

TOBIAS FALKNER

**THE DEVELOPMENT OF CRIMINAL LAW
LEGISLATION IN NEW ZEALAND**

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LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON

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I. INTRODUCTION

From the time New Zealand became a British Colony until today there have been important changes within the legal system. An area, in which most striking developments can be discovered, is criminal law. This research paper will give a short summary of the change from the colonial English criminal law to the modern New Zealand criminal law system.

II. SITUATION IN THE MIDDLE OF THE 19th CENTURY

After the British discoverer Cook landed in New Zealand in 1769 British settlers came to New Zealand in the following years. The Treaty of Waitangi was signed on 6th February 1840 and New Zealand came under British sovereignty on 21st May 1840, first as part of the Australian colony New South Wales thereafter as a separate colony from 10th November 1840. This was the moment when English law came into force officially in New Zealand¹.

Although many people came to New Zealand with great enthusiasm, there was the need to create new legal rules including rules of criminal law². Due to a lack of qualified personnel it soon became a question whether it was better to create new rules on its own what might cause problems because of missing experience with these regulations or to copy the existing English law what might cause trouble because of its incompatibility to special circumstances in New Zealand. Finally, the political leaders decided to set up the legal system on well-known English rules as this seemed to be the “smaller evil”³. Nevertheless, some people already thought about alterations of the English law, respectively the law that had been imported from the “convict colony” New South Wales and was still in force in

¹ Norman Arthur Foden *New Zealand Legal History* (Sweet & Maxwell, Wellington, 1965) 6, 15 – 19.

² I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 361.

³ Citation in: I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 362.

New Zealand⁴, but it took a long time before first reforms could be seen in New Zealand's criminal law.

III. DEVELOPMENTS IN ENGLAND UNTIL THE 1890s

Before 1840 there had been several reforms in English criminal law especially in the 1820s that abolished many medieval punishments for minor offences⁵. This slight modernisation of English laws made it easier for New Zealand to stick to large parts of English criminal law. Besides some first codifications in specific fields of criminal law in 1861 there were also unsuccessful attempts to modify the English law. The most outstanding one was the rejection of the Stephen code in 1878/1879. Sir James Fitzjames Stephen had introduced a bill to create a far-reaching codification of English criminal law in order to simplify the law that consisted of many common law rules but also first codifications in some areas⁶. After the rejection England preserved its common law system and only codified some offences until the First World War without targeting a comprehensive criminal codification⁷. This defensive policy in England forced some colonies, including New Zealand, into to develop their own rules of criminal law without the opportunity to wait for developments in England.

IV. DEVELOPMENTS IN NEW ZEALAND

A. The English Laws Act 1858

Before we can focus on the developments of New Zealand criminal law it is necessary to have a look at the formal origins of English law in New Zealand. As New Zealand was a British colony it was usual that all the English law was

⁴ See William Swainson *New Zealand and its colonization* (Smith, Elder and Co., London, 1859) 93-94.

⁵ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 39.

⁶ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2ed, Brooker's, Wellington 2001) 39.

⁷ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 365.

applicable that was in force at the day the possession of the colony started. But as New Zealand was part of New South Wales first some people including the Acting Chief Justice Stephen claimed that the crucial date was 26th January 1788 when New South Wales was founded⁸. In order to clarify the situation the English Laws Act was passed in 1858 that stated that all English law – written or common law – that existed before 14th January 1840 was in force in New Zealand as far as applicable for the circumstances in New Zealand⁹. This last clause was usual practice after the establishment of a new colony¹⁰. Therefore, New Zealand's criminal law was the English law as it was after the reforms in the 1820s.

Although some people saw the necessity to develop rules that fit the requirements of New Zealand there was strong support for the preservation of English law mainly due to the fact that most of the immigrants were Englishmen and were used to the law that existed in their home country, including most of the judges and lawyers. Moreover, many saw England as the perfect legal system that should be rebuilt in New Zealand¹¹.

B. Criminal Law in the Early Years

During the first decades of the new colony only a few amendments of criminal law took place and, if so, they were mainly copies of law reforms that had taken place in England or other British colonies¹².

1. Justices of Peace Act 1858

A good example of a copy of English law is the Justices of Peace Act 1858 that only transferred English rules to New Zealand¹³:

⁸ See David V. Williams „The Foundation of Colonial Rule in New Zealand“ (1988) 13 NZULR 54, 63.

⁹ Jeremy Finn „The Imperial Laws Application Act 1988“ (1993) 4 CanterburyLR 93.

¹⁰ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 363.

¹¹ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 363-364.

¹² Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 102-103.

“The several Acts of the Imperial Parliament specified in the Schedule hereunto annexed shall be taken to extend to this Colony, and shall be applied therein in the administration of justice (...)”¹⁴.

Of course, this kind of acts will not be explained in detail here.

2. *Execution of Criminals Act 1858*

One of the most important acts in the early years was the Execution of Criminals Act 1858. It marks an independent development of law at a time when most criminal law was just copied from England. But the topic of the Act and the debate was not if death penalty is desirable or not. The Act dealt with the procedure of hanging offenders that had been sentenced to death, especially the question if offenders should be hung in public or not. One side argued that public hangings could lead to shocking experiences for the spectators, the other side saw a benefits for the prevention of further capital crimes.

Finally, the Bill that abolished public hangings - “(...) sentences of death (...) shall be carried into execution within the walls or the enclosed yard of some gaol (...)”¹⁵ - was passed and thus New Zealand had – even in the early years – a field of law where it was leading the development of law compared to England¹⁶.

Another improvement compared with English methods of execution was made in the Punishment of High Treason Act 1870.

Whereas the English law provided that the culprit of High Treason should be

“drawn on a hurdle to the place of execution and be there hanged by the neck until such person should be dead and that afterwards the head should be severed from the body of such person and the body divided into four quarters”¹⁷,

¹³ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker’s, Wellington, 2001) 102-103.

¹⁴ Section 1.

¹⁵ Section 1.

¹⁶ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 376.

¹⁷ See Preamble of the Punishment of High Treason Act 1870.

the Punishment of High Treason Act reduced the procedure of execution to the steps necessary to cause the death, s3:

“In all cases of high treason (...) such person shall be taken to the place of execution and be there hanged by the neck until such person be dead.”

This Act shows that some pieces of early legislation in New Zealand did get rid of remaining medieval procedures that still existed in English criminal law.

3. *Conclusion*

In the early years real independent reforms of criminal law were rare in New Zealand. Still parts of medieval rules of English law were upheld and only some of the old rules were altered. Although the most inconsistent parts of the English law, as the capital punishment for minor offences, had been reformed before 1840 the law was still very complex and hard to understand¹⁸, especially after first codifications led to a mixture of written law and common law.

But the inactivity of the legislature in the criminal law is understandable to some extent. After the new colony was set up it was necessary to bring order to important fields of civil law first, especially questions dealing with land. This task was even more difficult because of the problems with the native population that led to long violent conflicts that had to be settled. This took until the last quarter of the 19th century.

Another important aspect were the strong ties of large parts of the population to the mother country, which made it difficult to get enough support for reforms even if they were obviously necessary.

Other problems occurred when it was necessary to deal with Maori in court. This required a balance between sticking to the English law and, on the other hand, respecting the special needs of the Maori. Some Judges like Henry Samuel Chapman tried to cope with this situation¹⁹ others did not care or even treated Maori worse than the law allowed.

¹⁸ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 102.

¹⁹ Peter Spiller *The Chapman Legal Family* (Victoria University Press, Wellington, 1992) 50.

Major improvements of law were left to legislature in the following years of New Zealand legal history.

C. New Zealand Laws from 1865 onwards

The necessity of change increased throughout the 19th century. But in contrast to the development in England the legislature was the leading force in altering the law instead of the courts²⁰. The development of new technologies made it inevitable to adjust current rules of law – first of all, of course, not in criminal law²¹. But once the reforms were on the way they also affected criminal law. Some people still favoured the adoption of expected English law reforms rather than introducing new rules on their own²². But when the Stephen Code was rejected in the English Parliament it became obvious that New Zealand would not be able to wait for reforms in the mother country forever and started to work on criminal codifications on its own²³.

This was the birth of codification movements that did not only develop indigenous rules but also searched for successful codifications around the world as will be shown.

1. Acts between 1865 and 1875

From 1865 onwards, larger developments of New Zealand criminal law took place. The Criminal Law Procedure Act 1866 introduced some important rules about the procedure in criminal trials. The Act contained some rudimental rules about the

²⁰ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 75.

²¹ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 81-82.

²² Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 103.

²³ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 364.

defence in criminal trials, s 3, and some more detailed rules about the treatment of witnesses during the trial, s 3 to 11, especially concerning the cross-examination of witnesses.

Also some codifications of substantial law were enacted during these years. An example for this is the Forgery Act 1867 that dealt with forging of royal seals or signatures, forging of money notes, bonds or records used for evidence in court. The Act contained very detailed regulations about different cases of forgery and provided hard penalties for any of the offences, for example three years up to life time period of penal servitude or up to two years imprisonment with or without hard labour for forging bank notes, s 12 – even the purchase of forged bank notes could lead to 14 years of penal servitude. Also these early codifications had the advantage that they limited the judge’s discretion to the penalties set in the statutes²⁴.

Another early act was the Treason-Felony Act 1868 that made it punishable to

“compass imagine invent device or intend to deprive or depose (...) the Queen her heirs or successors from the style of honour (...) or to levy war against her Majesty (...) within any part of the United Kingdom or any other of Her Majesty’s dominions in order (...) [following several alternatives of felony] or to move or stir any foreigner (...) to invade the United Kingdom or any other of Her Majesty’s dominions (...)”²⁵.

This is only a small extract of s 3 but it shows that the Act provided a very detailed codification of felony in several possible alternatives – unfortunately hardly understandable as for example s 3 consisted of one sentence with 284 words, which contradicts the advantage of the clarity of the law in a written codification. The early date of this codification also shows that the protection of the Crown against acts of felony was obviously one of the most important issues of the time.

There were some more acts passed during the second half of the 1860s. All of them dealt with specific matters of criminal law and were repealed when the comprehensive codification of the Criminal Code Act 1893 came into force.

²⁴ Peter Spiller *The Chapman Legal Family* (Victoria University Press, Wellington, 1992) 111-112.

²⁵ Section 3.

2. *First Offenders Probation Act 1886*

In the early years, imprisonment in New Zealand was a very tough affair in an unworthy environment. The conditions in prison were so desolate that in 1861 some judges complained about the inhumanity of New Zealand prisons in a memorandum²⁶.

The result was a slow process of reforms.

In order to reduce the number of prisoners the First Offenders Probation Act 1886 introduced the opportunity to charge first offenders with a sentence on probation rather than sending them to prison²⁷. Also conditions of imprisonment improved during these years as imprisonment in dark cells was abolished in 1883 and the last prisoner was placed in irons in 1897²⁸.

3. *Justices of Peace Act 1882/ Criminal Evidence Act 1889*

First independent rules for criminal evidence were developed in the Justices of Peace Act 1882, ss 76 to 80. The Criminal Evidence Act 1889 altered the rules about evidence by a person charged for an offence of his wife/her husband; it allowed to refrain from giving evidence without having disadvantages because of this. I also introduced the right of the accused person to present evidence in his trial²⁹.

Important amendments to these rules were introduced with the Evidence Act 1908 and the Evidence Amendment Act (No 2) 1980. Further amendments were designed to keep in touch with modern developments, as for example the videotaping of children's testimonies was introduced with additional rules in the Evidence (Videotaping of child complainants) Regulations 1990 in order to keep them out of the real courtroom and the pressure of direct contact with the offender.

²⁶ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 377.

²⁷ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 378.

²⁸ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 378.

²⁹ Sherwood Young *Guilty on the Gallows* (Grantham House, Wellington, 1998) 22.

4. *Criminal Code Act 1893*

The first major criminal law reform was the Criminal Code Act 1893. It was based on the Stephen Code that had been rejected by the English Parliament. The Bill was introduced into Parliament in 1883 – but it took ten more years to be passed³⁰. Empowered by the support of the liberal government in the 1890s, a majority finally found the pragmatic conclusion that the new law would bring advantages for the legal system, although there was still quite a large opposition that was quite happy with the common law as it existed before³¹.

But what were the main changes introduced with the Criminal Code Act?

(a) Changes to substantial law

The Criminal Code Act 1893 was created as a comprehensive codification of criminal law in New Zealand. It contained the modified principles of criminal law that had been developed in common law in England and New Zealand. The existing common law was reviewed and rules that were no longer generally accepted were abolished. Other rules were simplified by leaving out unnecessary details in the codification³². The editors also adopted new ideas from other countries and to larger extent from the rejected Stephen Code in England. The results were important changes of the existing law.

Most importantly, statutory criminal law was made the only source for an indictment. Any punishable offence was codified and it became law that an offender must not be charged for a crime that was not part of the Criminal Code Act or other statutes consistent with this act³³ (*nulla poena sine lege scripta*), s 6:

³⁰ J. M. E. Garrow/ R. A. Galldwell *Criminal Law in New Zealand* (6 ed, Wellington, 1981), 3.

³¹ See for details: I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 367.

³² I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 365.

³³ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 366.

“Every one who is a party to any crime or misdemeanour shall be proceeded against under some provision of this act, or under some provision of some statute not inconsistent therewith and not repealed, and shall not be proceeded against at common law: (...)”

However, the courts did not always observe this rule. Although the editors did not codify the offence of Contempt of the Court the Supreme Court convicted for this offence because it “had not been the intention of the legislature to abolish this offence”, as Contempt of the Court was still mentioned in other places of the Crimes Act, namely section 432³⁴.

By introducing the principle *nulla poena sine lege scripta* the Criminal Code Act terminated the period of common law in New Zealand criminal law regarding punishable offences.

All common law rules that dealt with justification or excuse remained in force as long as they did not contradict to rules of the Criminal Code Act, s 21. Also the principle of *mens rea* as a condition for punishment was not abolished, although there had been such tendencies in Britain where the principle of *mens rea* was restricted in a way that the opportunity of foresight was the main reason why an act should be punishable³⁵.

The codification of *mens rea* is also a good example how new problems can be caused by sloppy phrasing of an act. The Criminal Code Act 1893 contained the following passage, stating that insanity was a defence if the accused was

“incapable of understanding the nature and quality of the act or omission, and of knowing that such act or omission was wrong.”

This formulation differed from the former common law rule that contained two separate alternatives of defence by saying “or of knowing”³⁶. Obviously this change of meaning was not intended and after the Court of Appeal had to decide about it in

³⁴ *Nash v Nash* (1924) 43 NZLR 495, 496 (SC), Stout CJ/ Hasking J/ Salmond J/ Reed J.

³⁵ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 366, 370-371.

³⁶ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 373.

1942³⁷ and interpreted the “and” as an “or” the formulation was corrected in the Crimes Act 1961.

(b) Changes to procedural law

The most striking change in the procedural law was the abolition of the distinction between treason, felony and misdemeanour. Whereas there were procedural specialities in former times the new procedural law was straight forward after the reform³⁸.

Further simplification and standardisation of procedures as means of defence were adjusted and reduced by a number of purely technical means of defence to straighten the procedure of the trial.³⁹

There were also some improvements for the situation of the accused. Section 363 of the Criminal Code Act 1893 read as follows:

“ (1.) Every count of indictment shall contain and shall be sufficient if it contains in substance a statement that the accused has committed some crime therein specified.

(2.) Such statement may be made in popular language, without any technical averments or any allegations of matter not essential to be proved.

(3.) Such statement may be in the words of the enactment describing the crime or declaring the matter charged to be a crime, (...)”

This rule guaranteed that the accused was able to know for which offence he was charged⁴⁰.

Finally, s 412 (1) allowed a court to reserve questions of law for the decision of the Court of Appeal. The prosecutor and the accused also had the chance to apply for

³⁷ *Murdoch v British Israel Foundation* (1942) 61 NZLR 600, 601 (CA) Myers CJ/ Ostler J/ Smith J/ Johnston J/ Fair J.

³⁸ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 365.

³⁹ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 365-366.

⁴⁰ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 366.

such a reservation, s 412 (3). If it was not granted the party could apply for revision at the Court of Appeal, s 413. But it was necessary to have approval for leave from the Attorney General and he had the opportunity to refuse the leave on his discretion. Therefore, the Criminal Code Act did not grant a general right of appeal, but offered first means of appeal in criminal law. The introduction of a general right of appeal in New Zealand took a very long time as will be shown later.

A good example for the weakness of the appeal against criminal court decisions is the case *R v Dean* that appeared in the Court of Appeal on 27th July 1895⁴¹. A woman, Minnie Dean, had been sentenced to death for murdering several children. Although the judge in the High Court trial had opened the door for an appeal concerning the admission of certain pieces of evidence⁴², the Court of Appeal under Chief Justice Prendergast refused the leave to appeal in a very direct way saying that the factual bases of the case was clear anyway⁴³.

This shows that a right of appeal was not taken for granted in these years even if there was a decision between life and death waiting for review.

There is another odd aspect concerning the execution of Minnie Dean. As seen above the Execution of Criminals Act 1858 abolished public hangings. Nevertheless, the execution was de facto public as the walls around the prison yard were not high enough to protect from views from the surrounding buildings which were full of spectators – a fact that did not influence the procedure of the hanging at all⁴⁴.

(c) Conclusion

In result, the Criminal Code Act 1893 brought a great simplification to New Zealand criminal law. Many traditional common law principles that had been ballast to the law were abolished. Furthermore, the codification of law made the conditions of punishment obvious for anyone who read the act.

⁴¹ *R v Dean* (1895) 14 NZLR 272-290 (CA) Prendergast CJ/ Williams J/ Richmond J/ Denniston J/ Conolly J.

⁴² Ken Catran *Hanlon A Casebook* (BCNZ Enterprises, Wellington, 1985) 39.

⁴³ *R v Dean* (1895) 14 NZLR 272, 276, 283 (CA) Prendergast CJ/ Williams J/ Richmond J/ Denniston J/ Conolly J.

⁴⁴ Ken Catran *Hanlon A Casebook* (BCNZ Enterprises, Wellington, 1985) 47.

Under the aspect of justice the strict codification of *nulla poena sine lege* is the most important invention of the Criminal Code Act. It had been an old tradition that an accused person could only be convicted for offences that were punishable before the crime was committed.

But whether this is the case is hard to find out as long as there is no written law and a risk remains that the judge “creates” new crimes retrospectively. With the strict principle *nulla poena sine lege scripta* the Criminal Code Act 1893 guaranteed protection against retrospective punishment.

Of course, it is necessary that the legislature does not create retrospective criminal law according to Article 11 (2) United Nations Declaration of Human Rights. It has been criticised that some New Zealand laws had been retroactive⁴⁵. But this is another topic.

The result of the Criminal Code Act was a more consistent, understandable and just law. England, however, did not manage to create a comprehensive codification of its criminal law and set up codifications of some parts, such as perjury, forgery and larceny, between 1911 and 1916⁴⁶.

On the other hand, the penalties for criminal offences were not reformed in 1893. There was still the lack of balance between maximum punishments for offences against property and against persons that was typical for a medieval society. This meant very hard punishments for crimes against property and relatively mild punishments for offences against persons⁴⁷.

5. *Indeterminate sentences – Habitual Criminals Act 1906/ Crimes Amendment Act 1910*

An important reform of penalties took place in 1906/1910. After a debate about the proper duration of imprisonment the Habitual Criminals Act 1906 and the Crimes Amendment Act 1910 allowed a flexible duration of imprisonment for offenders with

⁴⁵ R.B.G. Mahon e.a. *Retroactivity in Criminal Legislation* (Auckland, 1979) 2-5.

⁴⁶ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 365, 368.

⁴⁷ See for examples: I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 368.

a previous record. The Acts introduced the indeterminate sentence; this meant that the time of release depended on the offender's development in prison⁴⁸. To assess this development a new administrative body, the Prisons Board, was established that reviewed the development in regular intervals or on application⁴⁹.

Similar regulations had been discussed earlier in England but were not enacted. The proposals went to New South Wales and became law there before they were adopted by New Zealand⁵⁰.

The Prisons Board gained importance in 1920 when it became possible for prisoners on probation to apply for their discharge and for persons in prison to apply for their release on probation after half of the time in prison or on probation⁵¹.

6. *Crimes Act 1908*

The Crimes Act 1908 was the first revision of the Criminal Code Act 1893. But it was just a consolidation act, which means that only some technical problems of the old act were solved without changing the overall meaning of the law⁵². Therefore, it was in result a re-enactment of the Criminal Code Act 1893⁵³.

Between the First World War and the early 1950s there were no major developments in New Zealand criminal law. A Law Revision Committee was set up in the 1930s in order to support law reforms but the stand still in criminal law continued for many years.

⁴⁸ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington 2001) 104.

⁴⁹ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 379.

⁵⁰ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington 2001) 104.

⁵¹ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 379-380.

⁵² John Frederick Burrows *Statute Law in New Zealand* (Butterworths, Wellington, 1992) 223; I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 36.

⁵³ J. M. E. Garrow/ R. A. Galdwell *Criminal Law in New Zealand* (6 ed, Wellington, 1981), 1.

7. *Preventive detention 1954*

Special sentences were introduced in 1954 for sexual offenders: the corrective training and the preventive detention. Whereas corrective training was abolished in 1963 due to the lack of success, preventive detention remained in force. It allowed courts to keep people, who had committed certain sexual crimes, in jail for a specific period to protect the public against these offenders for three up to 14 years⁵⁴.

8. *Crimes Act 1961*

The Crimes Act 1961 brought a complete revision of the existing criminal law and several important changes for the New Zealand legal system. It was designed as a modification of the Criminal Code Act 1893 in order to make necessary adjustments to the law and to react on changes of circumstances that had occurred during the last decades.

(a) Abolition of the capital punishment

The most obvious reform of the Crimes Act 1961 was the final abolition of death penalty for murder⁵⁵. This decision ended two decades of struggling about this topic. Capital punishment for murder had been abolished in 1941 but was reintroduced in 1949 because public opinion regarded the abolition as a mistake, although there was neither statistic evidence that numbers of murder had increased after the first abolishment⁵⁶, nor experiences of that kind in other countries that had abolished death penalty⁵⁷. On the contrary, there was a research paper about the development of homicides in several countries that had abolished capital punishment.

⁵⁴ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 381.

⁵⁵ The death penalty for treason in time of war was not abolished until 1989, Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 105.

⁵⁶ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 382.

⁵⁷ John L. Robson *Sacred Cows and Rogue Elephants* (Government Printing Office Publishing, Wellington, 1987) 154-155.

This paper showed that the ratio of homicides was smaller after the abolition⁵⁸. After a change of government capital punishment was first suspended by converting all death sentences into life imprisonment, before the law was changed in 1961 and life imprisonment became the obligatory sentence for murder⁵⁹ after a long discussion about criminal, practical and moral aspects of the capital punishment as well as matters of public opinion that wanted to retain the capital punishment⁶⁰.

(b) Changes to the substantial law

Some authors argue that the entire debate about the Crimes Act 1961 only covered the abolishment of capital punishment⁶¹. Although this judgment is probably true concerning the public coverage of the Bill, the Crimes Act 1961 also brought significant changes to substantial parts of the criminal law⁶².

There were provisions that gave New Zealand courts more opportunities to charge offences that had been committed outside New Zealand, for example on ships and planes, if they were listed in s 7A or are subject to s 8⁶³.

Also reactions on recent developments took place as for example crimes as sabotage, s 79, and espionage, s 78, were introduced. Another important field that was covered for the first time was the protection of children from violence or sexual attacks by persons responsible for their observation. Several offences were redesigned, such as burglary, rape, sexual offences, false pretences and murder⁶⁴, others were abolished, most importantly the attempted suicide⁶⁵.

Especially in regard of murder there was a significant change as the conditions of provocation – i.e. the reduction from murder to manslaughter – that had been

⁵⁸ New Zealand Howard League for Penal Reform *Capital Punishment* (Wellington, 1949) 4-5, 24.

⁵⁹ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 382.

⁶⁰ John L. Robson *Sacred Cows and Rogue Elephants* (Government Printing Office Publishing, Wellington, 1987) 155-157; 169-170.

⁶¹ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 105.

⁶² See for details: Pauline F. Engel *The Abolition of Capital Punishment in New Zealand 1935-1961* (Department of Justice, Wellington, 1977) 89-103

⁶³ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 368.

⁶⁴ I. D. Campbell "Criminal Law" in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 369.

⁶⁵ J. M. E. Garrow/ R. A. Galdwell *Criminal Law in New Zealand* (6 ed, Wellington, 1981), 3.

taken over unchanged from common law in 1893 were altered in the Crimes Act 1961⁶⁶.

The regulation of provocation was located in s 165 Criminal Code Act:

“(1.) Culpable Homicide, which would otherwise be murder, may be reduced to manslaughter if the person who causes death does so in the heat of passion caused by sudden provocation.

(2.) Any wrongful act or insult of such a nature as to be sufficient to deprive an ordinary person of the power of self-control may be provocation (...).

(3) Whether any particular wrongful act or insult amounts to provocation and whether the person provoked was actually deprived of the power of self-control (...), shall be questions of fact.

(...)”

The Crimes Act 1961 changed this in s 169 to:

“(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused death did so under provocation.

(2) Anything done and said may be provocation if

(a) in the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the offender, of the power of self-control; and

(b) it did in fact deprive the offender of the power of self-control (...).

(3) Whether there is any evidence of provocation is a question of law.

(4) Whether, if there is evidence of provocation, the provocation was sufficient (...) are questions of fact.

(5) No one shall be held to give provocation to another by lawfully exercising any power conferred by law (...)

(6) This section shall apply in any case where the provocation was given by the person killed, and also in any case where the offender, (...), by accident or mistake killed another person.

(...)”

The most striking difference is that not longer only the reaction of an “ordinary person” but also of the offender in the specific situation was to be assessed –

⁶⁶ I. D. Campbell “Criminal Law” in John L. Robson (ed) *New Zealand The Development of its Laws and Constitution* (Stephens & Sons, London, 1967) 374.

therefore, subjective and objective elements were combined for the assessment in a kind of “hybrid person”⁶⁷ in contrast to the objective assessment before⁶⁸.

Besides this, the Crimes Act also altered the regulations concerning the burden of proof in pp 3 and 4. There were some further improvements of the old rules. Paragraph 5 clarified that a lawful act can never be provocation, which expanded the old common law rule; p 6 eliminated doubts about the question whether provocation did also apply if the offender killed a third person and, if so, under which circumstances⁶⁹.

Concerning attempted offences, there was an important clarification in s 72 (3). In 1924 Judge Salmond had to decide the case *R v Barker* where the question arose of a sexually intended accosting of a youth could also be attempted buggery⁷⁰. Such constellation had not been clearly fixed in the common law and was also not codified in the Criminal Code Act. Therefore, Salmond J developed a solution of this problem focussing on the intention of the offender saying that there is no criminal attempt

“unless it is of such nature as to be itself sufficient evidence of the criminal intent with which it is done. A criminal attempt is an act which shows criminal intent on the face of it (...)”⁷¹.

Although this definition was not without problems it was law until this issue was codified in s 72 (3) Crimes Act 1961⁷².

Section 10 of the Crimes Act clarified that, if an offence was covered by more than one criminal rule, the offender was liable to be prosecuted and punished under any of these rules. Section 10A renewed the regulation of the Criminal Code Act about the principle *nulla poena sine lege*:

„Notwithstanding any other enactment or rule of law to the contrary, no person shall be liable in any criminal proceedings in respect of an act or omission by him if, at the time of the act or omission, the act or omission by him did not constitute an offence.“

⁶⁷ Heath Daniel Smith *Provocation: Problem of the morally innocent victim* (LLB Research Paper, Victoria University of Wellington, 1999) 11.

⁶⁸ J. M. E. Garrow/ R. A. Galdwell *Criminal Law in New Zealand* (6 ed, Wellington, 1981) 143.

⁶⁹ J. M. E. Garrow/ R. A. Galdwell *Criminal Law in New Zealand* (6 ed, Wellington, 1981) 146.

⁷⁰ *R v Barker* (1924) 43 NZLR 865 (CA) Stout CJ/ Sim J/ Stringer J/ Salmond J.

⁷¹ *R v Barker* (1924) 43 NZLR 865, 874 (CA) Stout CJ/ Sim J/ Stringer J/ Salmond J.

⁷² See Alex Frame *Salmond Southern Jurist* (Victoria University Press, Wellington, 1995) 230-231.

Finally, the Crimes Act 1961 adjusted the penalties for offences and improved the balance between penalties for offences against property and persons⁷³.

Notwithstanding the advantages of written criminal law, there has been criticism concerning the way the law was written. It was said that the regulations were “extraordinarily detailed” and, therefore, sometimes long and hard to understand⁷⁴. But this is to some extent the price you have to pay for the security of written law, especially for a comprehensive regulation.

(c) Statutory and common law

The Crimes Act 1961 also confirmed the abolition of common law in criminal law. Section 9 of the Crimes Act states that common law offences are not punishable as such: “No one shall be convicted of any offence at common law (...)”

In the Criminal Code Act, many common law rules had been transferred into statutory law. Nevertheless, there had been attempts to return to the common law through the back door by the use of old common law definitions⁷⁵. But the opinion of the courts was clear. Decisions under common law could be used for interpretation of the Crimes Act, if this was necessary⁷⁶. But common law definitions could not be used for interpretation if the text of the statutory definition was clear:

“Moreover, the Crimes Act 1961 has its origins in the Criminal Code Act 1893 which reduced the criminal law of England to a statutory criminal code for New Zealand. (...) [I]t is the statutory definition of assault itself that is all important. That definition should not be read down by a reference back to the common law if the definition is otherwise clear in its meaning⁷⁷.”

Therefore, common law cases are only subsidiary means of interpretation if the codified law gives no answer how to interpret a rule. Nevertheless, there have been

⁷³ J. M. E. Garrow/ R. A. Galdwell *Criminal Law in New Zealand* (6 ed, Wellington, 1981), 3.

⁷⁴ John Frederick Burrows *Statute Law in New Zealand* (Butterworths, Wellington, 1992) 52.

⁷⁵ See only *R v Kerr* (1987) 2 CRNZ 407, 410 (CA) McMullin J/ Casey J/ Bisson J.

⁷⁶ *R v Walters* (1979) 1 NZLR 375, 378-380 (CA) Woodhouse J/ Cooke J/ McMullin J.

⁷⁷ *R v Kerr* (1987) 2 CRNZ 407, 410 (CA) McMullin J/ Casey J/ Bisson J.

attempts to refer to an unclear meaning of the written law in order to open the door for common law interpretation⁷⁸. But in the main fields common law has left the surface in criminal law.

Sometimes the courts used common law rules although this was not expected. An interesting case is *R v McKeachie* where the court used a common law rule saying by decision 3 to 2 that wife and husband were treated as one person in case of conspiracy⁷⁹. As this was not the intention of the legislature, s 67 was introduced into the Crimes Act 1961 that reads

“[a] man shall be capable of conspiring with his wife (...); and a woman shall be capable of conspiring with her husband (...)”

and, therefore, ended the discussion about this problem⁸⁰.

Also the exception from the abolition of common law was confirmed. Section 20 (1) Crimes Act 1961 states that

“principles of common law which render any circumstances a justification or excuse (...) shall remain in force and apply in respect of a charge of any offence (...) except so far as they are altered by or are inconsistent with this act or any other enactment.”

This means, that common law cannot be used against the defendant but can be used in favour of the defendant as long as it does not contradict to the sense of the written rules of criminal law that have priority over unwritten common law.

It is interesting to note that this scheme also exists in countries without common law tradition in the area of justification and excuse. For example, it is impossible under German law to be punished for an offence that is not written down, but there are a few reasons of justification or excuse that are not written down but can be used in favour of the defendant. The most famous one is the so-called “*übergesetzlicher Notstand*”. This item was originally created to justify abortions in cases of danger of life for the mother and was thereafter used as well as a reason for justification as for excuse in ultimate situations of collision of duties⁸¹.

⁷⁸ *R v Toth* (1987) 2 CRNZ 377, 379-380 (CA) Casey J/ Bisson J/ Henry J.

⁷⁹ *R v McKeachie* (1926) 45 NZLR 1 (CA) Stout CJ/ Sim J/ Reed J/ Adams J/ Ostler J.

⁸⁰ Bruce Robertson *Adams on Criminal Law* (Brooker's, Wellington, 1992) 178, CA67.02.

⁸¹ Reinhart Maurach/ Heinz Zipf *Strafrecht Allgemeiner Teil Teilband 1* (8 ed, C. F. Müller, Heidelberg, 1992) § 27 pp 9 and 11.

After changes in the codified law it is now only a reason for excuse because written reasons of justification cover the field comprehensively⁸². But it is still expressly accepted as reason of excuse by the jurisdiction of the Bundesgerichtshof, for example in the “Katzenkönigfall”⁸³.

Furthermore, the codification still contains several principles of common law that have been transferred into written law. In this respect the common law lives on in the codification⁸⁴.

(d) Conclusion

The Crimes Act 1961 continued the tradition of the Criminal Code Act 1893. It developed the codified law and got rid of some mistakable or unclear passages of the old codification. The most obvious change was the abolishment of the capital punishment for murder. This was a great deal after the problems with the abolition twenty years earlier. But it was the right decision, as the capital punishment is not a suitable kind of punishment. It is based on the ideas of revenge and ends the life of the offender rather than giving him the chance to reflect his crime and perhaps become a better person in prison.

The most important disadvantage of the capital punishment is the missing opportunity to correct wrong judgments after the execution – this problem was already seen by Judge Henry Samuel Chapman in the 19th century, when he addressed the jury that “where a prisoner’s life is placed in jeopardy, an extra degree of vigilance [was] necessary”⁸⁵. Even before, there had been public doubt about some death sentences, for example the execution of Charles Dyer in 1874. This, of course, put enormous weight upon the shoulders of the jurymen. Fortunately Dyer confessed the murder immediately before his execution and removed the load from the people who had convicted him⁸⁶.

⁸² Reinhart Maurach/ Heinz Zipf *Strafrecht Allgemeiner Teil Teilband 1* (8 ed, C. F. Müller, Heidelberg, 1992) § 27 p 11.

⁸³ Bundesgerichtshof Germany 35 BGHSt 347, 350-351; Karl Lackner/ Kristian Kühl *Strafgesetzbuch mit Erläuterungen* (24 ed, C. H. Beck, Munich, 2001) Vor §32 p 31.

⁸⁴ John Frederick Burrows *Statute Law in New Zealand* (Butterworths, Wellington, 1992) 264.

⁸⁵ Peter Spiller *The Chapman Legal Family* (Victoria University Press, Wellington, 1992) 110.

⁸⁶ Sherwood Young *Guilty on the Gallows* (Grantham House, Wellington, 1998) 64.

There are still other aspects of ethics and moral related to this topic that cannot be discussed here. But also on the bases of the above-mentioned reasons, the decision of 1961 can be agreed with.

Although continuing the tradition of the Criminal Code Act the Crimes Act brought important improvements to the existing codification as shown above. Therefore, also the Crimes Act 1961 is a great landmark in the New Zealand legal system, sometimes with new developments, sometimes with the improvement of existing regulations.

9. *Periodic detention 1962/1966*

Another approach of reform of punishment was taken with the invention of periodic detention for juvenile in 1962 in order to reduce the numbers of prisoners⁸⁷. After a first evaluation of the factual situation, the Criminal Justice Amendment Bill was introduced into Parliament and passed in November 1962. Since then all first offenders between 15 and 20 years could be sent to periodic detention, which meant supervised work in a special camp for a certain number of hours each week. It was also a target of the program to stimulate a feeling of social responsibility in the offenders' minds⁸⁸.

After good experiences with the juvenile program it was extended to certain adult offenders in 1966.

The introduction of periodic detention is a good example of a successful experiment in New Zealand criminal law. After evaluating similar systems in South Africa, Germany and the United States New Zealand did not copy one of these systems but took them as a bases for its own system of periodic detention that fit best the requirements in New Zealand – it was considered to be successful after the report period as many participants were still without new offences after the end of the detention period⁸⁹.

⁸⁷ John L. Robson *Sacred Cows and Rogue Elephants* (Government Printing Office Publishing, Wellington, 1987) 171.

⁸⁸ John L. Robson *Sacred Cows and Rogue Elephants* (Government Printing Office Publishing, Wellington, 1987) 175-177, 179.

⁸⁹ John L. Robson *Sacred Cows and Rogue Elephants* (Government Printing Office Publishing, Wellington, 1987) 172-173, 180.

10. *Imperial Laws Application Act 1988*

Although many doubts about the law in force had faded after the Criminal Code Act 1893 and the Crimes Act 1961 there was still the unanswered question which parts of the inherited English law were in force in New Zealand.

In order to erase the rest of doubt in the whole New Zealand legal system the Parliament passed the Imperial Laws Application Act in 1988. It clarified which English rules are still in force in New Zealand. Therefore, it has been considered “one of the most important and far-reaching statutes in recent times”⁹⁰.

Of course, the Imperial Laws Application Act did not stand alone as there were several rules from English law that were supposed to be in force even after 1988. Therefore, several single acts transferred these rules into existing New Zealand legislation. In criminal law this was achieved by the Crimes Amendment Act 1988, that meant that certain breaches of imperial laws were not punishable under New Zealand law⁹¹.

Only a few English laws remained in force, many of them are basic rules for the legal system like the Magna Carta 1297, the Habeas Corpus Acts and the Bill of Rights 1688, but also the statutes concerning the Privy Council⁹².

There is also a part in the Imperial Laws Application Act 1988 concerning the English common law. Section 5 reads:

“After the commencement of this act, the common law of England (...), so far as it was part of the laws of New Zealand immediately before the commencement of this act, shall continue to be part of the laws of New Zealand.”

The most important part for criminal law is the middle part of the sentence. As shown above common law had been mainly banned from New Zealand criminal law in 1893 – therefore, section does not affect large parts of the criminal law except problem of justification and excuse.

⁹⁰ Jeremy Finn „The Imperial Laws Application Act 1988“ (1993) 4 CanterburyLR 93.

⁹¹ Jeremy Finn „The Imperial Laws Application Act 1988“ (1993) 4 CanterburyLR 93, 95.

⁹² John Frederick Burrows *Statute Law in New Zealand* (Butterworths, Wellington, 1992) 10.

Therefore, in total the influence of the Imperial Laws Application Act 1988 on the criminal law is rather small as the most important steps away from the English criminal law had already been taken long before 1988.

D. Institutionalised Reforms: Criminal Law Committee and Law Commission

The development of the law has been accompanied by institutional innovations. In order to accelerate law reforms the New Zealand Government invented a Law Revision Committee in 1937⁹³. After some problems of efficiency in the first decades, full time Law Reform Committees were introduced in 1966 for some parts of the law. A committee for the criminal law followed in 1971⁹⁴. It was the aim of the committees to collect ideas and to achieve a consensus of the different groups working with the law, that were represented in the committees, in order to promote indigenous law reforms rather than focussing on English law which had mainly been practice from the Second World War until 1960⁹⁵.

Since 1971 the Law Reform Committee also worked on criminal law. Several ideas from the committee became law for example in the fields of forgery and theft of documents but also in procedural questions like preliminary hearings⁹⁶.

In 1985 a full time Law Commission took over the tasks of the Law Committees following the Law Commission Act 1985 and has been working on a further development of the law since then⁹⁷. The Law Commission suggests updates to the law especially concerning modern developments as for example rules against computer misuse⁹⁸.

Another recent invention was the offence of sexual conduct with children outside New Zealand (s 144 A) that was introduced in 1995. It acknowledged the growing

⁹³ J. R. Hanan *The Law in a Changing Society* (Wellington, 1965) 5.

⁹⁴ B. J. Cameron „The Law Reform Committees 1966-1986“ (1998) 13 NZULR 123.

⁹⁵ J. R. Hanan *The Law in a Changing Society* (Wellington, 1965) 20 and 23.

⁹⁶ B. J. Cameron „The Law Reform Committees 1966-1986“ (1998) 13 NZULR 123, 133.

⁹⁷ B. J. Cameron „The Law Reform Committees 1966-1986“ (1998) 13 NZULR 123.

⁹⁸ New Zealand Law Commission *Computer misuse* (NZLC R54, Wellington, 1999).

problem of sex tourism into poorer countries like Thailand and enables punishment of persons who have sexual contact with children there.

Therefore, the law commission is still a competent and important factor for the improvement of the New Zealand criminal law.

E. Slow Developments in New Zealand

But New Zealand was not always very fast with reforms of the criminal law. Sometimes it took decades until developments that had been great success in other Commonwealth countries were taken over in New Zealand.

A good example is the introduction of a general right of appeal. The Criminal Code Act only gave limited means to review decisions of the trial judge. As seen above, there was the opportunity of appeal but this was dependent on the consent of the Attorney General.

England had introduced a general right of appeal in 1907. But it took until 1945 that this right was granted in New Zealand in the Criminal Appeal Act⁹⁹.

Another example is the abolition of the Grand Juries in criminal trials that took place in 1961. There had never been a specific codification dealing with Grand Juries but several acts referred to Grand Juries such as s 11 Criminal Law Procedure Act 1866:

“From and after the passing of this Act it shall not be necessary for any person to take an oath in open Court to qualify such person to give evidence before any grand jury.”

These juries had been used in criminal cases since the 1840s to make sure that the judgment was based on profound factual bases¹⁰⁰. Although the importance of the juries decreased during the 20th century as other institutions took over their functions

⁹⁹ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 104.

¹⁰⁰ Peter Spiller *The Chapman Legal Family* (Victoria University Press, Wellington, 1992) 48.

and the Grand Juries ceased to exist during the 1930s, it took another 30 years until the Grand Juries were formally abolished¹⁰¹.

V. *CONCLUSION*

The research shows that New Zealand has been quite active in the development of criminal law. After a first period in which mainly English laws were copied, New Zealand took the chance to develop a criminal law system on its own.

Important steps in this development are:

- The Execution of Criminals Act 1858: it is not important because of its content but it showed the capability of New Zealand to improve its legal system without precedence from the mother country for the first time.
- The First Offenders Probation Act 1886: this Act is a good example how New Zealand developed an own legal identity by searching for well established legal tools in other countries. Here New South Wales Laws based on rejected drafts from England and new ideas from the United States lead to the New Zealand act.
- The Criminal Code Act 1893: this Act is probably the most important step in the development of New Zealand's legal identity. Being a comprehensive codification it replaced common law rules in criminal law. This is even more remarkable as a similar draft was rejected in Britain some years earlier. By codifying the criminal law New Zealand cut the connection to the mother country in criminal law as English criminal law remained mainly common law based.
- The Preventive Detention Act 1954 and the Periodic Detention Act 1962/66: these Acts are remarkable as they widen the portfolio of possible sentences. They were also based on experiences of other countries with similar sentences. The broader variety of sentences now allows more suitable punishments for specific kinds of offenders.

¹⁰¹ Jeremy Finn in Peter Spiller (ed) *A New Zealand Legal History* (2 ed, Brooker's, Wellington, 2001) 104.

- The Crimes Act 1961: also the Crimes Act 1961 is an important piece of New Zealand criminal law, not only because of the abolition of the death penalty. It also enacted necessary adjustments to the Criminal Code Act 1893 due to factual developments throughout the years. Furthermore, the Crimes Act changed the penalties for certain offences creating a better balance. Therefore, the Crimes Act 1961 strengthened the identity of New Zealand criminal law.

The development of New Zealand criminal law continued in the following year but without extremely important single acts. Mainly reactions on modern developments took place.

But there might be another significant change in sight: the abolition of the Privy Council that might take place in the current legislative period and would be a symbol indicating the independence of the New Zealand legal system. The practical relevance for criminal law would be low, as even today appeal to the Privy Council requires admission by the New Zealand court, which will only be granted in exceptional circumstances if a substantial point of law is to be decided¹⁰².

In total the legislation of criminal law in New Zealand can be regarded as progressive compared with the development in England. The process of codification was generally faster and more creative because New Zealand systematically searched for good solutions around the world and altered them according to domestic needs rather than using the same source of law for any problem.

Of course, there were also periods of time – especially in the early years of the colony and after the First World War – and certain areas of criminal law where the development was very slow. But this does not change the overall evaluation of the development of criminal law in New Zealand.

¹⁰² Raymond Douglas Mulholland *Introduction to the New Zealand Legal System* (10 ed, Butterworths, Wellington, 2001) 94.

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