

THE NEW PENAL CODE OF SIAM

INTRODUCTION.

The name of a great monarch often goes down to posterity in connection with some great law-book. That of the 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. Napoleon is now remembered equally well in connection with warfare as in connection with codification, 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 Codes than in connection with his famous wars. It may then be said that the recent¹ promulgation of the Penal Code for the Kingdom of Siam was an event of no small significance to His Majesty, King Chulalongkorn of Siam. Indeed, any one who reads His Majesty's preamble to the Penal Code cannot fail 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 this Code and other Codes that are to follow. Incidentally, also, His Majesty gives in that preamble such a faithful history of this Code and of general codification in Siam, that the following extract may not be out of place here by way of historical introduction:

"We, Chulalongkorn, King of Siam and of all its Dependencies, being desirous to revise and improve the laws of Our Kingdom, hereby proclaim as follows:.....
".....
"

"In the year 116 of the Ratanakosindra Era (A. C. 1897), the work of examining into the state of the existing laws, old and new, with a view to reform and codification was ordered to be commenced, and entrusted by Us to the following special Royal Commission: Our son, the Prince of Rajburi, Minister of Justice, (President); Our brother, the Krom Luang Bijit Prijakorn, former Minister of Justice; Phya Praja Kitkorachak, then Chief Justice of the Civil Court; Chao Phya Abhai Raja

¹The Penal Code for the Kingdom of Siam was promulgated on April 1, 1908, and went into effect on September 21st—the 55th Birthday of His Majesty, King Chulalongkorn.

“(M. Rolin-Jaequemyns), General Adviser; Monsieur Richard “Jacques Kirkpatrick, a Belgian jurist, Legal Adviser to the “Ministry of Justice; and Doctor Tokichi Masao, a Japanese “jurist, then Secretary to the General Adviser.

“M. Kirkpatrick died before the labours of the Commission “were completed, and his place was taken by M. Corneille “Schlessler, another Belgian jurist, who, together with Doctor “Tokichi Masao, proceeded with and concluded the work of “examining and selecting the laws considered suitable to be “retained and incorporated in a proposed Code relating to crime.

“In the year 123 of the Ratanakosindra Era (A. C. 1904), We “also procured the services of Monsieur Georges Padoux, a “French jurist, as Legislative Adviser to Our Government, and “as the codification of a Penal Law, in amplification of the work “performed by the Royal Commission already mentioned, had “yet to be accomplished, We then appointed another Commis- “sion to undertake the same, composed of the following: “Monsieur Georges Padoux, Legislative Adviser (President); “Mr. William Alfred Tilleke, Acting Attorney-General; Phra “Athakar Prasiddhi, Judge of the Court for Foreign Causes; “and Luang Sakol Satyathor, Judge of the Civil Court.

“This Commission having completed its work, the Penal Code “as drawn up by it, was submitted to Us as well as communi- “cated to all the heads of the State Departments which will be “interested in its operation, and We referred it for final con- “sideration and revision to the following Committee of our “Ministers of State: Our brother, the Krom Luang Damrong “Rajanobhab, Minister for the Interior (president); Our brother, “the Krom Luang Nares Varariddhi, Minister of Local Govern- “ment; Our brother, the Krom Luang Devawongse Varoprakar, “Minister for Foreign Affairs; Our son, the Prince of Rajburi, “Minister of Justice.

“In addition, a special Sub-Committee, for the purpose of “dealing with the wording of the text and making comparisons “with the old laws, was also appointed by Us, composed of the “following: Our brother, the Krom Khun Siridaja Sangkas, “Member of the Supreme Court of Appeal; Phya Pracha “Kitkorachak, Member of the Supreme Court of Appeal; and “Pra Boriraks Chaturong, of the Ministry for Foreign Affairs.

“The Prince of Rajburi having to accompany Us on Our “recent tour in Europe, about the same time, his place on the “Committee above mentioned was filled by Dr. Tokichi Masao, “Member of Our Supreme Court of Appeal, and Mr. J. Stewart “Black, Barrister-at-Law, also Member of Our Supreme Court “of Appeal, during the whole time of his absence.

“This Committee and Sub-Committee, working in unison “with the Commission presided over by M. Georges Padoux, “concluded their labours in September, R. S. 126 (A. C. 1907). “The Draft Penal Code, as revised by them, has been submitted

"to Us. We have examined it and made such alterations as We deemed necessary and finding it to meet with Our wishes in every particular, We now signify that the Penal Code, in the form hereto annexed shall become the law of Our Kingdom."²

We may now proceed to see what are some of the more general features of this Code.

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 we open the French Penal Code of 1810, which is still in force, the first thing we meet with is the division of offences into three classes, namely, crimes, delicts, and contraventions.³ 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.⁴ Logically, this is no definition. 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

² From an official translation communicated by the Siamese Foreign Office.

³ The French Penal Code, Article I.

⁴ Same.

this year, has also discarded it. The Indian Penal Code is also 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 Siamese Penal Code is that it has simplified the names of punishments to a great extent. Under this Code⁵ there are only six punishments, viz.:

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

Some idea of the simplicity attained in this respect will be had when it is remembered that under the French Penal Code⁶ there are fifteen punishments and under the old Penal Code of Japan⁷ no less than eighteen. 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 losing some modes of it which are necessary. There is absolutely no need for apprehension on that score. 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 eleven different names, viz.:

- (1) Forced labour for life,
- (2) Forced labour for a limited period,
- (3) Perpetual deportation,
- (4) Temporary deportation,
- (5) Major reclusion,

⁵ Section 12.

⁶ The French Penal Code, Articles 7, 8, 9, and 464.

⁷ The Japanese Penal Code (1880), Articles 7, 8, 9, 10.

- (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 we find as many as six different names for imprisonment and seven 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 eleven punishments above-mentioned are simply different names for one and the same thing—imprisonment. The only distinctions that can possibly be made are that some are required 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 favorably with the Indian Penal Code⁸ under which there are seven punishments, and the new Japanese Penal Code,⁹ under which there are also seven 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 the enlightened rule of His Majesty King Chulalongkorn, 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

⁸ The Indian Penal Code, Sec. 53.

⁹ The Japanese Penal Code (1908).

much from the Siamese as from some Europeans, especially Englishmen from India. It is well to remember that the Indian Penal Code is probably the only civilized Penal Code that retains whipping.¹⁰

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 of Siam, 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 who had merely been the victim of some temptation or circumstances for which, morally speaking, such person could hardly be said to be blamable and yet legally must be held responsible. If, in such a case, there is no previous conviction proved against the offender, and 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, 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,

¹⁰ This statement is not absolutely accurate. See the article on Whipping and Castration as Punishments for Crime in the *Yale Law Journal*, Vol. VIII, 371.—Ed.

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 be 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 one year shall not be executed, on condition that the offender does not commit another offence for, let us say, five years, it would be like killing two birds with one stone. During those five 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 five 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 five 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 we shall speak further.

It was with some such ideas as these that the system of conditional sentences was first tried in Belgium some twenty 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,¹¹ is to be applied to sentences of imprisonment for one year or less only, and the period of "penitent probation," if we may call it so, is five 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 one year or less, as is also the case with the new Penal Code of Siam. But the result

¹¹ Sections 41 and 42.

of the experiment has been so satisfactory that the system has now been formally incorporated into the new Japanese Penal Code,¹² and its scope has been extended so as to apply to sentences of imprisonment for two years or less. In Belgium, France, and other countries where the system of conditional sentences is enforced, it is 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.

It has been 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 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

¹² The Japanese Penal Code (1908), Articles 25, 26, 27.

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 five 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.¹³ 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 three years of his liberation. In such a case, the punishment for the subsequent offence is to be increased by one-half.¹⁴ 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 five years of his liberation. In such a case the punishment for the last offence is to be doubled.¹⁵ 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.¹⁶

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 a strong 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. The system of maximum and minimum punishments adopted in the French Penal Code is one of the reflections of the spirit of the period follow-

¹³ Section 72.

¹⁴ Section 73.

¹⁵ Section 74.

¹⁶ Section 76.

ing 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 excellent points. 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 any judges who have received a fair amount of training. 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 yet been punished, he is, on being tried and sentenced for all these offences together, to receive the punishment provided for the most serious one only, as is the case with the French Code of Criminal Procedure,¹⁷ or is to receive the punishment provided for the most serious one plus one-fourth or one-third, etc., of the punishments provided for the rest, as is the case with the new Japanese Penal Code.¹⁸ This again reflects the spirit of the period following the French Revolution. The defenders of this system usually rely on philosophical grounds of an extremely speculative kind, namely, that the criminality of an

¹⁷ The French Code of Criminal Procedure, Article 365.

¹⁸ The Japanese Penal Code (1908), Articles 45-55.

offender who has committed ten offences at different times and places is not necessarily ten times the criminality of him 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.¹⁹ 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.²⁰

HOW TO COUNT A TERM OF IMPRISONMENT.

This is a question of very practical importance. 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 thirty 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

¹⁹ Section 71.

²⁰ Section 70.

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 Code²¹ contains most elaborate provisions in regard to these questions, leaving to the Judge little else but mechanical work to do,—a fact which may be regarded as another instance of the reflection of the spirit of the period following the French Revolution. But the provisions of the new Japanese Penal Code²² 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 thirty days. The first day of imprisonment counts in full, but the last day, *i. e.*, the day of liberation does not count at all.²³ 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.²⁴ 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 one who is detained in jail pending his trial or appeal, but not as a convict, should have the time so spent count upon his final 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.

²¹ The French Penal Code, Articles 23, 24, 40, etc.

²² The Japanese Penal Code (1908), Articles 21-24.

²³ Section 32.

²⁴ Section 31.

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 castaways, 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 one who has failed to make his home sufficiently attractive to his family, it may be said that the responsibility for the child's offence rests not less (or perhaps more) on the parent than on the child, and it may be well 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 contingences above suggested. Children under seven are absolutely irresponsible. Children over seven and under fourteen 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 as the Judge thinks fit. Children over fourteen and under sixteen are also presumed to be irresponsible, but this presumption may be rebutted. Unless it be rebutted they are to be dealt with in the same way as children between seven and fourteen. If it be rebutted and a child between fourteen and sixteen 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 the offence. Even then

the Judge may, if he thinks fit, send him to a Reformatory School instead of inflicting the half punishment.²⁵

APPLICATION OF THE CODE.

Sooner or later the time must come when Siam will be freed from the present *régime* of what is popularly called extraterritoriality, 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 Judges. A Penal Code for Siam which is adopted at a time like this when the abolition of the system of consular jurisdiction seems so much nearer in sight than ever before, 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 provide for the event of its being applied not only to foreigners committing offences in Siam, but also 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 thirty 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 its 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 this respect the Siamese have desired to do better than the Japanese had done thirty years ago. At any rate, the Siamese did not want to draw up a Code intended for a certain state of things and which, when that very state of things should begin to exist, it would be found necessary to supersede

²⁵ Sections 56, 57, 58.

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.²⁶ 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.

The conclusion of a Treaty with Japan in 1898, consenting to the exercise of Japanese Consular jurisdiction in Siam but providing for its eventual surrender by Japan on the completion and coming into effect of the Siamese Codes, *i. e.*, the Penal Code, the Civil Code, the Codes of Procedure, and the Law of Organization of Courts, and the subsequent conclusion of a Revised Treaty with France providing for the immediate relaxation of French Consular jurisdiction in Siam as regards French Asiatic subjects and *protégés*, and providing for the final surrender of such jurisdiction by France on the completion and coming into effect of the Siamese Codes including a Commercial Code, were a very strong incentive to Siam to put her law reforms on a broad and enduring basis. The new Penal Code discussed above is the first fruit of Siam's effort in this direction; being the product of Japanese, French, Siamese and English influences combined, and taking from the law systems of these and other countries what is believed to be the best in them. It consisted of three hundred and forty short and clear articles, and is divided into two general parts, dealing

²⁶ Sections 9 and 10.

with general principles and specific offences respectively. Already, good progress is being made in the collection of material for the other Codes, and it is confidently believed that in five years' time from the date of this article (1908) Siam will be provided with all the Codes of Laws mentioned in her Treaties with Japan and France. When that takes place, His Majesty King Chulalongkorn of Siam, might, in view of the wonderful reforms that have been already accomplished in His Majesty's army and navy within the last few years, with fitness join Justinian in proclaiming:—

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

Tokichi Masao.