THE "WAR ON FAKE NEWS" AND THE EMERGENCE OF TRUTH AS A PUBLIC INTEREST IN MALAYSIA, SINGAPORE AND THAILAND

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Abstract

This paper argues that truth is emerging as a legal interest in the public discourses of Malaysia, Singapore and Thailand. Though the criminal and media laws of several Southeast Asian countries have long addressed the dissemination of falsehoods, recent moves to ban "fake news" brought the issue to general attention. The professed function of the new legislation is to protect specified interests such as national security, public order and the integrity of democratic institutions. This paper inquires whether the protection of the truth is becoming increasingly disconnected from explicitly enumerated interests. For this purpose, the paper addresses how public interests are created and shaped, drawing mainly on communication and discourse theories. Constitutional texts, statutory and case law, official statements and media reporting are the material used to map the discourse. The paper describes a discursive process that is expected to result in new legal categories and enhanced powers of governments to restrict free speech.

I. Introduction

Since 2016, the vast majority of governments in the world have agreed that "fake news" is a threat. Following the trend, Southeast Asian countries have been addressing the issue as well. Malaysia has enacted and repealed its Anti-Fake News Act 2018, Singapore has passed the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA), and Thailand has enhanced relevant laws and launched an "anti-fake news centre". Several other Southeast Asian countries have increased their efforts to counter false information, making the region the world's most vibrant labouratory of anti-"fake news" legislation.[1] The governments are united by the common goal of eradicating the proliferation of false information on the internet in order to protect professed public interests such as national security, public order or the integrity of democratic institutions. In pursuit of this aim, criminal punishment, blocking of internet access, orders to publish accurate information and other measures are being introduced.

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1   Lasse Schuldt, 'A Look behind the Fake News Laws of Southeast Asia' (*Verfassungsblog*, 16 December 2018) <https://verfassungsblog.de/a-look-behind-the-fake-news-laws-of-southeast-asia/> accessed 12 December 2019.

This paper argues that the legislative developments and the public discourse surrounding them are evidence of the emergence of truth as a public interest. The intense focus on false information as the central problem of our time – a "war on fake news" – contributes to the formation of a novel ground for the restriction of the constitutional right to free speech: the protection of the truth. Describing a process rather than *fait accompli*, the paper introduces Malaysia, Singapore and Thailand as case studies to illustrate the phenomenon.

After an initial assessment of the constitutional limits of free speech with special attention to the formation and interpretation of public interests, the paper lays out the state-dominated discursive settings in the three countries under investigation. It then widens the perspective for an overarching theoretical discussion that explores the shaping of legal terms through discourse and outlines the characteristic features of the "fake news" discourse. Finally, the paper assesses relevant legislative developments and key accounts of public discourse in order to substantiate the main claim. Concluding remarks emphasise the significance of public discourse for the formation of law.

II. Constitutional conditions for restrictions of free speech

Laws criminalising the communication of false information restrict the constitutional right of free speech. According to Article 10(2)(a) of Malaysia's Federal Constitution (hereinafter "MY Constitution") and Article 14(2)(a) of the Constitution of the Republic of Singapore (hereinafter "SG Constitution"),

Parliament may by law impose such restrictions as it deems [SG: considers] necessary or expedient in the interest of the security of the Federation [SG: Singapore] or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.

Section 34 of the 2017 Constitution of the Kingdom of Thailand (hereinafter "TH Constitution") stipulates that freedom of speech can be restricted

for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people.

The conditions laid down in the constitutional texts thus do not explicitly allow the restriction of free speech to eradicate false information. Rather, restrictive laws may target false statements only if this is necessary to divert a threat to one or more of the stated public interests. For instance, some of the interests protected by Singapore's POFMA – "public health, public safety, public tranquillity or public finances" and "feelings of enmity, hatred or ill-will between different groups of persons" – do not figure in Article 14(2)(a) of the SG Constitution explicitly. They may therefore only be classified as sub-interests of "public order"[1] which is the legal term used to provide protection not only against physical threats, but also against "disturbance of the current of life of the community"[2].

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1 See also Li-ann Thio, Written Representation No. 55 to the Parliament of Singapore Select Committee on Deliberate Online Falsehoods, paras 2.4-2.7, <http://www.parliament.gov.sg/docs/default-source/sconlinefalsehoods/written-representation-55.pdf> accessed 12 December 2019.

2 *Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri* [1976] 2 MLJ 83 [86-87] MHC.

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Indeed, in Chee Siok Chin v Minister for Home Affairs, which dealt with a public protest that was dispersed by the police based on the Miscellaneous Offences (Public Order and Nuisance) Act, the Singapore High Court held that "wild and scurrilous allegations should be neither permitted nor tolerated under the pretext and in the guise of freedom of speech. Disseminating false or inaccurate information or claims can harm and threaten public order"[1]. The High Court also affirmed that parliament had an "extremely wide discretionary power" to decide how to protect the public interests enumerated in Article 14(2) of the Singaporean Constitution, leaving the "delicate balancing exercise involving several imponderables and factors such as societal values, pluralism, prevailing social and economic considerations as well as the common good of the community" to the legislators[2]. The court saw its role merely to verify whether there was a nexus between the object of the restrictive law and one of the permissible subjects in the Constitution. With a particular reference to "public order", it stated:

> Standards of public order and conduct do reflect differing and at times greatly varying value judgments as to what may be tolerable or acceptable in different and diverse societies. In the final analysis, the court will not only be guided but indeed be bound by the manifest intent and purport of both the Constitution and domestic legislation, not by abstract notions of permissible conduct[3].

The High Court also laid out how to ascertain the factual basis on which parliament would consider it "necessary or expedient" to restrict a right in question:

> Evidence of whether the restrictions are to be considered 'in the interest' of any of the stated purposes may be, inter alia, gleaned from the impugned Act, *relevant parliamentary material as well as contemporary speeches and documents*. A generous and not a pedantic interpretation should be adopted[4].

Thus, the court made it clear that the interpretation of an Act, including the question whether a certain restriction served the protection of public order[5], can be based also on "contemporary speeches and documents" by representatives of the state. How significant these are for the interpretation of Malaysian and Singaporean constitutional law, can, for example, be seen in Li-ann Thio's and Kevin Tan's textbook on Malaysian and Singaporean constitutional law, where speeches by prime ministers and ministers are frequently cited throughout the book[6].

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1   *Chee Siok Chin v Minister for Home Affairs* [2005] 1 SLR 582 [135] SGHC.

2   Ibid [49].

3   Ibid [132].

4   Ibid [49], emphasis by the author.

5   For more about public order under Singaporean law, see also Li-ann Thio, A Treatise on Singapore Constitutional Law (Academy Publishing 2012) para 11.139.

6   For instance, in the chapter about political culture and informal limits of free speech, speeches by Prime Minister Lee and Deputy Prime Minister Wong Kan Seng are quoted extensively, or in a chapter about the "local conditions" regarding political defamation and free speech, the authors refer to public speeches delivered by Singaporean Prime Ministers Lee Hsien Loong and Goh Chok Tong and the then Acting Minister for Information, Communication and the Arts, David Lim, see KevinYL Tan and Li-ann Thio, Constitutional Law in Malaysia and Singapore (3rd edn, LexisNexis 2010) 985-987 and 1116-1118.

In Malaysia, the (then) Supreme Court affirmed in Public Prosecutor v Pung Chen Choon[1] that Section 8A(1) of the Printing Presses and Publications Act, which prohibits the malicious publication of false information, is not in violation of the Constitution. The case dealt with a newspaper editor who had been charged with publishing false news about the arrest of a priest and who claimed that the provision constituted an impermissible restriction of free speech. The court decided that Section 8A(1) was "in pith and substance" falling under one of the enumerated interests of Article 10(2)(a) of the Federal Constitution, in this case public order, even if some acts covered by the law may not actually lead to public disorder. Pung Chen Choon thus affirmed parliament's discretion in creating restrictive legislation if its purpose was aligned with constitutional interests.

As for Thailand, "public order" can expediently be considered as a part of the more general category "public interest" (prayot satharana). Unlike in the cases of Malaysia and Singapore, first terminological clarification can be drawn from the constitutional text itself, which lays down "Duties of the State" (Sections 51-63 TH Constitution) as well as "Directive Principles of State Policies" (Sections 64-78). Both chapters contain several references to important public interests that must be pursued by state authorities. A key provision is Section 52 which mandates the State to "protect and uphold the institution of kingship, independence, sovereignty, integrity of the territories and the areas over which Thailand has the sovereignty rights, honour and interest of the Nation, security of the State, and public order." Besides other constitutionally mandated state policies, Section 78 demands the State also to "promote the correct knowledge and understanding of the public and communities regarding the democratic regime of government with the King as Head of State."

The constitutional provisions reflect the fact that "public interest" is interpreted with a particularly strong security focus in Thailand. This is not a new feature of the 2017 Constitution, but the mainstream interpretation among Thai scholars for a long time. Scholarly definitions of the public interest have evolved around the security (khwam mankhong) of the person and property, the territory, the state and the economy[2]. The examples used to illustrate the otherwise vague meaning of the term inevitably include references to national security as the central common good which demands civil and military institutions and sufficient resources in order to be properly pursued[3]. Nonetheless, it is also acknowledged that public interests can change over time[4]. In practice, and due to the strong focus on security, public interests are largely defined by the Thai executive and the military. Thai courts largely abstain from right-based judicial control[5].

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1 *Public Prosecutor v Pung Chen Choon* [1994] 1 MLJ 566 SC, extracts reprinted in KevinYL Tan and Li-ann Thio (n 5) 993-998.

2 Woraphot Wissarutphich, Lhak Kanphuenthan Khorng Kotmai Pokkhrong [Basic Principles of Administrative Law] (Winyuchon 1997) 21.

3 Bowornsak Uwanno, Kotmai Mahachon – Thima Lae Nitiwiti [Public Law – Development and Legal Method] Vol 3 (Nititham 1995) 333.

4 Somyot Chueathai, Lhak Kotmai Mahachon Bueang Ton [Introduction to Public Law: Principles of Law] (13th edn Winyuchon 2019) 33.

5 Khemthong Tonsakulrungruang, The Constitutional Court of Thailand – From Activism to Arbitrariness. In AlbertHY Chen (ed), Constitutional Courts in Asia A Comparative Perspective (Cambridge University Press 2018) 184-213; Andrew Harding and Peter Leyland, The Constitutional System of Thailand A Contextual Analysis (Hart 2011) 189-215.

For instance, the Constitutional Court decided that Sec. 14(2) of the Commission of Computer-Related Offences Act 2007 (amended in 2017; often referred to as "Computer Crimes Act") is in accordance with the Thai Constitution of 2007[1]. The provision makes it a crime to enter false information into a computer system in a manner that is likely to damage the maintenance of national security, public safety, national economic security or public infrastructure serving national's public interest or cause public anxiety. The Court was satisfied by the fact that the law served the protection of national security and public order and could not find any unfair disadvantage for the accused.

Consequently, what amounts to a threat to public interests in Malaysia, Singapore and Thailand is defined primarily by the legislative and executive branches, which shape the relevant discourse, thereby delineating the threshold for the restriction of free speech.

III. Definition of terms and distribution of power

The commanding position of the Malaysian, Singaporean and Thai governments induces and amplifies discursive dominance. In Malaysia and Singapore, the government controls both the parliament and the legislative agenda, whereas courts play only a marginal role in constitutional politics[2]. Adhering to thin versions of the rule of law, the level of political liberalisation is low. The media in both countries are subject to state control and censorship[3], though Malaysia exhibits a comparably higher level of internet freedom[4].

Malaysia's political system has been characterised as "regularised authoritarianism", which is manifested, for example, in the legislation and enforcement of the Internal Security Act, the Sedition Act and similar laws[5]. However, the current Pakatan Harapan coalition government, which took over from the UMNO-led Barisan Nasional administration in 2018, has promised reforms[6].

In Singapore, the state's control is "enveloped within administrative and regulatory mechanisms", usually without entering the public domain[7]. The Constitution exists to give power to the government to do what is "necessary or expedient" for the national interest[8]. The People's Action Party (PAP)

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1 Constitutional Court order No. 46/2555 [2012] of 12 September 2012.

2 Li-ann Thio, 'Soft constitutional law in nonliberal Asian constitutional democracies' [2010] 8(4) International Journal of Constitutional Law 766-799; DanielA Bell, 'A Communitarian Critique of Authoritarianism: The Case of Singapore' [1997] 25(1) Political Theory 6-32; JaclynL Neo, Balancing Act: The Balancing Metaphor As Deference and Dialogue in Constitutional Adjudication. in JaclynL Neo (ed), Constitutional Interpretation in Singapore: Theory and Practice (Routledge Cavendish 2017) 159-187.

3 Garry Rodan, Transparency and Authoritarian Rule in Southeast Asia. Singapore and Malaysia (Routledge, 2004) 18-37; Jothie Rajah, Authoritarian Rule of Law – Legislation, Discourse and Legitimacy in Singapore (Cambridge University Press 2002) 117-160.

4 Susan Leong, New Media and the Nation in Malaysia (Routledge 2014) 2, 119.

5 HP Lee, Constitutional Conflicts in Contemporary Malaysia (2nd edn, Oxford University Press 2017) 166-181; Ariel Heryanto and SumitK Mandal, Challenges to authoritarianism in Indonesia and Malaysia. In Ariel Heryanto and SumitK Mandal (eds), Challenging Authoritarianism in Southeast Asia. Comparing Indonesia and Malaysia (Routledge Cavendish 2003) 6.

6 David Boyle, Malaysian Press Await Promised Reforms' (*Voice of America*, 12 June 2018) <https://www.voanews.com/east-asia-pacific/malaysian-press-await-promised-reforms> accessed 12 December 2019.

7 Jothie Rajah (n 17) 20.

8 Michael Hor, Constitutionalism and subversion. An exploration. In Li-ann Thio and KevinYL Tan (eds), Evolution of a Revolution. Forty years of the Singapore Constitution (Routledge Cavendish 2009) 260-287.

government, which is permanently concerned with existential matters of national survival and economic prosperity, does not allow the media to assume a true watchdog position, but rather communicates messages to the public and serves the communitarian purposes of a dominant elite[1].

Thailand has moved back and forth between civilian and military governments since its change to constitutional monarchy in 1932. The most recent military interregnum lasted from May 2014 to July 2019. However, political power in Thailand has usually been firmly in the hands of members of the bureaucracy, the military, the judiciary and the palace[2], whereas the military and the monarchy exercise extra-constitutional roles[3]. Throughout the cycle of military coups, authoritarian governments have been the rule, not the exception[4]. The dominant groups have shaped the country's constitutional framework in ways to contain and discipline the mechanisms of representative and electoral democracy[5]. Depending on the type of regime, the media are subject to more or less censorship[6], whereas tools of digital mass surveillance have been increasingly deployed[7].

The Malaysian, Singaporean and Thai (military) governments hence occupy central positions to influence public discourse. Legal terms such as public order and public interest receive their meaning and significance through interpretation by these actors. At the same time, domestic discourses are on occasions supported from other discursive arenas. The global and regional "fake news" discourse would be a case in point. These feedback loops also drive the growth of particular problems\..[8]

IV. Shaping terms through discourse

Discourse can give weight to certain interests, assign priorities and establish hierarchies. Text and talk "manage the mind of others"[9]. A discursive perspective assumes that there are no pre-given or objective problems in human societies. The "significance" of a problem is naturally contested, subject to debates and discussions[10]. Cobb, Ross and Ross have described how the number and variety of potential public issues exceed the capabilities of decision-making institutions[11]. Therefore,

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1   DianeK Mauzy and RS Milne, Singapore Politics Under the People's Action Party (Routledge 2002) 137; Kenneth Paul Tan, Singapore - Identity, Brand, Power (Cambridge University Press 2018) 1-20.

2   Duncan McCargo, 'Network Monarchy and Legitimacy Crisis in Thailand' [2005] 18(4) The Pacific Review 499-518; Eugénie Mériau, 'Thailand's Deep State, royal power and the Constitutional Court (1997–2015)' [2016] Journal of Contemporary Asia, DOI: 10.1080/00472336.2016.1151917.

3   Andrew Harding and Peter Leyland (n 14) 29-33.

4   Federico Ferrara, The Political Development of Modern Thailand (Cambridge University Press 2015) 266-280.

5   Henning Glaser, Constitutional Conflict and Restatement: The Challenge and Transformation of the Hegemonic Basic Consent in Thailand. In Henning Glaser, Norms, Interests, and Values. Conflict and Consent in the Constitutional Basic Order (Nomos 2015) 294.

6   Peter Leyland, 'The Struggle for Freedom of Expression in Thailand: Media Moguls, the King, Citizen Politics and the Law' [2010] 2(1) Journal of Media Law 115-137; Glen Lewis, Virtual Thailand – The media and cultural politics in Thailand, Malaysia and Singapore (Routledge 2006).

7   Pinkaew Laungaramsri, 'Mass surveillance and the militarization of cyberspace in post-coup Thailand' [2016] 9(2) Austrian Journal of South-East Asian Studies 195-214.

8   Stephen Hilgartner and CharlesL Bosk, 'The Rise and Fall of Social Problems: A Public Arenas Model' [1988] 94(1) American Journal of Sociology 53, 67.

9   TeunA van Dijk, 'Principles of critical discourse analysis' [1993] 4 (2) Discourse & Society 249, 254.

10   Stephen Hilgartner and CharlesL Bosk (n 30) 54; see also Ray Maratea, 'The e-Rise and Fall of Social Problems: The Blogosphere as a Public Arena' [2008] 55(1) Social Problems 139-160.

11   Roger Cobb, Jennie-Keith Ross and Marc Howard Ross, 'Agenda Building as a Comparative Political Process' [1976]

only a selection of issues will land on the governmental agenda. This selection reflects a particular interpretation of reality that frames the discourse. Dramatic real-world events, capturing public attention may often influence this process[1]. Hilgartner and Bosk have outlined the possible arenas where discourse takes place, including the branches of government, media, political and social groups, religious communities, academia and more[2].

The determination of "problems" and "agendas" is shaped by communication. Jürgen Habermas has formulated a theory of communicative action according to which "lawmaking is interwoven with the formation of communicative power" and the validity of a judgment can only be assessed discursively, "by way of a justification that is *carried out* with arguments."[3] Based on the concept of communicative freedom, he posits that equal access by affected parties to rational or "rationalistic"[4] discourses is the fundamental requirement of democratic deliberation and the legitimacy of law. He therefore considers that negotiated agreements may be considered fair if an uncoerced consensus has been formed due to an equal distribution of bargaining power, with equal opportunities to exercise pressure[5].

However, Habermas was aware that these ideal circumstances may not always be present, particularly in deficient democracies, and that the formation of public opinion may be subject to a "more or less concealed game of power" with "exclusion mechanisms of the Foucauldian type"[6]. The "power behind discourse"[7] thus merits attention. Michel Foucault, in his genealogical writings, was concerned with the influence of power on discourse and knowledge: "Discourse (…) is the thing for which and by which there is struggle, discourse is the power which is to be seized"[8]. The regulation of discourse deals with who is allowed to speak on a given topic[9]. Foucault therefore calls to pay attention to the historical transformations of discursive practices and their relationship to social and cultural change[10]. His concept of governmentality is also deeply rooted in his ideas about discourse[11]. This connects Foucault with Antonio Gramsci and his concept of hegemony. For Gramsci, political power is based upon a combination of domination and hegemony, whereas the former refers to coercive state power in the narrow sense and the latter to forms of intellectual and moral leadership based on

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70(1) The American Political Science Review 126-138.

1   See, for instance, Jerry Williams and RS Frey, 'The Changing Status of Global Warming as a Social Problem: Competing Factors in Two Public Arenas' [1997] 7(1) Research in Community Sociology 277.

2   Stephen Hilgartner and CharlesL Bosk (n 30) 58-59.

3   Jürgen Habermas, Between Facts and Norms (2nd edn, MIT Press 1996) 162, 226 (emphasis in the original); see also id, The Theory of Communicative Action Volume 1 (Beacon Press 1984) 18.

4   AgnesS Ku, 'Revisiting the Notion of "Public" in Habermas' Theory – Toward a Theory of Politics of Public Credibility' [2000] 18(2) Sociological Theory 216, 223.

5   Jürgen Habermas, Between Facts and Norms (n 36) 166.

6   Ibid 374-375.

7   Norman Fairclough, Language and Power (Longman 1989) 55.

8   Michel Foucault, The order of discourse. In Michael Shapiro (ed), Language and Politics (Basil Blackwell 1984) 110.

9   MarkCJ Stoddart, 'Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power' [2007] 28 Social Thought & Research 205.

10 See Norman Fairclough, Discourse and Social Change (Polity Press 1992) 54.

11 See, for instance, Michel Foucault: Security, Territory, and Population. In Paul Rabinow (ed), Michel Foucault, Ethics: Subjectivity and Truth (The New Press 1997) 67-71.

consent[1]. Hegemony in the Gramscian sense allows a dominant class to control the institutions of the state and civil society. It relies on voluntarism and participation rather than the threat of punishment for disobedience[2].

In *Hegemony and Socialist Strategy*, which is tied to several of Gramsci's ideas, Ernesto Laclau and Chantal Mouffe argued that "every object is constituted as an object of discourse", moving beyond the Foucault's distinction between discursive and non-discursive practices. According to them, discourse is a "real force that contributes to the moulding and the constitution of social relations"[3]. The terrain for the constitution of every social practice is what they call the "field of discursivity" where, with reference to Derrida, Heidegger and Wittgenstein, the fixing of ultimate meanings is impossible. On this basis, "any discourse is constituted as an attempt to dominate the field of discursivity, to arrest the flow of differences, to construct a centre"[4]. Within every discourse, privileged discursive points may arise which reflect the relative power. Laclau and Mouffe refer to them as nodal points:

The practice of articulation, therefore, consists in the construction of nodal points which partially fix meaning; and the partial character of this fixation proceeds from the openness of the social, a result, in its turn, of the constant overflowing of every discourse by the infinitude of the field of discursivity[5].

Importantly, Laclau and Mouffe posit that discourses are shaped by antagonisms – "the political"[6] – arguing that "the more unstable the social relations (…), the more the points of antagonism will proliferate"[7]. Hegemony emerges in a "field crisscrossed by antagonisms" where a Gramscian war of position needs to be fought.

The global "war on terror" discourse is an example of how the strategic use of antagonistic language was able to shape a national security paradigm that promised to defend public and global order[8]. It was framed largely by governmental speech about ever-present threats from evil terrorists and resulted in restrictive legislation and an expansive interpretation of "national security". Dramatic terror attacks were the moments when executive and military representatives underlined the significant dangers and the need for surveillance, intelligence gathering and other restrictive measures.

The exclusion of certain discourses to the benefit of others results in an uneven and necessarily hierarchical discursive structure.[9] Floating signifiers – indeterminate terms – become nodal points which represent partial concentrations of power. Consequently, social and political spaces are continuously redefined. "Public order" and the threats to it are especially susceptible to being discursively framed:

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1   Antonio Gramsci, Selected Writings. in David Forgacs (ed), A Gramsci Reader (Lawrence & Wishart 1988) 249.

2   MarkCJ Stoddart (n 42) 201.

3   Ernesto Laclau and Chantal Mouffe, Hegemony & Socialist Strategy (Verso 1985) 107-110.

4   Ibid 112.

5   Ibid 113.

6   Chantal Mouffe, The Democratic Paradox (Verso 2000) 101.

7   Ibid 131.

8   Adam Hodges, The "War on Terror" Narrative – Discourse and Intertextuality in the Construction and Contestation of Sociopolitical Reality (Oxford University Press 2011); Henning Glaser, The Margin of Maneuver: Responding to the Terrorist Threat in Times of the Global War on Terror's Third Phase. In Henning Glaser (ed), Talking to the Enemy, Deradicalization and Disengagement of Terrorists (Nomos 2017) 257-356.

9   See David Howarth, 'Power, discourse, and policy: articulating a hegemony approach to critical policy studies' [2010] 3(3-4) Critical Policy Studies 309, 313.

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[I]n a situation of radical disorder, 'order' is present as that which is absent; it becomes an empty signifier, as the signifier of this absence. In this sense, various political forces can compete in their efforts to present their particular objectives as those which carry out the filling of that lack. To hegemonize something is exactly to carry out this filling function[1].

V. Characteristics of the "fake news" discourse

The contemporary discourse about the dangers of disinformation is focused on the power of social media. Facebook, Twitter, WeChat and WhatsApp, to name just a few, are direct communication channels unfiltered by editorial oversight. Many publications have already pointed to selective information exposure and the filter bubble phenomenon as major causes of increasing polarisation in societies worldwide[2]. Empirical studies have also investigated the agenda-setting power of deliberately false information in the media landscape[3].

At the same time, the term "fake news" is used in striking indeterminate ways. Government officials and politicians, commentators and academics and the media may employ the term to refer to the fabrication or manipulation of reports, to propaganda, the discrediting of traditional news or dissenters, news satire or parody, or even to an advertising technique[4]. Joshua Habgood-Coote therefore argued to abandon the terms "fake news" and "post-truth" altogether due to the lack of stable public meanings[5].

This indeterminacy of "fake news" is a particularly relevant aspect for discursive analyses. Johan Farkas and Jannick Schou have classified the term precisely as a Laclaudian floating signifier. Based on a contemporary reading of his works, they argue that "fake news" is "lodged in-between different hegemonic projects seeking to provide an image of how society is and ought to be structured"[6]. The term is mobilised as part of political struggles. With references mostly to the 2016 U.S. presidential election campaign, their case studies include the critiques of digital capitalism, right-wing politics and mainstream media. In conclusion, they argue that the pluralisation of "fake news" suggests that it has become the centre of contemporary political struggles, used as a discursive weapon within competing discourses seeking to delegitimise political opponents[7].

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1   Ernesto Laclau, Why do Empty Signifiers Matter to Politics? In Jeffrey Weeks (ed), The Lesser Evil and the Greater Good. The Theory and Politics of Social Diversity (Rivers Oram Press) 176.

2   Edda Humprecht, 'Where "fake news" flourishes: A comparison across four Western democracies' [2018] 22(13) Information, Communication & Society 1973-1988; Dominic Spohr, 'Fake news and ideological polarization: Filter bubbles and selective exposure on social media' [2017] 34(3) Business Information Review 150–160; Herman Wasserman, 'Fake news from Africa: Panics, politics and paradigms' [2017] Journalism https://doi.org/10.1177/1464884917746861; Homero Gil de Zúñiga, Brian Weeks and Alberto Ardèvol-Abreu, 'Effects of the news-finds-me perception in communication: Social media use implications for news seeking and learning about politics' [2017] 22(3) Journal of Computer-Mediated Communication 105-123.

3   See ChrisJ Vargo, Lei Guo, Michelle Amazeen, 'The agenda-setting power of fake news: A big data analysis of the online media landscape from 2014 to 2016' [2018] 20(5) New Media & Society 2028-2049.

4   EdsonC Tandoc, Zheng Wei Lim and Richard Ling, 'Defining Fake News. A Typology of Scholarly Definitions' [2018] 6(2) Digital Journalism, 137-153.

5   Joshua Habgood-Coote, 'Stop talking about fake news!' [2019] 62(9-10) Inquiry 1033-1065.

6   Johan Farkas and Jannick Schou, 'Fake News as a Floating Signifier: Hegemony, Antagonism and the Politics of Falsehood' [2018] 25(3) Javnost - The Public 298-314.

7   Ibid 308.

The "fake news" discourse is indeed double-edged. On the one hand, many share the conviction that false information and, particularly, deliberate misinformation can poison public debates and even lead to deadly lynch mobs[1]. On the other hand, all sides – but particularly actors within the political arena – feel the omnipresent temptation to discredit inconvenient truths by calling them fake.[2] Antagonistic language often displays the "fake news media" as the evil "Other" that needs to be neutralised. The parallels to the global "war on terror" are apparent.

VI. The emergence of truth as a public interest in Malaysia, Singapore and Thailand

Summarising the findings so far, it was argued that anti-falsehood legislation restricts free speech but may be constitutionally justified to protect public order and other public interests. In Malaysia, Singapore and Thailand, these terms are delineated largely by the executive and legislative branches. This conforms to the fact that the dominant powerholders are the governments, in Thailand also the military. The meaning crystallises over time through discourse. Thus, laws[3] and official statements from the government (and military) representatives are the main sources to trace the evolution of such interests.

It may be useful to briefly trace the key initialising moments in the three discursive settings. In early 2018, then Malaysian Prime Minister Najib Razak's alleged involvement in a large-scale corruption scandal was widely shared in social media. Shortly before UMNO's historic electoral defeat in May 2018, the ruling coalition thus rushed the Anti-Fake News Act through parliament in what appeared to be a last-minute effort to reassert control over public opinion. Singapore joined the global discourse with repeated references to the country's perceived vulnerability and the dangers of hostile influence from abroad, as could be seen in the Russian meddling with the 2016 U.S. presidential election. Consequently, the government adopted the "war on fake news" as a central policy field. In Thailand, a liberal party managed to attract widespread support, securing a significant number of parliamentary seats in the March 2019 election. The fundamental challenges to the traditional power distribution from these new political actors triggered governmental responses that increasingly used the language of "fake news" when engaging with opposing groups.

It is argued that the repeated official references to the danger of false information has triggered a process of the emancipation of truth as a public interest. The following analysis of recent Malaysian, Singaporean and Thai governmental discourses is confined to English-language publications, presuming that statements originally made in other languages have been accurately translated and also been published in local-language media. Due to the limited space, only selected statements can be included here. Contributions by NGOs, academics and the media are not presented due to their alleged limited impact on legal definitions. Future research will need to broaden and deepen this

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1   For instance, Paul Mozur, 'A Genocide Incited on Facebook, With Posts From Myanmar's Military' (*New York Times*, 15 October 2018) <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html> accessed 12 December 2019.

2   For instance, Editorial Board, 'A Philippine news outlet is exposing Duterte's abuses. He calls it fake news' (*Washington Post*, 13 December 2018) <https://www.washingtonpost.com/opinions/a-philippine-news-outlet-is-exposing-dutertes-abuses-he-calls-it-fake-news/2018/12/12/c97a0d5a-f722-11e8-8d64-4e79db33382f_story.html> accessed 12 December 2019.

3   On the relevance of law as discourse, see Jothie Rajah (n 17) 55-64.

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scope, in particular since social media platforms have started to cooperate with governments in the "war on fake news"[1].

1. Malaysia

Back in 2017, then Malaysian Prime Minister Najib Razak gave a keynote address at the 16th Asia Media Awards, where he said that "false and fake news" have become "a plague":

"[I]f you look online and on social media … well, it's like the Wild West out there! (…) [the media have a duty to] fight to the last this tide of fake and false news that threatens to turn truth into a purely subjective matter, with little relation to the actual facts. (…) The government of Malaysia will be on your side"[2].

However, existing laws have long prohibited the communication of false information in Malaysia. Section 28 of the Internal Security Act 1960 criminalises the spreading of "false reports" and the making of "false statements" by different means if these reports or statements are likely to cause "public alarm".

Section 8A(1) of Malaysia's Printing Presses and Publications Act 1984 addresses the malicious publication of false news. Under this provision, the printer, publisher, editor and the writer can be punished with imprisonment or a fine. According to the Section's second paragraph, malice is presumed if the accused did not take reasonable measures to verify the information.

Section 211(1) of Malaysia's Communications and Multimedia Act 1998 makes it a crime for a content provider or other person using such service to provide, among other alternatives, false content with intent to annoy, abuse, threaten or harass any person. Section 233(1)(a) of the same Act criminalises the making, creation or solicitation, or the initiation of the transmission of any communication which is, among other alternatives, false, with the said intent.

The widest reaching provision was Section 4 of the Anti-Fake News Act 2018 which made it a crime, punishable with imprisonment or fine, for "any person who, by any means, maliciously creates, offers, publishes, prints, distributes, circulates or disseminates any fake news or publication containing fake news." The term "fake news" was defined as "any news, information, data and reports, which is or are wholly or partly false", regardless of its form (Section 2). The Act also contained the duty to remove any publication containing "fake news". It was repealed on 9 October 2019.

When the law was still in the making, Mahatir Mohamad, then chairman of the Pakatan Harapan opposition, did not voice a principled disagreement with the bill:

"This law is very serious, and it has been opposed by many quarters including the Bar Council. We should give more time for the Bill to be debated when Parliament reconvenes after the

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1 Bangkok Post, 'AFP to assist fact-check programme' (*Bangkok Post*, 18 October 2019) https://www.bangkokpost.com/business/1774454/afp-to-assist-fact-check-programme; Tanakorn Sangiam, 'Digital Ministry to introduce official LINE account tackling fake news' (*National News Bureau of Thailand*, 1 September 2019) < http://thainews.prd.go.th/en/news/detail/TCATG190901172331166> all accessed 12 December 2019.

2 Sumisha Naidu, 'Free speech thriving in Malaysia but fake news a plague: PM Najib' (*Channel News Asia*, 19 April 2017) <https://www.channelnewsasia.com/news/asia/free-speech-thriving-in-malaysia-but-fake-news-a-plague-pm-najib-8741726> accessed 12 December 2019.

general election"[1].

Two days after the enactment, Mahatir vowed to abolish it if elected[2]. About three weeks later, the first person was convicted over inaccurate criticism of the police[3]. Five days before the election, Malaysian authorities said they were investigating Mahatir for false claims that his plane was sabotaged[4].

A few days after Pakatan Harapan's watershed election victory, Prime Minister Mahatir said the government intended to redefine, not revoke the Anti-Fake News Act, insisting that there must be limits to freedom of the press and freedom of speech[5]. Two weeks later, however, the Ministry for Communications and Multi Media announced that it was preparing a repeal bill. But it continued to emphasise the "fake news" threat. The responsible minister Gobind Singh Deo said:

> "We are going to repeal a law, so it is a lot more straightforward than us putting up a new bill. (…) We have laws that allow action to be taken over false reports. There are provisions in the civil law that can lead to legal suits, and we have provisions in the Penal Code on defamation and so forth. We will be looking at these laws to try and tweak them to make them more relevant for today's media"[6].

The lower house of parliament voted for repeal in August 2018. However, the Senate blocked the repealing legislation in September[7]. On the occasion of a joint press conference with Singaporean Prime Minister Lee Hsien Loong, shortly after the Singaporean Protection from Online Falsehoods and Manipulation Act (POFMA) bill had been made public, Prime Minister Mahatir defended his government's decision to revoke the Anti-Fake News Act. However, he also stressed the challenge of "fake news":

> "In the case of Malaysia, we have made a promise that we will do away with the anti-fake news law. That is because this is what the people want and we respect the people who actually voted us into power. On the other hand, of course, we know that the present social media can be

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1   The Star Online, 'PP sole authority on Bill, says Dr M', (*The Star Online*, 28 March 2018) <https://www.thestar.com. my/news/nation/2018/03/28/pp-sole-authority-on-bill-says-dr-m-pakatan-chairman-decision-on-whether-to-act-will-depend-on-publi> accessed 12 December 2019.

2   The Star Online, 'Dr M vows to abolish certain laws' (*The Star Online*, 4 April 2018) <https://www.thestar.com.my/ news/nation/2018/04/04/dr-m-vows-to-abolish-certain-laws-we-will-follow-the-requirements-of-the-time/> accessed 12 December 2019.

3   The Guardian, 'First person convicted under Malaysia's fake news law' (*The Guardian*, 30 April 2018) <https://www. theguardian.com/world/2018/apr/30/first-person-convicted-under-malaysias-fake-news-law> accessed 12 December 2019.

4   Joseph Sipalan and Praveen Menon, 'Go ahead, charge me over fake news, says Malaysia's Mahathir of plane sabotage claim' (*Reuters*, 4 May 2018) <https://www.reuters.com/article/malaysia-election-fakenews/go-ahead-charge-me-over-fake-news-says-malaysias-mahathir-of-plane-sabotage-claim-idUSL3N1SB1IU> accessed 12 December 2019.

5   BBC, 'Malaysia to review not revoke fake news law, says Mahathir' (*BBC*, 14 May 2018) <https://www.bbc.com/ news/world-asia-44104879> accessed 12 December 2019.

6   Nadiah Koris and Akmar Samudin, 'Proposal to repeal Anti-Fake News Act to be tabled in next Parliament sitting' (*New Straits Times*, 28 May 2018) <https://www.nst.com.my/news/government-public-policy/2018/05/374211/ proposal-repeal-anti-fake-news-act-be-tabled-next> accessed 12 December 2019.

7   Malaysiakini, 'Dewan Negara rejects Anti-Fake News Act repeal' (*Malaysiakini*, 12 September 2018) <https://www. malaysiakini.com/news/442741> accessed 12 December 2019.

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abused quite seriously. For us, that means that we have to learn how to handle such fake news. But when we have a law that prevents people from airing their views, then we are afraid that the Government itself may abuse the law, as happened in the last Government. We do not want any Government, this one and subsequent ones, to make use of the law in order to tell fake news, the Government itself to create fake news, in order to sustain themselves. But, of course, it will be difficult to handle. But we believe that we can accept the challenges and we can handle them"[1].

In August 2019, the Secretary-general of the Ministry of Communications and Multimedia, Suriani Ahmad, said anyone who finds a fake government or agency website should immediately report it to the Malaysian Communications and Multimedia Commission, also urging "all Malaysians who suspect that information on a website is false, to go to the sebenarnya.my portal."[2] Sebenarnya.my, an information verification portal for the verification of information by government agencies, was set up by the Malaysian Communications and Multimedia Ministry and the Malaysian Communications and Multimedia Commission in 2017.

In September 2019, Communications and Multimedia Minister Gobind Singh Deo suggested the formation of a parliamentary select committee to the government that will seek solutions to combat "fake news" notwithstanding the repeal of the Anti-Fake News Act[3]. Only days before the Act was finally repealed, Prime Minister Mahatir seemed to regret the decision:

 "The anti-fake news law is good because on social media you find a lot of wrong views coming out and they affect the thinking of the people. (…) How do you sift through bad and good news? That is a problem that we're faced with today. Frankly, I think we need to curb somewhat the fake news, but we have to do that without also curbing true news"[4].

But also after the repeal, the topic continues to be widely addressed by government representatives. For instance, Sabah Youth and Sports Minister, Phoong Jin Zhe, spoke about the publication of "fake news" over social media that has reached "an alarming stage throughout Malaysia". He also made strategic use of the global feedback loop and embedded the Malaysian discourse in an allegedly growing consensus:

 "It is becoming a norm and a challenge to the whole world, not only Sabah and Malaysia. It is also a threat to democracy (…) I am sure that in future election campaigns in Malaysia, more fake news will come up. So we really need to tackle this issue. If not, it could tear us apart"[5].

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1   TODAYonline, 'PM Lee, Dr Mahathir on tackling fake news' (*YouTube*, 9 April 2019) <https://youtu.be/h9TpWeEuDO8> accessed 12 December 2019.

2   Bernama, 'Check authenticity of websites before using them as reference' (*Bernama*, 3 August 2019) <http://www.bernama.com/en/news.php?id=1753493> accessed 12 December 2019.

3   Radzi Razak, 'Parliamentary select committee should be formed to combat fake news, says minister' (*Malay Mail*, 26 September 2019) <https://www.malaymail.com/news/malaysia/2019/09/26/parliamentary-select-committee-should-be-formed-to-combat-fake-news-says-mi/1794589> accessed 12 December 2019.

4   FMT News, 'Tackle fake news without hindering the truth, says Dr M' (*FMT News*, 4 October 2019) <https://www.freemalaysiatoday.com/category/nation/2019/10/04/tackle-fake-news-without-hindering-the-truth-says-dr-m/> accessed 12 December 2019.

5   Durie Rainer Fong, 'Teach social media literacy in schools, says Sabah minister' (*FMT News*, 11 November 2019) <https://www.freemalaysiatoday.com/category/nation/2019/11/11/teach-social-media-literacy-in-schools-says-sabah-minister/> accessed 12 December 2019.

Prominent Democratic Action Party (DAP) veteran Lim Kit Siang framed the issue in more bellicose language:

"In Malaysia, or in the whole world, the question of fake news, hate speech is taking over humankind and somehow we must be able to fight this battle"[1].

In sum, statements by members of the previous and the current Malaysian administration have described "fake news" as a central problem in Malaysian society. Though the Pakatan Harapan government under Prime Minister Mahatir Mohamad eventually repealed the Anti-Fake News Act, it clearly maintained its focus on the need to combat the spread of false information. It will not allow that the spread of "fake news" would "tear us apart". Laws will be "tweaked" to make them better applicable to social media in order to win this "battle". Prime Minister Mahatir described the Anti-Fake News Act, only days before its repeal, as "good". In his election campaign in 2018, he said that the Act merely needed some revisions. When speaking next to Singaporean Prime Minister Lee, he continued to emphasise the need for governmental responses to disinformation and "social media abuse". The formation of a parliamentary select committee attests to this aim.

2. Singapore

The criminal law of Singapore contains several provisions that address the spreading of false information. The Penal Code's Section 505, which has been adopted from the Indian Penal Code of 1860, provides for the punishment by imprisonment or a fine of any person who "makes, publishes or circulates any statement, rumour or report in written, electronic or other media" if this is done, among other alternatives, with the intent to "cause, or which is likely to cause, fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity."

According to Section 45(b) of the Telecommunications Act 1999, "any person who transmits or causes to be transmitted a message which he knows to be false or fabricated shall be guilty of an offence" and shall be punished with imprisonment or a fine.

On January 2018, the Singaporean parliament passed a resolution to establish the Select Committee on Deliberate Online Falsehoods. Following several public hearings, the committee delivered its report in September 2018 and recommended a multi-pronged approach consisting of criminal responses, improved education and digital media literacy, better support for quality journalism, disruption of online falsehoods by tagging or correction mechanisms and other measures including the removal or blocking of content.

During the Select Committee hearings on 23 March 2018, Law and Home Affairs Minister K. Shanmugam asked:

"What ends are you achieving by allowing absolute falsehoods... to circulate to try and influence people when it actually contradicts the very fundamentals of democracy and corrodes democracy?"[2]

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1   Malay Mail, 'Kit Siang says govt can effectively fight fake news, hate speech' (*Malay Mail*, 27 November 2019) <https://www.malaymail.com/news/malaysia/2019/11/27/kit-siang-says-govt-can-effectively-fight-fake-news-hate-speech/1813651> accessed 12 December 2019.

2   Faris Mokhtar, 'Law against online falsehoods 'justified' if public order is threatened, argues academic' (*Today*

The report of the Select Committee summarised its findings on the nature of deliberate online falsehood as follows:

"The Committee concludes that deliberate online falsehoods are a real and serious problem for the world, and Singapore. It is a problem that is more potent than before, due to technological advances and social changes in the Internet era. (…) There is overwhelming evidence of one of the problems, namely, deliberate online falsehoods. Singapore is not immune, and must take action to combat it"[1].

In an apparent reflection of the classic "passions versus interests" discourse[2], it described the effects that online falsehoods could have on society and public discourse:

"Falsehoods impede rational and reasoned political debate, by stoking negative emotions, such as anger and hate. They encourage polarisation and the entrenching of misinformed ideological beliefs. They seed negativity and anger among the middle ground, and polarise society by leveraging on or exploiting existing cleavages in society, making it difficult for rational discourse to take place"[3].

Based on the report, the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA) was passed by parliament on 8 May 2019 and assented to by the President on 3 June 2019. It entered into force on 2 October 2019 after subsidiary legislation had been finalised.

According to POFMA's Section 7, anybody who makes available a false statement of fact to end-users in Singapore and thereby negatively affects certain public interests, can be punished with a fine or imprisonment of up to five years. The enumerated public interests include the security of Singapore or a part thereof, public health, safety, tranquillity or finances, international relations, presidential or parliamentary elections or referenda, peaceful relations between different groups and public confidence in the performance of state authorities.

Section 2(2)(b) defines that "a statement is false if it is false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears." Sections 8 and 9, which deal with bots and commercial services for communication of false statements, establish criminal liability regardless of an effect on public interests. The Act also provides for the minister's authority to order the publication of corrections or the disabling of access to certain content (Sections 21-23). Moreover, the government can declare certain "online locations" as "declared online locations", which triggers further competences for restrictions (Sections 32-37).

Earlier that year, Second Minister for Defence Ong Ye Kung said at the Shangri-La Dialogue Sherpa Meeting that terrorism and "fake news" are among the security threats the world faces. Equating the Singaporean state with its people, he said:

Online, 23 March 2018) <https://www.todayonline.com/singapore/law-against-online-falsehoods-justified-if-public-order-threatened-argues-academic> accessed 12 December 2019.

1 Parliament of Singapore, Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures, para 239 <https://sprs.parl.gov.sg/selectcommittee/searchPage?from=20-9-2018&to=20-9-2018> accessed 12 December 2019.

2 Albert O. Hirschman, The Passions and the Interests (Princeton University Press, 1977).

3 Parliament of Singapore (n 80) para 241.

"Society will fight back, to restore our democratic institutions. This will be done through regulation, a likely drastic reconfiguration of the media industry, and an evolution of societies to become more discerning of what's real and what's false and malicious. (…) This is not conventional warfare, but a battle within all our societies. But it has important implications for global stability, as dysfunctional domestic politics created by misinformation and falsehoods, means messy external relations too"[1].

At the 20th anniversary of Channel News Asia, Prime Minister Lee Hsien Loong emphasised how Singapore's vulnerability is exacerbated by the threat of "fake news":

"[T]here is no shortage of people and groups who conduct coordinated campaigns to produce fake news to misinform and mislead, whether for financial gain, or to sow social discord, or even to radicalise people. (…) We are particularly vulnerable. We are open and English speaking, our mobile and internet penetration rate is high, and being a multiracial, multi-ethnic society, we have enduring fault lines that can be easily exploited"[2].

Lee has embedded his country's efforts in an alleged global "war on fake news" when making partially misleading references to France and Germany as countries having enacted anti-"fake news" laws[3]. In addition, he underscored the state's responsibility to fight "fake news". In a speech at the Inter-Pacific Bar Association Annual Meeting and Conference, he said:

"[T]he proliferation of technology and social media has provided a medium for hate speech and fake news to spread like wildfire. It has become absurdly easy for malevolent actors to conduct covert, subversive campaigns to manipulate opinions and influence elections. While public education is the first line of defence, legislation is an essential part of the answer"[4].

In the second reading of POFMA in May 2019, Law and Home Affairs Minister K. Shanmugam described factual truth as the critical infrastructure of public discourse:

"The pre-requisites for national conversations are a common vocabulary, an underpinning of facts, and that provides a platform for accommodation and compromise amongst diverse voices in society. A critical piece of infrastructure in these conversations is fact, and the infrastructure of fact. Like public infrastructure, society depends on it. It provides society with a shared reality. This is necessary so that we can have diversity without conflict, and public participation, while still getting decisions made. Without it, our political system will malfunction. (…) Where speech

1   Channel News Asia, 'Terrorism and 'fake news' key security threats the world faces: Ong Ye Kung' (*gov.sg*, 30 Januara 2019) <https://www.gov.sg/news/content/channel-newsasia---terrorism-and-fake-news-key-security-threats-the-world-faces> accessed 12 December 2019.

2   Prime Minister's Office Singapore, 'PM Lee Hsien Loong at the CNA 20th Anniversary Gala Dinner', 29 March 2019 <https://www.pmo.gov.sg/Newsroom/CNA-20th-Anniversary-Gala-Dinner> accessed 12 December 2019.

3   TODAYonline, 'PM Lee, Dr Mahathir on tackling fake news' (*YouTube*, 9 April 2019) <https://youtu.be/h9TpWeEuDO8> accessed 12 December 2019; Germany enacted the Network Enforcement Act (Netzwerkdurchsetzungsgesetz) in 2017 which merely reinforced existing notice-and-take-down duties.

4   Prime Minister's Office Singapore, 'PM Lee Hsien Loong at the 29th Inter-Pacific Bar Association Annual Meeting and Conference', 25 April 2019 <https://www.pmo.gov.sg/Newsroom/PM-Lee-Hsien-Loong-at-the-29th-Inter-Pacific-Bar-Association-Annual-Meeting-and-Conferenc> accessed 12 December 2019.

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does not serve the justifications for free speech, by harming the search for truth or by preventing citizens from becoming informed on issues, that does not warrant protection."[1]

Senior Minister and Coordinating Minister for National Security, Teo Chee Hean, later called on the Singaporean "society" to "stamp out the scourge of online fake news"[2].

The Singaporean government has thus underlined the threats from false information on multiple occasions, often invoking the city state's perceived vulnerability. Throughout the legislative process of POFMA, particularly during the Select Committee hearings, the government has characterised "fake news" as a "serious problem", a "wildfire" that necessitates a "battle within all societies" with "non-conventional warfare". Moreover, the emphasis on the importance of accurate facts for virtually all aspects of societal life has lifted the issue's salience significantly. The government also created an online portal on which falsehoods are officially corrected[3].

POFMA is a mere addition to already existing anti-falsehood legislation in Singapore. Its scope is partially more limited than, for instance, the Telecommunications Act. In particular, it provides for criminal liability only in the case of a threat to a definite public interest. However, the legislative process was also a performative act. After eight days of public hearings in March 2018, 65 individuals and organisations were heard. The hearings served as an important stage for the government to lay out its policy. Some organisations rejected participation. Human Rights Watch called the hearings a media event rather than a true consultation.[4] Some experts who appeared before the Committee later said that their statements have been misrepresented in the report[5]. The historian Thum Ping Tjin was "interrogated" by Law and Home Affairs Minister K. Shanmugam for almost six hours, during which his credentials were discredited and his replies often limited to yes or no answers[6]. This discursive dominance is reminiscent of what Jothie Rajah described as "performing legitimacy through select committees"[7]. The central message communicated by the government was that the serious threat from "fake news" necessitates decisive action. The first POFMA enforcement actions were initiated in late November 2019 against a local politician and Facebook[8].

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1 Ministry of Law of Singapore, 'Second Reading Speech by Minister for Law, K Shanmugam on The Protection from Online Falsehoods and Manipulation Bill', 7 May 2019, paras. 102-105, 268 <https://app.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-minister-for-law-k-shanmugam-on-the-protection-from-online-falsehoods-and-manipulation-bill> accessed 12 December 2019.

2 Prime Minister's Office Singapore, 'SM Teo Chee Hean at the Annual Religious Rehabilitation Group Buka Puasa 2019', 27 May 2019 <https://www.pmo.gov.sg/Newsroom/SM-Teo-Chee-Hean-at-the-Annual-Religious-Rehabilitation-Group-Buka-Puasa> accessed 12 December 2019.

3 Government of Singapore, 'Factually' <https://www.gov.sg/factually> accessed 12 December 2019.

4 Fathin Ungku, 'Human Rights Watch declines Singapore's invite to "fake news" hearing' (*Reuters*, 30 March 2018) <https://www.reuters.com/article/us-singapore-politics-fake-news/human-rights-watch-declines-singapores-invite-to-fake-news-hearing-idUSKBN1H60XQ> accessed 12 December 2019.

5 Reporters Without Borders, 'RSF explains why Singapore's anti-fake news bill is terrible' (*RSF*, 8 April 2018) < https://rsf.org/en/news/rsf-explains-why-singapores-anti-fake-news-bill-terrible> accessed 12 December 2019.

6 KennethP Tan, Singapore - Identity, Brand, Power (Cambridge University Press 2018) 49-50.

7 Jothie Rajah (n 17) 139-144.

8 Fathin Ungku, John Geddie, 'Facebook issues corrective label on user's post under new Singapore fake news law' (*Reuters*, 30 November 2019) <https://www.reuters.com/article/us-singapore-fakenews/facebook-issues-corrective-label-on-users-post-under-new-singapore-fake-news-law-idUSKBN1Y4043> accessed 12 December 2019.

3. Thailand

The political situation in Thailand is characterised by continued divisions in society. Since the military coup of May 2014, one of the most controversial issues has become the position of the military in state and society and its role in restricting political activities and the exercise of free speech[1]. Provisions against the communication of false information in the Computer Crimes Act have been extended while government and military officials have, on an increasing number of occasions throughout the year 2019, referred to "fake news" as one of the major threats to society.

Since the coup, the National Council for Peace and Order (NCPO) published several orders with the effect of laws. Orders 97/2014 and 103/2014 prohibited the publication of false information by the media and any unreasonable criticism of the NCPO based on false information. These orders have been revoked shortly before the elected government assumed office in July 2019[2].

Continued practical relevance of increasing impact has Section 14(1) of the Computer Crimes Act, which stipulates the punishment with imprisonment or fine of anyone who enters into a computer system "distorted", "fake" or "false" information "in a manner likely to cause loss to the public" if the act is done "dishonestly or by deceit". In addition, Section 14(2) criminalises the entry of "false" information if this is likely to cause "loss to the maintenance of national security, public security, national economic security or an infrastructure involving national public interest or in a manner causing public anxiety." Several people have been charged and convicted over allegedly false posts on social media in recent years[3].

On June 2019, Deputy Prime Minister and Defence Minister Prawit Wongsuwon ordered the Defence Ministry and the armed forces to take legal action against persons who spread false information online. A Ministry spokesperson said:

> "If any fake news and information is found to have had an impact on national security or damaged a particular organisation's reputation, correct information on the matter will have to be made known to the public while legal action is being pursued against the people responsible for spreading it"[4].

The chief of the Thai army, General Apirat Kongsompong, framed the issue in bellicose vocabulary when he stated in an interview in August 2019:

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1   James Buchanan, 'Is the era of "Red versus Yellow" over in Thailand?' (*New Mandala*, 21 August 2019) <https://www.newmandala.org/is-the-era-of-red-versus-yellow-over-in-thailand/> accessed 12 December 2019.

2   Mongkol Bangprapa, 'NCPO chief's last order will lift some controls on media' (*Bangkok Post*, 9 July 2019) <https://www.bangkokpost.com/thailand/politics/1709479/ncpo-chiefs-last-order-will-lift-some-controls-on-media> accessed 12 December 2019.

3   See the cases gathered by ilaw, such as 'Kritkorn: Organized symbolic action against mayor of Ubon Ratchathani' <https://freedom.ilaw.or.th/en/case/884>, 'Prasitchai: posted facebook criticizing Walailak univ. on its tree management' <https://freedom.ilaw.or.th/en/case/877>, 'Rinda: posted a rumor that Gen. Prayuth transferred money to Singapore' <https://freedom.ilaw.or.th/en/case/682>, 'Piyabutr: commented on TSN Party dissolution' <https://freedom.ilaw.or.th/en/case/864>, 'Gen. Pongsakorn: shared false news about buying cup of coffee for 12,000 THB' <https://freedom.ilaw.or.th/en/case/861> all accessed 12 December 2019.

4   Wassana Nanuam, 'Prawit wants "fake news" crackdown' (*Bangkok Post*, 27 June 2019) <https://www.bangkokpost.com/thailand/politics/1702408/prawit-wants-fake-news-crackdown> accessed 12 December 2019.

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"The threat now is fake news. (…) It's like cyber warfare. And when it combines with the [bombing] incident that happened last week, it's like hybrid warfare. (…) Now it is not just an open enemy like the old time. (…) So, we have to reorganise and improve our knowledge, and reorganise our units and many things to maintain peace and national security. (…) Some political parties, just born a couple of years ago (…) had the platform of their propaganda directed to (people) when they were 16 and 17. (…) They try to educate them with fake news"[1].

The response of a Future Forward Party spokesperson displayed in full clarity the war of position over the floating signifier "fake news":

"I believe his understanding of what fake news doesn't match the term used internationally. (…) The party agrees that fake news is a serious issue worldwide which has also created discord in the Thai society. But we're the victims, not the perpetrator"[2].

When the Minister of Digital Economy and Society, Buddhipongse Punnakanta, announced that his ministry was going to establish an "anti-fake news centre", he stressed that "fake news" can have an impact on every part of social life:

"Fake news is embedded within every aspect of our society, so it's very hard to specifically pinpoint anything right now besides the obvious problems, disasters and financial news, but as we progress, slowly but effectively, we'll try to cover every aspect possible. (…) People can submit any news they're suspicious of being unauthenticated, or that could incite fear and confusion to the public, to the website and our officials would verify its authenticity within two hours"[3].

On the anti-fake news centre's launch event, the minister equated "fake news" with other critical threats to society:

"Fake news is one of the critical threats that could harmfully affect people's lives and the economy. (…) The centre will only verify the truth and give feedback to citizens. (…) We did not establish the centre to support any specific parties or violate citizens' rights of expression"[4].

Two weeks after the centre's inauguration, the minister announced that it had detected more than eight thousand "messages with false news content", with 15 percent having the potential of inciting social division and affecting national security. Overall, he claimed that the centre processed more than 120,000 news items, which were forwarded to it by third parties, in thirteen days[5].

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1 Bangkok Post, 'Apirat: Fake news feeds "hybrid war"' (*Bangkok Post*, 9 August 2019) <https://www.bangkokpost.com/thailand/general/1727615/apirat-fake-news-feeds-hybrid-war> accessed 12 December 2019.

2 Hathai Techakitteranun, 'Future Forward hits back at Thai army chief's accusation' (*Straits Times*, 13 August 2019) <https://www.straitstimes.com/asia/se-asia/future-forward-hits-back-at-thai-army-chiefs-accusation> accessed 12 December 2019.

3 Khaosod English, 'Thailand to set up center to combat "fake news"' (*Khaosod English*, 22 August 2019) <http://www.khaosodenglish.com/news/crimecourtscalamity/2019/08/22/thailand-to-set-up-center-to-combat-fake-news/> accessed 12 December 2019.

4 Suchit Leesa-Nguansuk, 'Centre goes live to fight fake news' (*Bangkok Post*, 2 November 2019) <https://www.bangkokpost.com/business/1785199/centre-goes-live-to-fight-fake-news> accessed 12 December 2019.

5 Mu Xuequan, 'Nearly 8,000 fake news items detected in less than 15 days in Thailand' (*Xinhua*, 14 November 2019) <http://www.xinhuanet.com/english/2019-11/14/c_138552660.htm> accessed 12 December 2019.

In sum, the Thai discourse about the threat from "fake news" has been dominated by the government, which, particularly over the course of the last five years and until present times, has consisted largely of military generals. Since late 2018, when political activities were gradually permitted again, however, the government faced increasingly open criticism and was accused of abusing the issue for political purposes. Thus, the Thai "fake news" discourse is much more politicised than in Malaysia and Singapore, where the government's standpoint is comparably less contested. As the conservative government perceives and presents current liberal-progressive parties and groups as serious threats to the unity of the country and the monarchy, separating "fake" from real is highly political. The deeply polarised Thai society struggles to agree on what constitutes the commonly agreed political reality[1].

VII. Conclusion: Discourse becoming law

The emerging global consensus that "fake news" is a problem has been replicated and embedded in the state-dominated public discourses of Malaysia, Singapore and Thailand within the past two years. The floating signifier quickly became the focus of governmental attention. The language used by state representatives is reminiscent of the "war on terror": Battles need to be won; a hybrid war needs to be fought. Scenarios of societal decay and chaos are employed to attract public attention for the problem. Besides legislation, further approaches to fight "fake news" are deployed in high frequency, including the formation of parliamentary select committees, the establishment of "anti-fake news centres" operated by the government, or the creation of duties for social media sites to filter out false information. Regional initiatives to fight "fake news" have been launched within the Association of Southeast Asian Nations (ASEAN)[2]. In addition, the domestic and regional efforts are discursively embedded in a globalised "war on fake news" with references to other countries that have supposedly taken similar steps.

But how can the emergence of truth as a public interest be traced? To be sure, the most recent Singaporean and Thai laws criminalise the online communication of falsehoods only if this affects specific public interests. Moreover, the Anti-Fake News Act of Malaysia, which, in contrast, provided for an almost unconditional criminalisation, has been abolished in the meantime. In addition, several governmental statements described *specific* threat scenarios such as the incitement to racial hatred, the undermining of democratic institutions or unacceptable challenges to traditional power structures. At the same time, however, countless statements have indeed *not* distinguished between acceptable and unacceptable falsehoods, but rather referred to the problem of "fake news" in general terms. *Any* falsehood is thus becoming potentially harmful.

Restrictions of constitutional rights are likely to be justified on this novel ground to an increasing extent. The balance between free speech and the fight against "fake news" is thus expected to tilt in favour of the eradication of falsehoods. The governmental language of "war" affects the balancing of rights and interests, particularly where public discourse is dominated by state actors. In these hegemonic settings, the governments' continued emphasis on "fake news" can be expected to shift

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1   Janjira Sombatpoonsiri, '"Fake News" and Thailand's Information Wars' (*The Diplomat*, 3 July 2019) <https://thediplomat.com/2019/07/fake-news-and-thailands-information-wars/> accessed 12 December 2019.

2   ASEAN, 'ASEAN to cooperate on fighting fake news in the region' (*ASEAN*, 13 September 2017) <https://asean.org/asean-to-cooperate-on-fighting-fake-news-in-the-region/> accessed 12 December 2019.

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legal interpretations and adjudication toward the emancipation of truth as a public interest. The floating signifier becomes a Laclaudian nodal point.

Though lies and misinformation have been part of human societies for hundreds of years, a regional consensus is emerging according to which a "meaningful exercise of free speech" in a "properly functioning marketplace of ideas"[1] is not guaranteed anymore without state-regulated filtering through traditional media. The states' trust in existing correction mechanisms is dwindling. Falsehoods themselves are becoming a political and legal issue. This heightened governmental attention is largely attributable to the rise of social media, particularly in Southeast Asia[2]. But it is sustained and amplified by governmental framing and discursive superiority.

How the "war on fake news" unfolds deserves attention and necessitates continued observation. Communication and discourse theories that view public discourse as a yardstick of legal developments can help with this work. This paper therefore also calls for more interdisciplinary research at the intersection between law and discourse.

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1   Parliament of Singapore (n 80) para 253, (c).

2   World Bank, The Digital Economy in Southeast Asia (World Bank 2019) 27 <http://documents.worldbank.org/curated/en/328941558708267736/pdf/The-Digital-Economy-in-Southeast-Asia-Strengthening-the-Foundations-for-Future-Growth.pdf> accessed 12 December 2019.

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