The reform of the Crimes Act 1961

Rt Hon G W R Palmer*

This month I introduced a new Crimes Bill into Parliament. The Bill contains the first comprehensive revision of our Criminal Code for approximately thirty years. The last such revision took place in 1961 following a gestation period of research and consultation which began in the early 1950s.

Some people have asked why such a revision is necessary, given that the Crimes Act 1961 was a considerable advance on its predecessor, the consolidation of 1908. The simple answer is that the changes which have occurred in our society in the last thirty years are probably at least equivalent in significance to those which occurred between 1900 and 1961. We all feel the pace of change and know that its increase is inexorable.

Change has meant, for example, that our Crimes Act does not deal adequately with new forms of offending. Because we have chosen to codify all matters that give rise to criminal liability in New Zealand, it is essential that our code be as up-to-date as possible. This means that existing offences need to be revised and new offences created at reasonable intervals.

Within the last thirty years there has also been a consistent increase in serious and violent crime. This trend is not as appalling as it is perceived to be by the general public. However, it does require some sort of response. Governments have a duty to move with the times. That duty may in fact be a difficult or unpleasant one to perform. Reform often involves doing things other people lack the courage or zeal to complete. I am reminded that a Mayor of New York once put the process of reform robustly in context by suggesting it involved riding through a sewer in a glass-bottomed boat.[1]

But I also believe that the current revision of the Crimes Act 1961 is no more than a continuation of the embodiment of the forward thinking and ample vision of legislators of the late nineteenth century. By way of background, I intend to traverse briefly the history of our Criminal Code.[2] It is essential, if we are to be consistent in our law reform, that we understand the legacy left to us by past law-makers.

Those who came to New Zealand in the first half of the nineteenth century had, as we still do, a need to preserve peace and establish and maintain courts of justice. But they were in a unique position, in the sense that all of this was to be created out of

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1 James J Walker - Speech as Mayor of New York 1928 "A reformer is a guy who rides through a sewer in a glass-bottomed boat".

2 See JL Robson (ed), *New Zealand, The Development of its Laws and Constitution* (1967) chapter 11.

nothing. In 1842, James Stephen, the Under-Secretary of the Colonial Office, described the choices for dealing with crime in New Zealand as being between "adoption of an old and inapplicable code or of a new and immature code".[3] The choice was not made for thirty years, during which the administration of justice in New Zealand clung tenaciously to English precedents, which did not suit conditions in the new colony.

The prevailing idea was that all colonies should be modelled on England. The noble institutions of the mother country were to be reproduced if at all possible. So it was that colonies automatically acquired so much of the laws of England as were suitable to their circumstances. But it is clear that even in 1874 these laws, at least in the criminal area, were still being applied in New Zealand *in spite of* the local circumstances. Thus, in the case of *Elliott* v. *Hamilton*,[4] the United Kingdom statute banning lotteries was held to extend to New Zealand, although the Judge recognised that prohibitions were openly disregarded and penalties never enforced. He expressed the conservative view that it was for the legislature, and not the judiciary, to alleviate these problems.

Meanwhile, in England, Sir James Fitzjames Stephen, eminent English jurist and criminal historian, (not to be confused with the Colonial Under Secretary previously referred to), was busy drafting a Bill to codify all indictable offences. To those in New Zealand struggling with the problems just discussed, this promised much as a precedent. However, though revised by the English Judges and eminent counsel under the direction of the Attorney-General, the Stephen Code was never actually adopted in the United Kingdom. Instead, the United Kingdom in due course adopted jigsaw codification made up of a number of Acts dealing in specific areas, such as perjury, forgery, larceny and offences against the person. This piecemeal approach has never struck me as ideal, and indeed, did not appeal to our nineteenth century law-makers either. They regarded the Stephen Code as a very attractive proposition.

Our Criminal Code Act passed in 1893 was based on a combination of the abandoned Stephen Code and such case law and legislation as we already had. It abolished many old Common Law rules, standardised and simplified criminal procedure, reduced the scope for purely technical defences and provided ample powers to amend indictments. All indictable offences became statutory, so that offenders were charged under either the Criminal Code Act or some other statute not inconsistent with it. Common Law defences were expressly preserved unless modified or abolished by the Act.

The Code was seen to put an end to pre-existing chaos. It was generally agreed to be not only academically attractive, but also essentially pragmatic. As such it apparently found support in all quarters. If this is true, then those responsible for the Code and its enactment must be the envy of those who today struggle for law reform.

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3 Minute on Governor's Dispatch of March 29, 1842.
4 (1874) 2 NZ Jurist 95.

Only in one respect does the 1893 Code appear to be deficient to modern eyes, even for its time. It did not embody any real reform of sentencing. Property offences were much more severely dealt with than offences against the person, a dichotomy which we find repellant today. For example, the maximum penalty for aggravated assault was two years imprisonment, whereas the offence of wounding a goat attracted 14!

In 1908 the Code was re-enacted and consolidated, but with little change. The extreme bias in favour of protection of property was preserved. However, it was no longer in evidence in actual sentencing practice.

In 1961 a more significant revision occurred. There were a multitude of changes, although few were revolutionary. The work done in 1961 was considered with deliberation, and carried out with frequent reference to similar legislation recently enacted in other countries, especially the Canadian Criminal Code of 1954.

Many offences, of whimsical historical interest only, were swept away. They included:

- pretending to practise witchcraft;
- challenging to fight a duel;
- libelling foreign sovereigns;
- abducting an heiress;
- failing to resist a pirate;
- writing letters to a pirate; and
- unlawful drilling (of the marching kind!).

Futher, it is recorded that attempted suicide was removed for humanitarian reasons, and that the expensive and cumbersome grand jury procedure was abolished. Since judges were empowered in the Act to direct that indictments not be presented, the grand jury procedure of reviewing charges before committal to trial was no longer necessary.

New Zealand courts were also given extended power to deal with offences occurring outside the country on ships or aircraft. A number of new offences were created. They included:

- sabotage;
- slave dealing;
- infecting with disease;
- feigned marriage;
- kidnapping;
- indecent acts between women and girls;
- living on the earnings of prostitution;
- cruelty to children; and
- disabling.

More significantly, penalties were revised to reflect a better balance between crimes against the person and crimes against property. It was quite specifically recognised that

the judiciary were following sentencing patterns along these lines anyway, and had been doing so to some degree since 1908.

However, the 1961 revision is most significant in terms of sentencing reform because it finally abolished the death penalty for murder. A glance through Hansard reveals that this matter was the focus of every speech, along with, to a much lesser degree, homosexuality.

The 1961 Bill as originally introduced abolished the death penalty and substituted mandatory life imprisonment. Hansard also shows that, during the Bill's passage, it was suggested that the death penalty be retained for some murders, grouped under the heading "aggravated murder". I am pleased to say, this suggestion was eventually dropped. The reasons for abolishing the death penalty - that there is no evidence that it deters, that dreadful mistakes can occur, that it saps the spirit of those who have to carry it out, that murder is an offence least likely to be committed twice by the same person - are valid whatever form the offence may take. The 1961 reformers took a comparatively bold step with regard to the death penalty. Such a decision can never attract total approval. At the same time, the quieter reforms were necessary and effective.

For the reasons outlined at the beginning of this lecture, I believe it is now necessary to repeat the revision process. This is in spite of the fact that it is a process hedged by considerable pressures. Revision of the Crimes Act 1961 is almost a pure law reform exercise. It is not a vote-winner, and as such, is seen by some as a political luxury. But as Minister of Justice I cannot be deterred by this. Few topics arouse such public passion as crime and how we should deal with it. It is of little use to mention in a public law and order debate what Sir Arthur Conan Doyle had Sherlock Holmes once say, that ...

> Crime is common. Logic is rare. Therefore it is upon the logic rather than upon the crime that you should dwell.[5]

The plain fact is that we can never have public agreement on the matters to be included in a criminal code, and on how such a code should deal with them. Therefore the Sherlock Holmes approach is essential when we are talking about reform.

However, it was another famous Holmes, Justice Oliver Wendell Holmes, who said that the life of the law has not been logic: it has been experience.[6] I accept this view also, and believe that it is a combination of logic peppered with common sense based on experience which will produce the best reform.

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5 Sir Arthur Conan Doyle, *The Copper Beeches.*

6 *The Common Law* (1881) 1.

In his second reading speech on the 1961 Crimes Bill, the Hon J R Hanan said:

> The twin objects of any criminal code in a civilised country are to protect the persons and property of every citizen while sheltering the innocent from being punished unjustly.[7]

I adhere to that view and would add also that a criminal code should be concerned with conduct that is:

- generally seen as reprehensible;
- demonstrably harmful socially;
- reasonably capable of being enforced in a democratic society; and
- sufficiently serious to warrant State intervention, the expenditure of resources and the sanction of imprisonment.

It is also important that the code be:

- intelligible;
- practical and untechnical; and
- clear and certain.

The present Act is full of inconsistencies, many of them without social purpose or effect. It still reflects its origins in the accretion of Common Law principles and ad hoc statutes in the United Kingdom. There has, of course, been a good deal of piecemeal reform since 1961, including the violent offences legislation and homosexual and rape law reform. Nevertheless, much of the Criminal Code has remained largely unchanged for nearly thirty years.

Codification of the law is one of the oldest legal challenges. Our Criminal Code is, as you know, only partial. It operates against the backdrop of the Common Law in that it requires all offences to be statutory, but leaves the courts to elaborate on the mental or volitional elements in cases where these matters are not straightforward.

In Part III of the 1961 Act, section 20 expressly preserves all Common Law defences except where altered by or inconsistent with the Act. Sections 21 to 25 go on to deal with infancy, insanity, compulsion and ignorance of law, as matters of justification or excuse. It is only to this degree that codification of general principles was attempted.

I can remember to this day my confusion as a student studying criminal law under Professor I D Campbell. New Zealand had a code, we were told, and this was a great advance. I could not really follow why that code avoided the difficult issues - namely, the general part of the criminal law. As the Minister of Justice, therefore, I directed that we should attempt to codify this missing aspect.

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7 Hon J R Hanan (Attorney-General), NZ Parliamentary debates vol 328, 1961: 2683.

The Bill has been described in some media quarters as radical. I would prefer to describe it as forward thinking and both practical and logical, in the senses intended by Sherlock Holmes and Justice Holmes.

Part II of the draft Bill sets out general principles of criminal responsibility. There are completely new provisions on voluntariness, omissions, intention and knowledge, recklessness, heedlessness, negligence, mistake of fact, intoxication, necessity; and revised provisions on the age of criminal responsibility, insanity and duress. I do not propose to traverse the contents of these provisions. They are adequately summarised in the explanatory notes to the Bill. Briefly, the new provisions were framed by drawing on New Zealand case law, and on ideas found in the US Model Penal Code and on the draft Criminal Code prepared for the English Law Commission. The English document has recently been revised by the Law Commission itself and published.

Instead I would like to use the definitions of the states of mind of recklessness and heedlessness as examples of what this part of the Bill is trying to achieve. Under present law, recklessness has effectively been split into two concepts by an English case decided in 1981.

Prior to this date, the concept of recklessness required some recognition by the party concerned of the existence of risk - in other words, deliberate risk-taking. However, in *Caldwell*[8] the House of Lords held that recklessness was not restricted to this concept only; it also included failing to give any thought to whether a risk existed where the risk would be obvious if any thought was given to the matter. There has been much debate since then as to the desirability or otherwise of this development and the precise scope of the decision.

The New Zealand courts have taken a cautious approach in this area. In *Howe*[9] the Court of Appeal applied *Caldwell* recklessness to proof of a charge of riotous damage to a Crown vehicle, which arose from the overturning of an unmarked police car by demonstrators during the 1981 Springbok tour. It was held that a rioter should be found guilty under section 90 of the Crimes Act 1961 if he either knew the vehicle was used as a Crown vehicle (as described in the section), or was reckless as to whether or not it might turn out to be used in such a way. In this context, recklessness included giving no thought at all to the matter.

In *Harney*[10] the Court of Appeal discussed *Caldwell* recklessness in deciding an appeal against a murder conviction under section 167(b) of the Crimes Act. That section deals with murder committed by an offender who means to cause bodily injury known by the offender to be likely to cause death and who is reckless whether death ensues or not. The sole ground of the appeal was that the trial judge's summing up on the term "reckless" as it appeared in section 167(b) was in error. The Court of Appeal held that recklessness meant foresight of dangerous circumstances that could well

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8 [1982] AC 341; [1981] 1 All ER 961.
9 [1982] 1 NZLR 618.
10 [1987] 2 NZLR 576.

happen, together with an intention to continue the conduct, regardless of the risk. Therefore, the trial judge's inclusion of a *Caldwell* direction was incorrect.

The present state of the law appears to be that the traditional concept of recklessness will generally apply, although particular statutory contexts may require application of the *Caldwell* approach. The precise statutory contexts which require the broader approach will continue to be worked out by the courts. Opinions may differ on whether this is a satisfactory state of affairs. Should pivotal terms used in framing criminal offences be capable of different constructions according to the context?

The Bill proceeds on the basis that Parliament should give more guidance on such matters. It therefore separately defines the terms. Recklessness covers the pre-*Caldwell* meaning (running a recognised risk) and heedlessness is used for *Caldwell* recklessness (not giving any thought to the possibility of an obvious risk). I believe that this approach should actually assist the courts but obviously I would welcome other views on it.

I turn now to an example where the Bill revises an existing provision rather than introduces a new one. This is the insanity provision. The present definition of insanity has come down to us, as you will know, from the House of Lords in 1843, in the form of the M'Naghten rules. All law students have heard of the M'Naghten rules. They know that they are a judicial attempt to deal with the fact that, as Graham Greene has written, "[i]nsanity is a kind of innocence".[11] But the test has come under increasing criticism because it is seen as incapable of allowing twentieth century concepts of behaviour to be translated into the questions required by law to be left to the jury.

Clause 28 of the Bill provides that a person is not criminally responsible for any act done or omitted to be done when suffering from a mental defect or mental disorder that renders the person incapable:

(a) Of knowing what he or she is doing or omitting to do; or
(b) Of attributing to the act or omission the character that the community would commonly attribute to the act or omission.

The present presumption of sanity is retained. Therefore, the onus of proving insanity remains with the defence.

The first limb of the insanity defence set out in the Bill is a simplified re-writing of the existing first limb of section 23(2)(a) of the 1961 Act. The second limb of the defence in the draft Bill is intended to codify the decision in *Macmillan*.[12] In that case, the Court of Appeal declined to apply an objective standard to the question whether the accused knew that his action was morally wrong "having regard to commonly accepted standards of right and wrong". The Court found this approach too restrictive. Instead,

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11 Graham Greene, *The Quiet American* (1960).
12 [1966] NZLR 616.

it was held that the test of the accused's knowledge of the moral wrongfulness of his act is a subjective one. Because the accused could not, due to his disordered mind, think rationally of the reasons which to ordinary persons would make his acts morally wrong, he was entitled to acquittal on the grounds of insanity.

The provision in the Bill therefore seeks to cater for persons who more often than not know that what they have done is morally wrong in the eyes of society but, because they are mentally disordered, cannot grasp that there is anything wrong with it or in fact believe that it is the right thing to do. The drafting of such concepts is not easy and I would expect more ink to flow before there is finality on this, and indeed other matters in Part II of the Bill.

The clause does not deal with the difficult concept of volition. Some people know exactly what they are doing, know that it is wrong, but because of psychiatric disorder are not able to refrain from it. Early drafts attempted to cover these cases, but the idea was eventually put aside. It is difficult to see how the law can provide for these cases without also providing an undeserved defence to those who could have refrained, but did not.

This brief account of two aspects of the Bill's general part has highlighted the process of codification. There are several arguments in favour of codification, the principal among these being access to the law and enhanced certainty. A code provides a fixed starting point for ascertaining what the law is. I believe that certainty is especially important in the criminal law, where a person may be subject to serious penalties, possibly involving loss of liberty.

Arguments against defining pivotal terms in criminal liability include the sheer difficulty of the task and the risk that meanings thereby become frozen. There is a fear that factual situations will be overlooked which do not fit the fundamental concepts as worded. There is also the argument that the courts may be deprived of flexibility to develop the law in line with changing social perceptions and expectations.

These concerns are weighty. They cannot be dismissed on the basis that codification should proceed at all costs. Codification must resolve more problems that it creates. This will only be possible if the concepts can be reduced to clear and simple terms. The Bill is by no means the final word on the matter. Rather, it is a reasonable attempt to achieve what is seen as a desirable end.

I accept that the task is a difficult one. Yet I cannot accept that this justifies the matter being put to one side. The criminal law should, to the maximum degree possible, be accessible to the people.

We have already tackled the difficult task of codifying most elements in our criminal offences. The mental elements are logically the next task.

Having said that, I accept that it is essential for the statutory wording to be satisfactory. But I believe it is possible to find principles with which both judges and lawyers can feel reasonably at ease after the inevitable process of familiarisation.

The point I wish to emphasise is that I am firmly in favour of proceeding if this goal can be achieved, but it will not be pursued for the sake of change at any cost. I am persuaded at this stage, however, that we can succeed, and in a manner which is reasonable, sensible and simple.

I turn now to the provisions on murder and manslaughter. This part of the Bill has already attracted considerable comment. Almost no other offence except perhaps rape and other violent assaults excites the public consciousness so profoundly, and so variously. Yet again, if reform is necessary, we cannot step back from the brink.

Part X of the Bill seeks to recast the law of murder and manslaughter. The distinction between the two offences is dropped and they are both replaced with a new offence called culpable homicide. It applies to what is now murder and also includes other killings which would at present be manslaughter, essentially cases where the killing is intentional but a defence of provocation is made out. It will also cover a reckless killing in which the accused foresaw the risk of serious bodily harm, but not of death.

The defence of provocation is abolished. Under existing law a charge of murder is reduced to manslaughter if the defence of provocation succeeds. The statutory test of provocation is whether what was said or done 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 whether it did in fact deprive the offender of the power of self-control. The defence is generally regarded as being too hedged round with difficulty and technicality, for example, concerning the meaning of the term "characteristics" and the mode and time of retaliation. It is doubtful whether juries are able to comprehend the subtleties of the law.

In addition and most importantly, the mandatory penalty of imprisonment for life for murder is not continued. That will become, instead, the maximum penalty. It would not be appropriate for cases of what was formerly manslaughter because of provocation to receive a mandatory life sentence. But it will continue to be available for the more serious cases. The effect is that the relative seriousness of different killings will be assessed at sentencing. Judges will be free to impose a fair and just sentence after weighing carefully any plea of provocation.

The balance of what is now manslaughter is covered by new provisions on intentional or reckless endangerment. The offences will be made out irrespective of whether in fact death resulted, and will focus on the inherent danger of the unlawful act; not the unintended consequence of the death of another. The new offences deal with the potential, rather than the actual harm which occurs. Individual culpability will not be magnified by unusual or unforeseeable consequences. But grossly negligent conduct which could have caused death, but does not, will be treated more seriously.

The benefits which will flow from the changes are numerous. Juries will be in a position to make fairer decisions. It is not unknown for juries to bring in verdicts of manslaughter in cases which are truly murder, because the consequences of a murder verdict are seen as too harsh. There should be many more guilty pleas, thus avoiding

unnecessary trials when liability for homicide is not contended. At present, provocation is often pleaded to avoid a verdict of murder with its automatic penalty of life imprisonment. The change to a discretionary penalty and the abolition of provocation as a defence will discourage this approach. The new provisions accept the reality that there are significant differences in culpability among those who commit homicide. Recognition of reality helps to avoid injustice and is another important facet of reform.

In tandem with these changes, the Bill creates a new offence of aggravated violence, with liability to imprisonment for up to 20 years. The offence covers acts or a series of acts of exceptionally serious violence or exceptionally serious cruelty which intentionally or recklessly cause serious bodily harm to any person. There are a number of defined matters to be taken into account in assessing whether the violence or cruelty is exceptionally serious. The offence will not be able to be prosecuted without the leave of the Solicitor-General. This offence is intended to mark Parliament's concern about the extreme violence meted out to some victims by offenders. It is also designed to protect the public from such offenders for as long as possible.

The Bill contains a multitude of other changes. However, because of time constraints I turn now to a number of specific matters which will be of interest to you.

Concerning AIDS, I have already noted that the offence of wilfully and without lawful justification or excuse, causing or producing in any other person any disease or sickness, was introduced in 1961. The Bill replaces this with an offence prescribing a maximum penalty of 14 years imprisonment for a person who administers a toxic or noxious substance or infects with a disease or sickness, with intent to cause harm. A maximum penalty of imprisonment of five years is prescribed where the person acts similarly with reckless disregard for the safety of that other person. This clause is capable of catching the person who transmits AIDS with the requisite intention or recklessness, subject to questions of causation and such like.

The endangering clauses already discussed in relation to homicide may more readily catch the reckless, heedless and negligent transmission of AIDS. In Germany, the Federal Supreme Court has recently upheld a conviction for an attempt to inflict dangerous physical injury (section 223a of the Penal Code) in a case involving the HIV virus.[13] The appellant, who was infected with the virus, had unprotected intercourse with three men despite a warning from his doctor not to do so. The appellant argued that the offence required a specific intent to injure, and that the other men had consented. The Court rejected both defences, since the doctor had explained the dangers to the appellant, and the other men did not know he was infected. The advent of AIDS may well open up new categories of legal liability and responsibility. Certainly we need to foster more responsible attitudes in matters of sex. I am not sure, however, that the Crimes Bill is the correct forum for further AIDS-related reform at present, even if we were ready for it.

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13 Case 1 StR 262/88, 4.11.88.

Part V of the Bill deals with treason, spying and sabotage. The substantive law of treason is not altered. However, the death penalty is abolished as punishment for the offence and a mandatory life sentence is substituted. The intention is to expunge the death penalty from the criminal law.[14]

The law relating to spying was extensively reviewed in the context of the passing of the Official Information Act 1982 and is repeated unchanged. However the existing provisions relating to sedition have not been repeated. Sedition offences originally derived from the Common Law and were either seen as attacks upon the Established Church or some other dispute or matter likely to disturb the public order to a serious degree.

In the latter half of the nineteenth century, major sedition trials in New Zealand involved Maori leaders, such as Rua. By 1900 sedition worldwide centred on such matters as industrial, political and racial disputes, and a few religious disputes. The last two reported cases in New Zealand[15] occurred in 1914 and were concerned with inflammatory statements made by the accused during a waterfront strike. *Ambrose* v *Hickey*[16] in 1922 involved the question whether a pamphlet was seditious, but was prosecuted under regulations made under the War Regulations Continuance Act 1920.

Justice Department statistics reveal that two cases involving sedition were tried summarily in 1967 and resulted in convictions. No other records of these minor cases have been found. The main point to note, then, is that the offences are rarely used. Where what might be thought of as seditious utterances arise today, and unrest results, they would be more properly dealt with by existing offences relating to public order.

Sedition should not be a crime in a democratic society committed to free speech. Libelling the Government must be permitted in a free society. Indeed, on my recent visit to the Soviet Union I was told that changes are proposed there which will severely cut back existing offences of this nature. Only specific acts aimed at overthrowing the Russian Government will be offences; dissenting opinion will not.

Part XIV of the Bill sets out crimes involving property. The difficult and highly technical area of the law relating to theft, fraud, forgery, document frauds and false pretences has undergone substantial revision based in part on the reforms effected by the United Kingdom Theft Acts 1968 and 1978.

The Bill attempts to achieve simplicity in its description of the physical ingredients of the offences and balances this by attempting a close definition of the fault element involved. The old notion of a "fraudulent intent" is replaced by "dishonestly", and the word "dishonestly" is carefully defined.

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14 This has now been done independently of the Crimes Bill, see Abolition of the Death Penalty Act 1989 (eds).

15 *Holland* (1914) 33 NZLR 931; *Young* (1914) 33 NZLR 1191.

16 [1922] NZLR 96.

Of particular interest in this part are the provisions relating to the dishonest use of computers and the theft of trade secrets. Both of these provisions are new to our criminal law. The essence of the trade secrets offence is dishonestly acquiring something (such as a plan, a model, or a diagram) of commercial value with the intention of obtaining pecuniary advantage. An offender will be liable to five years imprisonment.

The computer offences are aimed at unlawful access for a criminal purpose and dishonest use following access. They prescribe a maximum penalty of seven years imprisonment for a person who accesses a computer with intent dishonestly to obtain some advantage or benefit (whether for that person or another) and also for a person who, having accessed a computer, dishonestly uses it for that purpose.

Simple access without authority, commonly known as "hacking", is not covered, as it is thought to be a breach of privacy. There is however, an offence prescribing a maximum penalty of five years for a person who unlawfully damages, deletes, modifies or otherwise interferes with any data stored in the computer system. This offence covers anything amounting to interference. It would possibly extend to some forms of "hacking".

This brings me full circle to the matter discussed at the beginning of this lecture, because the creation of the new computer offences is a good example of the Government's wish to move with the times.

The provisions contained in the new Crimes Bill which I have highlighted are those of very great significance and also those which are relevant to students of the law. In examining these matters it has also been my intention to demonstrate why and where change is particularly necessary.

However, the Bill does not pretend to be definitive. Now it has been introduced I welcome, and indeed urge, full submissions to the Select Committee by all branches of the legal profession and all other interested bodies and individuals. I do so because, as Winston Churchill once said, it is always wise to look ahead, but difficult to look further than you can see.

I believe that we need to tackle the difficulties involved in the revision of our Criminal Code. The fact that the task necessitates picking our way through a political minefield should not deter us. Indeed, this goal has been a long-standing feature of Labour party policy. The 1984 Labour manifesto stated that a Labour government would revise the major areas of New Zealand law, a task which would include:[17]

> ... a comprehensive review of the Crimes Act 1961 to bring the basic criminal law up to date ...

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17 *Labour Party Manifesto 1984*, Justice Policy, 54, 7(b).

At its most basic, the criminal law prevents people from unjustly prevailing over other people. It was Freud who said:[18]

> ... the history of civilization has been one of finding means to inhibit our aggressiveness.

But I believe there is more to it than that. The criminal law is a battleground of social theory. That is why criminal law reform is so difficult.

A crime is an offence not only against an individual, but also against society for which the State, as the representative of the public, will bring proceedings in the form of a criminal prosecution. The criminal law must measure the criminal acts of an offender and the harm done. But it must also range farther afield, and look to the social consequences that will follow. We are entitled, therefore, to direct the law along a path which will achieve a desirable social result, both for the present and for the future. I believe that codification is the key to direction in the criminal law. A good criminal code promotes the justice of the individual case and the long term interests of society. But a good criminal code must also reach the people whose rights it seeks to preserve. It is too important to be the sole preserve of lawyers and judges. It is not a matter of arcane legal delight but of robust and basic social policy. By this I mean that a criminal code educates as well as prescribes and regulates. It is a social as well as a legal instrument. I am convinced that the Crimes Bill meets these requirements to a substantial degree. The process of refinement which has now begun will ensure that we build on the advances already made.

The substantial revision of our criminal law is timely and necessary. I believe it is within our power to produce a criminal code fit to take us into the 21st century and beyond.

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18 S Freud, *Civilisation and Its Discontents* (1963).