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RESEARCH WORKSHOP ABSTRACT

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Constitutional Narratives: Australia and Malaysia Compared

Constitutions are, in part, a story that a country tells about itself. In this presentation, I argue that we can have a richer, deeper insight into what interpretative decisions judges make and why they make them if we pay attention to the idea of constitutional narrative in judicial interpretations of the Constitution. For this purpose, constitutional narrative refers to a culturally and legally created story about the role, purpose, history and relevance of the Constitution in a particular society. It is related to but distinct from concepts such as culture, ideology or politics and allows judges engaged in constitutional adjudication to navigate some of the difficulties of this task. This is not to suggest that judges consciously and deliberately adopt a story of the constitution in the way that some of them might adopt a particular interpretative theory or political philosophy. Rather, the narratives work below the level of conscious decision making in most cases, affecting the decision to adopt more specific interpretative approaches and informing the judicial approach to the 'big picture' questions of constitutionality around the purpose of the constitution and the role of the key constitutional actors. Different narratives justify different forms of judicial interpretation and legitimise certain forms of adjudication. By reference cases of the constitutional religion clauses, I will illustrate the way in which Australian and Malaysian constitutional adjudication are each caught between two competing narratives and that the outcome of key cases can be better understood by uncovering those narrative tensions.