

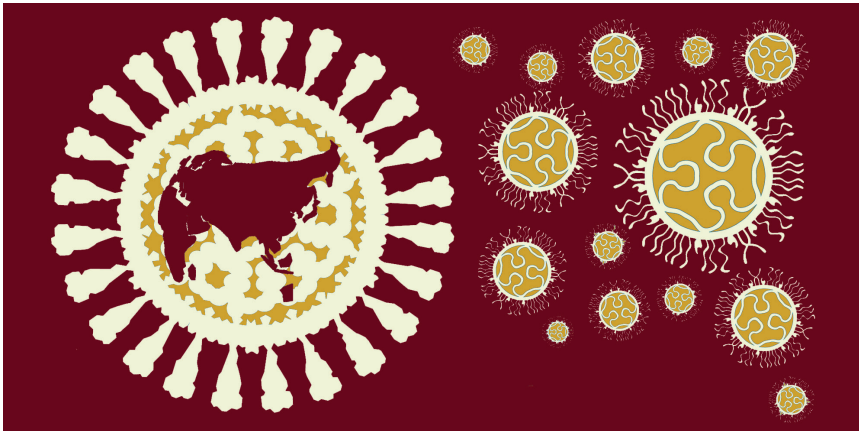
The COVID-19 Pandemic in Asia and Africa

Societal Implications, Narratives
on Media, Political Issues

edited by

Giorgio Milanetti, Marina Miranda, Marina Morbiducci

VOLUME II – SOCIETY AND INSTITUTIONS



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7. Singapore Constitutional Communitarianism and COVID-19

Astrid Zei

Abstract

As COVID-19 spread in Singapore, the authorities were able to draw on previous experience with the SARS and MERS outbreaks. Rather than relying on constitutional emergency powers, the response in Singapore was provided through ordinary legislation granting the Ministry of Health the power to issue control orders. The restrictive measures imposed by the government were received without any significant tensions or protests from the civil society. This seems to be dependent not only on the prompt deployment of an extensive set of social safety nets, or the severe punishments established by the emergency legislation, but also on the primacy accorded to the principle of “nation before community and society above the self”, which constitutes one of the pillars of Singapore’s unwritten “material constitution”. However, the pandemic hit at blind spots which were not found within the national community of the “residents”, but in the cohabitation with migrant workers, who in 2019 constituted 38% of the labour force in Singapore. The spread of the pandemic in the migrant worker’s dormitories and the way it has been managed constitute the most serious criticalities identified during the pandemic and have highlighted the unpreparedness of the communitarian model of Singapore to cope with more fluid and intersectional identities.

Keywords: Communitarianism; Asian Values; Cultural pluralism; Immigration policies; COVID-19.

7.1. A Golden Case with a Wide Blind Spot

Singapore is a prosperous mini-State, highly performing in economic quality, infrastructures, and market access¹, anchored in political stability, low corruption rates, committed to the values of social cohesion and ethnic and religious pluralism that constitute unwritten core elements of its Constitution. The response to the COVID-19 pandemic has been very successful in terms of quality of medical care, new technologies used to track infections and to implement the distancing measures imposed by the authorities, and financial support to household and businesses.

As recently observed in a comparative study on “coronavirus politics”, health policies and social policies have proved to be closely dependent, and “happy countries” in their response to COVID-19 were those that reacted with robust health and social policies, capable of sustaining income and the economy in the face of a collapse in demand and job opportunities (Greer et al. 2021, pp. 615-616). In fact, at an early stage of the pandemic, Singapore was considered a “golden standard”, with an efficient organisation in monitoring infection, isolation, and treatment of imported cases from abroad, and a near-zero mortality rate.

Like all crises, however, the pandemic hit at blind spots, which were not found within the national community of the “residents”, but in the cohabitation with migrant workers, who in 2019 constituted 38% of the labour force in Singapore, mainly in the sectors of domestic work, building and infrastructure construction, ship repair and construction (ILO 2020).

Low-waged migrant workers, mainly coming from India, continental China and Bangladesh, use to reside in cramped large-scale, purpose-built dormitories around the peripheries, tangibly expressing their otherness from the community of Singapore residents. When the pandemic inevitably erupted in the dormitories, their residents were subject to a separate harsher regime of movement restrictions, governed by the *Foreign Employee Dormitories Regulations* and the *Employment of Foreign Manpower (Work Pass Conditions) Regulations*. The unhygienic and health threatening living conditions in the dormitories became part of the public discourse, challenging the Singapore

¹ According to the *Legatum Prosperity Index*TM Singapore is ranking 17th in the overall *Prosperity Index*.

original communitarian model, not only in its effectiveness to cope with the pandemic, but also in its unpreparedness to engage with alternative voices in a much more diverse and sophisticated society (Dirlewanger-Lücke, Li 2022, p. 92).

7.2. A Legislative Answer

Singapore's Constitution has evolved combining different sources, including the *Republic of Singapore Independence Act 1965*, the continuing in force of provisions of the Malaysian Constitution, subsequent amendments, such as the introduction of an elected presidency in 1991, and "consensus convention of agreed rules"², progressively deviating from the original Westminster system of government, with a "clear preference for quiet diplomacy" oriented towards maintaining the institutional dynamics within the framework of a "harmonious working relationship" (Chang et al. 2014, pp. 103-104).

A first salient point to note is that while other countries relied on some kinds of Constitution-based emergency powers, the response in Singapore was legislative, even though the state of emergency is expressly regulated by the Singapore Constitution. Art. 150 of the Constitution of Singapore is invoked upon a proclamation of emergency "whereby the security or economic life of Singapore is threatened". This provision was originally designed to counter political (communist) insurgency (Thio 2010, p. 261), but its formulation is very broad and could certainly also cover a serious pandemic threat. Its most significant features consist of a possible suspension of constitutional rights and the vesting of legislative powers in the executive for the duration of an emergency, which leads to an emptying of the prerogatives of the parliament, and in particular, those belonging to the parliamentary opposition.

The decision to address the pandemic with the instruments of ordinary legislation can be explained by considering, on the one hand, that the government was supported by an ultra-qualified majority of parliamentarians, which allowed for the "undisturbed" adoption of any measure deemed necessary, possibly even through constitutional amendments, and, on the other hand, the ease with which the majority could institute

² Chang et al. (2014, p. 103) refer to "soft constitutional law norms, which were created afresh rather than being a product of past practice".

a legislative procedure that benefited from the fast-track of the urgency procedure outlined in the parliamentary Standing Orders (SO). Article 86 SO provides that a bill, if accompanied by a certificate of urgency signed by the President, may be put through all three parliamentary readings in the same sitting. In fact, the *COVID-19 Temporary Measure Act* (CTMA), which introduced the extreme measure of lockdown, termed locally as “circuit breaker” (CB), was debated and adopted on the same day, on April 7, 2020, and, although deemed to be provisional, its duration has been extended several times, most recently until 23 April 2023.

Initially, mandatory restrictive measures were issued in the framework of the 1976 *Infectious Disease Act*, which was amended several times. Since 2003, when Singapore was plagued by the SARS epidemic, it enables the government to implement compulsory quarantine for infected people and apply heavy penalties on those who violate the home isolation. As the daily number of new local cases in March 2020 has begun to rise, it was deemed insufficient to impose the “decisive move to pre-empt escalating infections” announced by the Prime Minister Lee Hsien Loong on 3 April 2020. The *COVID-19 Temporary Measure Act* (CTMA) grants the Ministry of Health the power to issue control orders pursuant he is “satisfied” that “the incidence and transmission of COVID-19 in the community in Singapore constitutes a serious threat to public health” and that the “control order is necessary or expedient to supplement the *Infectious Diseases Act* and any other written law”³.

Control orders (CO) are still subject to parliamentary scrutiny, as parliament may annul by resolution any order or part of it after the publication in the Gazette, although without affecting anything previously done under that CO⁴.

In general, the restrictions have been progressively tightened since the first months of the pandemic, and have resulted in Singapore, as in most countries of the world, in conspicuous limitations to many constitutionally guaranteed freedoms. The Singapore government implemented a lockdown, from 7 April to 1 June 2020 that reduced movements and interactions in public and private places. The measures entailed the closure of all non-essential workplaces, schools, recreational venues, tourist attractions and places of worship. Smart working and telecommuting policies were also implemented at the same time.

³ See *COVID-19 (Temporary Measures) Act*, 34 (1).

⁴ See *COVID-19 (Temporary Measures) Act*, 34 (5).

Under CTMA, persons who contravened any of the provisions under the *Control Order Regulations* committed an offence and were liable for a fine up to S\$20,000 and/or imprisonment for a term up to 12 months⁵. The authorities deployed substantial resources to ensure compliance with the imposed distancing measures.

Aside from *Safe Distancing Ambassadors* hired to enforce physical distancing in Singapore, new technological solutions were mobilised. For instance, a fleet of 30 drones was released to monitor some of the most popular parks and natural areas, which measured in real time how many visitors were at each destination. The data were aggregated to a website that locals could use to determine which parks have the lowest number of visitors at any given time. One of the most famous technological tools was a robotic dog that “barked” a warning whenever it came across someone who was not maintaining safe distancing, using a camera with remote navigation and pre-recorded messages. However, a close and transparent communication campaign, aimed also at stigmatising deviant behaviours as a form of disrespect to the community, has been probably effective, recording a prompt and cohesive response from the population.

7.3. Holding Parliamentary Early Elections at the Height of the Pandemic

During the pandemic, the parliament has continued to work as usual while implementing safe distancing protocols. In fact, the Constitution was amended to permit parliament to sit, meet and despatch business with members of parliament seated simultaneously in more than one location whenever “it is or will be impossible, unsafe or inexpedient for parliament to sit and meet in one place”⁶.

A second aspect to be emphasised concerns the choice not to postpone the general elections, that were held on 10 July 2020, at the height of the pandemic, nine months before the expiration of the parliament’s five years term. This choice has been justified on the grounds of constitutional obligations and political opportunity. Responding to a parliamentary

⁵ See Section 34(7) of the *COVID-19 (Temporary Measures Act) 2020*.

⁶ See *Constitution of the Republic of Singapore (Amendment) Act 2020*, 5 May 2020. The authorization only applies for 6 months at a time and needs to be renewed by the parliament each time.

question tabled on 25 March 2020, senior Minister Teo Chee Hean had in fact argued that it would be illegitimate to derogate from the Constitution since a state of emergency was not proclaimed.

On a political level, moreover, the elections would be read as a popular judgement on the work of the outgoing government and would have been necessary to legitimise the draconian actions that might be necessary in the future to deal with the pandemic: “Today, more than ever, we need a government that the people have expressed confidence in”, he said⁷.

7.4. An Iper-Majoritarian Democracy

The extremely stringent measures taken to cope with the pandemic have not been vigorously challenged, either politically, judicially or within civil society. As for the parliamentary debate, it is very easy to argue that the absence of a political contradiction regarding the freedom-restricting measures that were imposed by the government is due to the absence of a significant opposition in the parliament of Singapore. The People’s Action Party (PAP) could count on the support of an ultra-qualified parliamentary majority having won 83 out of 89 seats in the 2015 elections. Indeed, the absence of a robust parliamentary opposition that has characterised Singapore’s political system since the proclamation of independence is the main puzzle that hinders its comparison with other pluralist democratic systems.

As an elected opposition in the course of a competitive electoral campaign is regarded as an indefectible functional element for any democratic political representative regime (Fisichella 1983, p. 36)⁸, the system of government in Singapore has been variously described as a “constitutional-oligarchic regimes” combining “high levels of constitutionalism with low levels of electoralism” (Wigell 2008, p. 245), a “façade electoral regime” (Levitsky, Way 2002, p. 54), a “competitive authoritarian regime” (Ortmann 2011, p. 153), “stable semi-democracy” (Case 2002).

⁷ Lee (2020) noted that the election “would function (or at least be perceived) as a *de facto* vote of confidence or otherwise in the government’s responses to the pandemic”. See also Dirlwanger-Lücke, Li (2022, pp. 91-94).

⁸ Similarly, De Vergottini (2013, p. 210) emphasises the existence and effectiveness of opposition minorities as indefectible elements that are common to all democratic forms of government, pitting the systems of government with “guaranteed opposition” against so-called “façade democracies”.

While voting in Singapore is widely considered to be fair, accurate, and free from tampering⁹, the PAP enjoyed unbroken total representative hegemony in parliament in 1968-1981, and even thereafter, the mandates won by opposition parties could be counted on the fingers of one hand, at least until the last election in 2020 when the Worker's Party of Singapore succeeded in electing a record number of ten MPs.

The reasons for this largely depend on electoral legislation, which, given the multi-ethnic and multi-religious nature of the Singaporean community, is aimed at preventing the emergence of political parties and movements with a strong identity-based character, while renouncing the extreme instrument of prohibiting ethnic political parties. The electoral party system consists of both single-member and multiple-member constituencies. The plurality party bloc voting (PBV) was introduced in 1988 to ensure ethnic minorities representation in parliament. In the 2015 elections 76 out of 89 seats were contested in 16 Group Members Constituencies (GRCs) in which members were voted as a group of 4-6 candidates and, according to art. 39A of the Constitution, at least one member must belong to the Malay, Indian or another minority community of Singapore¹⁰. These rules discourage the participation of ethnic or strongly identity-based political parties and favour political parties that pursue cross-cutting and inclusive agendas and ideologies, such as the PAP in particular (Mutalib 2002). The latter, moreover, has capitalised on the electoral advantages that are often the prerogative of the incumbent majority, which consist in the possibility of changing the number of electoral constituencies from time to time and defining their boundaries¹¹ also through possible gerrymandering practices (Tan 2013).

⁹ According to Freedom's House (2021), the 2020 elections in Singapore were "largely free of fraud and other such irregularities" although "unfair due to the advantages enjoyed by the incumbent party, including a pro-government media sector, the GRC system, high financial barriers to electoral candidacy, and legal restrictions on free speech".

¹⁰ Following a March 2020 recommendation by the *Electoral Boundaries Review Committee*, the number of directly elected seats has been increased from 89 to 93. The parliament elected in July 2020 consequently included 14 members from single-member constituencies and 79 members from Group Representation Constituencies (GRCs).

¹¹ Since 1984, the number of electoral constituencies is not specified in the Constitution. Article 39 of the Constitution simply states that parliament "shall consist of such number of elected members as is required at a general election by the constituencies prescribed by or under any law made by the Legislature". Under section 8(1) of the *Parliamentary Elections Act*, the Prime Minister may, "from time to time, by notification in the *Gazette*, specify the names and boundaries of the electoral divisions of Singapore for purposes of elections". The Elections Department of Singapore (ELD) is not independent from the government. Thus, it is part of the Prime Minister's

The development of a robust opposition may have been hampered by the electoral legislation that has allowed the PAP to be far more efficient in translating its votes into seats, than its divided opposition. The co-optation of nine “distinguished”¹² “nominated members”, as provided by a constitutional amendment passed in 1991¹³, who are appointed by the President of Singapore for a two and half years term in the view of “reflecting as wide a range of independent and non-partisan views as possible”¹⁴, has made the parliament perhaps more diverse with regard to the *cursum honorum* of its members, but no longer plural in political terms (Hwee 2002, pp. 206-207), also because nominated-members are not allowed to vote on bills pertaining to financial matters, confidence in the government, removal of the President from office.

To strengthen the exercise of parliamentary oversight functions that are traditionally the domain of the opposition, the Constitution was amended in 1996 to reserve a certain number of seats – currently up to 12 – for non-elected members of minority parties. The allocation is based on the repechage of the best losers, provided they have won at least 15% of the votes in their constituency. Although these parliamentarians have the same prerogatives as elected members, they are perceived as holders of an imperfect representative mandate, which is “neither fully based on a clear electoral mandate like the elected parliamentarians, nor on expertise or specialisation like the no-parliamentary members” (Tey 2008).

Even though the members of opposition parties in the parliament of Singapore cannot stop bills and resolutions from passing, they exercise so-called “expressive” and “informative” functions (Bagehot 1867, p. 119), giving voice, albeit not decisive, to political demands outside the governing majority. The unanimous assent to the proposed measures to deal with the pandemic can be read, therefore, as an indicator of a wide-ranging political support.

Office (PMO) and reports to its permanent secretary. The electoral boundaries are periodically reviewed by the Electoral Boundaries Review Committee (EBRC) which is appointed by the Prime Minister pursuant to his power under section 8 of the Act and its determinations are not subject to parliamentary approval.

¹² According to the *Fourth Schedule* of the Constitution, “the persons to be nominated shall be persons who have rendered distinguished public service, or who have brought honour to the Republic, or who have distinguished themselves in the field of arts and letters, culture, the sciences, business, industry, the professions, social or community service or the labour movement”.

¹³ See *Constitution of Singapore*, art. 39 (1)(c).

¹⁴ See *Fourth Schedule* of the Constitution of Singapore, 1 (2).

The only real political issue in managing the pandemic concerns the TraceTogether app launched by the government in April 2020 – first in the world – to trace contacts through Bluetooth technology, which required the collected data to be stored for 25 days. Procedures detailing contact-tracing processes were established in the aftermath of SARS and were immediately considered a centrepiece in the response to COVID-19. Since in a first phase the application had been downloaded and was only being used by a limited part of the population (1.4 million by August 2020), great communication efforts were made to raise awareness of the importance of tracing for the isolation of cases at risk and the security of the collected data. To overcome suspiciousness, tracing tokens, which could be used as an alternative to smartphones, were also distributed.

However, in January 2021, the government had to acknowledge that the data collected could be used by the police, since, according to the current legislation, the police had the power to order anyone to produce data, including TraceTogether data, for criminal investigations. In response to parliamentary questions, the government justified this by stating that the police would only be allowed to use the data to prosecute unspecified “serious crimes”. Foreign Minister Vivian Balakrishnan, who tabled the bill, said the government acknowledged its “error in not stating that data from TraceTogether is not exempt” from the Criminal Procedure Code (CPC) (Kit 2021) and one month later, however, an amendment to the *COVID-19 (Temporary Measure) Act* was introduced with a certificate of urgency to clarify the circumstances under which data can be accessed by the police, providing a list of seven types of serious offences, including murder, terrorism, kidnapping and rape with an additional safeguard, consisting of the fact that production orders can only be made by officers with rank of sergeant and above. These exemptions were justified by stating that “it is not in the public interest to completely deny the police access to such data, when the safety of the public or the proper conduct of justice is at stake” (Tan 2021).

7.5. *Civitas propter cives*

The restrictive measures imposed by the government during the pandemic were received without any significant tensions or protests from the civil society, unlike in many other countries, especially Western ones. This seems to be dependent not only on the prompt deployment of an extensive

set of social safety nets¹⁵, or on the severe punishments established by the emergency legislation, but also on the primacy accorded to the principle of “nation before community and society above the self”, which constitutes one of the pillars of Singapore’s “material constitution”¹⁶.

The “shared values” laid out in a *White Paper* that was debated in parliament and adopted in 1991, consist of an inter-connected set of principles, values and norms that structure the State, shape its political institutions and nurture the institutional relationship among communities and stakeholders. They constitute “the norms, values, rules of the game and structures of authority in which politically relevant actors operate”¹⁷, endorsed and applied by the judiciary also¹⁸.

The former Prime Minister of Singapore Lee Kuan Yew played a leading role in the positivisation of so-called “Asian values” that would distinguish Asian constitutionalism from the Western tradition, which was deemed “unrealistic”, or “unsuitable” for the East Asian region. The “shared values” may be a “domestic” interpretation of Asian values, or a positive translation of modern Confucianism, that significantly influenced the organisation of government and the formation of social values in many East Asian countries, focused on conformism, collectivism, and social harmony (Spina, Shin 2011).

The fabrication of Singapore’s “material constitution” was driven by the spectre of communalism and the dramatic ethnic clashes

¹⁵ To protect the economy from the consequences of the COVID-19 pandemic, different grants and packages were distributed. For instance, the Unity Budget, Resilience and Solidarity Budget, and the Fortitude Budget were approved to help offset the costs of the low demand and unemployment. Besides the different subsidies for businesses and industries, the government also provided subsidies to offset the costs of healthcare.

¹⁶ The notion of “material constitution”, excellently developed by the prominent Italian constitutional scholar and constituent Father Costantino Mortati (1940), which results from the founding covenant and will of the dominant political forces, is very useful both for identifying, in a given historical situation, the Constitution actually in force (underlying the Constitution in the formal sense) and the system of government, and for guiding the interpretation of constitutional provisions and the identification of implicit limitations on the amending power of the parliament.

¹⁷ This is the general definition of “regime” and “form of state” elaborated by Lanchester (1990).

¹⁸ Thio (2012) expresses a very similar conception, dealing with “soft constitutional law”, consisting of “deliberately created constitutionally significant norms articulated by authoritative government actors, usually the executive branch, which are not legally binding but have some legal effect in ordering constitutional relationships”. In this sense, Thio (2004) explains the quasi-constitutional status of the *Declaration on Religious Harmony* adopted in 2003.

that had taken place during the 1960s. Since then, the parliament and the government have intervened to dismantle the early socio-ethnic cleavages, for instance, making English the *lingua franca* for the public administration, introducing compulsory national conscriptions¹⁹, imposing ethnic housing quotas to prevent the rise of ethnic enclaves²⁰, introducing a rotational presidency among ethnic communities²¹, and, as mentioned above, adjusting the electoral legislation to prevent the emergence of communal political parties.

At the same time, many efforts were made to accommodate cultural diversities within a unifying conception of the nation, where any attempt at hegemonic prevarication to the detriment of Singapore's diverse ethnic, linguistic and religious communities had to be averted. The *Presidential Council for Minority Rights* established in 1973²² under Part VII of the Constitution of Singapore, acts as a sort of second Chamber, vested with only consultative powers, verifying that bills and subsidiary legislation do not discriminate against any racial or religious community. Although its opinion may be overruled by the parliament, this advisory body, made of non-elected members²³, owes a suspensive veto, as it may refer the bill back to parliament for reconsideration within 30 days of the date on which the text was sent to the Council²⁴. Within divided societies consisting of some natural groupings as a result of

¹⁹ The *National Service (Amendment) Act* was promulgated on 14 March 1967. All 18-year-old male Singapore citizens and second-generation permanent residents are required to serve two years in active duty as full-time national servicemen (NSFs) in the Singapore Armed Forces (SAF), Singapore Police Force (SPF) or Singapore Civil Defence Force (SCDF).

²⁰ The *Ethnic Integration Policy* (EIP), introduced in 1989, places limits on the total percentage of a block or neighbourhood that can be occupied by a certain ethnicity.

²¹ Art. 19B of the Constitution, added by *2016 Constitutional (Amendment) Act*, provides for a presidential election that will be reserved to a candidate from a racial group that has not occupied the President's office for five or more consecutive terms. This provision was enforced in 2017, when the Malayan Halimah Yacob, became Singapore's first female President.

²² The Council was introduced in 1969 and renamed *Council for Minority Rights* in 1973 through the *Constitution (Amendment) Act 1973* (Act 3 of 1973).

²³ The idea of a Council made up of elected members or representatives chosen by each of the community was rejected out of concern that it would exacerbate divisions and communalism. See Thio (2012).

²⁴ The parliament has the power to overrule the Council's opinion, but according to art. 78 (6) of the Constitution the bill will be presented to the President for the assent only if accompanied with a certificate, issued by the Council or by the parliament, stating that the bill would not be discriminatory.

differences in race, language, religion, culture, Confucian culture may indeed corroborate something similar to a pluralistic social order.

A further step forward was taken after 1986, when the Internal Security Department issued a report recording a disturbing escalation in “religious fervour” in Singapore, “over-zealous” proselytising by evangelical Christian groups, and the dissemination of political messages by some religious leaders (Tan 2010, p. 144). During his opening address to parliament on 9 January 1989, then President Wee Kim Wee affirmed the need for Singapore to adopt a set of shared national values, to counter the threat of Westernised individualism reaffirming “traditional Asian ideas of morality, duty and society”. There was a commitment to “preserve the cultural heritage of each” of the diverse cultural communities in Singapore, and to “uphold certain common values which capture the essence of being a Singaporean”: these core values included “placing society above self, upholding the family as the basic building block of society, resolving major issues through consensus instead of contention, and stressing racial and religious tolerance and harmony”. The *White Paper for the Shared Values* presented to the parliament by command of the President of the Republic of Singapore on 2 January 1991 is a blueprint that identifies “a few key values which are common to all the major groups in Singapore, and which draw on the essence of each of these heritages”, which will serve “to evolve and anchor a Singaporean identity, incorporating the relevant parts of our varied cultural heritages, and the attitudes and values which have helped (*the Singaporeans*) to survive and succeed as a nation” (Command of the President of the Republic of Singapore 1991).

The health emergency caused by the COVID-19 virus led everywhere to drastic restrictions on some fundamental, constitutionally protected freedoms, with a level of magnitude and pervasiveness often unprecedented, at least after the Second World War. When COVID-19 erupted in migrant workers dormitory the government has adjusted its initial policies, ordering pervasive containment measures, including a “circuit breaker” that required not only the closure of schools, offices, restaurants, and most public places but also restriction on private gatherings.

The *Control Order Regulations* prohibited individuals from leaving their ordinary place of residence, subject to certain exceptions, including recreational activity in public open-air spaces alone or with individuals from the same household.

In Western liberal democracies during the COVID-19 pandemic, the primacy accorded to the protection of individual rights has engaged legislators and courts in laborious balancing exercises that, in principle, have been conducted without assigning any logical and axiological precedence. The need to balance constitutional principles or rights stems from the idea that they are all on an equal footing and that they may on some occasions also conflict with each other, i.e., a situation arises in which two or more rights cannot be fulfilled simultaneously and it is, therefore, necessary to decide, for the individual case, which right should prevail and, if so, how it should be exercised. The measures restricting constitutionally guaranteed individual freedoms imposed during the pandemic have thus been deemed lawful by the Western courts if, and insofar as they complied with the canons of necessity, proportionality, balance, justiciability, and temporariness, and have come under harsh social criticism and judicial review when they appeared to betray the need for a balance between different subjective legal situations.

The notion of “Asian constitutionalism” is not exempt from criticism: it has been regarded as a construct formulated by induction and generalisation from certain concrete experiences and therefore methodologically weak, or as “an umbrella under which all kinds of constitutional practices in the region of Asia can be classified, including (perhaps) any constitutional practices that are antithetical to the orthodox notion of constitutionalism itself” (Iskandar 2017), or even as justification, in the name of the traditional authoritarian Confucian tradition, for illiberal policies in practice (Brennan, Ruiping 2007; Hoon 2004).

It has been argued that “prosperity, public discourse, and a rigorous observance of legal procedure have enabled a reconfigured rule of law such that liberal form encases illiberal content. Institutions and process at the bedrock of rule of law and liberal democracy become tools to constrain dissent while augmenting discretionary political power” (Rajah 2012). However, it is difficult to deny that the culture of fundamental rights in many Asian countries implies, compared to the Western culture of constitutionalism, a shift of emphasis in favour of group rights, instead of individual rights, and a greater weight accorded to the communitarian dimension of living together, which may entail a balancing exercise that tolerates a more pervasive limitation of individual rights of freedom, which may overflow in a culture of ceding liberties in the pursuit of the societal good.

Li-Ann Thio offered an interpretation of pandemic management in Singapore in the light of the neo-Confucian values of “government by honourable men” that permeates the country’s constitutional culture: on the one hand, they commit the government to maintaining “trust and respect” by the governed, through the guarantee of the principle of rule of law, understood as equal subjection before the law; on the other, they justify the expectation of a social response based on the “responsibility of honourable citizens” towards the community, i.e. on social blame, rather than, or before sanctions towards those who do not respect the rules, and on a sense of collective solidarity (Thio 2023, pp. 388-389).

International surveys often show that the Singapore government enjoys a high level of trust among its citizens (Edelman 2023). In fact, a comparative examination of the experience in Singapore, Japan and South Korea reveals a lower need for enforcement mechanisms to ensure compliance with restrictions than in other Asian and Pacific jurisdictions: the population seemed more aware and more willing to accept restrictions of the fundamental rights as they perceived that the sacrifice of freedom was required of them “in good faith” (Rodriguez 2021, p. 6).

It has been argued that the Singapore government’s response to COVID-19 has exhibited numerous features of a “responsive communitarian approach” (Lee 2020, p. 646), based on government’s self-restraint and ability in eliciting a collective response motivated by a sense of responsibility and accountability.

In Singapore there have been no significant contestations from the public regarding the severity of the restrictions. On the contrary, compliance with the measures imposed or recommended by the authorities even bordered, from time to time, on a kind of “vigilantism”, and it was often the citizens themselves who urged others to stay home and wear masks, and who stigmatized tips and tricks to circumvent the prohibitions available on social media.

7.6. The Role of Religious Communities

The other element to be emphasised is the involvement of religious communities, both in determining the concrete measures to be taken and in promoting adherence to the safety measures and the vaccination campaign. Singapore has been described as a “communitarian” democracy where State and society are increasingly disentangled rather than conflated (Thio 2012, p. XII). The 2003 *Declaration on Religious Harmony*,

drafted by the government together with the leaders of religious communities, commits the “people of Singapore” to “strengthen religious harmony through mutual tolerance, confidence, respect, and understanding”. Although not expressly constitutionalized, “religious harmony” is also part of the “material constitution” of Singapore, providing “a constitutional or quasi-constitutional norm and interpretative lens which addresses the desires of the religiously faithful to live life according to their deepest convictions, while being loyal citizens” (Thio 2019, p. 221). This also results in a relationship between secular institutions and religious communities “through methods of persuasion and exhortation rather than compulsion” (Thio 2019, p. 221).

The role of ethnic and religious communities within the social and institutional architecture of Singapore may be explained by referring to the concept of “intermediate communities”. In our Western legalist conception, elaborated with originality for more than a century especially by Italian scholars, intermediate communities, which also include, for instance, political parties, link, and at the same time keep politics and society distinct, preventing the engulfment of society in politics²⁵. In Singapore ethnic and religious communities are self-organised communities, providing social services to their members and, above all, participating in a common design of the future aimed at achieving and maintaining security and well-being in a logic of non-competition between groups, but inspired by the value of “social harmony”. In this perspective, they perform a threefold function: they play a representative role, contribute to the organisation of civil society, and fulfil a social and political mandate with the exercise of advisory functions in the political decision-making processes.

During the pandemic, the government of Singapore has followed an approach based on confrontation, responsiveness and persuasion with leading representatives of religious communities in the context of regular meetings convened by ministers (Lee 2020, p. 653). With regard to the exercise of religious practices, for example, communities have often anticipated and exceeded government requirements, reorganising rituals in a way that minimised the risk of contagion.

²⁵ Tosato (1989, p. 139) defined intermediate bodies as “all those societies, variously named, which stand as centres of social life and internal and external action, within the larger state society”.

In other countries, the interaction with religious communities has been more strained²⁶. In Germany, for example, the ban expressly imposed through the government's delegated decrees (*Rechtsverordnungen*) on the celebration of any religious rites involving an assemblage of individuals was challenged before the Federal Constitutional Tribunal on the initiative of the German Islamic Community, which had considered the ban on praying in mosques during Ramadan to be incongruent and excessively limiting to freedom of faith in view of the liturgical significance of communal Friday prayer in the month of Fasting. This was in the face of the fact that the government had ordered the simultaneous reopening of larger stores and malls, provided that customers and merchants adhered to specific protocols based on spacing and sanitation measures. The petition was initially rejected by the ordinary courts: while finding a conspicuous limitation on the right to religious freedom, the judges had nonetheless justified the ban in view of the greater danger of the religious ritual, both because of its duration and because it is accompanied by the utterance of prayers and chants, which increase the risk of contagion through the dissemination of droplets.

Although the Federal Constitutional Tribunal granted the request for a precautionary measure, ordering the temporary suspension of the ban, it is worth noting that the judges at the same time called on the authorities to impose special protocols of behaviour aimed at limiting the risk of infection, as desired by the plaintiffs, suggesting, for example, compliance with special distancing measures, the use of masks and a silent conduct of the prayer, so that only the Imam would recite and intone the ritual chants²⁷.

In Singapore, during the circuit breaker the government formally "encouraged" religious leaders, instead of obliging them, to advise their communities to "Stay Home (to) Stay Safe". Religious leaders or groups were engaged in efforts to promote COVID-19 public health measures

²⁶ The report issued in November 2022 by the *Pew Research Center* identified at least one of the following in 74 countries of the world: (1) governments used force to impose limits on religious gatherings; (2) governments, private groups or individuals publicly blamed religious groups for the spread of the coronavirus; or (3) private actors engaged in violence or vandalism against religious groups, linking them to the spread of COVID-19.

²⁷ See BVerfG, decision issued on 10 April 2020 (1BvQ 31/20). On limitations affecting religious practices during the pandemic, see also World Health Organisation (2020).

also by adapting religious practices²⁸. During the circuit breaker, on 28 April 2020, members of the Inter-Religious Organisation (IRO)²⁹ took an inter-religious pledge to uphold their commitment to maintaining solidarity in crisis, to strengthening the nation's social defence disseminating accurate and reliable information, to support the nation's efforts in containing the COVID-19 outbreak by adjusting and adapting their religious rituals and practices. The National Steering Committee (NSC) on Racial and Religious Harmony, which is a national platform aimed at building close relationships at the top level of community, government and faith leaders, chaired by the Ministry for Culture³⁰, also issued a statement in support of staying united against COVID-19 recommending "congregants to work with their religious leaders in implementing the precautionary measures advised by the Ministry of Health and by the Ministry of Culture, Community, and Youth".

The Islamic Religious Council of Singapore³¹, for instance, was very active in promoting compliance with social distancing measures and urging Muslims to be vaccinated once a COVID-19 vaccine was available and medically authorised (Islamic Religious Council of Singapore 2020b). It retained best practices and ruling (*fatwas*) as, according to the *Administration of Muslim Law Act 1966*, the council is endowed with

²⁸ In the course of the pandemic, collaboration with religious communities was also developed under the *Crisis Preparedness for Religious Organisations Programme*, launched in January 2020 at www.cpro.gov.sg. The Programme was developed by the Ministry of Culture, Community and Youth, the Ministry of Home Affairs, the Singapore Police Force, the Singapore Civil Defence Force involving representatives from over 30 religious organisations in Singapore through focus groups, discussions and co-creation workshops 'to raise awareness of possible terror threats, inculcate a crisis-ready mindset, and encourage the implementation of crisis response plans' (see Fu 2020). The platform displayed resumption, updates, resources, and FAQ on COVID-19 regarding religious activities.

²⁹ The Inter-Religious Organisation (IRO) of Singapore is a non-governmental organisation founded by leaders of diverse faiths (Hindu, Jewish, Zoroastrian, Buddhist, Taoist, Jain, Christian, Muslim, Sikh and Baha'i) to work together for "religious harmony" in Singapore.

³⁰ The National Steering Committee includes representatives of the Catholic Archdiocese of Singapore, the Hindu Advisory Board (HAB), Inter-Religious Organisation (IRO), Majlis Ugama Islam Singapura (MUIS), National Council of Churches of Singapore (NCCS), Sikh Advisory Board (SAB), Singapore Buddhist Federation (SBF), Singapore Federation of Chinese Clan Associations (SFCCA), Taoist Federation (TF).

³¹ The Islamic Religious Council enjoys a special status under Article 153 of the Constitution, since it has to be established by law to "advise the President in matters relating to the Muslim religion".

the authority to issue a *fatwa* or ruling on any point of the Muslim law and to give its opinion on any question of the Muslim law that falls for decision in any court. In 2020 the Council issued a total of 4 *fatwas* and 15 *irsyads* – religious guidances – that were COVID-19 related and launched \$2.22 million support fund providing financial assistance for those who were adversely affected by the economic consequences of the pandemic, although not normally qualified for *zakat* under the existing criteria (Islamic Religious Council of Singapore 2020c).

7.7. The Pandemic Management in the Migrant Workers Dormitories: Challenging the Singapore Communitarian Model

In 2019 Singapore had 1.427.500 migrant workers (Ministry of Manpower 2019) largely moving from within the Southeast Asia region (Indonesia, Philippines, Myanmar, Vietnam, Malaysia, Thailand), South Asia (India and Bangladesh) and China. Most of them are semi-skilled or unskilled workers, who are offered two-year renewable work permits, sponsored by local companies that agree to hire them. The permit is released under conditions that its holder only works in the occupation and for the employer specified in their work permit card, does not marry a Singapore citizen or permanent resident in or outside Singapore without the approval of the Ministry of Manpower, is not “involved in any illegal, immoral or undesirable activities, including breaking up families in Singapore”³².

It has been argued that the legal framework regulating unskilled or semi-skilled migrant workers conceptualises them as undesirable for inclusion in a wider society (Neo 2015) and creates a lifelong temporariness with no prospects of settling in Singapore. Low-wage migrant workers indeed are not integrated into the Singaporean community and a recent study conducted for the International Labour Organisation (ILO) stated that “a majority of the Singaporean public tends to believe that migrant workers threaten the country’s culture and heritage” (ILO 2020, p. 3). Most of them reside in large dormitories mainly located outside the urban areas, forming large clusters. The creation of new dormitories is

³² See *Employment of Foreign Manpower Act (Chapter 91A). Employment of Foreign Manpower (Work Passes) Regulations 2012. Part VI. Conditions to Be Complied with by Foreign Employee Issued with Work Permit.*

often addressed by the near residents as a source of discomfort and concerns (Goh 2022; Greener 2022). After violent clashes broke out in 2013 in a central area of Singapore visited by many migrant workers during their free time, an additional effort was made to include recreational facilities within the dormitory compound. Furthermore, access to health services is hampered by its financial costs – even though they should be charged to employers – and by linguistic and cultural barriers.

The organisation of the dormitories is regulated by *Foreign Employee Dormitories Act and Regulations 2015*, which establish certain minimum requirements, including services and facilities to be provided for the operation of dormitories that offer more than a thousand beds. The high density of dormitory residents, living within small spaces, in extreme proximity to each other, with shared facilities and poor ventilation, creates a particularly high-risk environment for the spread of infection.

At an early stage of the pandemic, containing infections in dormitories was not handled as a priority by the government (Abdullah, Kim 2020). However, cases among workers living in dormitories had surged, alarmingly, from 31 in April 2020 to over 15,000 in May, before more than doubling to 33,000 in June. By the end of the first wave, in August 2020, the foreign worker population constituted over 90% of Singapore's local cases. The Ministry of Manpower (MOM) first managed to halve the density of the dormitories by reallocating the migrant workers to other facilities. However, lower density turned out to be insufficient to control COVID-19 transmission. The government issued a *COVID-19 (Temporary Measures) (Foreign Employee Dormitories – Control Order) Regulations 2020* limiting the movements of workers outside the dormitories and outside their rooms. Messages in the form of leaflets were placed in dormitories, instructing workers of recommended behaviours, such as wearing masks, not stepping outside the rooms, maintaining social distance. Infected workers were either isolated in designated areas within the dormitories or relocated to government restructured hospitals or community care facilities for treatment and recovery, while not infected were kept in the dormitories. Low-waged migrant workers have been perceived as one of the major sanitary threats for the community that needs to be isolated from the rest of society (Ye 2021). Meals were provided to residents, included special meal runs that have been organised for those observing Ramadan (Ministry of Manpower 2020). The Ministry of Manpower engaged

with employers to pay workers a basic salary during the lockdown and provided remittance services so that they could channel monies back to their home families.

The containment of the pandemic became more effective with the implementation of contact tracing applications, as TraceTogether and Safe Entry – a mandatory digital check-in and check-out system that logged visitors' entry into all venues – and moreover with the administration of vaccines.

Although in Singapore the circuit breaker terminated on 7 April 2020, migrant workers living in dormitories were subjected to prolonged movement restrictions until August 2020. Once assessed that all the dormitories were sanitised and free from COVID-19 cases, movement restrictions remained in place, limiting residents to moving between dormitories and worksites, with occasional respites in purpose-built recreational centres.

In the *White Paper* released by the Singapore government in March 2023, reflecting on “what we could have done better”, the authorities admit that “the early precautions (...) in the dormitories were insufficient” and that “some of the restrictions could have been removed earlier, especially after most of the workers had been vaccinated and boosted” (Government of Singapore 2023, pp. 56-57). To date, important steps have been taken to improve living conditions in the workers' dormitories, including enabling better management in the residences should a pandemic reoccur.

In 2021 the Ministry of Manpower (MOM), the Ministry of National Development (MND) and the Ministry of Health (MOH) issued improved standards for licensing new dormitories, capping room occupancy to 12 residents, segmenting communal facilities, improving ventilation requirements, increasing isolation facility capacity, guaranteeing in-room Wi-Fi coverage to allow communication with families and friends.

In March 2023, the government of Singapore announced a revision of *Foreign Employee Dormitories Act* so that the standards required as of April 1, 2023, will also apply to small dormitories with a capacity of at least seven beds. However, the prolonged lockdown to which migrants were forced compared to Singaporean residents, under limited space and separation from family affections, highlighted the unpreparedness of the communitarian model of Singapore, which has been able to unify the different ethnic, linguistic and religious communities that have been present in the territory since its independence, to cope

with more fluid and intersectional identities that inevitably arise in the context of transnational mobility that characterises Singapore (Brugola, Flood 2022, pp. 109-110; Lee 2020, p. 634)³³.

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³³ Lee (2020, p. 634) in this regard, concludes that "communitarianism is both a feature and a flaw, owing to authoritarian tendencies and risk of exclusion of non-members".

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Volume II – Society and Institutions

The present publication has been conceived as a critical reflection, in different disciplinary fields, on the social, institutional, and cultural impact of the recent COVID-19 pandemic in Asia and Africa. The issues presented here were first discussed as part of a larger research project at two conferences, held in Rome in June and October 2022. After extensive revision, these results have now been collected as fully developed articles in the current two volumes: the first focuses on the cultural, artistic, and media-related facets of the pandemic; the second on its social and institutional implications.

This Volume II examines the effects of the health crisis on the socio-political landscape, addressing, among other themes, the responses of civil societies to the infection, the consequences of quarantines, the role of the pandemic in blurring the boundaries between democracy and authoritarianism. The articles cover a wide range of geographical regions, including Eastern Europe, the Middle East, the Indian subcontinent, Indonesia, China, Singapore, and Japan.

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