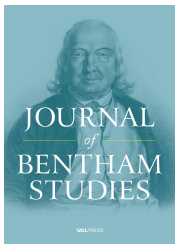

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Jeremy Bentham and the Communication of Legal Authority: The Indian Penal Code of 1860

Erica Kim Ollikainen-Read

Abstract

This article considers the creation of the Indian Penal Code of 1860 through a utilitarian lens, reframing the Code as a means of communicating and representing colonial legal authority. It borrows from studies of law as communication to argue that the codification of criminal law was not only about communicating substantive law; it also served as a representation of the authority of the legislature, and the relationship between the colonial State and the individual. Through an examination of the history of codification in Europe and the importance afforded to the communicability of the law in utilitarian legal thinking, this article demonstrates that these foundations are clearly reflected in the drafting of the Indian Penal Code. However, there was a long delay between the drafting of the Penal Code and its enactment in 1860. It is argued that the takeover of India by the Crown in 1858, and the subsequent reframing of colonial authority, meant that the communicative value of the Penal Code was reconsidered in a new light. This article builds on the work of scholars of the Indian Penal Code, including K.J.M. Smith and Barry Wright, to raise the possibility of further historical study on the theoretical considerations of the codification of transplanted laws in Britain's colonies, from the perspective of communication. In particular, this article offers an assessment of how codifying the law was a means of legitimising colonial authority.

Keywords: Indian Penal Code; codification; communication; legal transfer

Introduction

On 14 October 1837, the Indian Law Commission submitted their draft of an Indian Penal Code to the Governor-General, Lord Auckland. The draft was prefaced by a letter of explanation, which stated:

> if your Lordship in Council is disposed to adopt the Code which we have framed, it is most desirable that the native population should, with as little delay as possible, be *furnished with good versions of it in their own languages* … we are confident that your Lordship in Council will not grudge any thing that may be necessary for the purpose of *enabling the people who are placed under your care to know what that law is according to which they are required to live*.[1]

By exploring the nature, purpose and utilitarian colonial context of the Indian Penal Code of 1860 (hereafter, the Code), this article highlights a previously overlooked position: that the Code itself was a medium for communicating colonial legal authority. The communicative nature of the Code is explored in two parts. First, from a literal perspective, the Code was designed to be disseminated among the population of India, and was drafted using legislative techniques influenced by the works of Jeremy Bentham and utilitarianism. Second, the Code is explored as a means by which the British created legal authority through the process of codification and as such legitimised their rule, particularly following the Sepoy Mutiny of 1857 and the beginning of Crown Rule in 1858.

This article uses a 'communicational approach to law'[2] to examine the Code as an example of how Britain created, exerted and legitimised its authority. The primary function of law is to order society.[3] In a colonial setting, this entailed the introduction of new and transplanted laws and the adoption of existing local laws and norms. This in turn required the communication of the authority and legitimacy of the colonial power. If we accept, as Bentham argued, that legal codes derive their power from being enacted by the authority of the legislature, the authority of the law is identifiable with the authority of the legislative power of the state.[4]

By applying this logic to the context of the Code, this article argues that its history reflects the context of the changing nature of Britain's colonial rule, which can be characterised, in the words of Nasser Hussain, as a shift from 'sovereign extraction to governmentality'.[5] Codification remains a defining characteristic of Indian law to this day, and Anglo-Indian law is regarded as 'a system of codified law in the common law tradition'.[6] In contrast, criminal law in Britain remains uncodified. This

supports the proposition that the Code was a means of legitimising colonial rule, as this was ultimately not considered necessary in the metropole.

The story of the creation and implementation of the Code itself spans nearly thirty years, from 1835 to 1860. It was predominantly the work of the British politician and Indian lawmaker Thomas Babington Macaulay, who, after serving as a Whig member of Parliament, was appointed as the first Law Member of the Governor General's Council in 1833. Macaulay led the Indian Law Commission from 1835. Due to illness among the other members of the Law Commission during their time in India, Macaulay is treated as the Code's single author.[7] The fact that the history of the Code can be attributed in such large part to one historical actor strengthened the influence of Macaulay's personal ideologies and interests on the writing of the Code, which will be examined. Macaulay was not a part of Bentham's circle of acolytes and he only began to take an interest in a utilitarian approach to law and governance after entering government.[8] Despite this, Macaulay has been described as 'the most successful utilitarian legislator of his generation'.[9] In fact, Bentham's influence on him was so strong that it has been argued that 'without any effort on his part, Bentham achieved his most tangible codifying success in the form of the Indian Penal Code'.[10]

To understand the communicative role of the Indian Penal Code, and its place in the history of colonial legal transfer more broadly, section one of this article first examines the history of the codification movement and legislative drafting techniques in Europe. Bentham's ideas of the law as communication, his central belief in the importance of the communicability of the law and his writings on the transfer of English law to Bengal are then explored. This is followed by an analysis of the work of the English Criminal Law Commission of 1833–45[11] which examined the possibility of codifying the criminal law in England, almost contemporaneously with the Indian Law Commissioners. This history reveals that ideas about a legal code as a form of communicating state authority were already well formed and ready to be transplanted via colonial administrators from Europe to the colonial setting of India.

Section two sets out the Indian background to codification. An exploration of Macaulay as an historical actor and an examination of the Code itself highlight the clear utilitarian influence in its drafting. Finally, section three briefly considers the reasons why it took until 1860 to enact the Code, despite it having been drafted in 1837. It concludes with the proposal that following the takeover of India by the Crown in 1858, the Code served a renewed purpose of legitimising colonial rule.

An overview of codification in Europe

The codification movement began to take hold in continental Europe from the late eighteenth century, with the first wave of civil law codification occurring in Prussia (*Allegemeines Landrecht* 1794), France (*Code Civil* 1804) and Austria (*Allgemeines Bürgeliches Gesetzbuch* 1811). Broadly speaking, the European codification movement was born from the diminishing authority of Roman Canon law and criticisms of Roman law 'for being the law of despotic rulers' of the past.[12] The age of legal Enlightenment emerged from the clash between the confusing, obscure and indecipherable seventeenth-century legal systems and 'the need for geometrical clarity, certainty and simplicity'.[13] Legal Enlightenment has been characterised by two stages: a 'destructive critique of European law's customary sources', followed by 'a series of constructive proposals'.[14]

It has been argued that the European codes of this time served two main functions. First, as a tool for legal professionals, codes provided 'the basic framework of the legal system'.[15] Second, they provided 'a definite conception of the nature of law and the social function of regulation by law',[16] whereby the authority of the law is derived 'not by virtue of its content but by virtue of its source, in that the authority of the law is identified with the authority of the state's legislative power'.[17] In terms of the criminal law, the enactment of the Enlightenment-era criminal codes of the late eighteenth and early nineteenth century marked 'the transition to the modern legal and political order', by defining 'the relationship between the juridical individual and the constitutional state'.[18] The European enlightenment codes should therefore be seen in relation to a shift in government style.[19] In practical terms, it has been argued that the enlightened absolutism of the time was the 'perfect political environment in which codification could take place'.[20] The codes were built on a vision of codifying 'the relation between the state and citizen as a political relation, a form of sovereignty'.[21]

In defining the relationship between the state and the citizen as one of sovereign power, the authors of the European codes had to balance the embodiment of abstract conceptions of the nature of the law with an end product which was accessible, predictable and clear. This balance was achieved through the development of particular legislative features or techniques. Three legislative features have been identified as key characteristics of the codes of eighteenth-century Europe: comprehensiveness, completeness and simplicity.[22] These characteristics helped to reach the 'ultimate goal'[23] of producing legal certainty, which in turn helped to build the relationship between the person and the state.

Although English law generally was never codified, England saw similar law reform movements to its European neighbours in the late eighteenth and nineteenth centuries. The framework of England's common law system had become the subject of criticism and debate, especially after the publication of William Blackstone's *Commentaries*.[24] The Commentaries brought the common law into the public domain, no longer under the purview of the judiciary alone. Criticisms were levied against the complexity of the common law and a philosophical movement developed which positioned itself against the traditional conservative legal outlook which saw the past 'as the source for the development of British society'.[25]

The debates surrounding the efficacy of the common law preceded a move towards specialised legislative drafting of Acts of Parliament in the nineteenth century known as the statutory reform movement. The first Bill Draftsman was appointed in 1789. Prior to the introduction of specialised legislative drafting in England the drafting of statutes was decentralised, with much drafting conducted on a case-by-case basis by conveyancers. As a result there was little uniformity of style or language.[26] Another long-standing criticism was the lack of clarity and unnecessary complexity of the statutes, with claims of deliberate disingenuity made against lawyers as a professional group.[27] Criminal law became a natural focal point for reformist ideologies as it was criticised for being confusing, inconsistent and in many cases too severe, therefore unjust. As such, law reform moved to the forefront of the political agenda as a recognition of the 'unsatisfactory condition of much of the existing legal order' in comparison to the needs of the rapidly changing society.[28]

As one of the most prominent English legal theorists and prolific proponents for law reform, Bentham went further than his contemporaries in his desire for law reform. Significantly he called for the old order of the common law to be disregarded and built anew, and is now considered to be the 'father' of the codification movement in England. His influence continued after his death in 1832 thanks to his utilitarian 'disciples' – some of whom, such as John Stuart Mill, were colonial administrators for the East India Company.

In his essay 'Of Nomography' (taken from the Greek words *Nomos*-, meaning law, and *-graphy*, meaning to write),[29] Bentham defined the law as 'the denomination by which … expression is given to an extensively applying and permanently enduring act, or state of the will, of a person or persons in relation to others – in relation to whom he is, or they are, in a state of superiority'.[30] In other words, the law was an expression of control which derived its legitimacy from the fact that it emanated from a

person or persons in a position of power over others. We will see how this understanding of the law proved useful in the context of colonial India. Bentham's aim was to write a complete set of positive legal codes. These would derive their legitimacy by the fact that they had been enacted by the legislature.[31] In terms of the criminal law, by using utilitarian theory and legal positivism as the framework on which to rebuild it, Bentham hoped to remove the role of instinct and moral feeling in administering the law and to replace it with reason and logic.[32] In this way, the criminal law could be rewritten to be based on the principle of the subject's 'complete knowledge of the consequences of any given act [of crime]'.[33]

Although it is easy to oversimplify Bentham's work and influence, the lawyer and scholar of codification Gunther Weiss has compiled a framework of the characteristics of Bentham's ideas on the nature and purpose of codification. This framework allows a broad comparison to be made between the ideals that informed codification in England and India, as well as facilitating an examination of Bentham's indirect influence on the Code. The five key characteristics of Bentham's vision for a complete code of laws that Weiss identifies are authority, reform, simplicity, a systematic element and completeness.[34] These will be addressed briefly in turn.

First, the belief that the law gained its authority by virtue of being enacted by the legislature made the common law fundamentally flawed in Bentham's opinion because the common law lacked legislative authority.[35] At best, the public might be able to infer rules from the common law, 'but these rules could never be authoritative, and were hence always unstable as guides',[36] not least because the common law 'operated *ex post facto* and without the proper commands needed to guide conduct'.[37] As a consequence, 'only written law enacted by a legislator could be properly regarded as law'.[38] Furthermore, because the common law did not emanate from the sovereign or the legislature, it was fundamentally unsuitable for clear expression.[39] Bentham therefore proposed a comprehensive reform of the law – the second characteristic – which would be based on 'the science of legislation', according to 'certain empirical criteria'.[40] Crucially, however, reform could only be achieved by bringing the laws 'within the reach of those whom they bind'.[41] Bentham's reforms were thus based on two key elements: making the laws 'simple, concise and uniform' and adopting 'adventitious' ways of promulgating them'.[42]

Simplicity – the third defining characteristic of Bentham's work on law reform – would ensure that 'an exact idea of the will of legislator' could be presented to the citizens.[43] The efficiency of a statute would be measured by how efficiently it presented and fixed itself in the user's

mind.[44] Bentham's advice to legislators was to deal with the reader with 'the same simplicity and sincerity as that with which, when calling for obedience on the part of your own children or your own servants, you address yourself'.[45] Bentham imagined that his codes would be available to every man to consult whenever he needed, allowing everyone access to the law, in a language familiar to all, without special explanation.[46] Such an approach lent itself well to legal transfer to a colonial setting, as is evidenced in Bentham's idealistic and paternalistic examples. Bentham was convinced that a set of codes built upon his principles would be so simple that it 'would not require schools for its explanation [because] it would speak a language familiar to everybody: Each one might consult it at his need. … The father of a family, without assistance, might take it in his hand and teach it to his children'.[47]

Among his recommendations to achieve simplicity were that the same word should always have the same meaning and crucial terms should be specially defined, with these definitions indicated to the reader by special print, thereby reducing unnecessary repetition.[48] Such changes were imperative for Bentham, who argued that 'until … the nomenclature and language and of law shall be improved, the great end of good government cannot be fully attained'.[49] In short, for Bentham, legislation and the writing of legal codes was a communicative act that legitimised the authority of law. Conversely, without effective communication the law's authority could not be legitimised.

Simplicity went hand in hand with the fourth defining characteristic, a systematic approach which would culminate in the creation of a 'Complete Code of Laws'.[50] Instead of using existing means to organise the laws, such as those used by Roman law, Bentham developed a new plan of systematising the law in its entirety.[51] The trend to document and classify both scientific and social phenomena is also associated with imperial control in India. In terms of the codification of the criminal law, Bentham proposed a clear rubric with the categorisation of offences into five main classes, supplemented by further subcategories where necessary, in order to make sure the criminal code could catch every potential crime.[52]

Finally, codification had to be complete in order for a system of codes to function correctly. 'Whatever is not in the code of laws, ought not to be law'.[53] Previous laws, including legal custom and precedent not incorporated into the codes, would be done away with. This brings us back to reform as a defining characteristic. Bentham was so convinced of the merits of his proposed system for a 'Complete Code of Laws' that he optimistically suggested that the law would only need to be revised 'once

in a hundred years' – and even then mostly for the sake 'of changing such terms and expressions as by that time may have become obsolete'.[54]

In summary, Bentham believed that the only way to remedy the state of the common law was a complete and systematic codification of the law, the object of which was to make the law clear, simple and prominent (or, in Bentham's words, 'notorious')[55] in the public mind. Bentham's plans for codification were never realised in England. However, by conceiving of the law as the language of authority, with a basis of logic and science, the five characteristics of Bentham's vision for English law reform discussed here lent themselves well to the establishment of English law in India as a means of legitimising a foreign authority.

Bentham's essay *On the Influence of Time and Place in Matters of Legislation* considered the transfer of English law to Bengal.[56] Despite his insistence on complete legal reform in England, Bentham acknowledged that in the case of the transfer of English laws to India, a complete break from previous legal tradition was not the best course of action. Instead, certain deviations from English laws might be necessary in order to allow Bengal to receive it 'without prejudice'.[57] First he reasoned that the circumstances of the 'recipient' country, including manners, legal customs and religion, should be acknowledged.[58] The law would therefore have to be adapted in the process of transfer to account for 'the imperious, and oftentimes unchangeable, circumstances of the people to be governed'; care should be taken 'that established opinions may not be violently shocked' in the process of introducing English law.[59]

> The people of every country are attached to their own laws; to those parts of them at least, under which they have been bred, and to which they have been taught to pay an habitual acquiescence … they will endure abuses they have been accustomed to, but they will not endure new ones: they will sit easy under the yoke of their own prejudices; but they will not sit easy under the prejudices of another people.[60]

To avoid a sudden shock to established norms, the transfer of laws to India should be undertaken according to the greatest happiness principle, which held that the 'smaller the number of the discontented, the greater the chance of success'.[61] To that end, Bentham argued that existing laws should not be changed unless there was a 'special reason', or an 'assignable benefit', which could 'be shown as likely to be the result of such a change'.[62] He warned:

> The changing of a custom repugnant to our own manners and sentiments to one which is conformable to them, for no other reason than such repugnancy or conformity, is not to be reputed as a benefit. The satisfaction is for one, or a small number; the pain is for all, or a great number.[63]

We see from this that Bentham's approach to the transfer of law was to place English law 'within an Indian idiom',[64] in order to make it easier to understand and more palatable to the colonised.

In 1833 (the same year in which Macaulay became the Law Member of the Governor General's Council of India) the Lord Chancellor, Lord Brougham, a contemporary of Bentham and 'principle patron of codification' at the time, appointed the Criminal Law Commission to investigate the possibility of consolidating the criminal law in England.[65] The commission worked on reducing and consolidating the existing criminal law, both statutory and common law, including procedure and punishment, into a digest. The Commission issued eight reports in the years up to 1845.[66] Although the Commissioners referred to their work as the creation of a 'digest' of the law rather than a 'code', for the purposes of this article the terms are interchangeable.[67] A brief overview of the work of Brougham's commission reveals some important parallels with the work of Macaulay and the Indian Law Commission, and the way in which communication was seen as central to successful codification of the criminal law in both locations.

The seventh report of the Criminal Law Commission, issued in 1843, included a draft of their criminal law digest to date. This draft digest is clearly influenced by Benthamite views on both the need for law reform and the centrality of communicability therein. The introduction sets out the perceived weaknesses of the contemporary system of English criminal law, which the commissioners believed stemmed from a disconnect between the 'gradually increasing exigencies of society' and the slow pace of legislation, which had to be filled by 'an extension of the narrow technical rules suited only to a much more inartificial [archaic] state'.[68] It was thought that this led to the weakening or subversion of the practical authority of such rules, to the extent that 'they could no longer be regarded as conveying to those who heard or read them, in their natural sense, their real effect'.[69]

The report criticised the 'mass of authorities, frequently conflicting with each other'. There were 'a great number of statutes, reported decisions, records, ancient and modern and text-books'.[70] 'Unwritten'

or common law was, the commissioners wrote, 'frequently a matter of inference and deduction from a multitude of precedents, general principles and other indefinite sources'.[71] Although these sources of law constituted 'in themselves [a] useful body of law to serve for the purpose of precedent and analogical reasoning', the problem was that they were 'not made manifest to the public' and were 'wholly inaccessible' to the 'great bulk' of subjects'.[72] A lack of communicability and public understanding of the criminal law was identified by the commissioners as one of its main defects. As such, the establishment of accessibility and communication as standards of good criminal law became central tenets of law reform.

According to the commissioners, provisions should be capable of being 'diligently promulgated' because 'in order to operate, the law must be known'.[73] Effective promulgation of the criminal law, they argued, would not only prevent the injustice of inadvertently incurring penalties on an individual level, but would also 'more effectually convince all ranks … that the laws are founded on just principles, having regard to the protection of all and equally binding on all'; such conviction would consequently 'impress the duty and induce the habit of prompt obedience'.[74] This shows that legitimising the law by communicating it was seen by the commissioners as a tool for influencing and controlling the population on a macrosocial level.

Ultimately the recommendations of Brougham's commission were met with scepticism from both bar and bench. To the 'defenders of the common law' codification was seen as both foreign and impractical;[75] successive commissions failed to produce any legislation on the codification or even consolidation of the criminal law.[76] One more attempt was made in 1878 by James Fitzjames Stephen. Although Stephen identified as a utilitarian, unlike Bentham his draft code was cautious and did not attempt any great reform of the interpretative powers of the judiciary. It came before Parliament, having received support from the Attorney General and Lord Chancellor, but the Conservative Party was ousted in the 1880 general election before this draft code could go any further.[77]

Despite the fact that the criminal law remained uncodified in Britain, the work of Brougham's commissioners nevertheless had an important impact. Lindsay Farmer has traced their attempts to codify English criminal law in relation to the changing relationship between substantive law, procedure and social policy, arguing that their work was part of 'transforming the role of the law within the process of

government'.[78] Because criminal law reform and the reform of punishment was viewed as an 'explicit reformulation and extension of state power',[79] codification was seen both as the 'distribution and definition of law' and 'the distribution or control of sovereign power'.[80]

These ideas reflect both the development of codification in continental Europe in previous years and the state of affairs in India. In particular, the legal history of British India after 1858 can be characterised in large part by the need to reformulate and extend state power. Just as in Europe, communication between the state and the governed in the form of codes had a central role to play in this reformulation.

The Indian background to codification

Prior to the Charter Act of 1833, neither criminal nor civil law in British India was uniform. The Governor-Generals of each of the Presidency Towns (Bengal, Bombay and Madras) were vested with executive authority in their own region, exercising their own legislative powers via enactments known as 'Regulations' under authority from Acts of Parliament. There were many different sources of law, competing with each other for authority. These included, but were not limited to, English Acts of Parliament, the common law, religious law, Charters and Letters Patent and the aforementioned Regulations made in each Presidency.[81]

By the 1830s this system had become 'almost necessarily defective, calling loudly for analytical scrutiny and for simplification'.[82] Charles Edward Gray and Edward Ryan, judges of the Bengal and Calcutta Supreme Court respectively, wrote to Governor General Bentinck advising that reform was necessary not only for the 'satisfactory provision for the establishment of Courts and the administration of justice',[83] but also in order to declare the relationship between 'the Crown, the Parliament, the Company, and the inhabitants of India … to each other' so that a foundation could be laid, 'upon which a regular and well defined structure of law and government … might be established … and afterwards extended'.[84] Just as in continental Europe, the formation of codes of law was seen as an integral part of defining the relationship between the state and subject. This was the background to the Charter Act of 1833 and the beginning of codification in India.

Section 53 of the Charter Act called for the establishment, 'at an early period', of a police and judicial system, 'to which all persons whatsoever, as well Europeans as natives, may be subject'.[85] In order

that the current systems of law 'be ascertained … consolidated, and as occasion may require amended', the Act established an Indian Law Commission to 'fully inquire into the jurisdiction, powers and rules of the existing Courts of Justice … and all existing forms of judicial procedure, and into the nature and operation of all law'.[86] Just as the English Criminal Law Commissioners did, the Indian Law Commission worked on the basis of using the law to legitimise authority.

Through their task of ascertaining, consolidating, amending and promulgating the law, the work of the commissioners, and the creation of the Anglo-Indian codes, can be seen as a means of setting out the rights of governed subjects, and as a way to 'define the state'.[87] Nasser Hussain argues that legal procedure was a means of declaring to subjects 'that their identity, their offenses, their grievances, all began and ended in the authority of the law'. Hussain continues to say that 'procedure was not [only] substance but *spirit*, and in its exactitude it covered all law, English or Indian, statutory or customary, insisting that no authority preceded the law, or more specifically, the workings of the law, and that these workings created and reflected their own authority'.[88]

As in continental Europe at the turn of the century, the law reform movement introduced by the Charter Act can be interpreted as a means of creating a well-defined presentation of the state, its authority and its relation to its subjects, as the Company was forced to take on a greater governmental role. Codification had an important part to play in creating this presentation. In giving evidence to the Parliamentary Select Committee on the affairs of the East India Company in 1832, William Butterworth Bayley argued that it was no longer necessary to 'apply the authority of religion, or any other authority than that of the government, to the establishment of law' in India.[89] However, seemingly in keeping with the advice of Bentham on the transfer of laws to India, he suggested that native pundits might be employed to help digest the law into an accurate code by 'subjoining quotations from their sacred books and declaring the words of the code to be the true interpretation of them', so that the code 'would not shock the prejudices of the natives'.[90]

Macaulay served as the first Law Member of the newly created Governor-General's Council from 1834 to 1838 and led the Indian Law Commission from 1835. The first commission, appointed in 1834, was made up of Macaulay, J.M. Macleod, G.W Anderson and F. Millet.[91] Macaulay suggested that the criminal law should be the first to be reformed. He reasoned first that the ground was already fertile for criminal law reform, stating 'there is perhaps no province of legislation which has been so thoroughly explored in all directions'.[92] Second,

Parliament had directed the Government of India to frame laws to prevent European settlers from oppressing the native population. To bring the European population fairly under the jurisdiction of the *Mofussil* courts,[93] a revision of 'the laws they administer and the rules of procedure which they follow' was necessary.[94] Unlike earlier efforts to compile existing laws in the presidencies of Bombay and Bengal, Macaulay instructed the Law Commission 'to frame a complete Criminal code for all parts of the Indian Empire. This code should not be a mere object of existing usages and regulations, but should comprise all the reforms which the Commission may think desirable'.[95]

Macaulay's work on the Code was 'informed by the utilitarian notion that crime should be suppressed by the least infliction of suffering, that the law should be clear and widely known, and that its administration should be as economical as possible'.[96] He wrote that the Code 'should be framed on two great principles, – the principle of suppressing Crime with the smallest possible infliction of suffering, and the principle of ascertaining truth at the smallest possible cost of time and money'.[97] Adjacent to the influence of utilitarianism, enlightened despotism also informed Macaulay's views on governance and legal reform in India. He acknowledged, 'we know that India cannot have a free Government. But she can have the next best thing – a firm and impartial despotism'.[98] Before travelling to India, Macaulay had sat as a Whig member of Parliament. In his parliamentary speech on the 1833 Charter Act, Macaulay articulated the connection between enlightened despotism in India and codification of the law:

> As I believe that India stands more in need of a code than any other country in the world, I believe also that there is no country on which that great benefit can more easily be conferred. *A Code is almost the only blessing – perhaps it is the only blessing – which absolute governments are better fitted to confer on a nation than popular governments.*[99]

He continued:

> This seems to me … to be precisely that point of time at which the advantage of a complete written code of laws may most easily be conferred on India. It is a work which cannot be well performed in an age of barbarism. … It is the work which especially belongs to a government like that of India – to an enlightened and paternal despotism.[100]

For Macaulay, therefore, enlightened despotism was almost an essential prerequisite for codification. He believed that one served to support the other, thereby strengthening the link between imperialist authority of the state and codification of laws as a form of communication of that authority. Similarities have been drawn between Macaulay's speech in the House of Commons and the writings of Bentham and James Mill.[101] For example, Macaulay's aforementioned speech has been compared with the writing of Bentham *c*. 1782:

> That a compleat and explicit /body / code/ system of laws, if well imagined and expressed, is the greatest blessing any country can possess is a truth which I suppose there will be no occasion to demonstrate: that the British possessions in Indostan have at present a more particular need of such a system is what your Lordship, I imagine, as well as every other man who has at all attended to the late transactions in that country is fully sensible of.[102]

Macaulay's influence as the Code's single author, the influence of the contemporary English Criminal Law Commissioners, the works of Bentham and, more broadly, the recent development of European Enlightenment ideals can be seen in certain legislative features of the Code. A study of the Code in this context reveals that codification, and in particular an understanding of codification as a form of communication, had a key role to play in defining the relationship between the individual and the colonial state.

The Indian Penal Code

This section turns to an examination of the legislative style of the Code itself, highlighting the connections and influence of Bentham's writings. As noted above, Gunther Weiss has outlined five characteristics of codification associated with Bentham: authority, reform, simplicity, a systematic element and completeness.[103] All five are reflected in the Code. A brief analysis of these characteristics as they appear in the Code serves to demonstrate the transfer of Bentham's legislative ideology to India. Concerning authority, the preface to the draft Code contains evidence that, like Bentham, Macaulay believed that the Code acquired its authority by virtue of its enactment by the legislature, and that interference from the courts would diminish its authority. If the law was

vague, Macaulay surmised, judges would have to step in to clarify, and therefore make the law themselves, which would be unacceptable. He explains his concerns in the preface to the draft, specifying 'to whatever extent a legislature uses vague expressions, to that extent it abdicates its functions, and resigns the power of making law to the Courts of Justice'.[104] This indicates that Macaulay saw codification as a way to avoid reliance on *ex post facto* legal decisions, which were in themselves unstable.

In terms of reform, the second characteristic identified by Weiss, Macaulay was clear that the existing criminal law had to be taken apart and rebuilt, sweeping away years of piecemeal legislative reform and development. The Commissioners could not recommend 'any one of the three [existing] systems of each Presidency as furnishing even the rudiments of a good Code'.[105] Macaulay explained:

> We by no means presume to condemn the policy which led the British government to retain, and gradually to modify, the system of criminal jurisprudence which it found established in these provinces. But it is evident that a body of law thus formed must, considered merely as a body of law, be defective and inconvenient.[106]

Despite the fact that the substantive law of the Code was clearly based upon English law, Macaulay claimed that the Code was created *ex nihilo*, without influence from any existing legal system. He argued that English criminal law as practised in India up until the drafting of the Penal Code was 'so defective that it can be reformed only by being entirely taken to pieces and reconstructed',[107] reflecting a Benthamite zeal for the reform of the common law. He remarked:

> The system of penal law which we propose is not a digest of any existing system; and … no existing system has furnished us even with a ground-work … none of the systems of penal law established in British India has any claim to our attention, except what it may derive from its own intrinsic excellence.[108]

However, in spite of its proclaimed reforming nature, Kartik Raman argues that the Code was drafted with the 'incorporation of Indian Legal Tradition'[109] in mind. According to Raman, Macaulay's approach was:

> a conservative one, not a Utilitarian exegesis. He proceeded from the reference point of indigenous tradition, and the Code was hence

> informed by the spirit of preservation rather than renovation. Accordingly, the legal-sacral conventions of the inhabitants, even when these challenged the British state's norm of justice and its judicial policies, were retained.[110]

The code thus reframed elements of religious law and custom as an 'indigenous covering' within the 'supposedly novel context' of the Code,[111] in order to 'gather in the threads of legitimacy'.[112] Although Raman seeks to distinguish Macaulay's approach from that of Bentham in this regard, Bentham's aforementioned essay on the transfer of English law to Bengal demonstrates that the consideration of existing laws and customs in India, along with a desire to avoid a sudden shock among the native population, was in fact part of the utilitarian approach to legal transfer to India, such considerations being a natural extension of the greatest happiness principle.

The influence of Bentham in this regard can be seen in a speech made by Macaulay in the House of Commons in 1833. Although Macaulay instructed the Commission to 'aim at uniformity as far as is practicable',[113] he qualified his approach to codification by acknowledging the impossibility of wholesale uniform legal transfer. He stated:

> We do not mean that all the people of India should live under the same law: far from it … We know how desirable that object is; but we also know that it is unattainable. We know that respect must be paid to feelings generated by differences of religion, of nation and of caste. Much, I am persuaded, may be done to assimilate the different systems of law without wounding those feelings. But, whether we assimilate those systems or not, let us ascertain them; let us digest them. We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this; uniformity where you can have it; diversity where you must have it; but in all cases certainty.[114]

Weiss's third characteristic is simplicity. This was a key feature of the legislative drafting of the Code because of the fundamental principle that the law had to be publicly known and understood in order to function properly. Macaulay considered that 'there are two things which a legislator should always have in view while he is framing laws: the one is that they should be as far as possible precise; the other that they should be easily understood'.[115] He further observed 'that a law, and especially a penal law, should be drawn in words which convey no meaning *to the*

people who are to obey it, is an evil. On the other hand, a loosely worded law is no law'.[116]

Simplicity, however, could not come at the expense of precision. Macaulay wrote that 'the Commissioners should be particularly charged to study conciseness as far as is consistent with perspicuity. In general, I believe, it will be found that perspicuous and concise expressions are not only compatible but identical'.[117] In this regard, the Code reflects many of Bentham's recommendations in 'Of Nomography'. One method used to help create uniformity in the Code is the dedication of the first chapter to 'General Explanations', which was intended to apply to every definition of an offence, thus removing the need for repetition.[118] Macaulay also stipulated that every expression, once explained, should thereafter be used in conformity with its explanation.[119]

Fourthly, the Code was drafted with the Benthamite intention to be a complete and systematic document. In describing the objectives of the Code in a Minute of 1835, Macaulay took a firm Benthamite position regarding the ideal state of a complete set of laws; he wrote that 'nothing that is not in the Code ought to be law'.[120] The provisions of the Code are organised in chapters according to the type of offence, with the Code designed to be used, 'at once [as] a statute book and a collection of decided cases',[121] thereby bringing elements of statute law and the common law together. Macaulay also recognised that the Penal Code would form part of the greater system of the Anglo-Indian Codes, stating that the Penal Code 'cannot be clear and explicit while the substantive civil law and the law of procedure are dark and confused'.[122]

In terms of the Code's longevity, Macaulay was not as ambitious as Bentham, declining to believe that his work would only require revisions once in every hundred years. Instead it seems that Macaulay intended the Code to be used as a sort of living document, which would be edited 'periodically' to ensure completeness. Doubts raised by judges as to the implementation of the Code which were not 'obviously unreasonable' would be 'periodically reported' to the legislature for revision. Macaulay hoped that, 'in this manner every successive edition of the Code will solve the appearance of the edition immediately preceding'.[123] He further explained, 'an addition of a very few pages to the Code will stand in the place of several volumes of [law] reports, and will be of far more value than such reports, inasmuch as the additions to the Code will proceed from the legislature, and will be of *unquestionable authority*'.[124] In this way, Macaulay envisaged the Code as forming a complete framework and format for the future development of the criminal law, based on the authority of the legislature.[125]

These core utilitarian characteristics are reflected by two particular drafting features of the Penal Code central to which was communication: Illustrations and Explanatory Notes. Illustrations were a drafting tool which accompanied many provisions of the Code to maximise accessibility and clarity. These were hypothetical factual situations which were designed to '*exhibit* the law in full action and *show* what its effects would be on the events of common life'.[126] As an example, the Illustration under the definition of murder reads as follows 'A. lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A. has committed the offence of voluntary culpable homicide'.[127] It has been claimed that Macaulay was the first to introduce Illustrations to 'practical legislation'.[128] Macaulay himself recognised the novelty or, as he stated, 'peculiarity' of the Code's 'copious use of illustrations' in the preface to the draft Code,[129] lending credence to the suggestion that he was among the first legislators to use them. The Illustrations served three main purposes.

First, the Illustrations were a tool to strike a balance between producing good substantive law and producing law which was accessible and understandable to ordinary readers. Macaulay made it clear that the Illustrations were 'never intended to supply any omission in the written law, nor do they ever, in our opinion, put a strain on the written law. They are merely instances of the *practical application of the written law to the affairs of mankind*'.[130] He explained that the purpose of the Illustrations was to allow a balance between precision in the meaning of the law and clarity of the law. This was one of the central characteristics for legislative reform for both Bentham and Macaulay. Macaulay explained:

> In our definitions, we have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions because we could find no other expressions which would convey our whole meaning and no more than our whole meaning. Such definitions standing by themselves might repel and perplex the reader, and would perhaps be fully comprehended only by a few students after long application.[131]

Therefore, he continues:

> We have, in framing out definitions, thought principally of making them precise, and have not shrunk from rugged or intricate phraseology when such phraseology appeared to us to be necessary

> to precision. If it appeared to us that our language was *likely to perplex an ordinary reader*, we added as many illustrations as we thought necessary *for the purpose of explaining it*.[132]

Here the reference to the 'ordinary reader', just as Bentham had referred to a father reading to his children without any additional assistance, provides strong evidence that the Code was intended for broader reading and not just for legal professionals. The addition of Illustrations at a later stage was also presented as an easy means to clarify or update the penal code:

> Sometimes it will be found that the language of the law, though it is as precise as the subject admits, is not so clear that *a person of ordinary intelligence* can see its whole meaning. In these cases it will generally be expedient to add illustrations such as may render it impossible that the same question or any similar question should ever again occasion difference of opinion.[133]

Second, the Illustrations helped to fulfil another Benthamite tenet: the centrality of the legislature in making and communicating the law. Macaulay insinuated how the Illustrations served to protect the authority of the colonial legislature by describing them as 'cases decided *not by the judges but by the legislature*, by those who make the law, and who must know more certainly than any judge can know what the law is which they mean to make'.[134] According to Macaulay, the 'necessary but most disagreeable work' of balancing 'perspicuity' and precision in definitions of the law was the 'duty' of the legislator. If the legislator failed to provide both clear and precise laws, then it would fall to be 'constantly performed in a rude and imperfect manner by every Judge in the Empire and will probably be performed by no two Judges in the same way'.[135] Through codification, the aim was to achieve a body of law which was rigid and inflexible in dealing with criminal behaviour. The Code was to be the 'reference point for evaluation of criminal behaviour' with Illustrations used to help define the law where necessary.

Third, the Illustrations helped to situate and present the criminal law in an Indian context, demonstrating a recognition of the 'Indian idiom'. Several Illustrations were thus presented in a specifically Indian context. For example, under the offence of voluntary culpable homicide by consent, the practice of *sati* (the self-immolation of Hindu widows on the funeral pyre of their deceased husbands) was used as an Illustration: 'Z, a Hindoo Widow, consents to be burned with the corpse of her husband. A kindles the pile. Here A has committed voluntary culpable

homicide by consent'.[136] Presenting the application of English penal law in particularly 'Indian' situations in this way not only allowed for a greater understanding of the application of the law, but also helped to legitimise English laws by juxtaposing an 'Indian problem' (in this case, *sati*) with an English solution – namely, the introduction of the Penal Code.

The 1835 draft Penal Code included a set of Explanatory Notes as an appendix, categorised by type of offence, as per the order of the chapters of the Code. To keep the Code itself 'purely imperative' with 'no argumentative matter whatever', Macaulay instructed the Commissioners 'to append to the Code notes assigning their reasons for all provisions of which the reasons are not obvious. If they differ as to the law as to the reasons for it, they may write separate notes'.[137] The addition of an appendix of Notes allowed for the provision of 'fuller information as to the considerations by which [the Commissioners] ha[d] been guided in framing any part of the law'.[138] This bears similarities to the ideas of Bentham, who had proposed that it would help the public to comprehend laws better if they were accompanied by a *Rationale* or series of reasons which would serve as an aide to 'honest and sincere obedience', by giving the public greater confidence in their justice.[139]

The Notes do not appear in the final version of the Code. Nevertheless, a brief analysis offers valuable insight into the reasoning behind the provisions of the Code, as well as the Code's communicative role. First, the Notes again reveal the importance of preserving the 'Indian Idiom', so as not to offend Indian feelings. For example, in Note M, 'On Offences Against the Body', Macaulay stated

> We are legislating for them, and though we may wish that their opinions and feelings may undergo a considerable change, it is our duty, while their opinions and feelings remain unchanged, to pay as much respect to those opinions and feelings as if we partook of them.[140]

This further reinforces Macaulay's belief that in order to legislate effectively in India, due respect had to be paid to local conceptions of criminality and justice.[141] It resonates with Macaulay's words in the preface of the draft, 'we are perfectly aware that law-givers ought not to disregard even the unreasonable prejudices of those for whom they legislate'.[142] In an explanation about provocation as a partial defence to homicide, Macaulay justifies his reasons for not treating 'homicide committed in violent passion which had been suddenly provoked' as murder, but instead as a lesser offence, as follows, 'we think that to treat

a person guilty of such homicide as we should treat a murderer would be a highly inexpedient course … which would shock the universal feeling of mankind, and would *engage the public sympathy* on the side of the delinquent against the law'.[143] Macaulay's reference to the 'universal feeling of mankind' not only demonstrates the importance of public perception of the law in the writing of the Code, but is also a nod to Bentham and his advice that the successful legislator 'ought to fear to enkindle the passions and to excite an opposition'.[144]

Macaulay returned to London almost immediately after completion of the draft and died in December 1859, before he could see the Code enacted. A long period of revision began, during which the Code's original utilitarian nature was watered down in the face of criticism both within and outside the legal profession. The Code's journey was also slowed as a result of political and economic exigencies which had little to do with utilitarianism.[145] The Code was finally enacted in 1860. James Fitzjames Stephen (Law Member of the Governor-General's Council from 1869) summarised the history of the Code over these interim years as follows:

> Lord Macaulay's great work was far too daring and original to be accepted at once. It was a draft when he left India in 1838. His successors made remarks on it for twenty-two years … The Afghan disasters and triumphs, the war in Central India, the wars with the Sikhs, Lord Dalhousie's annexations, threw law reform into the background, and produced a state of mind not very favourable to it. Then came the Mutiny, which in its essence was the breakdown of an old system; the renunciation of an attempt to effect an impossible compromise between the Asiatic and the European view of things, legal, military and administrative. The effect of the Mutiny on the Statute-book was unmistakable.[146]

Following the Indian Mutiny of 1857, the Company was dissolved in 1858 and the Crown took direct control of its territories. The shift in the source of colonial authority from 1858 was a major event which led to a renewed interest in both creating and demonstrating the source of Britain's legal legitimacy in India after a period of emergency which had necessitated the suspension of the rule of law.[147] In his study on the relationship between the political exigency of emergencies and the rule of law, Nasser Hussain draws the correlation between the establishment of British colonial supremacy over non-white populations and the enshrining of 'legality' as the 'preeminent signifier of state legitimacy' and so-called 'civilisation'.[148] It is submitted here that a key way to identify

legality with state legitimacy was through the creation and promulgation of a revised legal framework, including codification. A penal code in particular has central importance as a source of arguably the most basic aspect of state power: the power to punish.[149]

The enactment of the Code thus allowed Britain to shore up its position of power and 'restore the semblance of legality'[150] when it was most needed. The timing of the codification of the criminal law should be seen as a tool to empower the government at a time of existential crisis. McClure succinctly explains the reason for the success of codification in India, despite the fact it did not materialise in Britain – namely that 'codification had become an attractive proposition to imperial legislators with authoritarian tendencies and anxious interpretations of the contemporary state of colonial societies'.[151] In the context of crisis of the Mutiny, 'the codification of penal law was understood as the modern antidote to arbitrary and violent justice, replacing legal uncertainty with uniformity'.[152]

Because the Mutiny was sparked, at least in part, by actual and perceived mismanagement of India and mistreatment of Indians by the Company, 'codification offered the promise of a colonial state reliant on a more measured rule of law, which could manage colonial societies with greater accountability'.[153] When the Code was enacted, it provided a tool that could be used to organise executive legality and sovereign discretion into a 'new and centralised legal structure'.[154] Through the enactment of the Code, and subsequently the Code of Criminal Procedure, the need to resort to arbitrary measures, such as the suspension of civil authority or violent military intervention again in the future, was minimised.[155] Therefore, Wright argues, 'the enactment of the IPC, delayed until after the 1857–8 Indian Mutiny, helped to disguise the contradictions and restored the moral legitimacy of British rule, for the English governing classes at least'.[156]

The enactment of the Code at this time entailed what Wright has described as 'a quasi-constitutional projection of British rule that aimed to better regulate relations between the colonisers and the colonised'.[157] Use of the word 'projection' here is fitting. At the time of enactment, the Code was considered and used as a means of communicating not just the word of the criminal law, but also idealised representations of British rule and the supposed benefits of the improved criminal law and justice system that were introduced with the beginning of Crown rule. As Hussain has argued, 'Government by rules', as written and promulgated in the codes, 'became the basis for the conceptualisation of the "moral legitimacy" of British colonial rule'.[158]

Conclusion

In setting out its historical context both in India and Europe, this article has identified how the Indian Penal Code was a means of both creating and disseminating colonial legal authority. A communicational approach to law has helped to situate the Code within the history of European law reform and redefinitions of 'the relationship between the juridical individual and the constitutional state'.[159] The well-recognised characteristics of the European codes of the eighteenth century which preceded it, such as comprehensiveness, completeness and simplicity, and the work of the English Criminal Law Commission of 1833–45 are reflected in the Code and stem from a communicative objective championed by Bentham. Two legislative drafting techniques used by Macaulay in the Indian Penal Code stand out: Illustrations and Explanatory Notes.

Despite revisions to Macaulay's original draft Code, we have seen evidence that the Code was both drafted and enacted with the aim of advancing government authority (from a newly unified Indian colonial legislature, as created by the Charter Act of 1833, and, from 1858, representatives of the Crown) in mind. This intent is reflected in the way in which the simplicity and precision of the Code was presented by Macaulay as a safeguard against an overreliance on the opinions of Judges in interpreting the law. As Hussain points out, the Code was based on the 'qualities associated with a utilitarian understanding of law: publicity, efficiency and simplicity'.[160] Although Macaulay made no direct acknowledgements to Bentham, it has been argued that a 'debt to Bentham lies in the informing spirit of the Code and its general doctrines of jurisprudence'.[161] The Code should therefore be seen as a monument to Bentham's proud boast that he would be the 'dead legislator of British India'.[162]

This was the narrative which informed Macaulay's Penal Code. The draft Code was set aside as other priorities took the attention of the government of India and colonial administrators. However, the aftermath of the Sepoy Mutiny of 1857 pushed it into the spotlight once again. At this critical juncture for colonial control over India, the Code's potential for legitimising the authority of the Crown and communicating the law directly to what was, in effect, a re-conquered population was identified – making the Code a new tool for colonial control via the communication of legal authority.

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Notes

1 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, in Indian Law Commission, *A Penal Code*, viii. Emphasis added.
2 See Van Hoecke, *Law as Communication*.
3 Van Hoecke, *Law as Communication*, 8.
4 Canale, 'The Many Faces of the Codification', 135.
5 Hussain, *Jurisprudence of Emergency*, 6.
6 Weiss, 'The Enchantment of Codification in the Common-Law World', 485.
7 Although the Draft Penal Code was signed by all the Law Commissioners (T.B. Macaulay, J.M. Macleod, G.W. Anderson and F. Millett), Macleod testified in 1848: 'I may state a fact already generally known when I say that Mr. Macaulay is justly entitled to be called the author of the Indian Penal Code'. Macleod, *Notes on the*

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10 Smith, 'Macaulay's "Utilitarian" Indian Penal Code', 164.
11 Appointed by Royal Commission, also known as the Royal Commission on the Criminal Law.
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28 Farmer, 'Reconstructing the English Codification Debate', 405.
29 Bentham, 'Of Nomography', iii, 233. Hereafter 'Bowring'.
30 Bowring, iii. 233.
31 See Bentham, 'A General View of a Complete Code of Laws', in Bowring, iii. 155–210.
32 Halévy, *The Growth of Philosophic Radicalism*, 55.
33 Raman, 'Utilitarianism and the Criminal Law in Colonial India', 751; Bentham, 'A General View of a Complete Code of Laws'.
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38 Cornish et al., 'Theories of Law and Government', 78.
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42 Burton, 'An Introduction to the Works of Jeremy Bentham', 53.
43 Bowring, iii. 207.
44 Bowring, iii. 236–7.
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46 Bowring, iii. 209.
47 Bowring, iii. 209.
48 Bowers, 'Victorian Reforms in Legislative Drafting', 335; Bowring, iii. 208.
49 Bowring, iii. 271.
50 See generally Bentham, 'A General View of a Complete Code of Laws', in Bowring, iii.
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130 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, v. Emphasis added.
131 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, iv.
132 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, v. Emphasis added.
133 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, vii. Emphasis added.
134 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, v. Emphasis added.
135 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, iv–v.
136 Indian Law Commission, *A Penal Code*, Sec. 298, Ch. XVIII ('Of Offences affecting the Human Body'), 39.
137 Minute by the Honourable T.B. Macaulay Esqr, 4 June 1835, in 'Instructions to the Law Commission for the formation of a Criminal Code', IOR/F/4/1555/63507, 7–10.
138 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, iv.
139 Bowring, i. 58–9.
140 Indian Law Commission, *A Penal Code*, 109.
141 Raman, 'Utilitarianism and the Criminal Law in Colonial India', 739.
142 Letter to Lord Auckland from the Indian Law Commissioners, 14 October 1837, prefixed to the draft of the Penal Code, 1.
143 Indian Law Commission, *A Penal Code*, 108. Emphasis added.
144 Bowring, i. 184.
145 Stokes, *The English Utilitarians and India*, 42.
146 Fitzjames Stephen, in George Otto Trevelyan, *The Life and Letters of Lord Macaulay*, vol. 1, 417–18.
147 For example, Act VI of 1857 created new offences against the State relating to the Mutiny, and Act XIV of 1857 granted the Governor-General the power to convene court martials or commissions for trial for the purpose of trying such offences. These specially appointed courts were not subordinate to the *Sudder* or any other court and were authorised to convene without the assistance of a *futwa*, Law officer or Assessor. The Acts did not apply to British-born subjects or to their children.
148 Hussain, *The Jurisprudence of Emergency*, 4.

149 Hussain, *The Jurisprudence of Emergency*, 62.
150 Wright, 'Macaulay's Indian Penal Code: Historical Context and Originating Principles', 21–2.
151 McClure, 'Sovereignty, Law, and the Politics of Forgiveness', 386.
152 McClure, 'Sovereignty, Law, and the Politics of Forgiveness', 386.
153 McClure, 'Sovereignty, Law, and the Politics of Forgiveness', 386.
154 Wright, 'Macaulay's Indian Penal Code: Historical Context and Originating Principles', 52.
155 Wright, 'Macaulay's Indian Penal Code: Historical Context and Originating Principles', 22.
156 Wright, 'Macaulay's Indian Penal Code: Historical Context and Originating Principles', 54.
157 Wright, 'Macaulay's Indian Penal Code: Historical Context and Originating Principles', 24.
158 Hussain, *The Jurisprudence of Emergency*, 3–4.
159 Farmer, 'Reconstructing the English Codification Debate: The Criminal Law Commissioners, 1833–45', 399.
160 Hussain, *The Jurisprudence of Emergency*, 60.
161 Stokes, *The English Utilitarians and India*, 233.
162 Stokes, *The English Utilitarians and India*, 233.

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