
Wednesday, 19 June 2019 + 12.30pm to 2.00pm

(Registration starts at 12.00noon)

Lee Sheridan Conference Room, Eu Tong Sen Building Level 1, NUS Law (Bukit Timah Campus)

When Courts Decide Not to Decide: A View From Afghanistan

by

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Chairperson: Associate Professor Jaclyn Neo, NUS Law

ABSTRACT

Scholars of comparative constitutional studies have generally put faith in apex courts' ability to build and maintain a democracy. Specifically, when the winds of democratization swept across the globe in the 1980s, academic literature suggested that strong courts and strong-form review were necessary ingredients for the formation of all "third-wave" democracies. However, recent scholarship has questioned this premise that paints courts, equipped with the power of strong-form review, as successful democratization engines. In new democracies, judicial attempts to steer democratic transition frequently obstruct the political branches and create flash points for conflict between courts and the holders of political power. This conflict in turn might trigger systematic political attacks against judicial independence. In this session, the speaker explores Afghanistan's judicial review experience since the country's democratic transition began in late 2001. He will focus on a number of sensitive cases in which a declaration of constitutional invalidity are found and how such declarations activated political backlash that undermined the Supreme Court's independence and limited its powers. Afghanistan's experience suggests that a focus on democratization through strong-form review is unrealistic and counterproductive in unstable democracies. In these brittle democracies, courts' decisions that outrun the "tolerance intervals" of the political branches get disobedience and spark political backlash, thereby undermining the judiciary's independence and limiting its powers. Instead, Afghanistan's history suggests that weak-form review and strategic judicial avoidance might be useful tools for lowering the risk of systematic political attacks against judicial independence and might help courts to avoid having their wings clipped.

ABOUT THE SPEAKER



Shamshad Pasarlay is Senior Teaching Assistant at Herat University School of Law. He holds a bachelor's degree from Kabul University School of Islamic Law. His LL.M. and Ph.D. in comparative law are from the University of Washington. He has worked as a research fellow in the Law Library of Congress. His research interests include comparative constitutional law and Afghanistan's constitutional history. His scholarship on judicial politics, religion and constitution making and constitution-making/design in deeply divided societies has appeared in numerous journals, including the *International Journal of Constitutional Law*, *Asian Journal of Comparative Law* and *Washington International Law Journal*.

REGISTRATION

There is no registration fee for this seminar, but seats are limited.

Lunch will be provided on a first-come, first-served basis.

Please register at <https://nus.edu/3194Wq> or scan the QR code.

Closing Date: Friday, 14 June 2019

For enquiries, please contact Ms Alexandria Chan at rescle@nus.edu.sg

