"THE GRIFFITH CODE" - THEN AND NOW

The Honourable Dean Wells*

It may well be true to say that, notwithstanding Sir Samuel Griffith's significant contribution both as a politician and as a Judge, his most enduring legacy must be the Criminal Code of Queensland. Sir Samuel Griffith was the progenitor, and effectively the sole architect and draftsman, of the Queensland Criminal Code which has not only served Queensland well for over 90 years, but has also been the substantive model for criminal codes within Australia - Western Australia, the Pacific - Papua New Guinea, and as far away as Israel and Nigeria.

In paying tribute to Sir Samuel Griffith's extraordinary legal talent, I would like to traverse the history of the development of the Queensland Criminal Code, then pass to a brief overview of the work of the Queensland Criminal Code Review Committee before moving on to give you a progress report on the National Criminal Code Project which might be described as a distant grandchild of Sir Samuel Griffith's 1897 draft Code.

A brief review of salient dates in March 1893 leads to an interesting hypothesis. On 13 March 1893, Sir Samuel Griffith resigned as Prime Minister (Premier) of the Colony of Queensland and within two weeks - on 27 March - he was appointed Chief Justice of the Colony. It is not known exactly when the new Prime Minister (Premier), Sir Thomas McIlwraith, requested Sir Samuel to prepare a draft code of criminal law, but it was most certainly within only a matter of weeks of Sir Samuel taking up his appointment as Chief Justice.

Given both his robust intellect and considerable political knowledge and skill, there is little doubt in my mind that the idea of a draft code of criminal law for the Colony originated with Sir Samuel rather than with Sir Thomas McIlwraith. There is no real evidence that the latter had any

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interest in, or detailed knowledge of, the law generally or the criminal law in particular. I would therefore venture to suggest that, although the historic footsteps of the origin of the Queensland Code have now been obscured by the winds of time, it seems reasonable to suppose that the original idea of codifying the criminal law came from Sir Samuel Griffith alone.

In 1893, the criminal law of Queensland was a mess. In order to ascertain the substance of the criminal law applicable in this Colony, it was necessary to traverse 96 statutes of England, in force in 1828, as extended to the Colonies of New South Wales and Van Dieman's Land (and *in extenso* to Queensland after separation from New South Wales in 1859) and which had not since been repealed by the Queensland legislature. There were also seven Criminal Law Consolidation Acts of 1865 as well as a further 140 criminal provisions scattered throughout other Queensland statutes.

Prior to commencing work on a draft code of criminal law therefore, Sir Samuel Griffith felt obliged to produce a Digest of the existing criminal law. Commencing work in 1893, the year in which he took up position as the Chief Justice of the Colony, the Digest took three years to complete, being presented to the Government of Queensland on 1 June 1896. The work was monumental. The Digest embodied all the existing criminal statute law which it was within the competence of the Queensland legislature to repeal or amend.

However, it did not contain provisions of certain Imperial statutes such as Slave Trade Acts, Piracy Acts, the *Foreign Enlistment Act* and *Merchant Shipping Act*. It also excluded the Imperial statutes of Praemunire which related to issues of divine worship, the Church of England and the Church of Rome. Sir Samuel Griffith also excluded sundry provisions relating to offences which had for their object immediate effect in England and were practically inappropriate or impractical in Queensland.

Presented by Sir Samuel Griffith to the Government as a "progress report" on the preparation of the Criminal Code, the Digest of 1896 contained over 1,000 offences known to the common law and for which punishment was provided by statute. In form, the Digest was prepared as

if it were proposed to consolidate and re-enact the existing criminal law without alteration of any of its substantive provisions, but in the shorter and simpler phraseology used in the (then) "modern" Acts of Parliament.

The Digest included all indictable offences of statute law, summary offences of the same nature as indictable offences but which differed only in degree; but excluded offences which Sir Samuel Griffith considered to be in the nature of police regulations.

A good example of the consolidation undertaken in the Digest relates to the offence of forgery. Forgery and its derivations were, prior to the Digest, formerly scattered across 54 different statutes, 16 of which were Imperial statutes passed prior to 1828.

It is thus reasonable to contend that, had the Criminal Code project proceeded no further than the Digest of 1896, Sir Samuel Griffith would have rendered outstanding service to the Colony in drawing into one comprehensive document all the criminal law applicable throughout Queensland.

However, fortunately for us and many others, Sir Samuel Griffith's robust health kept pace with his equally robust intellect. Thus within a period of 18 months from production of the Digest, on 29 October 1897, Sir Samuel Griffith forwarded his Draft Code of Criminal Law to the Queensland Government. It is clear from Sir Samuel Griffith's letter to the Government on 29 October 1897 that he was particularly concerned that the Government should adopt a code of criminal law rather than just enact a statute or series of statutes of criminal offences. Both in communications prior to his letter prior to 29 October 1897, and most particularly within that letter, it is clear that Sir Samuel Griffith was contending strongly for the adoption of a criminal code which, he said:

> ... the work of amending the criminal law would be greatly facilitated by its codification. It is manifestly much easier to deal with a law completely and definitely stated than with laws the provisions of which have to be collected from a vast number of separate documents. In the latter case the actual effect of a new statutory provision may be very different from that intended.

There were a number of areas that the Draft Code did not cover. For example, the law embodied in Imperial statutes which were in force throughout "Her Majesty's dominions" and which applied irrespective of local legislation. Sir Samuel Griffith also excluded all matters relating to procedures before Magistrates - which he had already dealt with in his the *Justices Act* 1886. There were also a few indictable offences which Sir Samuel Griffith regarded as being of a temporary or special nature which he excluded along with offences which he regarded as being in the nature of police regulations.

Subject to those exceptions, the Draft Code covered the whole subject of the criminal law which it was within the competence of the Parliament of Queensland to repeal or amend. He included all offences at common law which "should not manifestly be abolished." He developed, drafted and provided all the rules of the unwritten common law relevant to criminal responsibility and the administration of justice. These rules provided the first major attempt in any jurisdiction to codify - by setting in statute - such matters which had, until that date, been left to the flexible approach taken by the common law.

There is no known evidence that Sir Samuel Griffith consulted with what must have been at least embryonic organisations, the descendants of which may now be recognised as the Queensland Law Society, the Bar Association of Queensland and other professional or community groups. Thus Sir Samuel did not have to contend with disparate views on the criminal law, either in terms of the principles of criminal responsibility or in actual offences, which are often now advanced by specific interest groups representing the fragmentation of legal interests which has occurred in post modern society.

In preparing the Draft however, Sir Samuel Griffith did pay tribute to the 1878 Royal Commission Report on the provisions of a Draft Code of Criminal Law for England.

That Royal Commission, consisted of Mr Justice Barry, Mr Justice Lush and Sir James Stephen, all well known names in criminal jurisprudence. It was proposed by those Commissioners that their Draft Code should provide that all future offences should be prosecuted either

under the Code or under some other statute, and not at common law. In contending for a form of codification, those Royal Commissioners stated:

> Practically, the great leading branches of the law are to a great extent distinct from each other, and there is probably no branch which is so nearly complete in itself as the criminal law.

Unfortunately, the work of the 1878 Royal Commission ultimately came to nought.

Although a Bill to codify the English criminal law was introduced into the House of Commons in 1880, it subsequently lapsed.

Apart from that Royal Commission Report, Sir Samuel Griffith was also much influenced by the 1888 Italian Penal Code. This Code represented over 20 years work undertaken by a series of Parliamentary Committees and Royal Commissions under the guidance of eminent Italian lawyers. Sir Samuel Griffith also had regard to the Penal Code of the State of New York and the 1893 adoption, by the Parliament of New Zealand, of the substantive essence of the UK draft Bill of 1880.

In passing however, it is interesting to note that nowhere is there evidence that Sir Samuel Griffith took into account the 1893 Criminal Code of Canada. A most surprising omission given its (then) currency.

The Draft Code was drawn in the form a schedule to be embodied in a Bill which would establish the Code from a proscribed future day (ultimately 1 January 1901), repeal all existing statutes listed in another schedule, contained other necessary provisions `as to the exclusive operation of the Code and contained provisions as to the construction of statutes affected by the changes in nomenclature and other alterations in the law effected by the adoption of the Draft Code.

In 1898 the Draft Code, now in the form of a Bill, was introduced into the Legislative Council by the Minister for Justice. However, due to lack of time, the Legislative Council resolved not to proceed with consideration of the Bill and instead recommend that the Bill be submitted for full consideration and report by a Royal Commission. Thus on 15 December 1898, a Royal Commission was appointed consisting of the Chief Justice, (Sir Samuel Griffith) as Chairman, three Judges and an acting Judge of

the Supreme Court, the Judges of the District Court, the Crown Prosecutors of the Supreme Court, the Crown Solicitor and Parliamentary Draftsman (appointed to act as Secretary).

The several matters required to be considered by the Commission were the expediency of enacting a code of criminal law, the completeness of the Draft Code (submitted by Sir Samuel Griffith in October 1897), the changes proposed to be made to the existing law by the Draft Code and any additions, omissions or alterations which the Commission considered appropriate to make to the Draft Code. The Commission held 26 meetings and furnished their Report to the Governor on 23 May 1899.

It is of interest to note that, as far as can be ascertained, the Commission reviewed the Draft Code without any formal consultation with either members of the profession or the community. It is interesting to observe the contrasts between consultation in the 1890's as opposed to government consultation in the 1990's. The Royal Commission, which was comprised of about a dozen, white, male lawyers could hardly be called representative of the community, even in 1898. What is of interest is the apparent lack of concern at the narrow base utilised for consultation of such an important piece of legislation.

Jumping forward in time to debate on the Criminal Code Bill in the Legislative Assembly in September 1899, there are very few references in Hansard to the restricted consultation process.

> The Attorney-General (Honourable A Rutledge, Maranoa): ... in the course of his untiring labour the learned draftsman found it necessary, in order to perform his work efficiently, to begin with the preparation of a Digest of the statutory criminal law in force in Queensland.
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> Mr Dawson (Charters Towers): Did he call in expert evidence?
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> The Attorney General: He did not call in expert evidence ...[1]

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1 *Parliamentary Debates* (Hansard), 21 September 1899 at 105.

> Mr Lesina (Clermont): As a layman I feel a certain amount of diffidence in getting up to criticise a measure of this character. It would appear that the necessary qualification for dealing with a measure of this kind is the possession of a legal mind.... We have also to depend upon the report of the Commission, which was composed of eminent legal gentlemen like Sir Samuel Griffith and men of that type.... It is lawyers and judges who compose this Commission ... The Commission tells us that this work has been well done, but it is for this House, after discussion, and after investigation of the Code, both on the Second Reading and when we get into Committee, to find out whether the work has been well done.[2]

> Mr Fitzgerald (Mitchell): ... Speaking as a member of the legal profession, I should like to hear an expression of opinion by those outside the ranks of the profession, because it is a question that might be discussed very well and very much to the point outside the profession as well as inside it. Reference has been made to the gentleman who drew up this Code, and to those who revised it. We know who the gentleman is who drew it up in the first instance. But I notice that all who have had anything to do with it are leading legal gentleman: Not a single layman has been asked to consider it or look over it. ... so I should have liked to have seen some persons on the Commission outside of the profession.
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> The Attorney-General: For a codification?
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> Mr Fitzgerald: Yes, for a codification.[3]

To return to the Report of the Royal Commission in 1899, the Commission resolved "that it is expedient to enact a Code of criminal law for Queensland". The Commission concluded:

> that the Draft Code comprises all the provisions which, in the actual circumstances of the Colony, it is necessary or desirable to include in a code of criminal law."

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2 *Parliamentary Debates* (Hansard), 27 September 1899 at 149-50.

3 Parliamentary Debates (Hansard), 27 September 1899 at 161.

However, the Commission did make several alterations to the Draft Code, many of which were considered to be of a minor nature, but there were a number of some significance.

For example, the conditional suspension of punishment was extended to all offenders, not just first offenders. In passing, I cannot resist the opportunity to comment that the *Penalties and Sentences Act* 1992 has effectively revived and extended that original concept. Other examples of variations made by the Commission include the punishment of rape, which the Commission recommended should no longer be a capital offence - although Sir Samuel Griffith and one other Commissioner did not concur. Robbery was to no longer be regarded as capital offence in certain circumstances.

In regard to stealing, the Report agreed the Draft Code should reflect the element of the offence be fraudulent conversion of property, compared with the (then) existing law which made the fraudulent taking of property the gravamen of the offence. The Commission divided on whether the concept of provocation, as propounded by Sir Samuel Griffith in the Draft Code, should be included. This was one of the more significant variations on the common law that Sir Samuel Griffith had recommended be adopted in the Draft Code. After apparently considerable debate, the Commission by a majority concluded that provocation should be included.

There is one novel provision proposed by Sir Samuel Griffith which did pass scrutiny of the Royal Commission, that relating to public attacks on religious creeds. Actually this raises an interesting example of the farsightedness of Sir Samuel Griffith who, although he could hardly have anticipated the multi-cultural society Australia has recently become, still had the perception of using the criminal law to protect religious diversity. Section 213, Public Attack on Religious Creeds, was included in Sir Samuel's original Draft of 1897. It provided:

> Any person who, with intent to excite ill will amongst Her Majesty's subjects, by words publicly spoken, or by any writing, sign or visible representation publicly exhibited, holds up the doctrines of any religious faith to public derision or contempt, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Sir Samuel Griffith did not incorporate the existing common law relating to blasphemy into his Draft Code on the grounds that it was "manifestly obsolete or inapplicable to Australia" where there was no established Church. Instead, adapting an idea derived from the Italian Penal Code of 1888, s.213 effectively proscribed the intentional insulting of religious sensibilities.

As Robin O'Regan QC, another Queensland criminal law reformer of more recent times, has observed:

> Long before the enactment of anti-discrimination legislation in Australia, Griffith provided protection against acts intended to offend the feelings of persons within different religious groups.[4]

This bold experiment in tolerance underlines Sir Samuel Griffith's commitment that:

> the modern role of the criminal law in this context was not to protect the Christian religion from attack but to punish public vilification of religion of any denomination lest it lead to civil disorder.[5]

The Royal Commission simply indicated that, with regard to s.213:

> We desire to call attention to s.213 ... which is an important modification of the present statute law.

Unfortunately, such a balanced and novel approach to the concept of diversity of religious feeling was clearly well ahead of its time and was not accepted by Parliament when the draft Code was debated in September 1899.

There were a number of other observations and reservations set out in the Report of the Royal Commission, such as assigning maximum sentences to one of four levels of imprisonment: 3 years, 7 years, 14 years and life (except for certain variations which arose from the context or nature of the offence to which the sentence was attached). Subject to those

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4 R.O'Regan, "Two Curiosities of Sir Samuel Griffith's Criminal Code" (1992) 16 *Crim L.J.* 209, at 215.

5 *Id.* at 213.

and other less important reservations, the Commission was unanimous in adopting Sir Samuel Griffith's Draft Code.

The Criminal Code Bill was introduced into the Legislative Assembly on 20 September 1899 by the Attorney-General (the Honourable A Rutledge) who said that the Draft Code effectively reduced the criminal law to:

> a simple form, so that any intelligent man could understand it. It would enable a man to ascertain in a few minutes which now - however diligent and however well informed he might be - would take hours or days to ascertain.[6]

There were 10 days of debate in all from 20 September to and including 24 October 1899. During the first two days of the debate there was a considerable amount of discussion on the best manner of proceeding to deal with the Bill and the attached schedule containing over 700 sections. Some objection was taken to the Government's attempt to deal with such a weighty piece of legislation in a relatively short space of time. Ultimately, the House dealt with significant groups of sections, only pausing to debate individual sections where specific objections were raised. In the majority of cases, such objections related to the punishment attached to the offence, to a lesser extent some of the elements of the offence were also subjected to scrutiny.

During the debate, the definition of codification given by the UK Royal Commission of 1878 was adopted by the Attorney-General who described it as:

> The reduction of existing law to an orderly written system, free from the needless technicalities, obscurities and other defects which the experience of its administration had disclosed.[7]

One of the most important arguments mounted by the Government contending for codification was put by the Attorney-General in these terms:

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6 *Parliamentary Debates* (Hansard) 20 September 1899 at 85.

7 *Parliamentary Debates* (Hansard) 21 September 1899 at 106.

> When it is remembered that ignorance of the law does not excuse anyone who commits a breach of the law, it becomes, I say, instantly apparent that such an extensive body of law ought, in all fairness to the community that is bound under more or less serious penalties to obey it, to be reduced to writing in such form that every intelligent person who is able to read should have an opportunity of knowing for himself what the law really is.[8]

As I have already indicated, there was both long, divisive and diverse discussion on the range of penalties to be included in the draft Bill. More than any other single aspect of the criminal law, and far more than any attention paid to a particular provision, sections which provided for sentences of death, mutilation, floggings and solitary confinement attracted most debate. Page after page of Hansard records the emotional and logical arguments, often peppered by colourful examples of barbaric punishment, which punctuated the debate on the Bill. In this way, some of the more Draconian levels of sentences originally proposed in the Bill were diluted; although the death sentence survived for some offences until 1922 and whipping was only removed from the Criminal Code as recently as the 1980's.

However, there is a remarkable silence - in both the report of the Royal Commission and in Hansard records of the debate on the Bill - on the single most radical element of Griffith's Draft Code. The subject is the codification of principles of criminal responsibility. It is a tribute to Sir Samuel Griffith's legal scholarship that the original concepts which he propounded and which are now contained in sections 22 to 36 inclusive[9], have remained almost untouched for nearly 100 years. In the late 1890's there was no English speaking precedent for codification of the principles of criminal responsibility dealing with such jurisprudentially difficult subjects as intention, accident, insanity, intoxication and mistakes of both fact and law. There was absolutely no discussion whatsoever of the provisions of Chapter 5 of the Code which contained these vital concepts; the entire Chapter was put and passed without debate on 3 October 1899.

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8 *Ibid.*

9 Chapter 5 of the Criminal Code.

On 21 November 1899, Hansard noted that the Legislative Assembly had received a message from the Legislative Council "intimating that they [the Council] had agreed to this Bill without amendments." On 28 November 1899 the Criminal Code Bill received assent and the Act was proclaimed to come into effect on 1 January 1901.

I would now like to return you from the end of the nineteenth century to the present.

Having covered the main features of the history of Queensland's Criminal Code, I will briefly outline recent developments both within and outside Queensland concerning reforms of the Criminal Code.

In line with the Queensland Government's commitment to modernise and overhaul the law relating to criminal offences, in April 1990 I appointed a Committee to conduct a thorough review of the Queensland Criminal Code. Chaired by Mr Robin O'Regan QC, then an esteemed member of the private Bar, the Committee also comprised Mr Michael Quinn, a solicitor (and then vice-President of the Queensland Law Society) and Mr Jim Herlihy, then a senior law lecturer at Queensland University. The Committee was assisted by Mr Michael Shanahan, now Public Defender at the Legal Aid Office (Queensland), Mr Marshall Irwin, General Counsel to the Criminal Justice Commission and Mr Peter Svensson, a former Assistant Public Defender.

On 8 March 1991, the Committee produced a First Interim Report which traversed the first 380-odd sections of the Code. Released in late March 1991 for public discussion, over the succeeding months the Interim Report attracted 16 submissions. However, as the Final Report of the Criminal Code Review Committee subsumed those matters covered in the First Interim Report, I will pass onto the Final Report itself.

The Final Report was released in June 1992. It revisited certain aspects of the Code covered in the First Interim Report and also covered the remaining sections of the Criminal Code. Shortly put, the current Queensland Criminal Code contains over 700 sections, many of which have been amended or added to over the last 90 odd years. There are disparities in expression and interpretation which have arisen over that period of time. The Review Committee has recommended a more

consistent approach be adopted in the drafting of any new Code and have also recommended a reduction of the over 700 sections to about 395.

In this regard the Review Committee is returning to the original concept of Sir Samuel Griffith that the criminal law:

> ... by which everyone is bound and which is understood to be definitely known and settled, should be ... reduced to writing in such a form that any intelligent person able to read can ascertain what it is.[10]

The Committee has recommended a large number of amendments, deletions and additions to the original structure drafted by Sir Samuel Griffith. Many of the changes recommended are of a minor or even a drafting nature, which it would be wearisome to detail here. However, I would like to highlight for you five significant changes which have been recommended in the Final Report.

The first change recognises the atrophy of the ancient classification of a misdemeanour. Thus the Committee has recommended simplification of the classification of offences into crimes (indictable offences), simple offences (capable of being dealt with in a summary way) and regulatory offences.

One of the most significant recommendations contained in the Final Report relates to offences of dishonesty. The present Code contains numerous provisions relating to stealing, fraud, secret commissions, other property offences and forging and uttering. The Committee has recommended that the Code be redrafted to incorporate the particular conduct now proscribed by those various sections into a relatively few new provisions drawn in more general terms. The fundamental basis of such offences is thereby recommended to be placed on the footing of dishonest appropriation of property belonging to another person. The approach is not entirely novel, having been pioneered in the UK by the *Theft Act*. However, with the increasing tide of fraud - particularly white collar crime - throughout Australia, this approach is largely in accord with law reform being carried out in other jurisdictions around the country. Ideally, given that white collar criminals know not State

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[10] Extract from Griffith's letter accompanying draft Code, 29 October 1897.

boundaries, it would be desirable for all Australian jurisdictions to at least align fraud provisions on the same basis.

The Final Report also recommends that all present rules relating to corroboration be abolished, but the Report leaves at large the discretion of a trial judge to warn a jury of the dangers of convicting on the uncorroborated testimony of a witness if, in the interests of justice, it appears to be appropriate in the facts of a particular case.

This recommendation has a significant effect with regard to the way in which the evidence of accomplices has formerly been treated, and also has some effect in dealing with evidence of complainants in sexual assault and rape cases.

The Final Report further recommends that the option of summary trials for indictable offences should be available for a much wider range of offences. Three pre-conditions are recommended: that the maximum sentence for the offence if dealt with on indictment does not exceed seven years imprisonment; that the accused person does not object to the summary procedure; and that the Magistrate considers, in all the circumstances, that summary process is appropriate. It is argued by the Final Report that such a variation which permits an accused person to waive trial by jury for some offences may speed up the criminal justice process.

Sentencing is perhaps one of the most sensitive aspects of the criminal law and regularly attracts significant public attention. As I have already indicated, it was aspects of sentencing and punishment that attracted the most interest of the Legislative Assembly during the course of the debate of the original Criminal Code Bill in 1899. The Final Report has recommended that a redrafted Criminal Code contain no mandatory sentences at all. As you may be aware, mandatory sentences of life imprisonment are still provided by the Criminal Code for five offences, but in practical terms the most significant is murder.

The Final Report was publicly released in early July 1992. Submissions were sought from the public, the profession, academia and any other interested organisations and the original deadline for receipt of such submissions was set at 31 January 1993.

However, as a result of numerous applications for extension of time within which to make submissions, I have extended that deadline to the end of this month. To date, over 40 submissions have been received, principally from interested members of the public and from community groups. One of the most disappointing omissions from the list of submissions received so far are the legal profession and the Law Schools.

The most significant common element emerging from submissions received to date relate to the levels and type of sentences attached to offences, particularly offences of violence and sexual offences against children.

The openness of process, even at this early stage of the development of a reformed Criminal Code, is in marked contrast to the lack of public input to the original Code between 1897 and 1899. Consistent with this Government's commitment to community awareness, it is intended that further input into the development process will be encouraged, most especially when a draft Bill has been prepared on the basis of the Final Report - as modified by the submissions received at the end of March 1993.

The final aspect of a review of the development of the criminal law influenced by Sir Samuel Griffith relates to the national model criminal code project - long the elusive dream of academic lawyers, practitioners and legislatures. Just short of 100 years of the passage of the Griffith draft Code, there is now some ground for cautious optimism that the nine criminal law jurisdictions in Australia may move towards national consensus on codifying the criminal law for the whole of the country.

On 28 June 1990, the Standing Committee of Attorneys-General (SCAG) placed on its agenda the possibility of developing a uniform criminal code for all nine Australian jurisdictions.

One event which, in retrospect, represented the first step along the road which may ultimately lead to a uniform national code, was the establishment in February 1987 of a Committee to review the Commonwealth criminal law. Headed by Sir Harry Gibbs, the (then) recently retired Chief Justice of the High Court, the Committee had produced a number of Reports dealing with different aspects of the

criminal law and its application to the Commonwealth. However, by far the most important catalyst to the SCAG initiative in 1990 was the release, in the middle of that year, of the "Gibbs Report" on criminal responsibility.

Fortuitously, that report was released only a couple of months before the meeting, in September 1990, of the Third International Criminal Law Congress held in Hobart. Many of the papers presented at that congress, and much of the informal discussion, centred on the "Gibbs Report" dealing with principles of criminal responsibility. This had the effect of subsequently galvanising SCAG, individual jurisdictions and other organs of law reforms to accelerate the pace of discussion, debate and review of the criminal law generally.

The momentum for reform received an additional boost in April 1991 in Brisbane. A seminar was conducted by the (International) Society for the Reform of the Criminal Law, to discuss the implications arising from the "Gibbs Report" on criminal responsibility. The seminar was attended by judges, prosecutors, defence counsel and academics from all Australian jurisdictions. In essence, the conference re-iterated earlier calls to work towards uniformity in the criminal law throughout Australia.

One of the most significant developments arising from the seminar was an appreciation that, despite disparities between the "Griffith Code" States and the common law States, the fundamental principles underlying criminal responsibility were not as diverse as had previously been assumed.

With the impetus received from the "Gibbs Report", the Third International Criminal Law Congress, and the Brisbane Conference, SCAG authorised the establishment of a Criminal Law Officers Committee (CLOC) which contained one criminal law specialist from each of the nine Australian jurisdictions. The first formal meeting of CLOC took place in May 1991 in Adelaide, when it was decided that in any move towards national uniformity in the criminal law, priority should be given to an examination of the principles of criminal responsibility; the very foundations of any system of criminal justice.

CLOC has met regularly since May 1991, periodically reporting back to SCAG on progress achieved. It was a meeting of CLOC in Melbourne

in August 1991 that the concept of a model criminal code for Australia was first mooted. That concept was supported by five considerations.

The first was recognition of the significant distinctions which existed between the "Griffith Code" States (Queensland, Western Australia, to a lesser extent Northern Territory and marginally, Tasmania) compared with the common law States. Given the history of developments which occurred independently in the common law and the "Griffith Code", it was considered that to immediately centralise the criminal law could have unfortunate ramifications for the administration of law and law enforcement at a practical level in each of the nine jurisdictions.

The second consideration was that the concept of a model code, which would stand apart from the nine existing systems, could thus draw on the best of all jurisdictions - both common law and "Griffith Code".

The third aspect was that the establishment of a model code would thereby enable the individual jurisdictions to draw upon the model when considering reform of their own statutes and codes, at a time and in circumstances suitable to each jurisdiction, rather than be forced to make wholesale changes at a pace which may be counterproductive or politically unacceptable.

The fourth consideration was recognition of the benefits of a code system. A model code as distinct from a series of statutes, was accepted because of the inherent strength of the criminal code which contained within it all rules relating to criminal responsibility, defences, exculpation as well as all the substantive offences and their sentencing levels.

Finally, the common law jurisdictions accepted the utility, efficiency and internal cohesion of the Griffith Code concept. Thus it may be seen that the CLOC model code project is very much the grandchild of the pioneering work undertaken by Sir Samuel Griffith.

In July 1992, CLOC released a Discussion Draft entitled: "Chapter 2: General Principles of Criminal Responsibility". In September 1992; the Fourth International Criminal Law Congress held in Auckland, New Zealand, provided a focus on the major aspects of criminal responsibility contained in the Discussion Draft. This Congress effectively acted as a continuation of the debate commenced in Hobart two years earlier and

was thus an appropriate forum for observations and criticism to be ventilated on the CLOC Draft.

Events moved quite rapidly from that point. The end of September 1992 was the deadline for submissions on the Discussion Draft relating to criminal responsibility.

In November 1992, amendments were made to the Discussion Draft as a result of submissions received over the preceding months and as a result of the points raised at the Auckland Conference. In December 1992 CLOC presented the Final Report on "Chapter 2: General Principles of Criminal Responsibility" to SCAG which, in February 1993, authorised the release of that Final Report.

Now that the Final Report of CLOC is at large, I have sought public and community input from Queenslanders on the concept of criminal responsibility which are set out in the Final Report.

Without going into detail, I think it is fair to say that the principles of criminal responsibility contained in the CLOC report vary considerably from those set out in the original Draft Code of Sir Samuel Griffith and which form the basis of Queensland's present Criminal Code. However, having said that, I think it is also fair to say that many of the variations concerning criminal responsibility, which are well enough known to common law, evolved in the last 90 years since Griffith's Code passed into legislation.

Thus, while the CLOC Report has attracted criticism from "Griffith Code" jurisdictions, as representing a "foreign" common law approach to criminal responsibility, the fundamental bases remain similar, and the variations probably reflect the development of the criminal law over the past 90 years rather than a significant departure from those principles so aptly embodied in the Draft Code by Sir Samuel Griffith.

In 1958, Queensland's Chief Justice Mansfield said:

> It is, however, incorrect to suppose that any code can remain complete for long. Cases arise from time to time when its meaning is extended and modified by Judges, and every year produces a crop of legislation some of which affect the provisions the Code. Queensland is no exception.

Thus it may be seen that the work undertaken by the Queensland Review Committee has addressed at least part of the problem identified by the former Chief Justice. The recommendations contained in the Final Report will, at the end of the public consultation period, enable the Queensland Code to carry the weight of this State's criminal jurisdiction for some time yet.

However, it should be noted that the Queensland Review Committee did not recommended any substantive changes to the concepts of criminal responsibility contained in Chapter 5 of the Code, which have remained essentially unaltered since they flowed from the pen of Sir Samuel Griffith in 1897. It will be recalled that there was absolutely no debate on the provisions of Chapter 5 when the Criminal Code Bill was passing through the Queensland legislature in 1899. It is against that background then that the CLOC Final Report, released in February this year, must be gauged.

As I have already indicated, the concepts of criminal responsibility set out in the CLOC Final Report pose a significant challenge, not only to the accepted principles of criminal responsibility embodied in the Queensland Criminal Code, but also in the approach required to be adopted by practitioners, academics and the community.

It is contended that the concepts of criminal responsibility which are likely to form the basis of any national uniform criminal code, while they do take into account the Griffith Code approach, have had the benefit of 90 years of common law development; whereas the provisions of the Queensland Code have essentially remained static - subject of course to modification and interpretation by the judiciary - for that same period.

The challenge for the Queensland criminal law in the future is to ensure that the best features produced by the robust intellect of Sir Samuel Griffith are adapted and modified in the light of experience, both for Queensland criminal law and the ambitious project to harmonise criminal law throughout Australia. It is probably fruitless, but nonetheless tempting, to imagine what Sir Samuel Griffith would think of the breadth, depth and extent of debate on the criminal law today, in contrast to the almost "club-like" atmosphere in which his remarkable creation was conceived, debated and passed into law.