

Eleventh edition

# Criminal Law

Catherine Elliott & Frances Quinn

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Eleventh Edition

# Criminal Law

Catherine Elliott and  
Frances Quinn

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# Preface

This text is designed to provide a clear explanation of criminal law. As well as setting out the law itself, we look at the principles behind it and discuss some of the issues and debates arising from it. The criminal law is frequently the subject of heated public debate, and we hope that the material here will allow you to enter into this debate and develop your own views as to how the law should progress.

One of our priorities in writing this text has been to explain the material clearly, so that it is easy to understand, without lowering the quality of the content. Too often, law is avoided as a difficult subject, when the real difficulty is the vocabulary and style of legal texts. For that reason, we have aimed to use 'plain English' as far as possible, and *Criminal Law 11th edition* explains the more complex legal terminology where it arises. In addition, chapters are structured so that material is in a systematic order for the purposes of both learning and revision, and clear subheadings make specific points easy to locate.

Although we hope that many readers will use this text to satisfy a general interest in the law, we recognise that the majority will be those who have to sit an examination on the subject. Therefore, each chapter features typical examination questions, with detailed guidance on answering them, using the material in the text. This is obviously useful at revision time, but we recommend that on first reading, you take the opportunity offered by the questions sections to think through the material that you have just read and look at it from different angles. This will help you to both understand and remember it. You will also find a section (at the end) which gives useful general advice on answering examination questions on criminal law.

This text is part of a series produced by the authors. The other titles in the series are *English Legal System*, *Contract Law* and *Tort Law*.

We have endeavoured to state the law as at 1 January 2016.

**Catherine Elliott and Frances Quinn**  
**London 2016**

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# Introduction

## This introduction discusses:

- What amounts to a crime
- The difference between reported crime, recorded crime and actual crime
- How to interpret statistics about crime
- The sources of criminal law
- Efforts to codify the criminal law.

## Introduction

Criminal liability is imposed on conduct felt to be against the general interests of society. Obviously if millions of people have to live together, their lives will be more pleasant and peaceful if some measures are taken to prevent people from killing or physically attacking others, walking into their houses and taking things away, or smashing up someone else's car. Most of us would agree that these types of behaviour are anti-social, and we want them to be controlled. But there is not always agreement on what kinds of conduct should be considered criminal. Swearing in front of children is considered anti-social by many, along with eating smelly fast food on public transport, or wearing too much perfume or aftershave. Yet none of these constitutes a crime, and very few people would wish them to be. On the other hand, there are types of behaviour which may affect nobody but the people involved – smoking cannabis and failing to wear a seat belt are examples – which are nevertheless criminal acts.

The types of conduct which are considered criminal vary from society to society. In our own system, for example, homosexuality was once a crime, while, until 1991, it was not a crime for a man to rape his wife. As general attitudes change over time, so do attitudes to the kinds of behaviour we label as criminal. And at any stage in a society, there will be some kinds of behaviour about which there is dispute – at the moment, for example, smoking cannabis is a crime and some people argue that it should not be, while abortion (within certain rules) is not a crime, and some believe it should be. It is important therefore to realise that there is no absolute definition of criminal behaviour – 'criminal' is no more than a label attached to different types of behaviour at different times in different societies.

### ● How much crime is there?

Official statistics on crime are published annually in the UK, and provide two main kinds of information: the number of crimes committed, as a whole and by type of crime; and certain characteristics, such as age and sex, of convicted offenders. The figures tend to be reported in the media under headlines such as 'Violent crime up 10 per cent', or 'Burglaries reduced by 25 per cent'. However, since the 1960s, increasing doubt has been cast on this interpretation of official statistics. We now know that when official figures say that, for example, burglaries are down by 25 per cent, it does not necessarily mean that there have been 25 per cent fewer burglaries than the year before. This is because these statistics do not measure the crime that has taken place, but the crimes that have been officially recorded, and they may be two very different things. The reason for this is that before a crime can be recorded, a series of processes must occur: a person (the victim, the police, or someone else) must be aware that it has happened; if the police have not discovered it, someone must report it; and the police must accept that the law has been broken. Each stage has implications as to whether the incident appears in the official statistics or not.

### ● Awareness of crime

While in the case of crimes such as burglary or theft it will be clear to the victim that a crime has been committed, many offences do not have an obvious victim. For example, tax evasion victimises the whole community, because if dishonest people avoid paying their fair share, the rest of us have to pay more, but we are not likely to be aware of it happening. Unless the police, or other enforcement agencies, discover such crimes, nobody but the criminals will know that they have taken place.

Whether the police discover a crime depends heavily on where police officers are actually placed. Areas where police believe that crime is likely to occur are allocated higher policing levels, so crime is more likely to be discovered there, and presumably less likely to be discovered in areas not seen as likely to produce crime. Styles of policing may also play a part in this, as the sociologists Lea and Young point out in their book *What Is to Be Done About Law and Order?* In suburban and country areas, policing is more likely to be what Lea and Young describe as 'consensual', with officers seeing themselves as supporting the community in upholding the law. In cities, they see themselves as controlling the community, and preventing it from breaking the law. Lea and Young suggest that people are more likely to be stopped and searched in the second type of area, and thus more likely to be discovered if they do commit crime.

## ● Reporting crime

Numerous studies have shown that the majority of crimes which take place are not reported to the police. Victimisation surveys ask respondents whether they have been the victim of crime over the previous year, whether they have reported it, and whether it was recorded by the police. The best known is the Crime Survey for England and Wales which takes place every couple of years. It regularly reveals a huge number of crimes which have not been reported to the police. The 2009/10 survey uncovered 9.6 million crimes, more than double the official figure of 4.3 million. In addition, rates of reporting varied widely between different types of offence. Clearly this throws doubt on the official picture of which types of crime are committed most frequently; not only are the numbers wrong, but also the proportions.

What influences the decision to report? The main reasons for not reporting are that the victim saw the offence as trivial, and/or believed that the police would not be able to do anything about it. People also tend to report crimes where there is an obvious advantage to them in doing so – 98 per cent of car thefts are reported, presumably because that is necessary in order to make an insurance claim. Other factors are that some crimes are regarded as personal matters, to be sorted out between the individuals; victims may want to protect the offender, particularly in crimes such as child abuse or domestic violence; and victims may be too embarrassed to report to police, especially where the offence is of a sexual nature.

Kinsey, Lea and Young in *Losing the Fight Against Crime* provide additional reasons why crime may go unreported, and therefore unrecorded in official statistics. They argue that inner-city communities have little faith in the police, and this expresses itself in two ways: residents believe the police are biased against them, and they also fear reprisals from criminals, against which the police will not be able to protect them. Another victimisation study, the Merseyside Crime Survey (Kinsey (1984)), has shown that the higher the crime in an area, the lower the willingness to report.

However, even victimisation studies probably underestimate the true amount of crime committed. They can only record certain types of crime – those with an obvious victim. They therefore do not include drugs offences, prostitution, tax, corporate or white-collar crime. Sexual offences are also likely to be underreported; although victims may be more likely to report these in the confidentiality of such surveys than they are to go to the police, many will still be too embarrassed to admit to them, especially as there may seem to be no practical point in doing so.

Victimisation surveys also rely on victims' memories, and their ability to define an act as a crime. Minor criminal acts may be forgotten, not regarded as serious enough to record, or not seen as crime.

**Table I.1** Reasons for not reporting crime to the police, 2010/11

Percentages								
	Vandalism	Burglary	Thefts from vehicles and attempts	Other household theft	Other personal theft	All violence	Comparable crime	All BCS crime
Trivial/no loss/police would not/could not do anything	82	70	86	83	70	44	69	72
Private/dealt with ourselves	11	15	9	11	11	33	18	16
Inconvenient to report	5	7	7	6	8	6	6	6
Reported to other authorities	2	5	0	2	16	9	4	5
Common occurrence	3	3	2	1	2	9	4	4
Fear of reprisal	2	1	0	1	2	4	2	2
Dislike or fear of the police/previous bad experience with the police or courts	2	2	2	1	1	4	2	2
Other	4	7	4	4	4	12	8	7

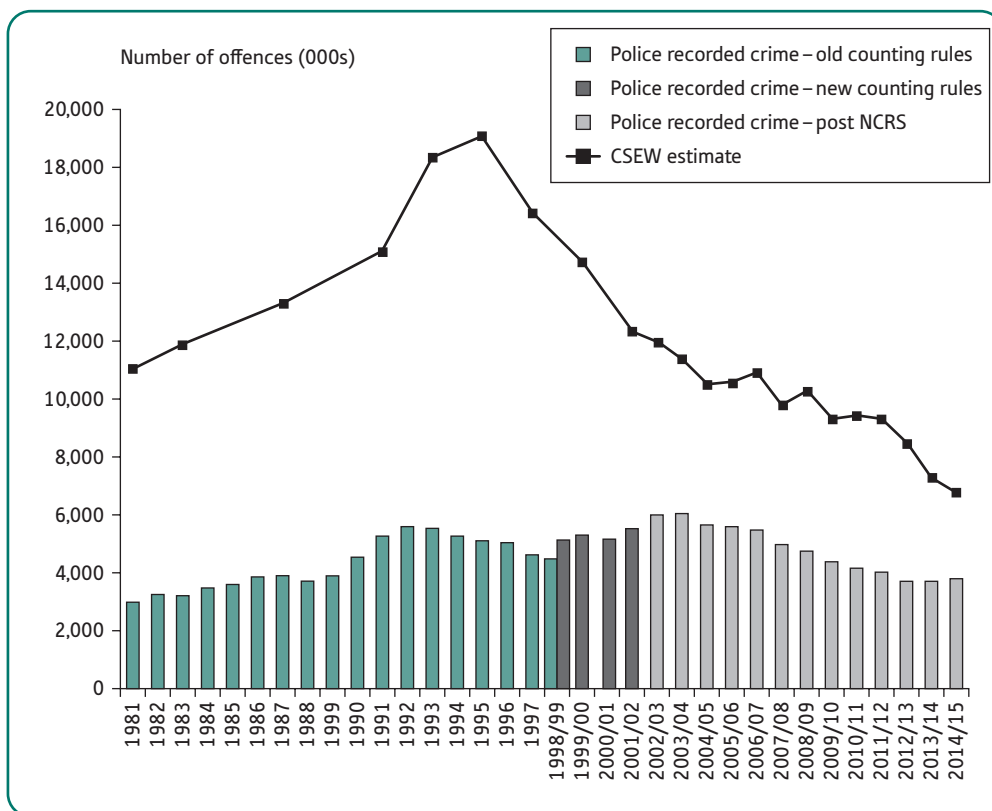
Source: 'Crime in England and Wales 2010/11', p. 55 ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)).

## ● Recording crime

Even where a crime is reported to (or discovered by) the police, it will not necessarily end up being recorded by them. Sociologists have suggested that whether the police perceive an individual's behaviour as a crime may depend on how they label the offender. An American study by Chambliss looked at two teenage groups, one working-class (known as the 'roughnecks') and one middle-class (the 'saints'). Despite the fact that the 'saints' committed more, and more serious, delinquent acts, they did not conform to the police image of young criminals, and were able to present their activities as harmless pranks. Whilst they were questioned, they were never charged, and therefore their activities were not recorded as crimes.

The proportions of different types of crime recorded in official statistics may be distorted by the fact that some acts potentially fall within the definitions of more than one crime – different types of assault, for example. Which crime is recorded may depend on police discretion. In addition, different forces may have different attitudes to types of crime, reflecting the priorities of their senior officers. If the result is that forces concentrate resources on some crimes at the expense of others, this may make it appear that certain crimes are rising by comparison with others, when in fact they may simply be more likely to be detected.

Her Majesty's Inspectorate of Constabulary has published a report (2014) into the reliability of police crime records. It concluded that a fifth of crimes reported to the police are not recorded as



**Figure I.1** Trends in police recorded crime and Crime Survey in England and Wales, year ending December 1981 to year ending March 2015

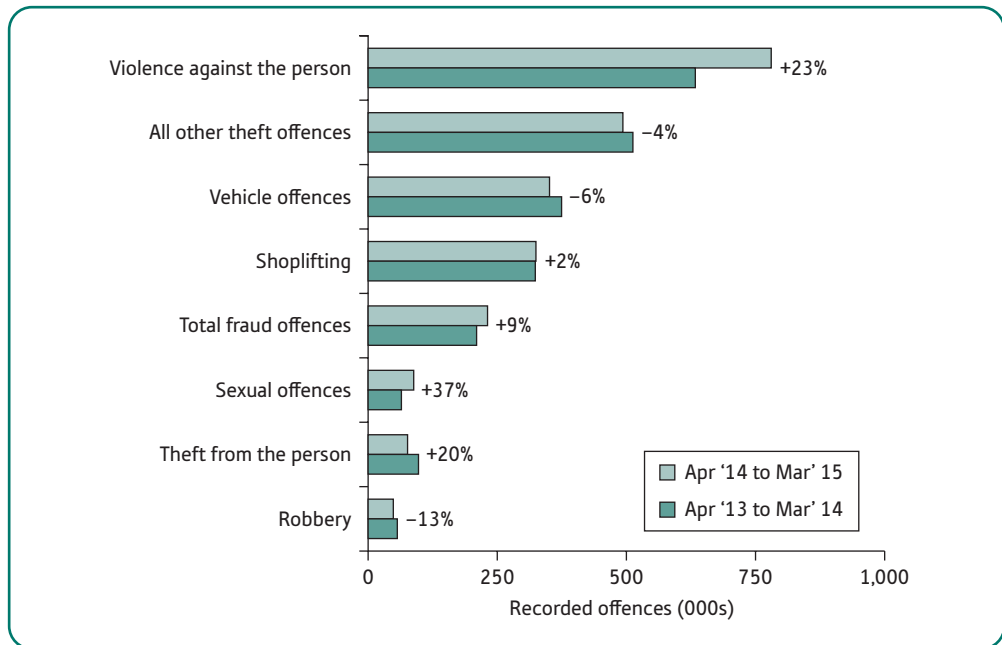
Source: Office for National Statistics Bulletin, Crime in England and Wales, Year Ending March 2015, p. 7 ([http://www.ons.gov.uk/ons/dcp171778\\_411032.pdf](http://www.ons.gov.uk/ons/dcp171778_411032.pdf)).

crimes. Reasons for this under-recording included performance pressure on the police to achieve national targets, a desire to save money and a lack of knowledge about crime-recording.

## White-collar and corporate crime

White-collar crime is the name given to criminal activities performed by those in fairly high-status occupations during the course of their work – fraud is the obvious example. Corporate crime is that committed by companies. Fraud also tends to be the area most associated with corporate crime, but sociologists such as Steven Box have argued that deaths and injuries caused by companies to employees or customers also often amount to crimes.

Neither white-collar nor corporate crimes are adequately reflected in official statistics, for two main reasons. First, there is low awareness of the fact that they have been committed. Many such offences victimise the community as a whole, or large groups of consumers. Where a company breaks safety legislation and an employee dies or is injured as a result, the situation is often viewed as accidental, so although the company may be sued for compensation, criminal charges are rarely brought. In cases of bribery and corruption, both parties may benefit, and both are liable to prosecution, so neither is likely to report the offence.



**Figure I.2** Selected victim-based police recorded crime offences in England and Wales: volumes and percentages change between year ending March 2014 and year ending March 2015

Source: Office for National Statistics Bulletin, Crime in England and Wales, Year Ending March 2015, p. 14 ([http://www.ons.gov.uk/ons/dcp171778\\_411032.pdf](http://www.ons.gov.uk/ons/dcp171778_411032.pdf)).

Secondly, these crimes are frequently investigated not by the police, but by regulatory authorities such as the Health and Safety Executive, who, as a matter of policy, rely on persuasion rather than prosecution; the number of companies who need 'persuading' to stop breaking the law is not recorded in the criminal statistics.

## ● Statistics and conclusions

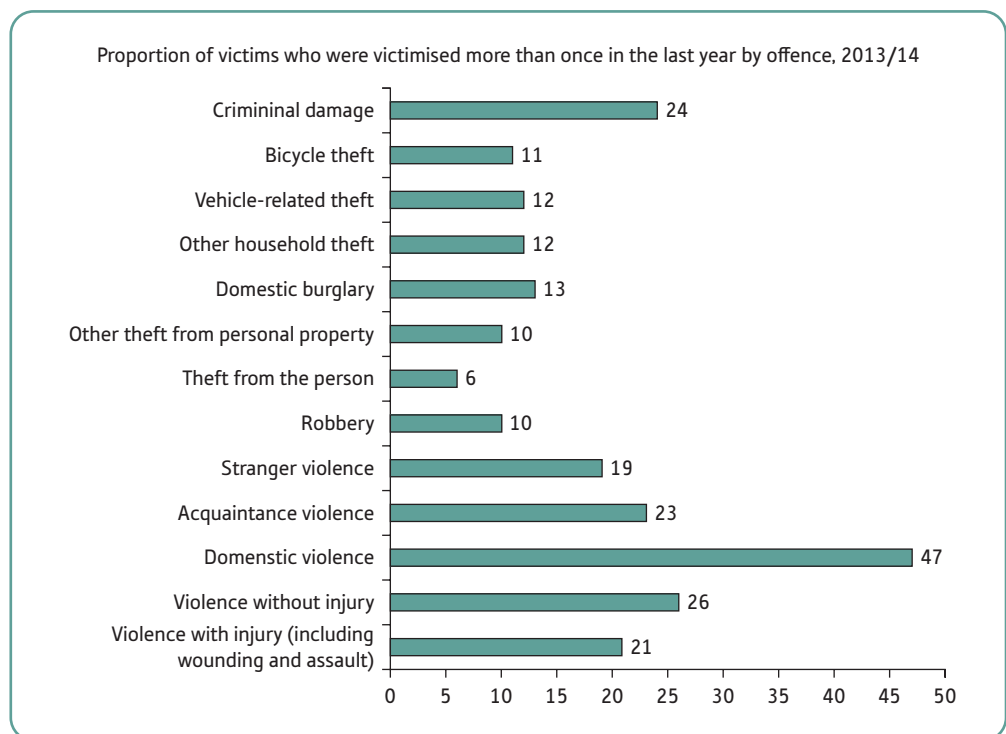
These weaknesses of official statistics make them unreliable not only as a picture of current crime rates, but also for the purposes of comparison – which is a problem, given the huge media attention paid to such comparisons, and its influence on policy. For example, rape figures have risen since the early 1980s, but the figures themselves cannot show whether this means more rapes are being committed or more are being reported, perhaps as a result of more sensitive police treatment of victims. In addition, methods of gathering and/or categorising statistics may vary over time. Consequently, it is difficult to draw reliable conclusions from either apparent increases or decreases in the crime rate. A rise, for example, in the official crime statistics is usually seen as bad news. Yet it may not reflect more crimes committed, but more crimes reported, which may in turn be a result of higher public confidence in the police, and/or less tolerance by victims and others of crimes such as marital rape, child abuse or domestic violence.

Similar problems can be seen in the picture painted by the official statistics of offenders. They suggest that most crime is committed by young, working-class males, and that black people are more heavily represented than might be expected from the proportion of the population that they make up. Many important theories of criminology have been based on these findings, with experts

accepting that working-class men are the main offenders, and then setting out to explain what it was about these men that made them likely to commit crime.

However, in recent years, other criminologists, known as 'labelling theorists', have questioned these assumptions, asking whether it is in fact the case that some sections of society appear more frequently in the crime figures because they are more likely to be convicted, and not because they commit more crime. As we have seen, the offenders who appear in official statistics are likely to be a small proportion of actual offenders, given the amount of crime which is not reported or recorded. As Chambliss's research shows, some groups are more likely to appear in official statistics because of who they are, not what they have done. If young, working-class men are most likely to be stopped by police, or to have their activities defined as criminal, it is not surprising that this is reflected in the official statistics. Lea and Young have suggested that the police may also be more likely to stop and question black people, with the same result.

It has been argued that police behaviour towards these two groups reflects the fact that they actually do commit more crime, but, even if this is the case, it ignores the fact that, in concentrating on some groups, the behaviour of others is not recorded, and so the balance presented in statistics is distorted. In other words, the targeted groups may commit more crime – but not as much more as statistics suggest.



**Figure I.3** Proportion of victims who were victimised more than once in the past year by offence, 2013/14

Source: Data taken from Table D6 at: <http://webcache.googleusercontent.com/search?q=cache:fhEDudKI54YJ:www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-march-2014/3-annual-trend-and-demographic-tables-crime-in-england-and-wales-year-ending-march-2014.xls+&cd=1&hl=en&ct=clnk&gl=uk>



The same applies to the absence of white-collar and corporate crime in official statistics. Box's study of these areas suggests that if the true picture of criminal activity were revealed, the assumption that crime is a working-class activity would soon be overturned.

A further problem with official statistics is that they aim to present a picture of crime as a whole, which may ignore the reality of crime statistics for some groups or geographical areas. For example, the Islington Crime Survey (1986) found that residents of that borough had much higher than average chances of being a victim of certain serious crimes. Women were 40 per cent more likely to suffer non-sexual assault and rates of sexual assault were 14 times the national average. This was even though women were five times more likely than men to avoid going out alone after dark, and six times more likely to avoid going out alone. Burglary in the borough was five times the national average. Clearly this suggests that the national average rates underestimate the effects of crime in such areas and, by implication, overestimate its effects in other districts.

Similarly, the Crime Survey for England and Wales reveals that many apparently separate instances of crime may involve the same victims over and over again; this is known as repeat victimisation. Regarding burglary, for example, the 2000 survey found that 13 per cent of households suffering burglaries had done so twice in the year, and 7 per cent had been burgled three or more times. High-crime areas may not contain more victims, but a similar number to other places, who are victimised more often. Again, this is not reflected in the official statistics, but since these figures are used to help make decisions on policy and allocation of resources, such variations are important.

It seems clear that official statistics are not – and should not be regarded as – reliable, at least not in the role they are designed to perform. They may be very revealing about the assumptions used in defining crime, by police and others, but, as a picture of how much crime is committed and by whom, they are seriously flawed.

## ● Sources of criminal law

The criminal law can be found in a mixture of court judgments and legislation, for example the defence of murder is a common law offence while the offence of theft is contained in the Theft Act 1968. Even where an offence is contained in legislation, court judgments interpret the meaning of the legislative provisions. In the past, when lawyers needed to find out about a criminal offence, they would undertake research by reading textbooks and looking at cases published in the printed law reports. With the development of the internet and electronic databases, increasingly this research is being carried out online. Electronic searches are undertaken using key words and this can generate a very large number of cases which are potentially relevant to the subject. The essential legal research skill has, as a result, evolved from finding to filtering the law. The courts have become concerned that more and more cases are being referred to in court which is slowing down the court process. The Court of Appeal has therefore stated, in **R v Erskine and Williams** (2009), that lawyers should only refer the court to an authority which established or developed a legal principle. Reference should not be made to authorities which simply illustrate or restate the principle. Otherwise the criminal justice system would be 'suffocated'.

## ● European criminal law

Traditionally, criminal law has been a matter for each individual country. However, in recent years European Member States have chosen to give the European Union some powers with regard to criminal matters. This is a recognition that the free movement of people around Europe will not

just encourage legitimate trade, but also facilitate cross-border crimes. Much of the work to date of the European Union in the field of criminal justice has been concerned with procedural issues supporting police and judicial cooperation across Europe. For example, mechanisms have been put in place to facilitate the exchange of evidence between countries and a European Arrest Warrant allows the deportation of suspects between countries. But Article 83 of the Treaty on the Functioning of the European Union (TFEU) gives the European Union the power to define criminal offences and adopt criminal sanctions. As a result, some European Directives have been passed dealing with substantive criminal law offences. These specify that each Member State must criminalise certain categories of anti-social conduct and lay down minimum sanctions. There are directives on such subjects as child abuse, pornography, people trafficking, crimes committed using the internet (often known as cybercrime) and environmental crimes. The impact of European criminal law is still quite limited and none of the legislation has had an impact on the offences discussed in this text, but it is likely that its role will steadily increase. The involvement of the European Union in criminal law matters is quite controversial, with opponents arguing that criminal law should be controlled by national governments.

### ● Fair labelling

This book looks at how criminal offences are defined in English law. In order to critically analyse the offences, academics have developed a principle known as 'fair labelling'. There are two key functions of labelling crimes: differentiation and description. Thus, Ashworth and Horder (2013) have argued that this principle requires the law to respect and signal 'widely felt distinctions between kinds of offences and degrees of wrongdoing' and 'that offences are subdivided and labelled so as to represent fairly the nature and magnitude of the law breaking'. Simple, informative offence names should convey the essential nature of the wrongdoing and communicate information about the offender to the public.

### ● Codification of the criminal law

The criminal law is an area of law of particular significance to every member of society, as under this law your freedom can be taken from you and you can be placed in prison. It is therefore of particular importance that members of the public either know what the law is in this field or are able to find out what the law is. At the moment, however, the criminal law is contained in a wide range of legislation and judicial decisions which can be difficult for lawyers to understand, let alone lay people. This has led some to favour the creation of a criminal code which would bring together in one accessible text the key legislative provisions of the major criminal offences. The criminal law in most other countries is codified. The philosopher Jeremy Bentham (1843) criticised the inefficiency of the common law system, with its attempt to apply incoherent and disjointed precedents to each individual case. He considered that a legal code would bring fairness, order, certainty and transparency to the system. Jenny Lavery (2010) has pointed out that while a codified civil law system focuses on general principles and when faced with a case asks 'What should we do this time?', the common law system looks backwards through its system of judicial precedent and asks 'What did we do last time?'

The Law Commission was created in 1965. Under the Law Commission Act of that year its task is to codify the law, but to date the Commission has only had very limited success. In the field of criminal law, from 1968 to 1974, the Commission produced a series of working papers, but in