

COVID-19 IN SINGAPORE: ‘RESPONSIVE COMMUNITARIANISM’ AND THE LEGISLATIVE APPROACH TO THE “MOST SERIOUS CRISIS” SINCE INDEPENDENCE

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The Singapore government has called the COVID-19 pandemic “the most serious crisis” that Singapore has faced since Independence. However, Singapore did not issue a Proclamation of Emergency. Instead, it adopted a ‘legislative model’ of emergency powers, addressing COVID-19 through ordinary legislation, including and especially the new *COVID-19 (Temporary Measures) Act 2020*. Despite the sweeping nature of the powers thereunder, the government has exercised a calibrated approach in its measures, shaped by communitarian norms and high level of responsiveness towards the needs of members of the Singapore community, albeit not without its weaknesses. This article thus makes the case that Singapore’s response to COVID-19 has been characterised by two main features: a legislative emergency in law and ‘responsive communitarianism’ in practice. It argues that COVID-19 has seen the further concentration of executive power where the law is increasingly instrumentalised as a tool towards social and political priorities.

I. INTRODUCTION

The Singapore government called the coronavirus disease (“COVID-19”) pandemic “the most serious crisis” that Singapore has faced since Independence in 1965,¹ and “the gravest crisis the world has faced in a century”.² Even as other states within Southeast Asia such as Thailand³ and the Philippines⁴ issued declarations of

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¹ *Parliamentary Debates Singapore: Official Report*, vol 94 (7 April 2020) (K Shanmugam) [*Parliamentary Debates*, 7 April 2020].

² Prime Minister’s Office, “Written Statement by PM Lee Hsien Loong at the Extraordinary Virtual G20 Leaders’ Summit” (26 March 2020).

³ Prime Minister of Thailand, “Declaration of an Emergency Situation in all areas of the Kingdom of Thailand as from 26 March B.E. 2563 (2020)” (25 March 2020).

⁴ President of the Philippines, “Proclamation No 922 Declaring a State of Public Health Emergency Throughout the Philippines” (8 March 2020); President of the Philippines, “Proclamation No 929 Declaring a State of Calamity Throughout the Philippines Due to Corona Virus Disease 2019” (16 March 2020).

emergency in light of COVID-19, Singapore refrained from doing so, thus keeping unbroken its record of having never issued a Proclamation of Emergency since Independence.

Despite initial successes in managing the spread of COVID-19 in Singapore without the need to lock the country down, the Singapore government announced a ‘circuit breaker’ in April 2020 to arrest the spread when the situation continued to deteriorate.⁵ Pursuant to powers under the new *COVID-19 (Temporary Measures) Act 2020*,⁶ the Health Minister ordered the closures of most workplaces, prohibited gatherings, and imposed restrictions on freedom of movement.⁷ Thus, Singapore adopted a ‘legislative model’ of emergency powers in response to COVID-19, addressing the pandemic through ordinary legislation that delegates significant authority to the executive, usually for a temporary period.⁸

Notwithstanding the exceptional measures taken, Singapore has adopted a calibrated response to COVID-19, based on cooperation at every level of society. Prime Minister Lee Hsien Loong credited Singapore’s initial successes to social capital and trust, stating that “if people do not trust you, even if you have the right measures, it is going to be very hard to get it implemented”.⁹ Governmental response has exhibited elements of a ‘responsive communitarian’ approach within the framework of a wider social compact, balancing the needs of the community against individual interests, while also responding to needs of members.¹⁰

This article makes the case that Singapore’s response to COVID-19 has been characterised by two main features: ‘legislative emergency’ in law and ‘responsive communitarianism’ in practice, while taking a further step towards the instrumentalisation of the law as a tool in the hands of the executive. Part II considers how a ‘legislative emergency’ blurs the norm-exception dichotomy in classical accounts of emergency powers by enacting emergency-like powers within the ‘normal’ order, as well as Singapore’s constitutional culture. Part III examines Singapore’s legislative response to the COVID-19 ‘emergency’, and the safeguards within and beyond the *CTMA*. Part IV elaborates on Singapore’s ‘responsive communitarian’ approach to COVID-19, and Part V considers whether the social compact is being expanded to accommodate foreigners, before concluding with some reflections on the ‘new normal’ in a post-pandemic world (Part VI).

⁵ Prime Minister’s Office, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 3 April 2020” (3 April 2020) [PM Lee on the COVID-19 situation on 3 April 2020].

⁶ *COVID-19 (Temporary Measures) Act 2020* (No 14 of 2020, Sing) [*CTMA*].

⁷ *Ibid*; *COVID-19 (Temporary Measures) (Control Order) Regulations* (No S 254 of 2020, Sing).

⁸ John Ferejohn & Pasquale Pasquino, “The law of the exception: A typology of emergency powers” (2004) 2:2 *Intl J Constitutional L* 210 [Ferejohn & Pasquino]; see Jaclyn Neo & Darius Lee, *Singapore’s Legislative Approach to the COVID-19 Public Health ‘Emergency’*, online: [Verfassungsblog <https://verfassungsblog.de/singapores-legislative-approach-to-the-covid-19-public-health-emergency>](https://verfassungsblog.de/singapores-legislative-approach-to-the-covid-19-public-health-emergency).

⁹ Prime Minister’s Office, “PM Lee Hsien Loong’s interview with CNN” (30 March 2020); Kenneth Cheng, “S’poreans’ co-operation with Govt, trust in mainstream media ‘a great help’ in managing Covid-19: PM Lee” *TODAY* (23 March 2020), online: [TODAY <https://www.todayonline.com/singapore/sporeans-cooperation-govt-trust-mainstream-media-great-help-managing-covid-19-pm-lee>](https://www.todayonline.com/singapore/sporeans-cooperation-govt-trust-mainstream-media-great-help-managing-covid-19-pm-lee).

¹⁰ Amitai Etzioni, “The Responsive Community: A Communitarian Perspective” (1996) 61:1 *American Sociological Rev* 1 at 5 [Etzioni, “The Responsive Community”].

II. NORMS, EXCEPTIONS AND THE ‘LEGISLATIVE EMERGENCY’

A classical account of emergency powers is premised on the distinction between the ‘normal’ constitutional order—involving robust checks and balances on government power, and strong protections of civil liberties—and a regime of ‘exception’ or emergency where the life of the nation is severely threatened, such as war or natural disasters. In the latter, ordinary legislative processes and constitutional liberties are suspended, and the executive is granted temporary and extraordinary powers to restore order and normalcy.¹¹

However, especially with the rise of global terrorism, governments around the world have increasingly adopted a ‘legislative model’ of emergency powers, where legislatures enact ordinary statutes that delegate temporary emergency-like powers to the executive to deal with exceptional circumstances.¹² While technically complying with democratic processes and the rule of law, such ‘legislative emergencies’ risk permanently diminishing the robustness of constitutional safeguards through the legislature’s implicit assumption that these powers are compatible with constitutional liberties in the ‘normal’ order; a view that may even be vindicated by courts by judicial deference to other branches of government or expansive interpretations of permissible limits on constitutional rights in light of severe threats to the nation.¹³

A. Emergencies Under the Singapore Constitution

Formally, Articles 149 and 150 of the *Constitution of the Republic of Singapore*¹⁴ reflect a regime of exception where the life of the nation is threatened. Whereas Article 149 of the *Singapore Constitution* empowers Parliament to enact legislation against subversion notwithstanding inconsistencies with various constitutional liberties, Article 150 empowers the President, acting in accordance with the advice of the Cabinet,¹⁵ to issue a Proclamation of Emergency if satisfied that “a grave emergency exists whereby the security or economic life of Singapore is threatened”.

With some limited exceptions,¹⁶ ordinary legislative processes and constitutional liberties are largely suspended in an emergency, and the President is empowered to

¹¹ Ferejohn & Pasquino, *supra* note 8 at 221-223; Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2005) at 5.

¹² Ferejohn & Pasquino, *supra* note 8 at 216-217. Oren Gross has referred to this as a “model of accommodation”; see Oren Gross, “Chaos and Rules: Should Responses to Violent Crises Always Be Constitutional?” (2003) 112 Yale LJ 1011 at 1011-1021, 1064-1068 [Gross].

¹³ Sascha Mueller, “Turning Emergency Powers Inside Out: Are Extraordinary Powers Creeping into Ordinary Legislation?” (2016) 18 Flinders LJ 295 at 305-309 [Mueller].

¹⁴ 1999 Rev Ed [*Singapore Constitution*].

¹⁵ *Singapore Constitution*, *supra* note 14, art 21(1); S Jayakumar, “Emergency Powers in Malaysia: Can the Yang Di-Pertuan Agong Act in His Personal Discretion and Capacity?” (1976) 18 Mal LR 149; see also *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at paras 19, 178-180 (CA) [*Yong Vui Kong (Clemency)*].

¹⁶ The only provisions that still require presidential assent are those relating specifically to the Central Provident Fund (*Singapore Constitution*, *supra* note 14, art 22E), laws circumventing or curtailing the President’s discretionary powers (*Singapore Constitution*, 22H), and the drawing down of past reserves for loans and guarantees (*Singapore Constitution*, art 144(2)) and Supply Bills (*Singapore Constitution*, art 148A). Constitutional rights are largely suspended except those relating to religion, citizenship, or language (*Singapore Constitution*, art 150(5)(b)(iii)).

promulgate ordinances having the force of law until Parliament convenes.¹⁷ Thereafter, these extraordinary powers are vested in Parliament,¹⁸ which also has the power under Article 150(3) to annul the proclamation and any ordinance promulgated the President. The Proclamation is valid for a period of six months, any ordinances and laws made during the period of emergency shall cease to have effect after the expiration of the period unless it was a law that could have been validly made apart from the Proclamation.¹⁹

Even though Article 150 has never been invoked in post-Independence Singapore, the prevailing political ethos has long been based on a heightened sense of vulnerability as a small island nation-state to internal and external threats owing to the tumultuous circumstances prior to Independence in 1965 (including two emergencies declared in 1948 and 1963 in response to internal and external armed violence respectively).²⁰ This is coupled with a strong emphasis on pragmatism, effectiveness and survival in governance. In the words of the first Prime Minister Lee Kuan Yew shortly after Independence, “[t]he main thing about the Constitution is that it must work”.²¹

Further paving the way for the concentration of emergency-like powers in the executive is Singapore’s adoption of a Westminster system of government, including the system’s “efficient secret” of a near-complete fusion between the legislature and executive in the form of the Cabinet,²² which is formed from members of the ruling party. The ruling People’s Action Party (“PAP”), which has been in power since Independence, has in turn embraced the Confucian concept of government by “honourable men” who have a duty to do right and have the trust and respect of the population.²³

With such strong emphasis on governmental effectiveness in dealing with internal and external threats, the conferral of emergency or emergency-like powers on the executive is relatively unexceptional in Singapore. Despite their original enactment in exceptional circumstances in 1955 and 1960, laws such as the *Criminal Law (Temporary Provisions) Act*²⁴ and *Internal Security Act*²⁵ have empowered the executive to exercise powers of preventive detention in the interests of public order and national security till today. Whereas the *ISA* was enacted pursuant to Article 149 for the constitutionally permissible purpose of national security, the *CLTPA* is an instance of emergency-like powers within the ‘normal’ constitutional order. Though formally legal, such extraordinary powers reduce the strength of constitutional safeguards,

¹⁷ *Singapore Constitution*, *supra* note 14, art 150(2); see United Kingdom, Colonial Office, Report of the Federation of Malaya Constitutional Commission, 1957 (“*Reid Commission Report*”) at para 175.

¹⁸ *Singapore Constitution*, *ibid*, art 150(4).

¹⁹ *Ibid*, art 150(6).

²⁰ *British Military Administration (Essential Regulations) Proclamation*, 18 June 1948; *Proclamation of Emergency*, L.N. 271/64.

²¹ *Parliamentary Debates Singapore: Official Report*, vol 24 at col 430 (22 December 1965) (Lee Kuan Yew); see also Sundaresh Menon, “Executive Power: Rethinking the Modalities of Control”, *Annual Bernstein Lecture in Comparative Law at Duke University School of Law* (1 November 2018) at paras 13-14 [Menon].

²² Walter Bagehot, *The English Constitution*, 2d ed (Boston: Little, Brown and Company, 1873) at 76.

²³ *White Paper on Shared Values* (Paper Cmd No 1 of 1991) at para 41 [*Shared Values White Paper*].

²⁴ *Criminal Law (Temporary Provisions) Act* (Cap 67, 2000 Rev Ed Sing) [*CLTPA*].

²⁵ *Internal Security Act* (Cap 143, 1985 Rev Ed) [*ISA*].

such as the right to liberty,²⁶ because of the wide discretion vested in the executive to curtail them.²⁷

B. Singapore's Constitutional Culture

Buttressing the conditions that permit a 'legislative model' of emergency powers are the communitarian principles ingrained in Singapore's constitutional culture, that is, the agglomeration of beliefs and attitudes that the people, judges, lawyers and the state hold toward the *Singapore Constitution* and constitutional law.²⁸ The prevailing value system prizes "nation before community and society above self",²⁹ whereas criminal law is seen as the public's expression of communitarian values to be promoted, defended and preserved.³⁰

In legal terms, the notion of trade-offs between individual rights and societal interests is well-established in Singapore's constitutional jurisprudence. Echoing Jean-Jacques Rousseau's lesser-known emphasis on *both rights and duties* of individuals in society Karthigesu JA opined that "every person's liberty is circumscribed by his moral and social obligations".³¹ Likewise, the courts have repeatedly held that the exercise individual rights such as freedom of speech, assembly, association or religion is "not absolute" but subject to wider public interests.³²

Coupled with the survivalist bent, Singapore's brand of communitarianism is both a feature and a flaw, owing to authoritarian tendencies and risk of exclusion of non-members.³³ Rousseau's controversial opinion thus accurately described a communitarian response in the context of COVID-19 when he stated that the "social compact" includes the tacit undertaking that "whoever refuses to obey the general will shall be compelled to do so by the whole body".³⁴

This was evident in an incident widely publicised on social media when a woman caught violating rules on mandatory face masks claimed to be "sovereign" and thus the police had "no say" over her.³⁵ Apart from ridicule from the public and legal

²⁶ *Singapore Constitution*, *supra* note 14, art 9.

²⁷ See Li-Ann Thio, "Lex Rex or Rex Lex? Competing Conceptions of the Rule of Law in Singapore" (2002) 20 UCLA Pac Basin LJ 1 [Thio, "Lex Rex or Rex Lex"].

²⁸ Kevin YL Tan, *The Constitution of Singapore: A Contextual Analysis* (London: Bloomsbury, 2015) at 58; see also Jaclyn L Neo, "Introduction: Judging the Singapore Constitution" in Jaclyn L Neo, ed. *Constitutional Interpretation in Singapore Theory and Practice* (London: Routledge, 2017) at 3.

²⁹ *Shared Values White Paper*, *supra* note 23 at para 52.

³⁰ *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR (R) 684 at para 17 (CA).

³¹ *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR (R) 78 at para 54 (HC) [*Taw Cheng Kong (HC)*]; David Lay Williams, *Rousseau's Social Contract: An Introduction* (New York: Cambridge University Press, 2014) at 23-25 [Williams].

³² See, for example, *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR (R) 582 at para 42 (HC) [*Chee Siok Chin*]; *Ng Chye Huay v Public Prosecutor* [2006] 1 SLR (R) 157 at para 44 (HC); *Vijaya Kumar s/o Rajendran v Attorney-General* [2015] SGHC 244 at para 29.

³³ Williams, *supra* note 31 at 55-56; Etzioni, "The Responsive Community", *supra* note 10 at 9-10.

³⁴ Jean-Jacques Rousseau, *The Social Contract and Discourses* (London: J M Dent & Sons Ltd, 1923) at 18-19.

³⁵ Shaffiq Alkhatib, "Sovereign' woman accused of failing to wear mask in public faces two additional charges" *The Straits Times* (19 May 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/courts-crime/sovereign-woman-accused-of-failing-to-wear-mask-in-public-faces-two>>.

sanction, she drew a rebuke from Home Affairs and Law Minister K Shanmugam who, comparing her views to those of the anarchist ‘Sovereign Citizen Movement’ in the United States, said that “she should not expect any of the benefits that come from [Singapore’s] system of governance”.³⁶

Finally, separate branches of governments have tended to close ranks and adopt a unified approach, especially in response to threats, owing to a constitutional attitude of “consensus instead of contention” and conflict-avoidance.³⁷ While respecting the separation of powers, the relationship between the legislative, judicial and executive branches of government has been characterised by the Chief Justice as one of “partnership and cooperation within a framework of governance and legality”.³⁸ This commitment to non-confrontational modes of discourse is reflected not only in public institutions, but also private law, where the Court of Appeal spoke of Singapore’s “cultural value of promoting consensus whenever possible” when upholding a contractual obligation to negotiate in good faith.³⁹

III. COVID-19: A LEGISLATIVE RESPONSE

When the World Health Organization (“WHO”) declared the “novel coronavirus” to be a Public Health Emergency of International Concern in accordance with the International Health Regulations on 30 January 2020, there were still “many unknowns”.⁴⁰ This necessitated the deployment of *ex ante* precautionary and pre-emptive measures to prevent the spread, and swift responses to rapidly-changing situations that other branches of government were less capable of employing due to their slower deliberative and, in the case of the judiciary, *ex post* nature of their action. There is little doubt that the executive branch of government is the best placed—and indeed, has both the power and duty—to handle a public health emergency of this nature.

On top of the abovementioned features of Singapore’s constitutional culture, the Singapore government’s choice of a legislative response to COVID-19 was further facilitated by the ease by which the government could pass new laws without significant opposition. The ruling PAP had 82 out of 89 elected Members of Parliament belonging to the party at the start of the outbreak.⁴¹ Furthermore, the government had

³⁶ K Shanmugam SC, “In the past few days, several have shared a video of a lady, refusing to obey instructions from officers, not wearing a mask, and saying she is “Sovereign.” (4 May 2020), posted on *K Shanmugam Sc*, online: Facebook <<https://www.facebook.com/k.shanmugam.page/posts/3002307669815743>>; Federal Bureau of Investigation, United States of America, “Domestic Terrorism: The Sovereign Citizen Movement” (13 April 2010), online: <https://archives.fbi.gov/archives/news/stories/2010/april/sovereigncitizens_041310>.

³⁷ *Shared Values White Paper*, *supra* note 23 at para 52.

³⁸ Menon, *supra* note 21 at paras 15-44.

³⁹ *HSBC Institutional Trust Services (Singapore) Ltd (trustee of Starhill Global Real Estate Investment Trust) v Toshin Development Singapore Pte Ltd* [2012] SLR (R) 738 at para 40 (CA).

⁴⁰ World Health Organization, “Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)” (30 January 2020); World Health Organization, *International Health Regulations (2005)*, 2nd ed, art 12.

⁴¹ The People’s Action Party had 83 elected Members of Parliament, after winning 83 out of 89 seats in the 2015 general elections. Madam Halimah Yacob vacated her seat in the Marsiling-Yew Tee Group Representation Constituency (“GRC”) when she resigned in order to contest in the 2017 Presidential

the benefit of some degree of social capital and trust accumulated prior to the COVID-19 pandemic,⁴² and surveys found high levels of satisfaction among Singaporeans in the government's responses to COVID-19.⁴³

A. Early Stages of Singapore's Response to COVID-19

Singapore was highly vulnerable to a global pandemic, being a small, densely populated and highly globalised city-state with a resident population of approximately 5.7 million, of whom around 1.7 million are foreigners.⁴⁴ Prior to the outbreak, Changi Airport was the seventh-busiest international airport in the world.⁴⁵

As early as 3 January 2020, Singapore began implementing temperature screening at Changi Airport for inbound travellers arriving on flights from Wuhan,⁴⁶ which was expanded to all inbound travellers from China on 22 January.⁴⁷ These were similar to measures first applied during the SARS (Severe Acute Respiratory Syndrome) epidemic in 2003.⁴⁸

On 28 January, Singapore began to quarantine "higher risk" travellers from Hubei, closing its borders the next day to new visitors with recent travel history to Hubei and those with Chinese passports issued in Hubei.⁴⁹ The travel ban was extended to

Election. The Court of Appeal held that the Constitution did not require the holding of a by-election for the GRC to fill the seat. See *Wong Souk Yee v Attorney-General* [2019] 1 SLR 1223 (CA).

⁴² Kenneth Cheng, "Singaporeans' co-operation with Govt, trust in mainstream media 'a great help' in managing Covid-19: PM Lee" *TODAY* (23 March 2020), online: TODAY <<https://www.todayonline.com/singapore/singaporeans-cooperation-govt-trust-mainstream-media-great-help-managing-covid-19-pm-lee>>.

⁴³ Blackbox, "Government Satisfaction Index (GSI): (April 2020)" (23 May 2020), online: Blackbox <<https://blackbox.com.sg/everyone/2020/05/23/government-satisfaction-index-gsi-april-2020>>; Blackbox, "Most countries' COVID-19 responses rated poorly by own citizens in first-of-its-kind global survey" (6 May 2020), online: Blackbox <<https://blackbox.com.sg/everyone/2020/05/06/most-countries-covid-19-responses-rated-poorly-by-own-citizens-in-first-of-its-kind-global-survey>>.

⁴⁴ Department of Statistics, Ministry of Trade & Industry, *Population Trends 2019* (Singapore: Department of Statistics, September 2019).

⁴⁵ Wong Kai Yi, "Changi Airport on track for record passenger numbers in 2019" *The Straits Times* (2 January 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/transport/changi-on-track-for-record-passenger-numbers-in-2019>>.

⁴⁶ Ministry of Health, "Precautionary Measures in Response to Severe Pneumonia Cases in Wuhan, China" (2 January 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/precautionary-measures-in-response-to-severe-pneumonia-cases-in-wuhan-china>>.

⁴⁷ Ministry of Health, "Additional Precautionary Measures in Response to Novel Coronavirus Pneumonia in China" (21 January 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-precautionary-measures-in-response-to-novel-coronavirus-pneumonia-in-china>>.

⁴⁸ "Singapore looks for SARS hot-heads" *CNN* (17 April 2003), online: CNN <<https://edition.cnn.com/2003/WORLD/asiapcf/southeast/04/17/singapore.screening/>>; Ministry of Health, "Cessation of Temperature Screening at Border Checkpoints and Termination of 993 Ambulance Services" (8 June 2004), online: Ministry of Transport <<https://www.mot.gov.sg/news-centre/news/Detail/Cessation%20Of%20Temperature%20Screening%20At%20Border%20Checkpoints%20And%20Termination%20Of%20993%20Ambulance%20Services/>>.

⁴⁹ Ministry of Health, "Additional Precautionary Measures to Minimise Risk of Community Spread in Singapore" (28 January 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-precautionary-measures-to-minimise-risk-of-community-spread-in-singapore>>.

mainland China as of 2359 hours on 1 February.⁵⁰ As the situation intensified worldwide in March, Singapore progressively extended the bans beyond South Korea, Iran and northern Italy to other countries.⁵¹ As of 2359 hours on 23 March, twelve days after WHO declared COVID-19 a global pandemic, Singapore closed its borders to all short-term visitors worldwide.⁵²

Before Singapore announced its first confirmed case of COVID-19 on 23 January, the government established the Multi-Ministry Taskforce (“MTF”), co-chaired by the Ministers for Health and National Development, as part of its whole-of-government approach.⁵³ Singapore raised its colour-coded Disease Outbreak Response System Condition (“DORSCON”) level to Orange on 7 February 2020, indicating that the disease was severe and spread easily from person to person, but had not spread widely in Singapore and was being contained.⁵⁴ In response to the ensuing wave of panic buying that followed the DORSCON Orange announcement, the Prime Minister delivered his first national address on COVID-19, calling for calm and assuring that the government was “not locking down the city or confining everybody to stay at home”;⁵⁵ inadvertently associating a lockdown with a state of panic.

At the same time, the government took incremental steps to slow the spread of COVID-19, strengthening the number of tools at its disposal. Originally, returnees from overseas were put on leaves-of-absence (“LOAs”) as precautionary measures against the spread, but the government strengthened the measure by implementing the new Stay-Home-Notice (“SHN”) on 17 February.⁵⁶ While LOAs permitted

⁵⁰ Ministry of Health, “Extension of Precautionary Measures to Minimise Risk of Community Spread in Singapore” (31 January 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/extension-of-precautionary-measures-to-minimise-risk-of-community-spread-in-singapore>>.

⁵¹ Ministry of Health, “Additional Precautionary Measures in Response to Escalating Global Situation” (3 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-precautionary-measures-in-response-to-escalating-global-situation>>; Ministry of Health, “Additional Precautionary Measures to Prevent Further Importation of COVID-19 Cases” (15 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-precautionary-measures-to-prevent-further-importation-of-covid-19-cases>>.

⁵² World Health Organization, “WHO Director-General’s opening remarks at the media briefing on COVID-19” (11 March 2020), online: World Health Organization <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19—11-march-2020>>; Ministry of Health, “Additional Border Control Measures to Reduce Further Importation of COVID-19 Cases” (22 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-border-control-measures-to-reduce-further-importation-of-covid-19-cases>>.

⁵³ Ministry of Health, “Multi-Ministry Taskforce on Wuhan Coronavirus: Terms of Reference and Composition” (27 January 2020), online: Ministry of Health: <<https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/multi-ministry-taskforce-on-wuhan-coronavirus-and-tor—final.pdf>>. The Multi-Ministry Taskforce was established before Singapore confirmed its first imported case of COVID-19 on 23 January 2020.

⁵⁴ Ministry of Health, “Risk Assessment Raised to DORSCON Orange” (7 February 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/risk-assessment-raised-to-dorscon-orange>>.

⁵⁵ Prime Minister’s Office, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 8 February 2020” (8 February 2020), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-on-the-Novel-Coronavirus-nCoV-Situation-in-Singapore-on-8-February-2020>>.

⁵⁶ Ministry of Health, “Implementation of New Stay-at-Home Notice” (17 February 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/implementation-of-new-stay-at-home-notice>>.

individuals to leave home briefly to attend to matters, SHNs are stricter and do not permit the individual to leave home. Like quarantine orders (“QOs”), SHNs are issued under the *Infectious Diseases Act*⁵⁷ and carry criminal penalties for non-compliance. To prevent the spread within the community, the MTF progressively ramped up its measures, eventually restricting gatherings to group sizes of 10 people, mandating “safe distancing” for seating and queues, and requiring employers to implement telecommuting for work unless it is not reasonably practicable to do so.⁵⁸

Like many nations around the world, Singapore, had to strike a balance between safeguarding lives and livelihoods in addressing COVID-19; it sought to protect public health while minimising and mitigating the economic impact of the public health measures.⁵⁹ Until the beginning of April, the measures had been applied pursuant to powers under the *IDA*, which had been strengthened during the global SARS outbreak in 2002 and 2003.⁶⁰ This was coupled with border control powers under the *Immigration Act*,⁶¹ which delegated powers to the Minister of Home Affairs to impose regulate or restrict cross-border travel.

B. Legislative Response and the ‘Circuit Breaker’

Singapore’s initial response to COVID-19 won early praise from observers for controlling the spread without the need to impose a lockdown,⁶² even as the neighbouring Malaysia announced the initial phase of its Movement Control Order (“MCO”) on 16 March.⁶³ In fact, during this time, government ministers actively posted pictures on social media of their gatherings and activities in public, encouraging people to live “as normally as possible”.⁶⁴ In early March, the Prime Minister even encouraged visits

⁵⁷ *Infectious Diseases Act* (Cap 137, 2003 Rev Ed Sing), ss 15(b), 65 [*IDA*].

⁵⁸ *IDA, ibid; Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations* (No S 185 of 2020, Sing); *Infectious Diseases (Workplace Measures to Prevent Spread of COVID-19) Regulations* (No S 235 of 2020, Sing).

⁵⁹ See, for example, Ministry of National Development, “Ministerial Statement by Minister Lawrence Wong on Update on Whole-of-Government Response to COVID-19” (25 March 2020), online: Ministry of National Development <<https://www.mnd.gov.sg/newsroom/speeches/view/ministerial-statement-by-minister-lawrence-wong-on-update-on-whole-of-government-response-to-covid-19-3>>.

⁶⁰ *Infectious Diseases (Amendment) Act 2003* (No 5 of 2003, Sing); *Infectious Diseases (Amendment No. 2) Act 2003* (No 7 of 2003, Sing).

⁶¹ *Immigration Act* (Cap 133, 2008 Rev Ed Sing).

⁶² Dale Fisher, “Why Singapore’s coronavirus response worked—and what we can all learn” *The Conversation*, (18 March 2020), online: *The Conversation* <<https://theconversation.com/why-singapores-coronavirus-response-worked-and-what-we-can-all-learn-134024>>; Audrey Cher, “Countries in lockdown should do what Singapore has done, says coronavirus expert” *CNBC News* (31 March 2020), online: *CNBC News* <<https://www.cnb.com/2020/03/31/countries-in-lockdown-should-try-what-singapore-is-doing-coronavirus-expert.html>>.

⁶³ Prime Minister’s Office, “Speech by Y.A.B. Tan Sri Muhyiddin H.J. Mohd. Yassin, Prime Minister of Malaysia” (16 March 2020).

⁶⁴ Chan Chun Sing, “Visit to Tanglin Halt Market.” (22 February 2020), posted on *Chan Chun Sing*, online: Facebook <<https://www.facebook.com/ChanChunSing.SG/posts/2989954964389800>>; K Shanmugam SC, “Chong Pang CNY dinner” (16 February 2020), posted on *K Shanmugam Sc*, online: Facebook <<https://www.facebook.com/k.shanmugam.page/posts/2824165237629988>>; Masagos Zulkifli, “It is important to stay active and healthy, while practising good hygiene in the

and staycations at local attractions and hotels, in efforts to mitigate the economic impact on the tourism industry.⁶⁵

Despite the measures taken by the government, the number of infections continued to increase in Singapore and the proportion of cases arising from community spread continued to rise.⁶⁶ On 3 April, the Prime Minister gave a televised address announcing a “decisive move” to “pre-empt escalating infections” under a series of ‘circuit breaker’ measures.⁶⁷

Since the existing powers under the *IDA* were deemed insufficient to impose the ‘circuit breaker’, the *COVID-19 (Temporary Measures) Bill* was laid before Parliament on 7 April. It was described as a “*Noah’s Ark*”, containing a host of different measures added by various government ministries over time with concerns ranging from contracts and insolvency relief to meetings and court hearings, taxes and, finally, the ‘circuit breaker’.⁶⁸ The Singapore government evidently had no doubt that the Bill would pass since, on the day that it was debated in Parliament, the Ministry of the Environment and Water Resources (“MEWR”) had already deployed its officers and issued more than 7,000 written advisories by 8pm that evening.⁶⁹ The Bill was expedited through Parliament pursuant to a Certificate of Urgency, passed the same day, and the *COVID-19 (Temporary Measures) (Control Order) Regulations*⁷⁰ were gazetted just before midnight.

Through the *CTMA*,⁷¹ the legislature vested vast rulemaking powers and discretion in the Health Minister, who may pass a control order pursuant to two cumulative requirements: firstly, the Minister must be “satisfied” that “the incidence and transmission of COVID-19 in the community in Singapore constitutes a serious threat to public health” and secondly, that the “control order is necessary or expedient to supplement the *Infectious Diseases Act* and any other written law.”

Control orders may entail requiring people to stay at or in, and not leave, a specified place; restrict movement of or contact between people; require premises or facilities to be closed or be subject to limited access; restrict the time, manner, or extent for the carrying out of any business, undertaking or work; and prohibit or restrict the conduct of or participation in any event or gathering.⁷² Taking reference from the existing framework under the *IDA*, the penalties for violation were fines of up to \$10,000 or imprisonment for up to 6 months or both, doubled for second

current COVID-19 situation.” (2 March 2020), posted on *Masagos Zulkifli*, online: Facebook <<https://www.facebook.com/masagos/posts/1435739323253747>>.

⁶⁵ Lee Hsien Loong, “Jurong Bird Park #jalanjalan” (2 March 2020), posted on *Lee Hsien Loong*, online: <<https://www.facebook.com/leehsienloong/posts/3088354714560547>>.

⁶⁶ Ministry of Health, “Five More Cases Discharged; 74 New Cases of COVID-19 Infection Confirmed” (1 April 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/five-more-cases-discharged-74-new-cases-of-covid-19-infection-confirmed>>.

⁶⁷ PM Lee on the COVID-19 situation on 3 April 2020, *supra* note 5.

⁶⁸ *Parliamentary Debates*, 7 April 2020, *supra* note 1.

⁶⁹ Ministry of the Environment and Water Resources, “Press Release on Penalties and Enforcement Actions against Breaches of Elevated Safe Distancing Measures in Public Spaces in HDB Estates” (7 April 2020), online: <<https://www.mse.gov.sg/news/press-release-on-penalties-and-enforcement-actions-against-breaches-of-elevated-safe-distancing-measures-in-public-spaces-in-hdb-estates>>.

⁷⁰ *CTMA*, *supra* note 6; *COVID-19 (Temporary Measures) (Control Order) Regulations* (No S 254 of 2020, Sing) [*Control Order Regulations*].

⁷¹ *CTMA*, *ibid*, s 34(1).

⁷² *Ibid* at s 34(2).

or subsequent offences.⁷³ The *CTMA* also enabled the requisition of resources by empowering the Minister to decide whether the deployment of any land, undertaking or other resources for the purpose of the control order is necessary.⁷⁴

Despite the scope of the powers and the exceptional circumstances of its passage, no emergency powers were invoked in order to pass the *CTMA*. Thus, Singapore joined other common law jurisdictions like the United Kingdom,⁷⁵ Malaysia⁷⁶ and India⁷⁷ in imposing lockdowns pursuant to ordinary (non-emergency) legislation in response to COVID-19.

C. Safeguards Against Abuses of Power

The ‘circuit breaker’ began for an initial period from 7 April to 4 May 2020 (both dates inclusive), but was extended by four weeks when there was an unexpected outbreak in the migrant workers’ dormitories.⁷⁸ Notwithstanding the numerous constitutional rights that the *CTMA* may affect, the conferral of such extensive powers to the executive *sans* a state of emergency reflects an implicit understanding on the part of the legislature that such restrictions are compatible with the ‘normal’ constitutional order, including the rights protections thereunder. Hence, apart from concerns about provoking public panic, another possible reason why the government did not issue a Proclamation of Emergency was because an emergency was deemed legally unnecessary.

At the same time, as the *CTMA* was enacted within the ‘normal’ framework, all the usual protections under the constitutional have not been suspended and continue to apply. Oversight of emergency-like powers exists not only *ex ante* and *ex post*, but also in the interim.⁷⁹ Yet, as the analysis below will show, legal safeguards against the abuse of the emergency-like powers under the *CTMA* are relatively thin, whereas extra-legal control through the ballot box may be, relatively speaking, the strongest safeguard.

1. Safeguards within the COVID-19 (Temporary Measures) Act

Legislative emergency powers ought to be temporary and “conservative” in principle, aimed at restoring the constitutional status quo.⁸⁰ Consonant with this aim

⁷³ *Ibid* at ss 34(7), 35(11); *Parliamentary Debates*, 7 April 2020, *supra* note 1 (Gan Kim Yong).

⁷⁴ *CTMA*, *supra* note 6, s 34(8).

⁷⁵ *Public Health (Control of Disease Act) 1984*, 1984, c. 22; *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020*, S.I. 350/2020; *Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020*, S.I. 353/2020 (W. 80).

⁷⁶ *Prevention and Control of Infectious Diseases Act 1988* (Act No 342 of 1988); *Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020*, P.U. (A) 91 of 2020.

⁷⁷ *Disaster Management Act, 2005* (Act No 53 of 2005); National Disaster Management Authority, India, *Order No. 40-3/2020-DM-I(A)* (24 March 2020).

⁷⁸ Prime Minister’s Office, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 21 April 2020” (21 April 2020), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-address-COVID-19-21-Apr>>.

⁷⁹ Mueller, *supra* note 13 at 303.

⁸⁰ Ferejohn & Pasquino, “Law of the Exception”, *supra* note 8 at 217.

and reflecting its temporary nature, the *CTMA* is valid for a period of one year.⁸¹ Yet, being double the length of the state of emergency under Article 150 of the *Singapore Constitution*, it sidesteps and potentially undermines the constitutional time limits on emergency powers. Moreover, the *CTMA*'s safeguards on control orders are premised mainly on formal rule of law principles concerning clarity and accessibility of laws and compliance with procedural norms,⁸² as opposed to strong substantive limits.

Firstly, pursuant to the general rule laid down in section 23(1) of the *Interpretation Act*, control orders and amendments thereof must be published in the *Government Gazette* as a means bringing it to the knowledge of the public, in accordance with the basic rule of law principle that a person's liberty should not be curtailed by unknown or inaccessible laws and regulations.⁸³ A control order under the *CTMA* remains in force until its expiry, revocation or the date that the penalties cease to be in force, whichever occurs first.⁸⁴

Even though emergency powers under Article 150 of the *Singapore Constitution* were not invoked, the safeguards under the *CTMA* closely mirror Parliament's supervisory role thereunder. Any control order and amendment thereof must be presented to Parliament as soon as possible after publication in the *Gazette*. Parliament may annul the control order, amendment or any part thereof by passing a resolution, though without affecting anything previously done under that control order or part thereof.⁸⁵ This is similar to the supervisory role played by Parliament over a Proclamation of Emergency and ordinances promulgated by the President under Articles 150(2) and (3) of the *Singapore Constitution*.

Furthermore, Parliament has continued to sit as usual while implementing safe distancing protocols,⁸⁶ and the *Singapore Constitution* was amended to permit Parliament to sit, meet and despatch business with Members of Parliament seated in more than one location.⁸⁷ However, given that the Cabinet is staffed by leading members of the PAP ruling party, this gives room to doubt the intensity of Parliamentary scrutiny of the application of the *CTMA*.

The final safeguard within the *CTMA* is apparently based on the tacit recognition that members of the public generally do not read the *Gazette*. Thus, the Minister must additionally cause to be published every control order, and any amendment thereof, so as to bring it to the notice of all persons who may be affected by the control order.⁸⁸

In furtherance thereof, the Ministry of Health ("MOH") has posted the full text of the *Control Order Regulations* and amendments thereto on its website, and

⁸¹ *CTMA*, *supra* note 6, s 1.

⁸² See Thio, "Lex Rex or Rex Lex", *supra* note 27 at 75.

⁸³ *Cheong Seok Leng v Public Prosecutor* [1988] 1 SLR(R) 530 at paras 59-63 (HC); *Lim Chin Aik v The Queen* [1963] 1 AC 160 at 171 (PC); *Interpretation Act* (Cap 1, 2002 Rev Ed Sing), s 23(1).

⁸⁴ *CTMA*, *supra* note 6, s 34(3).

⁸⁵ *Ibid*, s 34(4)-(5).

⁸⁶ Office of the Clerk of Parliament, "Stepped Up Precautionary Measures Against COVID-19 in Parliament" (25 March 2020), online: Office of the Clerk of Parliament <<https://www.parliament.gov.sg/docs/default-source/default-document-library/press-release-covid-measures-in-parliament.pdf>>.

⁸⁷ *Constitution of the Republic of Singapore (Amendment) Act 2020* (No 22 of 2020, Sing).

⁸⁸ *CTMA*, *supra* note 6, s 34(6).

maintained a webpage containing the various amendments over time.⁸⁹ This is consistent with MOH's existing practice of consolidating all relevant COVID-19 press releases, briefings and advisories from different government departments on its website, rendering all such information easily accessible from a single source.⁹⁰ These have also been complemented by regular press briefings by the MTF on the COVID-19 situation and measures.

2. Constitutional and administrative review

Article 93 of the *Singapore Constitution* vests judicial power in the courts, which have a duty to declare invalid any legislative and executive or exercise of power exceeding legal limits.⁹¹ Few, if any, questions are precluded from judicial review, although the precise scope of judicial review varies depending on the applicable principles, including the separation of powers.⁹² A review of constitutional jurisprudence tends to vindicate the legislature's implicit understanding of the *CTMA*'s consistency with the 'normal' constitutional order.

The co-equal status of legislative, judicial and executive branches of government has entailed a significant degree of judicial restraint concerning matters that properly fall within the purview of other branches of government. Courts tend to shy away from reviewing the merits of matters involving intricate balancing of various competing policy considerations that "judges are ill-equipped to adjudicate due to limited training, experience and access to materials".⁹³ Thus, owing to the polycentric nature of decision-making on COVID-19 measures as well as the heavy reliance on public health expertise in their formulation, the views of the legislature and executive will likely carry great weight before the courts.

As emergency powers have not been invoked, constitutional rights such as the freedom of movement (Article 13), speech, assembly and association (Article 14) and religion (Article 15) have not been suspended, and courts may still review the *CTMA*'s consistency with those rights. However, the *CTMA* would likely be justified in the interests of the permissible restrictions thereunder. Public health is a permissible ground of restriction in relation to freedom of movement and religion under Articles 13(2) and 15(4) respectively. Although no public health exception exists explicitly under Article 14, the rights thereunder are subject to security of Singapore or public order,⁹⁴ pursuant to which the *CTMA* will likely also be justified.

⁸⁹ Ministry of Health, "COVID-19 (Temporary Measures) (Control Orders) Regulations 2020", online: Ministry of Health <[https://www.moh.gov.sg/policies-and-legislation/covid-19-\(temporary-measures\)-\(control-order\)-regulations](https://www.moh.gov.sg/policies-and-legislation/covid-19-(temporary-measures)-(control-order)-regulations)>.

⁹⁰ See Ministry of Health, "Past Updates on COVID-19 Local Situation", online: Ministry of Health <<https://www.moh.gov.sg/covid-19/past-updates>>.

⁹¹ *Chan Hiang Leng Colin v Public Prosecutor* [1994] 3 SLR (R) 209 at para 50 (HC); *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR (R) 103 at para 58 (CA).

⁹² *Tan Seet Eng v Attorney-General* [2016] 1 SLR 779 at paras 47, 97-98 (CA) [*Tan Seet Eng*]; *Yong Vui Kong (Clemency)*, *supra* note 15 at para 31.

⁹³ *Lee Hsien Loong v Review Publishing Co Ltd* [2007] 2 SLR (R) 453 at para 98 (HC); *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 at para 16 (HC).

⁹⁴ *Chee Siok Chin*, *supra* note 32 at para 49.

Administrative law provides another layer of judicial review of control orders or any other subsidiary legislation issued under the *CTMA*. Yet, the words “satisfied” and “necessary or expedient” under section 34 grant wide discretion to the Health Minister to not only assess the relevant risks of COVID-19 but also the particular measures that may be adopted under such orders, thereby limiting the scope of the court’s review.⁹⁵

Practically, the rapidly-changing circumstances and the relatively short time periods of the relevant regulations and orders (eg, the 14-day period of the SHN issued to returnees from overseas) further diminish the effectiveness of judicial review in restraining the exercise of power, since the curbs on liberty are short, limited and easily amended compared to the longer process of judicial review. This is despite the fact that the courts have made arrangements to facilitate judicial review of COVID-19 measures even during the ‘circuit breaker’, classifying applications for such judicial reviews as “essential and urgent”.⁹⁶ Resort to judicial review of government action has been rare, with only one reported decision to-date where an application to compel the postponement of the 2020 General Elections in light of COVID-19 failed before the High Court and Court of Appeal.⁹⁷

3. Ballot box

One benefit of a legislative response lies in the democratic legitimacy since such ‘emergency’ legislation is enacted by elected representatives through the ordinary Parliamentary process.⁹⁸ Elected representatives can be held to account for their successes or failures at the ballot box, forming an extra-legal safeguard against abuses.⁹⁹

Whether by sheer coincidence or design, the 1-year validity of the *CTMA* would expire in or about April 2021, whereas the next general elections were due to be held by 14 April 2021 pursuant to Article 66 of the *Singapore Constitution*, three months after the dissolution of the 13th Parliament. At the same time, the government rejected a suggestion to delay the next elections beyond the constitutionally permitted timeframe, since the only way to do so was to issue a Proclamation of Emergency, an option it did not accept.¹⁰⁰

Instead, the *Parliamentary Elections (COVID-19 Special Arrangements) Act*¹⁰¹ was passed in order to facilitate the safe conduct of elections. On 23 June, during Phase Two of the post-‘circuit breaker’ period when things were “relatively

⁹⁵ *Tan Seet Eng*, *supra* note 93 at paras 98-106.

⁹⁶ See Supreme Court of the Republic of Singapore, *Registrar’s Circular No. 4 of 2020* (5 April 2020), online: Supreme Court of the Republic of Singapore <[https://www.supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-4-2020—updates-on-measures-relating-to-covid-19-\(coronavirus-disease-2019\)-from-7-april-to-4-may-2020.pdf](https://www.supremecourt.gov.sg/docs/default-source/module-document/registrar/circular/rc-4-2020—updates-on-measures-relating-to-covid-19-(coronavirus-disease-2019)-from-7-april-to-4-may-2020.pdf)>.

⁹⁷ *Daniel De Costa Augustin v Attorney-General* [2020] 2 SLR 621 (CA) [*Daniel De Costa*].

⁹⁸ See Mueller, *supra* note 13 at 305-306.

⁹⁹ See Gross, *supra* note 12 at 1023.

¹⁰⁰ *Parliamentary Debates Singapore: Official Report*, vol 94 (25 March 2020) (Teo Chee Hean) [*Parliamentary Debates*, 25 March 2020].

¹⁰¹ *Parliamentary Elections (COVID-19 Special Arrangements) Act* (No 21 of 2020, Sing).

stable”, President Halimah Yacob issued the Writ of Election on advice of the Prime Minister.¹⁰²

In the lead up to the polls, there were at least three constitutional issues discernible from the political hustings. The first was that the elections would function (or at least be perceived) as a *de facto* vote of confidence or otherwise in the government’s responses to the pandemic, rewarding success, punishing failures and ratifying any action.¹⁰³ The second was whether the elections would secure a significant opposition presence in Parliament so as to deny the ruling party a “blank cheque” on its policy choices, and promote “sound and rational debate”.¹⁰⁴

Thirdly, the government saw the elections as an opportunity to seek a fresh five-year mandate from the electorate to guide the country through COVID-19 and into a post-pandemic world.¹⁰⁵ It refused the option of operating as a “caretaker government” during an emergency, preferring instead a government in which the people have expressed confidence “to take us through this unprecedented health crisis, stabilise the economy and safeguard our people’s lives and livelihood”.¹⁰⁶

Accentuating the stakes in the elections is the fact that the COVID-19 pandemic broke out during a critical period of transition from the 3rd to the 4th generation of PAP leaders (also known as the “4G” leadership), which had been a key issue since the 2015 elections.¹⁰⁷ These plans took on a new urgency after Prime Minister Lee “took ill” with a fainting spell at the 2016 National Day Rally, who declared after returning to the podium that his successor “must be ready to take over” after the next general elections,¹⁰⁸ which he reiterated in the lead up to the 2020 General Elections.¹⁰⁹

The MTF was comprised of a new generation of 4G leaders, many of whom had recently assumed their roles when the Cabinet were reshuffled in 2018 and 2019.¹¹⁰

¹⁰² Prime Minister’s Office, “Speech on General Election 2020 by PM Lee Hsien Loong” (23 June 2020), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/Speech-on-GE2020-by-PM-Lee-Hsien-Loong>> [PM Lee’s Speech on General Election 2020]; Writ of Election, Government Gazette No 1203, 26 June 2020.

¹⁰³ See Gross, *supra* note 12 at 1127-1128; Cara Wong, “Singapore GE2020: Peoples Voice chief takes aim at minister over outbreak in dorms” *The Straits Times* (4 July 2020), online: The Straits Times <<https://www.straitstimes.com/politics/peoples-voice-chief-takes-aim-at-minister-over-outbreak-in-dorms>>.

¹⁰⁴ Rei Kurohi, “Singapore GE2020: WP wants to deny PAP a blank cheque, says Jamus Lim” *The Straits Times* (2 July 2020), online: The Straits Times <<https://www.straitstimes.com/politics/voters-being-asked-for-blank-cheque-says-wp>>; Tan Cheng Bock, “Singapore GE2020: Say ‘no more blank cheques’ to the ruling party, says Dr Tan Cheng Bock” *The Straits Times* (3 July 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/say-no-more-blank-cheques-to-the-ruling-party-dr-tan>>.

¹⁰⁵ PM Lee’s Speech on General Election 2020, *supra* note 103.

¹⁰⁶ *Parliamentary Debates*, 25 March 2020, *supra* note 101.

¹⁰⁷ Chua Mui Hoong, “GE 2015: The PAP’s urgent succession dilemma” *The Straits Times* (9 September 2015), online: The Straits Times <<https://www.straitstimes.com/opinion/ge-2015-the-paps-urgent-succession-dilemma>>.

¹⁰⁸ Prime Minister’s Office, “National Day Rally 2016 (English - Part 2)” (21 August 2016), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/national-day-rally-2016-speech-english-part-2>>.

¹⁰⁹ People’s Action Party, “GE2020: Lunch time Rally” (6 July 2020), online: People’s Action Party <<https://www.pap.org.sg/happenings/ge-2020-lunchtime-rally/>>.

¹¹⁰ Prime Minister’s Office, “Changes to Cabinet and Other Appointments (Apr 2018)” (24 April 2018), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/changes-cabinet-and-other-appointments-apr-2018>>; Prime Minister’s Office, “Changes to Cabinet and Other Appointments (Apr

The Prime Minister considered COVID-19 as a “formative experience” for the 4G leaders, gaining “experience and confidence” and building “trust and rapport” with the people.¹¹¹ Hence, the stakes were high for the ruling party with a real prospect of electoral accountability in relation to the government’s handling of the COVID-19 pandemic.

Though comparatively stronger than other legally based safeguards against abuses, the ballot box is a blunt tool and has its limitations in supervising the implementation of the *CTMA*. Elections generally favour majoritarian Singaporean preferences, since the right to vote is an exclusive right of a Singapore citizen,¹¹² whereas elections are based on the obtaining of majority of votes in a first-past-the-post system. Potentially also raising questions about the universality of suffrage and permissible restrictions on voting rights, approximately 350 voters with COVID-19 or on QOs were prohibited from voting, even as special arrangements were made for persons on SHNs to vote.¹¹³

Furthermore, the government’s COVID-19 responses were only one of the many issues at the ballot; elections have five-year cycles and reflect various social priorities, thus lacking sufficient precision to address specific flaws in the structure or application of the *CTMA*. Indeed, at the close of Polling Day on 10 July, the PAP again secured an overwhelming majority of 83 out of 93 seats in Parliament,¹¹⁴ the reasons for its 8.7 percent decline in share of the popular vote were primarily due to “economic pain” suffered due to COVID-19.¹¹⁵ Other factors included the desire for more opposition presence in Parliament, PAP’s style of campaigning, race issues and *Protection from Online Falsehoods and Manipulation Act*.¹¹⁶

IV. SINGAPORE’S RESPONSE TO COVID-19

A pandemic like COVID-19 radically challenges notions of individualism, since individual responsibility and collective action are vital in combatting the spread of

2019)” (23 April 2019), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/Changes-to-Cabinet-and-Other-Appointments-Apr-2019>>.

¹¹¹ See Prime Minister’s Office, “PM Lee Hsien Loong’s Media Doorstop Interview at the Istana” (27 March 2020), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/PM-Lee-Doorstop-Interview-27-March>>.

¹¹² *Daniel De Costa*, *supra* note 98 at para 13.

¹¹³ Elections Department, “Press Release on Special Voting Arrangements to Protect Health and Safety at General Election 2020” (1 July 2020), online: Elections Department <https://www.eld.gov.sg/press/2020/Special_Voting_Arrangements_to_Protect_Health_and_Safety_at_General_Election_2020.pdf>.

¹¹⁴ Warren Fernandez, “GE2020: PAP returns to power with 83 seats, but loses Sengkang and Aljunied GRCs in hard-fought Covid-19 election” *The Straits Times* (11 July 2020), online: The Straits Times <<https://www.straitstimes.com/politics/ge2020-pap-returns-to-power-with-83-seats-but-loses-sengkang-and-aljunied-grcs-in-hard>>.

¹¹⁵ People’s Action Party, “Lawrence Wong’s Address to Activists” (18 July 2020), online: People’s Action Party <<https://www.pap.org.sg/news/ge2020-news/lawrence-wongs-address-to-activists/>> [Lawrence Wong’s Address to PAP Activists]; Jalelah Abu Baker & Lianne Chia, “GE2020: PAP has a ‘clear mandate’, but popular vote share ‘not as high’ as hoped: PM Lee” *Channel NewsAsia* (11 July 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/ge2020-result-pap-lee-hsien-loong-general-election-12922974>>.

¹¹⁶ *Protection from Online Falsehoods and Manipulation Act 2019* (Act No 26 of 2019, Sing) [*POFMA*]; see Lawrence Wong’s Address to PAP Activists, *supra* note 115.

infections and implementing social distancing measures. Such a collective response is particularly relevant in a small, densely-populated country like Singapore, where “it takes only one irresponsible super-spreader exercising his proclaimed right to freedom to unleash a new wave of infections”.¹¹⁷ COVID-19 has thus tested the strength of each nation’s “social compact” – the unwritten understanding within society as well as between the government and society – and the extent to which societies are able to “come together” by staying physically apart, that is, to collectively engage in social distancing.¹¹⁸

Like other observers, Amitai Etzioni has noticed that countries that have embraced communitarian value systems have generally performed better in handling the COVID-19 pandemic, especially East Asian countries.¹¹⁹ However, Etzioni has mooted a version of communitarianism characterised by more than shared values, norms and culture, but also a high level of responsiveness. In a ‘responsive communitarian’ model, neither individual autonomy and the common good are ‘trumps’, but are values to be negotiated and balanced. The emphasis is on greater participation, deliberation and responsiveness on the part of government and the community in relation to members and their basic human needs.¹²⁰

Owing to a strong emphasis on individual and collective responsibility in a “responsive communitarian” model, most members of the community generally discharge their duties out of a sense of personal commitment, rather than compulsion by the state. Law enforcement should be a last resort; the more the state relies on norms rather than laws, and on public education, moral persuasion and informal social controls, the better the society.¹²¹

While the *CTMA* grants extraordinary powers to the executive, the Singapore government’s response to COVID-19 has exhibited numerous features of a ‘responsive communitarian’ approach.¹²² However, this emanated mostly out of the executive’s self-restraint and self-direction rather than legal compulsion or constraint. Hence, the law was essentially instrumentalised as a tool in the government’s hands towards wider social objectives, such as public health and economic development. Furthermore, as the political community is seen as a “bounded world” of reciprocal rights

¹¹⁷ Walter Woon, “Why responsibility must come before freedom in Singapore’s fight against Covid-19” *TODAY* (18 May 2020), online: TODAY <<https://www.todayonline.com/commentary/why-responsibility-must-come-freedom-singapores-fight-against-covid-19>>.

¹¹⁸ See World Health Organization, “‘One World: Together At Home’ Global Special” (18 April 2020), online: World Health Organization <<https://www.who.int/news-room/events/detail/2020/04/18/default-calendar/one-world-together-at-home-global-special>>.

¹¹⁹ Amitai Etzioni, “COVID-19 Tests Communitarian Values” *The Diplomat* (14 July 2020), online: The Diplomat <<https://thediplomat.com/2020/07/covid-19-tests-communitarian-values/>>; see also Chan Heng Chee, “Disruption. Democracy Falter. Capitalism Flounders. World Order Unravels.” *IPS-Nathan Lectures* (18 June 2020), online: National University of Singapore <<http://www.nus.edu.sg/thought-leadership/disruption.-democracy-falters.-capitalism-flounders.-the-world-order-unravels>>.

¹²⁰ Etzioni, “The Responsive Community”, *supra* note 10 at 5; Amitai Etzioni, “Authoritarian Versus Responsive Communitarian Bioethics” (2011) 37:1 *J Medical Ethics* 17 at 17 [Etzioni, “Authoritarian Versus Responsive Communitarian Bioethics”].

¹²¹ Etzioni, “Authoritarian Versus Responsive Communitarian Bioethics”, *ibid* at 19; see also Columbian College of Arts and Social Sciences, “The Responsive Communitarian Platform”, online: <<https://communitariannetwork.org/platform>>.

¹²² This article therefore disagrees with Etzioni’s characterisation of Singapore as an example of a “totalitarian” state, at least insofar as Singapore’s response to COVID-19 is concerned.

and duties among members in a communitarian philosophy,¹²³ there was strong tendency to bring both social and legal pressure to demand compliance by individuals with public health norms on pain of social ostracism or criminal penalties.

A. Whole-of-Society Approach

A key factor tempering the extraordinary powers and measures imposed by the Singapore government has been its emphasis on collective action at every level of society, encapsulated in slogans that “we are all in this together” and “we are SG United”,¹²⁴ and cautions from ministers against the fraying of the “social compact” in Singapore,¹²⁵ a term which has encompassed a wide range of issues, including socio-economic policies, social cohesion and common values.¹²⁶

The *Singapore Constitution* does not envisage a one-for-one trade of rights and duties between citizens and the state, such that the state ought to grant “an additional liberty with each new obligation”.¹²⁷ However, governance was not motivated solely by considerations of legal rights, as evident in the introduction of compensation of \$100 per worker per day to mitigate the financial impact caused to employers and self-employed persons by QOs, LOAs and SHNs.¹²⁸

While QOs and SHNs (but not LOAs) are forms of state-imposed detention backed by criminal penalties that may arguably engage the right to liberty under Article 9(1) of the *Singapore Constitution*,¹²⁹ they are imposed in accordance with valid “law”. Thus, these measures are likely constitutional, and it is doubtful that any prior legal obligation to provide compensation exists. Parallel to its efforts to mitigate economic loss was its pursuit of public health, where the government paid for all COVID-19 testing fees, and covered the hospital bills in full for all Singapore residents and Long-Term Pass (“LTP”) holders who were admitted to public hospitals for COVID-19.¹³⁰

¹²³ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (United States: Basic Books, 1983) at 31-63.

¹²⁴ Prime Minister’s Office, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 12 March 2020” (12 March 2020), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/PM-Lee-remarks-COVID-19-Outbreak-12-Mar-2020>> [PM Lee on COVID-19 situation, 12 March 2020].

¹²⁵ Heng Swee Keat, “The First World War proved to be a turning point for the 20th Century”, (6 May 2020), published on *Heng Swee Keat*, online: Facebook <<https://www.facebook.com/hengsweekeat/posts/2986952804676558>>.

¹²⁶ See Prime Minister’s Office, “National Broadcast by SM Tharman Shanmugaratnam on 17 June 2020” (17 June 2020), online: Prime Minister’s Office <<https://www.pmo.gov.sg/Newsroom/National-Broadcast-by-SM-Tharman-Shanmugaratnam-on-17-Jun-2020>>; *Parliamentary Debates: Official Report*, vol 94 (28 February 2020) (Heng Swee Keat).

¹²⁷ *Taw Cheng Kong (HC)*, *supra* note 31 at para 55.

¹²⁸ Ministry of Manpower, “Leave of Absence Support Programme Extended To Those Serving Stay-Home Notice” (17 February 2020), online: Ministry of Manpower <<https://www.mom.gov.sg/newsroom/press-releases/2020/0217-loasp-extended-to-those-serving-stay-home-notice>>; Ministry of Health, “Quarantine Order Allowance Scheme” (29 January 2020), online: Ministry of Health <[https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/quarantine-order-allowance-scheme-\(for-web\).pdf](https://www.moh.gov.sg/docs/librariesprovider5/default-document-library/quarantine-order-allowance-scheme-(for-web).pdf)>.

¹²⁹ *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 at paras 44-47 (CA) [*Lim Meng Suang*]; see also *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at paras 16-23 (CA) [*Yong Vui Kong (Caning)*].

¹³⁰ Ministry of Health, “Three More Cases Discharged; Ten New Cases of COVID-19 Infection Confirmed” (9 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/three-more-cases-discharged-ten-new-cases-of-covid-19-infection-confirmed>>.

On a broader level, the government has long emphasised fiscal responsibility and maintained the national reserves for use in crises rather than to fund wide-ranging social welfare programmes or government benefits.¹³¹ Such fiscal conservatism is buttressed by constitutional safeguards, through the attenuation of executive power by, *inter alia*, vesting discretionary powers in the President to hold and exercise a “second key” to guard the national reserves, aided by the advice and recommendations of the Council of Presidential Advisers (“CPA”).¹³² Under Article 148A of the *Singapore Constitution*, the President has discretion to withhold assent to Supply Bills that are likely to lead to a drawing on past reserves. However, Article 37IF allows Parliament to overrule the President’s decision by a resolution passed by at least two-thirds of the total number of Members of Parliament (excluding nominated Members) if she acts contrary to the CPA’s recommendation.

None of these mechanisms to resolve the deadlock were triggered. Not only have the different branches of government manifested a high level of cooperation *inter se*, the response to COVID-19 has also been seen as a partnership between the government and different sectors of Singapore society.

The government took an unprecedented step of announcing four budgets (under a Supply Bill and three Supplementary Supply Bills) within a year – named Unity, Resilience, Solidarity and Fortitude, and formulated in cooperation with various economic and social sectors – providing a range of support measures to mitigate economic disruption and cushion the impact of COVID-19 and the ‘circuit breaker’ on Singaporeans.¹³³ Among the groups consulted was the Emerging Stronger Taskforce appointed by the government, which involved fifteen industry representatives from key sectors of the Singapore economy, to make recommendations on economic strategies in light of systemic shifts arising from the pandemic.¹³⁴

Having received briefings from government ministers and favourable recommendations from the CPA, President Halimah Yacob agreed to two drawdowns of past reserves in the sum of \$52 billion.¹³⁵ This was far more than the previous, first-ever drawdown on past reserves of \$4.9 billion during the financial crisis in 2009

¹³¹ See, for example, Chia Yan Min, “Free healthcare will mean raising taxes: Tharman” *The Straits Times* (6 September 2015), online: The Straits Times <<https://www.straitstimes.com/politics/singapolitics/free-healthcare-will-mean-raising-taxes-tharman>>.

¹³² *Singapore Constitution*, *supra* note 14, arts 17, 37I-37IA; Menon, *supra* note 21 at paras 20, 28-37.

¹³³ Ministry of Finance, “Ministerial Statement on Support Measures In Our Continuing Fight Against the COVID-19 Pandemic” (26 May 2020), online: Ministry of Finance <<https://www.mof.gov.sg/Newsroom/Speeches/ministerial-statement-on-additional-support-measures-in-response-to-covid-19-pandemic>>.

¹³⁴ Ministry of Trade and Industry, “Emerging Stronger Taskforce to Provide Recommendations to the Future Economy Council (FEC) on Post-Covid-19 Economy” (6 May 2020), online: Ministry of Trade and Industry <<https://www.mti.gov.sg/-/media/MTI/Newsroom/Press-Releases/2020/05/Media-Release—TASKFORCE-TO-PROVIDE-RECOMMENDATIONS-TO-THE-FUTURE-ECONOMY-COUNCIL-Media.pdf>>.

¹³⁵ Halimah Yacob, “I am sure that everyone is looking forward to the gradual resumption of economic and social activities when the circuit breaker ends on 1 June 2020.” (25 May 2020), posted on *Halimah Yacob*, online: Facebook <<https://www.facebook.com/halimahyacob/posts/3292458290787250>>; President of the Republic of Singapore, “Message by President Halimah Yacob to the Parliament on the Government’s Proposal to Fund Extraordinary Budgetary Measures from Past Reserves” (26 March 2020), online: Istana <<https://www.istana.gov.sg/Newsroom/Speeches/2020/03/26/Message-by-President-Halimah-Yacob-to-the-Parliament>>.

approved by then-President S.R. Nathan.¹³⁶ While the remunerations of the President, Speaker and Deputy Speakers are protected by the *Singapore Constitution*, they joined political office holders in taking a three-month pay cut to “show solidarity with Singaporeans”.¹³⁷

B. Transparency and Suppression of Falsehoods

Transparency and accountability are key to a communitarian response, being essential to public deliberation and the taking of responsibility by every member of the community for collective action.¹³⁸ At the same time, emergencies challenge the classical “marketplace of ideas” rationale for free speech because of the lack of time necessary for the usual self-correcting mechanisms of democratic deliberation to operate, and diminished levels of rationality due to a climate of fear.¹³⁹ These principles cohere strongly with two elements of Singapore’s constitutional culture: the emphasis on political honesty and integrity and the use of law to enforce fair and accurate reporting and comment.¹⁴⁰

Since January, MOH published and disseminated daily updates in relation to the number of cases, advisories and measures taken in response to COVID-19, including disclosure at one point of the “false positives” in detection arising from a calibration issue of a test kit at a laboratory.¹⁴¹ The MTF held regular press conferences, and the Ministry of Communications and Information carried out communications and public education campaigns through print and other media on COVID-19.¹⁴²

Singapore’s leading newspaper English-language newspaper *The Straits Times* lifted its paywall vis-à-vis all COVID-19-related news,¹⁴³ while other local mainstream news outlets like *TODAY* and *Channel NewsAsia* are freely available. Prime Minister Lee Hsien Loong credited Singapore’s initial successes in managing the pandemic to the people’s trust in both the government and the mainstream media, and their appreciation that the government had gone to “enormous lengths to be transparent”.¹⁴⁴

¹³⁶ See Kevin Y L Tan, “Constitutionalism in Times of Economic Strife: Developments in Singapore” (2009) 4:3 National Taiwan University L Rev 115 at 132-135.

¹³⁷ *Singapore Constitution*, *supra* note 14, arts 22J(2), 41, 42(3); *Parliamentary Debates: Official Report*, vol 94 (26 March 2020) (Heng Swee Keat).

¹³⁸ Gross, *supra* note 12 at 1126; see also Etzioni, “The Responsive Community”, *supra* note 10 at 6-9.

¹³⁹ See Peter Maggiore, “Viewer Discretion is Advised: Disconnects between the Marketplace of Ideas and Social Media Used to Communicate Information during Emergencies and Public Health Crises” (2012) 18 Mich Telecomm & Tech L Rev 627 at 632-642.

¹⁴⁰ *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 at paras 275-285 (CA).

¹⁴¹ Ministry of Health, “425 More Cases Discharged; 876 New Cases of COVID-19 Infection Confirmed” (10 May 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/425-more-cases-discharged-876-new-cases-of-COVID-19-infection-confirmed>>.

¹⁴² *Parliamentary Debates: Official Report*, vol 94 (3 March 2020) (S Iswaran).

¹⁴³ Tham Yuen-C, “Role of newsrooms critical amid coronavirus crisis, says ST editor Warren Fernandez” *The Straits Times* (15 May 2020), online: The Straits Times <<https://www.straitstimes.com/politics/role-of-newsrooms-critical-amid-virus-crisis-says-st-editor>>.

¹⁴⁴ Kenneth Cheng, “S’poreans’ co-operation with Govt, trust in mainstream media ‘a great help’ in managing Covid-19: PM Lee” *TODAY* (23 March 2020), online: TODAY <<https://www.todayonline.com/singapore/sporeans-cooperation-govt-trust-mainstream-media-great-help-managing-covid-19-pm-lee>>; Warren Fernandez, “Credible media vital in fight against coronavirus and

Conversely, the Singapore government adopted various means to safeguard perceptions on the government as a reliable source of information and action on COVID-19. Milder means include clarifying and rebutting of misinformation and rumours on official channels and urging the public not to share unsubstantiated information.¹⁴⁵

However, the government applied aggressive civil and criminal proceedings, including potentially disproportionate sanctions, towards conduct perceived as harmful to public tranquillity or damaging trust in the government. Consistent with long-standing PAP practice to vindicate the integrity of politicians through the courts, the Minister for Manpower threatened defamation suits against two men who made allegations of corruption concerning tenders for the development of emergency housing facilities.¹⁴⁶ In one instance of an exceptionally severe penalty, a four-month imprisonment term was meted out under *Miscellaneous Offences (Public Order and Nuisance) Act*¹⁴⁷ against a taxi driver who urged panic buying on the basis of false “intel” of more stringent measures, even though the message had been posted for only fifteen minutes.¹⁴⁸

Of particular concern is the application of *POFMA*, which the government indicated from the early stages of the pandemic that it would not hesitate to invoke.¹⁴⁹ Passed in 2019 before COVID-19 struck, *POFMA* includes among its purposes the swift disruption of online falsehoods that undermine trust in public institutions.¹⁵⁰ It is a one-sided legal power without a corresponding legal obligation on the part of the government, assuming the reliability of official sources of information without legally compelling such transparency. Accordingly, much turns on the self-discipline of the executive, which is conferred wide discretion to take various escalating actions to correct falsehoods in the “public interest” as defined under section 4 of *POFMA*.¹⁵¹

In practice, a number of *POFMA* directions have canvassed the goals of preventing diminution of public confidence in government agencies or public health measures. Directions were issued to correct falsehoods purveyed by one Alex Tan through various Facebook pages—later subject to Disabling Orders—regarding a range of

epidemic of fake news” *The Straits Times* (8 April 2020), online: The Straits Times <<https://www.straitstimes.com/opinion/credible-media-vital-in-fight-against-coronavirus-and-epidemic-of-fake-news-0>>.

¹⁴⁵ Gov.sg, “Clarifications: Misinformation, rumours regarding COVID-19”, online: Gov.sg <<https://www.gov.sg/article/covid-19-clarifications>>.

¹⁴⁶ Kok Yufeng, “Activist Jolovan Wham apologises for claims” *The Straits Times* (23 May 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/activist-jolovan-wham-apologises-for-claims>>.

¹⁴⁷ *Miscellaneous Offences (Public Order and Nuisance) Act* (Cap 184, 1997 Rev Ed Sing).

¹⁴⁸ Louisa Tang, “Covid-19: Cabby jailed 4 months for posting false information about closure of supermarkets, food outlets” *TODAY* (27 May 2020), online: TODAY <<https://www.todayonline.com/singapore/covid-19-taxi-driver-jailed-4-months-posting-false-information-about-closure-supermarkets-food>>.

¹⁴⁹ Ng Jun Sen, “Wuhan virus: Government will not hesitate to use Pofma on fake news regarding viral outbreak, says Iswaran” *TODAY* (27 January 2020), online: TODAY <<https://www.todayonline.com/singapore/wuhan-virus-government-will-not-hesitate-use-pofma-fake-news-regarding-viral-outbreak-says>>.

¹⁵⁰ *Report of the Select Committee on Deliberate Online Falsehoods—Causes, Consequences and Countermeasures* (Parl 15 of 2018) at paras 556-574; *Parliamentary Debates: Official Report*, vol 94 (7 May 2019) (K Shanmugam).

¹⁵¹ *POFMA*, *supra* note 117 at ss 4(b), 4(f). Nevertheless, recourse may be had to the courts against directions issued (*POFMA*, *supra* note 117 at ss 4, 17, 29, 35, 44).

issues such as the availability of face masks, contact tracing capabilities, reporting of COVID-19 cases and allegations that the Education Minister was responsible for the spread of COVID-19 among schoolchildren and teachers.¹⁵² There is undoubtedly an element of self-vindication on the part of the executive, where these measures have to sought to reinforce the message that the government is a reliable source of information and competent responder to COVID-19.

C. Cooperation with (Mainstream) Religious Groups

Together with racial harmony, religious harmony is a core element of the Singapore social compact and constitutional culture, viewed as critical to the country's survival.¹⁵³ It is a quasi-constitutional principle arising out of the fractious events that led to Independence, such that the task of the first post-Independence constitutional commission was to ensure that rights of racial, linguistic and religious minorities were adequately safeguarded in the *Singapore Constitution*.¹⁵⁴ Thus, apart from freedom of religion under Article 15 of the *Singapore Constitution*, protection from "hate speech" and "unacceptable offensive speech" has also been described as part of the "fundamental assurance" in Singapore.¹⁵⁵

Two churches were among the first clusters identified by MOH in the earlier phases of the spread of COVID-19 in Singapore, arising out of a visit by two travellers from Wuhan at a church service on 19 January.¹⁵⁶ However, the Prime Minister took care to highlight that the issue was not religion itself, but that "the virus can spread quickly to many people in crowded settings".¹⁵⁷ At the same time, the Ministry of Home Affairs ("MHA") accelerated its investigations into the unregistered local chapter of Shincheonji Church of Jesus the Temple of the Tabernacle of the Testimony ("SCJ"), the controversial sect linked to a huge cluster of COVID-19 cases in Daegu and Cheongdo in South Korea. Notably, such actions were taken on account of SCJ's "deceptive recruitment methods",¹⁵⁸ as opposed to religious beliefs, which are protected under Article 15 of the *Singapore Constitution*.

¹⁵² See the press releases of the POFMA Office dated 31 January, 14 February, 18 April and 5 May 2020; Ministry of Communications and Information, "Minister for Communications and Information Directs POFMA Office to Issue Disabling Order" (30 May 2020), online: POFMA Office <<https://www.pofmaoffice.gov.sg/documents/media-releases/2020/May/pofma-pr-mci-30May2020-01.pdf>>.

¹⁵³ *White Paper on the Maintenance of Religious Harmony* (Paper Cmd No 21 of 1989) at para 4.

¹⁵⁴ Republic of Singapore, *Report of the Constitutional Commission* (27 August 1966).

¹⁵⁵ *Parliamentary Debates: Official Report*, vol 94 (1 April 2019) (K Shanmugam); see also Thio Li-Ann, "Between Eden and Armageddon: Navigating 'Religion' and 'Politics' in Singapore" [2009] Sing JLS 365 at 385.

¹⁵⁶ Ministry of Health, "Links Established between Church Clusters and Wuhan Travellers" (25 February 2020), online: <[https://www.moh.gov.sg/news-highlights/details/links-established-between-church-clusters-and-wuhan-travellers#:~:text=The%20Ministry%20of%20Health%20\(MOH,be%20the%20source%20of%20infection.>](https://www.moh.gov.sg/news-highlights/details/links-established-between-church-clusters-and-wuhan-travellers#:~:text=The%20Ministry%20of%20Health%20(MOH,be%20the%20source%20of%20infection.>)>.

¹⁵⁷ PM Lee on COVID-19 situation, 12 March 2020, *supra* note 125.

¹⁵⁸ Ministry of Home Affairs, "Investigations into Shincheonji Church of Jesus the Temple of the Tabernacle of the Testimony in Singapore" (28 February 2020), online: Ministry of Home Affairs <<https://www.mha.gov.sg/newsroom/press-release/news/investigations-into-shincheonji-church-of-jesus-the-temple-of-the-tabernacle-of-the-testimony-in-singapore>>.

On the other hand, the communitarian consensus on religious harmony entailed the application of both legal and social sanctions against elements that infringed on those norms. MHA and the police took action when a Facebook page “NUS Atheist Society” posted a picture of a Bible and Qur’an with the caption, “For use during toilet paper shortages”, when toilet paper became a strange sought-after commodity in panic-buying around the world.¹⁵⁹ Law and Home Affairs Minister K Shanmugam condemned the “very offensive” post.¹⁶⁰ The newly-formed Progress Singapore Party expelled the author of the post Jan Chan from its ranks.¹⁶¹ Facebook acceded to MHA’s request to disable access to the post, and Chan was investigated for the offence of intentionally wounding religious feelings.¹⁶²

In contrast with elements considered to run afoul of legal and social norms, the government’s relationship with regard to the majority of mainstream religious groups has been based on mutual cooperation.¹⁶³ This has proved helpful in reducing the potential tensions over religious freedom and its limits in COVID-19 response, especially since regular attendance at services is often considered a sacred duty in many religions, and the pandemic spanned holy days of various faiths including Good Friday, Vesak Day and Hari Raya Puasa (*Eid al-Fitr*).

The Muslim community stands in a unique position due to the role of the Islamic Religious Council (Majlis Ugama Islam Singapura, or “MUIS”) in advising the President on Muslim religious matters pursuant to Article 153 of the *Singapore Constitution*. Though established by *Administration of Muslim Law Act*,¹⁶⁴ MUIS enjoys autonomy in its rulings on Muslim law (*fatwas*), which have legal force pursuant section 32 of *AMLA*. Even before such closures were mandated by the government, MUIS issued *fatwas* accepting the closures of mosques if necessary and further announced the deferment of the *haj* in view of COVID-19.¹⁶⁵ In the month of March when COVID-19 escalated worldwide and in Singapore, it closed all mosques until further notice.¹⁶⁶

¹⁵⁹ “Police investigating offensive NUS Atheist Society post on Facebook: MHA” *Channel NewsAsia* (20 March 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/nus-atheist-society-facebook-post-offensive-shanmugam-police-12560286>>.

¹⁶⁰ K Shanmugam SC, “Post offensive to Muslims and Christians” (20 March 2020), published on *K Shanmugam Sc*, online: Facebook <<https://www.facebook.com/k.shanmugam.page/posts/2898543010192210>>.

¹⁶¹ Rachel Phua, “Progress Singapore Party expels member behind offensive post on NUS Atheist Society Facebook page” *Channel NewsAsia* (21 March 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/progress-singapore-party-suspends-expels-member-jan-chan-12563658>>.

¹⁶² Ilyas Sholihyn, “Expelled PSP member and atheist meme page owner opens up about his controversial actions” *AsiaOne* (24 March 2020), online: AsiaOne <<https://www.asiaone.com/digital/expelled-ppp-member-and-atheist-meme-page-owner-opens-about-his-controversial-actions>>.

¹⁶³ See Li-Ann Thio, “Control, Co-Optation and Co-Operation: Managing Religious Harmony in Singapore’s Multi-Ethnic, Quasi-Secular State” 33:2 *Hastings Const LQ* 197.

¹⁶⁴ *Administration of Muslim Law Act* (Cap 3, 2009 Rev Ed Sing) [*AMLA*].

¹⁶⁵ Office of the Mufti, “Fatwa on Precautionary Measures in Dealing with COVID-19” (18 February 2020), online: Office of the Mufti <<https://www.muis.gov.sg/officeofthemufti/Fatwa/Fatwa-Covid-19-English>>; Office of the Mufti, “The Deferment of Hajj 2020” (6 May 2020), online: Office of the Mufti <<https://www.muis.gov.sg/officeofthemufti/Fatwa/English-The-deferment-of-Hajj-2020>>.

¹⁶⁶ Masjid Ugama Islam Singapura (“MUIS”), “Media Statement on Temporary Closure of Mosques and Suspension of Mosque Activities” (12 March 2020), online: MUIS <<https://www.muis.gov.sg/Media/Media-Releases/12-Mar-20-Media-Statement-on-Temporary-Closure-of-Mosques>>; MUIS,

In relation to other religious groups, the government took an approach of suasion and advice, including through meetings between Cabinet ministers and religious leaders.¹⁶⁷ Religious groups were given advice and guidance but, along with private gatherings, were exempted from the prohibition imposed in the middle of March against events with 250 participants or more.¹⁶⁸ Nevertheless, by the time that the mandatory suspension of religious services was imposed later that month,¹⁶⁹ a number of religious groups had already suspended or, at least, reduced their regular services and implemented precautions, shifting some meetings online.¹⁷⁰

Many religious groups themselves consented and voiced support for the government's actions. Both the Inter-Religious Organisation and National Steering Committee on Racial and Religious Harmony, the latter of which is chaired by a Minister, issued statements in support of government measures including the suspension of religious services and cancellation of religious events.¹⁷¹ Religious groups also echoed national messages by calling for unity, praying for victims, supporting healthcare workers, doing community service and opposing discrimination.¹⁷² Nevertheless, even during the period of the 'circuit breaker', places of worship were still

"Mosques to Remain Closed Until Further Notice" (24 March 2020), online: MUIS <<https://www.muis.gov.sg/Media/Media-Releases/24-Mar-20-Mosques-to-remain-closed-until-further-notice>>.

¹⁶⁷ Ministry of Health, "Minister for Health and Minister for Culture, Community & Youth Meet Church Leaders on COVID-19" (14 February 2020), online: Ministry of Health <[https://www.moh.gov.sg/news-highlights/details/minister-for-health-and-minister-for-culture-community-youth-meet-church-leaders-on-covid-19#:~:text=14th%20Feb%202020,of%20transmission%20of%20the%20virus.](https://www.moh.gov.sg/news-highlights/details/minister-for-health-and-minister-for-culture-community-youth-meet-church-leaders-on-covid-19#:~:text=14th%20Feb%202020,of%20transmission%20of%20the%20virus.;)>; Ministry of Health, "Meeting with Religious Leaders on COVID-19" (17 February 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/meeting-with-religious-leaders-on-covid-19>>.

¹⁶⁸ Ministry of Health, "Additional Precautionary Measures to Prevent Further Importation and Spread of COVID-19 Cases" (13 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-precautionary-measures-to-prevent-further-importation-and-spread-of-covid-19-cases>>.

¹⁶⁹ Ministry of Health, "Tighter Measures to Minimise Further Spread of COVID-19" (24 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/tighter-measures-to-minimise-further-spread-of-covid-19>>; *Infectious Diseases (Measures to Prevent Spread of COVID-19) Regulations 2020* (No S 185 of 2020, Sing).

¹⁷⁰ Jean Iau & Goh Yan Han, "More places of worship suspend services in bid to curb virus spread" *The Straits Times* (21 March 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/health/more-places-of-worship-suspend-services-in-bid-to-curb-virus-spread>>.

¹⁷¹ Inter-Religious Organisation, "Interfaith Leaders Support Efforts By Religious Communities to Deal with COVID-19 Situation" (13 March 2020), online: Inter-Religious Organisation <<https://iro.sg/press-release/interfaith-leaders-support-efforts-by-religious-communities-to-deal-with-covid-19-situation-2/>>; Ministry of Culture, Community and Youth, "National Steering Committee on Racial and Religious Harmony" (25 March 2020), online: Ministry of Culture, Community and Youth <<https://www.mccy.gov.sg/sector/initiatives/national-steering-committee-on-racial-and-religious-harmony>>.

¹⁷² Inter-Religious Organisation, "Inter-Religious Organisation, Singapore Calls for Singaporeans To be United and Uphold Values of Compassion and Empathy" (20 April 2020), online: Inter-Religious Organisation <<https://iro.sg/press-release/interfaith-leaders-support-efforts-by-religious-communities-to-deal-with-covid-19-situation/>>; Charmaine Ng, "Coronavirus: Jurong Polyclinic staff get lunch treat and notes of appreciation from religious groups" *The Straits Times* (20 February 2020), online: The Straits Times <Coronavirus: Jurong Polyclinic staff get lunch treat and notes of appreciation from religious groups">.

permitted to conduct funeral rites, subject to precautionary measures and provided there were no more than 10 persons gathered at any one time.¹⁷³

D. Calibrated Enforcement

In Singapore, co-equal status between the three branches of government has entailed a wide discretion on the part of the executive in relation to the enforcement of laws, even while it may take general governmental policy into account.¹⁷⁴ The most significant aspect of the government's COVID-19 response by far has been its calibrated formulation and enforcement of the *Control Order Regulations* and responsiveness towards public perceptions. This is notwithstanding the significant concentration of powers under sections 34 and 35 of the *CTMA* which vest both rulemaking and enforcement powers in the executive branch of government, backed by severe penalties.¹⁷⁵

1. Facilitating compliance

In announcing the 'circuit breaker', the Prime Minister was careful to couch the measures as part of a collective effort by the entire society to join healthcare staff and others "on the frontline".¹⁷⁶ Efforts were made to facilitate compliance rather than to strictly impose and enforce the rules at the initial stages.

MEWR took a graduated approach towards the enforcement of the rules. Beginning with advisories on the first day of the 'circuit breaker', it soon followed by issuing stern warnings, in order to inform individuals that they may be prosecuted if found engaging in such conduct in the future.¹⁷⁷ After having given the public a few days to understand and comply with the rules, enforcement officers began issuing fines for non-compliance.¹⁷⁸

¹⁷³ Ministry of Culture, Community and Youth, "COVID-19: MCCY advisory to religious organisations on elevated safe distancing measures" (4 April 2020), online: Ministry of Culture, Community and Youth <[https://www.mccy.gov.sg/about-us/news-and-resources/press-statements/2020/apr/covid-19-mccy-advisory-to-religious-organisations-on-elevated-safe-distancing-measures#:~:text=Community-,COVID%2D19%3A%20MCCY%20advisory%20to%20religious%20organisations,on%20elevated%20safe%20distancing%20measures&text=On%203%20Apr%202020%2C%20MOH,2020%20until%204%20May%202020.](https://www.mccy.gov.sg/about-us/news-and-resources/press-statements/2020/apr/covid-19-mccy-advisory-to-religious-organisations-on-elevated-safe-distancing-measures#:~:text=Community-,COVID%2D19%3A%20MCCY%20advisory%20to%20religious%20organisations,on%20elevated%20safe%20distancing%20measures&text=On%203%20Apr%202020%2C%20MOH,2020%20until%204%20May%202020.;)>; *Control Order Regulations*, *supra* note 71, regs 4(3)(ia), 13B.

¹⁷⁴ *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at paras 180-182 (CA) [*Tan Eng Hong*]; see also *Yong Vui Kong (Clemency)*, *supra* note 15 at paras 191-192.

¹⁷⁵ *CTMA*, *supra* note 6, ss 34(7), 35(11).

¹⁷⁶ PM Lee on COVID-19 situation on 3 April 2020, *supra* note 5.

¹⁷⁷ *Tan Eng Hong*, *supra* note 175 at para 183; Ministry of the Environment and Water Resources, "Three Written Stern Warnings and 10,000 Written Advisories Issued for Failure to Comply with Safe Distancing Measures, Closure of Public Spaces to Prevent Congregations" (8 April 2020), online: Ministry of Sustainability and the Environment <<https://www.mse.gov.sg/news/three-written-stern-warnings-and-10-000-written-advisories-issued-for-failure-to-comply-with-safe-distancing-measures-closure-of-public-spaces-to-prevent-congregations-1>>; Ministry of the Environment and Water Resources, "153 Stern Warnings Issued as Enforcement on Circuit Breaker Measures Tightens" (9 April 2020), online: Ministry of Sustainability and the Environment <<https://www.mse.gov.sg/news/153-stern-warnings-issued-as-enforcement-on-circuit-breaker-measures-tightens>>.

¹⁷⁸ Ministry of the Environment and Water Resources, "More than 2,900 Stern Warnings and 40 Fines Issued for Failure to Comply with Elevated Safe Distancing Measures" (10 April 2020), online: Ministry of

Nevertheless, this was not before the government had gazetted an amendment to the *Control Order Regulations* providing for composition of offences up to the sum of \$2,000,¹⁷⁹ an amount far less than the maximum penalties permitted under the *CTMA*. Such composition of minor offences is not contrary to public policy, and even encouraged by the courts and permitted pursuant to section 243 of the *Criminal Procedure Code*.¹⁸⁰ MEWR subsequently made clear that from 12 April 2020, first-time offenders face a composition fine of \$300, and repeat offenders would face higher fines, or prosecution in court for “*egregious cases*” of violations of the *Control Order Regulations*.¹⁸¹

Likewise, before the wearing of face masks was made mandatory in April, the MTF had already issued reusable masks to residents in Singapore,¹⁸² thereby easing compliance with the rule. This was in addition to the issuance of four surgical masks per household in February, and a subsequent issuance of “better” reusable face masks towards the end of the ‘circuit breaker’.¹⁸³

2. *Hard enforcement and soft appeals*

Both the *CTMA* and *IDA* continue to apply concurrently, and thus the *Control Order Regulations* complement other pre-existing health control measures including LOAs, SHNs and QOs. Apart from the elected President, executive power is further diffused under the *Singapore Constitution* through the vesting of prosecutorial power and discretion in the Attorney-General pursuant to Article 35(8).¹⁸⁴ Hence, while enforcement of non-criminal consequences and minor breaches of the applicable measures have rested with the respective ministries such as MEWR, prosecutors have taken serious breaches of the *CTMA* and *IDA* to court.

Breaches of LOAs do not carry criminal penalties, though consequences include revocations of work passes for (foreign) work pass holders and of work pass privileges for their employers in relation to breaches of LOAs.¹⁸⁵ Those in breach of

Sustainability and the Environment <<https://www.mse.gov.sg/news/more-than-2-900-stern-warnings-and-40-fines-issued-for-failure-to-comply-with-elevated-safe-distancing-measures>>.

¹⁷⁹ *COVID-19 (Temporary Measures) (Control Order) (Amendment) Regulations 2020* (No S 261 of 2020, Sing).

¹⁸⁰ *Public Prosecutor v Norzian bin Bintat* [1995] 3 SLR (R) 105 at para 32 (HC); *Criminal Procedure Code* (Cap 68, 2012 Rev Ed Sing).

¹⁸¹ Ministry of the Environment and Water Resources, “Stiffer Penalties for Breach of Safe Distancing Measures from 12 April 2020” (11 April 2020), online: Ministry of Sustainability and the Environment <<https://www.mse.gov.sg/news/stiffer-penalties-for-breach-of-safe-distancing-measures-from-12-april-2020>>.

¹⁸² *Control Order Regulations*, *supra* note 71, reg 3A; Ministry of Health, “Continued Stringent Implementation and Enforcement of Circuit Breaker Measures” (14 April 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/continued-stringent-implementation-enforcement-of-circuit-breaker-measures>>.

¹⁸³ Ang Hwee Min, “Singapore to distribute ‘better’ reusable face masks to households” *Channel NewsAsia* (6 May 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/covid-19-surgical-mask-production-reusable-masks-distributed-12706980>>.

¹⁸⁴ *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at para 43 (CA).

¹⁸⁵ Ministry of Manpower, “More workers and employers taken to task for breaching leave of absence requirements” (24 February 2020), online: Ministry of Manpower <<https://www.mom.gov.sg/newsroom/press-releases/2020/0224-more-workers-and-employers-taken-to-task-for-breaching-loa>>.

QOs and SHNs or serious breach of the *Control Order Regulations* have been sentenced to imprisonment or subject to fines.¹⁸⁶ Other consequences may include cancellation of permanent resident (“PR”) status¹⁸⁷ and cancellation of a Singapore citizen’s passport in at least one case.¹⁸⁸ The Immigration Checkpoints Authority has also named and shamed individuals for violations.¹⁸⁹ In deciding which cases to prosecute, the Attorney-General’s Chambers have considered as “particularly egregious” those breaches in full view of the public and in deliberate defiance of the law.¹⁹⁰

Coupled with the ‘hard’ action of enforcement were also much ‘softer’ appeals through moral suasion, particularly towards the elderly who have a heightened vulnerability to COVID-19. The government was mindful of public perceptions of its enforcement methods, following an event on the first day of the ‘circuit breaker’ when footage was circulated on social media of police arresting a 71-year-old man at the void deck of an apartment block. In response to public consternation, the police

¹⁸⁶ Lydia Lam, “Jail for man who breached stay-home notice to eat bak kut teh at hawker centre, run errands” *Channel NewsAsia* (23 April 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/covid-19-breach-stay-home-notice-bak-kut-teh-jail-12668182>>; Louisa Tang, “22-year-old fined S\$1,500 for breaching Covid-19 quarantine order half an hour before it ended; lawyer says he misread it” *TODAY* (29 April 2020), online: TODAY <<https://www.todayonline.com/singapore/covid-19-man-fined-s1500-after-misreading-timing-quarantine-order-breaching-it-half-hour>>; Singapore Tourism Board & Enterprise Singapore, “Hostel fined for breach of COVID-19 (Temporary Measures) Act” (17 April 2020), online: SG Press Centre <https://www.sgpc.gov.sg/sgpcmedia/media_releases/stb/press_release/P-20200417-7/attachment/STB%20ESG%20Joint%20Release%20Hostel%20fined%20for%20breach%20of%20COVID%2019%20Temporary%20Measures%20Act.pdf>; Shaffiq Alkhatib, “Six convicted over various offences related to Covid-19” *The Straits Times* (21 May 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/courts-crime/six-convicted-over-various-offences-related-to-covid-19>>.

¹⁸⁷ Immigration and Checkpoints Authority, “Singapore Permanent Resident Breached Stay-Home Notice Requirements; Loses Singapore Permanent Residence Status And Will Be Barred From Re-entering Singapore” (26 February 2020), online: Immigration and Checkpoints Authority <<https://www.ica.gov.sg/news-and-publications/media-releases/media-release/singapore-permanent-resident-breached-stay-home-notice-requirements-loses-singapore-permanent-residence-status-and-will-be-barred-from-re-entering-singapore>>.

¹⁸⁸ Immigration and Checkpoints Authority, “Singapore Citizen’s Passport Cancelled, Investigated For Possible Offences For Breaching Stay-Home Notice Requirements” (29 March 2020), online: Immigration and Checkpoints Authority <[https://www.ica.gov.sg/news-and-publications/media-releases/media-release/singapore-citizen-s-passport-cancelled-investigated-for-possible-offences-for-breaching-stay-home-notice-requirements#:~:text=Back-,Singapore%20Citizen's%20Passport%20Cancelled%2C%20Investigated%20For%20Possible%20Offences%20For%20Breaching,Home%20Notice%20\(SHN\)%20requirements.>](https://www.ica.gov.sg/news-and-publications/media-releases/media-release/singapore-citizen-s-passport-cancelled-investigated-for-possible-offences-for-breaching-stay-home-notice-requirements#:~:text=Back-,Singapore%20Citizen's%20Passport%20Cancelled%2C%20Investigated%20For%20Possible%20Offences%20For%20Breaching,Home%20Notice%20(SHN)%20requirements.>)>.

¹⁸⁹ Immigration and Checkpoints Authority, “Singapore Permanent Resident Failed To Declare Recent Travel History To Indonesia” (25 March 2020), online: Immigration and Checkpoints Authority <<https://www.ica.gov.sg/news-and-publications/media-releases/media-release/singapore-permanent-resident-failed-to-declare-recent-travel-history-to-indonesia#:~:text=Singapore%20Permanent%20Resident%20Failed%20To%20Declare%20Recent%20Travel%20History%20To%20Indonesia,-A%2043%20year&text=ICA%20subsequently%20detected%20Wiluan's%20failure,of%20his%20Re%2DEntry%20Permit.>>>.

¹⁹⁰ Lydia Lam, “COVID-19 court cases: Why have some people not been charged?” *Channel NewsAsia* (7 June 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/covid-19-coronavirus-why-some-people-not-charged-court-12811008>>.

highlighted that the man was only arrested when he refused to cooperate and turned rowdy.¹⁹¹

Mindful of the high numbers of non-compliance among the elderly, the Prime Minister gave a televised address before the first weekend of the ‘circuit breaker’ period, identifying himself with the seniors and making a “special appeal” to them to stay home.¹⁹² In his other messages, the Prime Minister also empathised with the difficulties caused by the measures to Singapore citizens and residents, and showed appreciation for their cooperation in compliance.¹⁹³

3. Flexibility in enforcement

Much flexibility has been exercised, firstly, by formulating rules with careful exceptions, and secondly, in the enforcement thereof. When imposing the mandatory wearing of face masks outside of home, children under the age of two were expressly exempted under the *Control Order Regulations* for safety reasons, though the MTF further announced that it will “exercise flexibility in enforcement” in relation to groups that have difficulties wearing masks, such as children with special needs and young children.¹⁹⁴

Similarly, the police have refrained from proactive enforcement of some measures under the *Control Order Regulations*, even openly declaring as such. While the Regulations extend to the private sphere and prohibit gatherings within homes,¹⁹⁵ the police have at least twice debunked rumours that they were conducting checks at residential units to enforce the elevated safe distancing measures in an effort to stem public alarm. Instead, the Singapore Police Force clarified that it will take enforcement action if they come across anyone flouting the measures when attending to other types of incidents at residential units reported by the public.¹⁹⁶ Similarly,

¹⁹¹ Cherlynn Ng, “Coronavirus: Elderly man who wanted to eat in void deck arrested after refusing to go home, shouting at police” *The Straits Times* (8 April 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/coronavirus-elderly-man-who-wanted-to-eat-at-void-deck-arrested-after-refusing-to-go-home>>.

¹⁹² Prime Minister’s Office, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 10 April 2020” (10 April 2020), online: Prime Minister’s Office <<https://www.gov.sg/article/pm-lees-address-on-the-covid-19-situation-in-singapore-10-april-2020>>.

¹⁹³ *Ibid*; Prime Minister’s Office, “PM Lee Hsien Loong on the COVID-19 situation in Singapore on 21 April 2020” (21 April 2020), online: Prime Minister’s Office <<https://www.gov.sg/article/pm-lees-address-on-the-covid-19-situation-in-singapore-21-april-2020>>.

¹⁹⁴ *Control Order Regulations*, *supra* note 71, reg 3A(1)(b); Ministry of Health, “Continued Stringent Implementation and Enforcement of Circuit Breaker Measures” (14 April 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/continued-stringent-implementation-enforcement-of-circuit-breaker-measures>>; Ministry of Health, “Guidance for Use of Masks and Face Shields” (1 June 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/guidance-for-use-of-masks-and-face-shields>>.

¹⁹⁵ *Control Order Regulations*, *supra* note 71, reg 6.

¹⁹⁶ Singapore Police Force, “POLICE DO NOT CONDUCT CHECKS AT RESIDENTIAL UNITS TO ENFORCE ELEVATED SAFE DISTANCING MEASURES” (14 April 2020), published on *Singapore Police Force*, online: Facebook <<https://www.facebook.com/singaporepoliceforce/posts/10159695384084408>>; Gov.sg, “False rumour about police conducting checks at residential units to enforce safe distancing” (16 April 2020), online: Gov.sg <<https://www.gov.sg/article/false-rumour-about-police-conducting-checks-at-residential-units-to-enforce-safe-distancing>>; Singapore Police Force, “FALSE RUMOUR ON NEA AND POLICE CHECKS ON RESIDENTIAL UNITS TO

the police have clarified that they do not stop or fine motorists who do not comply with the measures at road blocks.¹⁹⁷

4. Responsiveness to feedback

While diverse interests are represented to some extent in the whole-of-government approach and public-private partnership, its executive rulemaking procedures are still largely opaque and lack the plurality of voices from the democratic process. In light of the evolving circumstances of COVID-19, the MTF has apparently compensated for its hasty decision-making processes with a high degree of responsiveness to feedback.

Home-based food businesses were badly affected by the ‘circuit breaker’ measures because of restrictions on delivery and collection of goods, including Malay-Muslim businesses anticipating a surge in orders over the Hari Raya period.¹⁹⁸ Although the Minister for the Environment and Water Resources Masagos Zulkifli initially criticised a petition seeking exceptions for home bakers as “irresponsible”, he later cited an improvement in circumstances as justification for relaxation in the measures to permit such businesses to operate.¹⁹⁹

Feedback and criticism of particular measures have been implemented as part of process of gradual relaxation of the ‘circuit breaker’, although most changes were relatively minor. Shortly after criticism in the newspaper forums of a ban on exercising and dog-walking in the common areas of condominium blocks, the *Control Order Regulations* were amended so that the same rules applied in relation to public areas and common areas of strata-titled residential buildings.²⁰⁰ A similar approach was taken in relation to certain forms of Traditional Chinese Medicine, and

ENFORCE CIRCUIT BREAKER MEASURES” (10 May 2020), published on *Singapore Police Force*, online: Facebook <<https://www.facebook.com/singaporepoliceforce/posts/10159824319289408>>.

¹⁹⁷ Singapore Police Force, “POLICE DO NOT CONDUCT ROAD BLOCKS TO ENFORCE ELEVATED SAFE DISTANCING MEASURES” (13 April 2020), published on *Singapore Police Force*, online: Facebook <<https://www.facebook.com/singaporepoliceforce/posts/10159691515574408>>; Singapore Police Force, “Police Do Not Conduct Road Blocks To Enforce Elevated Safe Distancing Measures” (13 April 2020), online: Singapore Police Force <https://www.police.gov.sg/Media-Room/News/20200413_OTHERS_-Police_Do_Not_Conduct_Road_Blocks_To_Enforce_OpsTP>.

¹⁹⁸ Sue-Ann Tan, “Coronavirus: Home bakers cannot operate under circuit breaker rules” *The Straits Times* (26 April 2020), online: The Straits Times <<https://www.straitstimes.com/business/home-bakers-cannot-operate-under-circuit-breaker-rules>>; Natasha Meah, “Some shuttered home-based F&B businesses lament lost Ramadan, Hari Raya bumper sales” *TODAY* (27 April 2020), online: TODAY <<https://www.todayonline.com/singapore/home-based-fb-businesses-face-income-crunch-just-some-would-usually-enjoy-strongest-sales>>.

¹⁹⁹ Masagos Zulkifli, “In this holy Ramadan, we feel sympathy for everyone affected by the COVID-19 crisis.” (27 April 2020), posted on Masagos Zulkifli, online: Facebook <<https://www.facebook.com/masagos/posts/1485878304906515>>; Masagos Zulkifli, “The Tightened Circuit Breaker measures have been difficult for many people, including home-based food businesses (HBBf)” (29 April 2020), posted on Masagos Zulkifli, online: Facebook <<https://www.facebook.com/masagos/posts/1487680011393011>>; *Parliamentary Debates: Official Report*, vol 94 (4 May 2020) (Masagos Zulkifli B M M).

²⁰⁰ Devadas Krishnadas, “BCA’s ban on exercise and dog-walking in condominiums makes no sense” *TODAY* (30 April 2020), online: <<https://www.todayonline.com/voices/bcas-ban-exercise-and-dog-walking-condominiums-makes-no-sense>>; *COVID-19 (Temporary Measures) (Control Order) (Amendment No. 7) Regulations 2020* (No S 359 of 2020, Sing).

the subsequent easing measures to permit visitation among family members after the lifting of the ‘circuit breaker’.²⁰¹

E. *Balancing Non-Constitutional Interests*

The *Singapore Constitution* does not contain unenumerated rights, and the courts have rejected attempts to read such rights into the text as undemocratic and contrary to the rule of law.²⁰² Rights such as marriage and family life, privacy and freedom of contract are not contained in the *Singapore Constitution*, and may at best have statutory or moral status within the domestic legal system.²⁰³ Yet these principles have been taken into account and balanced to different extents in the framing of rules, suggesting that the government’s considerations extend beyond enumerated constitutional rights to wider normative values.

Exceptions to social gatherings under the *Control Order Regulations* were framed along the lines of nuclear and extended family units, to facilitate the care of children by their grandparents while minimising contact.²⁰⁴ In the initial phase when the measures were eased, households were given limited permission to visit their parents or grandparents staying elsewhere in order to allow families to spend time and provide support to one another.²⁰⁵

These mirror the emphasis on traditional family values within Singapore’s social norms.²⁰⁶ Similarly, mindful of the fact that the ‘circuit breaker’ for almost two months affected 2,723 couples, Parliament passed the *COVID-19 (Temporary Measures for Solemnization and Registration of Marriages) Act 2020* to facilitate the remote conduct of civil and Muslim marriages.²⁰⁷

By contrast, though the Law Minister considered the sanctity of contracts a foundational rule of law principle critical to Singapore’s status as an international commercial centre, he justified reliefs from contractual and legal obligations contained in the *CTMA* on the basis that these were a “legal circuit breaker”, “a timeout

²⁰¹ Ng Chee Keon, “Why shut TCM retailers during circuit breaker?” *TODAY* (21 April 2020), online: <https://www.todayonline.com/voices/why-shut-tcm-retailers-during-circuit-breaker>; Ministry of Health, “Easing the Tighter Circuit Breaker Measures, Preparing for Gradual Resumption of Activity After 1 June” (2 May 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/easing-the-tighter-circuit-breaker-measures-preparing-for-gradual-resumption-of-activity-after-1-june>>; Toh Wen Li, “Coronavirus: Allowing people to visit relatives after June 1 under cautious study” *The Straits Times* (13 May 2020), online: <<http://straitstimes.com/singapore/allowing-people-to-visit-relatives-after-june-1-under-cautious-study>>.

²⁰² Menon, *supra* note 21 at para 49; *Yong Vui Kong (Caning)*, *supra* note 130 at para 75.

²⁰³ See *Lim Meng Suang*, *supra* note 130 at paras 44-49; *Lo Pui Sang v Mamata Kapildev Dave* [2008] 4 SLR (R) 754 at para 6 (HC).

²⁰⁴ Ministry of Health, “Changes to Childcare Arrangements During Circuit Breaker” (10 April 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/changes-to-childcare-arrangements-during-circuit-breaker>>; *Control Order Regulations*, *supra* note 71, reg 4(3).

²⁰⁵ Ministry of Health, “End of Circuit Breaker, Phased Approach to Resuming Activities Safely” (19 May 2020) <<https://www.moh.gov.sg/news-highlights/details/end-of-circuit-breaker-phased-approach-to-resuming-activities-safely>>; *COVID-19 (Temporary Measures) (Control Order) (Amendment No. 8) Regulations 2020* (No S 428 of 2020, Sing).

²⁰⁶ *Parliamentary Debates: Official Report*, vol 83, col at 2397-2398 (23 October 2007) (Lee Hsien Loong); *Shared Values White Paper*, *supra* note 23 at paras 12-13.

²⁰⁷ *Parliamentary Debates: Official Report*, vol 94 (5 May 2020) (Desmond Lee); *COVID-19 (Temporary Measures for Solemnization and Registration of Marriages) Act 2020* (Act No 23 of 2020, Sing).

until this virus dies out”.²⁰⁸ Drawing from the reasoning of the United States Supreme Court in the 1934 Great Depression-era case of *Home Building & Loan Association v Blaisdell*²⁰⁹ which permitted the legislature to vary contractual rights in a time of emergency, the Minister’s reasoning was distinctly communitarian: restriction of particular economic rights was justified because of the damage that strict enforcement will cause to the whole economy.²¹⁰

The balance between individual rights and societal interests was likewise tipped in favour of the latter on the issues of contact tracing, privacy and public health. The Minister opined that the balance favoured contact tracing through phone applications, due to the risks to other people and the healthcare system.²¹¹

Nevertheless, even while emphasising the necessity of contact tracing for public health when reopening the economy, the government has simultaneously taken pains to assuage privacy concerns in relation to the TraceTogether app and token, as well as the SafeEntry national digital check-in system. Apart from adopting a partially-decentralised data collection system, distinguishing them from tracking devices in public statements and stressing their use only for contact tracing purposes in conformity with public sector data protection rules,²¹² the government has open-sourced the TraceTogether code and engaged the community in a “hackathon” in efforts to improve it.²¹³ It has also established a microsite for the public to report incidents of unauthorised disclosure.²¹⁴

V. EXTENDING THE SOCIAL COMPACT?

Singapore’s response to COVID-19 drew on the strength of a communitarian social compact, marked by a strong sense of identity and belonging, apart from an understanding of mutual rights and obligations among members of the political community that help to motivate collective action.

One concrete manifestation of the rights of political membership as opposed to non-members is citizenship and immigration. Save for the exceptional circumstances under Articles 149 (legislation against subversion) and 150 (emergency), citizens have an unqualified right not to be banished or excluded from Singapore under

²⁰⁸ *Parliamentary Debates*, 7 April 2020, *supra* note 1.

²⁰⁹ *Home Building & Loan Assn v Blaisdell*, 290 US 398 (1934).

²¹⁰ *Parliamentary Debates*, 7 April 2020, *supra* note 1.

²¹¹ Charissa Yong, “Coronavirus: Healthcare concerns should take priority when contact tracing, says Shanmugam” *The Straits Times* (2 May 2020), online: The Straits Times <<https://www.straitstimes.com/world/united-states/coronavirus-healthcare-concerns-should-take-priority-when-contact-tracing-says>>.

²¹² TraceTogether, “TraceTogether Privacy Safeguards”, online: TraceTogether <<https://www.trace-together.gov.sg/common/privacystatement>>; SafeEntry, “Data protection/privacy”, online: SafeEntry <<https://support.safeentry.gov.sg/hc/en-us/categories/900000073246-Data-protection-privacy>>.

²¹³ GovTech, “Improving TraceTogether through community engagement” (6 July 2020), online: GovTech <<https://www.tech.gov.sg/media/technews/2020-07-06-tracetoegether-token-teardown>>.

²¹⁴ Huang Weixian, “Contact tracing app is safe, secure and needed as Singapore opens up” *The Straits Times* (13 June 2020), online: The Straits Times <<https://www.straitstimes.com/forum/contact-tracing-app-is-safe-secure-and-needed-as-singapore-opens-up>>; see also Darius Lee, “Transparent rules needed on use of contact tracing data” *The Straits Times* (12 June 2020), online: The Straits Times <<https://www.straitstimes.com/forum/forum-transparent-rules-needed-on-use-of-contact-tracing-data>>.

Article 13(1) of the *Singapore Constitution*, putting in legal terms what Robert Frost expressed poetically that “[home] is the place where, when you have to go there, they have to take you in.”²¹⁵ Thus, when Singapore shut its borders, Singapore citizens, along with PRs and LTP holders, were permitted to enter the country though subject to SHNs.²¹⁶ LTP holders were later required to apply for approval before travelling to Singapore.²¹⁷

Nevertheless, with these rights came responsibilities. Though not prohibited from leaving the country, if these citizens and residents travelled after 27 March, they were required to pay the full costs of serving their SHNs at government-designated facilities and unsubsidised medical fees if admitted for suspected COVID-19 symptoms within 14 days after their return. This was because they “[disregarded] prevailing travel advisories” and had “[risked] the health of other Singaporeans and residents”.²¹⁸

The strong emphasis on the interests of members was also the weakness of Singapore’s communitarian culture, since even the most responsive communities can be particularistic, exclusive and potentially hostile to non-members.²¹⁹ Tendencies to sharply distinguish between “us” (members) and “them” (non-members) of the community at times manifested in indifference or even racism or xenophobia, especially towards foreigners suspected to be in breach of applicable laws or social norms.²²⁰ This was on top of the added consequence of deportation imposed on non-citizens to deter violations of public health measures notwithstanding other hardships imposed. In one instance, a British national was deported for falsely declaring his travel history at the Family Justice Courts despite being married to a Singapore PR.²²¹

²¹⁵ Robert Frost, *The Death of the Hired Man*, online: Poetry Foundation <<https://www.poetryfoundation.org/poems/44261/the-death-of-the-hired-man>>. On the other hand, as Malaysian jurisprudence suggests, there appears to be no fundamental right to travel overseas (*Government of Malaysia and Others v Loh Wai Kong* [1979] 2 MLJ 33; *Pua Kiam Wee v Ketua Pengarah Imigresen Malaysia* [2018] 6 MLJ 670).

²¹⁶ Ministry of Health, “Additional Border Control Measures to Reduce Further Importation of COVID-19 Cases” (22 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/additional-border-control-measures-to-reduce-further-importation-of-covid-19-cases>>.

²¹⁷ Immigration and Checkpoints Authority, “Entry Approval Required For All Long-Term Pass Holders” (28 March 2020), online: Immigration and Checkpoints Authority <<https://www.ica.gov.sg/news-and-publications/media-releases/media-release/entry-approval-required-for-all-long-term-pass-holders>>.

²¹⁸ Ministry of Health, “Tighter Measures to Minimise Further Spread of COVID-19” (24 March 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/tighter-measures-to-minimise-further-spread-of-covid-19>>; Ministry of Health, “Expansion of the Enhanced Stay-home Notice Requirements to All Countries” (8 April 2020), online: Ministry of Health <<https://www.moh.gov.sg/news-highlights/details/expansion-of-the-enhanced-stay-home-notice-requirements-to-all-countries>>.

²¹⁹ Etzioni, “The Responsive Community”, *supra* note 10 at 9-10.

²²⁰ Janice Tai, “Racism and xenophobia resurfacing during Covid-19: MCCY minister Grace Fu” *The Straits Times* (30 May 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/racism-and-xenophobia-resurfacing-during-covid-19-mccy-minister-grace-fu>>; Etzioni, “The Responsive Community”, *supra* note 10 at 9-10; see also Jaclyn Neo, “Riots and Rights: Law and Exclusion in Singapore’s Migrant Worker Regime” (2015) *Asian J Law & Society* 1.

²²¹ Immigration and Checkpoints Authority, “British National Deported For Falsely Declaring His Travel History At The Family Justice Courts” (26 April 2020), online: Immigration and Checkpoints Authority <<https://www.ica.gov.sg/news-and-publications/media-releases/media-release/british-national-deported-for-falsely-declaring-his-travel-history-at-the-family-justice-courts#:~:text=Back-,British%20National%20Deported%20For%20Falsely%20Declaring%20His%20Travel%20History%20At,182%20of%20the%20Penal%20Code.>>.

However, at least two significant events during the spread of COVID-19 prompted a re-examination of the social compact and the symbiotic relationship between locals and foreigners. The first was Malaysia's announcement of its MCO in March, which not only restricted movement within Malaysia but also prohibited Malaysians from leaving the country,²²² thereby affecting both workers who commuted across the causeway to Singapore for work as well as their employers. While Prime Minister Lee Hsien Loong managed to secure an assurance from his Malaysian counterpart that the flow of goods including food supplies would continue, no exceptions were made for Malaysians working in Singapore, necessitating intervention from both governments to rush and secure accommodation for Malaysian workers in Singapore.²²³

The second was the unexpected outbreak of COVID-19 in migrant workers' dormitories in April shortly after the announcement of the 'circuit breaker', immediately eliciting promises from the government to raise standards of the dormitories after the transmission was contained.²²⁴ Pursuant to powers under section 17 of *IDA*, large numbers of dormitories were gazetted as isolation areas to ringfence the infections, and the Director of Medical Services imposed various movement restrictions and workers were subject to mass testing in the interests of public health.²²⁵

While the government's support and financial relief packages remained focused on Singaporeans, the Prime Minister notably took the opportunity in his televised addresses on 21 April and his annual May Day message to address both Singaporeans and residents, promising to take care of migrant workers "just like we care for Singaporeans", and showing appreciation to migrant workers for their contributions to society and cooperation with the government in the measures taken.²²⁶ The Ministry of Manpower convened an Inter-Agency Taskforce, seeking and receiving support from religious groups and non-governmental organisations, in a collective effort to meet the workers' physical, psychological and spiritual needs.²²⁷ On the other hand,

²²² Prime Minister's Office, "Speech by Y.A.B. Tan Sri Muhyiddin H.J. Mohd. Yassin" (16 March 2020); Prime Minister's Office "Movement Control Order: FAQ & Info" (19 March 2020).

²²³ Lee Hsien Loong, "Last night, Malaysia announced that it would impose a Movement Control Order to combat the spread of COVID-19." (17 March 2020), published on *Lee Hsien Loong*, online: Facebook <<https://www.facebook.com/leehsienloong/posts/3123197981076220>>; Ministry of Manpower, Singapore, "Accommodating Workers Affected by Lockdown in Malaysia" (17 March 2020), online: Ministry of Manpower <<https://www.mom.gov.sg/newsroom/press-releases/2020/0317-accommodating-workers-affected-by-lockdown-in-malaysia>>; Ministry of Health, "Situasi Rakyat Malaysia di Singapura" (20 March 2020) (Malay language only).

²²⁴ Josephine Teo, "SHOULD STANDARDS IN FOREIGN WORKER DORMITORIES BE RAISED?" (6 April 2020), published on *Josephine Teo*, online: Facebook <<https://www.facebook.com/Josephine.LM.Teo/posts/3665600290180906>>; Lim Yan Liang, "Plans to overhaul housing for foreign workers unveiled" *The Straits Times* (2 June 2020), online: The Straits Times <<https://www.straitstimes.com/singapore/plans-to-overhaul-housing-for-foreign-workers-unveiled>>.

²²⁵ *IDA*, *supra* note 58, s 17; see, for example, *Infectious Diseases (Declaration of Isolation Area) (No. 5) Notification 2020* (No S 260 of 2020, Sing); Yuen Sin, "All foreign workers in dorms to be tested for Covid-19" *The Straits Times* (13 May 2020), The Straits Times <<https://www.straitstimes.com/singapore/all-foreign-workers-in-dorms-to-be-tested-for-covid-19>>.

²²⁶ Prime Minister's Office, "PM Lee Hsien Loong on the COVID-19 situation in Singapore on 21 April 2020" (21 April 2020), online: Prime Minister's Office <<https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-address-COVID-19-21-Apr>>; Prime Minister's Office, "May Day Message 2020" (1 May 2020), online: Gov.sg <<https://www.gov.sg/article/pm-lee-may-day-message-2020>>.

²²⁷ Ministry of Manpower, "Inter-agency Taskforce Coordinating NGOs' Efforts to Support the Well-Being of Foreign Workers" (17 April 2020), online: Ministry of Manpower <<https://www.mom.gov.sg/newsroom/press-releases/2020/0417-inter-agency-taskforce-coordinating>>.

Law and Home Affairs Minister K Shanmugam criticised as racist, xenophobic and deeply insensitive a forum letter blaming the outbreak on the workers' lack of personal hygiene, explaining instead that the outbreak was due to communal living in close quarters.²²⁸

VI. CONCLUSION: THE 'NEW NORMAL'?

The WHO has said that COVID-19 "may never go away",²²⁹ a disturbing prospect given the enormous public health and socio-economic implications that are already evident worldwide. Both agility and flexibility are required in the face of such an unpredictable and ever-present threat,²³⁰ and governments may be inclined to seek wide-ranging 'permanent' emergency or emergency-like powers to respond thereto. Akin to the transformations wrought on legal systems by the threat of global terrorism, it is foreseeable that the looming public health threat may likewise embed permanent changes in the legal system as part of a 'new normal'.²³¹

Shaped by prevailing constitutional attitudes rooted in pragmatism, communitarianism and trust in government with a strong survivalist bent, the concentration of power in the executive branch of government is not new to Singapore. Even though the Singapore government has never issued a Proclamation of Emergency since Independence, emergency or emergency-like powers have long been exercised in relation to national security and public order. Through the *CTMA*, the legislature has further expanded the executive's powers, adding public health to the list of purposes for which such powers may be exercised. The *CLTPA* has further shown that "temporary" legislation can be made permanent; the government has repeatedly extended its 5-year validity from its initial enactment in 1955 on the basis of perceived public order threats to a small and vulnerable country like Singapore.²³²

Although the government's response has exhibited numerous features of a 'responsive communitarian' approach, shaped by Singapore's social compact, these are largely the result of executive choice rather than legal control or compulsion. Owing to tendencies to bring legal and social pressure to conform with social distancing norms and sharply distinguish between citizens and non-citizens, Singapore's communitarian approach is not without its weaknesses, particularly in relation to foreigners.

ngos-efforts-to-support- the-well-being-of-foreign-workers>; Masjid Ugama Islam Singapura, "Support for Foreign Workers in View of Ramadan" (22 April 2020), online: Masjid Ugama Islam Singapura <<https://www.muis.gov.sg/Media/Media-Releases/22-Apr-20-Media-Release-on-Support-for-Foreign-Workers-in-View-of-Ramadan>>.

²²⁸ Aqil Haqziq Mahmud, "COVID-19: Forum letter on foreign worker dormitory cases reveals 'underlying racism', says Shanmugam" *Channel NewsAsia* (18 April 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/singapore/covid-19-letter-zaobao-foreign-worker-dormitory-racism-shanmugam-12654924>>.

²²⁹ "Coronavirus may never go away: WHO" *Channel NewsAsia* (14 May 2020), online: Channel NewsAsia <<https://www.channelnewsasia.com/news/world/covid19-coronavirus-who-go-away-12729420>>.

²³⁰ Tessa Oh, "Government leaders must be agile and flexible when making decisions during Covid-19 pandemic: Professor" *TODAY* (4 June 2020), online: TODAY <<https://www.todayonline.com/singapore/government-leaders-must-be-agile-and-flexible-when-making-decisions-during-covid-19-pandemic>>.

²³¹ Ferejohn & Pasquino, "Law of the Exception", *supra* note 8 at 219.

²³² *Parliamentary Debates: Official Report*, vol 94 (6 February 2018) (K Shanmugam).

While lives and livelihoods are undoubtedly important, COVID-19 has accentuated a constitutional culture in Singapore where law is increasingly instrumentalised as a tool, benchmarked against its effectiveness towards fulfilling social and political priorities, rather than a constraint on the means to those ends. Thus, with the 'legislative model' of emergency powers and de-emphasis on legal controls of executive power, the government has taken yet another step towards a formalistic rule of law system which is highly dependent on the ability and willingness of the people in power to carry themselves as "honourable men (and women)".