

21 . THE DOGMA BEHIND POFMA

The new online falsehoods law hints at what we can expect from 4G.

MINISTERS SAID THAT the new law would shine a light on facts lost in a fog of misinformation. But its most illuminating revelations are about the government that created this unique piece of legislation. Pofma, or the Protection from Online Falsehoods and Manipulation Act 2019, helps us peer into the leadership’s mind as a fourth generation prepares to take over. It shows a government fixated on maintaining centralised control, and impatient to tame the messiness of democratic debate.

Pofma is the most elaborate and forceful response to so-called “fake news” anywhere in the world. It deals with “false statements of fact” circulating online on matters of public interest. The authorities can charge offenders with committing a crime, punishable with heavy fines and jail time—powers it already had under older laws such as the Sedition Act. What’s new is that Pofma also empowers the government to order that correction notices be pinned on the allegedly inaccurate post, or that the post be removed entirely.

Since Pofma’s correction and removal directives are obviously less severe than the bans and jail terms provided for under pre-existing legislation, ministers argued that the new law’s critics were overreacting. The public should appreciate its more considerate, “calibrated” approach, they implied. One reason why it’s hard to be grateful for these gentler powers is that they augment rather than replace the more extreme weapons, which are all still intact.

Besides, more calibration needn’t mean less restriction. That would be like expecting fewer casualties when a nuclear-armed country builds an arsenal of conventional weapons. Nukes are so extreme that the political cost of using them is inhibitive. That’s why countries have ended up killing millions more people with

small arms than weapons of mass destruction ever have. Similarly, Singapore's most extreme laws against online speech have been too politically radioactive for the government to deploy. But ministers did not hesitate to pick up Pofma, pulling the trigger twice a month on average in its first few months of operation.

Pofma is many different things, making it hard to sustain an in-depth conversation without being sidetracked. So, before going into the main subject of this essay—Pofma as a window on the PAP mind—let me get a couple of potentially distracting points out of the way.

At one level, Pofma is a serious attempt to come to grips with some major hazards, such as malevolent actors' abuse of online tools to spread hatred and divide society; and fake science, which vested interests have used to create unwarranted doubt about the scientific evidence concerning tobacco-related diseases and man-made climate change, for example. Whether Pofma will really help—or create its own problems—is arguable. But, I would not fault the Singapore government for taking such threats seriously.

At another level, Pofma reflects widespread public frustration with social media. The internet once had the image of an exciting new frontier promising incredible opportunities for conversation, education, entrepreneurship and creativity. It is still all those things. But people now have a love-hate relationship with the technology. Though they can't stop using it, they're aghast at what a mean and scary place the online world can be. It's not surprising that most Singaporeans supported the idea of the government rolling in to clean up the mess.

So we might, with good reason, welcome government restrictions on online falsehoods that cause harm to vulnerable communities or public health. We might, mistakenly but understandably, expect the state to be our cyber-nanny. But none of this required that we let the government arm itself with powers that make it harder for us to hold officials to account. That's what Singapore got as part of the Pofma bargain.

*

The law shifts the balance of power to an already dominant executive in quite unprecedented ways. Pofma can only be used in the “public interest”, but its articulation of what counts as the public interest is remarkable. Aside from the aforementioned aims of preventing incitement to hatred and protecting public health—which international human rights law recognises as legitimate reasons to restrict speech—Pofma states that it would be in the public interest for a minister to take action to maintain “public confidence” in the government’s performance.

The problem with this should be obvious. “Members of a ruling government, holding political office, cannot be deemed, under the law, to be impartial, reliable arbiters of what constitutes ‘legitimate’ criticism of their performance,” noted an in-depth legal analysis of Pofma by the International Commission of Jurists (ICJ), which comprises 60 distinguished lawyers and judges from around the world.

Pofma has echoes of the colonial-era Sedition Act, which criminalises speech that excites disaffection against the government. But even the drafters of the draconian Sedition Act were reasonable enough to insert a kind of good-faith exception: your speech won’t be considered seditious if it shows that “the Government has been misled or mistaken in any of its measures”. In other words, if the government deserves to be taken down a notch, you are allowed to say so.

Pofma mentions no such exception. A government agency could be enjoying high levels of public confidence only because people are not aware of its failings. Yet, if someone posts an article that exposes the agency’s incompetence, a minister can intervene as long as he’s able to find a factual inaccuracy somewhere in it. He can then use a correction order to interrupt and distract from the writer’s message. Pofma presumes the minister would be acting in the public interest since he’s trying to stop a slide in public confidence. On the same basis, the minister can even require the article to be removed entirely, regardless of whether the alleged error was central to the thrust of the piece. In this regard, Pofma is more extreme than defamation law.

In defamation cases, judges look at the meaning of the problematic statement within the context in which it appears. Pofma, in contrast, allows ministers to zero in on a single false or misleading line on its own, and order the take-down of the whole article, including accurate criticism of their work.

A second extraordinary feature of this law is that nobody other than government ministers can trigger correction or removal orders. This distinguishes it from France's 2018 election misinformation law, under which any candidate, whether from the opposition or the ruling party, can apply to a judge for an emergency injunction to remove online content containing damaging falsehoods. One does not have to believe in French-style *liberté*—one just needs to possess a commonsense grasp of human history—to know that people who already hold power are prone to lie and mislead as much as opponents who seek that power. Indeed, the lies of rulers are generally more harmful to society than the lies of the ruled. So it's reasonable to expect any law against falsehoods to apply to all sides.

The government has so far used only correction orders, saying that this merely amounts to claiming its "right of reply". But a "right" that's the exclusive privilege of around 20 of the country's most powerful men and women isn't a particularly high-minded principle; it's an oxymoron. Ministers have also argued that, contrary to what critics claim, Pofma doesn't give the government the final say concerning fact and falsehood, since you can challenge its orders in court (after you comply with them). Ministers nevertheless do have the *only* say about which facts merit consideration for Pofma protection. Nobody else who's trying to build what the government calls democracy's "infrastructure of facts"—whether opposition politicians, journalists, researchers or other citizens—are entitled to nominate their facts for legal protection from false or misleading attacks.

This is another way in which Pofma is different from defamation law, which allows anyone to sue since everyone has a right to reputation. I'm not suggesting that Pofma's "right of reply" should be democratized such that everyone gets to shoot off correction orders.

Under defamation law, someone who feels wronged by a falsehood can't force the speaker to retract and apologise unless a judge mandates it. Pofma contains no such independent safety check, so it's understandable that lawmakers don't want to distribute its powers to everybody. But that's a pretty good indicator that nobody should have them.

During the Pofma debate, Ministers worked hard to counter criticisms and correct misperceptions. But they could not deny that the law's language allows the executive to suppress and punish criticism. They could only give verbal assurances that they would not abuse the law, if any future government did, voters could have the final say at the ballot box. In other words, we should just trust leaders to keep their non-binding promises, and try to sack them if they don't. If your business partner or building contractor presented you with such an agreement, you wouldn't sign it.

*

Though there was never any doubt the Bill would be passed, the public debate over Pofma was unusually intense. The debate showcased the infowar armoury that the government has accumulated over the years. In the first few days after the Pofma Bill was tabled, it looked as if the mainstream media would provide balanced coverage of the debate. Singapore Press Holdings even took the relatively bold step of releasing a statement in favour of an independent regulator. The press also carried comments and commentaries by critics of the Bill. A letter of concern from academics was widely reported.

Very quickly, though, there was a marked shift in mainstream media coverage, probably due to government displeasure at the way the debate was going. SPH never repeated its call for an independent regulator. Furthermore, the most prominent academic and civil society opponents of the Bill were suddenly shunned when the national media sought views from commentators. Critics had to turn to foreign outlets and independent blogs. The clearest case of media self-censorship was their non-coverage of the ICJ's detailed legal analysis, as well as a statement from law professor David Kaye in

his capacity as the United Nations Special Rapporteur on freedom of expression. The mainstream media suppression of these credible legal sources then allowed ministers to tell Singaporeans that Pofma's critics lacked legal expertise.

The government could thus continue to rely on its traditional mass media partners. Its online outreach was more of a revelation. The government and its supporters had ramped up their digital capacities over the past decade, and ministers could now rely on not only their own official websites and social media vehicles, but also paid influencers and supporting fire of unknown provenance, such as internet brigades, bots and assorted trolls. Critics of Pofma found their patriotism questioned by PAP politicians. Such nationalist dog whistles unleashed troll attacks, in a style reminiscent of the intolerant populist movements overseas that are prime producers of toxic disinformation. The government's failure to disavow these techniques suggested that its response to the weaponisation of online tools is less about demilitarising cyberspace than winning the internet arms race.

It remains to be seen whether Pofma, used in a regular but relatively calibrated manner, will intensify Singapore's already suffocating culture of self-censorship. But what's already clear is the signal it sends about the PAP government. Aside from their instrumental function, laws also have a symbolic role, expressing the values of lawmakers and the society they represent. Many censorship laws are deliberately symbolic, like Singapore's token list of 100 banned pornographic sites. Other laws are unintentionally revealing of their drafters' values. Pofma is one example.

First, Pofma signifies an entrenching of the principle of executive dominance. Singapore's Constitution upholds the separation of powers. But, since independence, PAP ideology has been contemptuous of liberal democratic checks and balances that impede the important work of cabinet. Certain civil rights and democratic ideals have to be "subordinated to the primacy of purpose of an elected government", to borrow from Lee Kuan Yew's seminal 1971 speech about press freedom.

Aside from ideology, the PAP's sheer longevity in office has

strengthened its hegemony. The ruling party's prime position has been so normalised that it's become a habit to treat party, government and republic as virtually synonymous. Pofma turns this unthinking conflation of terms into formal law by elevating the interests of government bodies to the "public interest".

Second, Pofma is symptomatic of the PAP's shift from pragmatism to dogmatism. Government leaders still claim to be non-ideological, embracing whatever works for Singapore. But for more than a decade, they've appeared convinced that they've found the formula for success (Chapter 20). When Singapore reached First World status, leaders understandably grew more anxious about what it could lose by changing course, than excited about what it could gain. One young journalist on the team that conducted 30 hours of interviews with Lee Kuan Yew for the 2011 book, *Hard Truths to Keep Singapore Going*, got the same impression. Rachel Lin felt depressed by Lee's constant "vulnerability" message. "I wanted something to fight for that didn't sound freakishly like a castle under siege defended by dogmatic, extremely irritable knights," she wrote in her contribution to the book.

The PAP has been extraordinarily successful in delivering on its promises. The United Nations Human Development Report—which measures human wellbeing not only by income but also education and health—ranks Singapore among the world's top 10 places to live. Even after adjusting for inequality, it is within the top 25. How much of this can be attributed to the quality of government, versus geography, is debatable. Another global hub city, Hong Kong, has a mediocre administration that's rightly mocked by Singapore officials, but their human development rankings are very similar, both before and after adjusting for inequality. Undoubtedly, though, the PAP government is internationally admired for its competence and far-sightedness. Its ability to bounce back from global crises, from recessions to epidemics, is widely regarded as a model of sobriety and resilience.

The state's self-image as "exceptional" is, therefore, not without basis. What's dubious is the idea that Singapore can only preserve

its exceptional strengths by fiercely protecting every feature of the Singapore model—regardless of whether particular features are indispensable for future success, inconsequential, or actually in the way. Such an attitude turns Singapore’s exceptional status into a self-serving government ideology of exceptionalism that encourages the powerful to insulate themselves from sustained, penetrating democratic accountability.

Certain core governance principles do deserve to be sacralised: zero tolerance for corruption, inducting top talent into the public sector, and a whole-of-government problem-solving mindset, for example. Pofma, however, takes the conservative impulse to reactionary extremes, encouraging officials to pile more and more of their policies—and, ultimately, their own authority—onto the proverbial sacred cow. Liberal democracies recognise that public discourse requires breathing room: you have to allow people to get some things wrong if you want to benefit from the larger truths they are trying to communicate. But Pofma tells officials that critics deserve no such latitude.

Third, Pofma sets the tone for state–society relations as the PAP transitions to its fourth generation of leaders (Chapter 11). Goh Chok Tong and the New Guard experimented with more openness in the late 1980s until 1991 or so (Chapter 5). The arrival of Web 2.0 in the late 2000s prompted another review. I was invited a couple of times to talk to senior civil servants about how the public sector could adapt to this new talk-back culture. I suggested to them that the days of winning arguments by pulling rank are over. Respect has to be earned, not demanded by virtue of status. And the only way to develop the requisite skills for this new environment is to practise, out there in the wild.

I recommended that they start by practising with the relatively forgiving mainstream press. Try dealing with SPH and Mediacorp editors and journalists like a private sector newsmaker would. By all means, use your influence. But stop using either implicit or direct threats when telling editors how you’d like a piece of news covered. No more warnings if they get something “wrong”, and no orders to

run your replies. You won't get 100 per cent compliance. But you will develop exactly the kind of skills required for the online space. If, on the other hand, you can't last three months without resorting to old habits even with friendly mainstream media, you know you're not ready for the online world.

Needless to say, the government took a different path. It came to believe that it had the resources to dominate the national conversation online, even if not to the same degree as offline. Pofma is one of the final pieces of the strategy, enabling the government to stay within its comfort zone, where it can interrupt robust debates by pulling rank.

*

The timing of this new legislation was significant. Heng Swee Keat's elevation to deputy prime minister—confirming him as the designated successor to Lee Hsien Loong—was announced and took effect in the five-week window between the Pofma bill's introduction and passage in parliament in the first half of 2019. Later that year, even as 4G ministers were sharing their "Singapore Together" vision to encourage closer government–people cooperation, they were interrupting the dialogue by firing off Pofma correction orders. Heng led from the front. He will go down in history as the first minister to use the new law.

Among the first four applications of Pofma were three directed at opposition politicians' claims about the perennial topics of Temasek governance and immigration. One could sense officials' frustration: no matter how hard they've tried to settle doubts about these issues with facts and figures, some critics still confuse the public with the same old allegations. More stoic leaders might decide to take it on the chin. They trust the majority of Singaporeans to see reason. They know public confidence doesn't require absolute assent on every issue. They have faith in their own ability to carry the ground unaided by legal levers.

Instead, 4G has decided it needs the help of Pofma. This reliance is likely to be counterproductive, failing to change the minds of cynics, while raising suspicions among fence-sitters who wonder

why the government doesn't have more confidence in the power of its arguments. And for those who were still wondering if the shift to 4G would represent a major upgrade of the PAP's operating system, Pofma provided the clearest possible answer—reassuring to some, disappointing to others—that it's just a newer iteration of the same basic software.