

**10 August 2017, Thursday ✦ 3.00pm – 4.00pm**

Executive Seminar Room, Block B, Level 3, NUS (Bukit Timah Campus)

## **TOWARDS A THEORY OF “DUAL CONSTITUTIONALISM” : Reflections from the Thai case study**

**Speaker: Dr Eugénie Mérieau, Sciences-Po Paris**

**Chairperson: Associate Professor Michael Dowdle, NUS Law**

### **ABSTRACT**

Since the traditional typologies of constitutionalism opposing “normative” to “nominal”, “façade” or “sham” constitutions have proved their shortcomings, several scholars have demonstrated that constitutions in non-liberal settings *do matter*. Today, the study of “illiberal” and “authoritarian” constitutionalism is one of the most promising fields of comparative constitutional enquiry. In spite of their quality, these recent accounts of constitutionalism in non-liberal settings are mostly essentialist definitions still dividing the world’s constitutions among two static types: liberal vs. non-liberal. Emerging accounts of constitutionalism try to address this gap by shedding light on the “mixed”, “hybrid” or “dissonant” nature of constitutions, but also, on their ever-evolving dynamic, (ie. “abusive constitutionalism” describing the liberal to non-liberal shift by constitutional amendment).

This talk will advocate for a non-binary, non-essentialist, non-static redefinition of constitutionalism, linked to a dual conception of the state. In Fraenkel’s account, the Dual State is characterized by two relatively autonomous spheres: the normative state and the prerogative state (or what some have called the “deep state”). In the prerogative state, the state acts with discretion and its actions are not subject to judicial review.

Along these lines, most constitutions are characterized by coexisting liberal and authoritarian layers of normativity. In times of crisis or for any *raison d’état*, the authoritarian “deep constitution” may take over the normative constitution, with the courts starting to act in a “schizophrenic” manner. When Ginsburg and Simpser define authoritarian constitutions as having “the form of a constitution, but without fully articulated institutions of limited government” (Ginsburg and Simpser 2005), they wrongfully associate limited government with liberal constitutions and miss the fact that institutions of limited government always coexist with authoritarian “deep” features; furthermore, authoritarian constitutions often put more limits on government than non-authoritarian ones. The case of Thailand fully exhibits such *constitutional fluidity*.

### **ABOUT THE SPEAKER**



Eugénie Mérieau studied Law, Political Sciences and Oriental Languages and Civilizations at the respective Parisian Universities of Sorbonne, Sciences Po and the National Institute for Oriental Languages and Civilizations. In 2017, she completed her PhD on “Thai Constitutionalism and Legal Transplants: a study of Kingship”. She currently holds a temporary teaching and research position at Sciences Po in Paris. From the 1st of September onwards, she will be a post-doctoral fellow under the newly created Comparative Constitutionalism chair of the Faculty of Political Science, University of Göttingen, Germany, held by Prof. Ran Hirschl. She has lived for 8 years in Thailand where she held several positions including researcher for the King Prajadhipok’s Institute under the Thai Parliament and consultant for the International Commission of Jurists. Her research interests focus on constitutional transplants and authoritarian constitutionalism, especially in the Asian context. Her most quoted article is “Thailand’s Deep State, Royal Power and the Constitutional Court”, published by the Journal of Contemporary Asia in 2016. She also contributed to several Routledge “Asia” and “Law in Asia” series. Her published works have been translated into Thai, German and French.

### **REGISTRATION**

There is no registration fee for this seminar but seats are limited.  
Light refreshment will be provided on a first-come, first-served basis.  
Closing Date: **7 August 2017, Monday**  
For enquiries, please contact Alexandria at [cals@nus.edu.sg](mailto:cals@nus.edu.sg)

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