



Australian  
National  
University



Centre for Asian Legal Studies  
Faculty of Law



CONSTITUTIONAL STRUGGLES IN ASIA  
WEBINAR  
1 & 3 DECEMBER 2020

ANU College of  
Law

## Presented by the Australian National University and the National University of Singapore Centre for Asian Legal Studies Faculty of Law

The Asia region is experiencing a wave of constitutional strains, with political and social disruptions that are threatening the foundations of their legal and governance systems. Countries such as Cambodia, Philippines, India, Indonesia, Malaysia, Myanmar, Sri Lanka, Hong Kong, and Thailand are undergoing regime change, political turmoil, and authoritarian surges that challenge the tenets contained within their respective constitutions. While specific conditions and events across countries vary, the collective trends reflect significant struggles in upholding principles of constitutionalism and the rule of law. These issues are not only confined to the more stable democracies; they are also emerging in democratising countries. Asia therefore presents an interesting laboratory for investigating and theorising the constitutional struggles that have developed and evolved in the region.

The project underpinning this webinar seeks to explore the causes, complexities, and implications of constitutional struggles occurring in countries within the Asian region. To that end, it will consider a range of questions including: What are the nature and scale of the threats to constitutionalism? What are the linkages to broader contextual issues affecting constitutional understanding? In what ways are the current constitutional struggles similar to or different from the past? How are concepts of constitutionalism changing? What are the normative concerns associated with these constitutional threats? What are the implications of current constitutional crises, either for individually affected countries, the Asian region, or partners outside the region?

### **Convenors:**

Andrew Harding (NUS Law)

Jonathan Liljeblad (Australian National University)

Dian A H Shah (NUS Law)

# PROGRAMME

## Tuesday 1 December 2020

Time (SGT)	Event
11am	<b>Opening Remarks</b> Dr Jonathan Liljeblad, Australian National University
11.10am	Moderator: Dr Dian A H Shah Commentator: Professor Andrew Harding, NUS Law  <b>Taiwan's Changing Political Order Since 2016: The Return to Authoritarianism and Its Implications for Constitutional Law</b> Associate Professor Anton Ming-Zhi Gao, National Tsing Hua University Melody Yi-Chien Lin, National Taiwan University  <b>Judicialization of Authoritarian Politics in Indonesia</b> Dr Herlambang Wiratraman, Universitas Airlangga  <b>There and Back Again: The Return of Legal Authoritarianism in The Philippines</b> Gemmo Bautista Fernandez, Australian National University Raphael Lorenzo Aguilung Pangalangan, OP Jindal Global University  <b>Constitutional Crisis, Autocratic Legalism and the Indian Constitution: Constitutionalism at Crossroads?</b> Dr Shameek Sen, The West Bengal National University of Juridical Sciences, Kolkata Dr Shouvik Kumar Guha, The West Bengal National University of Juridical Sciences, Kolkata
1pm	<b>Break</b>
2.30pm	Moderator: Dr Jonathan Liljeblad Commentator: Dr Dian A H Shah, NUS Law  <b>Thin but Resilient Constitutionalism in Japan</b> Professor Akiko Ejima, Meiji University  <b>The Hong Kong National Security Law: Challenging Constitutionalism in Hong Kong and Abroad</b> Associate Professor Surabhi Chopra, City University of Hong Kong Professor Eva Pils, King's College London  <b>Determining What is 'Thai': Thailand's Constitutional Court and Identity Polarisation</b> Dr Rawin Leelapatana, Chulalongkorn University
2.30pm	<b>End of first day</b>

# PROGRAMME

## Thursday 3 December 2020

Time (SGT)	Event
2.30pm	<p>Moderator: Professor Andrew Harding Commentator: Dr Jonathan Liljeblad</p> <p><b>Constitutional Politics in Sri Lanka</b> Dr Mario Gomez, International Centre for Ethnic Studies, Colombo</p> <p><b>The Three “Rs” in Malaysia’s Struggle for Constitutional Democracy</b> Dr Dian A H Shah</p> <p><b>The Politics of Constitutional Design and Constitutional Change in Myanmar</b> Dr Nyi Nyi Kyaw, ISEAS Professor Andrew Harding</p>
4.15pm	<b>Closing Remarks</b>

# SPEAKERS



## Convener: Andrew Harding, NUS Law

Professor Andrew Harding is Visiting Research Professor at the Centre for Asian Legal Studies, Faculty of Law, National University of Singapore. He commenced his academic career at NUS before moving to SOAS, University of London, where he became Head of the School of Law. He joined NUS from the University of Victoria, BC Canada, where he was Professor of Asia-Pacific Legal Relations and Director of the Centre for Asia-Pacific Initiatives. At NUS he has been Director of the Centre for Asian Legal Studies, Director of the Asian Law Institute, and a Chief Editor of the Asian Journal of Comparative Law. He is an expert in comparative constitutional law with special reference to Southeast Asia.



## Convener: Jonathan Liljeblad, ANU College of Law

Jonathan Liljeblad received a PhD and JD from the University of Southern California (USC), an MS from the University of Washington (UW), and a BS from the California Institute of Technology (Caltech). His research largely focuses on rule-of-law, with case studies from human rights and environmental issues. His fieldwork is mostly in Myanmar. Generally, his research falls within the fields of international law, rule-of-law, human rights, environmental law, law & development, and law & society. Due to the empirical nature of his research, his work connects academia, government, and civil society; seeks interdisciplinary, transboundary, and cross-cultural collaborations; and endeavors to nurture direct impact upon policy-makers and societal leaders. He received an Endeavour Research Grant (2018) and was a Fulbright Scholar (2014-2015).



## Convener: Dian A H Shah, NUS Law

Dian A. H. Shah is an Assistant Professor at the NUS Faculty of Law. She completed her LLM and SJD degrees at Duke University, and prior to that she graduated with an LLB from Warwick University. Her research interests span the fields of law and religion, comparative constitutional law, and human rights, and her work focuses on the interaction of law, religion, and politics in plural societies. Dian is the author of *Constitutions, Religion and Politics in Asia: Indonesia, Malaysia and Sri Lanka* (CUP, 2017) and Co-Editor of *Law and Society in Malaysia: Pluralism, Religion, and Ethnicity* (Routledge, 2018) (with Andrew Harding). She previously served as the Deputy Editor of the *Asian Journal of Comparative Law* (AsJCL) and the Editor of the AsJCL's Special Issue on 'Religion and Constitutional Practices in Asia'.



## Surabhi Chopra, Chinese University of Hong Kong

Surabhi Chopra is an Associate Professor at the Faculty of Law, Chinese University of Hong Kong. She researches national security laws, sectarian violence, forced migration, and the socio-economic rights of the poor. She was recently awarded a Research Grants Council Research Impact Fund award for the project *Immigration Detention and Vulnerable Migrants in Hong Kong: Evaluating the System, Facilitating Reform*. Prof. Chopra teaches constitutional, criminal and human rights law at the undergraduate and postgraduate levels. She serves on CUHK's Diversity and Inclusion Steering Committee, and on the executive committees of the CUHK Gender Research Centre and the Gender Studies Programme. She is also a member of the Law Panel on the Research Assessment Exercise (RAE) 2020 conducted by the Hong Kong Research Grants Council. A former barrister, Prof. Chopra was called to the Bar at Lincoln's Inn, UK in 2006, and practiced law in the UK and India.



## Akiko Ejima, Meiji University

Akiko Ejima is Professor at the School of Law, Meiji University, Tokyo. She teaches constitutional law, comparative constitutional law and international human rights law. Her research focuses on the relationship between constitutional law and international human rights law. Her current research project explores the possibility of a pluralistic, non-hierarchical and circulatory system for human rights protection which combines constitutional law and international law and increases the effectiveness of human rights protection. She has been a Liaison Member of the Science Council of Japan since 2014. She was a visiting scholar at Wolfson College, Oxford, a visiting scholar at Faculty of Law and Hughes Hall, Cambridge, a visiting fellow at Harvard Law School, a study visitor at the European Commission on Human Rights, and a visiting scholar at King's College, London.



# SPEAKERS



## **Gemmo Bautista Fernandez, ANU College of Law**

Gemmo Bautista Fernandez is a PhD candidate at the Australian National University where he also teaches Public International Law. He obtained his Master of Laws from the University of Sydney and Juris Doctor degree from the University of the Philippines. His doctoral dissertation delves into the enforcement of collective norms, the codification of the relevant provisions in the Articles of State Responsibility, and the examination of the attendant state practice. He previously worked as an associate at a Philippine law firm and specialises in data privacy protection and cybercrime law.



## **Anton Ming-Zhi Gao, National Tsing Hua University**

Anton Ming-Zhi Gao is an Associate Professor at the National Tsing Hua University's Institute of Law for Science and Technology. He has devoted himself in energy and climate legal research and projects in Taiwan, including publishing books and articles, hosting local and international energy law conferences, and participating in international events. Over the past years, he has been very active in international publications involving investigations on global legal issues, as well as European, Asian, and Taiwanese energy laws. In recent years, he has remained one of the most productive scholars in the field of energy law in Taiwan. His recent works on COVID-19 and rule of law includes: 'Lessons from the facemask monopoly system in Taiwan to tackle the COVID-19 challenge'; 'Viewing COVID-19 Measures under the Rule of Law Perspective: A Comparative Law Analyze of the Measures taken by the Four Asian Tigers'; and 'Taiwan, Covid-19 pandemic Covid-19 relief measures: Environment, Health and Safety Law perspective' (International Bar Association).



## **Mario Gomez, International Centre for Ethnic Studies, Colombo**

Mario Gomez is the Executive Director at the International Centre for Ethnic Studies, an independent think-tank in Sri Lanka. He has worked in academia, human rights, and peace building. His recent and forthcoming publications include 'Advancing Economic and Social Rights through National Human Rights Institutions', 'Prosecuting Religious Violence in Sri Lanka', 'The Right to Information and Transformative Development Outcomes', 'The Courts Respond to Executive Tyranny in Sri Lanka', 'The Politics of Dealing with the Past in Deeply Divided Sri Lanka', 'Constitutionalizing Economic and Social Rights in Sri Lanka' (Co-author), 'Keeping Rights Alive: Reform and Reconciliation in Post-War Sri Lanka', 'The Death Penalty in Sri Lanka: Hanging by a Thread', 'Constitutional Change and Institutional Resilience in Sri Lanka', 'Cutting a New Edge: Mixing Writs with Rights in Sri Lanka', and 'Institutional Resilience and Political Transitions in Sri Lanka and Beyond' (Co-author).



## **Shouvik Kumar Guha, The West Bengal National University of Juridical Sciences, Kolkata**

Shouvik Kumar Guha is an Assistant Professor of Law (Senior Scale) at The West Bengal National University of Juridical Sciences (NUJS). He has obtained his B.A., LLB. (Hons.), LL.M. (gold medallist) and Ph.D. degrees from NUJS. He is also the Co-Coordinator of the Centre for Financial and Regulatory Governance Studies and the Centre for Competition Laws, the Founder of the Centre for Law, Literature and Popular Culture, and the Assistant Coordinator of the Centre for Law and Technology at NUJS. In 2019, a course designed by him, exploring the interface between law and fantasy fiction literature, has received international acclaim and global media coverage for being the first of its kind in the world. His areas of interest include law and technology, corporate law, banking and financial laws, competition law, contract law, and law and literature. Currently he has to his credit about sixty publications including book chapters, conference papers and articles published in journals of international and national repute.



## **Nyi Nyi Kyaw, Institute for Southeast Asian Studies (ISEAS)**

Dr Nyi Nyi Kyaw is Visiting Fellow in the Myanmar Studies Programme, ISEAS – Yusof Ishak Institute, and Assistant Professor (adjunct) in the Department of Southeast Asian Studies, National University of Singapore. He is an expert on Myanmar politics and religion, and he is a former Postdoctoral Fellow at the Centre for Asian Legal Studies, Faculty of Law, National University of Singapore.

# SPEAKERS



## **Melody Yi-Chien Lin, National Taiwan University**

Yi-Chien Lin is an undergraduate law student at National Taiwan University. She is interested in legal research, especially in the field of constitutional law, privacy law, information law as well as the unique relationship between technology and jurisprudence. As a research assistant, she has been focusing on the pandemic control and constitutional issues in Asia. Recently her two papers are respectively accepted by conferences. Moreover, as a case assistant in the “Taiwan Innocence Project”, technology applied in courts is also one of her focus. Yi-Chien is currently finishing her Bachelor of Law and hopes to continue further law studies in the near future.



## **Raphael Lorenzo Aguing Pangalangan, Jindal Global Law School**

Raphael Lorenzo is an Associate Dean and Assistant Professor of Jindal Global Law School. He completed his Juris Doctor at the University of the Philippines, the LL.M. in International Law at Cambridge, and the MST in Human Rights Law at Oxford where he received the Morris Prize in Human Rights. Raphael practiced Criminal Law with the Office of the Ombudsman and continues his public advocacies as a consultant with UK and Philippine-based NGOs.



## **Eva Pils, King's College London**

Eva Pils is Professor of Law at King's College London and an affiliated scholar at the US-Asia Law Institute of New York University Law School. She studied law, philosophy and sinology in Heidelberg, London and Beijing and holds a PhD in law from University College London. Her current research addresses autocratic conceptions and practices of governance and dimensions of legal and political resistance at domestic and global levels, and she is working on a book on the rule of law and its opponents in the People's Republic of China (forthcoming with Hart). Her most recent book, *Human rights in China: a social practice in the shadows of authoritarianism*, was published in 2018. At King's, she teaches courses on human rights; law and society in China; and authoritarianism, populism and the law. Before joining King's in 2014, Eva was an associate professor at The Chinese University of Hong Kong Faculty of Law. She has held visiting appointments at École des Hautes Études en Sciences Sociales (Paris) and at Columbia University (New York).



## **Shameek Sen, The West Bengal National University of Juridical Sciences, Kolkata**

Dr. Shameek Sen is an Assistant Professor in the West Bengal National University of Juridical Sciences. He specializes in Public Law disciplines like Constitutional Law and Media Law. After graduating from the NUJS in 2005 as a part of the first graduating batch of the University and finishing his LL.M. in 2007 (where he won the Nani Palkivala Gold Medal for securing the highest marks in his batch), Sen joined NUJS as an Assistant Professor. He completed his M.Phil. in the year 2008 and Ph.D. in the year 2016. His Ph.D. thesis is titled “Free Speech and Censorship, with special reference to the Law of Obscenity”. Sen has several publications as books, book chapters and articles in peer-reviewed journals. He is currently the Coordinator at the Centre for Studies in Entertainment and Media Law at WBNUJS, Kolkata.



## **Herlambang Wiratraman, Universitas Airlangga**

Herlambang is a Senior Lecturer at Constitutional Law Department and at the Center of Human Rights Law Studies (HRLS), Faculty of Law, Airlangga University. He obtained his PhD in Law from the Van Vollenhoven Institute, Leiden University (2014). His major research includes Constitutional Law, Human Rights, Law and Society, and Freedom of Expression. He was previously a visiting researcher at Graduate School of International Development (GSID), Nagoya University (2015), Center for Asian Legal Studies NUS Law School (2017), Sydney Myer Asia Center, Faculty of Arts the University of Melbourne (2017), Vietnam National University Law School (2017), and Norwegian Center for Human Rights (NCHR) Faculty of Law, University of Oslo (2018). He has been involved as a Selection Committee member for Supreme Court Judges (2017-2019). Currently he serves as a member of the Indonesian Caucus for Academic Freedom (KIKA) and the Steering Committee of Southeast Asian Human Rights Studies Network (SEAHRN).







