

Thursday, 24 November 2022

10.00 am **Opening Ceremony**
Dean Simon Chesterman (NUS);
Deputy Dean Ainee Binti Adam (University of Malaya)

10.15 am **Keynote Address:**
'A Constitution, If We Can Keep it: Reflections on the Basic Structure Doctrine'
Tan Sri Datuk Zainun Ali, former Judge of the Federal Court.

Chair: Jaclyn Neo (NUS)

10.45 pm Coffee Break

11.15 am **Session 1: Making & Amending the Constitution: Some Theoretical Threads**

- Monika Polzin (Vienna U of Econ & Business), 'Theoretical Underpinnings of the Basic Structure Doctrine and its application to Westminster-style Constitutions'
- Maha Balakrishnan (Jeffrey Cheah Institute on Southeast Asia), 'The Basic Structure Doctrine in Malaysia: Past, Present and Future'.

Chair: Thio Li-ann (NUS)

12.30 pm Lunch

1.30 pm **Session 2: The Basic Structure Doctrine – Comparative Perspectives**

- Philip Koh (UM) and Emily Ho, 'Defending Constitutional Supremacy through Basic Structure Doctrine : Challenges and Constraints of Judicial Adjudication on Rights , Sovereignty and Constitutionalism in Malaysia'
- Rehan Abeyratne (Chinese University of Hong Kong), 'Basic Structure as Judicial Self-Dealing or Self-Preservation? Placing Malaysia in the Broader Asian Context'. [via Zoom]
- HP Lee (Monash), 'Protection of the Judicial Power Under the Basic Structure Doctrine: Lessons from Australia'.

Chair: Kevin YL Tan (NUS)

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3.00 pm Coffee Break

3.30 pm **Session 3 – The Basic Structure Analysed II**

– Wong Chin Huat (Sunway University, Malaysia) 'Political Parties in Parliamentary Democracy : Lacuna in Malaysian Constitution's Basic Structure'.

– Dian Shah (NUS), 'Religion in the Basic Structure of the Federal Constitution' [via Zoom]

Chair: Tan Hsien-Li (NUS)

Friday, 25 November 2022

10.00 am **Session 4 – The Basic Structure Analysed I**

– Dato Sri Fong Joo Chung (former State Attorney-General, Sarawak), 'Malaysia's Federal Structure: How Basic? A View from Sabah/Sarawak'

– Wilson Tay (Taylor's University), 'Unravelling the Gordian Knot: Judicial Power and the Basic Structure Doctrine in Malaysia'.

– James Chin (University of Tasmania), 'Constitutional Amendments and the Basic Structure in Malaysia'

Chair: Benjamin Joshua Ong (SMU)

11.30 am **Round Up & Closing Speeches**

Kevin YL Tan (NUS)

Philip Koh (University of Malaya)

Tan Sri Dato Mohd Ariff Yusof (former Speaker of Parliament, Malaysia)

Mohd Nazim Ganti Shaari (Universiti Teknologi MARA (UiTM))

CONVENORS



KEVIN YL TAN (NATIONAL UNIVERSITY OF SINGAPORE)

Dr Kevin YL Tan is Adjunct Professor at the Faculty of Law, National University of Singapore where he has taught since 1986. He specialises in Constitutional and Administrative Law, Singapore Legal History, the Singapore Legal System and International Human Rights. He has written and edited over 60 books on the law, history and politics of Singapore. Kevin has been on the editorial board of several leading legal journals. He is currently Co Editor-in-Chief of the Asian Journal of Comparative Law; Consultant Editor of the Asian Yearbook of International Law; and Editorial Board member of the Korean Journal of International and Comparative Law.



PHILIP TN KOH (UNIVERSITY OF MALAYA)

Philip TN Koh, Advocate & Solicitor, High Court of Malaya; LLB(Hons) (Malaya); LLM(London); MA (Theology)(Australian Catholic University); Professor(Adjunct) Universiti Malaya & Monash Malaysia University ; Trustee of Tun Suffian Foundation and Senior partner of Messrs Mah-Kamariyah & Philip Koh (major law firm) and have served as member of Executive Committee for Financial Stability of Central Bank Malaysia. He has been involved with Corporate Law reform leading to enactment of Companies Act 2016. He has co- edited major texts on Constitutional and Corporate & Contract law. He writes Op-Ed Forum pieces in major Media that enhances public discourse which shapes understanding of public law in public sphere. He also appeared as co- counsel in major public law cases e.g. the Sabah crisis; the Perak Chief Ministers and the Tribunal that impeaches the five (5) Supreme Court judges. He is co- counsel in Suhakam hearings for “Enforced Disappearances”. Currently he teaches an Elective course on Law & Literature at Universiti Malaya and facilitate seminars and symposium on both private and public law. He is also a member of Panel of Arbitrators of AIAC.



SIMON CHESTERMAN (DEAN OF FACULTY OF LAW, NATIONAL UNIVERSITY OF SINGAPORE)

Simon Chesterman is David Marshall Professor and Vice Provost (Educational Innovation) at the National University of Singapore, where he is also Dean of NUS College and the Faculty of Law. He serves as Senior Director of AI Governance at AI Singapore, Editor of the Asian Journal of International Law, and Co-President of the Law Schools Global League. From 2006-2011, he was Global Professor and Director of the New York University School of Law Singapore Programme. Prior to joining NYU, he was a Senior Associate at the International Peace Academy and Director of UN Relations at the International Crisis Group in New York. He has previously worked for the UN Office for the Coordination of Humanitarian Affairs in Yugoslavia and interned at the International Criminal Tribunal for Rwanda. Professor Chesterman is the author or editor of more than twenty books, including *We, the Robots? Regulating Artificial Intelligence and the Limits of the Law* (CUP, 2021); *Law and Practice of the United Nations* (with Ian Johnstone and David M. Malone, OUP, 2016); *One Nation Under Surveillance* (OUP, 2011); *You, the People* (OUP, 2004); and *Just War or Just Peace?* (OUP, 2001).



AINEE ADAM (UNIVERSITY OF MALAYA)

Ainee is the Deputy Dean (Research) at the Faculty of Law, University of Malaya, a position she was appointed to in April 2019. She completed her doctoral degree in 2014 at the Faculty of Law, Monash University Australia. In 2015, she took up the position as a postdoctoral fellow at the Centre for Law and Business at the National University of Singapore. She returned in 2016 to resume her duties as Senior Lecturer. In 2019, she spent two months at Nankai University as a Confucius Institute Visiting Scholar to work on her research project. Her current research interests lie in researching the history of intellectual property rights and exploring Asian theories and philosophies to provide an alternative view/solution on contemporary intellectual property rights issues. Ainee has published several articles in journals including the *Queen Mary Journal of Intellectual Property*, *European Intellectual Property Review* and the *Hong Kong Law Journal*. Her most recent article, 'Pricing and Profiting in Copyright: An Introduction to Islamic Perspective', is published in the *Queen Mary Journal of Intellectual Property*. She is also currently the Project Leader for the team from the University of Malaya for an Erasmus Project with eight other Asian and European partners.

KEYNOTE



TAN SRI DATUK ZAINUN ALI (FORMER FEDERAL COURT JUDGE)

Zainun Ali is one of the pioneering students of the Faculty of Law, University of Malaya who graduated in 1976. She read for her Masters of Law degree in the University of Cambridge, UK and served in the Malaysian Legal and Judicial Service and thereafter in the Judiciary before retiring as a Federal court judge in 2018. She has since served as one of 10 judges in the United Nations Global Judicial Integrity Network and is Deputy Commissioner in Malaysia's Integrity Commission(EAIC).

A Consultant with the legal firm of Zain & Co n Dentons , Zainun is also on the boards of the Permodalan Nasional Berhad (PNB) and Allianz Malaysia Berhad (AMB) , besides serving as one of 5 judges in the Administrative Tribunal of the Islamic Development Bank of Jeddah and is an Arbitrator registered with the Asian International Arbitration Centre (AIAC).

Zainun was editor of the Malaysian Judiciary Annual Report/ Yearbook for 9 years and has also written the forewords of books by eminent judges such as 'Parliament, Unexpected' by Tan Sri Ariff Yusof , 'Summum Bonum' by Dato ' Mahadev Shankar, books by prominent lawyers such as 'Corporate Power Accountability' by Dato Loh Siew Cheang and 'The Law and Practice of Judicial Review in Malaysia' by Gregory Das. She has also co- edited the 8th Edition of Mallal's Criminal Procedure.

Known for her bold dissenting judgments in several public interest cases, her tenure in the Malaysian Judiciary has seen her contributing much to the Malaysian legal jurisprudence.

CHAIR



JACLYN NEO (DIRECTOR, CENTRE FOR ASIAN LEGAL STUDIES, NATIONAL UNIVERSITY OF SINGAPORE)

Jaclyn Neo is an Associate Professor and the Director of the Centre for Asian Legal Studies at the National University of Singapore (NUS) Faculty of Law. A graduate of the NUS Faculty of Law (LLB) and Yale Law School (LLM and JSD), Jaclyn is a recipient of multiple academic scholarships, competitive research grants, and research awards. She has published in leading journals and is the editor/co-editor of more than ten books and special journal issues. Jaclyn was an elected Council Member of the International Society for Public Law (ICON-S) and currently sits on the editorial boards of the Asian Journal of Comparative Law, the International Journal of Constitutional Law Blog (ICONnect), the Asian Yearbook of International Law, the Journal of Law and Religion, and Suprema (Revista de Estudos Constitucionais). She has held visiting positions at Princeton School of Public and International Affairs, Frankfurt University, University of Münster, University of Trento, Melbourne Law School, and the Max Planck Institute for the Study of Religious and Ethnic Diversity. At present, she is a Professorial Fellow with the Singapore Attorney-General's Chambers Academy and a Senior Research Fellow in Constitutional Studies with The University of Texas-Austin School of Law.

SPEAKERS & CHAIRS



REHAN ABEYRATNE (THE CHINESE UNIVERSITY OF HONG KONG)

Rehan Abeyratne is an Associate Professor of Law at The Chinese University of Hong Kong. He holds a BA in Political Science from Brown University, a JD from Harvard Law School, and a PhD from Monash University. Professor Abeyratne's primary research area is comparative constitutionalism. He is a co-editor of *Towering Judges: A Comparative Study of Constitutional Judges* (Cambridge University Press 2021) and of *The Law and Politics of Unconstitutional Constitutional Amendments in Asia* (Routledge 2021), as well as two forthcoming volumes. His published works have appeared in the *International Journal of Constitutional Law* (I-CON), *Yale Journal of International Law*, *Global Constitutionalism*, *Journal of Indian Law and Society*, *Asian Journal of Comparative Law*, *Texas International Law Journal*, *Minnesota Journal of International Law*, *Nebraska Law Review*, *Brooklyn Journal of International Law*, and *George Washington International Law Review*, as well as in edited volumes published by Hart, Cambridge University Press, and Oxford University Press.



MAHA BALAKRISHNAN (ASIA OFFICE OF THE UNITED NATIONS SUSTAINABLE DEVELOPMENT NETWORK)

Maha trained as a barrister and practiced civil, commercial and public administrative law at the Malaysian Bar for 12 years. During her legal career, Maha contributed to the Malaysian Bar's public advocacy work, participating in Royal Commissions of Inquiry and co-producing policy papers on legal and institutional reform. Upon shifting her focus to political science, Maha obtained a Masters in Democracy and Comparative Politics under a Chevening scholarship. Combining the disciplines of law and political science, Maha has consulted for INGOs, NGOs and think-tanks. She served as the Political Advisor to the British High Commission in Kuala Lumpur for four years, where she provided interdisciplinary strategic analysis and developed multi-stakeholder partnerships, particularly on domestic institutional strengthening. Maha is a researcher, content producer, trainer and speaker on democratic development and institutional design, legislative studies and rights-based policy making. She is currently a Research Fellow at the Asia office of the United Nations Sustainable Development Network (SDSN-Asia).



JAMES CHIN (UNIVERSITY OF TASMANIA)

James Chin is Professor of Asian Studies, University of Tasmania. He was previously Director of the Asia Institute Tasmania. He writes extensively on Malaysian politics, especially on Sabah and Sarawak.

SPEAKERS & CHAIRS



DATO SRI FONG JOO CHUNG

Born in Kuching in 1949, he received his early education at St Joseph's School, Kuching, before proceeding, in 1968, to study law at the University of Bristol, England where he obtained his Bachelor of Laws (Hons) in June 1971. He was called to the English Bar by the Honourable Society of Lincoln's Inn in November 1971. He was admitted to practise as an Advocate in Sarawak in January 1972, and remained in private practice with the Law firm of Reddi & Company, Kuching until the end of July 1992.

On 8th August 1992 he was appointed as the State Attorney-General, Sarawak, a position he held until 31st December, 2007. Upon relinquishing that position, he has been retained by the State Government of Sarawak in an advisory capacity and continues to represent the State Government in cases before the appellate Courts and the High Court. He sits on the Board of Directors of a number of Corporations wherein the State Government has equity interests, including Bintulu Port Holdings Berhad, Sarawak Energy Berhad, and Syarikat SESCO Berhad. He is a member of the Board of Curtin (Malaysia) Sdn Berhad (which runs the Curtin University Miri Campus) and St Joseph's Private School, Kuching.

He is the author of three books. Two books were published by Thomson-Reuters, namely Constitutional Federalism in Malaysia [2008] and Law on Native Customary Land in Sarawak [2011] and Sarawak Law Series Land Code [with Annotations] published by LexisNexis [2015].



EMILY HO (RAJA, DARRYL & LOH)

Emily holds a B.A. in Law (triple first) from the University of Cambridge, and a LL.M. from Harvard Law School where she was a Dean's Scholar in Comparative Constitutional Law, International Trade Law, and International Human Rights. She is a research panellist for the UN High Commissioner of Refugees (Geneva) and was previously a legal researcher for the Columbia University Global Freedom of Expression Institute. In addition, she has been on the editorial teams of the Harvard Human Rights Law Journal and the Cambridge Law Review, and her work has been published in two law reviews. Her areas of interest are comparative constitutional law, and law and religion. She is called to the Bar of England and Wales, and is currently undertaking a pupillage at a law firm in Kuala Lumpur.



EMERITUS PROFESSOR H P LEE (MONASH UNIVERSITY)

Professor Hoong Phun ('HP') Lee is Emeritus Professor in the Faculty of Law at Monash University. He held the Sir John Latham Chair of Law from 1995-2014, and served as Deputy Dean for a number of years. He is the author of Constitutional Conflicts in Contemporary Malaysia (2nd ed, Oxford University Press, 2017). His extensive publications include Emergency Powers in Australia (2nd ed, Cambridge University Press, 2019) (co-author), The Australian Judiciary (2nd ed, Cambridge University Press, 2013) (co-author), Asia-Pacific Judiciaries: Independence, Impartiality and Integrity (Cambridge University Press, 2017) (co-editor), Judiciaries in Comparative Perspective (Cambridge University Press, 2011) (editor).

SPEAKERS & CHAIRS



MONIKA POLZIN (VIENNA UNIVERSITY OF ECONOMICS AND BUSINESS)

Monika Polzin is a Professor of Public and Public International Law at the Vienna University of Economics and Business. She was an Associate Professor at the University of Augsburg (Germany) and a Visiting Professor in Berlin (Humboldt University), Munich (Ludwig Maximilian University of Munich) and Göttingen. Monika was a Member of the Bavarian Constitutional Court (2018-20) and acts a legal expert for national and international institutions. In 2006/7 she was a Hugo Grotius Scholar at New York University and has published in national and international peer-reviewed journals in English, German, and French on comparative constitutional law, European Union and Public International law. Her main research interests are constitutional identity, constituent power, the relationship between national and European and international law and autocratic tendencies in international law.



MOHD NAZIM GANTI SHAARI (UNIVERSITI TEKNOLOGI MARA (UiTM))

Mohd Nazim Bin Ganti Shaari teaches constitutional law at his alma mater, the Law Faculty of the Universiti Teknologi MARA (UiTM), Selangor. He was called to the Malaysian Bar in 1999 and later completed his LLM at Monash University. He vigilantly monitors the public discussion on matters relating to the “special position of the Malays and natives of Sabah and Sarawak” and the powers of the Malay Rulers and he also regularly attempts to correct the public narrative concerning these matters.



BENJAMIN JOSHUA ONG (SINGAPORE MANAGEMENT UNIVERSITY)

Benjamin Joshua Ong is an Assistant Professor of Law at the Yong Pung How School of Law, Singapore Management University, where he currently serves as Director, Undergraduate Admissions. Benjamin aims to produce and share meaningful research on both cutting-edge and enduring topics relating to the regulation of discretionary powers, both public and private, in civil and criminal settings, and through legal and non-legal means. His work has been published in a variety of academic, professional, and popular fora. He has written on matters of contemporary interest such as Town Councils in Singapore, legal approaches toward COVID-19 in Singapore, ouster clauses in the UK, and judicial approaches toward constitutional liberties in Malaysia. In his teaching activities, Benjamin aims to contribute toward students’ growth through interactive seminars that combine foundational knowledge, the development of analytical skills, and exploration of the latest legal developments.

SPEAKERS & CHAIRS



DIAN A. H. SHAH (NATIONAL UNIVERSITY OF SINGAPORE)

Dian A. H. Shah is an Assistant Professor at the NUS Faculty of Law. She is a graduate of Duke University (LLM and SJD) and Warwick University (LLB). 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. She is a member of the Consultative Committee on Foreign Policy under the Ministry of Foreign Affairs, Malaysia. Dr Shah 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). She has published in the *Oxford Journal of Law and Religion* and the *International Journal of Constitutional Law*, and was previously a columnist on the ICONnect blog. From 2016 to 2019, she served as the Deputy Editor of the *Asian Journal of Comparative Law (AsJCL)* and was the Editor of the AsJCL's Special Issue on 'Religion and Constitutional Practices in Asia' (December 2018).



TAN HSIEN-LI (NATIONAL UNIVERSITY OF SINGAPORE)

Dr Tan Hsien-Li was until recently Senior Research Fellow and Executive Director of the ASEAN Integration through Law Project at the Centre for International Law, NUS, an affiliation she still maintains. Hsien-Li has held fellowships at the European University Institute, Florence; the Jean Monnet Center for International and Regional Economic Law and Justice, NYU School of Law. She was previously also the AsianSIL Research Fellow at the NUS School of Law and the Ushiba Memorial ASEAN Fellow in Tokyo working on Japan's human security policy's impact on Southeast Asia. Hsien-Li researches on the role and the rule of law and institutions in ASEAN Integration; public international law, particularly on institution-building and norm-creation; as well as human rights and peace and security. Hsien-Li wrote the first book on the ASEAN human rights system (Cambridge University Press, 2011) and will publish two books (co-authored) on ASEAN dispute settlement mechanisms and human rights in ASEAN with Cambridge University Press, forthcoming in 2016. Hsien-Li is currently working on two more books – the documentary analysis of ASEAN instruments and a theory of the ASEAN Way. Hsien-Li is an editor of the *Asian Journal of International Law* and the general co-editor (together with Joseph Weiler) of the ASEAN Integration Through Law Book Series (Cambridge University Press).



WILSON TAY TZE VERN (TAYLOR UNIVERSITY)

Dr Wilson Tay Tze Vern is a Senior Lecturer at Taylor's Law School, Taylor's University, Malaysia. He read law at University College London, and subsequently obtained his LLM in Asian Legal Studies and his PhD in Law from the National University of Singapore (NUS). Wilson's current research and teaching interests are in Malaysian constitutional law, administrative law, and comparative law. Previously, Wilson was a Research Fellow at the Centre for Asian Legal Studies, Faculty of Law, NUS and Deputy Editor of the *Asian Journal of Comparative Law*. He has been called to the Bar in West Malaysia and has also previously served as Senior Assistant Registrar in the Judicial & Legal Service of Malaysia.

SPEAKERS & CHAIRS



THIO LI-ANN (NATIONAL UNIVERSITY OF SINGAPORE)

Thio Li-ann is Professor of Law at the National University of Singapore where she teaches and has published widely in the fields of public international law, human rights law, constitutional and administrative law. She is 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 also sits 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 was formerly Chief Editor of the Singapore Journal of Legal Studies and the Singapore Journal of International & Comparative Law, and has been an Editor for the International Journal of Constitutional Law (ICON). A leading Singapore constitutional scholar, she is the author of A Treatise on Singapore Constitutional Law (Academy Publishing, 2012).



WONG CHIN HUAT (JEFFREY CHEAH INSTITUTE ON SOUTHEAST ASIA, SUNWAY UNIVERSITY)

Professor Wong is a political scientist trained as a comparativist in University of Essex, UK, specialising in electoral system, party system, parliamentary democracy and ethnic politics. He is Deputy Head (Strategy) of UN Sustainable Development Solutions Network's Asia Headquarters (SDSN-Asia). He is a founding member of Coalition for Clean and Fair Elections (Bersih) and led the clusters on electoral system and constituency delimitation in the Malaysian Government's Electoral Reform Committee (ERC) in 2018-2020. In the aftermath of the Sheraton Move, he had advocated many institutional reforms, including Confidence and Supply Agreement, recall, fixed term parliament, equal constituency allocation for all lawmakers, public funding for political parties and absentee voting right, some of which have materialised or gained traction with stakeholders. Wong's political insights are featured in international and domestic media in English, Chinese and Malay, including Project Syndicate, South China Morning Post, Straits Times, Aljazeera, Malaysiakini, Astro Awani, Astro AEC, BFM, The Star, Sinar Harian and Utusan Malaysia. He has also published books on Malaysian politics in English and Chinese.



TAN SRI DATO MOHD ARIFF YUSOF (FORMER SPEAKER OF PARLIAMENT, MALAYSIA)

Tan Sri Mohamad Ariff bin Md Yusof graduated with a Bachelor of Laws and a Master of Laws degrees from the University of London (London School of Economics). He obtained his Bar-at-Law qualification from, and is a member of, the Honourable Society of Lincoln's Inn, England.

Ariff started his career in 1974 as a law lecturer and subsequently an Associate Professor of the Law Faculty of the University of Malaya before venturing into legal practice as an advocate and solicitor in 1986. He is one of the founding partners of Cheang & Ariff. In 1993 to 1995, he took leave from legal practice to join the then newly formed Securities Commission of Malaysia and became the first Director of its Market Supervision Department. In September 2008, Ariff was appointed as a Judicial Commissioner of the High Court of Malaya and later a Judge of the High Court of Malaya in October 2009. In September 2012, he became a Judge of the Court of Appeal until his retirement in early 2015. Between July 2018 to July 2020, Ariff was elected as the Speaker of the House of Representatives, the Parliament of Malaysia. Ariff is on the Asian International Arbitration Centre's panel of arbitrators, and is currently an Adjunct Professor in the School of Law, University Utara Malaysia (Northern University of Malaysia).