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REVITALISING THE *PENAL CODE* WITH A GENERAL PART

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The *Penal Code* has served Singapore well for more than a century but it has become antiquated and is in need of major repair. A General Part is required to enable the criminal law to become precise, comprehensible, democratically-made and accessible—the hallmarks of a good Penal Code. The paper concludes by outlining a strategy for implementation and a call for the Government to fully support this much-needed exercise.

I am privileged to have the opportunity of presenting this paper to such an esteemed audience, and in honour of the late Dr. David Marshall. As we all know, Dr. Marshall has left an indelible mark on the legal and political life of this nation as one of the foremost criminal defence lawyers of his time, as the first Chief Minister of Singapore and as the Singapore Ambassador to several Western European nations in his later years. I would like to think that, had Dr. Marshall been here with us, he would have warmed to my lecture topic since it takes a visionary approach towards his favourite law subject.

It is well-known that our *Penal Code*[1] is, except for a few revisions,[2] virtually identical to the *Indian Penal Code 1860*. Not long after its enactment, the *Indian Penal Code* received high praise for its clear articulation and thinking concerning criminal responsibility. For example, the eminent English jurist and codifier, James Stephen, was led to proclaim that:

> 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 Penal Code 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.[3]

Such lavish praise was entirely warranted given the overly complex, confusing and cumbersome state the English criminal law was in at the time, and also because

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1 Cap. 224, 1985 Rev. Ed. Sing.

2 For example, the defence of intoxication under the Singaporean *Penal Code* differs from the one found in the *Indian Penal Code*, and the defence of diminished responsibility is recognised by the Singaporean but not the Indian *Code*.

3 Cited in G.O. Trevelyan, *The Life and Letters of Lord Macaulay* (London: Longmans, Green, 1923) at 303.

Thomas Macaulay, the principal framer of the *Indian Penal Code*, had done a superb job of drawing ideas from existing criminal codes and improving upon them.

However, Stephen's observations were made over 120 years ago and even the best codes would be bound to lose much of their attributes if they remained unaltered over such an extended period of time. This paper will show the unsatisfactory state of our *Penal Code* which, as a manufactured article (to use Stephen's metaphor), has not even been serviced, let alone remodelled, since leaving the codifier's desk. As a result, the *Code* struggles to remain the principal repository of the foundational principles of criminal responsibility in this jurisdiction, with hardly any influence on the development of subsequent penal legislation. A proper recognition of the *Penal Code* as the primary penal legislation would require all other penal legislation to make the *Code* a pivotal source of reference. Additionally, the *Code* has created many problems of interpretation for the courts which have had the unenviable task of finding ways, not always successful, of applying the 19th century mindset embodied in the *Code* to 20th and 21st century social and moral situations.

In this paper, I shall be proposing that the best solution to this unfortunate state of affairs is to enact a "General Part" which will significantly revitalize the *Penal Code* and return it to much of its former glory. A realistic strategy for drafting and enacting such a Part will be suggested, and the call made for the government to bring its full weight behind this project. To gain this vital governmental support, one need only show just how far removed the *Code* is in its present day functioning from what its principal creator, Macaulay, envisioned.

I. A Good Code No Longer

According to Macaulay, a good code should have the qualities of precision, comprehensibility, being democratically made, and accessible. The first three qualities are encapsulated in the following passage of Macaulay's letter to Lord Auckland, the Governor General of India in Council, which accompanied his draft *Penal Code*:

> There are two things which a legislator should always have in view while he is framing laws: the one is that they should be as far as possible precise; the other that they should be easily understood . . . That a law, and especially a penal law, should be drawn in words which convey no meaning to the people who are to obey it, is an evil. On the other hand, a loosely worded law is no law, and to whatever extent a legislature uses vague expressions, to that extent it abdicates its functions, and resigns the power of making law to the Courts of Justice.[4]

Regarding the need for precision, while many provisions of Macaulay's *Code* have this quality, there are others which are ambiguous. Gaps and inconsistencies in the *Code* provisions have also shown up in the course of time which have, like the

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[4] T.B. Macaulay, *A Penal Code prepared by the Indian Law Commissioners, and published by command of the Governor General of India in Council* (London: Cornhill, 1838) at v. See also the statement of the Full Bench of the Ceylon Supreme Court in *Kachcheri Mudaliyar v. Mohomadu* (1920) 21 N.L.R. 369 at 373 that the policy of the *Penal Code* was that "[t]he criminal law should be defined and should be in such form as to be capable of administration in all parts of the Island by both principal and subsidiary courts and, further, that it should be in such a form that the population of the country should clearly understand their obligations."

ambiguous provisions, required the attention of the courts. Some examples will be given later on in this paper.

As for comprehensibility, the *Penal Code* may have been understood by the ordinary people of Macaulay's time who were familiar with the words used and could relate well to the many factual illustrations which Macaulay used to help explain the law. But ever since its inception, there have been parts of the *Code* which have necessitated clarification by the courts on account of their incomprehensibility. Furthermore, while much of the *Code* remains understandable to the present day Singaporean, there are many words or concepts which are likely to cause puzzlement.[5]

In relation to the need for a code to have been democratically made, the underlying premise is that:

> [S]ince the criminal law is arguably the most direct expression of the relationship between a State and its citizens, it is right as a matter of constitutional principle that the relationship should be clearly stated in a criminal code the terms of which have been deliberated upon by a democratically elected legislature.[6]

The fact that so many parts of the *Penal Code* have been subjected to judicial interpretation and elaboration runs counter to Macaulay's insistence that the *Code* should be the creation of "the legislature, by those who make the law, and who must know more certainly than any judge can know what the law is which they mean to make."[7]

There is then the fourth quality of a good code in Macaulay's eyes, namely, that it must be accessible. Macaulay envisaged that all the penal laws which the Legislature enacted from time to time would be framed in such a manner as to fit into the *Code*, and proposed that each member of the population should be furnished with a copy of the *Code* in their own native language.[8] Although no longer feasible today in the light of the huge amount of penal legislation, this goal of accessibility can be met in another way, to be explored later in this paper. For now, it may be said that the law, even if we were concerned with just that covered by the *Penal Code*, is inaccessible to the layperson. Most certainly, a person has more ready access to a copy of the *Code* than ever before, thanks to the electronic age. But that is not the point here. Rather, it is that the *Code* is no longer the sole repository of the law which it purports to cover but has to be read together with a very large body of case law. As evidence of this, a quick browse through an Indian or Singaporean criminal law commentary will reveal that it is heavily devoted, no less than their counterparts from common law jurisdictions such as England, to the discussion of case law.[9]

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5 For example, "wantonly" (s. 153); "maliciously" (s. 219); "malignantly" (s. 270); "common intention" (s. 34); "unsoundness of mind" (s. 84); "sufficient in the ordinary course of nature" (s. 300(c)); "cruel or unusual manner" (exception 4 to s. 300) to name a few.

6 Law Commission, Law Com. 177, *Criminal Law: A Criminal Code for England and Wales* Vol. 1 (London: H.M.S.O., 1989) at 5.

7 Macaulay, *supra* note 4 at v, referring to the legislative quality of the illustrations appearing in his *Code*.

8 *Ibid*. at viii.

9 See, for example, the 4,300 plus page *Gour's Penal Laws of India*, 10th ed. (Allahabad: Law Publishers, 1987), and K.L. Koh, C.M.V. Clarkson and N.A. Morgan, *Criminal Law in Singapore and Malaysia* (Singapore: M.L.J., 1989) which has a 14-page table of cases.

To Macaulay's list of qualities of a good code may be added that of modernity. Values and ways of thinking about criminal responsibility inevitably change with time and place, and it is incumbent upon an effective Code to keep abreast with these changes. It would be an immense surprise if the many pronouncements in a Penal Code enacted for the 19th century residents of India accurately reflected the values and views of 21st century Singaporeans concerning criminal responsibility.

In short, the *Penal Code* as we know it today fails to satisfy any of the attributes which its creator regarded as essential for a good code, and continues to perpetuate the moral judgments of a bygone era. The following observation succinctly describes this unfortunate state of affairs:

> The common law Codes [of which the *Indian Penal Code* was one] . . . are in origin nineteenth century codes, albeit much amended. The knowledge and understanding of the principles of substantive law have, through the work of judges and jurists, greatly increased since then. Moreover, while all of these codes are available for assessment by specialist lawyers, they are less readily to hand for the profession as a whole and still less to the general public . . .[10]

II. Explaining the Unsatisfactory State of the *Penal Code*

No blame whatsoever can be laid on Macaulay for the current dismal state of his *Code*. He was the first to acknowledge that his creation was not perfect and that there were bound to be deficiencies in its interpretation and application which would require fixing. In line with his insistence that the *Code* should be the work of the Legislature and not the courts, Macaulay proposed putting in place a revision mechanism. It was that, whenever an appellate court reversed a lower court on a point of law not previously determined, or whenever two judges of a higher court disagreed on the interpretation of a provision of the *Code*, the matter should be automatically referred to the Legislature which should decide the point and, if necessary, amend the *Code*.[11] Regrettably, this mechanism was not adopted in India nor in Singapore, leaving any ambiguities in the *Code* to be rectified by the Legislature as it saw fit, or else to be dealt with by the courts as best as they could.

As one might expect, the Legislature has rarely taken the initiative to rectify defects in the *Code* which have come to the attention of the courts and commentators.[12] Sadly, in quite a few of the instances when the Legislature has done so, the results have been far from satisfactory, adding further confusion or complexity to the law. A likely explanation is that the drafters of the legislative amendments have paid scant regard to the relationship between their amendment and existing provisions in the *Code*. For example, after the *Indian Penal Code* was promulgated, the Indian Legislature felt the need to create criminal liability for causing "the death of any

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[10] The Law Commission No. 143, *Codification of the Criminal Law: A Report to the Law Commission*, (London: H.M.S.O., 1985) at para. 13.

[11] A. Gledhill, *The Penal Codes of Northern Nigeria and the Sudan* (London: Sweet and Maxwell, 1963) at 19.

[12] It was in anticipation of just such legislative inertia that Macaulay saw the need for a revision mechanism to be implemented. See also the English Law Commission, *supra* note 6 at paras. 3.43–3.51.

person by doing a rash act not amounting to culpable homicide."[13] However, the new provision did not define what "rash" meant, leaving it to the courts to define it. In this regard, the Legislature may be criticised for effectively handing over its democratically ordained lawmaking powers to the judiciary. Additionally, if the courts are correct in defining rashness as constituting knowledge that one's act might cause death,[14] how does this differ from the mental state for the offence of culpable homicide of knowledge that one's conduct is likely to cause death?[15] The qualities of precision and comprehensibility of a good code would have been met if the Legislature had made the effort to define its newly introduced concept of rashness in the light of closely similar ones appearing in the *Code*.

Another example is the Singaporean Legislature's decision in 1935 to replace the *Penal Code* provision on intoxication with a new one loosely based on the English common law at the time.[16] The revision included a provision[17] which spelt out certain conditions enabling an intoxicated accused person to be dealt with in the same way as one who successfully pleaded the defence of unsoundness of mind under s. 84 of the *Code*. To achieve the qualities of precision, comprehensibility and accessibility, the obvious course the drafters of the new provision should have taken was to adopt, as far as possible, the terminology of the defence of unsoundness of mind. Instead, they introduced new terms which have plagued the courts and commentators ever since.[18] Is the term "insane" used in the new provision identical to "unsoundness of mind" under s. 84? Is there a distinction between "did not know that such act or omission was wrong or did not know what he was doing" under the new provision and the clause "incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law" under s. 84? Different answers given by the courts have added to the confusion, rendering the law imprecise, incomprehensible and inaccessible to the lawyers and laypeople alike—the characteristics of a bad code.

Since the Legislature has not been at all forthcoming in initiating ongoing review and revision of the *Penal Code*, the task has fallen upon the courts. Judges often refuse to do it, saying that it is the work of the Legislature.[19] When judges do it, they often perform poorly and are criticised for doing so. But the fault does not really lie with the judges since, in many instances, they are required to handle cases where "criminality has taken new forms which are difficult to cope with under old

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[13] Section 304A reads: "Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment for a term which may extend to 2 years, or with fine, or with both." The fault element of negligence will be considered later in this paper.

[14] *Re Nidamarti Nagabhushanam* (1872) 7 Mad. H.C.R. 119.

[15] Section 299, the relevant part of which reads: "Whoever causes death by doing an act . . . with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

[16] By the insertion of new ss. 85 and 86 which were influenced by the House of Lord's decision in *D.P.P. v. Beard* [1920] A.C. 479. See further M. Cheang, "The intoxicated offender under Singapore law" (1986) 35 I.C.L.Q. 106.

[17] Section 85(2) read with s. 86(1).

[18] For a discussion of the case law and academic opinion on this issue, see Lee Kiat Seng, "Casenote: *Public Prosecutor v. Tan Ho Teck*" (1990) 2 Sing. Ac. L.J. 332.

[19] For example, see *Jum'at bi Samad v. P.P.* [1993] 3 S.L.R. 338 where the court described as "somewhat disturbing" an aspect of the *Code* provision under consideration but refused to depart from the clear wording of the provision.

structures and under a philosophy which binds judges to a strict and literal reading of prohibition."[20]

Furthermore, the judges are left entirely in the dark concerning the correct approach to take to resolve an ambiguity, gap or inconsistency in the *Penal Code*. There appear to be at least three approaches open to them. The first, and by far the most popular, is to rely on the English common law. But is it permissible to assume that the English common law is the primary source of law for the purposes of interpreting the *Code*? Macaulay expressly denied this when he claimed that his *Code* was "not a digest of any existing system, and that no existing system [had] furnished [him] even with a ground work."[21] And if the primary source of our *Penal Code* was, indeed, the English common law, should it not be the law as it then stood[22] in Macaulay's time rather than the contemporary English law? Neither answer to this question is satisfactory. If it is in the affirmative, it would be a retrograde step since the 19th century English common law was in shambles. While a negative answer might be better, it results in the invocation of laws which have been judicially formulated under a legal system whose approach to criminal responsibility is, in many major respects, very different from our own.[23]

Consequently, some judges have opted for the second approach which is to refuse to apply the English common law, insisting that the answer to any problem is to be found in the wording of the *Penal Code* alone.[24] But this stance is also unsatisfactory where an ambiguity in a *Code* provision was the very reason why the matter came before the courts. Admirable as this judicial stance might be in insisting on the maintenance of a democratically made *Code*, justice is not served because experience shows that the particular ambiguity will continue unresolved on account of legislative inattention.

There is a third approach which has been suggested by some commentators but which, to date, has rarely been taken up by our judges. It is that the judges should consider the criminal laws of Commonwealth jurisdictions other than England, such as Australia and Canada.[25] These jurisdictions have a stronger claim to relevance for Singapore than the English common law because they have experience with the working of a criminal code and with nation-building in a multicultural society.[26] This approach is arguably the best one available but requires a fair degree of judicial

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[20] Law Reform Commission of Canada, *Criminal Law: Towards a Codification, Study Paper* (Ottawa: LRCC, 1976) at 18.

[21] *Supra* note 4 at iii.

[22] The High Court of Australia in *R. v. Brennan* (1936) 55 C.L.R. 253 at 263 thought so in relation to the Griffith Code of 1899. However the court held that, since the Code was intended to displace the common law, that law was therefore inapplicable.

[23] Consider, for instance, that England continues to have trial by jury while Singapore does not; and that the English legal system imposes the burden of disproving a defence on the prosecution whereas, in Singapore, the burden lies with the defence to prove a defence.

[24] For example, see *Gopal Naidu v. King Emperor* (1922) I.L.R. 46 Mad. 605; *Emperor v. Joti Prasad Gupta* (1931) I.L.R. 53 All 642.

[25] See M. Sornarajah, "The Interpretation of the Penal Codes" [1991] 3 M.L.J. cxxix; S. Yeo, "Evaluating Necessity under Macaulay's Penal Code" [1991] 1 M.L.J. xlix; Chan Wing Cheong, "The present and future of provocation as a defence to murder in Singapore" (2001) Sing. J.L.S. 453.

[26] For a rare instance when our courts have referred to Canadian case law, see *M.V. Balakrishnan v. P.P.* [1998] 1 CLAS News 357 (on the issue of strict liability).

creativity since it involves the solving of "novel problems . . . through the discovery and extension of principles that are basic to the [Penal] Code."[27] Criminal justice would certainly be advanced by such a method of judicial law-making but at a price. The need for the courts to "discover and extend" the basic principles of the criminal law contained in the *Code* will further compound the problems of imprecision, incomprehensibility, inaccessibility and non-democratic-making besetting the *Code*.

In sum, the impoverished nature of the *Penal Code* cannot be rectified by our judges simply because their involvement is antithetical to the formulation of a good code. This is not to say that judges will inevitably perform poorly at interpreting Code provisions. What is being said is that a good code will not require the judges to perform this task. Of course, this is only an ideal since no code can ever be entirely without blemish. The point is that, whenever judges discover some ambiguity or inconsistency in the *Code*, the Legislature should be required to promptly rectify the defect. Once the decision was made that our criminal laws should be governed by a code, the die was cast that it was for the Legislature and not the courts to promote and maintain the qualities of a good code. While the Legislature has been remiss in discharging this duty, it is never too late to do so. I turn now to consider how this can be done.

III. Fixing the Penal Code With a General Part

The revision of a 19th century legal instrument such as our *Penal Code* can be conducted in two ways. The first is a tidying up exercise which deals with ambiguities, gaps and inconsistencies in the *Code* and modernizes the language used. While this may be a worthwhile exercise, it does not examine the foundational structure and conceptual underpinnings of the *Penal Code* in any meaningful way.[28] Such an examination is well overdue. It bears emphasising that the *Penal Code* is over 143 years old and much has changed by way of thinking about criminal responsibility since Macaulay's time, both here and abroad. This is not to dismiss the possibility, highly unlikely as that may be,[29] that our Legislature may find that the basic principles of criminal responsibility contained in the *Code* continue to closely reflect the contemporary views and values of our society. But the Legislature will not know this unless and until it undertakes the above mentioned examination.

The second way of revising an antiquated *Code* is to re-examine the general principles of criminal responsibility contained in the *Code* with a view to evaluating whether they correspond with contemporary thinking about the subject matter. This assumes, of course, that those general principles are readily to be found in the *Code*. The next section of this paper will show that several of these principles are either non-existent or unclear. I would like to strongly suggest that the best method of conducting this exercise is to produce a "General Part" for the *Code*. The reason why it is so described is because this Part will contain the foundational principles

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[27] Sornarajah, *supra* note 25 at cxxxiv.

[28] M. Goode, "Constructing Criminal Law Reform and the Model Criminal Code" (2002) 26 Crim. L.J. 152 at 165 commenting on such an exercise by a 1992 Queensland Criminal Code Review Committee on the Griffith Code of 1899.

[29] Unlikely because of the antiquity of the *Penal Code* and the experiences of many jurisdictions which have engaged in a re-codification exercise, two of which will be presented below.

of criminal responsibility which are generally applicable to all offences, including those found outside the *Code*. The creation of a General Part has been a tried and proven method for successfully producing a sound modern criminal code for several Commonwealth jurisdictions such as Australia, Canada and England.[30] The Part normally comprises (i) the physical (or conduct) elements of a crime; (ii) the fault (or mental elements) of a crime; (iii) the general defences; and (iv) ancillary liability and the inchoate crimes of attempt and conspiracy.

Introducing a General Part does not necessarily mean a complete revision and rewriting of the *Penal Code*. The exercise will allow whatever that may be found to be sound or desirable in the *Code* to be retained. The good thing about the exercise of producing the General Part is that it requires the Legislature to confront and resolve most of the major problems which have led to the current impoverished state of the *Code*. As will be shown in the next section, it is in relation to this part of the criminal law that many apparent difficulties have arisen from the interface between the *Code* provisions and their interpretation and application by the courts.

Having a General Part has the further benefit of reinstating the *Penal Code* as the main repository of the substantive criminal law in Singapore. Once the General Part is enacted, the exercise can commence of gradually revising all other existing penal legislation to accord with the general principles and rules of interpretation found in the General Part. By the same token, future penal legislation should be drafted with the General Part fully in mind. In this way, the quality of accessibility of a good code will be achieved insofar as the general principles of criminal responsibility to which every offence is subject will be contained in the one volume. The following pertinent observations were made by an English law reform body when describing the advantages of having a General Part in a criminal code:

> The law would immediately become more accessible; all users would have an agreed text as a common starting-point and the scope for dispute about its terms and applications should be reduced. The source of the general principles of criminal liability would be found in little more than fifty sections of an Act of Parliament instead of many statutes, thousands of cases and the extensive commentaries on them to be found in the textbooks.[31]

If further evidence were needed that the production of a General Part is the best way to revitalize our *Penal Code* and to ensure that it reflects modern notions concerning criminal responsibility, it is to be found by studying the recent efforts at re-codification in the Commonwealth jurisdictions of Australia and Canada.[32]

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[30] By "success", I mean that the new criminal codes have received the substantial support of all parties involved in the exercise, including judges, legal practitioners, legal academics and other interested bodies. That the codes have not been enacted is no measure whatsoever of their failure as effective and workable pieces of legislation. Rather, this is due to a lack of political will on the part of the government. For an excellent description of the political inertia which has prevented many a sound criminal code from becoming law, see G. Ferguson, "From Jeremy Bentham to Anne McLellan: Lessons on Criminal Law Codification" in D. Stuart, R. Delisle and A. Manson (eds.), *A Criminal Reports Forum* (Scarborough: Carswell, 1999) at 23.

[31] *Supra* note 10 at para. 2.6. The number of sections is that found in the draft criminal code proposed by the Criminal Code team.

[32] While mention has previously been made of the English codification effort, I shall only discuss the Australian and Canadian efforts since these jurisdictions, unlike England, have experienced the working of a criminal code.

For those unfamiliar with the Australian law, the criminal law is, generally speaking, not a Commonwealth (that is, Federal) matter but is vested in the various States and Territories of Australia. There, two systems of criminal law exist, the first being the common law jurisdictions such as New South Wales, South Australia and Victoria which are based on the English common law and supplemented by statute. The second is codified criminal law in jurisdictions such as Queensland, Western Australia and Tasmania which are based on the Criminal Code which Samuel Griffith devised for Queensland at the end of the 19th century. The Griffith Code, like its 19th century counterparts, does not have a General Part. In the early 1990s, a movement to formulate a model criminal code began in earnest, with the backing of the Attorneys-General of all the States and Territories. The primary aim of this exercise was to eradicate or else reduce significantly the huge diversity of criminal laws found amongst the various jurisdictions. A Model Criminal Code Officers Committee was established in 1991 with representatives from the Attorney-General's Departments of all the States and Territories, and published its first report at the end of 1992. That report spelt out the general principles of criminal responsibility which were to form the General Part of the committee's model code.[33] To date, this General Part has been adopted by the Federal Parliament.[34] Matthew Goode, a leading contributor to the deliberations of the committee, has this to say:

> The Committee decided very early in its life that the very first project in a codification exercise must be the foundational general principles of the criminal law. Hence, the Committee began with a Discussion Paper and Final Report on the general principles. That decision turned out to be absolutely correct. The general principles guided the deliberations of the Committee in its work on the specific offences to be included in the Code in ways which were fundamental to the structure and drafting of the recommended provisions of the *Code*. The most important of these provisions were those which dealt with the . . . fault elements of offences.[35]

The reference in the last sentence to the fault elements of offences is of particular significance to our discussion. It illustrates how the production of a General Part requires the legislators to decide between adopting the position found in a 19th century code or the recent common law pronouncements on the matter. Simply put, the choice is between the code stance of objective criminal responsibility which was thought at the time to be the common law position, and of subjective criminal responsibility formulated by the courts in recent years. By way of illustration, in the Australian code jurisdictions, a person charged with rape may escape liability only if he reasonably believed that the complainant was consenting, whereas in the common law jurisdictions, the prosecution will have to prove that the accused knew or was recklessly indifferent to the lack of consent of the complainant. For the purposes of the present discussion, there is no need to decide which is the better position. The point is that, without undertaking the production of a General Part, it is unlikely that our legislators will consider issues of such fundamental importance as this. Rather, they

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[33] Model Criminal Code Officers Committee, *Chapters 1 and 2, General Principles of Criminal Responsibility* (Canberra: MCCOC, 1992).

[34] See the *Criminal Code Act* 1995 (Cth).

[35] *Supra* note 28 at 7.

are much more likely to be content, and without due deliberation, to leave unchanged the objective criminal responsibility found in our own *Penal Code*.[36]

Canadian criminal law, unlike in Australia, is a Federal matter. The *Criminal Code 1892*, which applies to all the Provinces and Territories of Canada, was largely based on the English Draft Code of 1879 which in turn was primarily the work of James Stephen. The Canadian *Code* is therefore slightly newer than our *Code*. Furthermore, unlike our *Penal Code*, there are two mechanisms which enable the Canadian *Code* to accommodate contemporary views about criminal responsibility. One is a provision which expressly preserves a residual common law source for criminal defences.[37] The other is the judicial power to strike down as unconstitutional any part of the *Code* which is inconsistent with "principles of fundamental justice" protected by the *Canadian Charter of Rights and Freedoms 1982*.[38] The Supreme Court of Canada has used these mechanisms on several occasions to replace what it considered to be outmoded codified law with the contemporary common law. For example, in a recent case, the court had to evaluate the constitutional validity of the requirements of the *Code* defence of duress that the threatener must be present and the threat had to be of immediate death.[39] The court ruled that these requirements were unconstitutional and replaced them with contemporary pronouncements on the common law defence from other Commonwealth jurisdictions such as Australia and England. This stands in stark contrast to what our Singaporean Court of Appeal can do in respect of outdated provisions of our *Penal Code*.

The Canadian Parliament has also been much more proactive compared to ours in revising their criminal code. That *Code* has seen patchwork changes made almost annually since its inception and a major exercise was conducted in 1955 which clarified ambiguities, reconciled inconsistencies and pruned obsolescent provisions in the *Code*. Yet, in spite of all this, the Canadian government in 1979 thought it necessary to work on a new criminal code rather than simply tinkering with the existing one. As a result, the Canadian Law Reform Commission produced the draft of a new code in 1986. The following extract from the Commission's statement introducing its draft code provides a good summary of our discussion thus far:

> Our current Code lacks a comprehensive General Part, which has required our courts to fashion, without legislative guidance, many of the basic principles of criminal law dealing with *mens rea*, drunkenness, necessity, causation and other matters. It is incoherent and inconsistent. It is sometimes illogical. Its organization leaves much to be desired.
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> Our present Code is overly complicated and, hence, hard to understand. It uses language that is not familiar to ordinary people, which makes it difficult for them to obey . . .

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[36] See *P.P. v. Teo Eng Chan* [1988] 1 M.L.J. 156 and discussed in C.M.V. Clarkson, "Rape: Emasculation of the Penal Code" (1988) 1 M.L.J. cxiii.

[37] Section 8(3) reads: "Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of proceedings for an offence under this Act or any other Act of the Parliament of Canada."

[38] Section 7 of the Charter reads: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

[39] *R. v. Ruzic* (2001) 153 C.C.C. (3d) 1 and discussed in S. Yeo, "Defining Duress" (2002) 46 Crim. L.Q. 293.

> [Much of our present Code] is no longer responsive to the needs and values of Canadians. It requires restraining in some areas and strengthening in others. Some acts which are now criminal ought not to be and others that are not should be.
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> The Commission has, therefore, decided to propose a new Criminal Code for Canada.[40]

It is submitted that every single one of these statements applies with equal force in respect our own *Penal Code*. In the next Part, some examples will be given to show that, like the Canadian *Criminal Code*, the lack of a General Part in our *Penal Code* has resulted in many of the basic principles of the criminal law becoming imprecise, incomprehensible and/or inaccessible.

IV. Uncertain Articulation of General Principles in the Penal Code

The 19th century criminal codes we have been studying cannot be dismissed out of hand merely because they did not have a General Part. The absence of such a Part does not mean that the codes are devoid of the general principles of criminal responsibility. Their drafters clearly realised the need to express these principles in the code but used a different technique to do so. In their view, these principles should be embedded in the specific offence and defence provisions rather than consigned to a separate part of the code. Thus, Stephen has written that "the only means of arriving at a full comprehension of the expression *mens rea* is by detailed examination of the definition of particular crimes."[41] Unfortunately, based on the experiences of the jurisdictions having codes of this nature, this technique has not been successful in making the law precise, comprehensible and accessible. The fact that modern law reformers who have been asked to re-codify their criminal codes have all recommended a General Part, speaks for itself. Part III of this article has already shown how situating the general principles of criminal responsibility in a General Part will significantly increase the precision, comprehension and accessibility of the criminal law.

Aside from the question of which is the best technique for pronouncing the general principles of criminal responsibility in a code, a brief study will be undertaken here to show that many of these principles are ambiguously expressed or even non-existent in our *Penal Code*. The study will provide two examples from each of the components of the proposed General Part, namely, the physical elements, the fault elements, the general defences, and ancillary and inchoate liability.

A. *Physical Elements*

A basic principle of criminal responsibility requires the prosecution to prove that the accused's conduct was voluntarily performed, in the sense that it was willed. If D collides with V as a result of being pushed from behind by X, we would not hold D criminally responsible for any injury caused to V, quite apart from the fact that

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[40] Law Reform Commission of Canada, Report 30, *Recodifying Criminal Law*, Vol. 1 (Ottawa: LRCC, 1986) at 3.

[41] J.F. Stephen, *A History of the Criminal Law of England*, Vol. 2 (London: Macmillan, 1883) at 95.

D lacked any *mens rea* to injure *V*. In recent years, a defence called automatism has been recognised by the criminal law of many Commonwealth jurisdictions. It was described in the following terms by the House of Lords:

> No act is punishable if it is done involuntarily: and an involuntary act in this context—some people nowadays prefer to speak of it as 'automatism'—means an act which is done by the muscles without any control by the mind . . .[42]

The *Penal Code* does not specify such a defence in Part IV where all the general defences of the criminal law are to be found.[43] This may be explained by the fact that automatism is a relatively recent concept which developed out of increased scientific understanding about human behaviour in the 20th century. In the example given above, *D* would be hard pressed to escape criminal liability under the *Penal Code*, with the only avenue open being to contend that the word "act" appearing in the relevant offence provision should be defined as willed conduct. In contending thus, *D* will have to appeal to the "common sense"[44] of the court because the word "act", although frequently appearing in the *Penal Code*, is nowhere defined. This is surely a lamentable state of affairs for a code which purports to declare the criminal law in precise and comprehensible terms.

The *actus reus* of result crimes requires the prosecution to prove that the accused's conduct caused a particular result or event. Whether or not causation has been established is therefore a basic requirement of these types of offences, and one would expect the *Penal Code* to provide general principles on causation for the courts to apply. Regrettably, the *Code* is devoid of any general provision on causation, with only a few explanations specifically related to the offence of culpable homicide.[45] Admittedly, principles of causation have proven notoriously difficult to formulate, but that is even more reason why the *Code* framers should have devised them. The result has been judicial articulations on causation which are both uncertain and contentious. For example, it has been held that the test of causation for the offence of causing death by a rash or negligent act is whether the accused's act was a "direct result" of his or her conduct.[46] On the other hand, the test of causation for culpable homicide has been held to require proof that the accused's conduct was "an operating and substantial cause" of the victim's death.[47] What do the words "direct" and "substantial" mean? And was it proper for the courts to pronounce different tests of causation for different offences? Additionally, there will be occasions when an accused's causal conduct may be superseded by a subsequent cause. What is the test to determine whether causal blame is no longer to be attributed to the accused on account of such an intervening cause? The *Penal Code* does not provide any answers or guidance for these questions. An example of a modern provision on causation may be found in the Canadian Law Reform Commission's draft criminal code. It reads: "Everyone

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[42] *Bratty v. Attorney-General for Northern Ireland* [1963] A.C. 386 at 409 *per* Lord Denning.

[43] This resulted in a Malaysian judge having to rely on common law authorities in a recent case where the plea was raised: see *P.P. v. Kenneth Fook Mun Lee (No. 1)* [2002] 2 M.L.J. 563.

[44] Resorted to in *Gour's Penal Law of India*, *supra* note 9 at 262.

[45] Explanations 1, 2 and 3 to s. 299.

[46] *Lee Kim Leng v. R.* [1964] 1 M.L.J. 285 (Singapore H.C.).

[47] *Leong Siong Sun v. P.P.* [1985] 2 M.C.L.J. 250 (Malaysian H.C.).

causes a result when his conduct substantially contributes to its occurrence and no other unforeseen and unforeseeable cause supersedes it."[48]

Doubtless, our *Penal Code* would be much improved by having some such provision on causation.

B. *Fault Elements*

The *Penal Code* contains several variations of recklessness which are difficult to distinguish. Reference has previously been made to the concept of rashness found in s. 304A and of "knowing to be likely" contained in s. 299 of the *Code*. To these may be added the term "voluntarily" which is defined in s. 39 as referring to the causing of an effect by means which the accused "knew or had reason to believe to be likely to cause it."[49] To complicate matters further, the *Road Traffic Act*[50] makes it an offence to cause "the death of another by driving a motor vehicle on a road recklessly."[51] Having a definition of recklessness in a General Part of the *Penal Code* which all offences (both within and outside the *Code*) having this form of fault must resort to, is infinitely more precise and comprehensible than the present haphazard arrangement. Additionally, that definition could usefully refer to the other closely related fault elements of intention and knowledge which the General Part will also have defined in precise and comprehensible terms. The Australian Model Criminal Code contains a good example of such a definition:

> 5.4(2) A person is reckless with respect to a result if:
> (a) he or she is aware of a substantial risk that the result will occur; and
> (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.
> (3) The question whether taking a risk is unjustifiable is one of fact.
> (4) If recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element.[52]

Whether or not this particular definition of recklessness should be adopted by our *Penal Code* is not the issue here. What is of concern is that the *Code* currently lacks a clear and precise definition of recklessness which is of general application.

The *Penal Code* also contains another fault element which has produced confusion and controversy because it was left undefined by the Legislature. This is the concept of negligence appearing in s. 304A which makes it an offence to cause the death of a person by doing a negligent act. Consequently, there have been a number of competing judicial formulations of the test for criminal negligence, ranging from

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[48] *Supra* note 40, clause 2(6) of the draft code. The Commission noted the dearth of pronouncements on causation in the existing Canadian code.

[49] The term "voluntarily" concerns the *mens rea* of certain crimes in the *Penal Code* such as those under ss. 321 to 334 of voluntarily causing hurt of various forms. As such, it differs from that used in relation to the *actus reus* discussed previously.

[50] Cap. 276, 1994 Rev. Ed. Sing.

[51] Section 66.

[52] Criminal Law Officers Committee of the Standing Committee of Attorneys-General, Model Criminal Code, Chapters 1 and 2, *General Principles of Criminal Responsibility* (1992). The Code defines "intention" in s. 5.2 and "knowledge" in s. 5.3.

gross negligence at one end of the spectrum to civil negligence at the other end, with an intermediate standard in between.[53] Although the High Court of Singapore has recently resolved the matter by opting for the civil standard,[54] the decision has been criticised and it is likely that there will be further judicial deliberations on the appropriate test for criminal negligence.[55] Wherever the courts may take us on this matter, the point is that it should be for the Legislature as the democratically elected body of the community, and not the courts, to define this fault element which the Legislature devised in the first place.[56]

C. *General Defences*

The general plea of private defence is spelt out in detail over ten sections of the *Penal Code*. Yet, they were described by Macaulay as "still in a very imperfect state" which "may be far better executed than it has been by [him and his fellow drafters]".[57] As noted previously, Macaulay would have expected these provisions on private defence to be regularly improved as they went through the judicial mill which identified any ambiguities or gaps requiring legislative rectification.[58] Regrettably, the provisions on private defence have not been subjected to such a process of revision ever since their inception 143 years ago. Consequently, none of the literally thousands of judicial pronouncements on the meaning and application of the private defence provisions have found their way into the express wording of the *Code*. It will suffice to describe an instance of how the *Code* provisions could have been considerably improved had the Legislature been attentive to the rulings of the courts. Section 99(4) of the *Code* stipulates that "the right of private defence in no case extends to the infliction of more harm than it is necessary to inflict for the purpose of defence." While acknowledging that the provision requires an objective appraisal of the accused's defensive action, the courts have generally interpreted the provision as not requiring the accused's action to be weighed on "golden scales".[59] Reverting to the wording of s. 99(4), it is noted that reference is simply made to "necessary" whereas the flexibility afforded by the courts effectively requires the term to be read as a "reasonably necessary" response as opposed to the minimum necessary response. The concept of reasonableness here obviously allows the factual inquiry to go beyond the least harmful response to consider a number of possible responses all of which could be regarded as being reasonably necessary. Regrettably, the absence

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[53] For a critical discussion of these alternative tests, see M. Hor, "Medical Negligence: The Contours of Criminality and the Role of the Coroner" (1997) Sing. J.L.S. 86.

[54] *Lim Poh Eng v. P.P.* [1999] 2 S.L.R. 116.

[55] V. Ramraj, "Criminal Negligence and the Standard of Care" (1999) Sing. J.L.S. 678.

[56] It is important to emphasise that the courts are not at all to blame for attempting to define negligence; the fault lies with the Legislature in failing to provide a definition.

[57] Macaulay, *supra* note 4 at 82.

[58] See the main text accompanying note 11 above.

[59] See the oft-quoted passage from the Supreme Court of India decision of *Jai Dev v. State of Punjab* A.I.R. 1963 S.C. 612 at 617 *per* Gajendragadkar J.

of the adjective "reasonably" in s. 99(4) appears to have led to occasions when a court has insisted on the minimum necessary response for the purpose of defence.[60]

Reference was earlier made to the defence under s. 84 where the concept of "unsoundness of mind" appears. It is unclear what this concept means either legally or clinically. Furthermore, with the significant advances in the sciences of psychology and psychiatry since the *Penal Code* was written, one can expect a much more precise and comprehensible definition of the kinds of mental disorders which will satisfy the s. 84 defence. The Australian Model Criminal Code provides a good example. As a preliminary matter, the Code substitutes "mental impairment" for the archaic term "disease of the mind" used by the present Australian criminal law[61] to describe the type of mental disorder required for the defence.[62] The Code then defines "mental impairment" as "including senility, intellectual disability, mental illness, brain damage and severe personality disorder."[63] It further defines "mental illness" as referring to:

> [A]n underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary but does not include a condition that results from the reaction of a healthy mind to extraordinary external stimuli.[64]

Once again, whether or not this terminology and definition is suitable for our own *Penal Code* is beside the point. What is noteworthy is that an attempt has been made by the Australian code drafters to bring the defence into line with clinical thinking about the workings of the human mind, and to provide as precise and detailed a definition as possible in the code for the assistance of the courts.

D. *Ancillary Liability*

One of the most unsatisfactory provisions in the *Penal Code* is s. 34 which states that:

> When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

The *Code* framers did not define what they meant by "common intention", resulting in several competing definitions being propounded by the courts.[65] Particular difficulty has risen in cases where *A* and *B* set out to commit a particular crime (the primary crime) in the course of which *B* committed another crime (the secondary crime).

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[60] For example, see the Singapore Court of Appeal case of *Roshdi v. P.P.* [1994] 3 S.L.R. 282 and commented upon by Lee Kiat Seng, "Moving towards a more restrictive approach towards private defence" (1998) 10 Sing. Ac. L.J. 231 at 237–40.

[61] The expression is borrowed from the English *M'Naghten Rules* for the defence of insanity, and is used by both the Australian common law and Code jurisdictions.

[62] Section 7.3(1) of the draft Code, *supra* note 33.

[63] *Ibid.*, s. 7.3(8).

[64] *Ibid.*, s. 7.3(9) much of the wording of which is, interestingly, adopted from the South Australian common law decision in *R. v. Radford* (1985) 42 S.A.S.R. 266. This illustrates that the drafters sought to embody what they considered to be the best aspects of the common law into the Code.

[65] For an excellent critical appraisal of the various judicial interpretations of s. 34, see M. Hor, "Common Intention and the Enterprise of Constructing Criminal Liability" (1999) Sing. J.L.S. 494.

The question which has plagued the courts and commentators has been the *mens rea* required for *A* to be found liable for the secondary crime. One line of cases holds that *A* must have intended to commit the secondary crime, while another line states that *A* need only have known that *B* might commit the secondary offence. Yet another group of cases has held that *A* is liable if he or she could reasonably foresee that *B* might commit the other offence, while still another group has ruled that *A* is liable if the commonly intended crime had led (in a causal sense) to the secondary crime, it being immaterial whether *A* intended, knew or could reasonably have foreseen the commission of the secondary crime. While it is not the place here to argue in favour of one particular position, it is certainly appropriate to decry this highly uncertain state of the law.

The main *Code* provision relating to attempts is s. 511. The section simply states "whoever attempts to commit an offence", without any elaboration whatsoever concerning the fault element required to accompany the conduct of the accused constituting the attempted offence. This defect has meant that the courts have had to interpret the *mens rea* required for s. 511 attempts. Fortunately, since case law is largely agreed that the accused must have intended to commit the complete offence, the law has been rendered precise and comprehensible.[66] However, since such elucidation of the law is contained in judgments rather than in the express wording of the *Code*, the goals of accessibility and democratic lawmaking are not met. Furthermore, this interpretation of s. 511 does not sit well with s. 307, the specific provision for attempted murder contained in the *Code*. That provision states that people can be guilty of attempted murder if they had "such intention or knowledge and under such circumstances that if [they] by that act caused death [they] would be guilty of murder." Hence, an accused need not be proven to have intended to kill to be convicted of attempted murder. The explanation for permitting a lesser degree of *mens rea* for attempting such a serious crime compared to cases covered under s. 511 is unclear. This position becomes even less tenable when it is observed that the punishment under s. 307 is a hefty ten years' imprisonment or even life imprisonment where the accused caused hurt in the attempt. By contrast, an accused convicted under s. 511 is liable to a maximum of one-half the longest term of imprisonment provided for the complete offence. In apparent accord with these reservations, there have been cases where the court has required the accused to intend to kill in order to be culpable under s. 307, while paying lip service to the wording of that provision.[67] It goes without saying that the uncertainty created by both s. 511 and s. 307 concerning the *mens rea* of attempts leaves much to be desired.

The above examples of poorly articulated or non-existent general principles of criminal responsibility in the *Penal Code* are only a small part of the whole sorry picture. A thorough review and reform of the general principles under the *Code* is therefore well overdue and, as previously contended, by far the best way of conducting such an exercise is through the production of a General Part.

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[66] For example, see *Tan Khee Koon v. P.P.* [1995] 3 S.L.R. 724; *Chua Kian Kok v. P.P.* [1999] 2 S.L.R. 542.

[67] For example, see *Om Prakash v. State of Punjab* (1961) S.C. 1782 (S.C., India); *State of Maharashtra v. Balram Bama Patil* (1983) 2 S.C.C. (Cri.) 320 (S.C., India).

V. An Implementation Strategy

From the preceding discussion, it is clear that the *Penal Code* is in dire need of a substantial overhaul of the general principles of criminal responsibility, and not just a tinkering exercise with a few provisions. The problem is that this need lacks sufficiently high visibility to demand public and professional debate and attention. As far as the public is concerned, their seeming disinterest may be explained by the fact that the *Penal Code* has for so long been incomprehensible and inaccessible to the layperson that the law has become virtually the sole domain of lawyers. As for professionals, particularly lawyers and lawmakers, their inattention may be explained by the absence of any mechanism for singling out this issue for special attention by the government.

A pro-active stance must therefore be initially taken by those who are convinced of the importance of revitalizing the *Penal Code*. I would like to suggest that the best team to spearhead this effort is the Law Reform Committee of the Singapore Academy of Law,[68] fully assisted by the very able group of criminal law academics working at the National University of Singapore. That such a team can readily meet the challenge of drafting a General Part for the *Penal Code* is, to my mind, beyond doubt. But their efforts will be in vain if the project does not have the support of the Minister of Law from the very start.

In 1980, the English Law Commission welcomed the proposal of the Criminal Law Sub-Committee of the Public Teachers of Law that a team should be drawn from its members to consider and make proposals to the Commission in relation to a criminal code.[69] The Code Team's terms of reference included:

> To formulate, in a manner appropriate to [a criminal code]—
> (a) the general principles which should govern liability under it;
> (b) a standard terminology to be used in it; [and]
> (c) the rules which should govern its interpretation.[70]

Our own re-codification team could also be given these terms of reference and instructed to draft a General Part for the *Penal Code*. Additionally, our team should be instructed to select specific offences for drafting in the light of the general principles proposed.[71] The English codification exercise found this essential to test the adequacy of the principles in the General Part,[72] as did the Australian and Canadian re-codification exercises.

Once completed, the General Part and selected offences drafted by our re-codification team should be disseminated widely to the public, the legal profession

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[68] The Committee is headed by a judge of the High Court, and has members from the judiciary, the Bar, the legal service and academic institutions. An alternative but less representative body which could undertake the task could be the Ministry of Law's committee reviewing the *Penal Code*.

[69] Law Commission, *supra* note 6 at para. 1.8. England, of course, is a common law criminal jurisdiction so that the project was one of codification rather than re-codification of the criminal law. However, the aims of both codification and re-codification are identical as the English Law Commission report indicates: see *ibid.*, paras. 2.1–2.11.

[70] *Ibid.*, para. 1.9.

[71] One or two offences against the person and against property will suffice. For instance, culpable homicide and theft.

[72] *Supra* note 10 at para. 0.3.

and people or groups with day-to-day practical experience in the workings of the criminal law. The English initiative of establishing "scrutiny groups" of lawyers to examine particular parts of the draft in detail and to report back to the re-codification team could also be emulated.[73] Representatives of our judiciary should likewise be asked to undertake such an exercise. Indeed, the involvement and support of the judiciary is vital to the success of the re-codification project.[74] All of this makes sense when we appreciate that it will be the judges and legal practitioners who would, if the draft became law, be its main users.

Only after changes have been made to the draft General Part, in the light of this extensive process of consultation and review, will it be ready for tabling in Parliament. More revisions may need to be made on account of the ensuing legislative debate before it is finally enacted. Once enacted, the process can commence of amending all penal legislation so as to accord with the General Part.

So much for the mechanics of seeing to the drafting of a sound and workable General Part of the *Penal Code*. I strongly suspect though, that however strong the case may be made for the introduction of a General Part, and however perfect its drafting, the project will flounder and eventually fail if certain other practical concerns are not allayed from the beginning. One of these is the human tendency to be comfortable with what we know whether or not it serves us or others well. Legal practitioners and judges may object to re-codification on the ground that they have learnt the law once and should not be required to learn it again. I do not think that our lawyers and judges would be so unwilling or unable to relearn the criminal law, especially when they are told that the law will be made more precise and comprehensible. There is no doubting that re-codification will involve "some painful short-term consequences"[75] for users of the *Code*, but such an experience will not be new to them, given the often rapid and radical changes to legislation occurring in other fields of the law such as in respect of taxation, company law and securities regulation.

Another practical concern is whether re-codification of the *Penal Code* will be costly in economic terms. Apart from the initial miniscule outlay of reprinting the *Code*, re-codification will actually substantially reduce the economic costs of meting out criminal justice in Singapore. Making the criminal law precise and comprehensible will minimise the number of appeals in order to "discover" the general principles of the criminal law or their application to a set of circumstances.[76] When there is litigation, judges would be better guided by the *Code* when confronted with a new problem. In the words of the Canadian Law Reform Commission re-codifying the criminal law:

> Instead of finding the justification for a principle in a long chain of precedents, of doubtful import in some instances, the judge could refer to codified statements and

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[73] Law Commission, *supra* note 6 at para. 1.13.

[74] The history of codification of the criminal law in other jurisdictions has shown that resistance from the judiciary can be a major obstacle to enactment: see, for example, the Law Commission, *supra* note 10 at paras. 3 and 5.

[75] To quote the English Criminal Code Team which was keenly aware of such resistance to change from the legal practitioners: see *supra* note 10 at para. 2.28(i).

[76] See M. Goode, "Codification of the Australian Criminal Law" (1992) 16 Crim. L.J. 5 at 13.

> draw conclusions from them by using basically the same methods and reasoning he [sic] uses at present.[77]

Indeed, I dare say that the positive economic impact will be felt throughout all stages of the criminal justice system from the appellate courts to the operational decisions of law enforcement agents.

Still on the matter of costs, the enactment of a precise and comprehensible General Part for the *Penal Code* will result in incalculable savings derived from Singaporeans becoming more law abiding. It has thus been contended that "[m]aking the law more accessible brings it down to the level of the ordinary citizen, and helps prevent crime through education."[78]

VI. Conclusion

The *Penal Code*, when first implemented, was well ahead of its time. But like all good things which are not regularly maintained and improved, the *Code* has become a pale shadow of its former self. Ambiguities, gaps and inconsistencies found in its provisions have been left to the courts to handle. When undertaking this task, the judges have often found themselves constrained by the wording or principles of the *Penal Code*. Furthermore, the judges have not been given any guidance from the *Code* as to which source of law they should draw upon to resolve a problem of interpretation. The result has been the growth of a huge body of case law on the *Code*, including numerous conflicting judicial rulings affecting the whole range of general principles of criminal responsibility. Consequently, for many decades now, the *Penal Code* has lost its once admirable qualities of being a precise, comprehensible, democratically made and accessible legal instrument.

The remedy for so huge a problem requires major remedial surgery rather than a band-aid revision exercise. The introduction of a General Part is needed to revitalize the *Code* and to regain its former glory of being one of the best criminal codes around. I am confident that the intellectual capacity and talent to undertake this task can readily be found, and have suggested that the Law Reform Committee of the Singapore Academy of Law in collaboration with a group of criminal law academics based at the National University of Singapore can fulfil this role. The major challenge is to convince the government that this is a project worth undertaking for the betterment of our society. It is therefore appropriate for me to address my last comment to the government. It is that this proposed re-codification exercise will lead to the enactment of a new Penal Code made in Singapore, by Singaporeans, for Singaporeans, and reflecting more accurately our identity as a nation and our common values as a people living in the 21st century.[79]

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[77] Law Reform Commission of Canada, *supra* note 20 at 24.

[78] *Ibid.* at 23.

[79] Adapting a statement of the Law Reform Commission of Canada on re-codifying the criminal law, *supra* note 40 at 3.