Book Review

CRIMINAL LAW IN MALAYSIA AND SINGAPORE[1]

by Stanley Yeo, Neil Morgan and Chan Wing Cheong

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I. Introduction

1 Coming hot on the heels of numerous amendments to the Singapore Penal Code passed by Parliament in October 2007, the authors of *Criminal Law in Malaysia and Singapore*, released in December 2007, had to grapple with updating the manuscript in a hurry.

2 Their task was made all the more challenging as the final version of the Penal Code Amendment Bill presented to Parliament was significantly different from the draft version circulated for public comment the previous year. For instance, the scope of the defence of duress under s 94 has now been widened to cover threats to persons other than the accused himself. Although time was obviously not on their side, the authors creditably managed to incorporate the key changes to the Code in their narration or, at the very least, by way of footnotes.

3 The book covers the main criminal law legislation and cases in Malaysia and Singapore. The Penal Codes of both countries feature prominently, but other legislation is used to explain particular crimes or principles. Thus, the Women's Charter, drug and regulatory legislation are used *ad hoc* to deal with domestic violence, evidentiary presumptions and strict liability respectively.

4 The authors intend the book to serve the diverse interests of legal practitioners and judges, scholars and students.

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1 Singapore: LexisNexis, 2007.

2 The views expressed in this article are personal to the reviewer.

II. Value for practitioners and judges

5 The authors deliver the substantive law clearly, drawing on authorities from Singapore, Malaysia, India (obviously) and other commonwealth jurisdictions where useful.

6 The exposition of the law will be immediately useful to practitioners and judges. Being a text book rather than a compilation of reference materials, it understandably quotes less liberally from case law than reference books such as Chan, Hor & Ramraj's *Fundamental Principles of Criminal Law: Cases and Materials* (2005). Nevertheless, this text book is of great assistance to the practitioner or judge in doing the initial getting-up, bringing one up to speed with an explanation and the gist of the main authorities applicable to specific offences or defences. The practitioner or judge would, of course, still need to go to the primary source (*ie*, the judgment) to assess the exact value of the authority as a precedent.

III. Comparisons across the Causeway

7 When juxtaposed with the last criminal law text book written locally by Koh, Clarkson & Morgan *Criminal Law in Singapore and Malaysia: Text and Materials* (1989), this latest book makes more direct comparisons between the substantive law and punishments for equivalent offences in Malaysia and Singapore. This is done through either separate expositions of the law of both countries, *eg*, on the scope of protection orders against domestic violence, or through tabular comparisons of the scope of offences or their punishments, *eg*, in the robbery sections. This cross-jurisdictional analysis would be of interest to comparative law scholars and students.

IV. Core values of the Penal Code undermined?

8 The important systemic issue raised by the authors is how far the core values of the Penal Code have now been undermined.

9 They note that when Macaulay drafted the Indian Penal Code on which the Singapore and Malaysian Codes were modelled, he intended the Code to trump the English criminal law, which he found less desirable as it was judge-made law articulated by unelected officials, which a layman would find hard to locate. By contrast, the Code was to have the core values of being comprehensive, precise, accessible and democratic, as an elected Parliament would make the criminal law, which would be self-contained and easily understood by laymen. Even though judges eventually had to interpret the Code, we are told that Macaulay had in mind a review mechanism where if any appellate court

reversed a lower court on a point of law not previously decided, the point would be referred to Parliament to decide and, if necessary, to amend the Code.

10 Obviously, this review mechanism is not in place. The authors correctly highlight the fact that the Legislature has passed unclear laws, *eg*, making it a crime to cause death by a rash act without defining the word "rash", leaving interpretation to the courts. At the same time, the courts grapple with unsatisfactory statutes and expressly leave law reform to Parliament. Problem areas can thus remain unresolved for a long time.

V. A treasure trove for law reform

11 What distinguished this text from others was the significant attention paid to law reform. There was a consistent effort in most chapters or topics to critique gaps or anachronisms and make detailed suggestions for law reform. Indeed, it is surprising that the authors do not mention legislators or those involved in policy work as among their target audiences.

12 In chapter 10, for instance, the authors dissect each limb of the definition of murder under s 300 of the Penal Code. They conclude that s 300(b) is redundant, as the perpetrator who knew of the victim's particular vulnerability probably had the requisite intention to kill under s 300(a) or at least knew that his acts would in all probability cause death under s 300(d). As for s 300(c), the current wording allows a conviction where the accused did not subjectively know that his acts could bring about the death of the victim; this needs review, especially since a murder conviction carries mandatory death. Clearly, the principle of linking the degree of blameworthiness to the severity of punishment is a critical tenet to be upheld and defended.

13 In the final chapter, the authors propose revitalising the Penal Code with a General Part which would set out the basic principles of criminal liability, *eg*, causation, requirements of different *mens rea*, the scope of general defences and so on. Less resort would then be needed to be had to judge-made (and hence, inaccessible and undemocratic) law.

14 Professor Stanley Yeo, one of the authors, made this call publicly at a Singapore Academy of Law lecture in 2004. While no reform can come without political will, those of us interested in improving the law must persist in the hope that someone would see the point one day. To that extent, the book is a must-read.