OF CODES AND IDEOLOGY: SOME NOTES ON THE ORIGINS OF THE MAJOR CRIMINAL ENACTMENTS OF SINGAPORE

This article, as its title suggests, surveys the historical background to the major criminal enactments of Singapore. As a subsidiary function, it also attempts to illustrate the possible ideology underlying the enactment of one particular statute, *viz*., the Penal Code — a possibility that might point the way toward broader conclusions as well as studies encompassing the role and function of the law in colonial Singapore from a more general point of view.

I. INTRODUCTION

PRECIOUS little has been written about the history of the criminal law in Singapore in general[1] and the three codes that constitute its mainstay, so to speak, in particular. The latter include the Penal Code,[2] the Evidence Act,[3] and the Criminal Procedure Code,[4] all 'imported', as it were, from the Indian subcontinent. This general dearth of writing is not surprising in view of the fact that the precise origins of, for example, the three codes just mentioned are perceived to be of little *practical* relevance today; the rules and principles arising from the construction of each enactment by the local courts (in accordance, of course, with established

There is a useful general account by Braddell that is, however, not documented: see Roland St. J. Braddell, "Crime : Its Punishment and Prevention" in Chapter IV (entitled "Law and Crime") in Makepeace, Brooke and Braddell, *One Hundred Years of Singapore,* Vol. 1 (1921), at pp. 244 to 290. There is also a general piece by Kynnersley: see C.W.S. Kynnersley, "The Prevention and Repression of Crime" (October 14th, 1893) in *Nodes Orientales, Being a Selection of Essays Read before the Straits Philosophical Society Between the Years 1893 and 1910* (1913), p.l; and see the criticism of this piece by Tan Teck Soon at p.16. On the more 'technical' side, the accounts by Braddell, Calvert (with regard to criminal law and procedure), and Coomaraswamy (with regard to the law of evidence) are not very much more helpful: see Roland Braddell, *The Law of the Straits Settlements — A Commentary,* Vol. 2 (2nd Edn., 1932), especially at Chapter III (entitled "Criminal Law and Procedure"); H.G. Calvert, "Criminal Law and Procedure" in Chapter 8 of L.A. Sheridan, *Malaya and Singapore*: *The Borneo Territories* (1961); and P. Coomaraswamy, "Civil Procedure and Evidence" in Chapter 7 of the preceding work. And see, more recently, Koh Kheng Lian and Myint Soe, *The Penal Codes of Singapore and States of Malaya — Cases, Materials and Comments,* Vol. 1 (1974), at pp. 1 to 2; Koh Kheng Lian, *Criminal Law* (Singapore Law Series, No. 3, 1977), at pp. 2 to 3; and K.L. Koh, "Introduction" in Chapter 1 of K.L. Koh, C.M.V. Clarkson, N.A. Morgan, *Criminal Law in Singapore and Malaysia — Text and Materials* (1989).

2 Cap. 224, 1985 Rev. Ed.

3 Cap. 97, 1985 Rev. Ed. It should be noted that the provisions of the Evidence Act also apply to civil proceedings.

4 Cap. 68, 1985 Rev. Ed.

principles relating to the construction of codes[5]) are, after all, what matter (so the argument goes). This article will not seek to controvert this highly 'pragmatic' approach. It aims, instead, to sketch out briefly the origins of the aforementioned codes in order to fill a small gap in the larger 'canvass' that reflects the totality of Singaporean legal 'roots'; it may, in this regard, at least make for some (hopefully) interesting reading.

The instant article has, in addition, a subsidiary function, *viz*., to illustrate (primarily from the views of one important actor, the then Chief Justice of the Supreme Court of the Straits Settlements, Sir Peter Benson Maxwell[6]) the possible ideology underlying the enactment of one particular statute *(viz*., the Penal Code) — a possibility that might point the way toward broader conclusions as well as studies encompassing the role and function of the law in colonial Singapore from a more general point of view.[7] The suggestions arising from this second (albeit subsidiary) aim must, however, be tentative at best, simply because the evidence is sporadic and patchy. But, it may be worth attempting such (admittedly) speculative reflections since, owing to the dearth of (especially legal) materials[8] that would aid in the ascertainment of the operation of colonial ideology *vis-a-vis* the law, probably little or nothing would otherwise be initiated.

One final note before we examine the genesis of the codes in question. This concerns the situation existing prior to the introduction of these enactments. Calvert sums up the situation well:[9]

> "For the best part of a century, the criminal law applied in British Malaya was that of England, in so far as local circumstances permitted. Despite a dearth of authority directly on the point, there can be little doubt that common law crimes were recognised as such in the Straits Settlements. The major point of difficulty was the applicability of English criminal statutes. The courts seem, at times, to have leaned

5 As to which, see, *e.g*., *Bank of England* v. *Vagliano Brothers,* [1891] A.C. 107; *Mahomed Syedol Artffin* v. *Yeoh Ooi Gark,* [1916] 2 A.C. 575; *Public Prosecutor* v. *Yuvaraj,* [1970] A.C. 913; and *Jayasena* v. *R*., [1970] A.C. 618.

6 On Sir Peter generally, see Lim Kheng Eng, Sir *Peter Benson Maxwell — His Malayan Career (1856 — 1871)* (a University of Malaya in Singapore History Department Academic Exercise, 1959); and Constance M. Turnbull, "Governor Blundell and Sir Benson Maxwell: a conflict of personalities", (1957) Vol. XXX, Pt. 1, J.M.B.R.A.S. 134.

7 That goes *beyond* a mere vulgar Marxist approach that, in my view at least, is deficient for one very powerful reason — that it can never capture the full 'flavour', so to speak, of reality; for a good warning, see E.P. Thompson, *Whigs and Hunters* (1975), at pp. 258 to 269.

8 That, in any event, are themselves nearly always implicit in purport and meaning, owing to the nature of the concept (of ideology) itself.

9 See Calvert, *supra,* note 1, at p.191. On the law of *evidence,* see Coomaraswamy, *supra,* note 1, at p.176: "Until 1893 the law of evidence applicable in the Straits Settlements was English law modified by a number of Indian statutes relating to evidence which were applicable in the Settlements. In that year the Straits Settlements legislature re-enacted the Indian Evidence Act of 1872." Indeed, insofar as the situation prior to the enactment of the Evidence Act and Penal Code was concerned, there were some Indian Acts that were applicable in the local context, presumably together with the English criminal law that was received *via* the Second Charter of Justice of 1826: see, generally, Braddell, *The Law of the Straits Settlements, supra,* note 1, at pp. 28 and 73; and Andrew Phang Boon Leong, "English Law in Singapore: Precedent, Construction and Reality or The Reception That Had To Be"', [1986] 2 M.L.J. civ.

dangerously far in favour of applying, in Malaya, statutes passed for the purpose of dealing with social evils in England."[10]

We turn, then, to a consideration of the origins of the three major enactments that constitute the foundation, so to speak, of Singapore criminal law.[11]

II. THE PENAL CODE

(1) The Indian Background:

As the Penal Code of the Straits Settlements was 'transplanted' in virtually its entirety from India,[12] a brief survey of the origins of the Indian Penal Code would not, it is submitted, be amiss, especially since it might give us some inkling with regard to the suitability of the Indian Code in the context of the Straits Settlements — a not unimportant consideration.

Whitley Stokes describes the Indian Penal Code as being based upon "the law of England, stript of technicality and local peculiarities, shortened, simplified, made intelligible and precise; but suggestions were derived from the French Code Penal and from Livingston's Code of Louisiana".[13] Whilst the principal, if not the sole,[14] draftsman or framer of the Code, Lord Macaulay, would agree that he had derived much valu-

10 On 'cut-off dates as well as the concepts of suitability and modification, see, generally, Andrew Phang Boon Leong, "Of 'Cut-Off Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore", (1986) 28 Mal. L.R. 242.

11 Although there are, of course, other pieces of criminal legislation that have figured prominently in the criminal law of modern-day Singapore: see, *e.g.*, the Misuse of Drugs Act, Cap. 185, 1985 Rev. Ed.; and the Prevention of Corruption Act, Cap. 241, 1985 Rev. Ed..

12 In 1872; Calvert is less extreme in his expression, stating that the Straits Code was *modelled* on the Indian Code: see Calvert, *supra,* note 1, at p.192.

13 *The Anglo-Indian Codes* (edited by Whitley Stokes, 1887), at p.71. See, also, generally, A.C. Patra, "Historical Introduction to the Indian Penal Code" in *Essays on the Indian Penal Code* (Edited by S. Govindarajulu, 1962), at pp. 33 to 44; and, by the same author, "An Historical Introduction to the Indian Penal Code", (1961) 3 J.I.L.I. 351. And *cf.* Sir James Fitzjames Stephen, *A History of the Criminal Law of England* (1883), Vol. III, at pp. 300 and 322; S.G. Vesey-FitzGerald, "Bentham and the Indian Codes" in Chapter 11 of *Jeremy Bentham and the Law — A Symposium* (Edited by George W. Keeton and Georg Schwarzenberger, 1948), especially at pp. 226 to 228; and Rankin, *infra,* p.49, note 16, at pp. 44 and 206 to 207, respectively. On Bentham's at least indirect influence on the Code itself, see Vesey-FitzGerald, *supra,* especially at pp. 230 and 232 (and see (at p.32): "Some of the materials used may be the old materials; but the edifice is a new edifice by architects of the school of Bentham."). See, also, Rankin, *Background to Indian Law, infra,* p.49 note 16, especially at p.137; and Clive, *infra,* p.48, note 14, at pp. 429, 434 to 435, 453, and 473. And see also p.229 of Vesey-FitzGerald's piece where reference is made, in addition, to the influence of *Scots* law (five of the first Indian Law Commission comprising, incidentally, Scotsmen). For specific details of the individual law commissioners, see Clive, *infra,* p.48, note 14, at pp. 438 to 439.

14 See G. Otto Trevelyan, *The Life and Letters of Lord Macaulay* (1904), Vol. I, at pp. 363 to 364. Trevelyan was Macaulay's nephew. See, also, John Clive, *Macaulay — The Shaping of the Historian* (1973), at pp. 440 and 443; this book is an extremely erudite and interesting recent study of Macaulay which has, for our present purposes, an especially relevant Chapter (14) entitled "The Indian Penal Code".

able assistance from both the French and Louisiana Codes,[15] he would probably controvert any suggestion that his product was based on English law — not consciously in any event.[16] In his own words, in a report on the Code to the Governor-General of India in Council:[17]

> "Your Lordship in Council will perceive that the system of penal law which we propose *is not a digest of any existing system, and that no existing system has furnished us even with a groundwork."*

Such a claim to uniqueness appears to be corroborated by Cross's description of Macaulay's aversion to black letter law,[18] and Macaulay's own innovations in the draft of the Code itself,[19] particularly the copious use of illustrations that "will lead the mind of the student through the same steps by which the minds of those who frame the law proceeded",[20] whilst not in themselves purporting to supply any omission in the actual provisions of the Code itself.[21] It is, however, interesting to note that in his justly famous and highly interesting work, Eric Stokes described Macaulay as having had little choice but to effect sweeping changes in the penal law of

15 As Macaulay himself admitted — with gratitude: see "Introductory Report Upon the Indian Penal Code: From: T.B. Macaulay, J.M. Macleod, G.W. Anderson; F. Millett, Indian Law Commission to: Lord Auckland, Governor-General of India in Council, dated 14 October 1837" in *The Works of Lord Macaulay, Speeches — Poems and Miscellaneous,* Vol. XI, pp. 3 to 22, at p. 12 (hereinafter cited as *Macaulay*). See, also, *Lord Macaulay's Legislative Minutes* (selected with a historical introduction by C.D. Dharker, 1946), at pp. 252 to 271. For further (especially pre-Code) background, including the genesis of the Indian Law Commission, the first one of which was responsible for the drafting of the Penal Code itself, see the discussion below.

16 See G.C. Rankin, "The Indian Penal Code", (1944) 60 L.Q.R. 37, at p. 44, where he refers to Macaulay's "cautious unawareness of the English law as the basis of his thinking". And see the same article as reprinted in Rankin, *Background to Indian Law* (1946), at p. 207. See, also, Jain, *infra,* p.50, note 27, at p.444. And *cf.* Clive's apparent 'middle view': see, *supra,* note 14, at p.452 *et seq.*

17 *Macualay, supra,* note 15, at p.5 (emphasis added).

18 Sir Rupert Cross, "The Making of English Criminal Law (5) - Macaulay", [1978] Crim. L. Rev. 519, at p.521. But *cf.* Patra, *supra,* note 13, at pp. 34 and 357, respectively; and Clive, *supra,* note 14, at p.447.

19 It would appear that the drafting of the Code was, to Macaulay at least, a veritable labour of love:

> "I am not ashamed to acknowledge that there are several chapters in the code on which I have been employed for months; of which I have changed the whole plan ten or twelve times; which contain not a single word as it originally stood; and with which I am still very far indeed from being satisfied. I certainly shall not hurry on my share of the work to gratify the childish impatience of the ignorant. Their censure ought to be a matter of perfect indifference to men engaged in a task, on the right performing of which the welfare of millions may, during a long series of years, depend. The cost of the commission is as nothing when compared with the importance of such a work. The time during which the commission has sat is as nothing compared with the time during which that work will produce good, or evil, to India."

The above is an extract from a minute dated the 2nd of January, 1837, as cited in Trevelyan, *supra,* note 14, at p.364.

20 *Macaulay, supra,* note 15, at p.13.

21 *Ibid*., at p.15. On the utility of illustrations (albeit in the context of the then Evidence Ordinance), see the Privy Council decision of *Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark,* [1916] 2 A.C. 575, especially at p.581. But *cf.* the opinion of the *Second* Indian Law Commission: see, *e.g*., Jain, *infra,* p.50, note 27, especially at p.459.

India, despite the fact that his (Macaulay's) general approach was actually quite conservative; as Stokes pertinently points out:[22]

> "He [Macaulay] rejected the Utilitarian ideal of a general renovation of society by means of an abstract universal theory, from which the minutest practical detail was deduced. Instead he adhered to expediency and pragmatism, which he dignified with the authority of Bacon's inductive method. Reform had place only when time and circumstance proved it necessary."

Obviously, the sorry state of the Indian penal law then in existence, as shall be detailed below, made innovation imperative. In the event, the Code was *not* "merely an attempt to apply a reformed English law to Indian conditions",[23] and the following comments by Stokes accord with the words of Macaulay quoted above:[24]

> "Macaulay's aim was a code that was not derivative from the laws of any creed or country but sprang from the universal science of jurisprudence.[25] And to neglect this universality of outlook … is to lose the historical atmosphere in which the Code took shape."

Finally, and perhaps surprisingly, Whitley Stokes himself appears to have acknowledged the artificiality and complexity of the English criminal law itself.[26]

The *purpose* of the Indian Code was, however, tolerably clear. It was intended to replace the manifold systems of criminal law then existing in the Indian Presidency Towns and the Mofussil that, taken together, apparently constituted a tangled and unworkable mess.[27] Some brief background as to how this rather unsatisfactory situation arose might be in

22 Eric Stokes, *The English Utilitarians and India* (1959), at pp. 191 to 192. By no means, however, did Macaulay reject the more specific utilitarian premises, as to which, see, *e.g.*, *supra,* note 13 and, *infra,* p.53 note 48. Of especial interest is dive's distinction between Macaulay's endorsement of Bentham's jurisprudential as opposed to his (Bentham's) political teachings: see Clive, *supra,* note 14, at pp. 434 to 435.

23 Stokes, *supra,* note 22 , at p.226.

24 *Ibid*., at p.227. And see, *supra,* note 17.

25 And see Whitley Stokes, *supra,* note 13, at p.71, where the learned author states: "Something, too, seems to have been taken from Austin's *Province of Jurisprudence,* the first edition of which was published in 1832." The author's remarks on the basis of the Code are thus even harder to follow, having regard to his present view. And see, also, *infra,* p.50, note 26.

26 *Ibid*., at p. 2. See, also, *supra,* note 25; and Stephen, *A History of the Criminal Law of England,* Vol. **HI,** *supra,* note 13, at pp. 322 to 323.

27 See, *e.g*., *Macaulay, supra,* note 15, at pp. 5 to 6, 11, and 12; Whitley Stokes, *supra,* note 13, at p.2; Patra, *supra,* note 13, especially at pp. 33 to 35 and pp. 356 to 357, respectively; M.P. Jain, *Outlines of Indian Legal History* (4th Edn., 1981), especially at pp. 441 to 442; *Gour's Penal Law of India* (10th Edn., 1982), Vol. I, at p.14; and R.C. Nigam, *Law of Crimes in India* (1965), Vol. I, at p.21. *Cf.* Tapas Kumar Banerjee, "The Substantive Criminal Law Prior to the Indian Penal Code"in *Essays on the Indian Penal Code, supra,* note 13, at pp. 1 to 32, and by the same author, *infra,* p.51, note 34, Chapter 2. See also, Clive, *supra,* note 14, especially at pp. 436 to 438,451,460 to 462,471, and 476; Clive's work is especially interesting insofar as he also tells us, *inter alia,* of Macaulay's hope that the Indian Code would influence the reform of the English criminal law; of how the Code demonstrated Macaulay's general notions of, and aspirations for, the general population of India; and, finally, of how Macaulay infused historical information into the Code, whilst simultaneously honing his own historical writing skills in drafting the Code itself. Clive notes, however, that Macaulay's heart was ultimately with England: see, *ibid*., especially at pp. 467 to 468.

order — if nothing else, so as to emphasize the very real significance of the Penal Code in the context of the substantive criminal law of the Indian subcontinent.

The Presidency Towns were directly founded by the British themselves and it comes as no surprise that the governing law was, subject to necessary accommodation of local circumstances, in fact English.[28]

The population of the outlying Mofussil, on the other hand, comprised a preponderantly Indian population which precluded the general application of the (alien) English law. What resulted, in effect, was an attempt to apply the indigenous laws of the local population.[29] Insofar, however, as the criminal law was concerned, it soon became clear to the British authorities that a continuation of the local laws[30] would be both impractical and even unacceptable in substance.[31] To this end, therefore, some interference became necessary. But the British were, in theory at least, fettered with regard to the *criminal* sphere. This fettering had to do with the distinction between the grant of the *diwani* (here, to the British) on the one hand and the *nizamat* on the other — a distinction that was a legacy from the Mogul empire. The *diwani* pertained to "the right to administer the revenue and civil justice"[32] whilst the *nizamat* concerned "the military power and the right to administer criminal justice".[33] The British were only granted the former but not the latter; indeed, it appears that there were good reasons why they did not in fact desire any grant of the latter, *viz*., the *nizamat*.[34] Whatever the actual reasons, however, the fact remained that without the express grant of the *nizamat,* the British were not legally entitled to modify the Indian criminal justice system. It appears, however, that this was but one view, the other holding that the British *did* in fact have a right to interfere in the *nizamat*.[35] The result was a "cloudy title"[36] to the *nizamat* which engendered apparent indecision

28 See M.P. Jain, *supra,* note 27, at p.3.

29 *Ibid.*

30 It should be noted that the prevailing criminal law was the Muslim criminal law, at least insofar as Bengal and Madras were concerned. The situation in Bombay was somewhat different insofar as a large part of the territory had never come under Muslim rule; it concerned itself, in fact, with the application of the various personal laws, until the famous 'Elphinstone Code' was enacted in 1827, which Code, however, did not even begin to reach the comprehensiveness and complexity of the Indian Penal Code itself: see Rankin, *Background to Indian Law, supra,* note 16, at pp. 185 to 186; and Jain, *supra,* note 27, at pp. 341 to 342. See, also, Banerjee, *supra,* note 27.

31 See, *e.g*., Bryce, *Studies in History and Jurisprudence* (1901), at pp. 101 to 102; and Jain, *supra,* note 27, at p.337; and Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* note 13, at pp. 293 to 294. And *cf.* the very brief reference in the Malayan context in Richard Winstedt's *The Malays — A Cultural History* (1947), especially at pp. 106 to 107.

32 Rankin, *Background to Indian Law, supra,* note 16, at p.163.

33 *Ibid.* "The idea underlying the fragmentation of administration between the Nawab and the Diwan was to create a system of checks and balances.... the Nawab had military power but no money; the Diwan had money but no force; both were to check each other; when one went wrong, the other was to control him.": Jain, *supra,* note 27, at p.56.

34 These included the avoidance of the appearance of dominion, the limited number of the East India Company's servants and their lack of administrative expertise, and avoidance of contravention of the principle of English constitutional law that British subjects (here, the East India Company) could only acquire territories from the Sovereign: see Tapas Kumar Banerjee, *Background to Indian Criminal Law* (1963), at pp. 2 to 3.

35 See *ibid*., especially at p.7.

36 *Ibid*., at p.9. See, also, Rankin, *Background to Indian Law, supra,* note 16, at p.169.

and consequent inaction on the part of the authorities. But this inaction lasted only up to 1790, when the British took control of the *nizamat*[37] — a control which was manifested in the form of *Regulations* that modified the existing Muslim criminal law.[38] The continued survival of the Muslim criminal law was therefore one in theory only; as one noted authority put it:[39]

> "To-day one reflects with some surprise that not until 1862[40] did the criminal law obtaining over the greater part of British India become detached from its base in Mahomedan jurisprudence. Had it not been *extensively amended* to adapt it to modern and western notions of policy and behaviour, Mahomedan criminal law could not have lasted so long. Before 1833[41] all the main topics had been dealt with by the Regulations."

He continues thus:[42]

> "British India before 1833 is the India of the 'Regulations' — laws passed by the separate legislatures of Bengal, Madras and Bombay, before the Charter Act of 1833 had set up one legislature for the whole of India, having authority over all the inhabitants whether European British subjects, Indians or others."

Despite the extensive inroads made into the Muslim criminal law *via* the aforementioned Regulations, there remained the very real problem of a rather startling lack of uniformity in the criminal laws of the various Presidencies — a problem that was compounded by the overlay of the English law (minus the Regulations) in the Presidency Towns themselves.[43] Nor were the Regulations themselves of impeccable quality.[44]

It came as no surprise, therefore, when the Charter Act of 1833[45] was passed in order to create, *inter alia,* an *unified* legislature for the whole of British India. Particular reference should be made to sections 43 and 53, the former of which empowered the Governor General of India in Council[46] to legislate (with some exceptions) for India, and the latter of which directed the Governor General of India in Council to appoint the (now

37 See Banerjee, *supra,* note 34, at pp. 9 to 10; and Rankin, *Background to Indian Law, supra,* note 16, especially at p.164.
38 Though *cf.* the situation of Bombay, as to which see, *supra,* note 30.
39 Rankin, *Background to Indian Law, supra,* note 16, at p.161 (emphasis mine). See, also, Jain, *supra,* note 27, Chapter XXI.
40 This was when the Indian Penal Code came into force.
41 This was the date when the first Charter Act was promulgated: see the discussion below.
42 Rankin, *Background to Indian Law, supra,* note 16, at p.162.
43 *Ibid*., at p.198. See, also, Jain, *supra,* note 27, Chapter XXI; Macaulay, *supra,* at note 27; and other works cited at note 27, *supra.*
44 Rankin, *Background to Indian Law, supra,* note 16, at pp. 197 to 198.
45 See Act 3 & 4 William IV, c. 85. And see, with regard to the local context, G.W. Bartholomew, "The Singapore Statute Book", (1984) 26 Mal. L.R. 1, at pp. 1 to 7, and the same author's "Introduction" to the *Sesquicentennial Chronological Tables of the Written Laws of the Republic of Singapore 1834-1984* (by G.W. Bartholomew, Elizabeth Srinivasagam, and Pascal Baylon Netto, 1987), at p. xxxix *et seq.* For an excellent and succinct discussion of the Indian codification movement, see Jain, *supra,* note 27, Chapter XXIV.
46 See, generally, sections 39 and 40 of the Act.

famous) Indian Law Commission.[47] And it was from the first of these Law Commissions that we obtained the draft Indian Penal Code.

It is also interesting to note the following remarks from Macaulay's speech during the Second Reading of the bill of the 1933 Act, if nothing else because Macaulay was, in fact, the main drafter of the Indian Penal Code:[48]

> "I believe that no country ever stood so much in need of a code of laws as India, and I believe also that there never was a country in which the want might so easily be supplied. . . . there are several systems of law widely differing from each other, but co-existing and co-equal.... We do not mean that all the people of India should live under the same law: far from it:. . . We know how desirable that object is; but we also know that it is unattainable. We know that respect must be paid to feelings generated by differences of religion, of nation, and of caste. Much, I am persuaded, may be done to assimilate the different systems of law without wounding those feelings. But, whether we assimilate those systems or not, let us ascertain them, let us digest them. We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this — uniformity where you can have it — diversity where you must have it — but in all cases certainty.
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> As I believe that India stands more in need of a code than any other country in the world, I believe also that there is no country on which that great benefit can more easily be conferred. A code is almost the only blessing — perhaps it is the only blessing which absolute governments are better fitted to confer on a nation than popular governments. The work of digesting a vast and artificial system of unwritten jurisprudence, is far more easily performed, and far better performed by few minds than by many — … It is a work which cannot be well performed in an age of barbarism — which cannot without great difficulty be performed in an age of freedom. It is the work which especially belongs to a government like that of India — to an enlightened and paternal despotism."

The Indian Penal Code thus marked a new (and quite different) epoch in the history of the substantive criminal law of India. As Cross put it, "it was clearly intended that there should be a fresh start",[49] though (and this where the controversy with regard to English law outlined above may thus not be as serious as originally thought), "the Code would have to be applied by judges of whom the most important would be *English lawyers* to a population some of whom had been living under English law while in India".[50] Still, having regard to the rather less flexibility afforded to the courts in construing the language of a Code such as this,[51] there was

47 See, also, sections 44 and 45 of the Act.

48 See *Hansard's Parliamentary Debates,* 3rd Series, Vol. XIX, 1833, at Cols. 531 and 534 (10th July, 1833).

49 Cross, *supra,* note 18, at p.523.

50 *Ibid,* (emphasis added).

51 See, *e.g., Bank of England* v. *Vagliano Brothers; Mahomed Syedol Ariffin* v. *Yeoh Ooi Gark;* and *Jayasena* v. *R.*, all cited at note 5, *supra.* And *cf. Public Prosecutor* v. *Yuvaraj,* also cited at, *supra,* note 5.

in fact a tangible opportunity to develop the Indian criminal law in a fashion different from that of the English.

It should be further noted that certain portions of the Indian Code were related to the circumstances then existing in India. For example, Whitley Stokes tells us that the provisions relating to abortion, exposure of children and concealment of births were drafted because offences in this context were "of lamentable frequency in India" due to the practice of infant-marriage.[52]

For all Macaulay's efforts, it should be noted that his draft ran into a storm of criticism by the Indian judges,[53] some indifference,[54] and more than twenty years had to elapse before it was enacted as the general criminal law of India in I860.[55] Possible reasons for the sudden legislative 'revival' that resulted in the passage of, *inter alia,* the Code include "the appointment, in 1853, of an Indian law commission to work in England", "the Indian Mutiny of 1857, and by the sense of a need for improved administration which arose out of the events of that mutiny".[56] It should, however, be noted that despite some modifications, the essential substance and form of Macaulay's draft code remained unchanged.[57] More important was its unmitigated success that was succinctly put by Fitzjames Stephen in the following passage — rare praise indeed from a person who had himself drafted the Indian Evidence Act:[58]

> "Its 511 sections contained nearly the whole criminal law of the Indian Empire. It had been in constant use for eleven years by a large number of unprofessional judges, who understood it with perfect ease, and administered it with conspicuous success. It had required hardly any amendments, additions, or explanations, and the number of cases which had been decided upon it was surprisingly small. Its defects might be easily remedied, and were of little practical importance. To

52 Whitley Stokes, *supra,* note 13, at p.44. On other 'departures', see Clive, *supra,* note 14, at pp. 454 to 457.

53 See, *e.g.*, Cross, *supra,* note 18, at p.524; both articles by Patra, *supra,* note 13, at pp. 39 *et seq* and 362 *et seq,* respectively; and Bryce, *supra,* note 31, especially at p. 104.

54 Notably, from Sir Charles Wood, who was then President of the Board of Control: see, especially, R.J. Moore, *Sir Charles Wood's Indian Policy 1853-66* (1966), at pp. 70 to 71. Reference may also be made to Turnbull, *infra,* p.58, note 69, at pp. 362 to 363; and Clive, *supra,* note 14, at pp. 463 to 465, the latter work of which also enunciates some other possible reasons for the delay between the drafting and promulgation of the Code (see, especially, at p.463).

55 Eric Stokes, *supra,* note 22, at p.224.

56 See C.P. Ilbert, "Sir James Stephen as Legislator", (1894) 10 L.Q.R. 222, at p.222. Other significant acts passed included the Code of Civil Procedure in 1859 and a Code of Criminal Procedure in 1861. See, also, Jain, *supra,* note 27, at p.443; Sir James Fitzjames Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* note 13, at p.299; and, by the same author, as cited in Trevelyan, *supra,* note 14, at p.367.

57 Ilbert, *supra,* note 56. See, also, Social Science Association, "Mr. Fitzjames Stephen on Codification", (1872-73) 54 Law Times 44, at p.45 (the same passage may be found in "Mr. Fitzjames Stephen on Codification", (1872) Irish Law Times 572, at p.573); and Patra, *supra,* note 13, at pp. 42 and 365, respectively; though *cf.* Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* note 13, at p.299; and *Gour's Penal Law of India, supra,* note 27, at p.15, both of which, however, can be possibly reconciled with the view expressed in the main text in that although there were, admittedly, changes, the core of Macaulay's work, as such, remained substantially unchanged.

58 See the two articles by Stephen, *supra,* note 57, at pp. 45 and 573, respectively.

compare the Indian penal code with English criminal law was like comparing Cosmos with Chaos."

And, to quote Stephen again from passages which, by their obvious inherent importance and their relatively less convenient accessibility, merit an extended setting out:[59]

> "In order to appreciate the importance of the 'Penal Code', it must be borne in mind what crime in India is. … In India, if crime is allowed to get to a head, it is capable of destroying the peace and prosperity of whole tracts of country. . . . Now, in many parts of India, crime is quite as uncommon as in the least criminal parts of England; and the old high-handed, systematized crime has almost entirely disappeared. This great revolution (for it is nothing less) in the state of society of a whole continent has been brought about by the regular administration of a rational body of criminal law. . . . This system is not unattended by evils; but it is absolutely necessary, to enable a few hundred civilians to govern a continent. . .. Pocket editions of these codes are published, which may be carried about as easily as a pocket Bible; and I doubt whether, even in Scotland, you would find many people who know their Bibles as Indian civilians know their codes. . . . Lord Macaulay's great work was far too daring and original to be accepted at once. . . . The credit of passing the 'Penal Code' into law, and of giving to every part of it the improvements which practical skill and technical knowledge could bestow, is due to Sir Barnes Peacock, who held Lord Macaulay's place during the most anxious years through which the Indian empire has passed. The draft and the revision are both eminently creditable to their authors; and the result of their successive efforts has been to reproduce in a concise and even beautiful form the spirit of the law of England; the most technical, the most clumsy, and the most bewildering of all systems of criminal law, though I think, if its principles are fully understood, it is the most rational. If any one doubts this assertion, let him compare the 'Indian Penal Code' with such a book as Mr. Greaves's edition of 'Russell on Crimes'. The one subject of homicide, as treated by Mr. Greaves and Russell, is, I should think, twice as long as the whole 'Penal Code', and it does not contain a tenth part of the matter.
>
> The point which always has surprised me most in connection with the 'Penal Code' is, that it proves Lord Macaulay must have had a knowledge of English criminal law which, considering how little he had practiced it, may fairly be called extraordinary. He must have possessed the gift of going at once to the very root of the matter, and of sifting the corn from the chaff to a most unusual degree; for his draft gives the substance of the criminal law of England, down to its minute

[59] As cited in Trevelyan, *supra,* note 14, at pp. 366 to 368. See, further, Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* note 13, at p.299, where he states: "I am conscious of being a partial critic of this work [*i.e.*, the Penal Code] for many reasons. But it seems to me to be the most remarkable, as I think it bids fair to be the most lasting, monument of its principal author. . . . the Penal Code has triumphantly supported the test of experience for upwards of twenty-one years during which time it has met with a degree of success which can hardly be ascribed to any other statute of anything approaching to the same dimensions. It is, moreover, the work of a man who, though nominally a barrister, had hardly ever (if ever) held a brief, and whose time and thoughts had been devoted almost entirely to politics and literature." (see, also, at pp. 303 and 322).

> working details, in a compass which by comparison with the original may be regarded as almost absurdly small. The 'Indian Penal Code' is to the English criminal law what a manufactured article ready for use is to the materials out of which it is made. It is to the French 'Code Penal', and, I may add, to the 'North German Code' of 1871, what a finished picture is to a sketch. It is far simpler, and much better expressed, than Livingston's 'Code for Louisiana'; and its practical success has been complete. The clearest proof of this is that hardly any questions have arisen upon it which have had to be determined by the courts; and that few and slight amendments have had to be made in it by the Legislature."

Lest, however, one be under the impression that Stephen is the lone voice in this regard, one might refer to other similar expressions of opinion. Ilbert, for example, was of the view that, of all the Indian Codes enacted, the Penal Code was "far the best of them";[60] he continued thus:[61]

> "In point of form its system of propositions, exceptions and examples constituted a new departure, which amounted to a stroke of genius. In point of substance it will compare favourably with any of the Continental Codes."

And Bryce had occasion to observe:[62]

> "The Penal Code was universally approved; and it deserves the praise bestowed on it, for it is one of the noblest monuments of Macaulay's genius. To appreciate its merits, one must remember how much, prepared in 1834, it was above the level of the English criminal law of that time."

Perhaps less disinterested are the remarks by Macaulay's own nephew, Trevelyan:[63]

> "If it be asked whether or not the "Penal Code" fulfills the ends for which it was framed, the answer may safely be left to the gratitude of

60 See Ilbert, *supra,* note 56, at p.225.

61 Though he did add that "... it could not be enacted for England without extensive amendments".: see *ibid.*. And *cf.* Bryce, *supra,* note 31, at p.113: "One reason why these Indian experiments have so little affected English opinion may be found in the fact that few Englishmen have either known or cared anything about them." See, also, *per* Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* note 13, at p.299 where he referred to "the extreme aversion which for a long time before the mutiny was felt by influential persons in India to any changes which boldly and definitely replaced native by European institutions", and at p.304, where he stated: "I admit, however, that I do not think that this method of legislative expression could be advantageously employed in England. It is useful only where the legislative body can afford to speak its mind with emphatic clearness, and is small enough and powerful enough to have a distinct collective will and to carry it out without being hampered by popular discussion. A criminal code drawn in the style of the Indian Penal Code could never be passed through Parliament, and even it it could I do not think English judges and lawyers would accept and carry out so novel a method of legislating." *Cf.*, also, Macaulay's closing remarks during the Second Reading of the Charter Act of 1833 at, *supra,* note 48.

62 See Bryce, *supra,* note 31, at p.109.

63 See Trevelyan, *supra,* note 14, at p.366. See, also, to the same effect, Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* note 13, at p.322, and, by the same author at, *supra,* note 59.

> Indian civilians, the younger of whom carry it about in their saddle-bags, and the older in their heads."

And there are numerous other echoes of these sentiments regarding the success of the Code itself.[64]

Thus, by the time the Indian Penal Code was ready for 'transplantation' into the Straits Settlements, the Indian Code itself was well-established, having many features that presumably differed from the rather more complicated and perplexing English criminal law, but garnering, at the same time, a not insignificant quantum of success, even amongst the nonprofessional judges. Although there appeared to be certain features of the Indian Code, such as those pertaining to abortion, exposure of children and concealment of births,[65] that might not have been particularly suited to the circumstances of the Straits Settlements, there appeared nothing in the Indian Code that could pose any serious objections to its introduction into the Straits *via* enactment by the local legislature. That some local enactment was required may be gathered not only from the uncertainty (or at least difficulty) of applying English criminal statutes on the basis of the general reception of English law[66] but also because the *actual* situation of law and order in the Straits Settlements was far from satisfactory.[67] Let us turn, then, to the situation in the Straits Settlements itself.

(2) The Straits Settlements Penal Code:

Having ascertained that conditions in the Straits Settlements for local enactment of the Indian Penal Code were, in fact, not unfavourable, to say the least, what were the events that led to the actual passage of the Straits Settlements Code and how receptive were the local bench and bar to its enactment?

It ought, however, to be pointed out as a fairly important (albeit, ultimately, preliminary) point, that the *Indian* Penal Code was in fact sought to be extended by the *Indian* Legislature *via* the (Indian) Act No. 5 of 1867.[68] It appears that the Indian Legislature was reluctant to extend

64 See, *e.g.*, Rankin, *supra,* note 16, at pp. 41 and 202 to 203, respectively; Whitley Stokes, *supra,* note 13, at p.71; Jain, *supra,* note 27, at pp. 444 to 445; Patra, *supra,* note 13, at pp. 36 and 359, respectively; Banerjee, *supra,* note 34, at pp. 130 to 131; and Clive, *supra,* note 14, at pp. 465 to 466, and 474.

65 See, *supra,* note 52.

66 See, *e.g.*, Calvert, *supra,* note 9.

67 I have in mind (in particular) the situation of chaos and lawlessness generated by the Chinese secret societies — a topic that is outside the scope of the instant article. And see, *infra,* p.75, note 75.

68 "An Act to extend the Indian Penal Code to the Straits' (sic) Settlements". And see s.4 of the Act: "This Act shall be read with, and taken as part of, the Indian Penal Code." This Act was repealed by the Statute Law Revision Ordinance 1889 (Ordinance No. 8 of 1889). It ought also to be noted that the Straits Settlements had no independent legislative council as such until its transfer to the Colonial Office (as to which, see, also, *infra,* p.58, note 69). At this point in time (and prior to transfer), the Straits was, of course, under the legislative governance of the Governor General of India in Council by virtue of the Charter Act of 1833 which has been discussed earlier. In fact, Bartholomew argues that the (notional) 'Singapore Statute Book' had its origins from 1834 when the Charter Act came into force: see Bartholomew, "The Singapore Statute Book", *supra,* note 45, at pp. 1 to 7; and, by the same author, his "Introduction", *supra,* note 45, at p. xxxix *et seq.*.

the Indian Code to the Straits Settlements, ostensibly because of the then probable imminent transfer of the Straits to the Colonial Office;[69] in the event, delay ensued, and, as Turnbull points out:[70]

> "The delay caused such inconvenience that eventually, after persistent agitation by Cavenagh, legislation to apply the Indian penal code in the Straits was passed, but it was not brought into effect until 1871."

In point of fact, Indian Act No. 5 of 1867, as mentioned above, did extend the Indian Penal Code to the Straits; section 1 of the Act, however, required such extension to be effected by the Governor of the Straits Settlements himself. The Governor effected the necessary extension by way of an Order dated 23 February, 1867.[71] Before, however, this Order could take effect, the Penal Code Suspension Act of 1867 was passed, cancelling the said Order.[72]

When the Penal Code was ultimately enacted, it was therefore a *local* re-enactment of the Indian Code itself, occurring in 1871.[73] The process leading to the passage of this enactment was, however, not at all a smooth one, and it is to the details of this process that we must now turn.

What historical material that exists on the history of the local Code is actually fairly scanty as well as comparatively inaccessible, being located, for the most part, on microfilm records.[74] An examination of this material did, however, yield some valuable information. As early as 1868, for example, we find a minute by members of the Singapore Bar in relation to the introduction of the Indian Penal Code into the Straits Settlements.[75] The opinions therein are, perhaps surprising, having regard to the discussion in the preceding Section. Both opinions are, in fact, *negative.* Mr. R.C. Woods, for example, thought that the Indian Code, while aiding the nonprofessional Indian judges, contained many sections that were "neither clear nor satisfactory";[76] he recommended, instead, the *English* acts:[77]

69 See C.M. Turnbull, *The Straits Settlements 1826-67 — Indian Presidency to Crown Colony* (1972), at p.71. The Straits Settlements were in fact transferred to the jurisdiction of the Colonial Office in London in 1867. See, also, *Proceedings of the Legislative Council of India,* 2nd series, vi (1867), expecially at pp. 45 to 49 (where, however, an objection from "a former Recorder of Singapore" was also noted: *ibid*., at p.45).

70 See Turnbull, *supra,* note 69, at p.71.

71 Order No. 84 which may be found in the *Straits Settlements Government Gazette* of 1867, at p.121 (1st March, 1867).

72 See Ordinance No. 11 of 1867. The reason for this Ordinance appears to be hinted at in the preamble (" . . . and whereas it is not expedient, pending the preparation of an Act to improve the law of Criminal Procedure; . . . "). The legislative council proceedings are not very enlightening in this regard: see *Report of the Proceedings of the Legislative Council of the Straits Settlements, 1867,* at p.15 (Wednesday, 26th June, 1867) where the Standing Orders were suspended to allow the Ordinance to be passed almost immediately. And see, generally, Bartholomew, "Introduction", *supra,* note 45, at p. xliv.

73 Specifically, the *Straits Settlements* Penal Code (Ordinance No. 4 of 1871), as to which see the discussion below.

74 This is the main reason why I quote *in extenso* from what I feel are important documents or speeches.

75 *Minute by the Members of the Singapore Bar Relative to the Introduction of the Indian Penal Code into the Straits Settlements* in *Appendix Y to Minutes of the Legislative Council of the Straits Settlements, 1868, laid before the Legislative Council on 12th November, 1868* (hereafter referred to as *Appendix Y).*

76 *Ibid*., at p. LXI.

77 *Ibid.*

> "I think the improved Criminal Acts of England, so far as they can be adapted to the circumstances of this Settlement, are far better than the Indian Penal Code, and offer the advantage of a continued series of decisions of the most eminent Judges who have made law the study of their lives; whose decisions reach us through the medium of Reports conducted by leading members of the English Bar. The defects found in practice can be remedied by the legislature wherever discovered. Criminal legislation is progressive, it cannot be confined within the limits of any Code, however well digested."

The main argument contained in the passage just quoted is, of course, double-edged, for, as Fitzjames Stephen has pointed out, it was precisely the relative simplicity as well as efficiency of the Indian Code that were its ultimate strengths; further, the lack of case-law could also be interpreted as evidence of such strengths and, in fact, ensured that the local criminal law was not encumbered by a plethora of cases. The strong implication in the passage, however, goes further, for, in it, there is, it is submitted, *a pride* in *English* law and legal training, forgetting that one of the other strengths of the Indian Code was that it cut through the dense and confusing thicket of the then existing English criminal law.[78] Yet, the pride just mentioned manifested itself yet again in the following words of John S. Atchison:[79]

> "I consider the introduction of the Indian Code undesirable. In stations like the Straits Settlements the public have the advantage of professional Judges, and the local Bars have been used to practice in the mode adopted in England, and we have the advantage of the decisions of known authorities. The adoption of late Home Criminal Legislation will place us on a satisfactory footing with regard to such matters as have been wanting hitherto."

In contrast, however, were the *virtually opposite* opinions from leading members of the Penang Bar. J.R. Logan, for example, whilst against an *untested* Code, was in favour of introducing the Indian Code for:[81]

> "... the Indian Code has been many years in operation, *and we shall always have the benefit of the decisions of the Superior Courts of India on its construction,* ..."

D. Logan, the Solicitor-General, was equally enthusiastic, and even went so far as to advocate the introduction of the Indian Code of Criminal Procedure as well, arguing that both this as well as the Indian Penal Code "are coadjutory".[82] He went on to describe his personal observation and experience thus:[83]

> "I saw them [*i.e.* the Codes] worked, and practised ... for nearly eighteen months, in the several Commissioners and Magistrate's

78 See, *e.g.*, *supra,* note 58.
79 *Appendix Y, supra,* note 75, at p. LXII.
80 *Opinions of the Members of the Penang Bar, Relative to the Introduction of the Indian Penal Code into the Straits Settlements* in *Appendix M to Minutes of the Legislative Council of the Straits Settlements, 1869, laid before the Legislative Council on 31st March, 1869.*
81 *Ibid.*, at p. xxxix (dated 26th February, 1869) (emphasis added).
82 *Ibid.* (dated 30th January, 1869).
83 *Ibid.* (emphasis mine).

> Courts, in British Burmah, and in the two Recorder's Courts at Maulmain and Rangoon. *Their superiority, in simplicity, contrasted with the action of our Courts, in this Colony is very great."*

David Aitken suggested that adoption of the Indian Code would afford the Straits Settlements an opportunity to draw from the Indian experience.[84]

Finally, however, R. Carr Woods Jr. was somewhat more tentative in his views, arguing that the Indian Code ought not to be introduced unless there is "a most urgent necessity for altering the whole Criminal Law".[85] He pointed to the many new provisions as well as to the danger of public confusion, especially taking into account the native population's ignorance of the English language.[86]

In summary, therefore, what evidence that exists points to a sharp division of opinion in the Straits Settlements Bar vis-a-vis the desirability of the introduction of the Indian Penal Code into the Straits Settlements; roughly speaking, the Singapore Bar was against introduction, whilst the Penang Bar was in favour. What, then, of the Straits Settlements judiciary?

During the Second Reading of the Straits Settlements Penal Code, we find the Governor informing the Legislative Council that after discussions, two judges, Sir William Hackett and Sir Peter Benson Maxwell, the Chief Justice, were *opposed* to the introduction of the Code.[87] Both judges were in favour of *English* law, though they "were not indisposed to accept the Indian Penal Code, provided it was clearly the wish of the community that it should be introduced".[88] The Attorney-General, however, favoured the Code as it was more efficient than the English criminal law, and hoped that the Legislative Council would agree to the adoption of the Code.[89]

It is, however, in the following speech of the Chief Justice that one discerns the bias toward English law already mentioned above with regard to the views of the Singapore Bar. The speech is important and merits quotation in full not only for the revelation of bias and pride but also for the insight it gives us to the effect that, from the vantage point of the judiciary at least, there was a perhaps not unnatural and almost instinctive tendency to revert to what was familiar, *viz.*, English law as well as its methodology, without really seeking to consider the suitability of such alien principles and method to the circumstances of the colony. This, perhaps, also explains the attitude taken by the Singapore Bar where, as the reader may recall, there are constant references to the ostensible advantage of guidance that English case-law allegedly provided. With these comments on the significance of the speech, it is best to set it out in its virtual totality for the reader's perusal, taking into account, *inter alia,* the

84 *Ibid*., at p. xl.
85 *Ibid.*
86 *Ibid.*
87 *Report of Proceedings of the Legislative Council of the Straits Settlements, 1869* (hereinafter referred to as *Proceedings),* at p.ll (Singapore, 31st March, 1869).
88 *Ibid.*
88 *Ibid*., at p.12.

fact that it was delivered by the Chief Justice and the further consideration that it is not easily accessible:[90]

> "On the other hand, the advantage that I see in abiding by our English system is this:- who will, who do, study the Criminal law? The Judges and the Legal Practitioners. Well, who are the Judges? *They come to you from England; they are trained up in the English law; they are familiar with its language;* ... I think *our* Criminal law is in general *very accurate and well-defined, and perfectly understood* by English lawyers. I do not think it presents those numerous difficulties which have been dwelt upon; and I therefore do not see anything gained in this respect by substituting the Penal Code for the English system. But you do take an English Judge and English Counsel from the system with which they are familiar, from the text books and the decisions of our Judges in Westminster, which they have for their guidance, and substitute for all these a very beautiful arrangement, a beautifully codified system, *to which he is a stranger,* and without the same guidance as he would derive in administering English law. *He is, as it were, thrown upon a sea without a chart or compass.* I should be very sorry, however, to exaggerate the difficulties of that position. No doubt, a lawyer, who is trained in any system of law is able easily to turn his attention from one body of law to another, and he would in a very short time make himself sufficiently familiar with the Indian Code to be able to administer it with success. *But it does require a little time, as there are many novelties in the Code."*

The views of the Chief Justice, quoted above, were in contrast with the subsequent views expressed. Mr. Brown, for example, stated that most of the *merchants* in Penang were in favour of the Code because of its *simplicity*,[91] whilst the Auditor-General stated that the Penal Code was operating satisfactorily in India, and that the operation of the Code did not necessarily require the presence of Indian judges as such.[92]

In the event, the Governor stated that the Code would be submitted for consideration after further consultation with the Judges.[93] It would indeed appear that this was not a 'typical' Second Reading of a Bill[94] — a view that is supported by the following statement of the Attorney-General:[95]

90 *Ibid.* (emphasis mine). The following remarks by the editor (S. Govindarajulu) of *Essays on the Indian Penal Code, supra,* note 13, also merit quotation: "If we had a good text-book on the Indian Penal Code it would have a chapter on its history, explaining that the draftsmen did independent thinking and were not merely codifying English law even though English law was largely in their minds. In the absence of that knowledge the later judges assumed that the code was following English law. *In the late Victorian era it was easy to make such an assumption; it was a period when Englishmen thought that the English and their institutions had reached the highest perfection and it was but natural that the rest of the world and particularly the non-European part of it desired to copy them."* (emphasis added): see the "Introduction", at p. v.

91 *Proceedings, 1869,* at p.13.

92 *Ibid*., at p.14. And *cf.* the opinion of the Chief Justice, *supra,* note 90.

93 *Ibid.*

94 Whilst serving as 'testing ground', the Second Reading stage has rarely been utilized purely as such, *i.e*., without any intention of *going further* in the legislative process.

95 *Proceedings, 1869,* at p.13 (Singapore, 31st March, 1869).

> "The object of the Bill is simply to ascertain the opinion of the Council as to whether the Code shall be introduced or not."

The further consultation with the Judges did *not* elicit a favourable opinion. In a meeting of the Legislative Council on 10th November 1869, the Chief Justice, after suggesting deferring the passage of the Bill as the Penal Code was itself about to undergo revision in India, stated thus:[96]

> "I can only say that in March last the *Judges* were *not in favour* of the introduction of the Penal Code, but seeing *a very strong impression in its favour prevailed out of doors,* they gave way to it ..."

It would appear, therefore, that despite the rather negative opinion (on balance) toward the Indian Code that was to be found amongst the judges and, to a lesser extent, the lawyers, the prevailing *public* opinion seemed to be very much in favour of the introduction of the Code.[97] This could perhaps explain why, when the Legislative Council met again on 15th November, 1869, the Legislative Council refused to postpone consideration of the Code, despite the Chief Justice's reference again to the revision of the Code in India. The Council proceeded to go through the greater number of the corrections and amendments proposed, after which progress of the Bill was reported.[98]

Some five days later, on 20th November, 1869, the Legislative Council went into committee on the Bill, with the Governor providing some confirmation at least of the favourable public opinion alluded to above:[99]

> "I believe that we are of opinion, — and I may say we know — that it is the wish of the Council *and of the public,* that this measure should become law as soon as possible."

However, whilst the Bill was now in a position to be passed, the Legislative Council had to wait for the Criminal Procedure Bill to be passed first.[1] The Governor thus proposed withdrawing the Bill first on the understanding that it would be passed in its then existing state at the commencement of the next session of the Legislative Council.[2]

The 'saga' of the Straits Settlements Penal Code finally came to an end on 25th May, 1870 when the Bill was successively committed, reported without amendments, read a Third Time and passed, with the Governor stating that it was his intention that the Ordinance should come into

96 *Ibid*., at pp. 88 to 89 (Singapore, 10th November, 1869) (emphasis mine). See, also, *Memorandum by Attorney-General, together with Minutes of the Chief Justice and the Judge of Penang, upon the Penal Code as submitted to Council in Appendix EE to Minutes of the Legislative Council of the Straits Settlements, 1869, laid before the Legislative Council on 2nd October, 1869,* p. lxxxix, which, however, merely contained suggested amendments as well as modifications. *Cf*., also, *Proceedings of the Legislative Council of India, supra,* note 69.

97 See, *supra,* notes 91 and 96. But *cf. Proceedings of the Legislative Council of India, supra,* note 69, at p.45 wherein a more indifferent attitude on the part of the public is suggested.

98 *Proceedings, 1869,* at p.101 (Singapore, 15th November, 1869).

99 *Ibid*., at p.103 (Singapore, 20th November, 1869) (emphasis added).

1 *Ibid.*

2 *Ibid*., at pp. 103 to 104.

operation on the 1st of October.[3] Alas, there was yet another slight hitch — the Secretary of State who "took some exception" to "some things" in the original Code, "and it was considered that it was better to pass a new Code altogether, so that we have two Codes on our Statute-book, Ordinance I. of 1870 and Ordinance IV. of 1871". Yet further exceptions were taken by the Secretary of State and after the passage and inclusion of an amendment Ordinance, it was this *latter* Ordinance *(i£.* Ordinance No. 4 of 1871) that was finally brought into operation.[4] The Straits Settlements Penal Code thus finally became law locally,[5] and continued, with relatively few amendments,[6] up to today. In fact, in spite of the promulgation of many other 'specialized' criminal statutes, especially during the recent past,[7] the Penal Code[8] remains *the foundation* of the *substantive* criminal law of Singapore. Whether or not the Code itself is exhaustive has remained the subject of some controversy even today,[9] but, despite these 'hiccups', there can be no doubting the pre-eminence of the Penal Code in the criminal law of Singapore in general and its substantive law in particular.

To briefly bring the 'story' of the Straits Settlements Penal Code to an end, one notes the curious manner by which the Code became law in Singapore. Being based almost entirely on the Indian Code, one would have thought that it would quite easily have passed muster, as it were, having regard to the relative success of the Indian Code as described above. The local Bill, however, ran into a fair amount of difficulties, surprisingly enough, amongst the local bench and bar which combined pride and bias in English law and methodology with a fear of the unknown. Public opinion, on the other hand, was exactly the opposite and probably resulted in the ultimate passage of the Bill as law approximately a decade after its enactment in India itself.

III. The Criminal Procedure Code

The Straits Settlements Criminal Procedure Code:

One salient point needs, in my view, to be stressed at the outset. Unlike the Penal Code, the passage of the various enactments relating to criminal

3 *Proceedings, 1870, Short-Hand Report,* at p.3 (Singapore, 25th May, 1870).

4 *Proceedings, 1872, Shorthand Report,* at p.88, *per* the Attorney-General (Singapore, 22nd August, 1872). The amendment Ordinance in question was the Penal Code Amendment Ordinance 1872 (No. 3 of 1872), s.13 of which reads as follows: "This Ordinance may be cited as the Penal Code Amendment Ordinance, 1872, *and shall be taken and read as part of the Penal Code,* and shall come into operation at the *same time* as the Penal Code." (emphasis added).

5 As Ordinance No. 4 of 1871. And see, *supra,* p.63, note 4.

6 Though *cf.* the relatively recent and important amendments in 1973 and 1984: see the Penal Code (Amendment) Act 1973 (No. 62 of 1973); and the Penal Code (Amendment) Act 1984 (No. 23 of 1984).

7 See, *supra,* note 11.

8 Cap. 224, 1985 Rev. Ed.

9 See Stanley Yeo Meng Heong, "The Application of Common Law Defences to the Penal Code in Singapore and Malaysia" in Chapter 5 of *The Common Law in Singapore and Malaysia* (Edited by A.J. Harding, 1985), at pp. 144 to 147. See, also, Calvert, *supra,* p.46, note 1, at pp. 192 to 193; Koh Kheng Lian and Myint Soe, *supra,* p.46, note 1, at p.l; and Koh Kheng Lian, *supra,* p.46, note 1, at pp. 3, and 5 to 10, respectively

procedure has been relatively trouble-free. The reasons for this are unclear, though three possible (and related) reasons may be tentatively advanced. Of these, only the first, and perhaps the third, may be of general application; the second reason is clearly only of relevance *vis-a-vis* the very first piece of local legislation relating to criminal procedure which we shall in fact be discussing in a moment, although the latter two reasons derive from the circumstances surrounding the enactment of this particular statute as well.[10] It ought, however, at this juncture, to be pointed out that this enactment was *not* a *code* as such; as we shall see, the first code of criminal procedure proper was enacted by the local (Straits Settlements) legislature only in 1900.[11]

First, the various enactments dealt *not* with the *substantive* criminal law as such (as did the Penal Code), but, rather, with adjectival or procedural law which has traditionally been perceived as being subordinate to the former (*i.e.*, substantive) law.[12]

Secondly — and this point is, of course, related to the first — the Penal Code had already been debated at length and had ultimately been passed.

Thirdly, and perhaps most important of all, the law relating to criminal procedure was perceived as being a mere *complement* to the Penal Code. This is apparent from the speech of the Acting Attorney-General (moving the Second Reading of the Bill relating to this very first local piece of criminal procedure[13]) that is set out below:[14]

> "This is a Bill which has become necessary in consequence of the Indian Penal Code — an adaptation of the code, but virually the whole Penal Code — having been put on our Statute-book here. The Bill now before the Council is a Bill to amend the law relating to procedure, and it is simply a counterpart of a Bill which found to be necessary in India after the Code had come into operation there, in order to facilitate the procedure of the Courts under that Code, and to prevent miscarriage of justice under some of the sections, of which under the old procedure there was some danger. I may mention that this Bill, I think, contains nothing of any importance beyond what is in the Indian Act XVIII of 1862, with the single exception of a section to provide for the summary procedure of the Magistrates of Police here in certain cases, and the introduction of one or two sections which appeared desirable to His Honour the Chief Justice, with whom I have been in communication on the subject, and to myself, regarding the admissibility of evidence in certain cases."

As already mentioned above, the very first piece of local legislation relating to criminal procedure was not embodied in a code as such. This

10 This was the Criminal Procedure Ordinance 1870 (No. 5 of 1870).

11 See the Criminal Procedure Code 1900 (No. 21 of 1900).

12 See, *e.g.*, Bashir A. Mallal, *Mallal's Criminal Procedure* (4th Edn., 1957), especially at pp. 1 to 2.

13 See, *supra,* p.64, note 11.

14 *Proceedings, 1870, Short-Hand Report,* at p.73 (Singapore, 27th June, 1870). See, also, B.B. *Mitra on the Code of Criminal Procedure 1973* (1978, by A.R. Biswas), Vol. 1, at p.23; and Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* p.48, note 13, at p.324.

was the Criminal Procedure Ordinance 1870;[15] it was relatively short — certainly in comparison with the code that was ultimately to be enacted (in 1900[16]) and that (after one further re-enactment without too many changes in substance, as we shall see[17]) forms the foundation of the present Criminal Procedure Code.[18]

The next major re-enactment was effected some three years later in the form of the Criminal Procedure Ordinance 1873.[19] This Ordinance was an *interim* measure. It was intended to effect changes *vis-a-vis* the jury system; in particular, it was proposed that the grand jury be abolished.[20] This latter proposal generated not a little debate in the Legislative Council itself, culminating in a walkout by three unofficial members.[21] What is interesting from the perspective of the instant article, however, is the fact, as just mentioned, that the Ordinance was introduced as an interim measure, as a much lengthier and comprehensive Code could not be passed for some time to come.[22] The Ordinance was nevertheless an important one as it marked (despite the controversy alluded to above) the

15 Ordinance No. 5 of 1870. And see, *supra,* p.64, note 10 and p.64, note 13.

16 See, *supra,* p.64, note 11.

17 As the Criminal Procedure Code 1910 (No. 10 of 1910). There were, of course, subsequent amendments, but no major revamping as such. As this is a piece tracing broad historical trends, I shall not be focusing as such upon these more specific amendments.

18 Which is to be found as the Criminal Procedure Code, Cap. 68, 1985 Rev. Ed.. Section 5 of the statute itself, a 'gap-filling' provision, is of interest; it reads as follows: "As regards matters of criminal procedure for which no special provision has been made by this Code or by any other law for the time being in force in Singapore the law relating to criminal procedure for the time being in force in England shall be applied so far as the procedure does not conflict or is not inconsistent with this Code and can be made auxiliary thereto." The following remarks gleaned from the *Straits Settlements Government Gazette* for 4th February, 1892 (with regard to the *Objects and Reasons* for the Bill of 1892 which will be considered later) throw not inconsiderable light upon the genesis of this provision (see paragraph 3): "Where the Code makes express provisions those provisions will rule, but to meet the case of powers and jurisdiction in criminal matters possessed by the Supreme Court under its constitution, and powers in criminal matters attaching to the office of Attorney-General, for the exercise of which the Code may have omitted to lay down procedure, it is enacted that where the Code does not apply the said jurisdiction and powers shall be exercised according to the course prescribed for English Criminal procedure by English law in force for the time being." *Quaere,* whether in the light of the passage just quoted, the rationale for section 5 of the Code no longer exists. On a literal construction of section 5, however, there appears to be no reason why the section ought not to be left on the Singapore 'statute book', especially having regard to the very functional possibility of providing the requisite flexibility *vis-a-vis* 'gaps' in the Code itself.

It might, of course, be further argued that because of the presence of section 5, the Criminal Procedure Code is not, strictly speaking, a 'Code'. It is not proposed to controvert this argument, though account has been taken of this point in the title of this article which refers to "enactments" instead of "codes".

For general historical background to the Code itself, see Mallal, *supra,* p.64, n.12, at pp. 1 to 3; and Braddell, *supra,* p.48, note 1, especially at pp. 73 to 74, and 85 to 86.

19 Ordinance No. 6 of 1873.

20 See, generally, *Proceedings, 1873, Short-Hand Report,* at p.48 (Singapore, 4th June, 1873); and at p.112 (Singapore, 28th July, 1873).

21 *Viz.*, Mr. T. Scott, Dr. Little and Mr. W.R. Scott, who resigned their seats after a failure to secure an amending Ordinance reversing the decision to abolish the grand jury. See, generally, *Proceedings, 1873, Short-Hand Report,* at pp. 128 to 136 (Singapore, 26th August, 1873); and, on the walkout in particular, see, *ibid.*, at pp. 161 to 162 (Singapore, 29th September, 1873).

22 See, generally, *supra,* p.65, note 20.

demise of the grand jury in the Straits Settlements in general, and Singapore in particular.[23]

The lengthier and comprehensive *Code* that, as already alluded to above, was to constitute the foundation of the present Code was passed only in 1900.[24] During the interim period, however — *i.e.*, between 1873 and 1900 — the Code in its essential form had in fact already been drafted by a Committee specially constituted solely for this very purpose; the draft Code was modelled, in fact, "mainly along the lines of the Indian Code of Criminal Procedure",[25] although "the local circumstances of the Colony have been considered, and in some cases where provisions of the present law of procedure in the Colony have been found to work well it has been thought better to incorporate them in the Code instead of adopting the corresponding provisions of the Indian Criminal Procedure Code".[26] The reasons for the drafting of the Code were stated by the then Attorney-General, J.W. Bonser, in a passage that bears quotation in full as it also captures the flavour, as it were, of the history of criminal procedure in the Straits Settlements right up to that particular point in time:[27]

> "I think it will be admitted by everybody that the efficient administration of the Criminal Law is vital to the well-being of every community, and that depends to a great extent upon the procedure adopted for carrying it out. The procedure should be simple, intelligible and easily accessible to those who have to use it. *Now, up to this time, I do not think that could be said of the criminal procedure of this colony.* The Criminal procedure of this Colony *partly consists of obsolete English practice, partly of antiquated Indian practice, and partly of modem local amendments,* and when I tell you *that this Bill will render it necessary to repeal the whole or portions of some twenty-five enactments now in force in this Colony, it will be seen what difficulties there are at present in the way of persons obtaining a clear conception of what our Criminal procedure is.* This Bill brings *into the compass of one Ordinance* the *whole* procedure with regard to the administration of Criminal Justice."

Thus, the necessity for a Criminal Procedure Code so as to take care of the difficulties described in the aforementioned quotation could not be controverted. The Committee that drafted the Code was, by the standards

23 For a comprehensive history of the grand jury in Singapore from its inception right up to its final abolition by the Ordinance presently discussed, see Y.K. Lee, "The Grand Jury in Early Singapore (1819-1873)", (1973) J.M.B.R.A.S., Vol. XLVI, Part 2, p.55.

24 As the Criminal Procedure Code 1900 (No. 21 of 1900); one major re-enactment followed in 1910 (see the Criminal Procedure Code 1910 (No. 10 of 1910)), but the basic structure of the present Code in force in Singapore may be traced to the 1900 Code. See, also, *supra,* p.65, notes 16 to 18 and the accompanying main text.

25 See the *Objects and Reasons* to the Bill in the *Straits Settlements Government Gazette,* February 4th, 1892, at p.442, paragraph 4.

26 *Ibid.*

27 See *Proceedings, 1892, Short-Hand Report,* at p. B18 (Thursday, 4th February, 1892) (emphasis added). See, also, the *Objects and Reasons* to the Bill itself that are to be found in the *Straits Settlements Government Gazette,* February 4th; 1892, at p.442, paragraph 3 which also refers to the convenience for the Magistrates (who had no formal legal training).

of the day, an eminent and erudite one, described by the Attorney-General as follows:[28]

> "The Committee consisted of His Honour the Chief Justice, who is an English Barrister, and subsequently filled the office of Attorney-General in the important Colony of Jamaica in the West Indies, and afterwards in Hongkong in the East, and had therefore a thorough knowledge of the subject. Mr. Justice GOLDNEY was another member. He is also a member of the English Bar, and has filled the offices of Attorney-General and Judge in the West Indies. Another member was my Honourable and learned friend on my left (Mr. BURKINSHAW), who brought to the work experience gained as a Clerk to Magistrates in England, and also the useful experience of many years' residence in this Colony and long familiarity with its legal procedure. Another member was Mr. VELGE, the Registrar of the Supreme Court, and any one who has practised in the Supreme Court knows how well qualified he is to assist in this task. Not only has he been for many years Registrar of the Court, on whom devolves the duty of settling all indictments, but he has previously acted as Magistrate and Coroner."

There was therefore an interesting blend of both local as well as overseas experience that was brought to bear upon the drafting of the Code itself. Though not a few significant changes were effected in the draft of the Code,[29] there were no apparently serious problems of policy.[30] The Bill was read a Third Time and passed on 21st March, 1892,[31] thus bringing into legislative existence the Criminal Procedure Code 1892.[32] There was further enacted (as a complementary measure) "[a]n Ordinance to repeal certain enactments regulating Criminal Procedure",[33] that, *inter alia,* repealed the Ordinances of 1870 and 1873 which we considered above.[34]

28 *Proceedings, 1892, Short-Hand Report,* at pp. B18 to B19. And see the preamble to the Ordinance itself *(viz.*, Ordinance No. 7 of 1892) where the members of the Committee are listed (presumably by way of legislative recognition of their efforts), but without (understandably) their respective backgrounds.

29 See, generally, *Proceedings, 1892, Short-Hand Report,* at pp. B19 to B21. These included the proposal that private prosecutions be done away with except in "trifling cases"; the very important principle that the accused could give evidence on his own behalf; the proposal that the jury must be unanimous; increased power to the police in serious cases; proposed abolition of the Coroners' Inquest; and last (but by no means least) the (now-famous) Schedule (" . . . so that the Magistrate, instead of having to turn to the various sections of the Ordinance, can, by referring to this schedule, see at a glance the principal matters which it is important for him to know with respect to the particular offence with which he is dealing:" see *ibid.*, at p. B21).

30 Apart from some comments by (especially) Mr. Shelford, an unofficial member of the Legislative Council. See, generally, *Proceedings, 1892, Short-Hand Report,* at pp. B41 to B44; B46; B55 to B58; B62 to B64; B65 to B68; and B70 to B72.

31 See, generally, *ibid.*, at pp. B73 to B74.

32 Ordinance No. 7 of 1892.

33 Ordinance No. 8 of 1892.

34 *Viz.*, the Criminal Procedure Ordinance 1870, *supra,* p.64, note 10; and the Criminal Procedure Ordinance 1873, *supra,* p.65, note 19.

What is curious, however, is that this Code (of 1892) was never brought into operation (not having the automatic force of law as such[35]). Whilst there were admittedly logistical problems that resulted in the provision for a time interval before the Code was brought into effect,[36] it is submitted that these logistical problems could not have been the root cause for the long delay in the installation of the Code as the law of the land. There was, in fact, a delay of some eight years before the Code came into effect in 1900, and even then as a brand-new re-enactment.[37] The problem appeared to be more one of substance; as stated by the then Attorney-General when introducing the Bill for the 1900:[38]

> "The original Code was compiled, in 1892, by a Committee of persons very competent to do it, and they made it a very excellent Code, and one of great completeness, and which was a most carefully drawn piece of legislation. For various reasons, that Code has not been brought into force, and there were strong reasons for that. *In the first place, the original Code was taken from the Indian Criminal Procedure Code, and that was, by many people, said to be adapted to a different state of society to that which exists here.* That Code was no doubt intended, in India, principally for the direction of Native Indian Magistrates in country districts, where they have no very great pressure of work, and have time to comply with the very minute regulations it contains. That Code is not in force in many of the large Presidencey *(sic)* towns, which, of course, are more analogous in their conditions with regard to Magistrates' work with Singapore and Penang, than are the country districts of India. The Code was submitted to a number of persons, who may be called experts, and a great number of objections were taken to it."

The learned Attorney-General went on to elaborate thus:[39]

> *"The principal point* upon which the Code was thought to be undesirable was *that it made proceedings before the Magistrates too elaborate,*

35 See section 1 of the Code which reads as follows: "This Ordinance may be cited as "The Criminal Procedure Code 1892" and shall not come into operation *unless and until the Governor notifies by Proclamation that it is Her Majesty's pleasure not to disallow the same and thereafter shall come into operation on such day as may be fixed by order of the Governor in Council."* (emphasis mine). The reason for this is to be found in the *Objects and Reasons* that are, in turn, to be found in the *Straits Settlements Government Gazette,* 4th February, 1892, at p.444, paragraph 13 where it is stated that "Section 1 suspends the coming into operation of the Code until a day to be fixed by the Governor, so as to allow time for the arrangement and constitution of Police Districts under section 2, for the appointment of Court Houses and Police Magistrates under section 6, of specially commissioned Magistrates under section 96, and of deputies and assistants of the Public Prosecutor under section 342, and for the preparation of forms of process under section 399, and of books for records, seals of Court, *&c*., and generally for the working of the new system."

36 See, generally, *supra,* p.68, note 35.

37 *Viz*., the Criminal Procedure Code 1900 (Ordinance No. 21 of 1900) that, of course, repealed not only the Code of 1892 but also the Ordinances of 1870 and 1873 (as to which see, *supra,* p.67, note 34), the latter two Ordinances of which had necessarily to continue in force during the interim period since, as we have just seen, the 1892 Code was never brought into force: see section 435 read with Schedule V of the Code of 1900.

38 *Proceedings, 1900, Short-Hand Report,* at p. B43 (Tuesday, 27th February, 1900) (emphasis mine).

39 *Ibid*., at pp. B43 to B44. (emphasis added). For further background, see a *Memorandum on the Criminal Procedure Code* (prepared by the Colonial Secretary, Mr. Maxwell) and

> *and that it would cause a great deal of time to be spent in making reports and writing documents, which would be taken from the substantial work of doing justice in the Police Courts."*

There were also other substantive reasons centring around, for example, the simplification of procedure, the powers of the Public Prosecutor, and the appointment of his assistants.[40] There are also indications that financial considerations may have played a role in delaying the bringing into operation of the Code of 1892.[41]

It was clear, however, that no *fundamental* changes as such were effected *via* the Code of 1900 — as a perusal of the pertinent legislative council proceedings will reveal.[42] In fact, as the Attorney-General (Mr. W.R. Collyer) appears to suggest (from the following passage), the re-enactment was more a matter of expedience than anything else:[43]

> "The original Code was most ably constructed by certain gentlemen, but it required certain amendments and certain modifications, and the question of whether we should repeal that Code or amend it is *simply a matter of convenience.* An amending Ordinance would consist of a number of verbal alterations with marginal notes, . . . together with more important amendments, and it would be necessary to enact that any copy of the Code printed hereafter should be printed with the amendments, modifications and alterations made by the amending Ordinance, which would cause much trouble and an enormous amount of work to the printer, and would, in every way, be most unsatisfactory. The best way was to repeal the Code of 1892 and re-enact it with modifications."

enclosed as part of the papers laid before the Legislative Council: see *Proceedings, 1900, Appendix, Papers Laid Before the Legislative Council,* at pp. C83 to C88; see, also, *ibid*., especially at pp. C89 to C90 *(Letter from the Secretary of State for the Colonies to Sir Cecil C. Smith, G.C.M.G.* dated 25th August, 1892); and at pp. C94 to C97 *(Letter from Officer Administering the Government, S.S., to Secretary of State for the Colonies* dated 13th May, 1898, including Appendices A to E). See, also, *per* the Attorney-General (W.J. Napier) who, in introducing the (subsequent) Code of 1910, also referred to the history behind the Code of 1892 in similar vein thus: "The Criminal Procedure Code was originally drafted in the year 1892 by a very competent body of gentlemen. It became law in that year, but when it came to be considered, *certain magistrates and officials here thought that it was not in the state in which it should have been from a practical point of view, and, therefore, for a number of years it was allowed to slumber.":* see *Proceedings, 1909, Short-Hand Report,* at p. B69 (Friday, 2nd July, 1909)(emphasis added).

40 See *Proceedings, 1900, Short-Hand Report,* at pp. B44 to B45 (Tuesday, 27th February, 1900).

41 See a *Letter from Governor Sir C.B.H. Mitchell, G.C.M.G., to Secretary of State for the Colonies* dated 12th October, 1894 in *Proceedings, 1900, Appendix, Papers Laid Before the Legislative Council,* at p. C93.

42 See, generally, *ibid*., at pp. B43 to B45; B76; B111; B208; B269 to B275; B287 to B288; and B298 to B299. See, also, *Report of the Sub-Committee of the Committee of the Legislative Council appointed to consider the Criminal Procedure Code Bill 1900* to be found as Paper No. 73 of *Proceeedings, 1900, Appendix, Papers Laid Before the Legislative Council,* at p. C200 ("The general result of the alterations is to simplify the procedure. In many cases a return has been made to the Ordinance of 1892, whilst in others amendments which have been adopted in India by the new Criminal Procedure code of 1898 have been inserted. Other changes have been introduced to meet the wishes of the Secretary of State and the opinions expressed by the Judges and other Judicial Officers.").

43 See *Proceedings, 1900, Short-Hand Report,* at p. B273 (Tuesday, 23rd October, 1900) (emphasis mine).

The Attorney-General went on to add thus:[44]

> "In [repealing the Code of 1892] . . . , it seemed to me most unfair to obliterate the names of those persons who had gone to the trouble of giving us the first edition of this Code. The only way of keeping them in was to do as has been done in the preamble."[45]

The Code of 1900 was to form, as already mentioned above, the *foundation* of the law relating to criminal procedure in the Straits Settlements and (subsequently) Singapore. The rest of the 'story' may now be briefly told. There was a further major re-enactment in 1910, *viz.*, the Criminal Procedure Code 1910.[46] This re-enactment did not, however, effect any fundamental change in either the structure or substance of the Code itself. In introducing the bill for the Code, for example, the then Attorney-General, W.J. Napier, had this to say:[47]

> "It [the Code] having been reprinted, it appeared to the Government that it would be of advantage to everybody if the sections were re-numbered and if it were re-enacted as a complete Code, and therefore the Code of 1900, as amended in 1902 and as amended in 1907, and with a few other amendments, which I will refer to later, was prepared. *The amendments of substance are few indeed,* and they are all set out in the Objects and Reasons of the Bill. Although the Bill is a very long one, yet I venture to think that it need not take much of the time of this Council, because, as I say, *apart from the few amendments of substance, the other amendments are only matters ofform."*

Indeed, although there, were a few comments and debate,[48] there were generally no problems with regard to the passage of the bill itself.[49]

44 *Ibid.*

45 Indeed, the preamble to the Code of 1900 clearly acknowledges the drafters of the 1892 Code, as to which see, *supra,* p.67, note 28, and the accompanying main text. See, also, *Proceedings, 1900, Short-Hand Report,* at p. B275 (per Mr. Bromhead-Matthews) (Tuesday, 23rd October, 1900). See, also, the remarks of the Attorney-General (W.J. Napier) when introducing the subsequent Code of 1910 as follows: "In the year 1900, the question was taken up again. The Bill was revised , in order to meet the practical difficulties which were felt to stand in the way of its adoption, by Mr. COLLYER, and was read a first and second time in this Council. It was then referred to a Select Committee of this Council under the chairmanship of Sir WALTER EGERTON, and the other members of the Committee were Mr. COLLYER, Sir EDWARD MEREWETHER and myself. We put a good deal of work into the Bill and finally it was adopted by this Council and became law in 1900. I think it will be generally admitted that the Code has been a success.": see *Proceedings, 1909, Short-Hand Report,* at p. B69 (Friday, 2nd July, 1909).

46 Ordinance No. 10 of 1910, which was subsequently to be found as Ordinance No. 121 of *The Laws of the Straits Settlements* (1926 Rev. Ed.); and Cap. 21 of *The Laws of the Straits Settlements* (1936 Rev. Ed.) - in that order. Significantly, the preamble to the Code refers to the Code of 1892 as well ("WHEREAS a Code of Criminal Procedure was in the year 1892 prepared . . . and was adopted as Law in the Colony by the Criminal Procedure Code 1900: AND WHEREAS the said Code has from time to time been amended and it is expedient to re-enact the same with certain further amendments:"). See, also, the long title which reads as follows: "An Ordinance to re-enact with Amendments "The Criminal Procedure Code 1900"". The Code of 1910, of course, repealed the Code of 1900: see s. 446 read with Schedule IV of the former Code.

47 See *Proceedings, 1909, Short-Hand Report,* at pp. B69 to B70 (Friday, 2nd July, 1909) (emphasis mine).

48 See *ibid.*, at pp. B76 to B81 (Friday, 9th July, 1909).

49 See *ibid.*, at pp. B83 to B84 (Friday, 16th July, 1909); and at p. B111 (Friday, 27th July, 1909).

The next major re-enactment came very much later — in 1955, with the enactment of the Criminal Procedure Code 1955.[50] And it was this version of the Code that constitutes the basic structure of the Code presently in operation.[51]

An examination of the actual genesis of the Code of 1955 will, again, reveal no real problems — certainly not at the First Reading.[52] At the Second Reading stage, there were in fact a few alterations and amendments, though they were neither radical nor fundamental changes as such.[53] Neither were there any problems with either the adoption of the Select Committee's Report[54] or the Third Reading of the bill itself when the bill was passed by the Legislative Council.[55]

The preceding account is, it is submitted, interesting from an historical point of view. The 'story' told, however, is a relatively uncontroversial one, marked more by consensus than disagreement — a situation quite dissimilar to that which obtained *vis-a-vis* the enactment of the Penal Code. I have not dealt with the substantive law as such, for this is not the thrust of the present article. There have, indeed, been a great many amendments to the substantive law of the Criminal Procedure Code,[56] but the purpose of the instant piece has been to give a general 'flavour', so to speak, of the genesis of the local criminal legislation in general and (in this Part) of the Criminal Procedure Code in particular. The development has, as we have seen, involved a number of pieces of legislation, though the legislative development has, in the final analysis, been one that has (as has already been mentioned) been relatively trouble-free.

50 Ordinance No. 13 of 1955. This Ordinance repealed the Code of 1910 (as amended) which was, by now, Cap. 21 of *The Laws of the Straits Settlements* (1936 Rev. Ed.): see the long title of the Code of 1955, and, more importantly, s.454 of the Code itself. The 1955 Code was assented to on 4th February, 1955, and came into operation on 16th July, 1955.

51 As Cap. 68 of the *Statutes of the Republic of Singapore* (1985 Rev. Ed.). The Code of 1955 was first embodied as Cap. 132 of *The Laws of the Colony of Singapore* (1955 Rev. Ed.); and then as *Reprint RS(A) 1 of 1969; Singapore Statutes, 1970 Revised Edition,* Cap. 113; *Reprint RS(A) 2 of 1980* (dated July 31, 1980); and, finally, as Cap. 68 of the 1985 Rev. Ed..

52 See *Proceedings of the Second Legislative Council of the Colony of Singapore, 1954/55, Shorthand Report,* at p. B222.

53 See *ibid*., especially at pp. B261 to B263 *(per* the Attorney-General). One major amendment centred around the question of statements to the police. And *cf.* the Attorney-General *(ibid*., at p. B261): "This is a comprehensive revision of our Criminal Procedure Code and it has been undertaken primarily in order that it can be incorporated in a concrete form, in a composite form, in the proposed new revision of the laws. This revision takes into account all those amendments that have been made to the Code since it appeared in the revised edition of the laws in 1936, and the opportunity has also been taken to make a number of alterations." The reference to "the proposed revision of the laws" was to the 1955 Revised Edition: see, *supra,* p.71, note 51.

54 *Ibid*., at p. B396. See, also, p. B347 read with pp. C680 to C681 (the latter being the *Report of the Select Committee Appointed to Examine and Report to the Legislative Council on the Bill the Short Title of which is the Criminal Procedure Code, 1954).*

55 *Ibid*., at p. B449.

56 Not least in recent years: see, *e.g*., the Criminal Procedure Code (Amendment) Act 1976 (No. 10 of 1976); and the Criminal Procedure Code (Amendment) Act 1984 (No. 24 of 1984). There have, of course, been numerous other amendments, but, as just mentioned, the discussion of the substantive law is outside the purview of the instant piece.

IV. THE EVIDENCE ACT

(1) The Indian Background:

Like both the local Penal Code and the Criminal Procedure Code, the Straits Settlements Evidence Ordinance[57] was modelled upon its Indian counterpart.[58] The Indian Evidence Act itself was drafted by Fitzjames Stephen who recast the original Bill which, in the words of Whitley Stokes, was "far from complete: it was ill-arranged; it was not elementary enough for the officers for whose use it was designed; and it assumed an acquaintance with the law of England which could scarcely be expected from them".[59] Stephen himself was rather more generous, albeit not without at least some possible self-interest:[60]

> "The Evidence Act, for which, in its present shape, I am in a great measure responsible, is founded on a draft prepared by the Indian Law Commissioners. It includes, I think, everything which was contained in that draft, but is considerably longer, and is arranged on a different principle."

Unlike Macaulay (who, it will be remembered, was largely responsible for drafting the Indian Penal Code), Stephen drew almost solely upon English law and was, in fact, utterly clear about the basis of the Evidence Act:[61]

> "The Indian Evidence Act is little more than an attempt to reduce the English law of evidence to the form of express propositions arranged in their natural order, with some modifications rendered necessary by the peculiar circumstances of India[62]."

The effect of the common or unwritten law was, however, to be eradicated as far as was possible:[63]

57 Ordinance No. 3 of 1893. See, now, the Evidence Act, Cap. 97, 1985 Rev. Ed.. It should be reiterated that the Evidence Act applies to civil and criminal cases alike.

58 See, *e.g.*, Coomaraswamy, *supra,* p.46 note 1, at p.176. The Indian Evidence Act was enacted as Act I of 1872. See, also, generally, Rankin, *Background to Indian Law, supra,* p.49, note 16, Chapter VIII; Jain, supra, p.50, note 27, at pp. 455 to 456; *Sarkar's Law of Evidence* (13th Edn., 1981, by Prabhas C. Sarkar and Sudipto Sarkar), at pp. 15 to 19; and *Woodrofe & Ameer Ali's Law of Evidence* (14th Edn., 1979, Edited and Revised by B.R.P. Singhal and Narayan Das), Vol. I, especially at pp. 14 to 18.

59 Whitley Stokes, *supra,* p.48, note 13, Vol. II (1888), at p.817.

60 J. Fitzjames Stephen, "Codification in India and England", The Fortnightly Rev., Vol. XII, New Series, July 1 to December 1, 1872, p.644, at p.657.

61 James Fitzjames Stephen, *The Indian Evidence Act, with an Introduction on the Principles of Judicial Evidence* (1872), at p.2.

62 See Whitley Stokes, *supra,* p.48, note 13, Vol. II (1888), at pp. 827 to 833 (regarding some differences between the English and the Indian Laws of Evidence), and pp. 839 to 841 (regarding Indian peculiarities bearing on evidence). See, also, G.D. Nokes, "Codification of the Law of Evidence in Common Law Jurisdictions", (1956) 5 I.C.L.Q. 347, which not only gives an interesting overview but also deals with some interesting aspects of the Indian Code (*e.g.*, the distinction between "relevance" and "admissibility"). See, also, *Woodrofe & Ameer Ali's Law of Evidence, supra,* p.72, note 58, at p.18 (though *cf.* at p.21).

63 Stephen, *supra,* p.72, note 61, at p.129. See, also, section 2 (2) of the Evidence Act, Cap. 97, 1985 Rev. Ed., and *Jayasena* v. *R.*, [1970] A.C. 618.

> "As the first section repeals all unwritten rules of evidence, and as the Act itself supplies a distinct body of law upon the subject, its object would be defeated by elaborate references to English cases. In so far as it is obscure or incomplete, the judges and the Legislature are its proper critics."

And the following summary by Stephen himself bears quotation in full:[64]

> "The Evidence Act (I of 1872) compresses into a very short compass the whole of the English and Indian law of evidence. I had charge of this Act, and drew it in its present shape, though in such a manner as to include the provisions of a bill previously drawn by the Indian Law Commissioners. It forms a good illustration of the justice of the charge of over-legislation, and an undue fondness for English law, so often brought against the Government of India. The truth is that the English Law of Evidence was inevitably introduced into India to an uncertain and indefinite extent as soon as English lawyers began to exercise any influence over the administration of justice in India. Nor was this all. In order to avoid refinements which would have been most injurious to India, legislation was necessary which, by declaring that particular parts of the English Law of Evidence should not apply to India, gives an implied sanction to the rest of it. The general result was, that the Law of Evidence before the Evidence Act was passed had a sort of dead-alive existence in India, and was the bugbear of civilian judges, who were placed by it much at the mercy of every English barrister who might appear before them. The Evidence Act reduced the whole subject to a plain short and explicit form."

Stephen's approach was consonant with the general description given by Eric Stokes:[65]

> "Although English law was unsystematic, ill-arranged, and superficially wanting in scientific accuracy, it represented for Stephen a body of principles worked out by the rough commonsense of successive generations, and requiring only to be tabulated and arranged to become a system of the highest excellence.
>
> Instead of suggesting an entire reconstruction of the existing structure in the light of certain rigid theoretical principles, as Macaulay had done, Stephen concentrated on mitigating the practical defects of the system as it stood. … He kept before himself Bentham's objectives — that justice should be swift, cheap, certain, and readily intelligible; but for him it was a question how far the existing system could be modified to bring it nearer these ideals rather than building an entirely new system in its stead."

And it might not be inapposite to note, in concluding this Section, that

64 Hunter's *Life of the Earl of Mayo,* Vol. II, Ch. VIII, p.201, by Stephen, as cited in Rankin, *Background to Indian Law, supra,* p.49, note 16, at p.123.
63 Eric Stokes, *supra,* p.50, note 22, at pp. 278 to 279. But *cf*., Bryce, *supra,* p.51, note 31, at pp. 109 to 110.

Stephen was a firm believer in the Benthamite principle of utility,[66] and was, in addition, a prodigious worker.[67]

(2) The Straits Settlements Evidence Ordinance:

Like the Criminal Procedure Code, but unlike the Penal Code, the Straits Settlements Evidence Ordinance went through a fairly smooth passage through the Legislative Council, barring one slight problem.[68] On the whole, however, the purpose of the enactment of the Evidence Ordinance was to simplify the local law of evidence, with the Indian Act being adopted because of its efficiency in India itself. It is, at this juncture, interesting and perhaps even ironical to note that the reasons that resulted in the Evidence Ordinance being passed in the Straits Settlements were the selfsame reasons that were glossed over by critics of the Indian Penal Code as detailed in Part II, Section (2) above!

In moving the First Reading of the Evidence Bill, the Attorney-General stated the detailed reasons for its introduction that have already been alluded to in the preceding paragraph:[69]

> "... the Law of Evidence now in force in this Colony is to be found in various volumes of text-books on the Law of Evidence, containing many hundreds of pages, and in various Acts of the Indian Legislature which are in force here and no longer in force in India. Under these circumstances it has been thought desirable to introduce here the Indian Evidence Code which is now in force in India. That Code *has stood the test of more than twenty years' experience,* and has been found an inestimable benefit to Magistrates and all persons concerned in the administration of justice, who have no longer to turn to reports of cases, and wade through TAYLOR on *Evidence, but can find in the compass of a few pages the proposition of law which meets the case before them.* That such a state of things is an improvement on the present state of things no one can deny. There is nothing or very little that is original in this Bill. It is the Indian Code adapted to the circumstances of this Colony."

66 "Probably no one ever believed more absolutely in the utility and in the practicability of codification than Fitzjames Stephen. The two most potent influences on his mind were those of Bentham and Carlyle.": see Ilbert, *supra,* p.54, note 56, at p.223.

67 "He threw himself into his Indian work with characteristic ardour and intensity. He attacked it with grim joy, with fierce delight. His strong will overbore all obstacles. His capacity for hard work was unrivalled. Problems which to the ordinary mind are repulsive from their complexity and technicality possessed for him a singular fascination.... His term of office lasted only half the ordinary span, but he compressed into it enough work for five law members,— ... " : *ibid*., at pp. 223 to 224. And *cf.* Macaulay and the Penal Code: *supra,* p.49, note 19.

68 Ordinance No. 3 of 1893. See, now, the Evidence Act, Cap. 97,1985 Rev. Ed. The problem was with regard to the admissibility of statements to police officers which need not concern us here.

69 *Proceedings, 1893, Shorthand Report,* at p. B23 (Thursday, 23rd February, 1893) (emphasis mine).

V. Conclusion

As can be seen from the discussion in Parts II to IV above, apart from some controversy with regard to the passage of the Penal Code, the local enactment of what were to constitute the foundation of Singapore's criminal law was relatively trouble-free. Thus, by the end of the nineteenth century, and in fact, well before,[70] the colonial government as well as the courts were apparently well-equipped to effect the maintenance of law and order in the Straits Settlements. The Penal Code, after all, had been passed in 1871[71] and the first Ordinance pertaining to criminal procedure a year earlier.[72] All three statutes *(viz*., the Penal Code, Criminal Procedure Code, and Evidence Ordinance) in fact tidied as well as tightened up the previous law that was often uncertain[73] and/or cumbersome.[74] This, however, was merely the 'theory'. In 'practice', however, there was often not even the appearance, let alone the substance, of law and order. This was due, in no small part, to the Chinese secret societies.[75] These statutes, therefore, were probably effective in a more limited fashion, *e.g*., to cover petty crimes or crimes committed by criminals without any organizational links. Even so, the utilization of these enactments, especially the Penal Code, was much more effective during the "modern period".[76]

To return to the secret societies, however, it ought, in all fairness, to be pointed out that even the People's Action Party had to resort to extraordinary legislation to rout these associations during the "modern period". But, then again, the colonial government did resort to extraordinary legislation of a kind itself. Unfortunately, however, the process by which it passed, and then implemented, the legislation concerned displayed an ineptness that was puzzling and/or pathetic.[77] But, one thing is clear — as already mentioned, the efficacy of the three pieces of legislation really came to the fore only during the "modern period". It may well have been the case that the initial lack of enthusiasm toward the Penal Code[78] may have contributed, in part at least, to any inefficacy after its

70 The *final* version of the Penal Code was enacted in 1871 (see, *supra,* p.63, notes 4 and 5) whilst the first Ordinance relating to criminal procedure was enacted in 1870 (although it ought to be noted that the first *Code* pertaining to criminal procedure was only enacted, as we have in fact already seen, in 1900). The Evidence Ordinance, however, was enacted in 1893.

71 As Ordinance No. 4 of 1871, and came into operation the next year, together with the Penal Code Amendment Ordinance 1872 (No. 3 of 1872): see, *supra,* p.63, note 4.

72 As Ordinance No. 5 of 1870.

73 Especially with regard to the reception of English criminal *statutes.* See, also, Calvert at, *supra,* p.47, note 9.

74 This is especially so with regard to the reception of English criminal *case-law.*

75 A topic that is outside the ambit of the instant article. The literature on Chinese secret societies is extremely voluminous — albeit more from an historical point of view. There is, however, some recent sociological work in the area as well: see, *e.g*., Mak Lau Fong, *The Sociology of Secret Societies — A Study of Chinese Secret Societies in Singapore and Peninsular Malaysia* (1981). The most comprehensive work in this sphere, at least insofar as the sheer weight of information is concerned, is Wilfred Blythe, *The Impact of Chinese Secret Societies in Malaya — A Historical Study* (1969).

76 *I.e*., the period from internal self-government in 1959 to date. This, again, is a topic that is outside the scope of this article.

77 All this, again, comprise an inquiry that is outside the ambit of the instant piece. The "extraordinary legislation" referred to *vis-a-vis* the "modern period" is the Criminal Law (Temporary Provisions) Act, Cap. 67, 1985 Rev. Ed..

78 See, especially, *supra,* notes 90 and 96, and the accompanying main text.

passage, especially having regard to the fact that the Code dealt with the *substantive* criminal law. Unfortunately, the lack of historical material renders this last remark pure speculation on the part of the writer.

What is, however, in my view, rather less speculative is the fact that the events that led to the enactment of the Penal Code illustrate the bias and pride that the colonial judiciary had in the English law and its methodology. But, a caveat is in order. Bias and pride in the English law do *not* necessarily imply, still less can they be equated with, blatant prejudice and oppression.[79] This distinction probably aids in explaining two ostensibly inconsistent decisions by Sir Peter Benson Maxwell (delivered in a somewhat different but related context[80]) — an explanation that is rendered all the more significant simply because, as the reader may recall, Sir Peter was the main actor in the controversy surrounding the enactment of the Penal Code. I am referring to the two landmark decisions pertaining to the reception of English law in Singapore. The first is *Regina* v. *Willans*,[81] a lengthy and erudite[82] decision, that is cited as a matter of course for the proposition that English law was received in Singapore *via* the Second Charter of Justice of 1826.[83] The other, *Choa Choon Neoh* v. *Spottiswoode*,[84] decided by Maxwell C.J. (he was by then Chief Justice of the Supreme Court of the Straits Settlements) in 1869, seeks to accommodate the native population *via* the concept of suitability and modification;[85] in an oft-cited passage, the learned Chief Justice stated thus:[86]

> "In this Colony, so much of the law of England as was in existence when it was imported here, and is of general [and not merely local] policy, and adapted to the condition and wants of the inhabitants, is the law of the land; and further, that law is subject, in its application to the various alien races established here, to such modifications as are necessary to prevent it from operating unjustly and oppressively on them."

79 See, *supra,* p.47, note 7; Phang, *supra,* p.47, note 9, at pp. cxii to cxiv; and Stephen, *A History of the Criminal Law of England,* Vol. III, *supra,* p.48, note 13, at pp. 344 to 345. *Cf,* also, Turnbull, *supra,* p.47, note *6,* at p.161.

80 Related insofar as, unlike the position in India, the problem before the Straits Settlements, insofar as the relevant enactments were concerned, was, broadly speaking, whether to take English law in either its codified or its uncodified form. The point made about ideology here is, however, a more general one.

81 (1858) 3 Ky. 16. And see, generally, Phang, *supra,* p.47, note 9.

82 In this connection, one might like to note the comments of Thomson C.J. in the 1961 decision of *Re Loh Toh Met, Deceased,* where the learned Chief Justice referred to the judgment of Maxwell R. (as he then was) as being one that "has been for over a century and will long continue to be a monument to the learning and erudition of a very great lawyer": [1961] M.L.J. 234, at p.239.

83 Letters Patent establishing the Court of Judicature at Prince of Wales' Island, Singapore, and Malacca dated 27 November, 1826, and made under the authority of Act 6 Geo. 4, c. 85. The 'First Charter' dated 25 March, 1807 was virtually identical in terms but extended only to Penang or Prince of Wales' Island as it was then known, being the only British acquisition at that point in time. The 'Third Charter', dated 12 August, 1855, is also virtually identical in terms, and is generally accepted as not having re-introduced English law as at 1855, but, rather, as having effected a re-organization of the existing court: see Andrew Phang Boon Leong, *supra,* p.48, note 10, at pp. 243 to 249.

84 (1869) 1 Ky. 216. See, also, in the local context, *Chulas & Kachee* v. *Kolson binte Seydoo Malim,* (1867) W.O.C. 30, that is, incidentally, also a judgment by Sir Peter Benson Maxwell.

85 For an elaboration and appraisal of these concepts, see Phang, *supra,* p.48, note 10, at pp. 249 to 262.

86 *Supra,* p.76, note 84, at p.221.

And the statement of principle just quoted received the highest possible endorsement by the Judicial Committee of the Privy Council in the case of *Yeap Cheah Neo & Ors.* v. *Ong Cheng Neo.*[87]

In one sense, the abovementioned decisions may not be inconsistent. The first, *Willans* case,[88] states the general rule, and the second, *Choa Choon Neoh*[89] states the exception. In yet another sense, however, these decisions may be viewed as inconsistent if it is assumed that the decision in *Willans case*[90] was due, in the main, to the bias of Sir Peter Benson Maxwell that, in turn, was premised on the conviction that English law was, and ought to be, utilized as a *tool of oppression.* If so, then his judgment in *Choa Choon Neoh*[91] will, in *substance* at least, be inconsistent with his earlier decision; the rationalization of general rule and exception mentioned above becomes, in effect, wholly a distinction of (empty) form rather than substance. If, however, we accept the distinction offered above between a natural pride in, and bias for, the tradition and learning the colonial judiciary had emerged from *(viz.*, the English legal tradition) on the one hand and a blatantly oppressive as well as instrumental approach toward the law on the other, the apparent inconsistency can be satisfactorily resolved. The inconsistency arises only if we accept the latter premise of oppression and instrumentalism, but not if the former premise is adopted. In my opinion, the former premise constitutes the better view; in other words, the natural pride in, and bias toward, the English law and its methodology characterizes not only Sir Peter Benson Maxwell's views vis-a-vis the Penal Code but also (in part at least) his construction of the Second Charter of Justice[92] in *Willans case*[93] to the effect that it introduced English law into the then Straits Settlements (of which Singapore was, of course, a part). And his judgment in *Choa Choon Neoh*[94] that accommodates the customs and practices of the native population is entirely consistent with this view inasmuch as a natural bias toward English law may be entirely consistent with an otherwise paternalistic concern for the local population.[95]

Admittedly, more research over a wider spectrum is required before one can confirm the aspect of legal ideology that has just been discussed. But, the historical material considered here offers, at the very least, clues, starting-points, and even directions for such future studies.

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87 (1875) L.R. 6 P.C. 381.
88 Supra, p.76, note 81.
89 Supra, p.76, note 84.
90 Supra, p.76, note 81.
91 Supra, p.76, note 84.
92 Supra, p.76, note 83.
93 Supra, p.76, note 81.
94 Supra, p.76, note 84.
95 But *cf.* Turnbull, *supra,* p.47, note 6, at p.161. It could, of course, aslo be argued that such "paternalistic concern" was really mystification of the grossest kind, but, at this point, the broader argument against reductionism militates against such an approach; see, also, *supra,* p.47, note 7.

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