



PROVOST'S CHAIR PROFESSORIAL LECTURE

RIGHTS, RITES AND REGULATION: SINGAPORE PUBLIC LAW IN THE 21ST CENTURY

by

PROFESSOR THIO LI-ANN, NUS LAW

CHAIRPERSON: ADJUNCT PROFESSOR KEVIN TAN, NUS LAW

WEDNESDAY, 21 NOVEMBER 2018

6:45PM TO 8:00PM | MOOT COURT, NUS LAW, BUKIT TIMAH CAMPUS

ABSTRACT

While Singapore constitutional and administrative law is rooted in the Westminster parliamentary system and the common law, it has developed distinctive sensibilities and autochthonous institutions; this differs from the rights-oriented court-centric ('ROCC') orientation associated with the hegemonic model of Western liberal constitutionalism. Fixation with the 'ROCC' model occludes the existence of other models of constitutionalism and the functions constitutions discharge beyond constraining public power and fostering legitimacy. This includes the articulation of fundamental principles, visions of citizenship and integrative functions which promote social cohesion and the shaping of a polity's distinctive identity, influenced by principles of justice and political culture particularities.

This lecture explores the landscape of Singapore public law as it has developed within a 'paternal democracy;' it highlights unique or unusual features in aid of pluralising our understanding of extant varieties of constitutionalism, which minimally seeks to restrain absolutist rulers and rules. Three main topics are addressed. First, three 'waves' of constitutional interpretation are identified, with specific reference to how fundamental rights are conceptualised within a communitarian setting and 'balanced' against competing rights, duties, norms and goods. In particular, the judicial approach towards articulating unwritten principles which shape judicial review is examined; these encompass 'structural' principles such as the separation of powers and rule of law, as well as substantive norms conditioning the exercise of public power and rights jurisprudence, such as fundamental rules of natural justice and human dignity. Second, we take a realist turn to the constitution beyond the court, examining the nature of what Karl Llewellyn termed the constitution as 'institution', that is, "the actions, understandings and inter-relationships of those who operate it." Non-binding soft constitutional law (SCL) norms which have some legal impact are often deployed instead of legal sanctions to address situations where the quasi-constitutional value of racial and religious harmony is imperiled. The 'canon' of these norms are found in executive-authored public instruments like the maintenance of religious harmony white paper. In cases of religious disharmony, these SCL norms furnish the standards for assessing conduct, driving conciliatory processes which eschew the adversarial nature of litigation and generating expectations of compliance; the constitution is developed not just by enactment or judicial interpretation, but through the practices of constitutional actors. In 'disharmony' cases, a certain public ritual has arguably evolved to soothe over inter-religious tensions, with a focus on sustaining durable relationships and the relational well-being of individuals and groups peacefully co-existing within a plural society. This is a key objective of 'relational constitutionalism' which is concerned not only with 'public order' (absence of conflict) but with 'harmony' which speaks to the quality of relationships and the project of securing solidarity in diversity.

Lastly, we examine the apparent preference for 'green light' theories of administrative review which controls the regulatory state, considering whether Singapore administrative law merely follows the path trod by pre-Europeanised English administrative law, whether it has developed any distinctive features and possible trajectories for the advancement of administrative legal values and good governance.

SPEAKER

Professor Thio Li-ann teaches and has published widely in the fields of public international law, human rights law, constitutional and administrative law. She is currently the Chief Editor for the Singapore Journal of Legal Studies. She is also on the editorial board of the Journal of East Asia and International Law, National Taiwan University Law Review and on the advisory board of the New Zealand Yearbook of International Law, Australian Journal of Asian Law and International Law & Human Rights Discourse. She is also on the international advisory board of the Max Planck Encyclopedia of Comparative Constitutional Law (from 2015), the University of Bologna Law Review and City University of Hong Kong Law Review.

Li-ann has taught courses at the law faculties of Hong Kong University and the University of Melbourne. A leading Singapore constitutional scholar, she is the author of *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012). She also co-authored *Constitutional Law in Malaysia and Singapore* (Lexis Nexis, 2010, 3rd ed.), co-edited *Evolution of a Revolution: 40 Years of the Singapore Constitution* (Routledge-Cavendish, 2009); co-authored *Constitutionalism in Asia: Cases and Materials* (Hart, 2014) with WC Chang, JR Yeh and Kevin Tan and is co-editor of a book series with Hart Publishing on *Constitutionalism in Asia* (from 2017), all with Adjunct Professor Kevin Y.L. Tan. She was an expert witness before the Australian Federal Court and academic freedom consultant to the University of Warwick (2005).

She was a Nominated Member of Parliament (2007-2009), and received the NUS Young Researcher Award in 2004.

Programme

06:00pm to 06:45pm	Registration
06:45pm to 07:45pm	Lecture
07:45pm to 08:00pm	Q&A Session
08:00pm	Dinner Reception

There are no registration fees but seats are limited.

Please register at:

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Closing Date for Registration: 14 November 2018

For enquiries, please contact Ms Poova at 6516 3644 or clemail@nus.edu.sg



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Practice Area: Contemporary issues in legal practice
Training Level: Foundation

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