1. **Legislative Power under the Myanmar Constitution** – Andrew McLeod, Stipendiary Lecturer in Law, Lady Margaret Hall, University of Oxford, United Kingdom

Abstract: Over the past year, constitutional reform has emerged as the dominant frame of reference in Myanmar political discourse. Within the country, long-claimed demands and historic political grievances are now explicitly couched in the language of constitutional reform. Internationally, key donor countries and organisations have publicly linked future support to successful constitutional renewal. Most of this discourse has centred on particular textual changes to the current constitution. Comparatively little attention has been afforded to the principles that govern (or ought to govern) Myanmar's constitutional settlement. The focus on which provisions need amending has masked serious divisions of opinion about the interpretation of the constitution among the branches of government. Chief among these is the scope and strength of legislative power. In this paper I examine the competing interpretations of the powers of the Hluttaw under Myanmar's constitution. Taking the text of the constitution as a starting point, I offer an analysis, based on orthodox principles of constitutional interpretation, of how governmental power is shared among the constituent institutions of Myanmar's constitutional settlement and how the legislative power vested the Hluttaw might be defined. I compare this with the conceptions of legislative authority manifest in recent judicial and parliamentary practice, exploring in particular the Constitutional Tribunal's 2012 decision concerning the powers of parliamentary committees, Parliament's response to that decision and the subsequent passage of several statutes in apparent conflict with constitutional provisions. What emerges is a grave difference of opinion between the legislative branch and the judicial and executive branches that is unlikely to be resolved within the current iteration of constitutional reform.

2. **Soldiers as Lawmakers: Assessing the Legislative Role of the *Tatmadaw* in a post-SPDC Era** – Renaud Egreteau, Research Associate, Research Institute on Contemporary Southeast Asia (IRASEC), Bangkok, Thailand

Abstract: The 2008 Constitution has unveiled a series of legal instruments and institutions through which the Burmese armed forces (*Tatmadaw*) can still exert their political sway. Among these post-SPDC state structures are fourteen local assemblies and a national parliament in Naypyitaw. In all these legislative bodies, the armed forces have secured a quarter of the seats. This study takes cue from an emerging literature on the post-SPDC parliamentary politics as well as on the scholarship on civil-military relations and post-authoritarian legislative politics. It attempts to examine the most recent legislative intervention of the *Tatmadaw* and its representatives in parliament. It also draws on a series of in-depth interviews with Burmese parliamentarians and party leaders carried out in Naypyitaw and Rangoon (Yangon) since 2012. The paper proposes to specifically look at how military representatives behave in the local and national legislatures (with however a stronger focus on the latter, to which I was granted access). In particular, it focuses on a set of four types of core legislative behaviour and functions performed by military MPs: vetoing, checking, lawmaking and networking. The underlying proposition is that, despite the undemocratic character of the presence of

men in uniform in all post-SPDC legislative bodies, the military appointees have so far not been the blunt obstructive force many observers thought they would be. More than being a mere protector of the *ancien régime*'s interests, the *Tatmadaw* rather intends to serve in the new legislature as an "arbitrator" regulating parliamentary debates and safeguarding the Constitution it has inspired. Yet, it is observed half-way through the first post-SPDC legislature, the level of the *Tatmadaw*'s legislative activities remains rather low. The paper eventually sets out to explore what would be the conditions for an incremental disengagement of the Burmese military from the legislatures and the crafting of a form of civilian control by parliamentarians.

3. **Finding Justice Scalia in Burma: Constitutional Interpretation and the Impeachment of Myanmar's Constitutional Tribunal -** Dominic Nardi Jr, PhD Candidate, Department of Political Science, University of Michigan, USA

Abstract: While the comparative courts literature has yielded valuable insights into confrontations between political elites and judges, we still know relatively little about if and how jurisprudential methodology affects the ability of constitutional courts to survive such crises. How does the choice between originalism versus living constitutionalism, for example, affect a court's relationship with the other branches of government? Do political elites tend to be more hostile towards certain methods of interpretation? The impeachment of Myanmar's Constitutional Tribunal in 2012 presents an interesting example of the interplay between jurisprudence and politics. After fifty years of military rule, Myanmar's 2008 Constitution and the 2010 elections led to the creation of a new civilian government that appeared committed to political reform. However, when the Tribunal ruled that legislative committees did not have constitutional status, the legislature impeached all nine members, forcing them to resign. Less than two years after it was created, the Constitutional Tribunal had become essentially defunct. This article argues that the Constitutional Tribunal's approach towards constitutional interpretation did not ameliorate—and might have exacerbated—the crisis. Using a textualist or originalist methodology, the Tribunal struck down national legislation in four out of the five cases it heard. However, the Tribunal's reasoning did not balance the legislature's interests, much less account for the dramatic political reforms after the 2010 elections. The Tribunal also never provided an explanation of constitutional review, and many legislators feared that the Tribunal was usurping their newfound lawmaking power. Had the Tribunal adopted a more flexible approach—such as proportionality or living constitutionalism—it might have soothed the legislature's fears while still allowing the Tribunal to reach similar policy outcomes.