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Criminal Law

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Catherine Elliott & Frances Quinn

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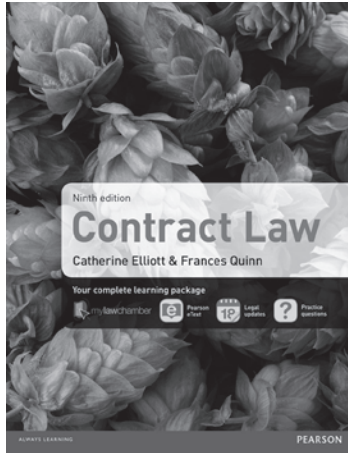
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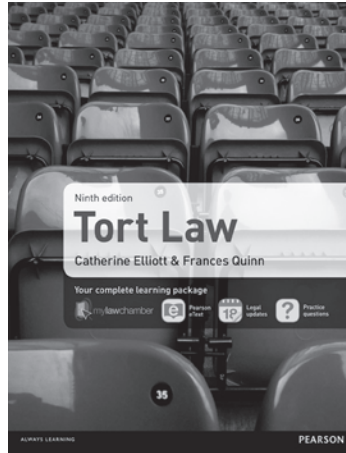
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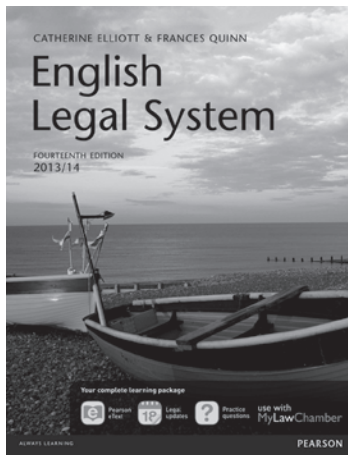
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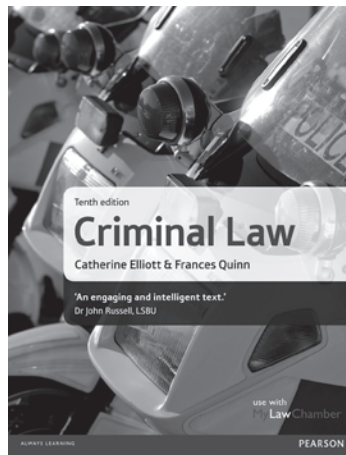
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Criminal Law

Catherine Elliott and
Frances Quinn

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Guided tour

Chapter 1 Elements of a crime

This chapter discusses:

- That the defendant must usually have both committed an *actus reus* (a guilty act) and have a *mens rea* (a guilty mind) to be liable for a criminal offence
- That criminal offences are not normally committed by an omission
- The three main forms of *mens rea* are intention, recklessness and negligence
- The doctrine of transferred malice
- The requirement that the *actus reus* and *mens rea* of a crime should usually both exist at the same point in time.

Chapter openings outline the key concepts to be discussed, and help organise your study.

Key case boxes summarise the leading cases in criminal law, and identify the related principles of law that arise from them.



Key Case R v Roberts (1971)

The leading case is **R v Roberts (1971)** where the defendant had given a lift to a young woman and had touched her clothes. She panicked, thinking that he was about to sexually assault her and jumped out of the moving car injuring herself. He was found to have caused her injuries as her reaction was foreseeable and not so daft as to be extraordinary. In the words of the Court of Appeal:

Was [the victim's reaction] the natural result of what the alleged assailant said or did, in the sense that it was something that could reasonably have been foreseen as the consequence of what he was saying or doing? If the victim does something so 'daft' or so unexpected that no reasonable man could be expected to foresee it, then it is only in a very remote and unreal sense a consequence of his assault.

Legal Principle

The victim's conduct will break the chain of causation if it was so daft as to be unforeseeable.

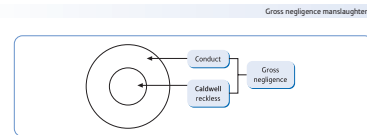


Figure 5.4 Gross negligence

The main reason Lord Mackay in **Adomako** rejected the **Caldwell** model direction for involuntary manslaughter was because he was concerned that a jury would find such a definition incomprehensible. To achieve this goal of simplification for the jury, the House of Lords might have been wiser to follow their own advice in **R v Reid** that judges need not use the exact words of the Diplock direction, but could adapt them for the particular case.

The approach taken in **R v Bateman** (1925) can also be criticised. It is absurd simply to ask the jury to decide whether the negligence goes beyond a mere matter of compensation between parties. The negligence may go beyond that while still falling far short of what is required for manslaughter. The question should not be whether the negligence is bad enough to give rise to criminal liability, but whether it is bad enough to give rise to liability for the very serious offence of manslaughter.

The reintroduction of gross negligence has brought with it the concept of 'duty' to the law of involuntary manslaughter, which is regrettable. In the first place, no purpose is served by unnecessarily complicating this area of law by reference to civil law concepts. This occurs in other areas of

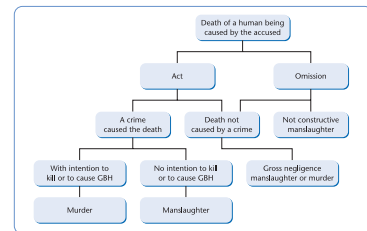


Figure 5.5 Murder and manslaughter

To help explain more complex legal process in more detail, **diagrams** and **flow charts** are used throughout.

Chapter 7 Sexual offences

The Judicial College has responsibility for training judges and it runs short courses to prepare them for hearing sex offence cases. Only judges who have completed these courses are allowed to hear rape trials. The seminars aim both to keep the judges up to date on the law but also to raise contextual, socio-legal issues relating to the nature and impact of sexual offending which could influence their decisions on, for example, the admissibility of sexual history evidence. These seminars are a useful way of tackling the myths and stereotypes that might otherwise influence judges. Only when attitudes towards women change will there ever be any chance of bringing the majority of rapists to justice. Although, sadly, some of these attitudes are held by women as well as men, involving more women in making, interpreting and enforcing the law would be one way to make progress.



Topic issue

Teenage sex

Rather than protecting children, some of the sex offences risk criminalising children for innocently experimenting as they develop sexually. While there is a concern to prevent a 15-year-old child from being sexually exploited by a paedophile, should a 15-year-old boy be criminalised for having sexual contact with his consenting girlfriend? While the Crown Prosecution Service has published policy not to prosecute consensual sexual activity between minors close in age and development, should a prosecution be brought a conviction can be obtained. The criminal law seems to be out of step with social reality, with the National Survey of Sexual Attitudes and Lifestyles (2010) finding that the average age of first sexual contact in the UK is 14 and 40 per cent of all teenagers have had sex by the age of 15. So about 50 per cent of the current teenage population have probably broken the law, suggesting a serious problem of over-criminalisation: the consent threshold of 16 looks chronically outdated and impractical. Professor Spencer has criticised the current law as 'oppressive legislative overkill' which criminalises minor acts such as cuddling and kissing. It is a shame that in passing the Sexual Offences Act 2003 the opportunity was not taken to change this Victorian approach to young people. The human rights campaigner, Peter Tatchell, has argued the consent threshold should be reduced to 14 years on the grounds this is the average age for first sexual activity. The sociologist, Matthew Walte, has suggested the age of consent could be reduced to 14 where a young person has sexual relations with another person who is less than two years older.



Topic issue

Paedophiles

There is a public perception of a growing threat of sexual abuse to children in society. A study was carried out by Don Grubin, Professor of Forensic Psychiatry at Newcastle University, entitled *Sex Offending Against Children: Understanding the Risk*. It looked at research and criminal statistics in the field, while acknowledging the serious limitations of official statistics, which invariably underestimate both the incidence and the severity of sexual offences. He remarked that 'any attempt to arrive at a realistic estimate of the actual rate of child abuse in England and Wales has to rely on assumptions, guesswork and a bit of putting one's finger in the wind'. The criminal statistics available, however, show that during the course of a year there are some 4,000 formal cautions or convictions for sexual offences against children, and that of these about one-half are for sexual

Criminal damage

Actus reus

This consists of destroying or damaging property that belongs to another. The definition of property is different from that in theft, in that it includes land, but does not include intangible property – so you can cause criminal damage to a field but not to a company share. The question of whether the property belonged to another is essentially the same as for the law of theft. Section 10(2) of the Act states:

Property shall be treated for the purposes of this Act as belonging to any person—

- (a) having the custody or control of it;
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) having a charge on it.

Thus property can belong to more than one person. If a person burns down their own home but the house was mortgaged with a bank, then they can be committing criminal damage because the house can be treated as belonging to the bank for these purposes.

The damage caused must not be purely nominal. In **A (A Juvenile) v R** (1978), the defendant spat on a policeman's raincoat. The spit was easy to remove from the coat by wiping it with a damp cloth and so the damage was considered insufficient to amount to criminal damage. Similarly, in **Morphitt v Salmon** (1990), a scratch on a scaffolding bar was held not to be criminal damage because it did not affect the value or usefulness of the scaffolding. By contrast, in **Hardman v Chief Constable of Avon and Somerset Constabulary** (1986) the defendant had drawn a large painting with water soluble paints. If it had been left in place, rain would eventually have washed it away, but the local authority incurred expense by washing it off. Due to this expenditure, the painting was held to constitute criminal damage. In **Lloyd v DPP** (1991) the defendant's car had been clamped for illegal parking and in trying to remove it he damaged the clamp, which amounted to criminal damage.

Some graffiti may be considered to have artistic merit, such as the work of the successful graffiti artist Banksy, and it may be arguable that this type of graffiti does not actually amount to damage – an issue of fact to be decided by the jury.

Mens rea

Section 1(1) of the 1968 Act, quoted above, requires that the defendant must have either intended or been reckless as to the criminal damage. In the past **Calwell** recklessness applied in this context, since that case was itself concerned with an offence contained in the Criminal Damage Act 1971. Subjective recklessness now applies, following the case of **R v G and another** (2003).



Defence

Section 1(1) provides that the defendant is only liable if the damage was done 'without lawful excuse'. A defendant will have a lawful excuse if they can prove some general defence (such as self-defence) or if their conduct falls within one of the categories of behaviour listed in s. 1(2) of the Act, which states that a person has a lawful excuse:

- (a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have consented to it if he or they had known of the destruction or damage and its circumstances; or

Topic issue boxes present examples of the law working in newsworthy or contentious situations, helping to demonstrate its relevance.

Icons alert you to more detailed examination of key cases via **Case Navigator**, accessible through MyLawChamber. Visit www.mylawchamber.co.uk for more details.

You can test your understanding of the subject by using the **exam style question and answer guidance** at the end of each chapter.



Answering questions

Property offences are popular subjects for problem questions and, when answering these, you should note that a lot of these offences now overlap. That means it is not sufficient to pull out the most obvious offence that has been committed; you need to discuss the whole range of possible offences, while allocating more time to the ones that fit the facts most closely. In particular, if you believe that a fraud offence has been committed, in the light of **Gomez** it is also likely that theft has been committed.



P stole some cheques from a building society where he worked. He went into Q's shop where he agreed to buy £2,000 worth of electrical goods. He said he would return with a building society cheque for £2,000. Twenty minutes later he returned with a stolen building society



Summary

The inchoate offences – attempt, conspiracy and encouraging or assisting – are concerned with the preparatory stages of other criminal offences. The common law offence of incitement has been abolished by the Serious Crime Act 2007. A person may be convicted of an inchoate offence even if the main offence was never actually committed.

Attempt

Actus reus

Section 1(1) of the Criminal Attempts Act 1981 provides that: 'If with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.' The question of whether an act is 'more than merely preparatory' is a matter of fact and, in a trial on indictment, will be for the jury to decide. Under s. 1(2) of the Act, people can be guilty of

Each chapter ends with a **summary** which helps you to recap and focus on the key themes from the chapter you've just read – a very useful tool for revision.

End of chapter **further reading sections** provide references to relevant hard copy and electronic resources which will be useful if you wish to study that area in more depth.



Reading list

Text resources

- Buxton, R (2009) 'Joint enterprise' [2009] *Criminal Law Review* 233.
 Buxton, R (2012) 'Being an accessory to one's own murder' [2012] *Criminal Law Review* 278.
 Clarkson, CMV (1998) 'Complicity, Powell and manslaughter' [1998] *Criminal Law Review* 556.
 Heaton, R (2004), 'Principals? No principles!' [2004] *Criminal Law Review* 463.

Appendix: Answering examination questions

At the end of each topic in this text, you will find detailed guidelines for answering exam questions on the material covered. Many of the questions are taken from actual A level past papers, but they are equally relevant for candidates of all law examinations, as these questions are typical of the type of questions that examiners ask in the field.

In this section, we aim to give some general guidelines for answering questions on criminal law.

● Citation of authorities

One of the most important requirements for answering questions on the law is that you must be able to back the points you make with authority, usually either a case or a statute. It is not good enough to state that the law is such and such, without stating the case or statute which lays down that law.

Some examiners are starting to suggest that the case name is not essential, as long as you can remember and understand the general principle that the case laid down. However, such examiners remain in the minority and the reality is that even they are likely to give higher marks where the candidate has cited authorities, quite simply, it helps give the impression that you know your material thoroughly, rather than half-remembering something you heard once in class.

This means you must be prepared to learn fairly long lists of cases by heart, which can be a daunting prospect. What you need to memorise is the name of the case, a brief description of the facts, and the legal principle which the case established. Sometimes it is useful to know the court, particularly if it is a House of Lords judgment. Learning the cases is often a slow and dull process, but is necessary in order to perform well in the examination.

Knowing the names of cases makes you look more knowledgeable, and also saves writing time in the exam, but if you do forget a name, referring briefly to the facts will identify it. It is not necessary to learn the dates of cases, though it is useful if you know whether it is a recent or an old case. Dates are usually required for statutes.

You need to know the facts of a case in order to judge whether it applies to the situation in a problem question. However, unless you are making a detailed comparison of the circumstances of a case and the facts of a problem question, in order to argue that the case should or could be distinguished or applied, you should generally make only brief reference to facts, if at all – long descriptions of facts waste time and earn few marks.

When reading the 'Answering questions' sections at the end of each topic in this text, bear in mind that, for reasons of space, we have not highlighted every case which you should cite. The skeleton arguments outlined in those sections must be backed up with authority from cases and statute law contained in the relevant chapter.

● There is no right answer

In law exams, there is not usually a right or a wrong answer. What matters is that you show you know what type of issues you are being asked about. Essay questions are likely to ask you to

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The **appendix** at the end of the book provides valuable advice on answering both problem and essay questions, which will help you prepare for success in your exams.

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Exam Board Questions on page 35, page 142, page 295, page 323, page 400, page 411, page 412 from Oxford, Cambridge and RSA Examinations (OCR)

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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 10th 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 *The English Legal System*, *English Legal System: Essential Cases and Materials*, *Contract Law* and *Tort Law*.

We have endeavoured to state the law as at 1 January 2014.

Catherine Elliott and Frances Quinn
London 2014

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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 shed 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).

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

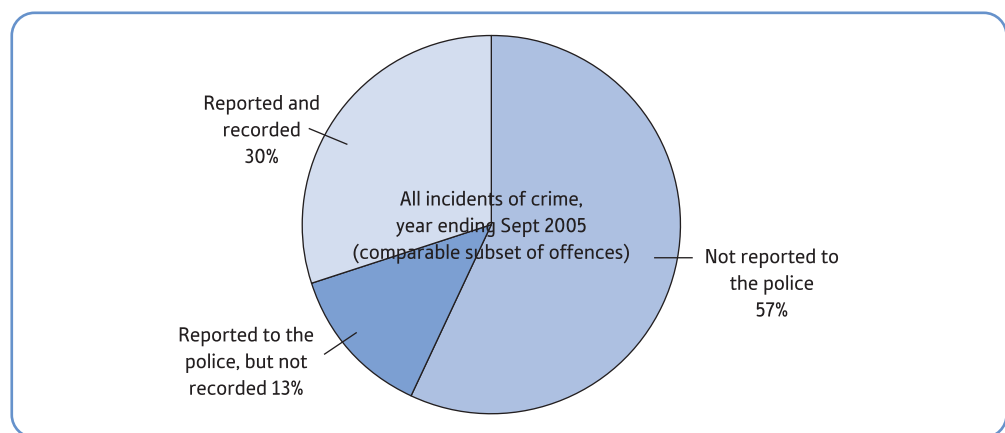


Figure I.1 Proportion of all crime reported to the police and recorded by them, year ending September 2005
Source: 'Crime in England and Wales 2005/06', Home Office Statistical Bulletin, p. 49.

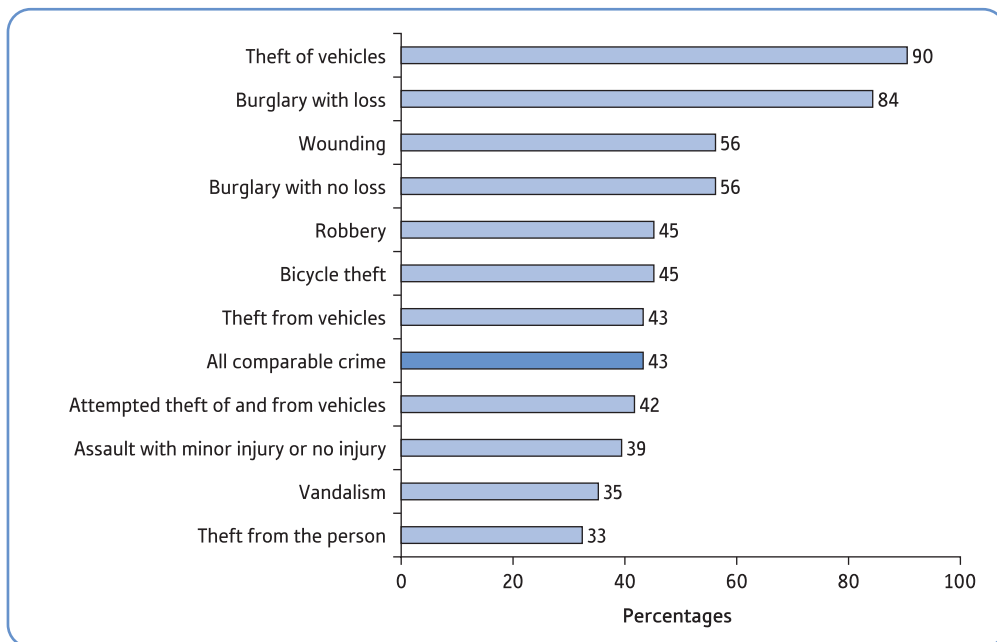


Figure I.2 Reporting rates for comparable subset of crimes, 2009/10 British Crime Survey
 Source: 'Crime in England and Wales 2009/10', p. 26 (homeoffice.gov.uk).

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.

● 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.

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 to 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.

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,

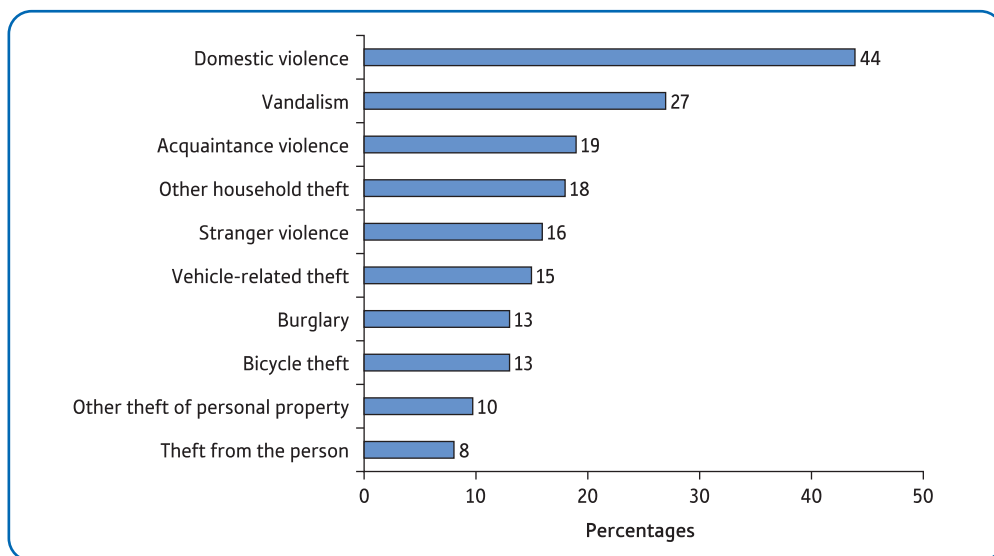


Figure I.3 Proportion of victims who were victimised more than once in the past year by offence, 2010/11 British Crime Survey

Source: 'Crime in England and Wales 2010/11', p. 37 (homeoffice.gov.uk).

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 there are also now some European directives dealing with the 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.

● 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 1980 it announced that its shortage of resources would not allow it to continue, and appealed for help with the task. The Society of Public Teachers of Law responded, and established a committee of senior academics, headed by Sir JC Smith. The team set out the aims of codification as being to improve the accessibility, comprehensibility, consistency and certainty of the criminal law. A first draft was produced in 1985. Following wide consultation a final Draft Code was published in 1989, but this has never been legislated as law.

The Draft Code incorporates not only the existing law, but also recommendations for reform made by law reform bodies. Thus, it takes into account reform proposals made by the Law Commission, the Criminal Law Revision Committee and the Butler Committee on Mentally Abnormal Offenders (1975). Reform proposals were incorporated where the existing law was inconsistent or arbitrary or where a recent official report recommended reform. It established a dictionary of key fault terms (for example, intention and recklessness) which Parliament henceforth would be presumed to have intended to apply unless it indicated to the contrary.

The Draft Code was the subject of some criticism. The legal commentator Bennion (1986) criticised it as incomplete and over-generalised, observing that 'you do not simplify by oversimplifying'. He argued that the Code should have only sought to state the existing law, rather than trying to introduce a random range of reforms at the same time. Ashworth (1986) argued that the broad provisions would allow the judges too much discretion.

Much to the irritation of the academics involved in this project, the Draft Code has never been presented to Parliament. The Law Commission's response to this failure has been to produce a series of 'mini-codes' in relation to specific areas of criminal law in the hope that this will prove more attractive to Parliament. These mini-codes have covered such areas as the offences against the person, intoxication and involuntary manslaughter. If enacted they could together form a single criminal code.

Until recently there was no tangible sign of progress in implementation of any of the Law Commission's major reports on criminal law reform. Decisions of the courts continued to draw attention to defects in the substantive law in areas on which the Law Commission had already proposed legislation. A former chairperson of the Law Commission had written in the *Criminal Law Review* in 1995 that the reports of the Commission 'were being shelved because there was no general perception, particularly among non-lawyers, that there was anything much wrong with the criminal law that needed reform, let alone that large sums of money were being wasted, and countless unfairnesses perpetrated, because important parts of our basic criminal law were so difficult to access'. He concluded that no government would use precious parliamentary time to pass the technical law reform Bills because such legislation did not win votes or advance ministerial careers.

In 2001 the Government published an official paper, *Criminal Justice: the Way Ahead*. This paper was presented to Parliament by the Home Secretary in February of that year as the Government's vision of the future for criminal justice. It included an express commitment to codification of the criminal law. This would be a 'consolidated, modernised core criminal code to improve public confidence and make for shorter, simpler trials'. It stated that 'codification could begin with some valuable proposals already made by the Law Commission on offences against the person, involuntary manslaughter and corruption'. Following the Government's stated commitment to codifying the criminal law, the Law Commission carried out a review of its Draft Code.

However, in its *Tenth Programme of Law Reform* (2008) the Law Commission has dropped its efforts to codify the law because codification has become 'evermore difficult' due to the