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Sources of Criminal Law in New Zealand: Papers By A.T.H Smith, Pro Vice-Chancellor and Dean of Law, Victoria University of Wellington

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["Codification of the Criminal Law: The Case for a Code"](#) 

[1986] Crim LR at 285

[Victoria University of Wellington Legal Research Paper No. 32/2015](#)

[A. T. H. SMITH](#), Victoria University of Wellington - Faculty of Law  
Email: [tony.smith@vuw.ac.nz](mailto:tony.smith@vuw.ac.nz)

The aims and objectives of a criminal code are examined in the context of potential codification of the English criminal law. The common law is inadequate in that it is often made up of instinctive responses rather than being systematic and deliberate. While the common law does have a unique and important character, a code will not necessarily obstruct the common law process. The advantages of a code expounded by the Law Commission have focused too much on how useful it will be for lawyers, and should instead focus on the way that a code will make law more generally available. While a code will be less malleable than the common law, that is a virtue in the criminal law context and there will be adequate room for exercise of judgement. Abstract by Rose Goss.

["Legislating the Criminal Code: The Law Commission's Proposals"](#) 

[1992] Crim LR at 396

[Victoria University of Wellington Legal Research Paper No. 33/2015](#)

[A. T. H. SMITH](#), Victoria University of Wellington - Faculty of Law

This article reviews the Law Commission's proposals for codifying non-fatal offences against the person and certain general principles. In terms of structure, it would make more sense for a whole code to be presented, the Bill's form is too complex and requires too much explanation. Further, some offences have been omitted without adequate justification. The author comments on the proposals, with a focus on those relating to intoxication. Other proposals that are examined relate to fault terms, O.A.P.A proposals, omissions, duress, use of force, repeals, and supervening fault. The focus of reform should be on resolving any doubts or uncertainties that surround the proposed law. Abstract by Rose Goss.

### ["Judicial Law Making in the Criminal Law"](#)

(1984) 100 LQR at 46.

[Victoria University of Wellington Legal Research Paper No. 34/2015](#)

[A. T. H. SMITH](#), Victoria University of Wellington - Faculty of Law

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The implications of judicial law making in the criminal law are examined, using the cases of *Hunter and Charles v Metropolitan Police Commissioner* as illustrative examples. The examples show the unsuitability of the forensic process in relation to creating a new offence. The theory and scope relating to the power to create new offences, to abrogate offences, and to create defences are also analysed. The author notes three main objections to criminal law making: the usurpation of Parliament's function, creation of uncertainty, and retrospective operation. The creation of a criminal code will provide more certainty and have a positive impact on this area of law. Abstract by Rose Goss.

### ["Criminal Law - The Future"](#)

[2004] Crim LR at 971

[Victoria University of Wellington Legal Research Paper No. 35/2015](#)

[A. T. H. SMITH](#), Victoria University of Wellington - Faculty of Law

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This article looks at trends in the criminal law and discusses how they may progress in the future. One such trend is the move towards an inquisitorial process, rather than the traditional adversarial process. Another is that criminal procedure is subject to code, processes are regulated in a detailed manner. Codification in regard to the substantive criminal law would be positive but is still only a remote possibility, some substantive reforms are considered. In regard to law making, the judicial role is small compared to that of Parliament, but the Human Rights Act 1998 may change this slightly. A number of unresolved problems remain, including the concept of intention, and offences against the person. In the criminal law context, scholarship has become more valued and influential. Abstract by Rose Goss.

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## About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachusetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the [Law School](#) has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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