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 obfuscates 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 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 conditioned the exercise of public power and rights jurisprudence, such as substantive norms 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.