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THE IMPORTANCE OF CRIMINAL LAW

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The Faculty of Law, National University of Singapore has been deeply involved in the teaching, research and practice of criminal law in Singapore since its early days. Pioneer members of the faculty developed teaching and resource materials which subsequent generations of scholars have built on. This paper charts the evolution of teaching at the law school and highlights the centrality of criminal law to the teaching and practice of law as well as our conceptions of justice. Criminal law has a profound impact on law students, and at NUS Law, it is a matter of pride that its students have an equally profound impact on criminal law in Singapore—as students, practitioners and leaders.

I. INTRODUCTION

This paper is about the role of National University of Singapore ("NUS") Faculty of Law in furthering the teaching, research and practice of criminal law in Singapore over the last six decades. It is broadly divided into three parts. The first part traces the evolution of criminal law teaching—including the teaching texts produced by faculty—from doctrinal to theoretical, cross-disciplinary and comparative. The second part reflects on two areas of the criminal law that have been fundamental to criminal law teaching and theorising and which viscerally illustrate the complex interplay of individual rights, liberty, democratic governance and pragmatism. The third part describes the inspirational contribution of NUS Law students to criminal law and practice, most notably through the Criminal Justice Club and through *pro bono* work with the Courts and Legal Aid.

The narrative here is not about the achievements of the law school, its faculty and students. As the only law school in Singapore until the last decade,[1] it goes without saying that NUS Law would have been at the centre of the action. Equally, while it is a matter of great pride, it is also natural that its alumni have gone on to become major players in the legal landscape of Singapore, both in Government and private practice. The story here is about the centrality of criminal law to ideas of peace, security, rights and liberty; it is about how the teaching of criminal law at NUS

* Professor, Faculty of Law, National University of Singapore. I would like to thank my Research Assistant, Ms Andrea Ong, for general research and compiling a comprehensive list of criminal law teachers; the following members of the Criminal Justice Club ("CJC") for providing me with information on the Club's activities: Uma Sharma (President, CJC); Melissa Heng (Vice-President, CJC); Kenneth Ng (Head, Innocence Project); and Carolyn Wee of the Law Library for digging up some historical material.

1 The second law school (Singapore Management University) accepted its first batch of students in 2007 and the third (Singapore University of Social Sciences) in 2016.

produces students who are passionate about criminal justice, have the necessary skill sets for practice and the intellectual depth to make a difference in the world they will inherit.

To the non-lawyer, criminal law is synonymous with law. Popular legal culture is driven by criminal law; some household names include Perry Mason, The Defenders, Crown Court, Rumpole of the Bailey, LA Law, Boston Legal and Matlock. Criminal law cuts to the heart of justice, touching intuitively on our sense of right and wrong, appealing to our primal instincts of justice. It is dramatic and sometimes voyeuristic, liberally sprinkled with sex, violence and death. Criminal law is also of immense intellectual interest, lying as it does at so many intersections: private and public; the State and the individual; philosophy and pragmatism; law and morals. Some of the most profound philosophical debates on our basic rights and liberties have revolved around the criminal law—the death penalty; homosexuality; abortion; euthanasia. Criminal law is important.

As societies evolve and new challenges present themselves, criminal law has to keep pace. In recent years, globalisation and the cyber-revolution have forced a reappraisal of the concept of criminal jurisdiction based on territoriality and sovereignty. Increasingly, States are enacting criminal laws with extra-territorial jurisdiction and bolstering international cooperation to combat cross-border and cybercrime. The contemporary phenomenon of lone wolf terrorist attacks brings new challenges to criminalisation, policing, criminal procedures, sentencing and civil liberties. Understanding the social, political, theoretical, philosophical and practical challenges is critical to a sound appreciation of criminal law and justice. A student of criminal law is at once a student of jurisprudence, philosophy, sociology, politics, constitutionalism, international law and human rights.[2]

II. Teaching

The NUS Law Faculty began life as a law department in the University of Malaya in 1957. The NUS Law Faculty, as with most leading law schools, had two missions. To use the words of a former Dean and Deputy Prime Minister, these two missions were "to provide for the liberal study of law as an intellectual discipline" and "to equip students for practice in the legal profession to the limited extent that a University is able to do so."[3] Due to the small size of the faculty, Lee Sheridan, the founding Dean of the Faculty,[4] making a virtue out of necessity, engaged private practitioners to teach criminal law, arguing that students would benefit from practical insights.[5] One of the notable teachers of Criminal Law and Criminal Procedure then was none other than David Marshall, the first Chief Minister of Singapore and giant of the criminal bar. This tradition of ensuring practical relevance continues today with elective modules offered by practitioners, including a module on "Advanced Criminal Legal

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2 This multi-dimensional approach to legal education is reflective of the philosophy of NUS Law which promotes cross-disciplinary and international education. Students are encouraged to make connections between the law subjects they study and also beyond the law school.

3 S Jayakumar, "Twenty One Years of the Faculty of Law, University of Singapore: Reflections of the Dean" (1977) 19:1 Mal L Rev 1 at 2.

4 Faculty status was achieved in 1959.

5 Kevin Tan, *Marshall of Singapore* (Singapore: Institute of Southeast Asian Studies, 2008) at 478.

Process" offered by the Attorney-General's Chambers during the course of which students spend time interacting with prosecutors and reviewing real files.[6] A similar course, "Criminal Practice", is offered by criminal defence lawyers to provide further perspectives for students.

A comparable module was offered in the early years by Professor Tommy Koh, a graduate of the pioneer batch, who went on to become Dean of the Law School before embarking on an illustrious career in public service. Professor Koh's final year module, "Administration of Criminal Justice", gave students a direct insight into the workings of the criminal law and required students to engage in field research, leading students to some interesting experiences. Lye Lin Heng, currently a member of the faculty, recounted her experience as a student when she had to follow ex-prisoners to study their process of reintegration. Her reminiscence on one particular person is a salutary reminder of the criminogenic effect of incarceration:

> We had a 16-year-old car thief (a first offender) and an older secret society member, jailed a second time for extortion. The young lad had a talent for picking locks, which was quickly discovered by his fellow prisoners. He lamented that although he did not have any links with secret societies before he was jailed, he would never be able to escape them on his release, as those he had met in prison would certainly look for him if they were going on a job that needed a lock picked! It was a good way to learn sentencing principles.[7]

A key priority of the fledgling law school was to state local law accurately, collate teaching materials and prepare students for practice. Singapore's criminal law is codified; the main body is in the *Penal Code*,[8] enacted in 1871 as the *Penal Code of the Straits Settlements*,[9] with the rest scattered amongst various pieces of legislation. Prior to 1871, the criminal law of Singapore was that of England, by virtue of the *Second Charter of Justice 1826*.[10] Although not expressly stated in the *Penal Code*, it has been read as excluding the application of English criminal law.[11] The only surviving common law offence was contempt of court, until it was codified in 2016.[12]

One of the chief concerns of local academics in the founding years was the lack of local materials for teaching. As many of the teachers were expatriates or trained in England, the tendency was to rely on English jurisprudence rather than the Penal Code jurisprudence. The need for a local textbook was acute, vividly noted by David

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6 The former Attorney-General, Steven Chong, recounted the positive experience of this course for students and for the Attorney-General's Chambers: Steven Chong, "Enhancing 'Access to Justice'" (Keynote Address of the Attorney-General delivered at the Criminal Justice Conference 2013, National University of Singapore, 17 May 2013) at para 5.

7 Irene Lye Lin Heng, "Reflections: Law Studies at the University of Singapore, 1969-1973" in Kevin Tan, ed, *Change and Continuity: 40 Years of the Law Faculty* (Singapore: Times Editions, 1999) 102 at 104.

8 Cap 224, 2008 Rev Ed Sing [*Penal Code*].

9 Ordinance 4 of 1871 [*Straits Settlements Penal Code*].

10 Koh Kheng Lian, ed, *Singapore Law Series No 3: Criminal Law* (Singapore: Malaya Law Review, 1977) at 2.

11 *R v Lee Siong Kiat* [1935] 1 MLJ 53 at 56, Terrell J: "In criminal matters the law in the Colony [*ie* the Straits Settlements] is provided by the Penal Code to the exclusion of English Common Law or English Statute Law."

12 *Administration of Justice (Protection) Act 2016* (No 19 of 2016).

Marshall in the foreword to the first local work on criminal law:

> The cry for justice reverberating down the corridors of the centuries is common to all humanity… but law, which is the pragmatic application of the concept of justice in everyday relations, must necessarily be unique in each sovereign territory—reflecting the traditions and the social economic and political conditions and aspirations of the people to whom it applies.[13]

The work was produced in 1974 by Professor Koh Kheng Lian, a member of the founding batch of students and currently an Emeritus Professor at the Law School, and Myint Soe, a member of the faculty who subsequently went on to establish a distinguished career in legal practice. Entitled *The Penal Codes of Singapore and States of Malaya: Cases, Materials and Comments*, it was published in two volumes, the first dealing with general principles in the vein of Glanville Williams' classic text[14] and the second dealing with specific offences. It was an early example of the comparative approach that has come to be a mainstay of the law school. The Preface notes: "we have included not only a selection of articles on the two Codes, but also relevant extracts of decisions and material from Africa, Australia, Burma, England, Sabah, Sarawak, and in particular, from India".[15]

15 years after the twin-volume casebook, Koh Kheng Lian collaborated with two other members of the faculty, Chris Clarkson and Neil Morgan, to produce a textbook, fondly known by a generation of students as the Red Book.[16] A year later, Molly Cheang published *Criminal Law of Malaysia & Singapore: Principles of Liability*.[17] These two texts marked a shift from teaching the rules of criminal law to thinking about the general principles of criminal liability. As Cheang noted in her Preface, "it is hoped that this book will also stimulate and expose readers to analyse and examine for themselves the theoretical basis upon which our principles of criminal liability are founded."[18]

The move towards a more theoretical approach to understanding the principles and practice of criminal law continued in the 1990s and culminated in the publication of another local text by a new generation of criminal law teachers.[19] The first chapter in this book introduced students to the key theoretical and philosophical debates on crime and punishment. The next major work, published in 2007,[20] brought a reformatory bent with the authors critiquing the law and suggesting reform. This reform project was undertaken more explicitly in a separate work published in 2013.[21] Beyond influencing Singapore, a group of criminal law academics are also

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13 Koh Kheng Lian & Myint Soe, *The Penal Codes of Singapore and States of Malaya: Cases, Materials and Comments* (Singapore: Law Book Company of Singapore & Malaysia, 1974) vol 1 at iii.

14 Glanville L Williams, *Criminal Law: The General Part* (London: Stevens & Sons, 1953).

15 Koh & Myint, *supra* note 13 at v.

16 KL Koh, CMV Clarkson & NA Morgan, *Criminal Law in Singapore and Malaysia: Text and Materials* (Singapore: Malayan Law Journal, 1989).

17 Kuala Lumpur: Professional Law Books Publishers, 1990.

18 *Ibid* at Preface.

19 Chan Wing Cheong, Michael Hor Yew Meng & Victor V Ramraj, *Fundamental Principles of Criminal Law: Cases and Materials* (Singapore: LexisNexis, 2005).

20 Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (Singapore: LexisNexis, 2007). The second edition was published in 2011 with a revised version in 2015. A companion casebook was also produced.

21 Chan Wing Cheong, Stanley Yeo & Michael Hor, *Criminal Law for the 21st Century: A Model Code for Singapore* (Singapore: Academy Publishing, 2013).

working on a regional project producing materials for other Penal Code jurisdictions such as Myanmar and Sri Lanka.[22]

The curriculum and pedagogy has also evolved over the years, shifting from a focus on local doctrine to a more comparative, contextual and critical approach in line with the general trend in legal education.[23] While the focus is on local jurisprudence and practice, the approach is explicitly comparative and theoretical to enrich students' contextual understanding of criminal law and to ensure that our graduates are critical thinkers who can not only practise criminal law, but also contribute to law reform, policy development and leadership.[24] These objectives are further supported through a range of criminal law electives that advance different perspectives, including comparative, international, practical and sociological.[25] A former graduate and colleague, Professor Stanley Yeo, described how studying "Administration of Criminal Justice" under Molly Cheang spurred his interest in sociological and empirical approaches to law, which led him to carry out impactful research as an academic.[26]

There have occasionally been calls for the law school to focus more on preparing law graduates to be practice-ready, the assumption being that students are not being prepared for practice. This assumption is flawed for two reasons. First, the best practitioner is one who is able to contextualise the legal problem, approach it from different perspectives and have a sound appreciation of the underlying policy of the law. Secondly, a university such as NUS is not well served if it descends to purely vocational teaching. The nitty-gritty of legal practice can be picked up easily in the first few years of professional work.[27] The value of the university experience is not in training students to perform tasks; it is in encouraging students to think critically, to solve complex problems and to add value by bringing original insights into legal practice, public administration, business and academia.

To take an example from criminal prosecution, the real challenge is not in the technicalities of running the case, but in making the right decision. To make the right decision requires more than knowing how to frame a charge; it requires the individual to understand the underlying policy of the law; the social, political and economic consequences of a prosecution; the impact on the individual parties, the community

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22 Chan Wing Cheong *et al*, *Criminal Law in Myanmar* (Singapore: LexisNexis, 2016). Beyond regional impact, the work of Andrew Simester has global reach: AP Simester *et al*, *Simester and Sullivan's Criminal Law: Theory and Doctrine*, 5th ed (Oxford: Hart, 2013).

23 See Cheng-Han Tan, "The Goals and Objectives of Law Schools Beyond Educating Students: Research, Capacity Building, Community Service—The National University of Singapore School of Law Experience" (2010) 29:1 Penn St Intl L Rev 67.

24 See S Jayakumar & Chin Tet Yung, *Report on the Development of the Faculty of Law, National University of Singapore* (Singapore: National University of Singapore, 1981), prepared at the request of then-Vice-Chancellor, Dr Tony Tan, and later President of Singapore, who suggested the faculty broaden its legal education beyond training lawyers to producing public service and business leaders. See also Tan Sook Yee, "Legal Education in Singapore" (1979) 21 Mal L Rev 58 at 60, 61.

25 Some of the electives that have been offered include the following: "Administration of Criminal Justice"; "Topics in International Criminal Law (A): Aggression"; "Theoretical Foundations of Criminal Law"; "Comparative Criminal Law"; "International Criminal Law"; "Chinese Criminal Law"; "Transnational Criminal Law"; "Advanced Criminal Legal Process"; "Criminal Practice".

26 Email from Stanley Yeo to Kumaralingam Amirthalingam (4 April 2017). Some of his empirical work on the high conviction rate of unrepresented accused persons contributed to the decision to establish the Criminal Legal Aid Scheme.

27 The real issue is whether the cost of that practical training should be borne by the university or by the profession.

and law and order.[28] A criminal law education that is philosophical, theoretical, comparative and contextual is vital. We are entering the world of artificial intelligence where routine practical work will be done by machines; indeed, it already is in some cases.[29] Our graduates must be trained for higher order functions: how to make the right decision; how to think out of the box; how to do justice. The New York Times, in a story on artificial intelligence and legal practice, noted that as routine legal work becomes automated, the lawyer's work shifts to skills such as "strategy, creativity, judgment and empathy."[30]

Another interesting—albeit accidental—development in Criminal Law pedagogy has been the shift from the traditional lecture-tutorial to a seminar system. While this was initially done for resource reasons, it has been maintained for its pedagogical advantage in facilitating a holistic and coherent study of the subject. For many years, the Criminal Law course was taught in the traditional lecture tutorial format, covering general principles and selected offences. In some years, the last two weeks of the course would be reserved for special topics of interest to particular faculty members, aligned with their research interests. Selected topics have included Misuse of Drugs, Sexual Offences, International Criminal Law and Migration Offences. With the seminar system, while maintaining a general core of topics, each faculty is able to customise the course, bringing greater authenticity to the teaching and learning experience. A collateral benefit of the seminar method is that Criminal Law is staffed with senior members of faculty who have the experience and expertise to teach independently at a high level and who are actively researching in criminal law.[31] This is a boon to first year students who benefit from having senior faculty who are passionate about criminal law teaching and mentoring them.

III. Significant Moments in Singapore's Criminal Law History

There have been several key moments in Singapore's criminal law history, but the last ten years have been particularly fascinating with two major reform exercises to the *Penal Code*;[32] a major reform of the *Criminal Procedure Code*;[33] the introduction of the Community Court, along with diversionary programmes and special assistance to vulnerable offenders. While Singapore's penal policy remains grounded in the

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28 See generally K Amirthalingam, "Prosecutorial Discretion and Prosecution Guidelines" [2013] Sing JLS 50.

29 Dan Mangan, "Lawyers Could be the Next Profession to be Replaced by Computers" *Consumer News and Business Channel* (17 Feb 2017), online: Consumer News and Business Channel <http://www.cnbc.com/2017/02/17/lawyers-could-be-replaced-by-artificial-intelligence.html>.

30 Steve Lohr, "AI is Doing Legal Work. But It Won't Replace Lawyers, Yet" *The New York Times* (19 March 2017), online: The New York Times <https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html>.

31 More than half the regular Criminal Law teachers are full Professors, including two Chair Professors. An added advantage of the seminar system is that students are exposed to a diverse range of independent views on controversial topics, which forces them to think for themselves and draw their own critical conclusions.

32 One was in 2007 and the other is ongoing. NUS criminal law teachers were involved in both exercises as consultants and advisers. In 2007, the NUS Law School organised a series of seminars, tackling the most contentious reform issues, including section 377 of the *Penal Code,* the death penalty and religious harmony.

33 This resulted in the *Criminal Procedure Code* (Cap 68, 2012 Rev Ed Sing).

crime control model, some recent developments suggest a more nuanced approach to criminal justice.

Singapore's criminal justice policy has always been pragmatic with a clear priority for national security, public safety, and law and order. This tough approach was set out by its founding father,[34] and has been reaffirmed by the executive and judiciary on several occasions.[35] Critics of this model have pointed out the dangers of wrongful conviction and unduly harsh punishment, including the mandatory death penalty. The Government has been resolute, but it is important to note that its commitment to the crime control model is not ideological but pragmatic. Despite its rhetoric, the Government has adopted a more nuanced approach to criminal justice, investing in diversionary programmes and community justice.[36] The judiciary also has in recent landmark decisions raised the bar for the prosecution.[37]

The following sections touch on two key issues, the death penalty for drug trafficking and murder, as well as section 377A of the *Penal Code*, which criminalises homosexual acts, to give a flavour of the pragmatic approach to criminal law as well as the centrality of constitutional and rights discourse in criminal law. Further, these two areas underscore the need for criminal law education—indeed, legal education generally—to be comparative, multidisciplinary, theoretical and philosophical. Without these perspectives, the legal arguments in court, the academic commentary and public discourse would not have been balanced, well informed or meaningful.

A. *The Death Penalty*

Singapore has retained the death penalty for several offences, although it is most commonly used in only two situations, namely drug trafficking and murder. When the *Misuse of Drugs Act*[38] was enacted in 1973,[39] the maximum punishment was 30 years' imprisonment. Two years later, with evidence of mounting drug activity in Singapore, the Government introduced the death penalty as part of its strategy to counter the threat of drug trafficking. However, most of the offenders who were convicted and sentenced to death tended to be low level couriers who were caught transporting the drugs into Singapore, raising questions as to the utility and justifiability of the death penalty. The harshness of the law was exacerbated by the presumptions built

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34 See Lee Kuan Yew, *The Singapore Story: Memoirs of Lee Kuan Yew* (Singapore: Times Editions, 1998) at 74.

35 See *eg*, Chan Sek Keong, "From Justice Model to Crime Control Model" (Address by Chief Justice Chan Sek Keong of Singapore delivered at the International Conference on Criminal Justice Under Stress: Transnational Perspectives, New Delhi, 24 November 2006), online: Scribd <https://www.scribd.com/document/284645676/Chan-SK-Millenium-Speech-From-Justice-Model-to-Crime-Control-Model-1>.

36 See K Amirthalingam, "Criminal Justice and Diversionary Programmes in Singapore" (2013) 24 Crim LF 527.

37 See *eg*, *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 (CA) on the prosecution's duty to disclose; *Daniel Vijay s/o Katherasan v Public Prosecutor* [2010] 4 SLR 582 (CA) on the test for common intention.

38 Cap 185, 2008 Rev Ed Sing [*Misuse of Drugs Act*].

39 An early commentator on the *Misuse of Drugs Act 1973* (Act 5 of 1973) was Professor Tommy Koh: Tommy Koh, "Misuse of Drugs Act 1973" [1973] 1 MLJ lvii; Tommy Koh, "Drug Abuse, the Law and Community Response in Singapore" (1974) 2 Intl J of Criminology and Penology 51.

into the *Misuse of Drugs Act*, which have the effect of requiring the accused person to prove his or her innocence.

In 2012, following a review of the death penalty regime, the *Misuse of Drugs Act* was amended to replace the mandatory death penalty with a discretionary sentencing regime restricted to low level drug couriers who suffered from a mental abnormality or who had provided substantial assistance to the Central Narcotics Bureau in disrupting drug trafficking activities.[40] The impetus for the amendment was partly compassion and partly pragmatism. The Government recognised the injustice of executing individuals whose mental capacity diminished their personal responsibility. At the same time, the Government was also of the view that the discretionary sentencing regime could be used as an incentive to encourage couriers to assist law enforcement authorities in disrupting drug trafficking activities.[41]

The other area where the mandatory death penalty has been replaced with discretionary sentencing is murder. When the *Straits Settlements Penal Code* was enacted in 1871, the punishment provided for murder was death or life imprisonment. This was amended in 1883 to impose the mandatory death penalty for murder. While the constitutionality of the death penalty has been affirmed,[42] its harshness continued to be an issue, particularly in light of the broad definition of murder in section 300(c) of the *Penal Code* which provides that culpable homicide is murder if it were "done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

Courts have interpreted this provision objectively, *ie* as long as the accused intended to cause a bodily injury, there was no requirement that the accused intended or knew or even foresaw that the bodily injury was sufficient in the ordinary course of nature to cause death. Thus, even the infliction of minor injury that resulted in death could result in capital punishment. This is a topic on which virtually all members of the NUS Law School have written.[43] During the 2012 review of the death penalty, Parliament amended the law to restrict the mandatory death penalty to cases where the death was intended, leaving discretion to the court to impose either the death penalty or life imprisonment in all other cases of murder, including section 300(c).

B. *Section 377A*

The criminalisation of "unnatural sex" dates back to the Victorian era of religious morality. A legacy of the British Empire, these laws pervaded the colonies, persisting in several jurisdictions even though England repealed its own laws criminalising such

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40 *Misuse of Drugs Act*, *supra* note 38, s 33B.

41 See *Parliamentary Debates Singapore: Official Reports*, vol 89 (14 November 2012) (Mr Teo Chee Hean).

42 *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR (R) 53 (CA); *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR (R) 103 (CA); *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 (CA).

43 For *eg*, Michael Hor, "Managing *Mens Rea* in Singapore" (2006) 18 Sing Ac LJ 314; Chan Wing Cheong, "No Punishment Without Fault" (2013) 25 Sing Ac LJ 801; K Amirthalingam, "Clarifying Common Intention and Interpreting Section 34: Should there be a Threshold of Blameworthiness for the Death Penalty?" [2008] Sing JLS 435; Alan Tan Khee Jin, "Revisiting Section 300(c) Murder in Singapore" (2005) 17 Sing Ac LJ 693; Victor V Ramraj, "Murder without an Intention to Kill" [2000] Sing JLS 560; M Sornarajah, "The Definition of Murder under the Penal Code" [1994] Sing JLS 1.

acts in 1967,[44] following the 1957 Wolfenden Report.[45] This controversial issue sparked one of the foundational debates on the scope of criminal law—the Hart-Devlin debate.[46] The polar views are represented by the prevention of harm principle (Hart) and the enforcement of morals principle (Devlin). The debate goes beyond homosexuality or any single issue. The crucial question for students of criminal law to ask is this: when should a State use its coercive powers to prohibit an individual from engaging in particular conduct? This is a question that cannot be answered by studying the rules of criminal law alone. Students need to appreciate the theoretical, constitutional, philosophical, social and political contexts.

The section 377A debate brought to the fore a tension between individual rights, ideology and Singapore's pragmatism, resulting in a series of judicial review applications and constitutional challenges.[47] Again, NUS academics contributed to this discourse through publications, participation in the reform process and advising on the litigation.[48] Ultimately, the Government chose the pragmatic option, outlined by Lee Kuan Yew in typical forthright fashion:

> You take this business of homosexuality. It raises tempers all over the world, and even in America. If in fact it is true—and I have asked doctors this—that you are genetically born a homosexual because that's the nature of the genetic random transmission of genes, you can't help it. *So why should we criminalise it?*… So what do we do? I think we pragmatically adjust, carry our people. Don't upset them and suddenly upset their sense of propriety and right and wrong.… So you have to take a practical, pragmatic approach to what I see is an inevitable force of time and circumstance.[49]

The experience of criminal law reform and section 377A has implications far beyond crime and punishment; it has reshaped the socio-political scene in Singapore and forced an open and intense—sometimes divisive—debate on individual rights and fundamental liberties. While the law was not repealed in its entirety,[50] it is also not

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44 *Sexual Offences Act 1967* (UK).

45 England and Wales, Home Office and Scottish Home Department, *Report of the Committee on Homosexual Offences and Prostitution* (London: Her Majesty's Stationery Office, 1957).

46 Patrick Devlin, *The Enforcement of Morals* (London: Oxford University Press, 1965); HLA Hart, *Law, Liberty, and Morality* (Stanford: Stanford University Press, 1963).

47 See *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 (CA); *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 (CA).

48 See *eg*, Yvonne CL Lee, "Don't Ever Take a Fence Down Until You Know the Reason It Was Put Up" [2008] Sing JLS 347; K Amirthalingam, "Criminal Law and Private Spaces: Regulating Homosexual Acts in Singapore" in B McSherry, S Bronitt & A Norrie, eds, *Regulating Deviance: The Redirection of Criminalisation and the Futures of Criminal Law* (Oxford: Hart Publishing, 2008) 185; Lynette J Chua, "Saying No: Sections 377 and 377A of the Penal Code" [2003] Sing JLS 209.

49 In response to a question, reported in Zakir Hussain, "Homosexuality: Govt Not Moral Police but It's Mindful of People's Concerns" *The Straits Times* (23 April 2007) [emphasis in original].

50 Previously, the law regulating homosexual acts was contained in section 377, which prohibited carnal intercourse against the order of nature and section 377A, which prohibited acts of gross indecency between males. Section 377 was repealed, but section 377A was retained albeit with an assurance that it would not be proactively enforced. The only difference was that under section 377, the penalty for sexual intercourse between males was up to life imprisonment, whereas under section 377A, the maximum sentence was up to two years.

enforced proactively—a living testament to the fine balance between law and politics. Uncomfortable though it may be, such debates are crucial to shaping appropriate criminal justice policies and laws.

Law schools have a critical role in explaining or questioning the status quo and offering alternative options. The NUS Law School has been at the forefront of this from its inception with its faculty writing on local criminal law, offering explanations and criticism, participating in public debate and collaborating with the profession and Government in advisory roles. These contributions are not limited to faculty, with the culture also instilled in its students. Criminal justice is a passionate topic and the students have championed the cause, especially over the last decade.

IV. Students

The strength of the NUS Law School lies in its outstanding students, who are not only academically gifted but have a strong passion for—and commitment to—justice. The Criminal Justice Club, established in 2009, has grown in strength and runs various projects that help the community and gives students opportunities for practical experience. It is entirely student-led, with criminal law teachers serving as advisers. Currently, the Club has over 100 student members. Its activities are spread across six domains, comprising general events and outreach, and five distinct projects—Project HELP Centre; the Innocence Project (Singapore); the Military Justice Project; the Criminal Law Website Project; and the CJC-Criminal Legal Aid Scheme ("CLAS") Initiative.

The flagship events run by the Club are the Criminal Justice Conference, the Attorney-General's Cup and the Death Penalty Dialogue, in addition to other *ad hoc* events. Project HELP is a Criminal Legal Clinic that works with the Law Society and State Courts at the Community Justice Centre. Students assist applicants and legal practitioners and observe lawyers advising Applicants in Person. The Military Justice Project was established in 2012 to help National Servicemen by raising awareness and helping with *pro bono*. Similarly, the CJC-CLAS Initiative, founded in 2016, is a partnership between the CJC, the Pro Bono Services Office of the Law Society of Singapore and the CLAS. The students sit in on meetings and trials, and help with preparing documents, including mitigation pleas.

The most impactful initiative has been the Innocence Project, modelled after the Innocence Projects in the United States. The idea for this Singaporean initiative came from an NUS Law student who went on exchange to Georgetown University Law School and experienced the Innocence Project there. On her return, she established the Innocence Project with a few other students. This is another example of the practical outcomes of a broad-based education with global opportunities. Briefly, the Innocence Project reviews cases in which there may have been a wrongful conviction and conducts research in this area. The students work together with the Law Society of Singapore's Pro Bono Services Office, the CLAS and Singapore Prison Services. They have had some success in reviewing cases,[51] won a university award for student achievements and been featured in the media.

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[51] See Chan Jian Da, Roi Tan Yu Ming & Joel Jaryn Yap Shen, "Uncovering Miscarriages of Justice" Singapore Innocence Project (website), online: Singapore Innocence Project <https://sginnocenceproject.com/2015/12/15/uncovering-miscarriages-of-justice/#more-747>.

V. Conclusion

The teaching of criminal law at NUS Law has from the beginning been forward-looking, comparative and multidisciplinary. Its teachers and students have been engaged in the real world of criminal justice through research, law reform, advisory work, advocacy and *pro bono* work. The criminal law electives have introduced students to different perspectives and have forged a close connection with practice through engagement with the Attorney-General's Chambers and the criminal bar. If the proof of a pudding is in its eating, the proof of a law school's success lies in its students. NUS Law students have carried the torch through their various initiatives focused on criminal justice. In addition to their contribution to the social good, these activities in themselves provide a lived educational experience—arguably the best type of education.