maung

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[57] Above, n 1 at 40.

[58] Above, n 1 at 90.

[59] Above, n 1 at 42, 123.

[60] The English translations of General Ne Win's speech can be found in The [Rangoon] *Guardian* and The [Rangoon] *Nation* of 9 July 1962. The speech was made on radio around 8 p.m and hence the editors of the then two English language dailies might have, on their own, made their hasty translations to put it in print in the papers for the morrow. The reviewer has obtained photocopies of the translation of General Ne Win's speech that appeared in the two English languages daily. Since the editors of the two dailies did their own translations the English versions of the speech that appeared in the newspapers were different. But the unmistakable message of "fighting sword with sword (in Burmese *dah*, "*dah* with *dah*" as The *Nation* put it in the headline) was there in both The *Nation* and The *Guardian* newspapers. The front page headline of the news item in The *Nation* of 9 July 1962 reads ' Gen. Ne Win Broadcasts Appeal: ' " Give Us Chance to Do Work" OBSTURCTIONISTS ARE WARNED: READY TO MEET 'DAH WITH DAH" ' .Another heading line states that ' ALL QUIET IN & AROUND UNIVERSITY CAMPUS "with the sub-headline '35 YEAR OLD HISTORIC RUSU [RANGOON UNIVERSITY STUDENTS' UNION] BUILDING REDUCED TO RUBBLE. At the bottom of the page of the news item there was a photograph of the dynamited Students' Union Building with the caption ' RUSU BUILDING DEMOLISHED: The patch of white walling is all that remained of the RUSU Building,

Maung's own words) in the "misty future" but U Ne Win's threat to "shoot straight" in July 1988 had echoes of the "fighting spear with spear and sword with sword" speech of July 1962 after troops had shot unarmed students at Rangoon University. Still, knowing his devotion to the "Old man",[61] if Maung Maung had mentioned his mentor's speech he would undoubtedly have justified and approved it. Maung Maung wrote whimsically that "[o]ne day the students will get their Union Hall, built with hewn stones if not with gold bricks."[62] After reading this affecting statement, the reviewer almost has goose-bumps, but at the same time remembers a Burmese song that was popular in the early 1970s, which reads in translation:

> "When a rock is thrown towards an airplane it will hit, ocean-liners will dock at the railway station, oh, don't come and give potatoes: reduce the wind, reduce your talk a bit…"

Coming back to the events of 1988, Maung Maung wrote that during his presidency "people were going around intimidating members of the BSPP, roughing them up and forcing them to give up their party cards."[63] Yes, these events happened sporadically. But for 26 years prior to that and in contrast to the ruling BSPP's last party Chairman's (Maung Maung's) claim that "party cadres were always taught to approach the people in all humility in a spirit of service and most of them did"[64] the BSPP had required, summoned, cajoled or covertly threatened many people to march in government rallies. Those who did not join the Party were subtly (and at times not so subtly) pressured to do so and many benefits were given to those who toed the Party line. Nowadays in addition to roughing up the opposition, the government sponsored the Union Solidarity and Development Association (USDA) are using the same tactic of pressuring government servants and others to join it through intimidation on the one hand and offer of benefits and other perks on the other.

Dr Maung Maung also made the claim in his speech as President that "[t]he Tatmadaw… shall never be an instrument of any political party but shall serve the people and defend the

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scene of many student activities, after it was entirely destroyed in a blast that rocked the neighbourhood' The *Nation*, 9 July 1962 VOL NO XIV, p. 1. The speech of General Ne Win on the night of 8 July 1962 did not contain any references to the dynamiting of the historic Rangoon University Student Union Building around dawn on the same day. It took General Ne Win another 26 years in his "farewell" address to the nation of 23 July 1988 to address this issue in which he said that he did not order the destruction of the Student Union Building, and that it was mainly his then deputy Brigadier Aung Gyi who was responsible and that after the shootings at Rangoon Univeristy and destruction of the Student Union Building he as a "revolutionary leader" had to take repsonsibility and gave the "sword for sword and spear for spear speech". See "Party Chairman Calls for Earliest Possible National Referendum, Reveals Truth About Destruction of Student Union Building, Announces Intention to Retire From Politics," The *Working People's Daily*, 24 July 1988, p.1. As for General Ne Win's "appeal" (on 8 July 1962) to the country about 'giving them the. chance to do work' it must be stated that a generation of students and the public gave him and his "Burmese Way to Socialism" 26 years to do their work until their patience ran out and the student-led uprising occurred in March, June, August-September of 1988 notwithstanding Ne Win's "stern note of warning" of 23 July 1988 that if "agitations continue the Army will have to be called in and if the Army shoots, it shoots to hit : it does not shoot into the air to scare" *Ibid*. And as it were ever since the (essentially) failed uprising of 1988 ended, General Ne Win's successors the military regimes known by the names of State Law and Order Restoration Council (SLORC) and State Peace and Development Council (SPDC) continue to 'restore law and order' or initiate 'peace and development' and continue to' do [their] work'.

[61] Above, n 1 at 216.
[62] Above, n 1 at 125.
[63] Above, n 1 at 164.
[64] Above, n 1 at 185.

integrity of the country."[65] Yet it was the *Tatmadaw* elite who took over power in 1962 that "founded" the Party and, as Maung Maung himself admitted in an earlier speech to the party Congress:

> "[The] party suffered from one congenital weakness: it was born in power and brought up in power."[66]

Every *Tatmadaw* day (Armed Forces Day) up till the year of 1988, the Chief of Staff of the *Tatmadaw* gave speeches urging the *Tatmadaw* men to unswervingly accept the leadership of the Burma Socialist Programme Party. But just a few days before the 1988 military takeover, the party cover was removed and the Army once again became a "neutral" institution that did not follow "any political party".

On 11 September 1988, in his last address to what he called "Parliament" the one–Party *Pyithu Hluttaw*, Maung Maung made a chilling and in his own words "ringing warning to the anarchists" to "flee, while there is yet time."[67] Exactly a week later with the 18 September 1988 military takeover, about ten thousand persons (at least some of them students who were in the vanguard of the democracy movement) had to actually flee to the bordering countries of Thailand and India, in fear of their lives or at least for their safety and security. Maung Maung recounted that after his speech "a cheeky friend had asked … 'What if they don't run?" The former president wrote:

> "Cheeky, but pertinent, and I had replied with a laugh: Then of course we'll do the running."[68]

The gentle and kind president need not have worried or even be concerned about "running". In the last six years of his life after his "severely abridged term of office"[69] he was able to travel freely in various parts of the country,[70] travel abroad for seminars, pilgrimages, go on meditation retreats while meeting old and new friends in Singapore, India and Japan,[71] read books for leisure and profit and spend time with his family, children and grandchildren.[72] Finally, Dr Maung Maung was able to publish his memoirs thanks to the efforts of his widow, Dr Osanaka and the Yale University Council for South East Asian Studies, even if this was done posthumously.[73] The same comfort (if not luxury) was not to be the lot of many of those (at least some if not most of them being students who participated in various ways during the uprising) who had to "flee in time", as the then President had predicted.

Even a critical review should, if at all possible, include some positive comments. One positive aspect of the book is the author's easy and mellifluous style. At times, however, the frequent invocation of *Anicca* (Impermanence), Buddhism, cycle of change etc and trying to be "lyrical" and pious have an ironic effect in that the word hypocrisy rather than piety crosses one's mind when one reads the repeated invocation of Buddhist terms. The reviewer has always admired the author's writing style and largely agrees with the substance and content of his earlier books that were mainly written before 1962. Apart from *Burma's Constitution* mentioned above the reviewer has enjoyed reading *Burma in the Family of*

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[65] Above, n 1 at 200. He reproduced virtually all of the five speeches he made during his chairmanship of the BSPP and the State presidency in translation and in full in the book.
[66] Above, n 1 at 185.
[67] Above, n 1 at 198, 221.
[68] Above, n 1 at 221.
[69] Above, n 1 at 7.
[70] Above, n 1 at 113-114.
[71] Above, n 1 at 245-246.
[72] Above, n 1 at 245.
[73] Above, n 1 at vii.

Nations[74] and *Law and Custom in Burma and the Burmese Family*[75] Alas, almost all of the substance of Dr Maung Maung's post-1962 writings in both Burmese and English languages were disappointing to the reviewer. This book is no exception; indeed it is, in a certain sense the most disappointing of his post-1962 books since it largely is a partisan if not distorted discourse on one of the most traumatic events in post-war Burmese history and the causes that led to it.

Secondly, facts hitherto unknown to the reviewer such as the author's narration of U Ne Win's closely guarded decision to resign as Party Chairman, how only the inner coterie knew of his decision to resign[76] provide an "insider's perspective". Maung Maung's narrative about the return of former Prime Minister U Nu to Burma after more than 11 years of self-imposed exile abroad,[77] and about other political personalities when the author was not "ironic" about them[78] provides snippets of new, interesting information to this reviewer. Likewise, the author's recounting of the sequence of events leading to the dynamiting of the Rangoon University Student's Union Building,[79] though "avoiding blame" or imputing responsibility to any particular person or group of persons for that extremely regretful and - at least to some among the generation of past and present students - heinous act is of interest coming as it does from a person who for about four weeks was President of the country.

Thirdly, the reviewer agrees with a few of the author's political and historical analyses. The reviewer has written that some of the comments that Maung Maung wrote about the opposition leaders were unfair especially when taken into context and compared with the unstinting praise he gave to U Ne Win. Among others Maung Maung wrote that U Ne Win possesses such sterling virtues as patriotism,[80] far-sightedness, vision and wisdom.[81] He was also a strict abider of the law[82] who had given a long, exemplary and indeed unique service to the country,[83] and whose interest and versatility in such diverse topics such as "education, culture, history, indigenous medicine" indeed "all subjects"[84] was impressive. Additionally, U Ne Win was described as a kind man who even looked after the relatives of his enemies.[85] At the same time, U Ne Win was a "thwarted man" who once told President Gail Singh of India that "the love of his life rejected him, though I am sure he himself could not remember who she was."[86] U Ne Win was an honourable person who followed his mother's strictures that "if he ever get a woman into trouble he must marry her", though it was "the women who got him into trouble first" and who proved to be "willing, eager brides."[87] Yet some of the observations made by Dr Maung Maung about some opposition figures, who, during the 1988 uprising finally spoken out against U Ne Win, were correct and pertinent. For example, Dr Maung Maung was right when he wrote that former General Tin U, (in 1988 one of the opposition leaders, and as of March 2001, the Vice Chairman of the National League for Democracy), had, during the 1988 uprising "lain low when the protests began, emerging only after carefully testing the winds, which was, of course what every 'leader' of prudence did."[88]

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[74] Maung Maung, *Burma in the Family of Nations*, (Martinus Nijhoff, The Hague, 1956, Revised edition 1957).
[75] Maung Maung, *Law and Custom in Burma and the Burmese Family* (Martinus Nijhoff, The Hague, 1963).
[76] Above, n 1 at 47-50.
[77] Above, n 1 at 142-144.
[78] Above, n 1 at 142-153.
[79] Above, n 1 at 120-125.
[80] Above, n 1 at 268.
[81] Above, n 1 at 158 and others.
[82] Above, n 1 at 253.
[83] Above, n 1 at 253-254.
[84] Above, n 1 at 265.
[85] Above, n 1 at 265.
[86] Above, n 1 at 255.
[87] Above, n 1 at 255.
[88] Above, n 1 at 189.

This fact has to be briefly mentioned with approval here since the reviewer has criticised the author's denigration of the "opposition leaders" an impression could arise that this review has been made from the perspective and standpoint of the "opposition". This is not the case and the reviewer never had any contacts, links or affiliations with the opposition, internal or external, and writes merely as an interested and concerned person.

Still, not all that Dr Maung Maung wrote of Tin U or the other opposition leaders were justified or for that matter even fair. In the light of subsequent developments, what he wrote about Tin U should have been directed towards his military successors. Dr Maung Maung wrote that: "Tin U and some of his colleagues … wanted to storm into power riding the waves of people, hooligans, looters, arsonists, headhunters and all" and that "[o]nce in, they would, try to stay in by every extra-legal means, for that was the way they came."[89] As it happened, "they" (the opposition) never came into power either in 1988 "riding the waves of hooligans…etc" or even when voted into office by a significant majority of the people in the May 1990 elections. Instead it was Dr Maung Maung's successors who initially gave the excuse of crushing "hooligans, looters, arsonists" et al when they came to power and had used every "legal", extra-legal and other means available to "stay in". Michel Foucault said that law is about power. Especially in the current Burmese context, does "legal or extra-legal means" matter in terms of the reality on the ground where the dominant concern by the regime for all these years since the 1988 uprising is to "stay in?"

The book contains some factual errors apparently due to authorial or editorial oversights. For example, in a sentence on page three, the acronym GCBA was immediately mentioned after the phrase Burma Socialist Programme Party. GCBA is an acronym for General Council of Buddhist Associations[90] and the acronym should have been BSPP. On page 24 it is stated that "[t]he AFPFL and other insurgents, who had come in large numbers and were on the verge of 'coming into the light'…" In the 1950s, the period about which the author was writing, "the AFPFL" was the government, not the insurgents. The reference should have been to the other insurgent groups such as those of BCP (Burma Communist Party) or CPB (Communist Party of Burma) or KNDO (Karen National Defence Organisation) or other insurgent groups that are mentioned in the list of acronyms. The "People's Judicial System" which the author as Judicial Minister introduced started not in 1974 as stated but on 7 August 1972.[91] Furthermore, in one of his numerous references to U Ne Win Maung Maung wrote:

> "Let us heal rather than reopen our wounds" U Ne Win had said to the elders who, as young men had led the University strike of 1920. They were celebrating the Golden Jubilee of the strike, and U Ne Win attended as president of the Union.[92]

The Golden jubilee of the 1920 Rangoon University strike was commemorated from late November to early December 1970. If "President of the Union" means President of the country, Ne Win was, at that time, not yet formally President- he became President on 5 March 1974 after the 1974 Constitution was adopted.[93] Also, his official designation in 1970 was not "U" but General Ne Win, since he retired from the Army only on 20 April 1972.[94]

At the height of the 1988 uprising Dr Maung Maung gave five speeches as President or as Party Chairman. In one of his speeches which the reviewer recalls reading, he assured the country that "constitutional" steps were being taken to hold a referendum regarding the continuation or otherwise of one-Party rule and rhetorically asked his fellow citizens

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[89] Above, n 1 at 227.

[90] The list of acronyms on page xx of the book mentioned GCBA as "General Council of Burmese Associations".

[91] Above, n 1 at 170. See the [Rangoon] *Guardian* and the *Working People's Daily* of 8 August 1972 for reports concerning the introduction of the new people's judicial system".

[92] Above, n 1 at 270.

[93] See 6 March 1974 issues of *The Guardian* and *The Working People's Daily*.

[94] See 21 April 1972 issues of *The Guardian* and *The Working Peoples' Daily*.

"couldn't you wait that much longer?"[95] The Burmese do have a sense of humour and perhaps that characteristic helps them sail through difficult times. Isn't there a saying that humour is the best defence against tyranny? The reviewer has heard that for quite a few months after the speech there have been instances when that phrase was used with telling effect which (at least temporarily) resulted in humorous relief. When at times people have to queue for goods and provisions in shops in Burma, so the reviewer learnt, some one in the queue would started to say "couldn't you wait that much longer?" to the relief and laughter of those present in the queue.[96] Dr Maung Maung has passed away from the scene. The "waiting game" of the Burmese people for positive changes, however, continues unabated.

It was perhaps Milan Kundera who stated that "the struggle against tyranny (and one might add for human rights) is the struggle of memory against forgetfulness."[97] Dr Maung Maung's memoirs of the 1988 Burmese uprising "misremembers"; oft times it falsifies, misrepresents, distorts, obfuscates, whitewashes and can in its best light be described as an "apologia"in a fully uncomplimentary sense. Hence the author's "memory" hinders rather than helps the cause for human rights as far as the struggle is concerned. Nevertheless, from a consequentialist viewpoint, it is hoped that the publication of the book will help some people who were involved in, affected by or take a genuine and concerned interest in the events of

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[95] The reviewer was unable to find the exact English translation of this particular phrase in all of the five speeches he gave as President which were reproduced in the book but fairly distinctly remembers reading the particular phrase in Burmese.

[96] The author stated that he was aware that some of the statements in his five speeches that he gave during the uprising were at times ironically and lightly taken by some of his "fellow citizens"(the way he addressed them in his speeches). A little ironically Maung Maung wrote: "I am grateful to all, including the demonstrators of 1988 and those who thought it was a brave thing to mock me" (at 245). This anecdote is mentioned not to mock the former president but to partially illustrate that (in Dr Maung Maung's own words) "the gentle, loving, lovable" (at 53) Burmese people have, even in difficult times, a sense of humour . Yet, Dr Maung Maung at the same time denigrated quite a few of the "gentle, loving, lovable" Burmese people when he actually gave the title of his book as *The 1988 Riots in Burma* instead of the title actually used by the editors and publishers of Yale University's South East Asia Monograph Series which is *The 1988 Uprising in Burma.* The reviewer came across this "publishing history" only a few months after submitting this review to the editor. The printing firm METAGLYFIX suggested five versions of the cover of the book including retaining the actual title used by the author which was *The 1988 Riots in Burma.* The printing firm recommended that the cover of the book should be with 'a photo of the author displayed in a conservative manner with a *non-inflammatory title*' (that is using the word "uprising" instead of the word "riots" used by Dr Maung Maung, emphasis added.) http://www.metaglyfix.com/maung/maung.html#update (accessed 23 April 2001). Dr Franklin Mark Osanka states in the foreword that in entrusting the manuscript to him to find an overseas publisher, "one condition insisted upon by [Dr Maung Maung's widow]Daw Khin Myint was that only minimal grammatical changes could be made to the manuscript. The basic text could not be altered. The South East Asia Studies Monograph Series honored this requirement" (at viii). It is submitted that changing the word "riots" which Dr Maung Maung had used to "uprising" in the title of the book is more than a "minimal grammatical change" and is an alteration of the "basic text". One gathers that the editors and publishers of Yale University's South East Asia Studies felt that notwithstanding the strictures of not altering the "basic text" this fundamental and significant, indeed a radical and complete change of usage, needs to be made. The reviewer would assert that if the editors and publishers had retained the word "riots" in the title they too would have been participants in the insult that was hurled by the late author to a large number of people who had sacrificed life and limb and had in various ways participated in the *uprising* (no less) that took place in Burma in 1988.

[97] See for example, Ifi Amadiume &Abdullahi An-Na'im (eds) *The Politics of Memory: Truth, Healing and Social Justice* (Zed Books, 2000).

1988 in Burma- to rise from their “forgetfulness” and also to help properly freshen their memory. In this review, the reviewer has attempted to highlight some of the misremembrances of the author with the hope that a small step can be taken towards refreshing and articulating the “memory” of those who were and are affected by the 1988 uprising in Burma.

Myint Zan