

The New Penal Code of Siam.

By T. MASAO, D. C. L., LL. D.

Introduction.

The name of a great monarch often goes down to posterity in connection with some great law. The name of Emperor Justinian who had been a great general is handed down to us more in connection with his famous Codes than in connection with any of his great wars. So is the name of King Phra Buddhayot Fa of Siam handed down to us more in connection with his famous recension of Siamese laws than in connection with anything else he accomplished. Napoleon is now remembered equally well in connection with wars as in connection with the Code which bears his name, but as time goes on the glories of his famous wars will fade into obscurity and the time will come when, as in the case of Justinian, Napoleon's name will be remembered more in connection with his famous Code than in connection with his famous wars. It may then be said that the recent promulgation of the Penal Code for the Kingdom of Siam was an event of no small significance to His Majesty King Chulalongkorn. Indeed, any one who has read His Majesty's preamble published in the local press a few weeks ago can not have failed to be impressed with the deep appreciation His Majesty has of the importance of the steps His Majesty is taking in regard to the enactment of the Penal Code and other Codes that are to follow.

Incidentally, His Majesty the King has given in that preamble a most accurate history of the new Penal Code and of general codification in Siam. It is therefore quite unnecessary for me to say anything in regard to the history of this Code to-night. The best I can do is to refer you to His Majesty's most elegant and accurate historical account given in that preamble. I may therefore proceed at once to give you an account of such general features of this Code as may be of interest to you as members of the general public.

Classification of Offences.

The new Penal Code of Siam discards the system of dividing offences into classes—a system in vogue with most of the older Penal Codes. If you will open the French Penal Code of 1810, which is still in force, the first thing you will meet with is the division of offences into 3 classes, namely, crimes, delicts, and contraventions. This system was followed by most of the older Penal Codes—such as those of Belgium, Germany, Japan, Italy, Egypt, etc. One great defect of this system is that it is impossible to define crimes, delicts and contraventions in such a way as to distinguish them logically one from another. For, what logical difference is there between a crime and a delict? There is none. They are both offences. It is no wonder then that the French Penal Code simply begs the question by saying that a crime is an offence liable to afflictive or infamous punishments or to both, a delict is an offence liable to correctional punishments, and a contravention is an offence liable to police punishments. Logically this is no definition. But if the Courts were divided into corresponding classes, for instance, as “Criminal Courts,” “Correctional Courts,” and “Magistrates’ Courts,” such a division of offences into classes might be found useful in deciding the question of jurisdiction. But the fact is, that in Siam as in many other countries the powers of a “Criminal Court” and the powers of a “Correctional Court” are vested in one and the same Court. Consequently, there would be neither logic nor practical utility to warrant the adoption of the conventional system of dividing and classifying offences. However, for the sake of convenience petty offences are grouped together at the end of the Code. That the modern tendency has been to do away with the system of dividing and classifying offences may be seen from the fact that the new Penal Code of Japan promulgated this year has also discarded it. It may also be of interest to you to know that the Indian Penal Code is on the side of those Codes that do not divide offences into classes.

Punishments.

One good result of the discarding of the conventional division of offences into crimes, delicts and contraventions by the new Penal Code is that it has simplified the names of punishments to a great extent. Under this Code there are only 6 punishments, viz.,

- (1) Death,
- (2) Imprisonment,
- (3) Fine,
- (4) Restriction of residence,
- (5) Forfeiture of property, and
- (6) Security for keeping the peace.

You will have some idea of the simplicity attained in this respect when you remember that under the French Penal Code there are 15 punishments and under the old Penal Code of Japan no less than 18. It might be suggested that it is very well to reduce the number of punishments but it would be disastrous to do so at the cost of some of the necessary modes of punishment. I can assure you that there is absolutely no need for apprehension on that score. For, the fact is that in the case of the French Penal Code, the old Japanese Penal Code, and the other Penal Codes following the conventional method of dividing offences into crimes, delicts and contraventions, it is found necessary to multiply and complicate the names of punishments in order to make them fit in with the different classes of offences, although as a matter of fact there may be no substantial difference between one mode of punishment passing under one name and another mode passing under a different name. For instance under the old Japanese Penal Code, imprisonment alone has no less than 11 different names, viz.,

- (1) Forced labour for life,
- (2) Forced labour for a limited period,
- (3) Perpetual deportation,
- (4) Temporary deportation,
- (5) Major reclusion,
- (6) Minor reclusion,
- (7) Major detention,
- (8) Minor detention,
- (9) Imprisonment with work,
- (10) Imprisonment without work, and
- (11) Police confinement.

The French Penal Code is not quite so bad, but even there you will find as many as 6 different names for imprisonment

and 7 if deportation is included. But in France deportation is a distinct form of punishment. In Japan it is not. The Japanese Government has found it extremely difficult to make proper provisions for enforcing deportation as a form of punishment distinct from imprisonment. The result is that all the 11 punishments above mentioned are simply different names for calling one and the same thing,—imprisonment. The only distinctions that can possibly be made are that some prisoners are made to work while others are not, and that some prisoners are kept in one jail while others are kept in another. But if these are distinctions they are distinctions that exist everywhere, whether imprisonment is called by one name or by a dozen different names.

With offences divided into classes it is necessary to call imprisonment by a great many different names. But with offences not divided into classes, there is no necessity for complicating matters by calling one and the same thing by so many different names. Consequently, the new Penal Code of Siam has only one name for imprisonment, *i. e.*, it is called by that name only. That is the principal reason why this Code has attained so much simplicity in respect of punishments, and in this respect it compares favourably with the Indian Penal Code under which there are 7 punishments, and the new Japanese Penal Code, under which there are also 7 punishments. It will be noticed that the Code leaves whipping out of the list of punishments. This is simply recognizing in the Code what already exists as a matter of fact, namely, the fact that in general conformity with the humane sentiments prevailing under His Majesty's enlightened rule the Courts have practically put whipping out of use. It is a curious fact that if any voice is heard against the abolition of whipping in Siam it is not so much from the Siamese as from some Europeans,—especially, Englishmen from India. Perhaps, it is well to remember that the Indian Penal Code is probably the only civilized Penal Code that retains whipping.

First and Second Offenders.

How to control second offenders is a problem that has to be met with by the administrator, the legislator, and the judge alike. The Finger-print system first introduced by the Commissioner of Police into the Police Department of Bangkok some years ago has been found so useful that it has been adopted by the Ministry of

Justice as a means of controlling second offenders throughout the Kingdom. But the subject of the Finger-print system scarcely belongs to the Penal Code. Within the sphere of a Penal Code there are two systems for controlling second offenders, either or both of which may be adopted. The new Penal Code of Siam has adopted both of them. The first of these is :—

The System of Conditional Sentences.

This is quite an innovation. Strictly speaking it is not so much a system of controlling second offenders as that of controlling first offenders. It is a system of controlling first offenders in such a way as to prevent them from committing offences a second time. Many a Judge can recall with the deepest grief the instance when circumstances compelled him against his better judgment to send a man or woman to prison when such man or woman had merely been the victim of some temptation or circumstances for which, morally speaking, such man or woman could hardly be said to be blamable and yet legally had to be held responsible. If, in such a case, there is no previous conviction proved against the offender, and it appears to the Judge that in view of the comparative respectability or youthfulness of the offender, or of the comparatively good character he has been known to bear in the past, or of the comparatively good antecedents he possesses, or of any other sufficiently extenuating circumstances,—if, in view of all or any of these circumstances, it appears to the Judge that under a proper warning from him the offender is likely to exercise more control over himself in future and is not likely to commit a second offence, what necessity is there for sending him to prison except that of satisfying the letter of the law? On the other hand, if such an offender is sent to prison, what is the result? He mixes with other prisoners who are real criminals and by the time his sentence expires he comes out of prison as a new man—not as a reformed new man but as a new member of the criminal class. If, in such a case, the Judge had the discretionary power of making the sentence conditional, *i. e.*, that the sentence of, let us suppose, imprisonment for 1 year shall not be executed on condition that the offender does not commit another offence for, let us say, 5 years, it would be like killing two birds with one stone. During those 5 years the offender would be a sort of a penitent. In his conscience he would be just as sorry for having committed the

offence as if he were in prison, but not being in prison he would not run the risk of receiving a criminal education. Then there would be the inducement that if he does not commit another offence during those 5 years the sentence is not to be executed at all and what is more the sentence becomes null and void, so that he becomes a man with a clean record as if he had never committed an offence in his life. On the other hand, there would be the warning that if he does commit another offence during those 5 years, the sentence becomes at once effective and in being tried and sentenced for the subsequent offence he is to be treated as a second offender subject to the disadvantage resulting out of the principle of Recidivism, of which I shall speak further.

It was with some such ideas as these that the system of conditional sentences was first tried in Belgium some 20 years ago. It was found so successful there that the example has been followed by several other countries such as France, Japan, Egypt, etc. The system, as adopted in the new Penal Code of Siam, is to be applied to sentences of imprisonment for 1 year or less only and the period of "penitent probation", if I may call it so, is 5 years. In Japan, the authorities were not sure as to whether the system would work well or not. A special decree was passed and the system was put in force more as an experiment than anything else. The Japanese authorities wished to be cautious in the matter and the system was applied only to sentences of imprisonment for 1 year or less, as is also the case with the new Penal Code of Siam. But the result of the experiment has been so satisfactory that the system has now been formally incorporated into the new Japanese Penal Code and its scope has been extended so as to apply to sentences of imprisonment for 2 years or less. In Belgium, France, and other countries where the system of conditional sentences is enforced, it is done so by special laws for the reason that at the time the Penal Codes of those countries were enacted the system was not yet in existence. The new Penal Code of Siam and the new Penal Code of Japan, which are the latest additions to the list of the Penal Codes of the world, are probably the only Penal Codes in which the system of conditional sentences is formally incorporated. In fairness to America and England it should be mentioned perhaps that it was in America that the idea of conditional sentences first originated and that England too has had her system of what is called "probation

of first offenders" for half a century. But the system of conditional sentences adopted in the new Penal Codes of Siam and Japan is essentially the Continental one.

I have said above that the new Penal Code of Siam has adopted two systems for controlling second offenders. So much for the first of these two systems. The second of these is:—

Recidivism.

This is a system of controlling first offenders against becoming second offenders, of controlling second offenders against becoming third offenders, of controlling third offenders against becoming fourth offenders, and so on, by holding out to them the fear of increased punishments. In short, it is a system of controlling habitual offenders by increasing their punishments in certain definite proportions. Recidivism is one of those principles which are so commonly known in countries where the system of Continental Codes is followed but are almost unknown as general principles of jurisprudence in countries where English law prevails. An English Judge will as a matter of common sense be inclined to punish a second offender more severely than a first offender as, indeed, any Judge will be inclined to. But an English Judge who gives an increased punishment to a habitual offender does so (except in some statutory cases) within the maximum limit of the punishment provided for the particular offence committed, while a Continental Judge who does the same thing has the advantage of doing so by extending the maximum limit of the punishment by so much and within the maximum limit so extended. As adopted in the new Penal Code of Siam there are four kinds of recidivism, viz., general recidivism, special recidivism, third offenders' recidivism, and recidivism of petty offences. General recidivism applies where a person who has been punished for any kind of offence commits another offence of whatever kind within 5 years of his liberation from the punishment suffered for his first offence. In such a case the punishment for the subsequent offence is, according to the system adopted, to be increased by one third. Special recidivism applies where a person who has been punished for one of the offences specially mentioned in the Code for this purpose commits another offence of the

same class within 3 years of his liberation. In such a case the punishment for the subsequent offence is to be increased by one half. Third offenders' recidivism applies where a person who has been twice punished for one or another of the offences specially mentioned in the Code for this purpose commits another offence of the same class within 5 years of his liberation. In such a case the punishment for the last offence is to be doubled. Recidivism of petty offences applies where a person who has been punished for having committed a petty offence commits another petty offence of the same class within one year. In such a case also the punishment for the subsequent petty offence is to be doubled.

Maximum and Minimum Punishments.

One of the most striking features of the French Penal Code is the extreme narrowness of the limits within which the maximum and minimum of each punishment are prescribed. It forms such a contrast to the English system of prescribing only the maximum punishment for each offence and leaving everything else to the discretion of the Judge. Under the French system the Judge has but little discretion left. In my opinion the system of maximum and minimum punishments adopted in the French Penal Code is one of the reflections of the spirit of the period following the French Revolution. It is one of those things that were adopted at that period to safeguard the people against the tyranny of the officials. While the English system is no doubt a most excellent system for England, it does not follow necessarily that it will prove itself to be so for any other country; and while the French system ties up the Judge too much and has no doubt other defects as well, it cannot be denied that it has some very excellent points about it too. The English system requires a staff of most superior judges such as are found in England, who may be said to be almost superhuman. The French system is workable with a staff of judges who have received a fair training as judges. If a choice had to be made between the two systems to begin a new experiment, the cautious man would have no hesitation in choosing the French system to begin with. If the French system is modified in such a way that the limits within which the maximum and minimum of a punishment are prescribed, are not made too narrow, a great

deal of the objection against the system disappears while the commendable features of the system are kept intact. The system of maximum and minimum punishments adopted in the new Penal Code of Siam is just such a modified form of the French system.

Accumulated Offences.

The new Penal Code of Siam discards a principle which is common to Continental Penal Codes but unknown to English law and passes under the name of "Cumulation of Offences." This principle means that where an offender has accumulated several offences such as theft committed at one place, fraud committed at another place, etc., for which he has not been punished yet, he is, on being tried and sentenced for all these offences together, to receive the punishment provided for the most serious of these offences only, as is the case with the French Penal Code, or is to receive the punishment provided for the most serious of these offences plus one fourth or one third etc. of the punishments provided for the rest, as is the case with the new Japanese Penal Code. In my opinion this is another one of those things reflecting the spirit of the period following the French Revolution. The defenders of this system usually rely on philosophical grounds of extremely speculative kind, namely, that the criminality of an offender who has accumulated ten offences committed at different times and places is not necessarily ten times the criminality of an offender who has committed only one offence and that if the State had exercised sufficient vigilance to catch and punish him when he had committed his first offence he might have been prevented from committing his nine other offences. The simple and practical English system of visiting each offence with punishment is one that commends itself far better to common sense. The new Penal Code of Siam is distinctly English in this respect. Of course, the English system of visiting each offence with punishment does not mean that where a person violates several provisions of the law by one and the same act he is to be punished separately for each violation of the law, nor does it mean that where a person commits an offence which is composed of many parts any of which constitutes a separate offence, he is to be punished separately for each of those many parts. For if it did, what would be the result? A man who gives another man a

hundred strokes with a stick would, at the rate of let us say one year for each blow, get one hundred years for the whole beating ! The English system is sufficiently guarded against such absurdities and so is the system as adopted in the new Penal Code of Siam.

How to Count a Term of Imprisonment.

This is a question of very practical importance,—especially to prisoners. Suppose a man is sentenced to imprisonment for a month. It is a question of absorbing interest to him to know when that sentence begins to run and when it ends: whether imprisonment for a month means imprisonment for one calendar month, in which case it makes a difference of three days whether he is imprisoned in February or in March, or whether it means imprisonment for 30 days, in which case it makes no difference whether he is imprisoned in February or in March or in any other month: whether the first day of imprisonment is counted, and, if so, whether it counts for one full day or for any fraction thereof: whether the last day of imprisonment is counted and, if so, whether it counts for one full day or for any fraction thereof: whether both the first and last days of imprisonment are counted or whether either the first or last day only is counted: whether the month begins to be counted from the time when the prisoner was actually under imprisonment pending his trial, or whether it begins to be counted from the time when the judgment was read out to him or from the time when the judgment became unappealable: and so on. The question becomes still more complicated if there is an appeal. It then becomes a question of equally absorbing interest to the prisoner to know whether the imprisonment undergone pending the appeal is to be counted and if so, for how much: whether it is counted for more or for less if the appeal was by the prisoner himself, or was by the Crown Prosecutor: whether it is counted for more or for less if the appeal was won or was lost: and so on.

The French Penal Code contains most elaborate provisions in regard to these questions, leaving to the Judge little else but mechanical work to do,—a fact which I regard as another instance of the reflection of the spirit of the period following the French Revolution. But the provisions of the new Japanese Penal Code and other modern Penal Codes in regard to these questions display a tendency to simplify the matter as much as possible. In

consonance with this tendency the system adopted in the new Penal Code of Siam is exceedingly simple. It is as follows:—A month does not mean a calendar month but means 30 days. The first day of imprisonment counts in full, but the last day, *i. e.*, the day of liberation does not count at all. So far there is not much difference between the Siamese system and any other system. But now comes the simplicity of the Siamese system, namely:—Imprisonment undergone pending trial or appeal counts in full, except when provided otherwise by the judgment. This disposes of nearly a dozen questions suggested above, by one stroke. It may not be in strict conformity with the hard theory of the law that a man who is spending his time in an Under-trial Jail pending his trial or appeal, is not spending his time there as a convict, and that consequently the time spent there should not count for his sentence. Nevertheless, it is an exceedingly simple, practical and humane system, and what is best of all, it is the system that has been actually in use in Siam.

Juvenile Offenders.

The tendency of modern legislation in regard to juvenile offenders is to recognize them more and more as a distinct class of unfortunate children and to give more and more freedom to the Judge in dealing with them. In most cases they are either orphans or cast-aways, or children of parents who have not made their homes sweet to their children. Some of them may be of a comparatively good sort: others may be of an absolutely bad sort. In some cases a mere admonition from the Judge may be sufficient: in other cases it may be necessary to do a great deal more than that. What is certain in all cases is that they should not be sent to ordinary jails where they may only be expected to receive a further training in the profession of crimes. It is clear then that the Judge should be given considerable freedom in dealing with juvenile offenders, so that he may act according to the requirements of each particular case. In the case of an orphan or castaway who, in the opinion of the Judge, requires more than a mere admonition, the best and the only thing that can be done may be to send him to a Reformatory School. But in the case of the child of a parent who has failed to make his home sufficiently attractive to the child, it may be said that the responsibility for the child's offence rests as much (or perhaps more) on the

parent as on the child and it may be a good idea to bind over the parent in some way for the good behaviour of the child.

The system adopted in the new Penal Code of Siam is substantially the system in use in England, Japan and Egypt, and meets all those emergencies above suggested. Children under 7 years are absolutely irresponsible. Children over 7 years and under 14 are presumed to be irresponsible but may be admonished, or sent to a Reformatory School, or handed over to parents under a bond for good behaviour, etc., etc., according to the requirements of each particular case and according as the Judge thinks fit. Children over 14 years and under 16 are also presumed to be irresponsible, but this presumption may be rebutted. Unless it is rebutted they are to be dealt with in the same way as children between 7 and 14. If it is rebutted and a child between 14 and 16 is proved to have attained sufficient maturity of understanding to judge of the nature and illegality of his conduct, he is to be punished with half the punishment provided for his offence. Even then the Judge may, if he thinks fit, send the child to a Reformatory School instead of inflicting the half punishment.

Application of the Code.

Sooner or later the time is bound to come when Siam shall be freed from the present regime of what is popularly called extra-territoriality, or the system under which the subjects of the Treaty Powers are exempt from the jurisdiction of the Siamese Courts and are subject only to the jurisdiction of the Courts of their own Consuls or their own Judges. A Penal Code for Siam which is adopted at a time like now when the abolition of the system of Consular jurisdiction seems so much nearer in sight than it ever seemed at any other time, should of course provide for the event of its being applied not only to Siamese subjects but to foreigners as well. Moreover such a Code should not only provide for the event of its being applied to foreigners committing offences in Siam but also for the event of its being applied to foreigners committing at least some special kinds of offence out of Siam. Such special kinds of offences are the offences against the King of Siam and the Siamese Government, the offences of counterfeiting Siamese coins, and of forging Siamese paper-currency notes or bank-notes, Siamese revenue stamps, etc.,

etc. When the old Japanese Penal code was enacted 30 years ago as a means of preparing the way for the day when the Treaty Powers should give up Consular jurisdiction, that day seemed so far away that even the eminent French jurist, M. Boissonade, who drafted that Code, did not think it worth while to provide for the event of that Code being applied to foreigners committing such special kinds of offences out of Japan. No great inconvenience was felt as long as the Treaty Powers maintained Consular jurisdiction. But when on the outbreak of the war with China the Treaty Powers suddenly gave up Consular jurisdiction in Japan, the defect of the old Penal Code in this respect became very evident and it was one of the principal causes that necessitated the enactment of the new Penal Code for Japan. In Siam we want to do better than they have done in Japan in this respect. At any rate, we do not want to draw up a Code which is intended for a certain state of things and which, when that very state of things begins to exist, is found to require to be superseded by another Code on account of that state of things having come into existence.

The provisions of the new Penal Code of Siam on the subject of the application of Siamese criminal laws leave little to be desired. In short, these provisions are that the Penal Code and other Siamese criminal laws are applicable to all offences committed in Siam and to such offences committed out of Siam as are stated in the Code, namely, the offences against the King and the State, the offences relating to money, seals or stamps of the State, and the offence of piracy. It is also provided that a Siamese subject committing an offence out of Siam is punishable in Siam provided that there be a complaint by a foreign State or by the injured person; that the offence be punishable as well by the law of the country where it is committed as by the law of Siam, if committed in Siam; and that the offender be not acquitted or discharged in the foreign country. Of course, it need scarcely be said that these provisions have only a limited application at present, but that is no reason why they should not be there,—especially in view of Japan's experience in this respect.

Conclusion.

Such are a few of the general features of the new Penal Code of Siam. Things accomplished in the administration of law are

least visible to the physical eye. But I may be pardoned for expressing the hope that what has been said to-night will have shown incidentally that the progress made in the legal lines in Siam has been quite as great as that made in the military lines where every one can see with his own physical eyes the wonderful progress that has been made within the last few years. Truly, His Majesty King Chulalongkorn of Siam might, with equal fitness with Justianian, proclaim to the world:—

“Imperatoriam majestatem non solum armis decoratam sed etiam legibus oportet esse armatam, ut utrumque tempus et bellorum et pacis recte possit gubernari!”

Conclusion

ORDINARY GENERAL MEETING, 2ND JULY, 1908.

DISCUSSION ON DR. MASAO'S PAPER.

An ordinary meeting of the Society took place at the Bangkok United Club on the evening of Thursday, the 2nd July, 1908. The President, Dr. O. Frankfurter was in the chair.

In introducing Dr. Masao the Chairman said: The paper which Dr. Masao is going to read before us this evening on the new Penal Code of Siam is one of very great interest, and in which every one who witnesses the development of Siam is necessarily interested. Dr. Masao, who is the oldest Member of the Committee for the drafting of the law, is thoroughly competent to deal with questions of modern and ancient law, and he has also shown when he read before us his papers on the indigenous Law of Siam, as a study of comparative jurisprudence.

Dr. Masao then read his paper.

Dr. Frankfurter said: The applause which greeted Dr. Masao makes it very easy for me to propose the first resolution this evening, viz: a cordial vote of thanks to Dr. Masao for his very competent paper. He has given us in a short space a clear and succinct statement of what the new penal code of Siam will be, he has shown that its provisions are clear and free from ambiguity and that in the hands of judges animated by care and diligence the code will be of benefit for future ages, and will, as Dr. Masao said, redound to the glory of the King under whose reign it was promulgated. The language of the law is clear, plain, and thoroughly Siamese, and not that curious mixture of Anglo-Siamese of which Mr. Black and others rightly complained in laws which were too obviously modelled after foreign examples. We can only hope that the second and more important task, that of the drafting of a Civil code for Siam will be taken in hand under the same good auspices and that we shall have in the near future as able an expositor of its provisions as Dr. Masao has proved himself to be in the Penal Code, *Quorum pars magna fuit*

Mr. J. Stewart Black said: I feel sure we shall all most cordially endorse the vote of thanks which the President has just proposed to Dr. Masao for his interesting and valuable paper on the Siamese Penal Code.

If M. Padoux, the Legislative Adviser, had not been absent on leave, he would no doubt have sought an opportunity of reading a paper before this Society on the subject of the Penal Code, for which in its final shape he is chiefly responsible. In his absence no one I am sure is better qualified than Dr. Masao to undertake this task. And he is to be congratulated not only on the mastery of the English language which he has displayed, but on the clear and emphatic manner in which he has read the paper to us.

He has presented to us some of the more salient features of the Siamese Penal Code. And I should like to say something about the sources from which the Code has been derived and perhaps also to point out some of the differences which may strike those who are accustomed to the English system of law.

You will have gathered from what Dr. Masao has said that this Penal Code is not a slavish copy or imitation of any of the other Penal Codes in existence.

This is quite correct, but of course inspiration has been derived from all Penal Codes--the Italian, French, Indian and Japanese Codes, in particular.

The French system of codification has had predominating influence on all Codes, and to this start it has also influenced the Siamese Penal Code. It has, I might say, similarly influenced the Indian Penal Code. But it is worth while noting that the modern system of codification did not originate in France. To Germany belongs that honour. As far back as the year 1510, a Penal Code was drafted for one of the German States and during the next two centuries Penal Codes were enacted in Batavia, Prussia and Austria.

In 1810 the French Penal Code was promulgated, and it was so much superior to the existing German Penal Code that the latter when amended, showed strong traces of the French influence, and that influence, as I have said, is seen to exist in all Codes now in force at the present time.

There exists a Penal Code in every civilised country in the world, with one exception and that exception is England.

Why this should be so, is rather difficult to say. Perhaps the reason is the insuperable difficulty which exists in the way of getting any legislation through such a mixed assembly as the British Parliament. I think too the British Public has always displayed great apathy concerning all legal matters. It may also be said that we have in England judges of such eminent character and abilities that they succeed in keeping a system going which in the hands of less able men might lead to a popular outcry for reform.

But there has been in England at the time, though not in the memory of the present generation, much discussion on the subject of codification.

In the year 1833 a Royal Commission began sitting to report on the state of the Criminal Law. It sat for about 10 years and issued voluminous reports, in which is to be found a Digest of the Criminal Law of England. A second Commission then sat from 1843 to 1848 to consider what amendments should be introduced into the Law. They also issued voluminous reports from time to time and finally drafted a Bill which was practically a Penal Code for England.

This was presented to Parliament, but ultimately for one reason or another—mostly political—it was dropped with the exception of the consolidation of some Acts, relating to special offences, passed in 1861. This is about as far as England has gone towards codification.

But all this was not done without discussion and it was such discussions in England and in other countries that have been of use to those concerned in drafting the Siamese Penal Code. Many debatable points in criminal law have been thoroughly thrashed out in Europe and full advantage of this has been taken here and though it is correct to say that the Siamese Code is not a copy of any Code, the drafting of it has naturally been made easy on account of the labours of so many predecessors in the same field.

In a country like Siam, where we have no Parliamentary institutions and where the public are not invited to contribute to the work of legislation, we have less discussion. When once a measure is decided upon it becomes a comparatively easy thing to get it passed into law.

As regards the general principles of the Siamese Penal Code, I think I may say that people who are accustomed to the English system of law will not find anything in the Code which is very strange or novel and other European nations will find it more or less familiar.

There are one or two points which may interest lawyers in Bangkok. The punishment of restriction of residence, for example, is new. Here in Siam on account of geographical reasons it was not found possible to make deportation a punishment, but restriction of residence is useful in the case of some notorious offenders whose evil reputation has made them feared in their own districts.

It is convenient to be able to prevent such offenders from returning to their own village and terrorising the people, and the Code gives the Court power to add in their judgment that certain offenders after the expiry of their term of imprisonment shall either live in a certain district or shall refrain from returning to a certain district for a length of time not exceeding 7 years.

The sections which deal with insanity are interesting and the point is new to English lawyers. In English law to speak popularly and generally an insane person is not held responsible for his actions. Under the Siamese Code a middle course may be taken. If the Court thinks the accused is only partially able to judge of the nature and illegality of the act, some sort of reduced punishment may be given, no minimum being fixed. Personally I think the English method is best but it will be interesting to see how the Siamese judges deal with a difficult point like this.

Then there is another section which will strike some people as new. It has been made a criminal offence to reveal a secret which is communicated to a professional man. This is not an offence under English law, but by the Siamese Penal Code any person who wrongfully discloses any private secret communicated

to him by reason of his functions or profession in a manner likely to cause injury to the person communicating such secret, is liable to imprisonment or fine.

In concluding, Mr. Stewart Black said that time would not permit him to mention other points but he felt sure that foreign residents in Bangkok, would not find anything in the Code with which they would not more or less completely agree and that the Siam Society and the public in general were much indebted to Dr. Masao, for the learned and interesting contribution he had made to their knowledge of the Siamese Penal Code.

The President: We should be glad if Mr. Naylor, who has had a long experience of criminal law in Siam, would give us his views.

Mr. C. Naylor said:—The interesting paper which has been read by Dr. Masao has been perhaps more interesting to me on account of my knowledge of the evolution of the Siamese Penal Code than to others. I remember fifteen years ago my old friend Luang Ratanayati, then Attorney General, afterwards Phya Kraisee; and Chief Judge of the Criminal Court starting to draft a new Penal Code for Siam. He was an English barrister, and he was firmly convinced that there was no better means of providing a penal code for Siam than by following on the general lines of the Indian Penal Code. He knew the temperament of his countrymen very well. He made a draft in English of a penal code which however did not find favour with the Siamese authorities, and I suppose it may be found in some pigeon hole or other even now. He was admitted, during his time, to be one of the best criminal judges that has ever sat on the Siamese Bench. The learned writer of the paper which we have just heard has this advantage over me, and I think over most of us, that we have not seen the text of the Penal Code to which he refers. I do not know in what language the Code was first drafted, and I am very curious to know whether it was in English or in Siamese. I ask this because among the many learned gentlemen who contributed to this, were men whose mother languages were different. In the first place the Penal Code confines itself or so I imagine, entirely to laying down what offences and acts on the part of individuals are considered criminal by the State, and also provides for the punishment which such acts merit. It has

nothing to do with procedure. A comparison has been drawn between European Continental and English law with regard to crime. The great difference between the British and the Continental system is not on the question of what are crimes and what are not, and what punishment should or should not be awarded, but the great difference is the distinction between their procedure and ours. The great difference in this connection is this; the British system gives to the judge a very great and wide discretion. We believe that justice cannot be measured by the yard; that you cannot draw up a code which will with certainty mete out justice in every individual case, but that you must leave great latitude to the judges who are trained accordingly. The Continental system on the other hand leaves very small discretionary power to the judge. The Siamese Penal Code, as far as I have been able to judge from the papers, goes much farther than the Continental system in the direction of reducing the Judges to mere machines; to men who have to act in the way the Code dictates. My experience of criminals in Siam is this. They are not the criminal you get in London or Paris or Berlin; they are not the men who make crime a business. Most of the men who are brought before the criminal courts in Siam are men who are to all intents and purposes children, men without ingenuity, without education, and without any training in crime. There are practically no clever criminals in Siam. Practically they are infants because in their early years they have never received any training in character or knowledge. Surely then you must adapt your code to your criminal? The great objection to the English system is this. If you get an incapable judge, the justice administered is bad; but fortunately in England we have by the system of appointing our judges from the Bar, obtained men who are perfectly capable of exercising a wise discretion without being tied to any particular section of a Penal Code. Proceeding, Mr. Naylor remarked, I can hardly believe the Siamese code will constitute a new era or that it can be compared in any way with the Code of Justinian which set an example to generations unborn. I think myself in this Code the Siamese and their advisers have been too ambitious. They have not been content to follow a good working Penal Code, which has borne the test of time in other Asiatic countries, but they have attempted to go one better, and to have a more elaborate Penal Code than any other country in the world. Therefore

we have these over-refinements which have been pointed out to us by Dr. Masao and Mr. Black. It is a great pity that this Code was not passed years and years ago, because the Siamese criminal law has been in a most hopeless condition for years past. Dr. Masao says the new Code does not include the punishment of whipping. I think myself, it is a great pity that it has been omitted from the new Code, because it is a punishment most peculiarly adapted to infantile intelligence, and I think the majority of criminals in Bangkok however adult they may be in years, are but infantile in intelligence. I must confess too, I have no sympathy with the scheme of deportation which the Siamese Government has formulated. I look upon deportation as a means whereby a State gets rid of its obligations. I do not like this scheme at all. Deportation is an inexact punishment; to one man it may mean happiness, to another starvation and the breaking up of family ties. Dr. Masao has insisted on the importance of finger prints. This is scarcely a matter for the Penal Code, but more a matter of evidence. The confidence to be placed in finger prints has been very much shaken of late, and in a trial in Australia not very long ago, it was demonstrated that two men who were before the Court had absolutely similar finger prints. I do not think Dr. Masao has done full justice to the English law in talking about conditional sentences, nor is it absolutely beyond all doubt that a second offender should be more highly punished than a first offender. I have heard of a Siamese judge who thought distinctly the reverse. I believe there is a case on record in the Siamese Courts where a man was brought to justice for having being out after dark in a certain village without carrying a lamp, and the Magistrate before whom he was brought inflicted the utmost penalty because it was his first offence, arguing that if he inflicted the heaviest penalty for the first offence the man would not offend again. Whether that judgment was upset on appeal or not I do not know. Again Dr. Masao has told us of the Code in so far as it refers to cumulative crimes or cases in which a man is charged at one time with various offences arising out of the same act. He seems to infer there is no provision in English law for such cases. That is not so; for in many cases, where several charges might arise out of one act, the prosecution is bound to elect to proceed on one particular act. I wonder very much whether the rules with regard to juvenile offenders will be found to work well.

In conclusion Mr. Naylor said, Dr. Masao gave us to understand that the Code has been drawn up with a view of including the Siamese and the stranger within the gates. Well, I do not know myself what the new Anglo-Siamese treaty may amount to, but if it places the individual British subject under the Siamese courts as they at present exist, then there must be some radical alteration. Mr. Black has referred to English law as if it were entirely uncodified. That is scarcely fair. Not only in civil law, but in criminal law, many of our statutes are to all intents and purposes codes of that particular branch of the law with which they deal; in fact one might say at the present time the criminal law of England is codified by statute. I personally hold the view that complete codification is not by any means a thing to be desired, and that we in England have gone quite far enough, and that it is very much better to allow trained Judges to deduct from general principles the law which should be applied in a particular instance than to compel the Court in every case to turn up a section of a code, and bind it by the text found there. The question of the responsibility of insane persons is one which jurists have discussed for many years past. I think that people who legislate in the way the authors of this Code have legislated, lose sight of the object which the State has in punishing a criminal. You punish a criminal in order to deter other people from doing what he has done, not as an act of revenge on the criminal himself. But judicial reform and improvement in Siam is not to come so much from the passing of new laws as from a revision of the method in which justice is administered, and by the placing of more thoroughly intelligent men upon the Judicial Bench. Until you can get His Majesty to recognise that the profession of the law is a profession as well worthy of reward as that of the Army or Navy, until you raise the salaries of your judges and make their position a position of high honour, no code which you may promulgate will ever make perfect the administration of either civil or criminal justice in Siam (applause).

Dr Masao replying to Mr. Naylor's query as to which language the code was drawn up in said it was drawn up both in English and Siamese.

Dr. Hillyard said he quite agreed with Mr. Naylor that they were under a disadvantage in not having seen a copy of the Code before hearing the paper. However, Dr. Masao had explained so

clearly the various important points in the Code that this disadvantage was to a very large extent obviated. He pointed out the importance of extradition treaties with the various Powers in the event of extra-territorial rights being given up. He said that too much emphasis could not be laid upon the fact that before the Code they must have a Judicial Bench able to deal with the Code. Whilst they had in Siam well equipped and most commendable training colleges for the Navy and Army, where there were competent instructors and a well planned curriculum, the study of law was practically in abeyance. Nearly all the law students were employed in the various government departments and consequently have little time to attend lectures or study law privately. There is no compulsion to attend the law lectures. There is only one examination necessary to pass in order to become a Judge. Hundreds of students present themselves yearly for this examination and only about 7 per cent. pass. There is no lack of law students but they are debarred from ever becoming Judges because they are insufficiently prepared to pass the necessary examination. The Judiciary is very inadequately manned and yet there are hundreds of men willing to become Judges, consequently the fault lies with the Law School. If Great Britain renounces her extra-territorial rights and British subjects are to be subjected to Siamese Jurisdiction the incompetency of the Judges may lead to very grave difficulties, and as the Code is drawn up both in English and Siamese it will be most important that every law student should understand the English language. In fact a knowledge of English should be a *sine qua non* in the law school. A knowledge of English will be of very great value in interpreting the Siamese version of the Code.

Dr. Hillyard concluded his remarks by saying that the very highest praise was due to M. Padoux, Dr. Masao, Mr. John Stewart Black and the other advisers who drew up the Code. It was one which would do credit to any nation. Great knowledge of the law combined with a thorough acquaintance with the exigencies of the people for whom the Code had been adopted must have been employed in its compilation.



