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978-0-521-89599-6 - Emergencies and the Limits of Legality

Edited by Victor Ramraj

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## EMERGENCIES AND THE LIMITS OF LEGALITY

Most modern states turn swiftly to law in an emergency. The global response to the 11 September 2001 attacks on the United States was no exception, and the wave of legislative responses is well-documented. Yet there is an ever-present danger, borne out by historical and contemporary events, that even the most well-meaning executive, armed with extraordinary powers, will abuse them. This inevitably leads to another common tendency in an emergency, to invoke law not only to empower the state but also in a bid to constrain it. Can law constrain the emergency state or must the state at times act outside the law when its existence is threatened? If it must act outside the law, is such conduct necessarily fatal to aspirations of legality? This collection of essays – at the intersection of legal, political and social theory and practice – explores law's capacity to constrain state power in times of crisis.

'Combining a subtle appreciation of the complexities with brilliant insights into their resolution, together these essays form an important contribution and an intellectual feast.'

Lucia Zedner, Professor of Criminal Justice, University of Oxford

'This is an unusually fine collection of essays on one of the most important questions in legal and constitutional theory – the propriety of violating legal norms in times of emergency. What makes it especially illuminating is the way that the various essays are very much in dialogue – and sometimes in tension – with one another, as well as the ability of the international cast of essayists to draw from a very broad range of examples.'

Sanford Levinson, Professor of Government,  
University of Texas at Austin

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For my parents, Ruby and Victor,  
who have always known what is most important.

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## PREFACE

This volume was inspired by a debate at a symposium in Singapore in 2004 between David Dyzenhaus, who attended the symposium in person, and Oren Gross, who spoke by teleconference. Their debate was later published in a volume I had the privilege of co-editing with Michael Hor and Kent Roach, *Global Anti-Terrorism Law and Policy*, published by Cambridge University Press in 2005. Reflecting on their debate, I became more and more convinced that the legal-theoretical issues they were confronting were likely to become the defining theoretical issues of our generation, and would preoccupy legal theorists for years, and probably decades, to come – in much the same way that the atrocities of World War II were the backdrop against which much of the subsequent twentieth-century jurisprudence developed. The more I reflected on the Gross–Dyzenhaus debate, the more determined I was to provide a forum in which the parameters of this debate could be fully examined, critiqued and challenged by a group of eminent legal, political and social theorists. And so the idea for this project was conceived.

I am especially grateful to David Dyzenhaus and Oren Gross for their enthusiasm from the very start, when I first broached the idea with them in late 2005. Their continued support for this project has been crucial to its completion. Convening an international symposium requires significant financial support, and the funding for this project came from a generous grant from the National University of Singapore (NUS). Thanks are therefore due to NUS and especially to the members of the Faculty Research Committee in the Faculty of Law and to my Dean, Tan Cheng Han, for their support of, and confidence in, this project.

I am also grateful for excellent research and editorial work from a superb team of students – Liu Huijun, Nishan Muthukrishnan, Li Daming, Dennis Tan Chuin Wei, Zhang Rui – and especially Cheryl Fung Shuyin, Teo Jin Huang and Crystal Tan Yan Shi, who provided invaluable assistance at critical stages in the project. I am indebted to my NUS colleagues Michael Hor, Arun Thiruvengadam, C.L. Ten and Alan Khee-Jin Tan for chairing

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sessions and for their thoughtful interventions at the symposium. Michael also kindly provided a guiding editorial hand on one of the chapters. I also owe Elizabeth Chua and Connie Yew an enormous debt of gratitude for their tireless logistical and administrative support, and their attention to detail.

My parents, Ruby and Victor, and my sister, Sharon (and her then-fiancé, Rob), graciously agreed to move our family holiday celebrations forward a month so that I could return to Singapore in time for the symposium. I am thankful for this small act of kindness – and deeply appreciative of their love and steadfast support over the years. Sandy was especially understanding and encouraging when this project was at its most demanding. But my gratitude to her also extends much further back. Sandy's probing questions have prompted me to refine my thinking and the beauty of her prose has inspired me – since the day thirteen years ago when our respective interests in legal theory and the printed word brought us together. As E.B. White once wrote, it 'is not often that someone comes along who is a true friend and a good writer'. Like Wilbur, I am lucky to have found someone who is both.

Above all, the flying, no-holds-barred, bowl-me-over hugs that I get from Eli and Satchel when I return home from the office – and the hours of uninhibited play, belly-splitting laughter and wondrous conversation that follow – remind me daily of what is most important in life, and help me to keep everything else in perspective.

Victor V. Ramraj