COVID-19 as an Opportunity for Democratic Consolidation?

Law, Politics, and Citizen-State Interactions in Singapore

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The Covid-19 pandemic has tested the legal, political, economic and public health systems of countries all over the world, and Singapore – particularly as it found itself having to hold a general election in the middle of the pandemic – is no exception. However, it does seem that the pandemic has created opportunities for consolidation of democracy in Singapore as a result of increased citizen-state interactions during this time.

The Executive and Use of Powers in Response to Emergency

Singapore's "legislative approach" in countering the outbreak of Covid-19 assiduously avoids invoking emergency powers and even the more drastic terminology of a "lockdown". The Covid-19 (Temporary Measures) Act (CTMA), passed on an urgent basis, was more wide-ranging than the existing Infectious Diseases Act, which had already been shored up to deal with the SARS outbreak in 2003. CTMA granted broad powers to the Minister of Health to enact control orders if satisfied that "the incidence and transmission of COVID-19 in the community in Singapore constitutes a serious threat to public health" and that the control order is "necessary or expedient" to supplement other legislation, particularly the Infectious Diseases Act. It also provides, notwithstanding existing legislation, for court proceedings using remote conferencing technology. In the private law realm, the law also introduced critical temporary measures granting relief to financially distressed individuals and businesses, amending statutes such as the Bankruptcy Act and the Companies Act.

The Ministry of Health enacted subsidiary legislation, the COVID-19 (Temporary Measures) (Control Order) Regulations 2020 (Regulations), the very same day, the effect of which were previously summarised here. Singapore ended its "circuit breaker" (the government avoided the term "lockdown") on 2 June 2020, entering into "Phase 2" of its schedule of restrictions easing. "Phase 3" commenced on 28 December 2020, with the Regulations amended each time to reflect the updated measures.

Legislative and Judicial Oversight

The Health Ministry's broad regulatory powers under CTMA are checked by (i) subjecting all control orders to parliamentary oversight, including by requiring all control orders and amendments thereto to be presented to Parliament "as soon as possible"; and (ii) prescribing a one-year time limit from the entry into force of the relevant provisions. (This time limit on the Health Minister's powers is twice as long as the six months validity the Constitution grants to Proclamations of Emergency.) This means that the Regulations will expire on 7 April 2021, unless extended by Parliament.

Neither CTMA nor the Regulations provide specific recourse mechanisms against state authorities in relation to the promulgation or enforcement of control orders, but the usual administrative law rules and remedies are likely to apply. It remains to be seen how the courts will interpret s 35(8) of CTMA, which provides that enforcement officers bear no legal liability so long as they act in "good faith and with reasonable care", should the issue arise. Preliminarily, it seems likely that it will be characterised as an immunity clause (which does not exclude the courts' jurisdiction or authority to act) and not a clause ousting

judicial review, quite apart from the question of whether ouster clauses are constitutional.

Whereas similar measures in some countries have encountered protests and resistance, there has been little vocal opposition in Singapore. In this sense, the situation in Singapore is much like that in South Korea, Taiwan, and Japan. The question of "why" is a complex one beyond the scope of this post, and indeed beyond the realm of law. As a starting point, and as previously argued, it would be too simplistic to attribute this to "authoritarianism". It is important to note that the legitimacy of these measures has hinged not only on their legal basis, but, perhaps more importantly, on the government's proactive strategy of communication. At the highest political level, the Prime Minister addressed the population at nearly every major stage of the evolution of the public health situation and of government policy. Relevant ministers and bureaucrats gave regular press briefings. The government also set up a WhatsApp channel (with currently over a million subscribers) and a Telegram channel to send updates directly to members of the public, including daily details of new, discharged, critical, and recovering Covid-19 cases. These channels have allowed the government to manage the flow of credible information and counter the spread of any problematic false information on the pandemic rapidly.

Parliamentary Democracy: Consolidation

The pandemic could be said to have ushered in a more robust form of democratic government in Singapore. We observe this in four ways.

The first is the commitment of the government to ensuring the continued functioning of Parliament. Parliament is not only an organ of democracy, but, in parliamentary democracies, also its most visible symbol. Its continued functioning is existential. Crucially therefore, in May 2020, the Singapore Parliament amended the Constitution to create a mechanism for meetings to take place with members in different places but in contemporaneous communication – arguably procedurally extraordinary but substantively limited. All members of Parliament, including those in the opposition, voted unanimously for the amendments. The Amendment Bill provided that this mechanism would be active for six months after it came into force, and that it can be subsequently activated for six months at a time if members consider that it is impossible, unsafe or inexpedient for Parliament to meet in one place. The mechanism was used for the first time at the Opening of Parliament following the July 2020 parliamentary elections (more below). The mechanism has since lapsed after the six months mark, and Parliament will have to reactivate the mechanism if necessary in the future.

Secondly, unlike in some countries where emergency proclamations delayed elections, Singapore organised general elections on 10 July 2020, some nine months before the current Parliament's term expired. Critics may argue that this is opportunistic, especially in light of calls by some opposition leaders for general elections to be delayed in light of the pandemic. However, with the end of the pandemic not in sight, even today, this was perhaps not the most objectionable timing. In calling the election, the Prime Minister specifically highlighted the need to seek a new mandate to respond to Covid-19 and its consequences. Measures were taken to address limitations arising from Covid-19. The Parliamentary Elections (COVID-19 Special Arrangements) Act was passed to allow political candidates, if ill, to file nomination papers electronically, and to allow voters subject to control orders to vote at facilities outside their electoral divisions. These measures have limited temporal remit; "election" is defined in the Act as "an election… held on or before 14 April 2021". An urgent constitutional challenge arguing that calling the election in the middle of a pandemic was contrary to the right to vote was dismissed ex tempore by Singapore's highest court.

Thirdly, the 2020 election is widely seen as a watershed election, with the largest opposition party winning 10 seats in Parliament, the highest number won by an opposition party in Singapore's post-independence history. This prompted the establishment of a formal office of the Leader of the Opposition, heralding an even more robust role for the opposition going

forward. There was some handwringing within the incumbent party, which won 61.2% of the vote – a solid victory by any global standard, but which represented a nearly 9% drop from its share in the last election (in 2015), and just slightly above its record low of 60.1% (in 2011). Further study is needed on exactly how and to what extent Covid-19 affected the election outcome, but preliminary data shows that it was likely a key election issue.

Lastly, citizens appear to be more engaged in political matters during this period, raising dissent that has eventually led to changes in policy. For instance, the debates in Parliament as to constitutional amendments to allow continuity arrangements (above) revived the question of livestreaming parliamentary proceedings, hitherto a contested proposition within and outside Parliament, generally along party lines. This appears to have led to the livestreaming of parliamentary proceedings for the first time, garnering more than 80,000 views.

Another important debate that was revived during this time addresses the rights of overseas voters. With 17 days between the writ of election and polling day, overseas Singaporeans outside the 10 cities with designated overseas polling stations found it nigh-impossible to cast their votes given travel restrictions and quarantine requirements. A group of them urged the government to examine alternatives that would enable them to vote in the election. The spotlight on the voting obstacles faced by overseas Singaporeans revived debates as to the nature and scope of the right to vote within Singapore's constitutional framework.

A Matter of Trust: Civil Liberties without Rights-Adjudication

Unlike in some countries, where courts were asked to adjudicate upon questions of whether Covid-19 measures violated constitutional and internationally protected rights, there were no such efforts in Singapore. Any discontent was directed at efficacy of the measures, rather than questioning whether the social-distancing and mask-wearing restrictions were necessary. The legitimacy of government and its actions in Singapore is largely based on its performance. Such performance legitimacy however requires a strong relationship of trust between the people and the government. These complex dynamics of performance legitimacy and trust in Singapore's semi-competitive dominant-party democracy was laid bare in the public backlash and the government's response to the use of contact tracing data.

After months of promising that data collected by a contact tracing technology called "TraceTogether" would only be used, where necessary, for contact tracing purposes, it was subsequently revealed during parliamentary question time that the data remains subject to the generally applicable Criminal Procedure Code. This means that the data could be used in criminal investigations, and had in fact been used in investigations in one murder case. The public outrage was swift and loud – reflecting a sense of betrayal of trust. The government first sought to address this by clarifying that the data would only be used for "very serious offences" as a matter of police discretion. Subsequently, presumably because this was thought insufficient to assuage public sentiment, the government promised to introduce expedited legislation to this effect.

A World Apart: Low-Wage Migrant Workers

The Covid-19 outbreak also brought to the fore public discussion on the living conditions of migrant workers in Singapore. Despite Singapore's early success in containing its spread, it was the rapid increase of Covid-19 cases in the crowded dormitories, in which most of Singapore's 350,0000 low-wage migrants who work in the construction and marine shipyard sectors live, that essentially forced Singapore to adopt the "circuit breaker" measures introduced by the CTMA. In fact, 93% of Singapore's approximately 59,000 Covid-19 cases to date have affected migrant workers. 47% of workers in dormitories have suffered from Covid-19, as compared to a 0.25% rate among the rest of the population. Despite an early government statement that migrant workers are "generally young, and thus much less likely to become seriously ill with COVID-19", at least one medical study has documented catastrophic long-term illnesses among some

migrant workers who were initially asymptomatic – consistent with a growing body of medical knowledge on potential long-term effects of Covid-19.

The crisis prompted the Prime Minister to directly address migrant workers in his addresses to the nation, promising "we will care for you, just like we care for Singaporeans". This message was reinforced in an unprecedented address on International Migrants' Day, describing migrant workers as "members of our society". To our knowledge, this was the first time a political leader directly addressed migrant workers as a constituency, for whose welfare Singapore's leaders are responsible. In light of the longstanding premise of Singapore's migrant labour regime as based on developmentalist and law-and-order logics, rather than on migrant workers as rights-holders, this is significant. The government recently announced that all migrant workers, like citizens and long-term residents, will receive Covid-19 vaccinations free-of-charge (albeit this would arguably have been necessitated by public health policy in any case). Nonetheless, more will need to be done to ensure that migrant workers are not disproportionately burdened by Covid-19 measures, including being subjected to more onerous controls than the rest of the population (as they currently are, under post-"circuit breaker" amendments to the Employment of Foreign Manpower (Work Pass) Regulations, rather than CTMA). There are serious concerns that prolonged lockdowns (among other factors) have taken a toll on the mental health of migrant workers, including leading to self-harm and suicides.

Conclusion: Who is the Political Community?

Whereas the pandemic has resulted in political upheaval and even democratic backsliding in many countries, Singapore's legal and political institutions have generally proven resilient, and the crises presented by Covid-19 have arguably raised political consciousness and encouraged citizens to be more participatory. It should also encourage Singapore to confront more fundamental questions as to the nature of its democracy and the identity of its political community. More than one million foreigners work in Singapore, of whom nearly a million are low-wage migrants on Work Permits, out of a total population of 5.69 million. Many Singaporean families now include non-citizen members. Besides migrant workers in dormitories, the pandemic also spotlighted the long-existing vulnerabilities of other key communities, such as foreign domestic workers, and migrant wives without long-term residence rights in Singapore. In the starkly interconnected world that globalisation has built and Covid-19 has thrown into sharp relief, democracy may require interrogating what it means to live together and what we owe to one another, in a manner faithful to the dignity of the human person. It may well be that, ultimately, we are only as strong as our most vulnerable.

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