

21 October 2016, Friday ✦ 12.30pm – 2.00pm ✦
Lee Sheridan Conference Room, Eu Tong Sen Building, NUS (Bukit Timah Campus)

Why Ethnocracy is Conceptually Alien to the Malaysian Constitution

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Chairperson: Professor Andrew Harding

ABSTRACT

Ethnocratic rule expressed as the doctrine of "Malay Dominance" is the ruling political paradigm in Malaysia. That doctrine requires that the primary role of government is to define and defend the ethical and political identity of the state as fundamentally a Malay (and Muslim) state. It follows that those who are ineligible for membership within the dominant Malay ethnoses are deemed politically unequal. They may engage in an intense struggle for equality but are subject to various limits on their civil and political rights. Notably, these limits arise from the formal justification given by the ruling United Malay National Organization ("UMNO") led government that ethnocratic rule is necessary to ensure social stability in an ethnically divided state. In light of this justification, those who challenge the ethnocratic political paradigm are identified as "enemies" of the state and are subject to authoritarian controls upon their liberties. Hence the history of ethnocratic rule in Malaysia goes hand in hand with official hostility to democratic forms of government and adequate respect for laws that protect civil, political, and human rights. Nevertheless, the government asserts that the doctrine of Malay Dominance is fully compatible with Malaysia's "supreme" Constitution as the ultimate touchstone of legal and political legitimacy. Public officials argue the Constitution embodies a "social contract" between the country's Founding Fathers that enshrines the doctrine of Malay Dominance and bestows upon the government a legally legitimate authority that includes the power to impose authoritarian controls on citizens who challenge ethnocratic rule. Thoughtful lawyers and legal thinkers respond that this assertion of legitimacy is false and misinterprets the Malaysian Constitution. Drawing resources from legal and political philosophy, I will argue that this response is inadequate because it concedes to ethnocrats the assumption that they respect the Constitution as an inherently significant object of interpretation that defines the terrain of argumentation about questions of legal and political legitimacy in Malaysia. This assumption is unwarranted because the conception of legal authority implicit within the ethnocratic political paradigm is conceptually alien to any constitutional framework that imposes legal limits on state power. Ethnocrats are thus conceptually committed to constitutional skepticism. If so, then a fortiori they cannot view the Constitution as an inherently significant object of interpretation. Ethnocrats are not guilty of merely misinterpreting the Constitution; they are not interpreting the Constitution at all because ethnocracy is conceptually alien to that document. The argument proceeds as follows: I first explain the conceptual and normative structure of the ethnocratic political paradigm and its companion conception of legal authority as requiring a legally unlimited government designed to ensure social stability. Then I show how the leading judgment of the Malaysian Federal Court in the so-called Allah-Herald Case, which asserts the legal legitimacy of ethnocratic rule by reference to the Malaysian social contract and the Constitution fails to fulfill the epistemic requirements of good faith constitutional interpretation, a failure that arises because ethnocratic rule is conceptually alien to the Malaysian Constitution.

ABOUT THE SPEAKER



Dr. Rueban Balasubramaniam is an Associate Professor of Law and Legal Studies at Carleton University, Canada. He did his doctoral work in law at the University of Toronto. His principal area of research in legal philosophy has been on the subject of legal pathology or "rule by law" as this problem relates to the Malaysian context. His most recent article is entitled "What is Rule by Law?" (2015) 42:2 *Journal of Malaysian and Comparative Law* 99-121. Presently, he is working on a book that sets out a theory of the Malaysian Constitution entitled "A New Social Contract for Malaysia."

REGISTRATION

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

A light lunch will be provided on a first-come-first-serve basis.

Closing Date: **17 October 2016, Monday**

For enquiries, please contact Haikel at cals@nus.edu.sg

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