

The Challenge of Codification in English Legal History*

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ABSTRACT

The effort to codify areas of British and European law has gained new urgency under the efforts towards legal unification in Europe. This paper looks at English legal history during the 17th-19th century, to explore earlier proposals for the codification at law. Although it is generally assumed that England's common law system was inherently antithetic to legislative codification, there was a well-established English approach to codification that developed early on in English legal history. In trying to explain the failures of previous attempts to codify England's law, we need to focus on political obstacles rather than purely legal considerations.

Efforts to achieve legal unification among the European states have returned the question of legislative codification to a center position in the discussion of law reform. For an historian of English and European law – such as myself – it is always tempting to view these contemporary discussions in light of a longer historical perspective. The great 19th-century British jurist, Henry Maine, began his most influential work, *Ancient Law* (1861), with a chapter on 'Ancient Codes', where he discussed the classical laws of antiquity such as Rome's Twelve Tables and the Hindu Laws of Manu; and contrasted these codes with the modern idea of codification. This is a helpful warning that when an historian thinks about codification, the perspective may run in length to several thousand years! In my presentation here I shall be more modest. My focus will be on England and English common law, and my perspective will be confined to only a few centuries.

For scholars of comparative western law, the absence of codification in England frequently appears as a defining point of contrast between English law and Continental European law. ‘If [English] common law stands for anything, it is the absence of codes, and likewise [European] civil law stands for codification.’¹ So striking and basic has this difference usually seemed that scholars have generally ignored the substantial efforts within the English legal tradition to construct and implement programs of systematic legislative reform. These efforts are my subject-matter here. What I hope to show is:

- (1) that English jurists by the early 17th century had already formulated a distinctive approach to systematic legislative reform of the law (that I shall here refer to as ‘statute consolidation’ and associate with the law reform program of Francis Bacon);
- (2) that ‘statute consolidation’ was conceptualized in opposition to the alternative legislative model of ‘codification’; and
- (3) that for political reasons – as much as for reasons of jurisprudence - the ideal of ‘statute consolidation’ remained an organizing element of English law reform through the 19th century, for some two centuries following its first authoritative formulation.

A. Legislation in Classical Common Law Theory

During the course of the seventeenth and eighteenth centuries, the law of England received its most influential exposition in the writings of such celebrated jurists as Edward Coke, John Selden, Matthew Hale and William Blackstone.² Previously, much of the scholarly expertise concerning English law was maintained in unpublished form in the records kept by the central royal courts of Westminster Hall and in the manuscript

collections of London's Inns of Court. But by the mid-18th century a large volume of published legal writing had appeared, and these works provided long-influential accounts of the nature, procedures and history of England's law. In these accounts - as now - English law was divided into two principal component parts: common law or '*lex non scripta*' [unwritten law] and statute law or *lex scripta* [written law]. The former comprised the legal 'custom' of the kingdom which had been refined and adapted over the centuries under the professional leadership of the common law courts. The latter was the legislation enacted by the sovereign authority of Parliament.

Common Law and Statute Law were conceived as two distinct and separate branches of the legal system even though jurists observed many important ways in which their histories and functions were intertwined. Matthew Hale, in his *History of the Common Law* (published 1713), speculated that the ancient Saxon customs which formed the original materials of English law, were themselves in fact Parliamentary statutes whose original written documentation had since been lost.³ Later in the *History*, he celebrated Edward I as 'the English Justinian', who had secured dramatic improvements in the administration of justice through a combination of royal leadership backed by judicial and Parliamentary contributions. In the chapter-length historical survey with which he concluded his *Commentaries on the Laws of England* (1765-9), Blackstone repeated these specific points of praise for England's Justinian.⁴ In this setting, Edward I's achievements appeared as one important moment in a grander narrative that supplied the central theme of the kingdom's legal history: the heroic process by which the common law, and especially common law liberty, was preserved and strengthened against those who threatened this inheritance. For Blackstone, the process had depended

throughout on Parliamentary interventions in support of the common law, and its history could be charted through a series of momentous medieval and 17th-century statutes, such as Magna Carta; the Charter of Forests; the Habeas Corpus Act; and the 1689 Declaration of Rights.⁵

All this might suggest a unified and integrated legal order of unwritten and written sources, common law and statute law, operating through the authority of several legal institutions and functioning to refine and advance the law through a steady process of incremental growth and adjustment. Yet, ironically, such a benign vision of the relationship between common law and statute was all but submerged by a professional orthodoxy that celebrated the achievements of the common law by measuring them against the failures of statute. In this reading, the kingdom's law was divided into two unequal parts, in which the common law was foundational and primary, and in which legislation often appeared as much a hindrance as an aide to England's law.

The case for common law's primacy rested on a several, nested lines of argument. It drew in part upon the blunt reality that most of the leading parts of England's law, such as the rules and doctrines governing property and obligations, were plainly the handiwork of the common law courts and not the sovereign legislature. 'The judgments of [the courts of] Westminster Hall are the only authority we have for by far the greatest part of the law of England.'⁶ But the principal claims concerned the qualitative superiority of the common law. The gradual and steady process of development and refinement had rendered common law (in Blackstone's phrase) 'fraught with the accumulated wisdom of ages.'⁷ In contrast, the episodic record of legislative enactments has produced a large, confused and often redundant body of statute law. English lawyers claimed that much of

this legislation lacked clarity and professional expertise, and they were prompt to identify badly-designed legislation as a major cause of the defects of the law. Blackstone, relying on previous legal authorities, maintained that:

... almost all the perplexed questions, almost all the niceties, intricacies, and delays (which have sometimes disgraced the English, as well as other courts of justice) owe their original not to the common law itself, but to innovations that have been made in it by acts of Parliament.⁸

The case against the statute law operated on many levels, some of which reflected little more than the legal profession's self-interested hostility to outside interference. The core presumption, however, was that - whatever the past and easily-recognized increasing pace of Parliamentary legislation - common law in future would continue to supply the basic form of law in England. 'Who that is acquainted with the difficulty of new-modelling any branch of our statute laws (though relating but to roads or to parish-settlements),' Blackstone insisted, 'will conceive it ever feasible to alter any fundamental point of the common law, with all its appendages and consequents, and set up another rule in its stead?'⁹

B. Statute Consolidation

The program for legislative reform favored by English jurists followed directly from this diagnosis of the strengths of common law and the defects of statute law. The program was frequently termed 'statute consolidation;' and it received its most influential presentation in the early seventeenth-century in the writings of Francis Bacon. Bacon's *De Augmentis Scientiarum* (1623) contained an elaborate discussion of legislative

composition and form, which he considered in terms of the larger goal of securing ‘certainty’ in law. Legislative consolidation – or what Bacon termed ‘Digests’ of the law – addressed the legal uncertainty created by verbose and disorganized legal sources. It comprised a systematic review of existing legislation and a dramatic contraction of its volume through the repeal of obsolete and unused materials; the reduction of excessive penal sanctions; and the consolidation, according to shared subject-matter, of the remaining Parliamentary enactments into uniform and consistent statutes.¹⁰ In the 1610s, Bacon composed two reform tracts that likewise pressed the case for a systematic rationalization of the statutes. Dated and unused statutes, which formed ‘a gangrene’ on the ‘wholesome laws’, required repeal; and the remaining laws, currently ‘heaped upon one another’, would be reorganized and redrafted into ‘one clear and uniform law.’¹¹

In two crucial respects, Bacon’s statute consolidation program constituted an expressly restricted exercise in legislative reform. First, the scheme’s primary objective concerned the verbal expression and organization of English legislation. In Bacon’s formulation, the Digest did not alter ‘the matter’ of the law, but only the ‘manner’ of its ‘registry, expression and tradition.’ And second, the Digest preserved the structural division of English law by only addressing Parliamentary statutes. Bacon recognized that England’s common law also required its own program of reform to improve and clarify its historical sources. But this was a different and separate project, and Bacon expressly repudiated the more ambitious project of using the statutory Digest as the vehicle for transforming common law into legislative form. The latter approach he dismissed as a ‘perilous innovation’ that threatened the law’s greatest strengths. ‘Sure I am,’ he

explained, ‘there are more doubts rise upon our statutes ... than upon the common law,’ and hence, ‘I dare not advise to cast the law into a new mould.’¹²

Later proponents of statute consolidation did little to alter the basic goals or strategy of this Baconian program for legislative consolidation. Instead, the emphasis – especially in the case of Blackstone and like-minded eighteenth-century commentators – was on the manner in which the increasing volume of Parliamentary law-making in the period since Bacon had rendered the law reform project all the more pressing and valuable.

C. Law Reform in the nineteenth century

During the course of the nineteenth-century, major structural changes to the organization of English courts and to common law process occurred through the vehicle of Parliamentary legislation. The decades of the 1820s and 1830s experienced an unprecedented level of public discussion concerning the reform of the law and other public institutions, as the nation shifted its focus to domestic matters following the final end of the nation’s prolonged and costly wars against Revolutionary and Napoleonic France. The future Lord Chancellor Henry Brougham’s six-hour speech on law reform to the House of Commons in February 1828 provided a convenient marker for the new ambition and publicity that attended the issue. Only a few years earlier, the Home Secretary, Robert Peel, had secured legislation to repeal and modify many of the most extreme examples of excessive penal severity on the statute book, thereby realizing a reform objective that had been agitated in Parliament since the 1810s. In 1824 a Chancery Commission was appointed to resume consideration of long-established complaints concerning the costs and abuses of justice in the Court of Chancery.

Brougham in 1828 identified other major areas that demanded attention: reform of the common law courts of and of common law procedures; the need for inexpensive and accessible local courts; reform of the laws governing debt, bankruptcy and tenures. In the aftermath of Brougham's marathon speech, two Royal Commissions were established with broad mandates to recommend changes in the law: one addressing the common law's notoriously complex law of real property, and the other covering the criminal law.¹³

These law reform initiatives also encompassed the most extensive discussion of and proposals for legislative codification in English legal history. These debates often drew on intellectual sources and legislative examples that were unknown in the eras of Bacon or Blackstone. Yet, projects of legislative renewal continued to be framed by the traditional project of statute consolidation and the authority of Francis Bacon. This, in part, was the result of the extent to which so many of the great nineteenth-century legal reforms addressed problems that had been first identified centuries earlier.¹⁴ But, in addition, the remarkable survival of the native tradition of 'statute consolidation' had as much to do with British politics as with historical continuities. For its opponents, codification was reinforced as a radical and foreign reform program at odds with the traditions of English jurisprudence. In contrast, 'statute consolidation' offered a way to embrace legislative reform that acknowledged the need to order and compress the statute law while shielding the common law from Parliamentary interference.

English jurists of the 17th and 18th-century naturally took Justinian's Code of Roman law (*Corpus Juris Civilis*) as their model of codification. But by the early 19th century, France's 1804 Napoleonic Code (*Code Civil des Français*) furnished a much

more recent and potent example of comprehensive codification. English authors were well aware of this and of the several other recent codes that had been adopted in Europe and in the Americas. Debates over law reform were quick to draw on this current and cosmopolitan context. In the 1820s, the young lawyer and literary editor, Abraham Hayward, embarked on an English translation of the sweeping attack on the codification ideal of the French Enlightenment produced by the formidable Berlin jurist and historian, Karl von Savigny.¹⁵ John Austin, in his *Lectures on Jurisprudence* – originally delivered to a tiny London University audience in 1828 and only reaching its more permanent audience through posthumous publication in 1863 – singled out Savigny and ‘his specious but hollow treatise’ as the critical target for his own cautious defense of codification in England.¹⁶ Yet, in the early-nineteenth century Parliamentary debates on law reform, this particular intellectual framework scarcely surfaced. Instead, the earlier and more traditional set of English authorities and preoccupations shaped the discussion.¹⁷

In addition, by the early decades of the 19th century, Britain had acquired its own native voice for systematic legislative codification in the jurisprudence of Jeremy Bentham. Bentham had begun his career in legislative theory many decades earlier, and by the mid-1780s, he had developed a detailed plan for a comprehensive code of law, uniformly organized and expressed, which he termed a ‘*pannomion*’ - meaning ‘a complete body of law’.¹⁸ In explicit contrast to the conventional project of statute consolidation, Bentham’s code was designed to reform both the content as well as the form of the law, and to codify the entire legal order, thereby turning common law into legislation. In the 1820s, Bentham sought to take advantage of the political opportunities

of the post-Napoleonic era by composing several ‘Codification Proposals’, in which he called upon the liberal nations of world to codify their laws and advertised his own willingness to draft a model code for any country that offered him an official invitation.¹⁹ From the start, Bentham believed that codification operated against the professional and material interests of lawyers and judges. Codification was designed to compress and rationalize the content of the law as well introduce a new and clearer legal terminology. This would render the law more intelligible so that the public would no longer need to depend on professional lawyers for its knowledge of the law’s requirements. Correspondingly, for Bentham, the lawyers and judges zealously defended common law because the complexity of customary law, its arcane terms and cumbersome procedures, all served professional power and self-interest. The untrained community at large could never acquire satisfactory knowledge of an unwritten law and therefore was left to the mercy of lawyers and judges to discover what the law demanded. In a famous metaphor, Bentham claimed that common law judges made law for the community ‘just as a man makes laws for his dog.’ First appeared the offensive behavior; then came the blow; and then the animal (or community) was left to work out the relationship between penalty and violated rule.²⁰

By the 1820s, Bentham had become an ardent and controversial advocate of radical democratic reform. In terms of contemporary British political debate, he occupied an extreme position, defending universal suffrage, the secret ballot, annual elections, and the elimination of the established Anglican Church and all forms of hereditary privilege. In his reform writings of this period, he linked codification to the project of fundamental democratic transformation of the social and political order. The uncodified common law,

he now argued, figured as but one institutional element in a system of corruption in which hereditary and professional elites advanced their ‘sinister interests’ through institutions and practices that frustrated the welfare of the general community. To secure implementation and the full realization of its purposes, codification needed to be accompanied by democratic constitutional reform. Democratic political institutions and codification were alike in creating structures through which those with power were forced to announce and explain to the community the rules and policies they enacted.²¹

In adopting this view of codification, Bentham joined earlier and contemporary English radicals in joining together law reform and political reform. But for the opponents of codification, this advocacy made codification appear even more dangerous and menacing. Codification not only threatened common law, it threatened the broader political establishment. For the defenders of codification, in turn, it became a frequent priority to separate Bentham’s jurisprudence and law reform program from his controversial democratic politics.²²

D. The Case of Criminal Law Reform

The complex political and institutional considerations attending English law reform can be illustrated in the fates of two different 19th-century efforts to at criminal law reform. The more ambitious of the two was the 1833 Royal Commission on the Criminal Law, which was unusual in its composition and broad mandate. Parliament directed that the Commission explore the complete codification of the law of crimes. The Commission was charged to draft a unified law consolidating previous criminal statutes as well as a unified law consolidating the common law of crimes.²³ It also was directed

to report on the feasibility of producing a more comprehensive law that would unify into a single enactment both the statute law and common law of crimes, thus turning common law into legislative code. The Commission contained five members, three of whom (unusually for this institutional setting) were academic lawyers. These included, John Austin, the one avowed disciple of Bentham among the Commissioners.

Over the course of its lengthy deliberations which continued for over a decade, the Commission produced eight voluminous *Reports of His Majesty's Commissioners on Criminal Law*, which carefully reported its findings on prospective reforms of the law and no less carefully weighed the various legislative forms by which this might best be achieved. Whereas the *First Report* of 1834 emphatically endorsed the codification goal to unify existing common law and statute into a single legislative enactment, by the time of the *Seventh Report* in 1843 the Commission revised this initial priority. It instead emphasized the greater coherence and sophistication of the common law treatment of crime compared with the statute law, and emphasized the need in any legislation to preserve the superior achievements of the common law. All this laborious research and reporting, however, made no direct impact on the actual reform of England's criminal law. Legislation, based on Commission's labors, was introduced in Parliament in 1848 and fitfully progressed through a succession of select committees. But the 1854 decision of the then Lord Chancellor to solicit the opinions of the common law judges led to the abrupt collapse of the entire project. As on numerous other occasions in the nineteenth century, Parliamentary law reform foundered in the face of judicial and elite professional opposition.²⁴ In response to this failure, one of the most active members of the Criminal Law Commissioners, Andrew Amos, protested 'that Codiphobia' which infected English

government and the ‘disingenuous class of postponers’ who undermined pressing codification efforts.²⁵

My second example of criminal law reform was the slightly earlier legislative efforts of the years 1826-30, when Parliament enacted a series of Criminal Law Amendment Acts, which implemented several long-advocated criminal law reforms. Robert Peel, then Home Secretary and associated with several law reform projects, led the Parliamentary effort. The legislation moderated the capital sanctions created by previous statutes for many property offenses, and achieved significant consolidation of the statute law. Four leading statutes - dealing separately with larceny, malicious property offences, offences against the person, and forgery – together repealed and replaced over 200 earlier statutes.²⁶ Peel himself made the case for this critical ‘consolidation of the criminal laws’ in a lengthy Parliamentary address of 1826. There he rehearsed familiar arguments concerning the need to reduce and order the chaos of the statute book through a cautious process of legislation rationalization. What he proposed, he explained to the House of Commons by directly quoting the words of Francis Bacon, ‘tendeth to the pruning and grafting the law, and not to plowing up and planting it again; for such a move I should hold indeed for a perilous innovation.’²⁷ The legislation aimed less to transform the substance of the law than the form of its organization and presentation.

Peel, no doubt, had ample pragmatic and even strategic reasons for thus cloaking his proposed legislation with the language and authority of Bacon’s consolidation project. Throughout the Parliamentary campaign, he emphasized the moderation and practicality of his reformist goals. His success at realizing a program of reform that had been

previously frustrated in Parliament was a testimony to his considerable political skills, as well as to his ability to maintain the support of key constituencies, especially the common law judges. Being able to present his proposals as conforming to a long-advocated and well-established native legislative tradition directly served these specific and pressing political needs.

E. Concluding Thoughts

What should we make of Robert Peel's 1826 claim in the House of Commons that after two centuries Francis Bacon still remained the single leading authority on legislative reform in Britain? Peel knew full well of the Napoleonic Code and of the contemporary debates in England and Europe over the merits of codification. He was well aware of Bentham and of Bentham's often critical and impatient responses to his more moderate reform projects. But these were not the examples and theories he chose to parade before the British Parliament. Where other political considerations obtained, English lawyers found that their legal training or tradition did not inhibit the capacity to codify. Particularly in the context of British Empire, codification proved quite congenial to British governors. Thus, under the direction of English lawyers, 19th-century India experienced a series of successful and ambitious codification measures, including penal law, criminal procedure, the law of evidence and the law of contracts. But the efforts of reforming jurists to draw on these examples for the purposes of transplanting Indian codification back to Britain proved distinctly unsuccessful.²⁸ As late as 1882 the lawyer who drafted the recently-enacted Bills of Exchange Act, M.D. Chalmers, could plausibly claim that this law represented the very 'first code or codifying enactment' in English

legal history because— unlike ‘a consolidation Act’ – the statute unified into legislative form both common law and statute law materials.²⁹

At the same time, it would be rash to treat the thin record of codification in English legal history as solely a matter of political imperatives and thwarted aspiration. Peel’s reliance on the authority of Francis Bacon in 1826 was politically adroit but also legally apposite. Given the very general terms of its formulation, Bacon’s legislative program remained recognizably relevant in the era of 19th-century law reform. Ten years after Peel’s speech, yet another royal Commission on law reform reported to Parliament, this time charged ‘to Inquire into the Consolidation of the Statute Law.’ The Commissioners elaborated a seven-step scheme for best condensing and ordering the statute book. Their recommendations covered all too familiar ground. As the Commissioners themselves explained, their ‘remedies for the defects of the Statute Law accord, for the most part’ with several of Bacon’s suggestions in the early-17th century ‘*Proposal for amending the Laws of England*.’³⁰ For the historian, these statements are a useful reminder that legislative reform in England was never solely the story of the failure on one important legislative program: codification. It was additionally the story of the successful realization of an alternative, older and more limited legislative project: statute consolidation.

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- * I draw in this paper on several of my previous publications: “Legislation in a Common Law Context”, *Zeitschrift für Neuere Rechtsgeschichte*, volume 27, Nos.1-2 (2005); ‘Jeremy Bentham’s Code: from Jurisprudence to Politics’ in Stephen Engelmann (ed.) *Selected Writings of Jeremy Bentham*, (Yale University Press, forthcoming); and *Province of Legislation Determined: legal theory in eighteenth-century Britain* (Cambridge, 1989).
- ¹ R.C. Van Caenegem, *Judges, Legislators and Professors: Chapters in European Legal History* (Cambridge, 1987), 39.
- ² For surveys of this common law jurisprudence see J.G.A. Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, 1957) and my *Province of Legislation Determined*.
- ³ Hale, *History of the Common Law*, ed. Charles M. Gray (Chicago, 1971), 4. (The date of the composition of Hale’s *History* is not known; it was first published posthumously in 1713.)
- ⁴ Blackstone, *Commentaries on the Laws of England* (1765-69), ed. Joseph Chitty, 4 vols. (London, 1826), 4: 425-7.
- ⁵ *Commentaries*, 4: 420, 438-40.
- ⁶ James Ram, *The Science of Legal Judgment* (London, 1834), titlepage.
- ⁷ *Commentaries*, 4: 442.
- ⁸ *Commentaries*, 1: 10.
- ⁹ *Commentaries*, 3: 267.
- ¹⁰ Bacon, *De Augmentis Scientiarum*, (English trans.), Book 8, Chapter 3, Title 1, in *The Works of Francis Bacon*, ed. James Spedding, Robert Leslie Ellis, Douglas Denon Heath, 14 vols. (London, 1857-74), 5: 101-3. I explore Bacon’s influence on later discussions of legislative reform in *Province of Legislation Determined*, chap. 9.
- ¹¹ ‘Proposition Touching the Compiling and Amendment of the Laws of England’ in *Works of Francis Bacon*, 13: 65.
- ¹² *Proposition*, 13: 63, 65, 67.
- ¹³ See Michael Lobban, *The Common Law and English Jurisprudence 1760-1850* (Oxford, Clarendon Press, 1991), chap. 7, and ‘Henry Brougham and Law Reform’, *English Historical Review* 115 (2000) 1184-215.
- ¹⁴ See Michael Lobban, “‘Old wine in new bottles’: the concept and practice of law reform, c. 1780-1830’, in Arthur Burns and Joanna Innes (eds.), *Rethinking the Age of Reform. Britain 1780-1850* (Cambridge, 2003), 114.
- ¹⁵ Abraham Hayward (ed. and trans.), *On the Vocation of our Age for Legislation and Jurisprudence* [*Zum Beruf unsrer Zeit für Gesetzgebung und Rechtswissenschaft*], (London, 1831).
- ¹⁶ Austin, *Lectures on Jurisprudence or the Philosophy of Positive Law* (1863), 5th edn., 2 vols. (London, 1885), 2: 666-81.
- ¹⁷ See K.J.M. Smith, *Lawyers, Legislators and Theorists: Developments in English Criminal Jurisprudence 1800-1957* (Oxford, 1998), 60-1.
- ¹⁸ *An Introduction to the Principles of Morals and Legislation* (1789), ed. J.H. Burns and H.L.A. Hart (London, 1970), 7, 305.

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- ¹⁹ See Jeremy Bentham, *"Legislator of the World": Writings on Codification, Law, and Education*, eds. Philip Schofield and Jonathan Harris (Oxford, 1998), and Philip Schofield in 'Jeremy Bentham: Legislator of the World', *Current Legal Problems* (1998) 51: 115-47.
- ²⁰ *Truth versus Ashhurst, The Works of Jeremy Bentham*, 11 vols. (Edinburgh, 1838-43), 5: 235.
- ²¹ See my 'Jeremy Bentham's Code: from Jurisprudence to Politics'.
- ²² See, for example, Austin's discussion in *Lectures on Jurisprudence*.
- ²³ The work and *Reports* of the Criminal Law Commission are surveyed in Rupert Cross, 'The Reports of the Criminal Law Commissioners (1833-1849) and the Abortive Bills of 1853', in P.R. Glazebrook (ed.), *Reshaping the Criminal Law: Essays in Honour of Glanville Williams* (London, 1978), 5-20, and in Leon Radzinowicz and Roger Hood, *History of English Criminal Law and its Administration: volume 5, Emergence of Penal Policy in Victorian and Edwardian England* (London, 1985), chapter 22.
- ²⁴ See John Hostettler, *The Politics of Criminal Law Reform in the Nineteenth Century* (Chichester, 1992), 196-201.
- ²⁵ Andrew Amos, *Ruins of Time: exemplified in Sir Matthew Hale's History of the Pleas of the Crown* (London, 1856), xvi, xix.
- ²⁶ Peel's law reform efforts in Parliament are reviewed and discussed in Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750: volume 1, The Movement for Reform* (London, 1948), chapter 18; and Norman Gash, *Mr. Secretary Peel. The life of Sir Robert Peel to 1830* (revised edn., London and New York, 1985), chapter 9.
- ²⁷ *Parliamentary Debates* (Hansard, new series), 14 (1826) 1239.
- ²⁸ See Hostettler, *Politics of Criminal Law Reform*.
- ²⁹ M.D. Chalmers, 'An Experiment in Codification', *Law Quarterly Review* 6 (1886) 125-6.
- ³⁰ *Report of the Commissioners Appointed to Inquire into the Consolidation of the Statute Law*, Parliamentary Papers (1835) XXXV: 384.