(2021) 33 SAcLJ 810
(Published on e-First 14 April 2021)

THE LAW ON TREASONABLE OFFENCES IN SINGAPORE

This article aims to provide an extensive and detailed analysis of the law on treasonable offences in Singapore. It traces the historical development of the treason law in Singapore from the colonial period under British rule up until the present day, before proceeding to lay down the applicable legal principles that ought to govern these treasonable offences, drawing on authorities in the UK, India as well as other Commonwealth jurisdictions. With a more long-term view towards the reform and consolidation of the treason law in mind, this article also proposes several tentative suggestions for reform, complete with a draft bill devised by the author setting out these proposed changes.

Benjamin **LOW**[1]
LLB (Hons) (National University of Singapore).

"Treason doth never prosper: what's the reason?
Why, if it prosper, none dare call it treason."[2]

I. Introduction

1 The law on treasonable offences, more commonly referred to as treason,[3] in Singapore remains shrouded in a great deal of uncertainty and ambiguity despite having existed as part of the legal fabric of Singapore since its early days as a British colony. A student who picks up any major textbook on Singapore criminal law will find copious references to various other kinds of substantive offences, general principles of criminal liability as well as discussion of law reform even, but very little mention is made of the relevant law on treason.[4] Academic commentary on this

1 The author is grateful to Julia Emma D'Cruz, the staff of the C J Koh Law Library, the Lee Kong Chian Reference Library and the ISEAS Library for their able assistance in the author's research for this article. All errors remain the author's own.

2 John Harington, *The Letters and Epigrams of Sir John Harington together with the Prayse of Private Life* (Norman Egbert McClure ed) (Philadelphia: University of Pennsylvania Press, 1930) at p 255.

3 The terms "treason" and "treasonable offences" are used interchangeably across this work and share the same meaning in so far as the author is concerned.

4 The most recent edition of a major local criminal law textbook addresses the treasonable offences chiefly in the context of the applicability of certain general defences as well as the law concerning attempts: see Stanley Yeo, Neil Morgan & Chan *(cont'd on the next page)*

particular topic is minimal at best,[5] notwithstanding the fact that some notable changes were made to some of the relevant provisions in the Singapore Penal Code[6] pertaining to treasonable offences during the last major round of significant changes to the Penal Code in 2019.[7]

2 The cumulative effect of this dearth of legal scholarship is such that even the precise contours of the law on treason are themselves imprecise and unclear, given that, as will be explained in further detail below, Singapore does not technically have a specific offence of "treason"; rather, it has several different offences pertaining to conduct of a treasonable character, from which the existence of a definitive law on treason may be inferred.

3 This article thus aims to remedy the aforementioned existing lacuna by providing an extensive and detailed analysis of the law governing treasonable offences in Singapore. It will begin with a conceptual exposition on the genesis of the offence of treason, followed by an overview and examination of the historical development of the law on treason in Singapore, from the early days of empire to the present day. The article will next propound on the proper substantive content governing the treasonable offences in Singapore, drawing on English, Indian as well as other Commonwealth authorities. Finally, the article will conclude with some tentative suggestions for reform of the law on treason, complete with a draft bill devised by the author setting out these proposed changes.[8]

II. Concept of treason as betrayal

4 The concept of treason has historically often subsisted in different forms and permutations and under different labels across different jurisdictions. Ancient Rome, from the time of the Roman kings to the Roman Republic, and subsequently the Roman Empire, provided for some form of legal recognition of the offence of treason under the concepts of *perduellio* and, subsequently, *majestas*.[9] *Perduellio*, having its

Wing Cheong, *Criminal Law in Malaysia and Singapore* (Singapore: LexisNexis, 3rd Ed, 2018) at paras 22.12–22.13 and 36.15.

5 The only available commentary that the author could find which deals with this particular subject was *Butterworths' Annotated Statutes of Singapore* vol 2 (Singapore: Butterworths Asia, 2001 issue) at pp 360–365.

6 Cap 224, 2008 Rev Ed.

7 Criminal Law Reform Act 2019 (Act 15 of 2019).

8 See Appendix.

9 A H J Greenidge, "The Conception of Treason in Roman Law" (1895) 7(3) Jurid Rev 228; see also T W Marshall, "The Law of Treason under the Roman Empire" (1896) 22(1) L Magazine & L Rev 33 at 34–35.

origins in early Roman law, was used to designate a great body of acts, all of which had a common character but greatly varying form. The common character of these acts was the attack in some form or other on the integrity of the State.[10] Thus, a Roman soldier's act of murdering his sister, normally categorised as *parricidium*, was classified as *perduellio* because the act had taken place in response to an unpatriotic utterance made by the offender's victim and was thus an usurpation of the prerogative of the Roman king.[11] In a similar vein, *majestas*, which arose later and which appears to have gradually replaced *perduellio*, came to describe those class of offences which were considered to be an attack on the state, ranging from deposing the Emperor to breaches of duty on the part of government officials, and even extending to military offences such as desertion and aiding or comforting the enemy.[12]

5 In the East, the ancient Chinese dynasties had elaborate legal codes prescribing the various categories of treasonable offences, as well as the corresponding punishments for them, which were usually capital in nature. The Tang Code, for instance, defined "treason" as a betrayal of the country or the serving of rebels, punishable by strangulation or beheading.[13] In a similar vein, the Great Qing Code alludes to treason as a betrayal of the country, but also makes reference to the separate offence of "high treason" *simpliciter* as encompassing plots against the Qing Emperor himself.[14] Here, as in Rome, the conceptual basis for treasonable offences appears to be relatively similar: an action that strikes at the very integrity of the State by means of a betrayal or breach of some duty or loyalty owed.

6 The English position is also similar in so far as it defines "treason" as a breach of allegiance or a display of criminal disloyalty. Thus, Coke, in his *Institutes of the Laws of England*, speaks of treason as "derived

10 A H J Greenidge, "The Conception of Treason in Roman Law" (1895) 7(3) Jurid Rev 228 at 229; see also Thomas R Robinson, "Treason in Roman Law" (1919–1920) 8(1) Geo LJ 14 at 16.

11 A H J Greenidge, "The Conception of Treason in Roman Law" (1895) 7(3) Jurid Rev 228 at 229; see also Thomas R Robinson, "Treason in Roman Law" (1919–1920) 8(1) Geo LJ 14 at 15.

12 A H J Greenidge, "The Conception of Treason in Roman Law" (1895) 7(3) Jurid Rev 228 at 229–230; see also T W Marshall, "The Law of Treason under the Roman Empire" (1896) 22(1) L Magazine & L Rev 33 at 35–37.

13 The Tang Code, Arts 6 and 251: see Wallace Johnson, *The Tang Code* vol 1 (Wallace Johnson trans) (Princeton, NJ: Princeton University Press, 1979) at p 65 and Wallace Johnson, *The Tang Code* vol 2 (Wallace Johnson trans) (Princeton: Princeton University Press, 1997) at p 245.

14 The Qing Code, Arts 2, 254 and 255: see William C Jones, *The Great Qing Code* (William C Jones trans) (Oxford: Clarendon Press, 1994) at pp 35 and 237–239.

from [*trahir*] which is treacherously to betray".[15] Foster, in a similar vein, defines high treason as "an offence committed against the duty of allegiance",[16] before describing the classes of persons who owe such a duty of allegiance as including natural-born subjects who "owe allegiance to the Crown at all times and in all places"[17] and even foreigners who reside in England and who receive the protection of the law.[18] Writing in more modern times, Stephen also echoed this conception of treason as betrayal and disloyalty:[19]

> The moral sentiment which condemns treason and other acts of the same kind is loyalty, which in the course of time has been gradually developed into patriotism; though from obvious causes the more sober and reflective sentiment is, in [England], still warmly tinged with personal affection, and with a proud sympathy with the glory of the oldest and noblest family in the world. The sentiment of personal loyalty was carried to the highest pitch in feudal times … By degrees, the nation came to be substituted for the sovereign as the proper object of this sentiment, and the general popular notion of treason came to point at acts which might rather be called unpatriotic than disloyal, in the proper sense of the word.

7 So the essence of treason then is some form of criminal disloyalty, or a betrayal of sorts. The question then is: who is the subject or victim of such betrayal? Roman law, as mentioned above, appears to have initially treated the recipient of betrayal as the Roman people, or the State in so far as it encompassed the Roman people, before expanding its scope to include the personage of the Emperor himself. Stephen, as quoted earlier, asserted that in England, the recipient of such a betrayal was initially the English monarch himself (or herself), by way of a breach of personal loyalty owed to him by his subjects, before giving way to, but not being

15 Edward Coke, *The Third Part of the Institutes of the Laws of England: Concerning High Treason, and Other Pleas of the Crown, and Criminall Causes* (London: Printed by M Flesher, for W Lee and D Pakeman, 1644) at p 4; see also William Blackstone, *Commentaries On the Laws of England* vol 4 (Oxford: Clarendon Press, 1769) at pp 74–75.

16 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at p 183.

17 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at p 183.

18 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at p 185.

19 James Fitzjames Stephen, *A General View of the Criminal Law of England* (London & Cambridge: Macmillan and Co, 1863) at p 112.

replaced entirely by, the more impersonal conception of the State and its organs. This of course is not always the case in every jurisdiction, for some countries such as the US[20] and Germany[21] define treason to refer to offences directed against the State itself exclusively rather than against any sovereign head of the nation in the sovereign's personal capacity.

8 It would seem then that the underlying thread of commonality behind these slightly different conceptions of treason is the purported disloyalty of a citizen towards his country and/or his sovereign, or a breach of allegiance that he owes to his country and/or his sovereign, made manifest by actions which appear to strike at the very institutions of the State itself. This must be correct. In an era where the nation-state continues to remain one of the most visible and prominent forms of political organisation, citizens are expected to uphold the obligation of allegiance and loyalty that is demanded of them, in exchange for enjoying the benefits of their status as citizens.[22]

9 Resident aliens, though not citizens of the country of their residence, are equally bound by a similar obligation of allegiance if they reap the benefits of the protection and laws of the State which they reside in. This obligation continues even if the territory in which the resident alien resides falls under the control of an invading power or rebels, for the protection of the State does not cease merely because the State's forces are compelled, for strategical or other such reasons, to temporarily withdraw from the State's territory.[23] Breach of this obligation in turn falls into the category of treasonable conduct for all intents and purposes.

10 What then are the acts which evidence this breach of allegiance? The article has already briefly expounded above on some examples of treasonous conduct, such as plots against the person and office of the sovereign, as well as the aiding and comforting of the enemy. To

20 US Constitution Art III § 3 cl 1: "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

21 German Criminal Code, §§81–82.

22 This definitional understanding of the essence of treason would certainly apply *apropos* to Singapore since, with the exception of natural-born citizens, persons who obtain citizenship in Singapore are required to swear the Oath of Renunciation, Allegiance and Loyalty whereby they pledge to "be faithful and bear true allegiance to the Republic of Singapore": see the Second Schedule to the Constitution of the Republic of Singapore (1999 Reprint).

23 *De Jager v Attorney-General of Natal* [1907] 1 AC 326 at 328–329. But see also *Joyce v Director of Public Prosecutions* [1946] 1 AC 347 at 370–371 where the majority in the House of Lords held that an alien who holds a British passport can commit acts of treason even if such acts are committed outside the realm.

this a non-exhaustive list of other such treasonable conduct, such as instigating rebellions and insurrections, employing force or levying war on the sovereign and/or the State, as well as espionage, may be added.[24] These are almost all acts that entail a breach of allegiance on the part of the offender. The rebel who takes up arms against his country, no matter how justified he may consider his cause, acts *outside* of the ambit of legitimate and permissible political expression and so breaches that part of his obligation to abide by the laws of his country. To a certain extent, even terrorism, in so far as it entails the use of force to achieve political goals by way of coercing the existing legal-constitutional system of government, could conceivably fall within the ambit of treasonable conduct.[25]

11 Of course, once again, different jurisdictions classify different offences as constituting "treason" proper and what is treasonable conduct in one country might not necessarily be treasonable in another. Nor is it necessarily always possible in practice to neatly delineate one kind of treasonable conduct from another. What appears to be common in all of them, however, is that they have, as their character, some form of attack against the State. Stephen, with his characteristic wit, addresses this point in fuller detail:[26]

> Every crime is to a greater or less extent a breach of the peace, but some tend merely to break it as against some particular person or small number of persons, whereas others interfere with it on a wider scale, either by acts which strike at the State itself, the established order of Government, or by acts which affect or tend to affect the tranquillity of a considerable number of persons, or an extensive local area.

12 Thus, the deliberate killing of the sovereign, though being an act of murder, is at the same time an act of treason because it is the intentional targeting and harming of one of the most visible embodiments of the State, with the understanding that the public peace would be greatly disturbed and the machinery of government thrown into disorder in consequence of such an act.[27]

---

24 In Singapore, however, espionage is punishable as a separate offence under the Official Secrets Act (Cap 213, 2012 Rev Ed) even though its moral dimensions might be viewed in the same light as that of treason: see s 3 of the Official Secrets Act.

25 As will be discussed in further detail at paras 50–100 below.

26 James Fitzjames Stephen, *A History of the Criminal Law of England* vol 2 (London: Macmillan and Co, 1883) at p 241.

27 James Fitzjames Stephen, *A General View of the Criminal Law of England* (London & Cambridge: Macmillan and Co, 1863) at pp 112–113; see also Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at pp 194–196.

13 Turning back to the question posed at the beginning of this part, what is treason? Without putting too fine a point to it, it may be posited that it is essentially conduct, by way of breaches of the bond of allegiance that binds the offender to his country, that undermines the public peace through the killing, attacking, subverting or overthrowing, in one way or another, of the institutions and bodies that make up the State. It is distinguishable from other crimes that also amount to breaches of the public peace, such as hooliganism or affray, by virtue of its *character* as a form of violent and/or subversive conduct designed to intentionally target the State. This, then, is the essence of treason which gives it its criminal character. So properly understood, this article now turns to the next part to see how this conception of treason as a breach of allegiance has shaped the historical development of the law governing treason both in England and in Singapore.

III. Historical development of treason laws in the UK and Singapore to the present day

A. Treason in the UK

14 Any discussion of the law on treasonable offences in Singapore would be sorely incomplete without some reference to the English law on treason, for much of the present treason law in Singapore owes its existence to British influences.

15 The law of treason in the UK has a long and chequered history, being bound up and interwoven with the history of the UK itself. Although a comprehensive account of the legal history of treason in the UK, or England itself for that matter, would be beyond the scope of this work, it suffices to say that the early English law of treason owed its origins to a plethora of different legal systems ranging from Roman law to ancient Anglo-Saxon law before finally assuming a more definitive shape and form under the influences of the Norman conquerors.[28]

16 By the late Middle Ages, the law on treason came to encompass two distinct species of offences, these being petty treason, or "petite" treason, and high treason. Petty treason involved the betrayal of a superior, himself a subject of the sovereign, by a subordinate. It was

28 For a fuller account of the history of treason in English law, see J G Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970); James Fitzjames Stephen, *A History of the Criminal Law of England* vol 2 (London: Macmillan and Co, 1883) at pp 243–282 and "Treason in Legal History" (1926) *Law Times* 115.

usually applied to conduct such as the murder of a master by his servant, of a husband by his wife, or of a bishop by a clergyman.[29] High treason, which forms the chief subject of this article, was reserved for acts of betrayal of the sovereign himself by his subjects. At this point, it suffices to say that petty treason eventually ceased to exist as a distinct offence by virtue of the passage of the Offences Against the Person Act 1828,[30] leaving high treason as the sole remaining head under the umbrella offence of treason, before gradually coming to be referred to simply as the offence of "treason" as it is known today.

17 Because treason lacked any clear, concretised definition in the Middle Ages, being a creature of the common law, its scope and character came to assume grossly wide and arbitrary proportions, as judges continued to treat offence after offence as falling within the ambit of treason proper.[31] Matters came to a head when one Sir John Gerbage of Royston was charged with treason for having unlawfully imprisoned William of Bottisford and refusing to let him go until he had made payment of a sum of £90, on the basis that the act of unlawful imprisonment was an "accroaching of the royal power".[32] As a consequence of this incident, Parliament petitioned King Edward III to remedy the parlous state of the law on treason.[33] The result was the passage of the Statute of Treasons of 1351.[34] That statute, also commonly referred to as the "Treason Act 1351", sought to properly delineate the hitherto nebulous contours of the law on treason, both with regards to high treason and petty treason. Where high treason was concerned, the Act defined several kinds of offences as amounting to high treason:[35]

---

29 J G Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970) at p 87.

30 Offences Against the Person Act 1828 (c 31) (UK) s 1.

31 "Treason in Legal History" (1926) *Law Times* 115. See also J W Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 18th Ed, 1962) at p 382.

32 "Treason in Legal History" (1926) *Law Times* 115; J W Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 18th Ed, 1962) at p 382; see also J G Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970) at pp 61–63. But see James Fitzjames Stephen, *A History of the Criminal Law of England* vol 2 (London: Macmillan and Co, 1883) at p 246 in which Stephen suggests that as Gerbage was not convicted, as was to be expected in a case of treason, but put to penance, his case cannot be taken to be a definite conviction of treason. Whatever may be the actual legal specifics of Gerbage's case, it was significant enough to compel Parliament to petition Edward III to remedy the treason law.

33 "Treason in Legal History" (1926) *Law Times* 115; J W Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 18th Ed, 1962) at p 382.

34 c 2 (UK).

35 Treason Act 1351 (c 2) (UK) s 2.

(a) compassing or imagining the death of the king, queen, or heir apparent;

(b) violating the king's companion or his eldest daughter being unmarried, or the wife of his heir apparent;

(c) levying war against the king in his realm;

(d) adhering to the king's enemies in his realm, by giving to them aid and comfort in the realm or elsewhere;

(e) slaying the chancellor, treasurer, or the king's justices of assize;

(f) forging or counterfeiting the Great or Privy Seal;[36] and

(g) introducing counterfeit money into the realm.[37]

The Treason Act 1351 also sought to pre-empt and control any judicial constructions of treason by expressly mandating that any issue or dispute before the judges as to whether or not an act ought to amount to treason was to be decided by the king and Parliament.[38]

18 Although the Treason Act 1351 was remarkable for providing a statutory definition of treason, when very few other crimes were defined by statute during this period of English legal history, it did not mark the end of history where the law of treason was concerned. Indeed, after the passage of the Treason Act 1351, it was declared by the royal judges during the reign of Richard II in 1387 that it was treason to impede the exercise of the royal prerogative.[39] Several new statutes were passed in 1397[40] criminalising new offences as treason. Nor did the Treason Act 1351 successfully put an end to the practice of judges creating so-called "constructive treasons" by way of "violently artificial"[41] interpretations of the Treason Act 1351. Thus, as one legal scholar observed, an attempt to

36 This head of treason was repealed and re-enacted in s 2 of the UK Forgery Act 1830 (c 66) before being reduced to a felony in s 1 of the Forgery Act 1861 (c 98).

37 This head of treason was repealed and reduced to a felony in the UK Coinage Offences Act 1832 (c 34).

38 Treason Act 1351 (c 2) (UK) s 2.

39 J G Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970) at pp 112–113.

40 These comprised the Treason Act 1397 (c 12) (UK) as well as several other supplementary Acts enacted by Richard II in the same period: see *The Statutes at Large, of England and of Great Britain: From Magna Carta to the Union of the Kingdoms of Great Britain and Ireland* vol 2 (Thomas Edlyne Tomlins ed) (London: George Eyre and Andrew Strahan, 1811) at pp 189–199 for the complete text of the Acts.

41 J W Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 18th Ed, 1962) at p 389.

raise a rebellion in Lower Canada and to incite a French invasion of that colony was held to show a "compassing" of the king's death, even though the king was thousands of miles away from when the impugned acts had been committed.[42] Similarly, the incitement of foreigners to invade England was also treated as an overt act constituting the compassing of the death of the king.[43] Many of these constructive treasons, based on broad judicial interpretations of the Treason Act 1351, were given credence by the writings of such prominent writers as Hale,[44] Coke[45] and Foster,[46] which were in turn cited and quoted extensively in various subsequent treason trials,[47] thereby perpetuating the phenomenon of constructive treasons for successive centuries after the passage of the Treason Act 1351.

19 Yet, at the same time, this concept of constructive treasons was also met with considerable criticism from various quarters, chiefly the general public of England at the time. Public dissatisfaction with the unduly broad scope of the law on constructive treason was cited as one of the primary factors behind the acquittal of Lord George Gordon[48] on the indictment of constructively levying war against the king for his role in the Gordon Riots of 1780.[49] A similar result was also reached in various

42 *R v Maclane* (1797) 26 St Tr 721 at 794.

43 This was the case with Cardinal Pole who had written to the Holy Roman Emperor to that effect, reported in *Proceedings against Various Persons in the Reign of Hen VIII for Treason, in Denying the King's Supremacy; and Other Capital Crimes, Principally Relating to Religion* (1536–1543) 1 St Tr 469 at 470, 479–480; see also *R v Story* (1571) 1 St Tr 1087; Matthew Hale, *The History of the Pleas of the Crown* vol 1 (Sollom Emlyn ed) (London: Printed by E and R Nutt, and R Gosling (the assigns of Edward Sayer), for F Gyles, T Woodward, and C Davis, 1736) at pp 120 and 167.

44 Matthew Hale, *The History of the Pleas of the Crown* vol 1 (Sollom Emlyn ed) (London: Printed by E and R Nutt, and R Gosling (the assigns of Edward Sayer), for F Gyles, T Woodward, and C Davis, 1736) at pp 131–132 and 199.

45 Edward Coke, *The Third Part of the Institutes of the Laws of England: Concerning High Treason, and Other Pleas of the Crown, and Criminall Causes* (London: Printed by M Flesher, for W Lee and D Pakeman, 1644) at p 10.

46 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at pp 194–196.

47 From the author's own perusal of the English state trials, the practice of the judges has typically been to cite Hale, Coke or Foster, or a combination of any of the three, generously and in support of the general principles as to the construction of the Treason Acts in the UK.

48 *R v Lord George Gordon* (1780) 21 St Tr 485.

49 See J W Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 18th Ed, 1962) at p 389; John Lord Campbell, *The Lives of the Chief Justices of England* vol 2 (Philadelphia: Blanchard & Lea, 1851) at pp 403–404. But see James Fitzjames Stephen, *A History of the Criminal Law of England* vol 2 (London: Macmillan and Co, 1883) at pp 273–274 in which the learned author

(cont'd on the next page)

state trials conducted in 1794 involving members of the Constitutional Society and the London Correspondence Society who were indicted for the offence of constructively compassing the king's death on the basis that, by having engaged in the writing of letters, the making of speeches, the circulation of books and pamphlets and the organisation of assemblies for the purpose of advancing their aims of political reform, they had consequently formed a conspiracy to depose the king, subvert the existing government and establish a republic, which was an overt act towards the compassing of the king's death.[50] Although the acquittal of the defendants in these trials was chiefly due to the Crown's inability to make out its case, it has also been contended that public unhappiness with the scope of the constructive treason doctrine played some part in influencing the jury's decision to acquit the defendants.[51]

20 By the 18th century, in response to the mushrooming of the law of constructive treasons, the UK Parliament enacted the Treason Act in 1795[52] ("Treason Act 1795"). This Act sought to codify some of the existing constructive treasons by rendering it an offence to "compass, imagine, invent, devise or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the same our sovereign lord the King, his heirs and successors".[53] However, although the 1795 statute did codify the judicial interpretations that had been accorded to the specific portion of the Treason Act 1351 which dealt with imagining the king's death, it did not repeal or abrogate the latter, which still continued to be the only source of the law of treason by levying war and adhering to the king's enemies. The Treason Act 1795 itself was originally meant to expire upon the death of King George III but it was made permanent by an Act passed by Parliament in 1817.[54] Both Acts would remain on the statute books until they were repealed in 1998.[55]

21 In the 19th century, the Treason Felony Act of 1848[56] ("Treason Felony Act 1848") was enacted, which repealed the Treason Act 1795 save for those parts dealing with the offence of compassing, imagining,

carefully distinguishes Lord Gordon's case on the basis that while that case accepted in full the propositions and constructive treasons propounded by Foster and Hale, the thrust of Lord Gordon's defence was that he had not intended to lead, and was not leading, the rioters in committing the acts of destruction across London.

50 *R v Hardy* (1794) 24 St Tr 199; *R v Tooke* (1794) 25 St Tr 1.

51 J W Cecil Turner, *Kenny's Outlines of Criminal Law* (Cambridge: Cambridge University Press, 18th Ed, 1962) at pp 389–390.

52 c 7 (UK).

53 Treason Act 1795 (c 7) (UK).

54 Treason Act 1817 (c 6) (UK) s 1.

55 Crime and Disorder Act 1998 (c 37) (UK) ss 36(3)(b), 120(2) and Schedule 10.

56 c 12 (UK).

inventing, devising, or intending the death, destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint of the sovereign. It then re-enacted those repealed portions of the Treason Act 1795, namely, the other categories of compassing, as felonies, with the maximum punishment for these felonies being penal servitude for life, thereby allowing for the easier prosecution of cases involving treasonable conduct, albeit now under the label of "treason-felonies" or "treasonable felonies".[57] However, the 1848 statute left untouched the Treason Act 1351 and its judicial constructions,[58] thereby leaving open the possibility of a prosecutor opting to prosecute an offender under the heavier charge of (constructive) treason as opposed to the lighter charge of the treason-felony.

22 Since then, very few changes have been made to the English law of treason. The Treason Act 1351 continued to be employed in the prosecution of various persons for treason during both the first and second world wars and remains on the statute books to the present day. Although a new statute was enacted in 1940 known as the Treachery Act 1940,[59] this law, which created a new substantive offence of treachery,[60] was always intended as a temporary and expedient measure in light of the exigencies of the world war that the UK found itself engaged in.[61] Indeed, despite the hope expressed by some commentators that the 1940 law would serve as a useful basis on which reform of the existing treason law could be carried out,[62] the Treachery Act 1940 was itself suspended after the end of World War II,[63] and then subsequently repealed in 1973.[64]

23 Today, the law of treason in the UK is comprised chiefly of the Treason Act 1351, as amended since its enactment, as well as its constructive interpretations, together with a few other statutes dealing with attempts to hinder the succession to the British throne[65] as well as the harmonisation of the treason laws between Scotland and England.[66] While plans to reform and update the existing UK treason laws are

57 Treason Felony Act 1848 (c 12) (UK) s 3.
58 Treason Felony Act 1848 (c 12) (UK) s 6.
59 c 21 (UK).
60 Treachery Act 1940 (c 21) (UK) s 1.
61 Treachery Act 1940 (c 21) (UK) s 6.
62 "Criminal Law Additions and Alterations: The Treachery Act, 1940" (1940) 4 J Crim L 304 at 304.
63 The Treachery Act (End of Emergency) Order 1946 (SR & O 1946 No 893) (UK) Art 2.
64 Statute Law (Repeals Act) 1973 (c 39) (UK).
65 Treason Act 1702 (c 21) (UK).
66 Treason Act 1708 (c 21) (UK).

currently afoot,[67] it remains to be seen whether these reforms will entail the repeal or abolishment of the Treason Act 1351 entirely, or simply involve the promulgation of new Treason Acts which overlap with the 1351 statute in terms of substantive content and which will end up co-existing alongside the Treason Act 1351, as has often been the case for much of the history of the law of treason in the UK. Until these new legal measures materialise and are implemented by Parliament, the substantive law of treason will continue to be governed by the Treason Act 1351. This then is the law of treason as it stands in the UK today.

B. Treason in Singapore

(1) Origins of treason law in Singapore: Early beginnings and the Indian experience

24 The law of treason in Singapore, like so much else of the early *corpus* of substantive law in Singapore, owes its origins to the English law of treason which made its way into the territory, together with the rest of the common law as it existed in the UK at the time, by virtue of the issuance of the Second Charter of Justice in 1826. In addition to facilitating the general reception of the English common law into the colony in 1826 through its "Justice and Right" clause,[68] the Charter also notably provided for the *criminal* jurisdiction of the Court of Judicature of Prince of Wales Island, Singapore and Malacca as a Court of Oyer and Terminer with power to hear all forms of criminal offences conducted in the colonial territories that were covered by the Charter's ambit:[69]

> And it is Our further Will and Pleasure, That the said Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, shall be a Court of Oyer and Terminer and Gaol Delivery in and for the said Settlement of Prince of Wales'

67 Charles Hymas, "British citizens Who Help Isil Could Face Life in Prison under Updated Treason Laws, Sajid Javid Suggests" *The Telegraph Online* (20 May 2019); see also United Kingdom, Law Commission, *Codification of the Criminal Law – Treason, Sedition and Allied Offences* (Working Paper No 72, Second Programme, Item XVIII, 1977) for a historical example of such reforming efforts.

68 See *R v Willans* [1808–1884] 3 Ky 16; *In re Lu Thien* [1891] SLR 10; and *Riedel-de Haen AG v Liew Keng Pang* [1989] 1 SLR(R) 417 at [12]. See also Andrew Phang Boon Leong, "Of Cut-off Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore" (1986) 28 Mal L Rev 242; Andrew Phang, "Reception of English Law in Singapore: Problems and Proposed Solutions" (1990) 2 SAcLJ 2; and Walter Woon, "The Applicability of English Law in Singapore" in *The Singapore Legal System* (Kevin Y L Tan ed) (Singapore: Singapore University Press, 2nd Ed, 1999) ch 6 at pp 234–236.

69 *Letters Patent Establishing the Court of Judicature at Prince of Wales' Island, Singapore, and Malacca in the East Indies: Bearing Date the Twenty-seventh Day of November, in the Seventh Year of the Reign of George IV: Anno Domini, One Thousand, Eight Hundred and Twenty-six* (Malacca: Printed by The Mission Press, 1827) at p 42.

> Island, Singapore, and Malacca, and the Places now, or any Time hereafter to be subordinate or annexed thereto, and have and be invested with the like Power and Authority as Commissioners or Justices of Oyer and Terminer and Gaol Delivery have or may exercise in that Part of Our United Kingdom called England, to inquire, by the Oaths of good and sufficient Men, *of all Treasons, Murders, and other Felonies, Forgeries, Perjuries, Trespasses, and other Crimes and Misdemeanours* heretofore had, done, or committed, or which shall hereafter be had, done, or committed within the said Settlement of Prince of Wales' Island, Singapore and Malacca, and the Places, now, or at any Time hereafter to be subordinate or annexed thereto; [emphasis added]

Clearly, the Charter sought to invest the Court of Judicature with all the appropriate powers and authority to try and hear criminal matters much like the courts of England, including serious state offences such as high treason. In particular, the term "all Treasons" can only be taken to mean the entirety of the English law of treason as it stood in 1826, which was namely that of the offences of high treason and petty treason.

25 If further support is needed for this proposition, it may be found in the original First Charter of Justice, which provided for the creation of the Court of Judicature of Prince of Wales' Island, and which also sets out the jurisdiction of the Court of Judicature of Prince of Wales' Island as a Court of Oyer and Terminer in nearly the same terms as the Second Charter of Justice did:[70]

> And it is Our further Will and Pleasure, That the said Court of Judicature of Prince of Wales' Island, shall be a Court of Oyer and Terminer and Gaol Delivery in and for the said Factory of Prince of Wales' Island, and the Places now, or any Time here-after to be subordinate or annexed thereto, and have and be invested with the like Power and Authority as Commissioners or Justices of Oyer and Terminer and Gaol Delivery have or may exercise in that Part of Our United Kingdom called England, to inquire, by the Oaths of good and sufficient Men, *of all Treasons, Murders, and other Felonies, Forgeries, Perjuries, Trespasses, and other Crimes and Misdemeanours* heretofore had, done, or committed, or which shall hereafter be had, done, or committed within the said Factory of Prince of Wales' Island, and the Places now, or at any Time hereafter to be subordinate or annexed thereto … [emphasis added]

In a speech to the court on 30 May 1808, the first Recorder of the Court of Judicature of Prince of Wales' Island, Sir Edmond Stanley, expressly referred to the court's criminal jurisdiction as extending to "all offences, from High Treason and Murder down to the most trivial Misdemeanor".[71]

---

70 *Letters Patent Establishing the Supreme Court of Judicature at Prince of Wales Island in the East Indies: Bearing Date the Twenty-fifth Day of March, in the Forty-seventh Year of the Reign of George III* (London: Printed by E Cox & Son, 1807) at p 37.

71 Reprinted in "The First Year of the Court of Judicature of Prince of Wales' Island 1808–9" (1973) 15 Mal L Rev 55 at 57.

Evidently there was an understanding, which has never been challenged, on the part of the learned Recorder that the English law of treason, having been imported into Prince of Wales' Island by virtue of the First Charter of Justice, now operated within that colony as substantive law, otherwise it would not have been necessary to refer to the court's power to try and hear offences of high treason.

26 In a similar vein, if the Second Charter of Justice is to be understood as merely extending the jurisdiction of the Court of Judicature of Prince of Wales' Island to include both Malacca and Singapore, then it must so follow as a matter of logic that the English law of treason was likewise brought into the colony of Singapore along with the rest of the substantive body of English law that was received into Singapore, in 1826. Thus, in 1826, the law of treason as it subsisted in Singapore was really the English law as it stood at that time, including the original Treason Act 1351, the judicial constructions that had been applied to that statute, as well as the Treason Act 1795, which gave statutory recognition to some of these constructive treasons.[72]

27 What about the Third Charter of Justice which was enacted in 1855?[73] Did that instrument effect a re-importation of the laws of England into the Straits Settlements, thereby, to borrow the terminology of a noted jurist, pushing the "cut-off" date for the reception of the English treason law from 1826 to 1855?[74] The author would contend that no such reception of English law occurred under the Third Charter, particularly where the law of treason was concerned, as will be shortly expounded upon below.

---

72 In identifying these statutes as forming part of the "general reception" of English law into Singapore in 1826, the author has modelled his approach based on the discussion by the learned author in Andrew Phang Boon Leong, "Of Cut-off Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore" (1986) 28 Mal L Rev 242 at 243–245. However, because there is no exhaustive listing of pre-1826 English statutes that became part of the law of Singapore in 1826, it is admittedly unclear just what statutes were indeed in force in Singapore after the "general reception" date of 1826. Any suggestions on this point have therefore been proffered with a degree of circumspection.

73 *Letters Patent for Reconstituting the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, Bearing Date the Tenth Day of August, in the Nineteenth Year of the Reign of Victoria, in the Year of Our Lord One thousand Eight Hundred and Fifty-five* (London: Printed by Cox (Bros) & Wyman, 1855).

74 R H Hickling, "A Note on the Law of Singapore: What is the Date of the Reception of English Law?" (Law/680/79) (unpublished note) at p 4, cited in Andrew Phang Boon Leong, "Of Cut-off Dates and Domination: Some Problematic Aspects of the General Reception of English Law in Singapore" (1986) 28 Mal L Rev 242 at 244, fn 8.

28 Following the enactment of the Second Charter of Justice, the law of treason in Singapore remained relatively untouched and static, with no criminal cases involving the commission of treason being reported in the Straits Settlements from 1826 up until 1868, when the colonial administration promulgated the Treasonable Offences Ordinance[75] ("Treasonable Offences Ordinance 1868"). That statute was, in essence, a local enactment of the Treason Act 1795, which codified the constructive treasons concerning offences against the king's person, and the Treason Felony Act 1848, which, as mentioned earlier, sought to amend the law of treason by reducing some of the existing treasonable offences to the rank of felonies. The Treasonable Offences Ordinance 1868 was itself implemented in response to a circular dispatch from the Secretary of State for the Colonies to the rest of the UK's colonies urging them to introduce similar enactments modelled on the Treason Felony Act 1848 in order to ensure that "the Law of the Empire ought, if possible, to be uniform".[76] Evidently, it was the intention of the imperial government, an intention which was also shared by the colonial administration in Singapore, to ensure as much as possible a close harmonisation of the treason law both in the UK and in Her Majesty's colonies and realms.

29 It can be seen then that the law of treason in colonial Singapore, though based on the English law as it stood in 1826, continued to follow the developments that were occurring within that body of law in the UK itself, albeit with some considerable delay in time owing to the need for the colonial administration to re-enact imperial statutes by way of local ordinances. That it was necessary for the British colonial authorities to enact the Treasonable Offences Ordinance 1868 also arguably demonstrates that the Third Charter of Justice did not, as has been contended by some, facilitate another reception of English law in 1855. Had that really been the case, then the English law of treason in 1855, which had by now undergone several significant changes itself so as to include the Treason Felony Act 1848, would have ended up forming a part of the fabric of the colonial law of Singapore, and the enactment of the Treasonable Offences Ordinance 1868 would have been an unnecessary and superfluous addition.[77]

---

75 SS Ord No 6 of 1868.

76 Copy of a Circular Despatch from His Grace the Secretary of State for the Colonies relative to the assimilating as far as possible the Law of the different Colonies respecting Treasonable Offences to the Law of the United Kingdom, in *Straits Settlements Government Gazette* (15 May 1868) at p 165.

77 In any case, the introduction of the Straits Settlements Penal Code Ordinance (SS Ord No 4 of 1871) and the enactment of the Application of English Law Act (Cap 7A, 1994 Rev Ed) have effectively rendered the point moot.

30 Scarcely had the Treasonable Offences Ordinance 1868 been passed, however, when the Indian Penal Code[78] ("IPC") made its entry into Singapore. The IPC, on which the Straits Settlements Penal Code[79] was based on, did not, and still does not to this day, contain any express provision on the offence of treason or its multiple heads. Rather, it contained a slew of offences that seemed to approximate treasonable conduct, all grouped under Chapter VI intituled "Of Offences against the State", of which the most important was s 121, namely the offence of waging war against the queen.[80]

31 It is not the purpose of this article to delve too deeply into the laborious history behind the passage of the Straits Settlements Penal Code, which has already been amply covered elsewhere.[81] Suffice to say, it need only be mentioned that although the Straits Settlements Penal Code was passed by the Legislative Council in 1870,[82] its coming into effect was delayed until 1872, when an amendment Ordinance ("the 1872 Amendment Ordinance")[83] was also enacted and brought into operation together with the original text of the Code as one single Code itself.[84] It will interest the reader to note that the 1872 Amendment Ordinance provided for the inclusion of two additional offences in Chapter VI of the Straits Settlements Penal Code in the form of ss 121A and 121B.[85] Section 121A, in particular, read as such:[86]

> Whoever compasses, imagines, invents, devises, or intends the death of, or hurt to, or imprisonment or restraint of the person of, the Queen, or the deprivation or deposition of the Queen from the sovereignity [*sic*] of the United Kingdom, or from any other of the Queen's Dominions or Countries, or the overawing by means of criminal force, or the show of criminal force, the Government of the United Kingdom, or of this Colony, shall be punished with penal servitude for life, to which fine may be added, or with imprisonment of either description which may extend to seven years, to which fine may be added, or with fine.

78 Act No 45 of 1860.
79 Penal Code Ordinance (SS Ord No 4 of 1871).
80 Indian Penal Code (Act No 45 of 1860) s 121.
81 See generally Andrew Phang Boon Leong, "Of Codes and Ideology: Some Notes on the Origins of the Major Criminal Enactments of Singapore" (1989) 31 Mal L Rev 46.
82 As Ordinance No 1 of 1870: see Straits Settlements, Colony of Singapore, *Proceedings of the Legislative Council*, 1872 (22 August 1872) at p 88 (Thomas Braddell, Attorney-General); see also Andrew Phang Boon Leong, "Of Codes and Ideology: Some Notes on the Origins of the Major Criminal Enactments of Singapore" (1989) 31 Mal L Rev 46 at 63.
83 SS Ord No 3 of 1872.
84 Penal Code Amendment Ordinance (SS Ord No 3 of 1872) s 13; see also Order of the Governor in Council [for the enactment of the Penal Code Ordinance No IV of 1871 and other Ordinances] (SS 156/1872).
85 Penal Code Amendment Ordinance (SS Ord No 3 of 1872) ss 1–2.
86 Penal Code Amendment Ordinance (SS Ord No 3 of 1872) s 1.

A cursory reading shows that this new s 121A was virtually *in pari materia* with s 1 of the Treasonable Offences Ordinance 1868 save that, unlike s 1 of the Treasonable Offences Ordinance, which provided for the death penalty for offences against the person of the sovereign, s 121A made such offences punishable with life imprisonment. Section 121B in turn made punishable the abetment of any offence committed under ss 121 and 121A of the Straits Settlements Penal Code.[87]

32 Why was it necessary to amend the Straits Settlements Penal Code by transplanting the Treasonable Offences Ordinance 1868 into the Code itself? Unfortunately, the answer to this question is not immediately apparent and the proceedings of the colonial legislature do not give any insight into the reasons behind this rather convoluted legislative amendment, save that it was done at the behest of the Secretary of State for the Colonies who purportedly had taken "some exceptions"[88] to the Code as it stood then. In the absence of any further conclusive evidence as to what these "exceptions" might be, one can only speculate that the Secretary of State, ever so desirous of the need to harmonise the laws of the British Empire, felt that the Straits Settlements Penal Code should reflect the existing substantive treasonable offences under the English law, when no such provision existed previously in that Code and the IPC.

33 This then was the state of the law of treason in Singapore by the end of the 19th century. By a somewhat peculiar series of legal circumstances, two separate sources of the law of treason came to coexist alongside one another, thereby providing the Crown with two possible routes through which a prosecution for treason could be conducted, with correspondingly different penalties for some of these species of treasonable offences.[89] This state of affairs was eventually resolved with the repeal of the Treasonable Offences Ordinance 1868 in 1917,[90] leaving the Straits Settlements Penal Code as the primary source of the treason law in Singapore during this period of the colony's history.

87 Penal Code Amendment Ordinance (SS Ord No 3 of 1872) s 2.

88 Straits Settlements, Colony of Singapore, *Proceedings of the Legislative Council*, 1872 (22 August 1872) at p 88 (Thomas Braddell, Attorney-General).

89 It is contended that whatever remained of the offence of treason as contained in the common law after the enactment of the Treasonable Offences Ordinance 1868 (SS Ord No 6 of 1868) was effectively replaced by the introduction of the Straits Settlements Penal Code Ordinance (SS Ord No 4 of 1871) which was meant to be exhaustive: see Koh Kheng Lian & Myint Soe, *The Penal Codes of Singapore and States of Malaya: Cases, Materials and Comments* vol 1 (Singapore: Law Book Company of Singapore & Malaysia, 1974) at p 1.

90 Criminal Law (Amendment) Ordinance 1917 (SS Ord No 10 of 1917) s 34.

34 Prosecutions for treason under the colonial laws from 1826 up until the eve of World War II generally remained few and far between, save for a few reported cases involving the commission of treasonous offences under the Treasonable Offences Ordinance 1868 and the Straits Settlements Penal Code during World War I.[91] One of the more notable of such cases concerned one Kassim Ali Mansoor, a local Gujarati merchant who had been indicted for 11 charges, nine of which pertained to the compassing of the death of the king under s 1 of the Treasonable Offences Ordinance 1868, and one of which concerned the offence of attempting to wage war against the king under the Straits Settlements Penal Code.[92] His alleged treacherous conduct consisted chiefly of his writing a letter to the Turkish consul in Rangoon in which he informed the consul that some members of the colonial Malay State Guides[93] were not willing to fight for the British against their fellow Muslim Turks and requested that the Turkish government dispatch a warship to Singapore to pick up these potential traitors for the purpose of allowing them to enlist in the Turkish military.[94] Although the plan itself was so fantastical as to be incapable of any chance of success, it was sufficient to make out the offence of treason, and Mansoor was accordingly found guilty and sentenced to death by hanging.[95]

35 Notwithstanding such sensational instances of treasonous conduct by the king's subjects, treason trials by and large remained infrequent and sporadic, with almost no reported cases during the inter-war period. One might safely speculate that this could have been due to the relative absence of widespread, organised and expressly anti-British discontent, barring some radical groups,[96] in the Straits Settlements, unlike other territories such as British India and Burma which experienced serious internal conflict. The local population appears

91 For a brief sampling, see "Alleged Treason" *The Straits Times* (16 September 1915) at p 9; "The Case of Jagat Singh" *The Straits Times* (17 June 1915) at p 7 and "Treason Prosecution" *Malaya Tribune* (6 June 1918) at p 6.

92 "The Mansoor Case" *The Straits Times* (22 April 1915) at p 7; "High Treason Charges" *The Singapore Free Press and Mercantile Advertiser* (23 April 1915) at p 10.

93 The Malay States Guides was a militia regiment that was established from amongst existing local police forces to maintain order in British Malaya and to assist the colonial authorities in policing duties. The regiment would see active duty in Aden against the Ottoman Empire during World War I, before being disbanded in 1919: see Abdul Karim bin Bagoo, "The Origin and Development of the Malay States Guides" (1962) 35(1) *Journal of the Malayan Branch of the Royal Asiatic Society* 51.

94 "Mansoor Case" *The Straits Times* (23 April 1915) at p 7.

95 "Mansoor Executed" *The Straits Times* (31 May 1915) at p 9. Unfortunately, as the case was prosecuted by way of Field General Court Martial, the records of the proceedings and judgment of the court are not available to the author, if such records are still in existence.

96 Namely, the *Kesatuan Melayu Muda*, a left-leaning Malay nationalist group that was founded in 1938.

to have been, for the most part, satisfied with the state of British rule in the Straits Settlements and the nascent nationalist movements in these territories were concerned chiefly with modernist reforms in matters of education and religion, while generally remaining loyal to the British.[97] This in turn reduced any propensity on the part of the resident inhabitants to engage in the sort of impugned conduct that would otherwise have been characterised as treasonable behaviour. Consequently, little to no recourse to the law of treason appears to have been necessary for the maintenance of public order in the Straits Settlements, thereby allowing the law of treason to occupy a backseat position in the grand scheme of things. It would not be until the onset of World War II and its aftermath that the law of treason would come to occupy a position of even greater prominence within colonial Singapore's legal system.

(2) Treasonous Offences in Singapore during World War II: Of Collaborators and Heroes

36 The initial outbreak of hostilities between the UK and her allies against Nazi Germany in 1939 did not effect any substantive changes to Singapore's legal system. Most likely this was due to the fact that, until 1941, Britain's colonial possessions in the Far East were largely untouched and unaffected by the war as it had been raging for the past two years, military operations being largely confined to the European and Mediterranean theatres. It was not until the entry of Japan into the war in 1941 as a belligerent power against the UK and her allies when the war situation in the Far East came to exert a direct and appreciable effect on the legal system in the Straits Settlements, specifically in terms of the colonies' legal response to the threat posed by Japan's invasion of British Malaya on 8 December 1941.

37 In an extraordinary session of the Legislative Council of the Straits Settlements convened on 16 December 1941, the colonial government hurriedly introduced a War Offences Ordinance[98] ("War Offences Ordinance 1941") which was passed and came into effect on the same day it was first introduced.[99] The War Offences Ordinance 1941 was expressly modelled on the Treachery Act 1940 that had been enacted into the UK a year ago. In moving the introduction of the bill, the Attorney-General for the Straits Settlements explained that the new law was necessary to extend the scope of the Treachery Act 1940, which

97 Paul Kratoska & Ben Batson, "Nationalism and Modernist Reform" in *The Cambridge History of Southeast Asia* vol 2 (Nicholas Tarling ed) (Cambridge: Cambridge University Press, 1993) ch 5 at pp 301–302 and 316–317.

98 SS Ord No 68 of 1941.

99 "Death for Looting & Treachery" *Malaya Tribune* (17 December 1941) at p 6.

hitherto applied only to British subjects in the colony and not the local inhabitants, to cover all persons in the Straits Settlements.[100] Section 3 of the War Offences Ordinance 1941, which introduced the new substantive offence of treachery, read as such:[101]

> If, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of treachery and shall on conviction be punished with death.

"Enemy", for the purposes of the ordinance, was defined as "the enemy in any war in which His Majesty may be engaged",[102] which doubtless meant Japan and her co-belligerents. The circumstances in which the War Offences Ordinance 1941 had been passed undoubtedly indicate that its passage was considered necessary to allow the British to deal more effectively with the problem of potential traitors and fifth columnists recruited by the Japanese from amongst the local population, who could potentially hamper the British war effort against the encroaching Japanese military.[103]

38 Nevertheless, the War Offences Ordinance 1941 appears to have come much too late in exerting any meaningful role in preventing the fall of Malaya and Singapore to the British to the Japanese by 1942. It would only be after the end of the Japanese Occupation, and the consequent restoration of British rule in Malaya and Singapore, when the ordinance would be applied to full effect in the prosecution of alleged collaborators and traitors during the occupation period.

39 After the Japanese surrender and the conclusion of the Second World War in 1945, the newly-installed British Military Administration ("BMA") undertook a policy of prosecuting persons who had allegedly collaborated with the Japanese during the period of the Japanese Occupation.[104] To ensure the efficacious implementation of this policy,

---

100 "Death Penalties in Colony" *Malaya Tribune* (16 December 1941) at p12.

101 War Offences Ordinance 1941 (SS Ord No 68 of 1941) s 3.

102 War Offences Ordinance 1941 (SS Ord No 68 of 1941) s 2.

103 There were in fact, instances of the Japanese contacting elements of the local population to assist them in engaging in fifth-column activities against the British when the Japanese invasion of Malaya was underway: see Nicholas Tarling, *Nationalism in Southeast Asia: "If the People Are with Us"* (Oxford: Routledge, 2004) at p 134.

104 "Procedure For Dealing With Traitors" *The Straits Times* (4 October 1945) at p 4; "Policy Towards Alleged Collaborators Outlined" *Malaya Tribune* (30 October 1945) at p 4/1; see also British Military Administration, *Advisory Council, Singapore: Report of the Proceedings* (14 November 1945) at p 17 (Lieutenant-Colonel F G Charlesworth, Legal Officer, Singapore).

Proclamation No 19 provided for the establishment of special courts to hear complaints and conduct investigations and examinations into alleged instances of "collaboration offences".[105] Collaboration offences, in turn, were defined under Proclamation No 19 as including offences committed under the Treason Act 1351, ss 121B and 121C of the Straits Settlement Penal Code, offences under s 4 of the Sedition Ordinance 1938, the offence of treachery under s 3 of the War Offences Ordinance 1941, as well as reg 31 of the Defence Regulations 1939.[106] Should such examinations and investigations disclose a collaboration offence, the special courts were empowered to hear preliminary inquiries and consequently, to commit such cases to trial[107] before the military courts[108] established by the BMA to administer the criminal law in the Straits Settlements until the restoration of civilian government.

40 By February 1946, the prosecution of alleged collaborators and traitors was well underway, with scores of persons, including several notable local figures,[109] having been detained by the British and undergoing examinations and preliminary inquiries by the special courts, while others had been committed for trial before the military courts.[110] The available historical coverage of these cases, though limited, presents a fascinating insight into the operation of the English treason law, as well as local laws dealing with treasonable offences, within Singapore,[111] while also raising several possible legal issues and questions which arguably remain pertinent in the present day. For now, the author will address one of the more high-profile cases of alleged collaboration concerning one Charles Paglar, a Eurasian who, during the Japanese Occupation,

105 Special Courts Proclamation (Procl No 19, 2 October 1945) s 3.
106 Special Courts Proclamation (Procl No 19, 2 October 1945) s 2.
107 Special Courts Proclamation (Procl No 19, 2 October 1945) ss 6–14.
108 Military Courts Proclamation (Procl No 3, 30 August 1945) s 5(2).
109 These included Lim Boon Keng, a venerated leader of the Chinese community who was co-opted to head the Overseas Chinese Association during the Japanese Occupation, Yong Shook Lin, who had served as a judge of the Supreme Court in Malaya during the Occupation, and S C Goho, a prominent Indian lawyer who helmed the Indian Welfare Association during the Occupation.
110 For a brief sampling, see "Indian Lawyer and Malay Editor On Collaboration Charges" *The Straits Times* (26 October 1945) at p 4; "First Collaboration Inquiry" *The Straits Times* (29 December 1945) at p 3; "First Collaboration Trial Opens" *The Straits Times* (6 February 1946) at p 3; "'Bar Committee Will Be Judges' of K.L. Lawyers" *The Straits Times* (14 February 1946) at p 3 and "Suspected of Being Collaborators: Two Singapore High Court Judges Detained" *The Mail* (7 October 1945), available in Private Papers Collection, Reid Constitutional Commission, HSL.005. Courtesy of ISEAS Library, ISEAS – Yusof Ishak Institute, Singapore.
111 Because the judgments of the military courts in cases involving collaboration offences were by and large unreported and no court documents concerning these cases are publicly available, the author has, for the most part, been forced to rely chiefly on press clippings and secondary sources for information on the collaboration cases.

had been placed in charge of running the Syonan Eurasian Welfare Association in Singapore.

(3) The curious case of Paglar

41 Prior to the outbreak of hostilities between the UK and Japan, Charles Joseph Paglar was a prominent surgeon and local leader within the Eurasian community, having been a patron and supporter of various clubs and associations, while also enjoying a close personal friendship with the Sultan of Johor.[112] During the Japanese Occupation ("the Occupation"), he was appointed Head of the Syonan Eurasian Welfare Association ("Eurasian Welfare Association"), an organisation created by the Japanese authorities for the purpose of co-ordinating and regulating the activities of the Eurasian community in Singapore. While Paglar continued his medical practice during the Occupation and sought to attend to the needs of the Eurasian community, as well as that of other local inhabitants, as best as he could, he had also, in his capacity as head of the Eurasian Welfare Association, allegedly collaborated with the Japanese authorities during the period of the Occupation by submitting intelligence reports to the Japanese *Kempeitai*, recruiting Eurasians into service with Japanese military and auxiliary forces as well as the labour service corps, and had also made public speeches in support of the Japanese war effort while pledging total co-operation with the Japanese.[113]

42 When the British returned to Singapore in 1945, Paglar was amongst those other notables who were detained by the BMA as part of its policy of prosecuting suspected collaborators.[114] As per British procedure, he was first subjected to an investigation by the Special Court into allegations of treason on his part during the period of the Occupation.[115] The Special Court, having found a *prima facie* case against Paglar, proceeded with its preliminary inquiry, with the Prosecution conducted by one Wing Commander Murray Buttrose.[116] Despite

112 For a fuller account of Paglar's life, see Rex Shelley & Chen Fen, *Dr Paglar: Everyman's Hero* (Singapore: Straits Times Press, 2010).

113 Lee Geok Boi, *The Syonan Years: Singapore under Japanese Rule 1942–1945* (Singapore: National Archives of Singapore and Epigram Books, 2005) at pp 245–246; see also Denyse Tessensohn, *The British Military Administration's Treason Trial of Dr Charles Joseph Pemberton Paglar, 1946* (unpublished MA Thesis, National University of Singapore, archived at ScholarBank@NUS Repository, National University of Singapore) (2007) at pp 94–100.

114 Rex Shelley & Chen Fen, *Dr Paglar: Everyman's Hero* (Singapore: Straits Times Press, 2010) at p 93.

115 "Inquiry into Paglar Case Fixed for 16 January" *Malaya Tribune* (24 December 1945) at p 8/1.

116 "Paglar Inquiry Opens" *Malaya Tribune* (16 January 1945) at p 4/1; "Treason Allegations against Paglar" *The Straits Times* (17 January 1946) at p 3.

the consistent evidence of various witnesses, including one Mamoru Shinozaki, Chief Welfare Officer under the Japanese administration, that Paglar had committed the impugned acts in order to prevent further misfortune from accruing to the Eurasian community in the form of Japanese reprisals and that he had done so reluctantly, the Special Court determined that Paglar's case be committed to trial. He was accordingly charged and tried before the Superior Court for having aided and adhered to the king's enemies under the Treason Act 1351.[117] This charge of treason would subsequently be amended by the Prosecution to one of abetting the waging of war against the king under s 121 of the Straits Settlements Penal Code.[118] However, before Paglar's trial proper was to begin, the Prosecution withdrew its case and the Superior Court acquitted and discharged Paglar.[119]

43 So ends the saga of Paglar. Assume, however, that the Prosecution did not withdraw its case but proceeded with the tendered charge against Paglar. What then would be the applicable legal principles here? It goes without saying that the facts on which the original treason charge was framed consisted namely of Paglar's acts of recruiting Eurasians for military and labour service under the Japanese as well as his public speeches in support of the Japanese war effort. That he did those acts was beyond doubt.[120] Furthermore, these acts, on the basis of existing English case law[121] on the Treason Act 1351, arguably satisfy the *actus reus* of aiding and adhering to the king's enemies. Even if he had been prosecuted under the amended charge of abetting the waging of war, one could argue, on a straightforward application of the legal principles concerning abetment under the Straits Settlements Penal Code, that actions such as recruiting Eurasians for service to a hostile power at war with the UK and the making of public speeches in favour of the hostile power constitute abetment under the Code. One could fairly conclude that there was a strong possibility that the Superior Court would have found him guilty of the charges tendered against him.

---

117 "Witnesses for Defence" *The Straits Times* (31 January 1946) at p 3; "Paglar Charged with Treason" *Malaya Tribune* (30 January 1946) at p 4/1.

118 "Bail for Dr. Paglar" *The Straits Times* (14 February 1946) at p 3; "Charge against Dr. Paglar: Details" *Malaya Tribune* (14 February 1946) at p 2/3.

119 "Cases against Doctor, Lawyer & Journalist Withdrawn" *Sunday Tribune (Singapore)* (24 March 1946) at p 4.

120 See "All Local Communities Pledge Co-operation in New Year" *Syonan Shimbun* (4 January 1945) at p 2 for a complete transcript of the impugned speech in question.

121 See, for example, *R v Casement* [1917] 1 KB 98 in which the accused was found guilty of aiding and adhering to the King's enemies on the basis that he had travelled to a prisoner-of-war camp in Germany to recruit Irish soldiers who had been imprisoned there to enlist in the German military against the forces of the UK during World War I.

44 Could Paglar nevertheless have pleaded the defence of duress,[122] on the basis that he had effectively been coerced into collaborating with the Japanese in response to threats intimated to him that serious harm and misfortune would befall the Eurasian community as well as himself if he did not co-operate? The English law of treason as it stood at that time appears to have been unclear on this particular topic, with conflicting positions given in various cases.[123] Tentatively, it would appear that the general position of English law at that time seems to have permitted only a very limited recognition of duress depending on the particular facts and circumstances of each case of treason. Nor would Paglar have been assisted by the amended charge of abetting the waging of war, for s 94 of the Straits Settlements Penal Code, which deals with the defence of duress, expressly precluded, and still precludes to this day, the applicability of duress to offences against the State and murder.[124]

45 All things considered, it was quite fortuitous that Paglar was able to secure an acquittal through the withdrawal of the Prosecution's case. Had the trial been seen to its legal conclusion, there is a strong possibility he would have been duly found guilty of the charge tendered against him, with all the attending consequences that would flow from such a conviction. Nevertheless, although the BMA's prosecution of alleged collaborators and traitors would shortly afterwards be discontinued by the British in March 1946,[125] several collaborators had by then already been tried and found duly guilty of the collaboration offences that they had been charged with.[126]

---

122 The defence of duress was contained in s 94 of the Straits Settlements Penal Code Ordinance (SS Ord No 4 of 1871).

123 See the *dicta* of Lord Goddard CJ in *R v Steane* [1947] 1 KB 997 at 1005 where the learned Lord Chief Justice observed that the law on this particular issue was uncertain; see also *R v Gotts* [1992] 2 AC 412 at 440 for the position that duress as a defence would not apply to treason. But see *R v M'Growther* (1746) 18 St Tr 391 and *R v Purdy* (1946) 10 J Crim L 182 for instances of cases whereby the defence of duress was allowed in response to charges of treason and assisting the enemy, albeit in limited circumstances. As to the writings of English authors, see James Fitzjames Stephen, *A History of the Criminal Law of England* vol 2 (London: Macmillan and Co, 1883) at p 105 and Matthew Hale, *The History of the Pleas of the Crown* vol 1 (Sollom Emlyn ed) (London: Printed by E and R Nutt, and R Gosling (the assigns of Edward Sayer), for F Gyles, T Woodward, and C Davis, 1736) at pp 49–51.

124 The opening words of s 94 of the Straits Settlements Penal Code Ordinance (SS Ord No 4 of 1871) begin with "Except murder and offences against the State punishable with death …". See also the decision of *Aung Hla v Emperor* AIR 1931 Rang 235 at 241.

125 "Clemency for Collaborators" *The Straits Times* (29 March 1946) at p 3; "No Further Trials of Collaborators" *Malaya Tribune* (29 March 1946) at p 2/3.

126 See, for example, "L.P. De Souza Sentenced to Death" *The Straits Times* (6 March 1946) at p 3 and "C.O. Woodford Sentenced to Death" *The Straits Times* (12 March 1946) at p 3.

46 The spate of collaboration trials held under BMA auspices represent something of an anomaly in the historical development of the treason law in Singapore. For the first time, and perhaps the only time in the legal history of Singapore, the law of treason was brought to bear by the governing power at the time against a considerable number of alleged traitors and collaborators, when previously prosecutions under such offences were few and far between. Of course, Singapore was not the only region to experience such systemic prosecution of alleged traitors and collaborators after the conclusion of World War II, and, when one considers that similar such prosecutions of collaborators were being conducted elsewhere in the territories of former German-occupied Europe and Japanese-occupied China during the collaboration trials in Singapore in 1946, the historical experience of Singapore in this respect appears to have been fairly unremarkable in comparison.

47 After the termination of BMA rule and the restoration of civilian government to Singapore in 1946, the law of treason appears to have entered once again into a state of relative dormancy. Not even the next major security issue to confront the British colonial authorities in the form of the Malayan emergency of 1948 appears to have necessitated any official recourse to the treason law, even though it is arguable that prosecutions for treason could have been initiated against those members of the Malayan Communist Party who had taken up arms against the colonial government. Rather, as the historical record illustrates all too well, preventive detention and other such security legislation were the preferred legal means by which the British administration sought to tackle the communist insurgency.[127]

48 With the repeal of the War Offences Ordinance 1941 in 1946,[128] the Straits Settlements Penal Code was left as the primary source of the substantive law concerning treasonable offences in Singapore. This state of affairs continued from the termination of British colonial rule to the creation of the Federation of Malaysia before Singapore eventually attained independence through separation from Malaysia in 1965. Even

127 For a comprehensive account, see Richard Clutterbuck, *Conflict and Violence in Singapore and Malaysia 1945-1983* (Singapore: Graham Brash (Pte) Ltd, 1984) and Andrew Harding, "Singapore" in *Preventive Detention and Security Law: A Comparative Survey* (Andrew Harding & John Hatchard eds) (Dordrecht: Martinus Nijhoff Publishers, 1993) ch 11.

128 Transfer of Powers and Interpretation Ordinance 1946 (No 2 of 1946) s 3. Interestingly however, there is a separate offence of assisting the enemy in s 12 of the Singapore Armed Forces Act (Cap 295, 2000 Rev Ed) which bears some similarity to the offence of treachery in s 3 of the War Offences Ordinance 1941. However, the offence in s 12 of the Singapore Armed Forces Act (Cap 295, 2000 Rev Ed) applies only to persons subject to military law, unlike the more general scope of the treasonable offences in the Penal Code.

after independence was achieved in 1965, there does not appear to have been a single case concerning the commission of treason in Singapore, although Malaysia has seen several prosecutions[129] under the relevant provisions of the Malaysian Penal Code.[130] Changes to the treason law in Singapore have also likewise been few and far between, with the last major amendment occurring in 2019 as part of wider changes to the Penal Code itself.[131]

49 The historical development of the law of treason in Singapore can be summarised thus: The law of treason, like much of Singapore's other laws, came to the territory as a British import and was wholly English in its scope and character when it made its appearance in the colony. By a series of local enactments patterned on imperial statutes, the law of treason in Singapore was slowly but steadily kept abreast of developments in the English law of treason that were underway in the UK, thereby ensuring that it retained its quintessential English character. The treason law in Singapore was very rarely used, as evidenced by the relative dearth of prosecutions for such offences in the Straits Settlements, until the immediate aftermath of World War II when official British policy was to prosecute certain classes of persons who had collaborated with the Japanese during the war. Yet even this policy was itself short-lived, and the law of treason in Singapore quickly fell into disuse from 1946 onwards, although it remains on the statute books in the form of several provisions in the Penal Code up to the present day. The author now turns to consider the operative legal principles that govern the application of these provisions.

IV. Present state of the substantive law of treason in Singapore

(1) Scope and reach of the treason law and some principles of interpretation

50 As stated in the previous part,[132] the law of treason in Singapore is presently to be found in several provisions of the Penal Code clustered under Chapter VI titled "Offences against the State".[133] The reader will note that there is no singular offence expressly titled as "treason" under the Penal Code. Rather, there are several distinct offences in the Penal Code

129 See *Public Prosecutor v Mohd Amin bin Mohd Razali* [2002] 5 MLJ 406; *Public Prosecutor v Atik Hussin bin Abu Bakar* (HC, Sabah and Sarawak, M'sia) (25 July 2015) and *Public Prosecutor v Kadir bin Uyung* (CA, M'sia) (8 November 2017).

130 No 574 of 2018.

131 Criminal Law Reform Act 2019 (Act 15 of 2019).

132 See paras 24–49 above.

133 Penal Code (Cap 224, 2008 Rev Ed) ss 121–124.

which collectively constitute the substantive law of treason. Although it is true that the treasonable conduct which Chapter VI directly addresses is quite capable of falling within the ambit of the Internal Security Act[134] ("ISA"), the latter statute does not arguably add anything substantive to the law of treason, but merely empowers the Executive to detain without trial persons suspected of "acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein",[135] leaving open the possibility that such persons could very well be subject to a prosecution for treason under the Penal Code in the future. But the ISA itself does not lend anything new to the law of treason in Singapore and is, for all intents and purposes, not a part of the law of treason.[136]

51 Turning to the scope of the treason law, when one considers the concept of treason as criminal disloyalty or breach of the allegiance owed by Singapore citizens or resident aliens to the State, one, however, finds that this commonly accepted definition of treason does not quite square with the legal reality of the jurisdiction and ambit of the Penal Code in which the law of treason is to be found. Section 2 of the Penal Code states: "Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he is guilty within Singapore." This appears to suggest that any person who commits an offence under the Code within Singapore, including a treasonable offence, would be liable to punishment for the said offence, with the effect that even foreign aliens who owe no allegiance to Singapore can technically be prosecuted for having committed a treasonous offence.[137]

52 This enlarged scope of the Penal Code, though keeping in line with the territorial jurisdiction of the Code proper, appears to diverge sharply from the traditional scope and understanding of the English law of treason, which has generally and unquestioningly been accepted as applying only to British subjects and aliens who reside in the realm and

134 Cap 143, 1985 Rev Ed.

135 Internal Security Act (Cap 143, 1985 Rev Ed) s 8.

136 On the other hand, a stronger argument could be made that the Official Secrets Act (Cap 213, 2012 Rev Ed), which deals with the offence of espionage, belongs properly within the larger substantive law of treason given that espionage by its nature entails a breach of allegiance owed to the State in favour of spying for a foreign power. See also the *dicta* of James Foong J in the Malaysian decision of *Gurcharan Singh a/l Bachittar Singh v Penguasa, Tempat Tahanan Perlindungan Kamunting, Taiping* [1997] 4 MLJ 123 at 133.

137 See the *dicta* of Mortimer J in *Public Prosecutor v Khoo Ban Hock* [1988] 2 MLJ 217 at 220, albeit decided in the context of the Bruneian Penal Code (Cap 22).

who enjoy the protection of the Crown.[138] By contrast, a foreigner who comes to Singapore without the intention of obtaining residence here and who commits a treasonous offence within the ambit of the Penal Code is liable for prosecution in the same manner as a Singapore citizen who betrays his country.

53 This interpretation of the scope of the treason law is further reinforced when one considers that the substantive provisions in the Penal Code themselves admit of no such distinction as to the nationality of the offender, whether he be a Singaporean, a resident or non-resident foreigner. For example, ss 121, 121A and 121B of the Penal Code all begin with the blanket word "Whoever" which suggests that a foreigner, as long as he has committed an offence within the meaning of those sections, is liable for punishment under those provisions. Indeed, this is the current position taken by the Indian courts with regards to the application of s 121 of the IPC, which is *in pari materia* with our own s 121, in cases of terrorism where foreigners have travelled to India solely for the purpose of committing terrorist acts on Indian soil.[139] A similar approach was adopted by the Malaysian courts as well in the case of the armed militants involved in the 2013 Lahad Datu incursion, all of whom hailed from the Philippines.[140]

54 Notwithstanding the somewhat broadened scope of the treason law in Singapore in so far as treasonable offences committed *within* Singapore are concerned, this is the inevitable result of a straightforward interpretation of the Penal Code's territorial jurisdiction, and it is unlikely that any other differing interpretation will be able to stand on its own in the face of the plain words of the Penal Code.

55 Besides s 2, the Penal Code also contains a new s 4A which extends the jurisdiction of the Code to Singapore citizens and permanent residents who commit acts abroad which, if committed in Singapore,

138 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at p 183.

139 *State (NCT Of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 774–775. See, however, *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on Indian Penal Code, 1860* vol 1 (Shriniwas Gupta & Preeti Mishra eds) (New Delhi: Bharat Law House, 28th Ed, 2018) at p 632 in which the editors state that foreigners may not be guilty of an offence under s 121 of the Indian Penal Code (Act No 45 of 1860) ("IPC") unless they are foreigners owing local allegiance. With the greatest respect, the basis for this position remains unclear to the author especially when one considers the plain text of both the IPC and the Penal Code (Cap 224, 2008 Rev Ed).

140 *Public Prosecutor v Atik Hussin bin Abu Bakar* (HC, Sabah and Sarawak, M'sia) (25 July 2015).

would amount to offences against the State or the offence of genocide, thereby allowing them to be prosecuted and tried in Singapore. This can only be correct. After all, why should a Singaporean who engages in treason against his country be allowed to escape liability simply because the acts of treason were committed overseas? Indeed, one could argue that the odiousness of his act is greatly magnified because he has sought to undermine his country from the safety of foreign shores and out of the reach of the state authorities. In this respect, the introduction of s 4A is a welcome addition[141] that brings the treason law of Singapore on the same footing as the English law, which has long possessed this element of extraterritoriality with regard to the offence of treason.

56 Before moving on to the substantive provisions proper, it behoves the author to sound a word of caution when interpreting the treasonable offences within the Penal Code. As Singapore does not have any existing case law concerning the treasonable offences, this means that for the present time, the courts will be compelled to rely almost exclusively on foreign jurisdictions with similar criminal codes as ours, namely India (from whom Singapore inherited the Penal Code), Malaysia as well as Brunei, for assistance in the interpretation of the Code's provisions. Recourse may also be had to English authorities, specifically where ss 121A and 121B of the Penal Code are concerned, given that these provisions had their origins in the former Treasonable Offences Ordinance 1868 and its imperial equivalent, the Treason Felony Act 1848.

57 Secondary authorities in the form of commentaries on the Penal Code are also useful in interpreting the provisions on treasonable offences, as are the writings of English jurists concerning the subject of treason. However, as will be illustrated below, the authorities all do not speak with one mind, and one inevitably finds that the commentaries and precedents in particular diverge from one another both across different jurisdictions as well as with the passage of time. Nowhere is this more apparent than in India, which has had the benefit of a sizeable body of jurisprudence on s 121 of the IPC both during the period of British colonial rule as well as in the post-independence period up to the present day.[142]

---

141 This section was introduced as part of the 2019 legislative changes to the Penal Code (Cap 224, 2008 Rev Ed): see Criminal Law Reform Act 2019 (Act 15 of 2019) s 2.

142 This is evident when one compares the more recent editions of the famous Indian criminal law treatise *Ratanlal & Dhirajlal's Law of Crimes* with older editions that were furnished during the period of British rule: see Ratanlal Ranchhoddas & Dhirajlal Keshavlal Thakore, *The Law of Crimes* (Bombay: The Bombay Law Reporter Office, 17th Ed, 1948) at pp 274–275 and *Ratanlal & Dhirajlal's Law of Crimes: A Commentary on Indian Penal Code, 1860* vol 1 (Shriniwas Gupta & Preeti Mishra eds) (New Delhi: Bharat Law House, 28th Ed, 2018) at pp 623–628.

(2) Section 121: Waging war against the Government

58 Section 121 of the Penal Code states simply that "Whoever wages war against the Government, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or with imprisonment for life."[143] To establish an offence under this provision, the Prosecution must prove that (a) there was a waging of war, or an attempt to wage war or the abetting of the waging of such; and (b) the war in question was waged against the Government of Singapore.[144] It is the only provision concerning treasonable offences to prescribe the death penalty, albeit a discretionary one, while the other provisions provide for custodial sentences. Doubtless, this also reflects the position of s 121 as the most serious of all the treasonable offences on account of the fact that it deals with conduct of an inherently violent and destructive character, namely the waging of war against the State, as embodied by the Government.

59 The provision has its origins as s 121 of the IPC, which in itself originally existed as cl 109 of the original IPC drafted by Thomas Macaulay[145] in his capacity as a member of the Indian Law Commission. At the time of the original draft Code, cl 109 read as such:[146]

> Whoever wages war against the Government of any part of the territories of the East India Company, or attempts to wage such war, or by instigation, conspiracy or aid, previously abets the waging of such war, shall be punished with death, or transportation for life, or imprisonment of either description for life, and shall forfeit all his property.

In his explanatory notes, Macaulay appears to have alluded to the limited legislative powers of the Governor-General and the Council of India as one of the primary reasons for his inclusion of cl 109 and its other counterparts in his draft Code:[147]

> His Lordship in Council will perceive that, in this chapter [of Offences against the State], we have provided only for offences against the Government of India, and that we have made no mention of offences against the General Government of the British Empire. We have done so because it appears to

143 Penal Code (Cap 224, 2008 Rev Ed) s 121.

144 *Public Prosecutor v Mohd Amin bin Mohd Razali & Ors* [2002] 5 MLJ 406 at 415.

145 See Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837).

146 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) at p 29.

147 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 26.

> us doubtful to what extent his Lordship in Council is competent to legislate respecting such offences. The Act of Parliament which defines the legislative power of the Council of India especially prohibits that body from making any law 'which shall in any way affect any prerogative of the Crown or the authority of Parliament, or any part of the unwritten laws, or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend, in any degree, the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said territories.'

60 Macaulay was also of the opinion that as English criminal law was not binding on the Indian natives in the mofussil, it was "exceedingly doubtful"[148] whether that part of English law concerning treason was likewise binding on the Indian natives in the mofussil. Furthermore, he recognised that the judicial officers of the East India Company were not likely to be adequately acquainted with the English treason law, nor was there any local equivalent of the English offence in the laws and regulations of the British Indian territories.[149] Thus, it was necessary that the draft IPC be crafted so as to be capable of remedying this evident legal black hole without exceeding the limits imposed on the British colonial authority's legislative powers. In Macaulay's own words:[150]

> It seems highly desirable that the Imperial Legislature should do what cannot be done by the Local Legislature, and should pass a law of high treason for the territories of the East India Company. As far, indeed, as respects the royal person, the present state of the law, though in theory unseemly, is not likely to cause any practical evil. It is highly improbable that any English King will visit his Indian dominions, or that any plot, having for its object the death of an English King, will ever extend its ramifications to India. But it is by no means improbable that persons residing in the territories of the East India Company may be parties to the levying of war against the British Crown, without violating any local regulation. If any insurrection were to take place in any of the British dominions in the Eastern Seas, in Ceylon, for example, or in Mauritius, it is by no means improbable that persons residing within the Company's territories might furnish information and stores to the rebels. And if this were done by a person not subject to the jurisdiction of the Courts established by Royal Charter, we are satisfied that there would be the most serious difficulty in bringing the criminal to legal punishment.

148 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 26.

149 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 27.

150 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 28.

61 In short, Macaulay appears to have been concerned with the need to empower the British colonial administration's ability, embodied at that time in the East India Trading Company, to combat threats against British rule in the form of insurrections and rebellions by the native population at that time. But, as a result of existing limitations on the Governor-General's ability to provide for local legislation in British India on the offence of high treason, together with the parlous state of British laws at the time, Macaulay would have to draft the IPC in such a manner as to effectively provide for the continuing security of the British colonial government in India without infringing on these limitations. This also meant, however, that the state offences contained in the draft Penal Code were not that of high treason, as evidenced by his express recommendation that the imperial parliament pass a law of high treason introducing that offence into British India.[151]

62 What then does this suggest of the meaning of the phrase "wages war against the Government"? Macaulay unfortunately does not appear to have given any further definition as to the meaning behind this particular term, but it may be inferred that cl 109 was to be patterned on the specific head of treason concerning the levying of war against the British sovereign under the English treason law. This interpretation of cl 109 is based on Macaulay's references to residents of the territories of the East India Company as being possible parties to the "levying of war against the British Crown, without violating any local regulation"[152] as one particular mischief which the IPC's provisions on state offences were meant to address.

63 This interpretation of "waging war" as corresponding to the offence of "levying war" under English law was also supported by the Second Report on the Indian Penal Code by the second Indian Law Commission.[153] There, the Indian Commissioners, drawing on the Sixth Report of the English Criminal Law Commissioners,[154] considered the

151 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 28.

152 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 28.

153 This second Indian Law Commission had been tasked with reviewing and revising Macaulay's original draft Code, which had hitherto lain untouched since its publication: see United Kingdom, *Second Report on the Indian Penal Code* (c 330, 1847–1848) at p 4 (Chairman: C H Cameron).

154 United Kingdom, *Sixth Report of Her Majesty's Commissioners on Criminal Law* (c 316, 1841) (Chairman: Thomas Starkie).

natural meaning of the two terms to be quite similar so as to be virtually identical:[155]

> In another place the [English Criminal Law] Commissioners say, 'the terms of the [Treason Act 1351] seem naturally to import a levying of war by one, who throwing off the duty of allegiance, arrays himself in open defiance of his sovereign in like manner and by the like means as a foreign enemy would do, having gained footing within the realm'. So also we conceive the terms 'waging war against the Government', naturally import a person arraying himself in defiance of the Government, in like manner and by like means as a foreign enemy would do; and it seems to us, as we presume it did to the authors of the Code, that any definition of terms so unambiguous, would be superfluous.

However, in so far as the offence of waging war under both s 121 of the IPC and s 121 of our Penal Code is co-terminus with that of levying war under the Treason Act 1351, this does not, however, mean *ipso facto* that s 121 in and of itself contains the entirety of the English law of treason. Such an interpretation was expressly rejected by the Indian courts in the cases of *The Queen v Amiruddin*[156] and *Barindra Kumar Ghose v Emperor*.[157] Rather, the Indian courts have held that reference may be made to those English cases concerning the offence of levying war in so far as it is helpful in clarifying the meaning of the term "waging war" in s 121 on the basis that the two phrases are essentially identical.[158]

64 So understood, waging war against the Government comprises chiefly of acts of open defiance of the Government. Insurrections and rebellions aimed at overthrowing the Government by force of arms, procuring the unlawful alteration of some law, or the attainment of some objective which undermines the authority of the State would all fit squarely within this meaning of s 121.[159] The existing authorities on this particular provision have also held that it is immaterial whether or not the offender was the principal instigator of the rebellion.[160] A person who

155 United Kingdom, *Second Report on the Indian Penal Code* (c 330, 1847–1848) at p 4 (Chairman: C H Cameron), citing United Kingdom, *Sixth Report of Her Majesty's Commissioners on Criminal Law* (c 316, 1841) at pp 6–7 (Chairman: Thomas Starkie).

156 (1871) 7 Beng LR 63 at 69–70.

157 (1910) ILR 37 Cal 467 at 505; see also *Maganlal Radhakishan v Emperor* AIR 1946 Nag 173 at 184.

158 See *Aung Hla v Emperor* AIR 1931 Rang 235 at 236; *In re Umayyathantagath Puthen Veetil Kunhi Kadir* (1922) 1 MLJ 108 at 111; *Maganlal Radhakishan v Emperor* AIR 1946 Nag 173 at 184; and *Nazir Khan v State of Delhi* (2003) 8 SCC 461 at 485–488.

159 *Aung Hla v Emperor* AIR 1931 Rang 235 at 236; *Maganlal Radhakishan v Emperor* AIR 1946 Nag 173 at 184; *Public Prosecutor v Mohd Amin bin Mohd Razali* [2002] 5 MLJ 406 at 418–419. See also *Butterworths' Annotated Statutes of Singapore* vol 2 (Singapore: Butterworths Asia, 2001 issue) at p 361.

160 *Aung Hla v Emperor* AIR 1931 Rang 235 at 236–237; *Jubba Mallah v Emperor* AIR 1944 Pat 58; *Maganlal Radhakishan v Emperor* AIR 1946 Nag 173 at 186.

partakes in a rebellion is guilty under s 121, regardless of the date and time at which he joined the rebellion. Nor does it matter as to the means and tools by which the rebellion was to be conducted, nor the number of persons actually engaged in rebellion.[161]

65 Notwithstanding the paradigmatic example that was highlighted above of an insurrection, courts have in practice often had to confront the thornier question of distinguishing an insurrection, which is necessarily governed by s 121, from a riot or unlawful assembly, which is addressed under s 146 of the Penal Code.[162] Often, courts have done so by focusing on the purpose of the assembly. An assembly for a private purpose would arguably amount to a riot, whereas one for a public purpose would arguably constitute an insurrection under s 121.[163] But even then, an assembly for a public purpose would not amount to an offence under s 121 if it sought the attainment of said purpose through lawful, peaceful means. In reality, the distinction to be drawn between the scenarios will not often be too readily apparent, and quite often much will depend on the specific facts and circumstances of each case concerning public disturbances and incidences of force and violence.

66 In addition to waging war, s 121 also criminalises preparatory acts pursuant to the waging of war. Thus, attempts and abetments of the waging of war are also treated and punished with the same degree of severity as the waging of war itself.[164] As Macaulay himself noted, this was done deliberately to ensure that residents of the British Indian territories would not be able to escape prosecution for abetting foreign princes and their subjects in waging war against the Indian government, and also to effectively nip treasonous plots in the bud by rendering their preparation an offence in itself.[165] As for what constitutes attempts or abetments of waging war against the Government, the meaning of these terms is the same as those used elsewhere in the Penal Code concerning attempts[166] and abetments.[167] Writing a letter to foreign enemies of the Government for the purpose of inviting them to come to Singapore to take away

161 *Aung Hla v Emperor* AIR 1931 Rang 235 at 237, citing *R v Wilson* (1820) 1 St Tr (NS) 1352 at 1353–1354 and *R v Hardie* (1820) 1 St Tr (NS) 609 at 765.

162 Penal Code (Cap 224, 2008 Rev Ed) s 146.

163 *Maganlal Radhakishan v Emperor* AIR 1946 Nag 173 at 184–186, citing *R v Lord George Gordon* (1780) 21 St Tr 485 at 644–645; *R v Wilson* (1820) 1 St Tr (NS) 1352 at 1353–1354; and *R v Hardie* (1820) 1 St Tr (NS) 609 at 765.

164 Penal Code (Cap 224, 2008 Rev Ed) s 121.

165 Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) Note C at p 28.

166 Penal Code (Cap 224, 2008 Rev Ed) ss 511–512.

167 Penal Code (Cap 224, 2008 Rev Ed) ss 107–120; see also *Emperor v Ganesh Damodar Savarkar* (1910) ILR 34 Bom 394.

soldiers ostensibly in the service of Singapore would suffice to constitute an attempt to wage war, since it is an invitation to a foreign enemy to engage in the conduct of military operations against the Government.[168] In a similar vein, broadcasting speeches and propaganda in support of a foreign enemy would amount to an abetment of waging war since it is the intentional aiding of the waging of war by the said foreign power against the Government.[169]

67 What about acts of terrorism, especially where such acts are perpetrated by foreigners who travel to Singapore chiefly for the express purpose of carrying out acts of terrorism? To date there appears to have only been one reported decision involving the criminal prosecution of foreigners for having committed acts of terrorism in Singapore, this being the perpetrators of the MacDonald House bombing of 1965. However, in that case, the offenders were prosecuted and convicted for the offence of murder under s 302 of the Penal Code and not for the offence of waging war against the Government.[170] It remains an open question then as to whether or not foreign terrorists who commit acts of terrorism in Singapore can and may be prosecuted for the offence of waging war.

68 On the other hand, the Indian courts have adopted a cautiously broad approach in this regard by focusing on the purpose of the terrorist perpetrators in order to determine whether their conduct amounted to waging war. In *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru*[171] ("*Navjot Sandhu*"), the Indian Supreme Court observed that "terrorist acts prompted by an intention to strike at the sovereign authority of the State/Government"[172] were arguably "tantamount to waging war irrespective of the number involved or the force employed".[173] Yet the court also acknowledged that "the demarcating line is by no means clear, much less transparent. It is often a difference in degree".[174] On the facts of that case, the court held that the terrorist acts in question did amount to waging war under s 121 of the IPC given that the terrorists deliberately targeted the Indian Parliament building, which the court considered to

168 This was the finding in Mansoor's case: see "The Mansoor Case." *The Straits Times* (4 May 1915) at p 7.

169 This is based on the facts of Paglar's case: see "Charge against Dr. Paglar: Details" *Malaya Tribune* (14 February 1946) at p 2/3.

170 *Osman v Public Prosecutor* [1965–1967] SLR(R) 402 (FC); [1968–1970] SLR(R) 117 (PC).

171 (2005) 11 SCC 600.

172 *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 768.

173 *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 768.

174 *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 768.

be evidence of their intention to "strike directly against the sovereign authority and integrity of our Republic".[175]

69 In the later case of *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra*[176] ("*Ajmal Kasab*"), the Indian Supreme Court also had cause to consider whether or not the appellant's actions as a perpetrator of the 2012 Mumbai terror attacks amounted to the waging of war under s 121 of the IPC. The appellant contended that while his actions did entail the mass killing of civilians and the perpetration of destruction on a widespread scale, this was not an act designed to strike at the "sovereign authority" of India in a way that the perpetrators in *Navjot Sandhu* did by deliberately targeting the Indian Parliament building, and so could not be considered a waging of war against the Indian Government.[177] The Indian Supreme Court rejected this argument and held that as the appellant had committed terrorism in pursuance of a broader conspiracy "to hit at India; to hit at its financial centre; to try to give rise to communal tensions and create internal strife and insurgency; to demand that India should withdraw from Kashmir; and to dictate its relations with other countries",[178] this was sufficient to elevate his conduct from that of terrorism and mass murder into one of waging war.[179]

70 The Indian cases appear to suggest a newfound application of s 121 through the equivocation of terrorism with the offence of waging war against the Government.[180] Where this provision had originally been used to deal with the threat of insurrections and rebels, as well as persons consorting with and assisting foreign enemies in the waging of war against the Government of the day, it has, in the Indian context at least, now been employed to prosecute terrorists, even foreign-born terrorists, who commit acts of terrorism in India.[181]

175 *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 771; see also *Mohd Arif v State (NCT of Delhi)* (2011) 13 SCC 621 at 700–703.

176 (2012) 9 SCC 1.

177 *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra* (2012) 9 SCC 1 at 201–202.

178 *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra* (2012) 9 SCC 1 at 206.

179 *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid v State of Maharashtra* (2012) 9 SCC 1 at 206.

180 See *Ratanlal & Dhirajlal: The Indian Penal Code* (K Kannan & Anjana Prakash eds) (Haryana: LexisNexis, 36th Ed, 2019) at pp 215–220.

181 See the observations of the Indian Supreme Court in *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 769–770; see also *Mohd. Jamiludin Nasir v State of West Bengal* (2014) 7 SCC 443 at 528–532.

71 Might such an approach be applicable in Singapore? Certainly, one might be tempted to have recourse to s 121 as one means by which terrorist suspects in Singapore could be prosecuted for their crimes. Nor is there anything precluding the Singapore courts from following the approach of the Indian courts in treating terrorist offences as amounting to acts of waging war. Under such an approach, there is nothing in the plain words of s 121 that appears to rule out or preclude the equivocating of terrorist acts with the *actus reus* of waging war against the Government, which suggests that terrorism might potentially be brought within the ambit of s 121.

72 Nevertheless, although it is true that the dividing line between terrorism and rebellion is quite often merely a "difference of degree"[182] and that rebellions may involve the commission of acts of terror pursuant to the goals of the rebels, the sort of conduct which s 121 is primarily designed to address, that of armed rebellion, does not always seem to comport neatly with incidents of terrorism waged by Singaporeans, and even less so where the aforesaid acts of terrorism are committed by foreign perpetrators. Much would depend really on the facts and circumstances surrounding the aforesaid acts of terrorism, such as whether they were undertaken in support of a broader political objective aimed at the forceful overthrow of the Government or the subversion of its authority, or whether such acts of terrorism would necessarily amount to acts of waging war against the Government.[183]

73 Given that a thorough discussion on the treatment of terrorism as amounting to the offence of waging war would be beyond the scope of this piece, it suffices for the time being to state only that care should be taken to avoid lumping in all conceivable instances of violent conduct under the offence of waging war in s 121 while the Indian authorities in *Navjot Sandhu* and *Ajmal Kasab* ought to be approached with a heavy dose of judicial caution and circumspection.[184]

---

182 *State (NCT of Delhi) v Navjot Sandhu @ Afsan Guru* (2005) 11 SCC 600 at 768.

183 But what about terrorists who engage in such terroristic activity for the purpose of *upholding* the status quo as opposed to seeking its unlawful and illegal alteration? The classic example of this paradigm would be the Ulster paramilitary forces in Northern Ireland, most of whom professed their continued allegiance to the UK, at least in so far as this meant a continuation of the status quo of Northern Ireland remaining a constituent member of the UK. Can such persons, though they may very well be terrorists, also be considered traitors? There are unfortunately no easy answers to inquiries of this sort.

184 One might argue in any case that Singapore already has sufficient laws in place to address the threat of terrorism without need for recourse to the Penal Code: see the Hijacking of Aircraft and Protection of Aircraft and International Airports Act (Cap 124, 1997 Rev Ed), Terrorism (Suppression of Bombings) Act (Cap 324A, 2008 Rev Ed); Terrorism (Suppression of Financing) Act (Cap 325, 2003 Rev Ed)

(cont'd on the next page)

(3) Section 121A: Offences against the president's person

74 Section 121A of the Penal Code in its present iteration states that:

> Whoever plans the death of or hurt to or unlawful imprisonment or restraint[185] of the President,[186] shall be punished with imprisonment for life or for a term which may extend to 20 years and shall, if he is not sentenced to imprisonment for life, also be liable to fine.

75 Prior to the recent 2019 changes to the Penal Code under the Criminal Law Reform Act 2019,[187] s 121A did not contain the word "plans" but instead employed the words "compasses, imagines, invents, devises, or intends". This change was not initially contemplated in the original Criminal Law Reform Bill 2019[188] when it was first tabled in Parliament. However, after the Bill's first reading, and during the course of its second reading, the Bill was amended to include replacing the words "compasses, imagines, invents, devises, or intends" with "plans".[189] According to the Senior Parliamentary Secretary to the Minister for Home Affairs, who was the prime mover of the Bill,[190] this had been done in response to a suggestion made by the Member of Parliament ("MP") for Bukit Batok Single Member Constituency ("SMC") that ss 121A and 121B be removed from the Penal Code on the basis that these were "thought crime provisions" that do not "sit well with the mores and values of present-day society".[191] Although the Government did not repeal these provisions fully, it nevertheless appeared to have partially accepted the concerns raised by the MP for Bukit Batok SMC in amending the words of the above-mentioned provisions.

76 With respect, it may be said at once that this sort of criticism levelled at ss 121A and 121B is misplaced and fails to properly comprehend the historical approach and treatment of the English equivalent of the

---

and Terrorism (Suppression of Misuse of Radioactive Material) Act 2017 (Act 27 of 2017).

185 For the meaning of "restraint", see Penal Code (Cap 224, 2008 Rev Ed) s 339.

186 "President" here means not only the President of Singapore elected under the provisions of the Constitution of Singapore but also any other person for the time being exercising the functions of the office of the president: see Art 2 of the Constitution of the Republic of Singapore (1999 Reprint) and s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed).

187 Criminal Law Reform Act 2019 (Act 15 of 2019) s 38.

188 Bill 6 of 2019.

189 Singapore Parliament, *Order Paper Supplement* (Sup No 18, 6 May 2019) at p 2.

190 *Singapore Parliamentary Debates, Official Report* (6 May 2019) vol 94 "Criminal Law Reform Bill" (Amrin Amin, Senior Parliamentary Secretary to the Minister for Home Affairs).

191 *Singapore Parliamentary Debates, Official Report* (6 May 2019) vol 94 "Criminal Law Reform Bill" (Murali Pillai).

two provisions in the UK itself. It is true that at first glance the words "compasses" and "imagines" seem to suggest that ss 121A and 121B are capable of encapsulating so-called "thought crimes" in the form of mental plans and designs to commit the offences under these two sections. However, under the English law of treason, the word "compassing", which appears under the Treason Act 1351 as one of the specific heads of treason concerning "compassing or imagining the death of the King",[192] has always been interpreted by the English courts as meaning that a definite, overt act must first be alleged in any indictment for treason and then proved before a conviction can be established.[193] Thus, a mere mental state of mind, without more, would be insufficient to establish the offence of "compassing" the sovereign's death. Whatever may be said about the wisdom of reading such a requirement of proof of an overt act into the provisions of the Treason Act 1351, this has been the undisputed and unchallenged position in English law and it is further submitted that the Singapore courts, had they been faced with a case concerning ss 121A and/or 121B of the Penal Code, would have also been minded to follow the approach of the English courts.[194]

77 This being the case, it becomes apparent that ss 121A and 121B are not in fact "thought crime" provisions. Furthermore, as the words "compasses, imagines, invents, devises, or intends" have generally been understood to mean "contriving" or "plotting", in like manner as the word "plans",[195] it is increasingly unclear as to what practical function has been served with this substitution of the original wording of the two sections with the word "plans". This author would contend that the change is in fact a superfluous and unnecessary one and has done nothing to affect the original meaning and interpretation of the two provisions.

78 As for s 121A of the Penal Code itself, what are the applicable legal principles concerning this section? As the author has previously mentioned, this section originally subsisted as s 1 of the old Treasonable Offences Ordinance 1868, which was in turn taken from the imperial

192 Treason Act 1351 (c 2) (UK) s 2.

193 *R v Thistlewood* (1820) 33 St Tr 681 at 684; see also Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at pp 193–194.

194 See Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (Singapore: LexisNexis, 3rd Ed, 2018) at para 36.15, fn 24.

195 Oxford English Dictionary Online, "compass, v.1" <https://www-oed-com.libproxy1.nus.edu.sg/view/Entry/37468?rskey=xP4kJA&result=1> (accessed 2 November 2020); see also *Butterworths' Annotated Statutes of Singapore* vol 2 (Singapore: Butterworths Asia, 2001) at pp 362–363.

Treason Act 1795 and the Treason Felony Act 1848.[196] Those provisions in turn sought to build on the substantive offence of compassing or imagining the death of the king from the Treason Act 1351. That particular species of treason dealt with treasonous plots and undertakings directed against the life of the sovereign, with the requirement of proof of an overt deed taken as evidence of the means by which such compassing was to be carried out.[197] This had the effect of giving rise to some peculiar interpretations of the statute of 1351. Thus in the trial of the regicides of King Charles I, it was held that the act of beheading the king, amongst other acts, was taken to be proof of an overt act of compassing his death, and the king's executioner who had delivered the fatal stroke was duly convicted accordingly.[198]

79 However, by virtue of the doctrine of constructive treasons, the offence of compassing or imagining the king's death came to assume an even greater scope than treasonous plots directed against the king's person. As Foster observed in his discourse on the subject:[199]

> The care the law hath taken for the personal safety of the King is not confined to actions or attempts of the more flagitious kind, to assassination or poison, or other attempts directly and immediately aiming at his life. It is extended to everything wilfully and deliberately done or attempted, whereby his life may be endangered: and therefore the entering into measures for deposing or imprisoning him, or to get his person into the power of the conspirators, these offences are overt acts of treason within this branch of the statute [of compassing or imagining the King's death]; for experience hath shewn, that between the prisons and the graves of Princes the distance is very small.

80 Consequently, even the act of inciting foreigners to invade the realm, though arguably an act that was aimed more at the integrity of the State as a whole rather than an act aimed at the personal wellbeing of the sovereign, was treated by the courts as evidence of compassing the king's death.[200] Like the other forms of constructive treason that had emerged around the Treason Act 1351, the constructive treasons

196 This point is examined at paras 20–21 and 28 above.

197 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; and of Other Crown Cases: To Which Are Added Discourses upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at pp 193–196.

198 *R v Twenty-nine Regicides* (1660) 5 St Tr 947 at 982.

199 Michael Foster, *A Report of Some Proceedings on the Commission for the Trial of the Rebels in the Year 1746, in the County of Surry; And of Other Crown Cases: to which are Added Discourses Upon a Few Branches of the Crown Law* (London: Printed for E and R Brooke, in Bell-Yard, near Temple-Bar, 3rd Ed, 1792) at pp 195–196.

200 *R v Lord Preston* (1691) 12 St Tr 646. In a similar vein, an act of instigating a rebellion in a remote colony was deemed to show a compassing of the king's death even though the king was thousands of miles away: see *R v Maclane* (1797) 26 St Tr 721.

based on the offence of compassing or imagining the king's death were eventually codified into statutory law with the passage of the Treason Act 1795, followed by the Treason Felony Act 1848.[201] Where Singapore is concerned, the reader will recall that the codified treasonable offence of compassing or imagining the king's death was imported by way of the Treasonable Offences Ordinance 1868 and s 121A of the Straits Settlements Penal Code. And it was in the Mansoor case where the provisions of the Treasonable Offences Ordinance 1868 were employed by the Crown in the prosecution of the luckless revolutionary Kassim Ali Mansoor.

81 Turning back to the present s 121A of the Penal Code, this provision initially used to encapsulate both (a) the compassing, imagining, inventing, devising or intending of the sovereign's death; as well as (b) the compassing, imagining, inventing, devising or intending of the deprivation or deposition of the sovereign from the sovereignty of the UK, or from any other of the sovereign's dominions or countries, or the overawing by means of criminal force, or the show of criminal force, the governments of the UK or the Straits Settlements.[202] However, the second half of s 121A was split off into a new s 121B when the Straits Settlements Penal Code was amended in 1917.[203]

82 Thus, the present s 121A, for all intents and purposes, deals chiefly with plots and combinations aimed at the person of the Head of State, in this case the President of Singapore. The section also criminalises plots and schemes that do not necessarily entail the death of the president. As the words themselves plainly show, even plans aimed at causing hurt or the unlawful imprisonment or restraint of the president will render the offender liable to prosecution under s 121A.[204]

83 What about situations where the treasonous plot has been carried out and the plotters have succeeded in their goal of causing the death, hurt, unlawful imprisonment or restraint of the president? Would it still be possible to mount a conviction under s 121A? Admittedly, in

201 This point is examined at paras 19–21 above.

202 See John Augustus Harwood, *The Acts and Ordinances of the Legislative Council of the Straits Settlements, from the 1st April 1867 to the 1st June 1886* (London, UK: Eyre and Spottiswoode, 1886) at p 366 for the text of the original s 121A of the Straits Settlements Penal Code Ordinance (SS Ord No 4 of 1871).

203 Criminal Law (Amendment) Ordinance 1917 (SS Ord No 10 of 1917) s 6.

204 Although there is no local reported decision involving this particular provision, the old English cases concerning the commission of acts of treason against the person of the sovereign under both the UK Treason Act 1351 (c 2) and the Treason Act 1795 (c 7) will be extremely relevant and useful authority in interpreting this particular branch of the treason law.

such a situation, it might seem quite bizarre to prosecute a traitor for a treasonous plot which has already been successfully carried out, thereby rendering any recourse to s 121A effectively nugatory. Nor does the plain language of the provision appear capable of encompassing such a situation, given that it seems to deal with treasonous plots in their planning stage and right before their execution. The English authorities on this particular point suggest that the successful implementation of the treasonous plot would not be a bar to prosecuting a traitor for planning the death of or hurt to the sovereign.[205] However, it would seem that more substantial solutions might yet be necessary to remedy this apparent legal lacuna.

84 As submitted earlier, although the requirement of the commission of an overt act or deed is not to be found anywhere in the words of s 121A, the Singapore courts should, and will most likely, follow the English courts in upholding such a requirement where a prosecution under s 121A is brought before the Singapore courts for their consideration.[206] This requirement would avoid the absurd result that would be reached if the words in s 121A were simply applied literally so as to potentially include even so-called "thought crimes" in the form of mental plots aimed at causing the president's death, hurt, unlawful imprisonment or restraint.

85 Given the existence of a separate s 121B which deals with treasonable offences aimed at the president's authority as opposed to her personal wellbeing, s 121A of the Penal Code should be further restricted to only plans and treasonous designs aimed at the personhood of the president. In practice, though, a criminal prosecution under a charge of s 121A alone might not be sufficient given that such a treasonous scheme or design might also entail not only the killing or restraining of the president, but also the overthrow or subversion of the Government as a whole by force in order to effect as great an attack on the State as possible, thereby bringing the offence within the ambit of s 121B as well.[207] Much will depend ultimately on the facts of each particular case.

---

205 *R v Twenty-nine Regicides* (1660) 5 St Tr 947.

206 *R v Thistlewood* (1820) 33 St Tr 681 at 684 and *Charge of Alderson B – Treason Felony* (1848) 6 St Tr (NS) 1129 at 1133; see also the American decision of *Respublica v Malin* 1 US 33 (1778) supporting the point that proof of an overt act is required in order to support a conviction under treason.

207 This legal quandary is arguably compounded by the existence of the English constructive treason cases, some of which have held that acts aimed at the overthrow of the Government or the waging of war against the sovereign can amount to a compassing of the sovereign's death: see *R v Harding* (1690) 2 Vent 315 (held that the recruitment of men for service in a foreign power at war with England amounted to a compassing of the King's death); *R v Lord Preston* (1691) 12 St Tr 646 and *R v Maclane* (1797) 26 St Tr 721.

(4) Section 121B: Offences against authority

86 Section 121B of the Penal Code, as stated above, deals with offences against the general authority of the State as a whole and reads as such:

> Whoever plans the unlawful deprivation or deposition of the President from the sovereignty of Singapore, or the overawing by criminal force of the Government, shall be punished with imprisonment for life or for a term which may extend to 20 years and shall, if he is not sentenced to imprisonment for life, also be liable to fine.

87 As the history of this provision is inextricably tied up with that of s 121A, it is not necessary to repeat the historical development of this provision and its English counterparts save only to reiterate that s 121B was initially a part of s 121A as one alternate limb of the treasonable offences contemplated within that section, until it was hived off from s 121A in 1917 and enacted as a separate provision in and of itself.[208] It too owes its origins to the Treason Act 1795 and the Treason Felony Act 1848[209] as a codification of the constructive treasons concerning the original offence of compassing or imagining of the sovereign's death.

88 Section 121B in essence creates two heads of offences against the State's authority: (a) planning the unlawful deprivation or deposition of the president from the sovereignty of Singapore; and (b) the overawing by criminal force of the Government. Plots and designs to effect an unlawful alteration or change in the existing structure of government outside of established legal and constitutional avenues for change would be caught under this section.[210] The key determinant is whether or not the intended deprivation or deposition of the president is "unlawful"[211] or whether criminal force[212] was to be employed in the overawing of the Government. Thus, for example, a political party that has, as its programme, the abolishment of the office of the Presidency through the democratic process would not be caught under this section since the deprivation or deposition of the president would have occurred under perfectly lawful and proper means. On the other hand, a coup hatched by members of the security forces would undoubtedly be an "overawing by

208 See paras 28 and 80–81 above; see also s 6 of the Criminal Law (Amendment) Ordinance 1917 (SS Ord No 10 of 1917).

209 Treason Felony Act 1848 (c 12) (UK) s 3.

210 For English decisions dealing with the equivalent offences under the English treason law, see *R v Mitchel* (1848) 6 St Tr (NS) 599; *R v Dowling* (1848) 7 St Tr (NS) 381; *R v Duffy* (1848) 7 S Tr (NS) 795; and *Mulcahy v R* (1868) LR 3 HL 306.

211 As to the meaning of "unlawful", see Penal Code (Cap 224, 2008 Rev Ed) s 43.

212 As to the meaning of 'criminal force', see s 350 of the Penal Code (Cap 224, 2008 Rev Ed).

criminal force" of the Government since the intention of the plotters is to gain control of the system of Government by force of arms and not by way of ballots.

89 In like vein, those English decisions that have treated acts of inciting foreigners to invade the realm as compassing or imagining the monarch's death would arguably be caught within the scope of s 121B of the Penal Code today.[213] Similarly, the requirement of proof of an overt deed or act as evidence of such a treasonous plot can and should apply to s 121B as it arguably applies to s 121A.

90 Again, as is the case with s 121A, the dividing line between a plot that is aimed at the wellbeing of the president's person and a plot that seeks to effect his overthrow or unlawful deposition from office is not necessarily easily identified where such treasonable plots are concerned. As always, much will depend on the facts of the particular case, as well as the specific nature and details of both the overt deeds carried out by the offenders and the treasonous plot itself. In such instances of legal uncertainty, it is open to the Prosecution to submit alternative charges under ss 121A and 121B of the Penal Code where the conditions for tendering these alternative charges are satisfied under the Criminal Procedure Code.[214]

(5) Sections 121C–124: Other state offences

91 Sections 121C to 124 of the Penal Code deal primarily with acts and abetments that are, in some way or another, connected with the three principal offences outlined above in ss 121, 121A and 121B.

92 Section 121C explicitly elevates the abetment of offences under ss 121A and 121B to the same level as the actual commission of those offences by providing that abetments of these offences will be punished with the same degree of punishment as provided in ss 121A and 121B.[215]

213 *R v Lord Preston* (1691) 12 St Tr 646. Had Lord Preston's case been decided under the present provisions of the Penal Code (Cap 224, 2008 Rev Ed), it is more likely that his crime of plotting with the King of France to invade England and restore the deposed James II would've been treated as a plan for the unlawful deposition of King William III rather than a compassing of the King's death.

214 Cap 68, 2018 Rev Ed. See s 138 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) for alternative charges. For a recent decision on the applicable law governing alternative charges, see *Public Prosecutor v Wee Teong Boo* [2020] 2 SLR 533 at [88]–[98].

215 Penal Code (Cap 224, 2008 Rev Ed) s 121C.

93 Section 121D in turn makes it an offence for a person who "knowing or having reason to believe that any offence punishable under section 121, 121A, 121B or 121C has been committed intentionally omits to give any information respecting that offence".[216] It may be understood as being similar to the English offence of misprision of treason,[217] although it would be inaccurate to refer to this provision as reproducing the English offence of misprision of treason since there is no express offence of treason under Singapore's laws, strictly speaking. Section 121D operates once a person has knowledge or reason to believe any of the principal treasonable offences has been committed but intentionally omits to report that information to the authorities. It is not necessary that he consents to the commission of the offence, and in fact it may be argued that if he actually consented to the treasonous undertaking, he could instead be prosecuted under s 121, 121A or 121B as a principal offender.

94 Sections 122 and 123 deal with preparatory acts designed to facilitate a waging of war against the Government under s 121 so as to render even the preparation of waging war a distinct offence in and of itself. Section 122 criminalises the collection of men, arms or ammunition, as well as any other acts preparatory to the waging of war. There is an additional requirement that the offender must have done the impugned acts "with the intention of either waging or being prepared to wage war against the Government".

95 Section 123 of the Penal Code states that:

> Whoever by any act, or by any illegal omission, conceals the existence of a design to wage war against the Government, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment for a term which may extend to 15 years, and shall also be liable to fine.

96 This section deals with persons who conceal the existence of a design to wage war under s 121 of the Penal Code so as to facilitate the waging of such war against the Government. In that respect, it differs from s 121D which deals with situations where the specified treasonable offences have already been committed,[218] whereas s 123 applies to situations where the waging of war has not yet been carried out. Furthermore, s 123's scope is limited in that it only applies to the

---

216 Penal Code (Cap 224, 2008 Rev Ed) s 121D.

217 As to English cases concerning misprision of treason, see *R v Twenty-nine Regicides* (1660) 5 St Tr 947 at 985; *R v Tonge* (1662) 5 St Tr 225 and *R v Walcot* (1683) 9 St Tr 519 at 553.

218 By virtue of the words "has been committed" in s 121D of the Penal Code (Cap 224, 2008 Rev Ed).

offence of waging war and not the other offences in ss 121A and 121B of the Penal Code.

97 Finally, the author turns to s 124 of the Penal Code which deals with assaults on the president or other high officers of the Government for the purpose of preventing them from exercising their lawful powers. That section states that:

> Whoever, with the intention of inducing or compelling the President or a Member of Parliament or the Cabinet, to exercise or refrain from exercising in any manner any of the lawful powers of the President, or such Member, assaults[219] or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force, or the show of criminal force, or attempts so to overawe, the President or such Member, shall be punished with imprisonment for life or for a term which may extend to 20 years, and shall, if he is not sentenced to imprisonment for life, also be liable to fine.

98 A cursory glance at this section suggests that there is a considerable deal of overlap between this section and s 121A in so far as offences against the president's person are concerned. Theoretically, an offender who assaults the president under s 124 has also arguably manifested a plan to hurt the president under s 121A. However, unlike s 121A which appears to only require an intent on the offender's part to cause the death, hurt, unlawful imprisonment or restraint of the president, s 124 requires that the criminal intent must be one of inducing or compelling the president (or any MP or the Cabinet) to exercise or refrain from exercising in any manner any of his lawful powers. A mere intent to cause death or hurt to the president, without more, would fall short of the *mens rea* requirement under s 124. Curiously then, the bar for establishing an offence under s 124 seems to be higher than that under s 121A.[220]

99 Section 124 arguably belongs within the body of treasonable offences in Singapore in so far as it deals with threats directed against the president's person. However, the same cannot be said for offences directed against MPs and the Cabinet which, though heinous in and of themselves, arguably do not fit into popular conceptions of treason so understood. Furthermore, as ss 121A and 121B already deal with treasonable offences directed against both the president's person and the authority of the State, one may very well wonder what further purpose

219 As to the meaning of "assaults", see s 351 of the Penal Code (Cap 224, 2008 Rev Ed).

220 This is arguably a somewhat bizarre position given that, in terms of the gravity of and penalties prescribed for the relevant offences in ss 121A and 124 of the Penal Code (Cap 224, 2008 Rev Ed), s 124 ought to be seen as the less serious offence that supplements s 121A.

is served with the retention of s 124, as well as its proper place under the treason law in Singapore.

100 This, then, is the substantive law of treason as it stands in Singapore today. It comprises chiefly several provisions in the Penal Code: some were found in the original draft of Macaulay's Indian Penal Code as well as the revised text of that statute when it was first enacted in British India, while other provisions were added later into Chapter VI of the Penal Code when the Code was imported into the Straits Settlements. As will be expounded on in the next section, this rather peculiar legal history behind the relevant provisions has resulted in a somewhat uneven and haphazard body of law that has given rise to some conceptual difficulties concerning the proper application of the treason law.

V. Some problems with the present treason law and the prospects for legislative reform

101 Notwithstanding the above legal principles that the author has sought to lay down with regard to the treasonable offences as they presently stand, it should become apparent by now that the present state of the treason law in Singapore remains quite unsatisfactory and problematic for the following reasons.

102 Firstly, the current provisions in the Penal Code are by no means an adequate or even a comprehensive codification of the myriad treasonable offences capable of commission in Singapore. This problem becomes painfully obvious when one recalls that the Chapter VI provisions of the Penal Code, which in turn were taken from the same provisions of the Indian Penal Code, were originally concerned chiefly with the substantive offences of waging war and the assaulting or overawing by criminal force of certain government officials, as well as attempts and preparations to wage war and the misprision of waging war. Indeed, the limited conception and scope of the treasonable offences as originally conceived in Macaulay's draft Code, before finding definitive form and expression in the Indian Penal Code, was itself highlighted as an issue of concern by the Law Commission of India in their 42nd report on the Indian Penal Code.[221]

103 From this rather limited scope of the treasonable offences in the Indian Penal Code, there was an attempt by the Straits Settlements government to broaden the ambit of the treason law in the Straits

221 Law Commission of India, *Indian Penal Code* (Report No 42, 2 June 1971) at pp 140–143 (Chairman: K V K Sundaram).

Settlements by grafting additional treasonable offences, based on the English equivalents at the time, onto the Straits Settlements Penal Code in 1872 when it was first enacted and brought into force in the region. However, in spite of this legislative change, the present crop of provisions in the Penal Code still does not fully encapsulate the offence of treason in the same way that the English treason law does, as well as the criminal laws of other Commonwealth jurisdictions such as Australia and Canada. For instance, the specific head of treason, that of "adhering to the King's enemies in his realm, by giving to them aid and comfort in the realm or elsewhere",[222] is nowhere to be found in the Penal Code. While one might argue that acts of adhering to the sovereign's enemies could very well be addressed under the offence of abetting the waging of war, this approach arguably fails to cover all such instances of adherence. For example, a Singaporean who becomes naturalised in an enemy state at war with Singapore cannot be said, without more, to have abetted the waging of war against the Government of Singapore, even though he has arguably, by taking the step of becoming naturalised in an enemy state, adhered to the enemy.[223]

104 In a similar vein, acts which entail the giving of material assistance to enemy forces at war with Singapore might not always be caught under the relevant offence of abetting the waging of war under s 121. Those who owe allegiance to Singapore but who nevertheless intentionally and deliberately aid and assist enemies who are at war with Singapore breach their duties of allegiance and endanger the State accordingly, and thus warrant the highest possible form of punishment. To that end, it bears mentioning that the substantive offence of treachery contained in the old War Offences Ordinance 1941[224] provides a highly suitable model on which the offence of treason could be expanded upon and it is submitted, in that regard, that the Penal Code should be amended accordingly to include this new offence of materially assisting any enemy at war with Singapore or doing any act designed to impede the prosecution of said war by the military forces of Singapore.[225]

105 Secondly, the somewhat archaic and convoluted language of some of the treasonable offences in the Penal Code has the potential

222 Treason Act 1351 (c 2) (UK).

223 He has, by becoming naturalised in an enemy state, arguably breached his duty of allegiance to Singapore, especially if he does not renounce his citizenship beforehand or if such renunciation is not accepted by the Government.

224 SS Ord No 68 of 1941, s 3.

225 A similar recommendation was made by the UK Law Commission which was unfortunately not taken up: see United Kingdom, Law Commission, *Codification of the Criminal Law – Treason, Sedition and Allied Offences* (Working Paper No 72, Second Programme, Item XVIII, 1977) at pp 33–34.

to give rise to problems of uncertainty as well as tortured and strained interpretations of the provisions. This is particularly the case with ss 121A and 121B. Where s 121A is concerned, it bears recalling that the English equivalent of this section was historically employed to prosecute treasonous plots and conduct against the personal being of the English sovereign. However, because the language of the proviso was couched in terms of "compassing or imagining the death" of the sovereign as opposed to actually killing or planning the death of the sovereign, the English courts were compelled to work their way around these linguistic barriers through the use of artificial constructions of the treason laws.[226]

106 Despite the recent legislative amendments to ss 121A and 121B in 2019, these changes have arguably failed to remedy the ambiguous language contained in the two provisions. Consider, for instance, a situation where an offender kills the president. Would he then be liable for prosecution under s 121A? As explained earlier above,[227] the language of that proviso at first sight does not appear to support a criminal conviction in a situation where the offender has actually succeeded in his plan to cause the death of the president since it appears to only deal with treasonous plans and designs at the point before their execution. That it might yet be possible to support a conviction of a successful traitor under s 121A is only because there are English authorities, based on judicial constructions of the English Treason Act 1351, that appear to support a similar construction of s 121A. But should that really continue to be the most appropriate approach governing the applicability of this provision?

107 Because the law on treasonable offences addresses some of the most heinous and odious forms of political crimes to have been perpetrated in a society, namely offences that strike directly at the State and its representative institutions, it is all the more important that, as a matter of fairness, the law should precisely spell out and delineate the contours of the treasonable offences in as clear and concise language as possible so that those who are prosecuted for acts of treason would be able to effectively meet the charges tendered against them. If, for instance, our society considers it an offence to kill or to injure the president or to unlawfully deprive or depose her from the sovereignty of Singapore, then the law in this regard should expressly reflect it as such, rather than criminalise it as a "plan"[228] and then seek guidance from old English decisions on this point. To that end, it is necessary that the provisions concerning the treasonable offences in the Penal Code be rendered more intelligible and comprehensible. Such a change to the law will also serve to

226 See paras 76–80 above.
227 See para 83 above.
228 Penal Code (Cap 224, 2008 Rev Ed) s 121A.

pre-empt the potential spectre of constructive treasons arising as a result of judicial interpretations of the relevant provisions concerning the treasonable offences that are currently in existence in the Penal Code.[229]

108 What then is to be done with the present state of the treason law as it stands? It would appear that simply laying down legal principles governing the scope and ambit of the relevant offences is insufficient to remedy the above-mentioned problems of insufficient scope and incomplete codification of all potential treasonable offences, as well as archaic and ambiguous language in the provisions of the Penal Code. A more thorough and effective solution would be to simply revamp the present treason law by way of legislative amendment to the Penal Code. To that end, the major criminal laws of other Commonwealth jurisdictions such as Canada and Australia provide useful examples from which one may have recourse to in formulating a more comprehensive body of the law on treason. Consider, for instance, s 80.1 of the Australian Commonwealth Criminal Code Act 1995 ("Australian Criminal Code 1995") which deals with the offence of treason:

> A person commits an offence if the person:
>
> (a) causes the death of the Sovereign, the heir apparent of the Sovereign, the consort of the Sovereign, the Governor - General or the Prime Minister; or
>
> (b) causes harm to the Sovereign, the Governor-General or the Prime Minister resulting in the death of the Sovereign, the Governor-General or the Prime Minister; or
>
> (c) causes harm to the Sovereign, the Governor-General or the Prime Minister, or imprisons or restrains the Sovereign, the Governor-General or the Prime Minister; or
>
> (d) levies war, or does any act preparatory to levying war, against the Commonwealth; or
>
> (g) instigates a person who is not an Australian citizen to make an armed invasion of the Commonwealth or a Territory of the Commonwealth.

109 In addition to these provisions, s 80.1AA of the Australian Criminal Code 1995 also criminalises as treason acts of materially assisting an enemy engaged in armed conflict against the Australian

229 Such concerns are not new and were evidently foreseen by Macaulay himself as early as when he first laid down his draft Indian Penal Code: see Thomas B Macaulay *et al*, *A Penal Code Prepared by the Indian Law Commissioners, and Published by Command of the Governor General of India in Council* (Calcutta: Bengal Military Orphan Press by G H Huttmann, 1837) at p 7.

Commonwealth or the Australian Defence Force.[230] The Canadian Criminal Code[231] follows a similar statutory pattern in the form of s 46, although that section expressly creates two degrees of treason: that of high treason[232] and that of treason.[233] The distinction between the two is more apparent than real, however, given that the kinds of conduct caught under these two categories would both constitute high treason under English law.[234]

110 These provisions have much to commend for their evident clarity and conciseness in language, while their coverage is considerably more comprehensive than the provisions in the IPC and our Penal Code. It would be wise to consider amending our corresponding provisions in the Penal Code to more closely follow the approach of the Australian and Canadian jurisdictions.

111 How would such a programme of legislative reform look like? One helpful starting point would be to establish a new substantive offence of treason comprising the different species of treasonable offences presently subsisting in the Penal Code, such as that of waging war against the Government, treasonous plots against the president's personal being and the president's authority, as well as the overawing by criminal force of the Government.

112 To this existing body of law, new species of treasonable offences may be added, such as the substantive offence of treachery that was part of the old War Offences Ordinance 1941,[235] while the remaining provisions in the Penal Code that deal with preparatory acts for the purpose of waging war and the concealment of information surrounding the commission of a treasonable offence could simply be repealed and substituted with new provisions that provide for the express criminalisation of attempts and abetments of the commission of treason, as well as the offence of misprision of treason. To that end, the author has prepared a draft bill located at the end of this article setting out suggested amendments to the existing law on treasonable offences.[236] It is hoped that this draft bill

230 Criminal Code Act 1995 (Cth) s 80.1AA.
231 RSC 1985, c C-46.
232 Criminal Code (RSC 1985, c C-46) (Can) s 46(1).
233 Criminal Code (RSC 1985, c C-46) (Can) s 46(2).
234 Thus for example, under the specific offence of treason in s 46(2)(a) of the Canadian Criminal Code (RSC 1985, c C-46), it is treason to use "force or violence for the purpose of overthrowing the government of Canada or a province" while such conduct would arguably amount to a compassing of the queen's death under English law.
235 War Offences Ordinance 1941 (SS Ord No 68 of 1941) s 3.
236 See Appendix.

will be of assistance to any future initiatives aimed at remedying and reforming this body of the criminal law.

VI. Conclusion

113 The law on treasonable offences in Singapore has a long history, one that is almost as old as our legal system itself since it first took shape during the early period of British colonial rule. As seen above, it first arrived in Singapore as part of the general reception of English common law under the Second Charter of Justice. It continued to maintain its relatively dormant existence for much of the colony's history, punctuated by occasional significant legislative changes to the colonial criminal law effected by the colonial government. The onset of independence in 1965 and the subsequent post-independence developments to our criminal law do not appear to have affected the treason law in any significant measure and that law, rather remarkably, has generally endured in almost the same form as when it was first codified with the passage of the Treasonable Offences Ordinance 1868 and the Straits Settlements Penal Code in 1872.

114 Although local cases involving the applicability of the treasonable offences provisions have generally been rare, and to date no such prosecution for treason has been conducted before our courts since Singapore attained independence in 1965, it would be naïve to assume that there will never again arise a situation involving the commission of treasonous acts that have the effect of endangering the security and stability of the Republic. The various reported incidences of Singaporeans actively involved in the planning of organised and violent subversive activity,[237] as well as Singaporeans who have been involved in instances of espionage,[238] plainly illustrate that threats to the integrity of the State will continue to emerge and the law on treason will always have a part to play in our legal landscape. Furthermore, the inherently violent and destructive nature of treasonable offences, and their capacity to generate great disturbances in the public tranquillity, arguably necessitate an equally robust legislative response from the criminal law, albeit one that is tempered with comprehensiveness and clarity in the interest of fairness.

115 The real question then is not whether or not the provisions on treasonable offences in our statute books should be retained, but rather

237 For a brief sample, see "10 Extremists Arrested in Raids" *The Straits Times* (11 January 1982) at p 11 and Leslie Fong & Ahmad Osman, "Inside Story of Terror Plot" *The Straits Times* (23 January 1982) at p 1; see also generally Richard Clutterbuck, *Conflict and Violence in Singapore and Malaysia 1945–1983* (Singapore: Graham Brash (Pte) Ltd, 1984).

238 "Special Soviet Privileges for Cypher Man" *The Straits Times* (9 March 1980) at p 9.

how these provisions should be applied in practice, given that there is no local precedent to provide a guide on the application of the treason law, while foreign decisions might not necessarily be suitable to our own domestic circumstances for their adoption. This article has thus sought to lay down some legal principles to guide lawyers and the courts in the interpretation and application of the treasonable offences. Mindful of the broader push towards law reform in the sphere of the criminal law that has been afoot over the past two to three years,[239] this article has also, in the same spirit of reform, proposed a possible reworking of the treason law through a comprehensive reform of the Chapter VI provisions in our Penal Code.

239 Indeed, there have already been two major legislative changes made to our primary criminal law statutes, the Penal Code (Cap 224, 2008 Rev Ed) and the Criminal Procedure Code (Cap 68, 2012 Rev Ed): see the Criminal Law Reform Act 2019 (Act 15 of 2019) and Criminal Justice Reform Act (Act 19 of 2018).

APPENDIX

Draft Penal Code (Amendment) Bill for the Amendment of the Treasonable Offences[240]

A BILL

intituled

An Act to amend the Penal Code (Chapter 224 of the 2008 Revised Edition) and certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Penal Code (Amendment) Act 2021 and shall come into operation on such date as the Minister may, by notification in the Gazette, appoint.

Repeal and re-enactment of Sections 121 to 124

2. Sections 121 to 124 of the Penal Code are repealed and the following sections substituted therefor:

"**Treason**

121.—(1) Whoever commits treason is guilty of an offence.

(2) A person commits treason if the person:

240 This draft Penal Code (Amendment) Bill sets out the author's suggestions in the main text of the article as to how the treasonable offences ought to be amended. The primary area of reform is set out in cl 2 of this draft Bill, which entails a major overhaul of the Chapter VI provisions in the Penal Code. The proposed new s 121 of the Penal Code in particular, which contains a more comprehensive offence of treason, is expressly modelled on the examples of the Australian Criminal Code 1995 (Cth), the Canadian Criminal Code (RSC 1985, c C-46), as well as James Fitzjames Stephen's draft Criminal Code Bill of 1878: see the UK Criminal Code (Indictable Offences) Bill 1878 (Bill 178). Reference was also made to several works of various learned writers and legal bodies, chiefly James Fitzjames Stephen's *Digest of the Criminal Law (Crimes and Punishments)* (London: Macmillan and Co, 4th Ed, 1887) and the *Report of the Royal Commission of 1878* that was appointed to consider the formulation of a criminal code for the UK. Every care has been taken to ensure that the end result is a bill which is not only comprehensive in its scope of the treasonable offences, but also clear in its language, so as to represent a vast improvement over the present law as it stands. As always, all errors remain the author's own.

(a) wages war, or does any act preparatory to waging war, against the Government;

(b) causes the death, hurt, unlawful imprisonment or restraint of the President;

(c) unlawfully deprives or deposes the President from the sovereignty of Singapore, or overawes the Government by criminal force;

(d) does any act, with the intention of helping an enemy engaged in war with Singapore and the Singapore Armed Forces, which is designed or is likely to give assistance to the enemy, to impede such operations of the Singapore Armed Forces, or to endanger life;

(e) instigates any person, who is not a citizen of Singapore, to make an armed invasion of Singapore; or

(f) conspires with any person to do anything mentioned in paragraphs (*a*) to (*e*).

(3) In this section —

"enemy" means the enemy in any war in which Singapore and the Singapore Armed Forces may be engaged but is not confined to a foreign Power.

"President" means the President of Singapore and includes any person for the time being performing the functions of the President under the provisions of the Constitution.

"waging war" means —

(a) attacking in the manner usual in war the Government itself or the Singapore Armed Forces, acting as such by the Government's orders, in the execution of their duty;

(b) attempting by an insurrection of whatever nature by force or constraint to compel the Government to change any law or measure, or to resist the execution of any law or measure, or to intimidate or overawe Parliament; or

(c) attempting by an insurrection of whatever kind to effect any general public object,

but does not include any insurrection against any private person for the purpose of inflicting upon him any wrong or offence, even if such insurrection is conducted in a warlike manner.

Explanation 1.— Where a person is a party to any criminal conspiracy to commit treason or cause treason to be committed, the act of conspiring and every act of any such criminal conspiracy shall be taken to be proof of an offence within the meaning of this section.

Explanation 2.— It is not essential for a person to have been a party to any criminal conspiracy to commit treason or cause treason to be committed from the start, provided that they joined in the conspiracy to commit treason or cause treason to be committed at any stage before the conspiracy is carried out.

Illustrations

(a) *A* joins an insurrection against the Government. *A* has committed the offence defined in this section.

(b) *A* collects men, arms or ammunition or otherwise prepares to wage war, with the intention of either waging or being prepared to wage war against the Government. *A* has done acts preparatory to waging war against the Government and has committed the offence defined in this section.

(c) *A* shoots the President with the intention of killing the President. The President does not die but only suffers hurt in consequence. *A* has caused hurt to the President and has committed the offence defined in this section.

(d) *A* offers to spy for an enemy that is engaged in war with Singapore. *A* has committed the offence defined in this section.

(e) *A* enters into an agreement with *B* and *C* to overawe the Government by criminal force. *D* subsequently joins in their conspiracy and procures weapons to be used in their attack on the Government. All four are guilty of criminal conspiracy to overawe the Government by criminal force and have committed the offence defined in this section.

Punishment for treason

122. Whoever commits treason shall be punished with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to caning.

Attempting to commit and abetting the commission of an offence under section 121

123. Whoever attempts to commit or abets the commission of an offence in section 121 shall be punished with the punishment provided for that offence.

Misprision of treason

124.—(1) A person commits an offence if the person:

(a) receives or assists another person who, to his or her knowledge, has committed an offence punishable under section 122 with the intention of allowing him or her to escape punishment or apprehension; or

(b) knowing or having reason to believe that a person has committed or intends to commit an offence punishable under section 122, intentionally omits to give any information respecting that offence to a public servant, or use other reasonable endeavours to prevent the commission of the offence.

(2) A person who is guilty of an offence under subsection (1) shall be punished with imprisonment for a term which may extend to 20 years, or with fine, or with both."

Amendment of Criminal Procedure Code

3. The First Schedule to the Criminal Procedure Code (Cap. 68, 2012 Ed.) is amended by deleting the items relating to sections 121 to 124 and substituting the following items:

"

122	Treason	May arrest without warrant	Warrant	Not bailable	Death, or imprisonment for life, and caning
123	Attempting to commit and abetting the commission of offences under section 121	Ditto	Ditto	Ditto	Ditto
124	Misprision of treason	Ditto	Ditto	Ditto	Imprisonment for 20 years, and fine

"

Saving and transitional provisions

4. Section 2 does not apply to any offence committed before the respective date of commencement of this Act.

EXPLANATORY STATEMENT

This Bill seeks to amend the Penal Code (Cap. 224) by creating the new offences of treason and misprision of treason, and also provides for attempts and abetments of the offence of treason.

The Bill also makes related and consequential amendments to the Criminal Procedure Code (Cap. 68).

Clause 1 relates to the short title and commencement.

Clause 2 repeals sections 121 to 124 and inserts new sections 121, 122, 123 and 124.

The new section 121 provides for a new offence of treason, which makes punishable any of the following acts:

(a) waging war, or doing any act preparatory to waging war, against the Government;

(b) causing the death, hurt, unlawful imprisonment or restraint of the President;

(c) unlawfully depriving or deposing the President from the sovereignty of Singapore, or overawing the Government by criminal force;

(d) doing any act, with the intention of helping an enemy engaged in war with Singapore and the Singapore Armed Forces, which is designed or is likely to give assistance to the enemy, to impede such operations of the Singapore Armed Forces, or to endanger life;

(e) instigating any person, who is not a citizen of Singapore, to make an armed invasion of Singapore; and

(f) conspiring with any person to do anything mentioned in paragraphs (*a*) to (*e*).

The commission of any of the abovementioned acts is sufficient to establish the offence of treason.

The new section 121 also covers the interpretation of "enemy", "President" and "waging war" and provides two explanations to clarify certain aspects of the new section.

Explanation 1 states that where a person is a party to a criminal conspiracy to commit any of the other acts in section 121(2), the act of conspiring itself and every act of any such criminal conspiracy shall be sufficient proof to establish the offence of treason. Thus, a person who conspires to commit any of the acts in sections 121(2)(*a*) to 121(2)(*e*), without doing more, will have committed an offence under section 121(2)(*f*).

Explanation 2 states that a person who joins in a criminal conspiracy to commit any of the acts in section 121(2)(*a*) to 121(2)(*e*) at any stage before the conspiracy is carried out shall be treated as a party to the criminal conspiracy for the purposes of section 121(2)(*f*).

The new section 121 also contains new *illustrations*. The *illustrations* are not meant to be exhaustive nor are they intended to restrict the power of the court to determine whether the offence under section 121 is made out. Much would depend on the assessment by the court as to whether, based on the facts of any given case, any of the acts is made out.

The new section 122 provides that the punishment for a person who has committed treason under section 121 will be punished with death or imprisonment for life and, if he is not punished with death, will also be liable to caning.

The new section 123 states that a person who attempts to commit or abets the commission of the offence of treason shall be punished with the punishment provided that offence, which is death or imprisonment for life and caning. This section provides that the punishment for attempts to commit treason and abetments of the commission of treason shall be the same as that for the offence of treason itself.

The new section 124 creates the statutory offence of misprision of treason. It makes it an offence for a person to receive or assist another person who, to his or her knowledge, has committed treason with the intention of allowing him or her to escape punishment or apprehension. The new section 124 also makes it an offence for a person who, knowing or having reason to believe that another person has committed or intends to commit treason, intentionally omits to give any information respecting that offence to a public servant, or use other reasonable endeavours to prevent the commission of the offence. The penalty is a maximum term of imprisonment of 20 years, or with fine, or with both.

Clause 3 makes consequential and related amendments to the First Schedule of the Criminal Procedure Code (Cap. 68).

Clause 4 provides a saving and transitional provision.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any financial expenditure.
