

because, whatever borders there might be in cyberspace, they do not map neatly onto the territories of national legal systems.

Needless to say, the constantly changing landscape of ICT Law also presents huge problems for legal scholars who are trying to capture the state of the law, focus on the most important issues, and anticipate the direction of both technological development and regulatory response. In this book, Warren Chik and Saw Cheng Lim have succeeded admirably in giving readers a window into the particulars of the local ICT Law in Singapore but also into the many ways in which the rapid development of ICTs, in conjunction with other technologies, is changing the context in which we think and act like lawyers.

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Constitutional Change in Singapore: Reforming the Elected Presidency BY JACLYN L **NEO** & SWATI S **JHAVERI**, eds. [London and New York: Routledge, 2020. xxi + 276 pp. Hardcover: £120]

I. INTRODUCTION

Constitutional Change in Singapore: Reforming the Elected Presidency is an excellent contribution to the literature on a uniquely Singaporean institution: the Elected Presidency. Established in 1991 as a means of providing an intra-institutional check upon the exercise of executive power through a democratically-elected head-of-state, the Elected Presidency is an autochthonous innovation to the traditional Westminster structure of government. A compilation of insightful and thought-provoking essays, the book will be an invaluable resource for lawyers, academics, law students, and anyone else interested in the Elected Presidency.

The central focus of the book is on the 2016 reforms to the Elected Presidency, following the Report of the Constitutional Commission to Review Specific Aspects of the Elected Presidency. The convening of this Commission, headed by Chief Justice Sundaresh Menon, was itself a significant moment in Singapore constitutional history—it was only the second Constitutional Commission to be convened since Singapore's independence, the first being the Wee Chong Jin Commission convened in December 1965. The Commission proposed a wide-ranging set of recommendations for the reform of the Elected Presidency. While a significant proportion of the public imagination was captured by the recommendation of hiatus-triggered reserved elections for the Elected Presidency, other important recommendations the Commission made included updates to the qualifying criteria for potential presidential candidates and the role of the Council of Presidential Advisors. The Commission's recommendations were accepted for the most part and the Constitution was duly amended, with the Government setting out its responses to the recommendations in its White Paper on the Review of Specific Aspects of the Elected Presidency.

The analysis in the various chapters situates the 2016 amendments carefully within the broader trajectory of Singapore constitutional law and the evolution of the Elected Presidency since its inception. In addition to this historical angle, *Constitutional Change in Singapore* approaches the subject from other diverse perspectives—including constitutional theory, constitutional design, politics, democratic legitimacy, multiculturalism, and the rule of law. The book therefore provides a comprehensive and multi-faceted analysis of one of the defining moments in Singapore constitutional law.

The contributions in this volume revolve around two broad themes: constitutional possibilities and normative tensions. This review will discuss each theme in turn and will conclude by offering some reflections provoked by the views presented in this book.

II. CONSTITUTIONAL POSSIBILITIES

A major recurring theme in this book is the idea of constitutional possibilities. This idea is introduced at the very outset of the book. Indeed, Jaclyn Neo insightfully points out in the introductory chapter that any constitutional design initiative—especially major ones like the Elected Presidency—has the potential to raise many more further design choices and possibilities than the original designers may have initially envisaged. Neo argues that constitutional innovations can lead to “unintended intended consequences” (at p 3). For example, while the Elected Presidency was intended to check a ‘rogue’ government, the experience of Ong Teng Cheong’s tenure illustrated that the President’s custodial powers could equally be used against a PAP government—a means of using the powers that was probably unintended by the constitutional designers (at pp 3, 4). These “unintended intended consequences” have to be managed by subsequent designers through the careful reimagination of yet more possibilities in constitutional design.

Kevin Tan’s and Lam Peng Er’s chapter touches upon this theme of constitutional possibilities even more directly. They usefully highlight that the Elected Presidency scheme, as accustomed as we are to it as a feature of Singapore’s constitutional landscape, is by no means the only way of achieving the outcomes intended for the scheme to achieve—indeed, Tan and Lam raise specific “alternative design choices”, such as creating an Upper House in Parliament as a check on government power, and lament the fact that such alternatives were rejected on the basis of inadequate argumentation (at p 31).

Eugene Tan’s two contributions to this volume similarly suggest additional constitutional possibilities. Working within the framework of the Elected Presidency scheme, Tan suggests that the eligibility criteria for potential presidential candidates do not adequately give effect to the Elected President’s role of being a “symbol of multiracialism and a unifying figure to all Singaporeans” (at p 100). In a subsequent chapter, he suggests the intriguing possibility of entrenching multiracialism as one of the criteria by which potential presidential candidates should be judged—for example, a candidate ought to show that he or she has a record of being “a practitioner and promoter of multiracialism” (at p 160).

In her second contribution to this volume, Jaclyn Neo in ‘Constitutionalising Minority Representation’ focuses on the reserved election mechanism. This chapter is particularly useful as an insight into the Malay community’s reaction to the reserved election system as a means of fostering multiculturalism (at p 126). In line with the theme of constitutional possibilities, Neo insightfully highlights that how constitutional discourse is framed (the language of ‘minority representation’ as compared to ‘multiculturalism’) has important implications on the constitutional possibilities that ensue from the discourse (at pp 131 to 133). She highlights that the prevailing discourse has unfortunately nevertheless led to the politicisation of ethnicity (at p 134)—an issue echoed also by Eugene Tan in a separate chapter (at p 161)—and raises an interesting point about the meaning of multiculturalism. Indeed, she points out that the term can be interpreted very differently to raise starkly differing constitutional possibilities (at p 138).

Maartje De Visser’s chapter highlights the constitutional possibilities raised by the usage of Constitutional Commissions as a means of effectuating constitutional change. She points out that effecting constitutional change through Constitutional Commissions allows for the possibility of greater public participation in constitutional design, in turn enhancing the legitimacy of constitutional amendments (at pp 209, 210). In this regard, she raises for consideration the possibility of convening Select Committees at the parliamentary approval stage of constitutional amendment—such Select Committees would allow for public feedback to be solicited at a relatively more advanced stage in the amendment process, thus complementing the Commission’s work (at p 222). She also argues that Constitutional Commissions can raise constitutional possibilities in the realm of constitution-application—for example, civil servants and other government officials are likely to take reference from the Commission’s recommendations and explanations in operationalising the updates to the Constitution effected in the wake of the Commission’s Report (at p 226, 227).

Finally, Swati Jhaveri’s concluding contribution casts a spotlight on institutional possibilities in the process of constitutional change. Specifically, she explores the institutional dynamics of constitutional change and makes an argument that the 2016 amendments to the Constitution highlight the possibility that Parliament and the Judiciary may play an increasingly important role in future constitutional change (at pp 236, 237). For example, Parliament is capable of playing the role of an arena within which difficult questions can be asked and answered, refining the discourse of constitutional change (at p 242), while the courts can frame the debate on constitutional change by “articulating aspects of the basic structure and the nature of the Constitution” (at p 245).

III. NORMATIVE TENSIONS

It is therefore clear that the theme of constitutional possibilities is a major one running through the entire volume. Why, however, is the theme of constitutional possibilities such a salient one in this volume? It is suggested that an important reason for the salience of this theme in this work is the existence of powerful competing normative imperatives embedded within the institution of the Elected Presidency. Given these

deep tensions, various constitutional possibilities naturally arise depending on which set of imperatives is emphasised.

The identification of these tensions is another major theme in this volume. Indeed, several chapters in the book seek to highlight the tensions which the legal framework of the Elected Presidency seeks to address, as well as the tensions that have emerged as a result of the updates to the scheme.

Thio Li-ann's chapter is squarely directed at this second central theme in this book. Indeed, she deftly highlights four key tensions existing within the Elected Presidency scheme: between efficacy and efficiency, political choice and technocratic quality, ceremonial and custodial functions, as well as multiracialism and meritocracy (at p 41). Thio also argues that these normative tensions may ease over time as one set of imperatives begins to trump or gain ascendance over the competing set of imperatives through the lifetime of the institution (at pp 50 to 57). In addition, she insightfully suggests that a study of the Elected Presidency scheme "opens a microcosmic doorway into the character and function of a constitution and the nature of the polity it operates within", by way of being a specific arena within which broader debates in constitutionalism are played out (at p 42).

Other chapters identify and discuss specific tensions within the framework of the Elected Presidency. Tan's and Lam's chapter, for example, points out a deep tension within the Elected Presidency scheme—they argue that it "does too much and too little at the same time" (at p 37). Indeed, they argue that while the President is supposed to serve as a second key to safeguard Singapore's reserves, the President is unable to protect Singapore's national wealth from investment losses by the sovereign funds entrusted to invest Singapore's considerable reserves (at pp 32, 33).

Kevin Tan's chapter on 'Mandates, majorities and the legitimacy of the Elected President' focuses on the tension between democratic legitimacy and technocratic ability, and makes a powerful argument that the manner through which the amended constitutional framework seeks to resolve this tension has weakened the democratic credentials of the Elected President (at pp 80, 81). Specifically, Tan highlights the fact that the relevant electoral rules allow for a candidate to be duly elected even in the case of walkovers or where the candidate has not secured an absolute majority during the election, and suggests that these allowances call into question the Elected President's democratic mandate (at p 82).

Eugene Tan's two contributions to the volume also helpfully highlight additional tensions within the Elected Presidency scheme. Focusing on the rules regulating the electoral process for the Elected Presidency in the chapter titled 'Perfecting Singapore's system of political governance', he points out that the rules have been structured to prevent candidates from descending into "an undignified and combative contest", and suggests that this reflects a balance that has to be struck between the need to secure democratic legitimacy for the President's custodial function and the unifying function of the President (at p 111). In his chapter titled 'Squaring the circle', he zeroes in on the reserved election system and highlights an important tension in this regard—the system draws significant public attention to the issue of a candidate's racial qualifications, while at the same time purporting to further multiculturalism and encourage Singaporeans to think beyond racial boundaries (at p 162). He argues that more needs to be done to deal with deep-rooted racial biases (at p 150), a call echoed also by Neo in a separate chapter (at p 141).

Jack Lee's chapter considers in detail the electoral process for the Elected Presidency, making an overall argument for more legal checks throughout the process to enhance the accountability of decision-making and limit executive discretion—ultimately for the purpose of securing greater democratic legitimacy for the Elected President (at pp 178, 179). In making this argument, Lee helpfully surfaces an underlying tension which the rules governing the electoral process appear to be navigating—on one hand, the rules express the importance of securing the electorate's approval as a means of acquiring democratic legitimacy for the President, but on the other hand, the structure of the rules suggests some scepticism about the electorate's powers of discernment (at p 199).

IV. REFLECTIONS

This review will conclude by offering some reflections provoked by the impressive array of scholarship in this volume.

First, as this review has suggested, two central and closely-related themes in this book are the constitutional possibilities and normative tensions inherent within the institution of the Elected Presidency. Drawing upon these themes, one cannot help but wonder whether the powerful competing tensions inherent within the constitutional framework of the Elected Presidency, as astutely articulated by the various contributors to this volume, point toward the need to seriously consider alternative constitutional possibilities. One may argue in response that tensions are inevitable in institutional design, and that well-designed institutions and rules are intended to strike a good balance between competing normative objectives. Yet, to the extent that the tensions highlighted by the authors in this volume are generated precisely by the prevailing institutional design, coupled with the fact that these tensions are potentially easily resolvable through alternative constitutional possibilities—including those suggested by the Menon Commission itself—a serious reconsideration of the Elected Presidency as one competing option among other constitutional possibilities might be warranted some time down the road.

Second, recent political developments in Singapore may serve to accentuate the salience of the points made by several of the contributors to this volume. Indeed, in the wake of the 2020 general election results and the Prime Minister's decision to formalise the role of the Leader of the Opposition in Parliament, one may begin to question the necessity of the Elected Presidency as an additional intra-institutional check on executive power. The safeguard represented by the Elected Presidency was crafted in a different political climate to address the 'problem' of a non-PAP government or a rogue PAP government. Yet, these recent political developments potentially indicate that this is no longer seen as a 'problem', or alternatively, indicate a growing acceptance of the idea that the 'problem' is resolvable through ordinary political means. One therefore may justifiably wonder about the continued relevance of the Elected Presidency as a safeguard on government power in this new political climate—especially since the constitutional design narrative revolving around the Elected Presidency has ironically shifted to a focus on checking 'bad' Presidents. A return to the traditional model of the Westminster head-of-state in Singapore might

be worth serious consideration as an alternative constitutional possibility in the wake of these developments.

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