

Global Legislative Responses to Coronavirus

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FOREWORD

Legislatures are constitutionally designated institutions for giving assent to measures of public policy, that assent being given on behalf of a wider political community than the body devising them.¹ Without that assent, those measures are not the law of the land. Given that, legislatures matter. They are ubiquitous. Hardly any nation exists without them.

To give assent to a measure, a legislature meets usually in a set physical forum, normally a chamber. Prior to giving assent, that forum is utilised for deliberating on the measures placed before them. Legislatures are, as they always have been, deliberative assemblies. In some non-democratic nations, the deliberation may be perfunctory or close to non-existent, but debate is fundamental to legislatures in democratic regimes. Debate takes place within a clear set of procedures. Legislatures generally proceed by way of standing orders, established practices and precedents determining proceedings on a measure, from introduction to assent.

The coronavirus crisis creates an unprecedented threat to legislatures. It does so in two respects. The first, clearly, is process. Executives have sought emergency powers to deal with an immediate crisis. But how can legislatures gather to debate and agree such measures? Members in many cases have had to decant the legislature to protect their own health. As a global phenomenon, this is unprecedented. Legislative authorities have had to move quickly to adapt technology to enable members to meet virtually or in a mixed – part physical, part virtual – format. Rules have had to be changed or adapted to enable measures to proceed without the usual rules of a chamber applying. Even with rule changes, there may still be problems with members being able to participate in a deliberative format, either by virtue of personal attributes (unfamiliarity with the procedure) or constraints in the technology (limited provision to members, inability for members to interject during a speech or statement, unstable connections). Given the immediacy of the crisis, time has

¹ P. Norton, 'General Introduction', in P. Norton (ed), *Legislatures*, Oxford: Oxford University Press, 1990, p. 1.

been of the essence, thus limiting opportunities for a sharing of practice and testing the utility of different technologies.

Process impacts substance. Parliamentarians have been faced with emergency legislation empowering executives to deal with the crisis. Legislatures have experience of dealing with emergency legislation to confer sweeping executive powers – in the UK, for instance, conferring draconian powers on ministers during the Second World War – but, although having to act quickly, they have been able to do so within the chamber and under the established procedures. Where members have been dispersed, this is no longer possible. Where chambers have continued to meet physically, there have been issues with some members (and officials) not being able to attend (or indeed dying from COVID-19) and with proceedings being limited because of the need for social distancing.

It is within these unprecedented constraints on how they proceed – well addressed by Ittai Bar-Simon-Tov – that legislatures have had to consider the emergency powers sought by government. How appropriate are the powers sought? Are they too extensive and open-ended? Should the powers be time-limited or at least amenable to early revocation? How are extensive powers to direct the actions of citizens, not least limiting their movements, compatible?

The conditions under which legislatures have dealt with emergency legislation has varied and so has the legislation itself. Governments have responded in different ways to the crisis. This special issue of the journal is invaluable in terms of analysis and in addressing what normative lessons may be drawn. It serves as a study of how legislatures have responded to the emergency measures laid before them and addresses the principles that may ensure COVID-19 legislation is sufficiently distinct and constrained so that it is not used for purposes beyond tackling the pandemic. The speed of legislative response has limited the opportunity to stand back and consider best practices. This issue contributes to the process of understanding how different nations, through their executives and legislatures, have sought to tackle the crisis, and what constitutes best practice in ensuring a proportionate response.

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