

Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj, Arun K. Thiruvengadam

Frontmatter

[More Information](#)

---

## EMERGENCY POWERS IN ASIA

What is the relevance of contemporary debates over emergency powers for countries situated in Asia? What role does, and should, the constitution play in constraining these powers? The essays in this collection address these issues, drawing on emergency situations in over twenty countries in Asia as a ready-made laboratory for exploring the relationship between emergency powers and constitutionalism. This volume therefore rests squarely at the intersection of two debates – a debate over the ability of law to constrain the invocation and use of emergency powers by the executive in times of crisis, and a debate over the nature and viability of constitutionalism in Asia. At this intersection are fundamental questions about constitutionalism and the nature of the modern state, questions that invite legal, political, sociological and historical analysis.

VICTOR V. RAMRAJ is an Associate Professor in the Faculty of Law at the National University of Singapore, where he is also Vice-Dean for Academic Affairs.

ARUN K. THIRUVENGADAM is an Assistant Professor in the Faculty of Law at the National University of Singapore.

Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj, Arun K. Thiruvengadam

Frontmatter

[More Information](#)

---

# EMERGENCY POWERS IN ASIA

Exploring the Limits of Legality

Edited by

VICTOR V. RAMRAJ

ARUN K. THIRUVENGADAM



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj, Arun K. Thiruvengadam

Frontmatter

[More Information](#)

## CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9780521768900](http://www.cambridge.org/9780521768900)

© Cambridge University Press 2010

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2010

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloging in Publication data*

Emergency powers in Asia : exploring the limits of legality / edited by Victor V. Ramraj, Arun K. Thiruvengadam.

p. cm.

ISBN 978-0-521-76890-0 (hardback)

1. War and emergency powers – Asia. I. Ramraj, Victor Vridar, 1968 –  
II. Thiruvengadam, Arun K.

KNC956.E44 2009

342.5'0412 – dc22 2009043744

ISBN 978-0-521-76890-0 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj , Arun K. Thiruvengadam

Frontmatter

[More Information](#)

---

For my parents, Ruby and Victor J.,

*sine qua non*

— V.V.R.

For Chandraleka and Ramaswamy Thiruvengadam

— A.K.T.

CONTENTS

<i>List of contributors</i>	ix
<i>Preface</i>	xi
1 Introduction: emergency powers and constitutionalism in Asia	1
VICTOR V. RAMRAJ AND ARUN K. THIRUVENGADAM	
<b>PART I Perspectives from legal and political theory</b>	
2 The emergency powers paradox	21
VICTOR V. RAMRAJ	
3 Emergency powers, constitutionalism and legal transplants: the East Asian experience	56
ALBERT H. Y. CHEN	
4 Constitution and ‘extraconstitution’: colonial emergency regimes in postcolonial India and Pakistan	89
ANIL KALHAN	
5 The princely impostor: stories of law and pathology in the exercise of emergency powers	121
VASUKI NESIAH	
<b>PART II Postcolonial and post-conflict transitions</b>	
6 From Myanmar to Manila: a brief study of emergency powers in Southeast Asia	149
KEVIN Y. L. TAN	
7 Discourses of emergency in colonial and postcolonial Burma	187
MAITRII AUNG-THWIN	

Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj, Arun K. Thiruvengadam

Frontmatter

[More Information](#)

viii

## CONTENTS

- 8 Emergency and Islamic law in Aceh 213

MICHELLE ANN MILLER AND R. MICHAEL FEENER

- 9 UNaccountable? The United Nations, emergency powers and the rule of law in Asia 237

SIMON CHESTERMAN

**PART III Emergencies, executive power and constitutional order**

- 10 Emergency powers and the rule of law in Indonesia 267

NADIRSYAH HOSEN

- 11 Emergency powers with a moustache: special powers, military rule and evolving constitutionalism in Thailand 294

ANDREW HARDING

- 12 Emergency powers and the limits of constitutionalism in Japan 314

MARK FENWICK

- 13 States of exception in an exceptional state: emergency powers law in China 342

JACQUES DELISLE

**PART IV The role of the courts**

- 14 Constitutionalised emergency powers: a plague on Asian constitutionalism? 393

H. P. LEE

- 15 Political emergencies in the Philippines: changing labels and the unchanging need for legitimacy 412

RAUL C. PANGALANGAN

- 16 Islamism as a response to emergency rule in Pakistan: the surprising proposal of Justice A. R. Cornelius 436

CLARK B. LOMBARDI

- 17 Asian judiciaries and emergency powers: reasons for optimism? 466

ARUN K. THIRUVENGADAM

*Index* 495

## CONTRIBUTORS

MAITRII AUNG-THWIN Assistant Professor, Department of History, National University of Singapore

ALBERT H. Y. CHEN Professor, Faculty of Law, University of Hong Kong

SIMON CHESTERMAN Associate Professor, Faculty of Law, National University of Singapore and Global Professor, New York University School of Law

JACQUES DELISLE Stephen A. Cozen Professor of Law, University of Pennsylvania Law School

R. MICHAEL FEENER Associate Professor, Department of History, National University of Singapore

MARK FENWICK Associate Professor, Faculty of Law, Kyushu University

ANDREW HARDING Professor of Asia-Pacific Law, Faculty of Law, University of Victoria

NADIRSYAH HOSEN Lecturer, Faculty of Law, University of Wollongong

ANIL KALHAN Associate Professor of Law, Drexel University Earle Mack School of Law

H. P. LEE Sir John Latham Professor of Law, Faculty of Law, Monash University

CLARK B. LOMBARDI Associate Professor, University of Washington School of Law

MICHELLE ANN MILLER Research Fellow, Deakin University

Cambridge University Press  
978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality  
Edited by Victor V. Ramraj, Arun K. Thiruvengadam  
Frontmatter  
[More Information](#)

---

X

## LIST OF CONTRIBUTORS

VASUKI NESIAH Director of International Affairs, Brown University

RAUL C. PANGALANGAN Professor, College of Law, University of the Philippines

VICTOR V. RAMRAJ Associate Professor, Faculty of Law, National University of Singapore

KEVIN Y. L. TAN Adjunct Professor, Faculty of Law, National University of Singapore and Adjunct Professor, S Rajaratnam School of International Studies, Nanyang Technological University

ARUN K. THIRUVENGADAM Assistant Professor, Faculty of Law, National University of Singapore



Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj, Arun K. Thiruvengadam

Frontmatter

[More Information](#)

## PREFACE

This book is the final instalment in an accidental trilogy. The ‘trilogy’ began with the publication by Cambridge University Press of a symposium volume, *Global Anti-Terrorism Law and Policy* (edited by Victor V. Ramraj, Michael Hor and Kent Roach), in 2005. The debate between David Dyzenhaus and Oren Gross over emergency powers in that book was the inspiration for another symposium (in which Arun was involved as a session chair) and another collection, *Emergencies and the Limits of Legality* (edited by Victor V. Ramraj), published in 2008. That collection in turn prompted the central question posed at the May 2008 symposium at the National University of Singapore Law School that shaped this volume: what relevance do the debates on emergency powers in liberal constitutional democracies have for the actual experience of and scholarly reflections on emergency powers in Asia?

Questions of this sort are important not only because of the reflections they stimulate. They are also important because they challenge an all-too-human tendency to look to the familiar first. We have both been struck in our research by the extent to which comparative constitutional studies in English are often limited to North American and European jurisdictions, Australia and increasingly, these days, South Africa. Rare is the study that engages Asian jurisdictions. Within Asia as well, we find a tendency to look within or to gaze outward to the West, rather than to reflect on the experiences in neighbouring countries. This is unfortunate when it comes to a study of emergency powers, since the experience of these powers in Asia, though often tragic, is rich, complex and varied. We are privileged to be part of a law school that encourages and supports broad-based comparative and theoretical inquiry and seeks to facilitate cross-cultural and cross-jurisdictional dialogue and supports projects of this sort.

This project would not have been possible without a research grant from the Singapore Ministry of Education’s Academic Research Fund (MOE AcRF #R-241-000-058-112) and the confidence in our project on the part of: the Faculty Research Committee at the NUS Law School; our

Cambridge University Press

978-0-521-76890-0 — Emergency Powers in Asia: Exploring the Limits of Legality

Edited by Victor V. Ramraj, Arun K. Thiruvengadam

Frontmatter

[More Information](#)

dean, Tan Cheng Han; and the Board of Directors of ASLI (the Asian Law Institute). The symposium was enriched by the heroic administrative efforts of Elizabeth Chua and Wendy Wee; the provocative contributions of Gary Bell, Gregory Clancey, Jörg Monar, M. Sornarajah, Alan Khee Jin Tan and Tey Tsun Hang; and the dedication of a superb team of research assistants: David Borgia, Shaun Lee, Lyndy Davies, Sang-Bonn Soth and Phang Liying. During the preparation of the manuscript, Kevin Leong and Kennedy Chen were of great assistance. We are especially grateful to Karin Loevy for her keen eye for detail, tireless work and substantive comments during the final stages of manuscript preparation. We are also indebted to Finola O'Sullivan and her colleagues at Cambridge University Press for their professionalism and support.

Victor would like to record his deep gratitude: to Sandy, who patiently endured a third edited volume, nourished his spirit and intellect and held the fort whenever it needed holding; to Eli and Satchel, who made him laugh, guided him through a wondrous world of play and sparked his imagination; and to Ruby and Victor J. who, long ago, taught him to write, indulged his curiosity and opened his eyes to new horizons.

Arun would like to thank: Victor, for his invitation to join this fascinating journey and for being a generous collaborator and mentor; his parents (to whom the book is dedicated), for the enduring gift of a love for the written word; and finally, Mayura, Ghazal and Sanjana, for their life-affirming love, which allows him to remain hopeful even while addressing the bleaker aspects of the human condition canvassed in this volume.