The Codification of Manx Criminal Law

PETER EDGE

Mann[1] is a micro-jurisdiction historically associated with Wales, Ireland, Scandinavia, Scotland, and England. Before 1765, the Manx Crown was held by the King, later Lord, of Mann from some more powerful monarch. Since 1406 the Manx Crown had been held by members of the Stanley and Atholl families, upon condition of their presenting two falcons to the British Sovereign upon Coronation day. In 1765, for fiscal and military reasons, the British Crown purchased the regalities of Mann from the Lord of Mann, and Mann fell under the control of the British government.[2] Although Mann remains separate from the United Kingdom, with its own legal system, its laws have been increasingly assimilated to those of its largest neighbour.[3]

The purpose of this paper is to chart the developing form of Manx criminal law from 1422, the year in which the keeping of legal records was first ordered by the King of Mann, to the present day. In the nineteenth century the law-making process in Mann was dominated by the government of the United Kingdom. While codification of the criminal law faltered in England, since 1817 Manx criminal law has been based upon a succession of Codes. It is the purpose of this note to discuss the development of codification in Mann.

Before discussing the rise and fall of the Criminal Code in Mann, it is important to outline the bodies capable of making and declaring Manx law. While separation of powers doctrine has been relatively unimportant in Mann, due to the small number of officials available to carry out the functions of government, the differences between the legislative and judicial processes merit discussing the two forms separately. We will then discuss the law-making powers of the British Crown.

THE LEGISLATURE

In its modern form, an Act of Tynwald, the Manx legislature, requires the assent of the House of Keys, the Legislative Council, and the Lord of Mann.[4] In certain well-defined circumstances the assent of one or more of these bodies may be delegated or waived. Before the seventeenth

Peter Edge, University of Central Lancashire

Legal History, Vol. 15, No. 2 (1994), pp. 109–130
PUBLISHED BY FRANK CASS, LONDON

century, however, the situation was more complex. Not only had the laws and ordinances of this period 'been prescribed by such different powers or combinations of powers that, as precedents of the exercise of the legislative authority, they can have but little weight',[5] but the majority of their pronouncements were statements of the existing customary laws,[6] or reports of individual trials,[7] rather than legislation effecting legal change.[8] Early legislation, therefore, must be treated with care. To ignore the existence of purported legislation that fails to meet the criteria later established would be to neglect the likely effect of such legislation at the time, and so the usual practice is to treat the purported legislation as having effected legal change, but note any defect in origin.[9] Where the organs of insular government have stated the existing law, it is usual to refer to such statements as 'Customary Laws' of that year, and accord them authoritative status as to Manx customary law, rather than consider them to be statutes of the legislature.[10]

It is convenient to discuss the typical progress of a Bill, detailing each organ of the legislature as it is encountered. A Bill, since the decline of the Council at the start of this century, typically began life in the House of Keys.[11]

The exact composition and status of the House of Keys in 1422 is unclear. The earliest document in the Manx statute book refers to 'Claves Manniae et Claves Legis',[12] but it was not until 1585 that the title of 'the Keys' was regularly used to describe the 'worthiest men' and 'elders of the land'.[13] Before the seventeenth century it appears that these 'worthiest men' were summoned and appointed by the Lord on an *ad hoc* basis.[14] From the start of the seventeenth century, however, the membership of the House of Keys continued from session to session. When one of the 24 seats fell vacant, the Keys themselves would nominate two candidates. The Lord then chose one of these to take the seat, usually the first named.[15] The Lord also had the power, and exercised it as late as 1734, arbitrarily to remove a Key from office.[16] By the time of the Revestment in 1765 it was the general practice for the Keys to hold office for life,[17] and from that time until 1866 'the Keys became more and more a closed corporation, and membership was largely confined to a few leading families'.[18] Since 1866 the House of Keys has been democratically elected. No Act of Tynwald is valid without the assent of this Branch of Tynwald.[19]

The other Branch of Tynwald is the Legislative Council. The exact membership of the Council has fluctuated considerably throughout our period, but the details do not merit discussion here.[20] Broadly, the Council originally consisted of the Governor and a number of principal executive, judicial and spiritual officers. During this century the *ex officio* membership of the Council has declined, to be replaced by appointees of the

Governor or of the House of Keys, until today the Legislative Council is dominated by appointees of the other Branch. Until 1962 the assent of this Branch of Tynwald was required for all Acts.[21] By a statute of that year, analogous to the British Parliament Act 1911, provision had been made for dispensing with this assent in many cases.[22]

After both branches had passed the Bill, it passed to Tynwald Court. Here both branches met to sign the Bill itself, along with the two keepers of customary law, the Deemsters, and the Governor. This was no mere formality, as if either of the two branches,[23] or the Governor[24] failed to sign the Bill it would fail. It has never been suggested that the Deemsters retained a discretion to refuse to sign the Bill, and the veto power of the Governor was abolished in 1990.[25]

After the Bill had been signed by the Insular authorities it was ready for Royal Assent. As has been discussed above, before 1765 the regalities of Mann were exercised by the Lord of Mann, without reference to the Sovereign of England.[26] Since Revestment the regalities of Mann, including Royal Assent to Bills of Tynwald, has lain with the Sovereign of the United Kingdom. In practice, because of the constitutional conventions of the United Kingdom, the decision to grant or withhold assent has lain with the United Kingdom government.[27] Since 1981 the Governor has been empowered to assent to many Bills, on behalf of the Crown, but sufficient safeguards exist to allow the United Kingdom government to retain final control over all Manx legislation.[28]

Finally, after assent came promulgation, a ritual dating from a time when the concurrence of the assembled people was considered necessary to legislation. Originally, the Act became law only after being read in full, in both English and Manx, from Tynwald Hill upon Tynwald Day. The amount of information required has been reduced by statute,[29] and since 1916 an Act has become law upon receiving assent, although it may lapse if not later promulgated.[30] It would seem logical that an Act of Tynwald that had not been properly promulgated, like a Bill that had failed any other stage of the legislative process, could not be relied upon in any civil or criminal matter. This writer is not aware of any case where the matter has arisen.

THE JUDICIARY

Consideration of the Manx Court structure may suggest that the tiny Insular population were especially well provided for by courts and legal officers. At one time or another, in the area of criminal law alone, can be found the Court of Criminal Appeal, the Court of Exchequer, the Court of General Gaol Delivery, the Courts of Summary Jurisdiction,

the Debet Court, the Deemsters Court, the High Bailiff's Court, the Sheading Court, the Staff of Government, and the Staff of Government (Criminal Jurisdiction). In fact, these courts were often held on the same day, at the same place, and by the same officers, using a different title for a different duty. The judicial function in Mann has thus been exercised by only a few officials, the most important of which are detailed below.[31]

Customary law vested judicial power in the Lord of Mann, who was able to hold any court, as well as hear appeals from insular officers. It was very rare for a Lord actually to be present in Mann during our period, however, and many of his powers were exercised by the Governor, who was empowered to hold all courts, and was the sole judge in any court he chose to hold.[32] The Governor was present at almost all sittings of the principal courts.[33] In 1921, as part of constitutional reform intended to reduce his role, the Governor lost his judicial functions.[34] His role as principal judge was taken by the two Deemsters. By customary law, the Deemsters had only a limited jurisdiction as judges. Instead, they attended the principal courts as assessors of Manx law to provide the Governor with advice. Additionally, they were often consulted, along with the Keys, if a general legal question arose.[35] In 1921 the Deemsters took over the judicial functions of the Governor.[36]

Additionally, before 1918 the island supported a Clerk of the Rolls who also acted as an appellate judicial officer. By 1918 there was insufficient work to justify the post, and it was merged with that of First Deemster. The abolition of this separate office raised a problem, for if the officer was not replaced in this role, each Deemster would have to hear appeals from the other, sitting alone. To provide a second judicial opinion in appeals the post of Judge of Appeal was created. The Judge of Appeal is an English Queen's Counsel, who only has jurisdiction in appeal cases, where he assists one or other of the Deemsters.[37]

Finally, in some circumstances an appeal may lie from the Insular Courts to the Judicial Committee of the Privy Council, resulting in consideration of Manx cases by a tribunal on which sit British Lords of Appeal in Ordinary.

THE POWERS OF THE BRITISH CROWN

The influence of the United Kingdom government over the Manx legislature and judiciary can be dealt with only briefly here.[38]

A number of mechanisms existed which, after 1765, could be used to compel or prevent legal change in Mann.[39] The United Kingdom Parliament could legislate on any matter whatsoever concerning Mann.[40] The United Kingdom government, acting as Ministers to the Crown, could

order or forbid the granting of Royal Assent to an Act of Tynwald.[41] As well as these obvious powers, which were only rarely exercised, more subtle mechanisms could be used – threats to exercise these powers, the personal influence of Crown Officers in Mann, and limited control over the membership of the legislature, all gave leverage.[42] Broadly, since 1765 the United Kingdom government has exercised a loosening control over the Manx legislature. Today, however, the United Kingdom government is still prepared to intervene decisively during the enactment of important Insular legislation.[43] In practice, due to convention, the United Kingdom rarely interferes with the domestic legtislature other than where the contentious matter transcends the frontiers of the Island.[44]

The influence upon the judicial process is more difficult to state. It does not appear that any form of direct pressure has been brought to bear on judicial officers to decide cases in accordance with the wishes of the United Kingdom government, but it would be naive to assume that such pressure would be recorded in a form accessible to modern researchers. It is open for debate whether pressure to conform to the European Convention on Human Rights has been applied to the Manx Courts by the executive.[45]

It should not be forgotten, however, that even where English officials did not coerce Manx law-makers, English law remained extremely influential. There were excellent reasons why Manx legislators, and judges, might choose to follow an English precedent, even when English officials are indifferent. Briefly, these include the institutional convenience to draftsmen, judges, advocates and the general public which could follow from adopting Imperial forms; deference to the perceived superiority of Imperial bodies; the benefits accruing from adopting legislation which had been tested in practice; and, for judge-made law, the relatively poor documentation of the tiny number of Manx precedents and resulting uncertainty if Manx precedents were to be required; deference to English courts and law; and the more subtle influence of background and education over the judiciary and legal profession. The important point for this paper is that, after 1765, any Bill of Tynwald has acquired statutory force only with the consent of the United Kingdom government. There is evidence that the grounds for this consent have been relaxed but, even today, if the United Kingdom government will not countenance a Bill, it will fail.

MANX CRIMINAL LAW BEFORE 1817

Since the mandatory keeping of legal records began in 1422 the form of Manx criminal law has undergone substantial change. There has been a move, more pronounced than in English law, away from judicial law-making to legislative law-making.

Before 1736 the criminal law in Mann was stated almost entirely by the judicial process. In comparison with the English law of the period, there were very few statutory provisions dealing with the criminal law. It is especially important, therefore, to distinguish between two different methods of judicial law-making in use during this period.

The first method was the application, distinction, development and distortion of prior written precedents by the judiciary. An early writer referred to this method of judicial law-making as 'chest law',[46] on the grounds that the written precedents were kept in a large wooden chest. There is no evidence that this term was adopted in Mann, and, as it may be confused with the similarly named 'breast law', this paper uses the term 'precedential law'. This method grew in importance throughout this period, as more legal doctrines were reduced to precedent.

The second method is harder to describe. Before 1422 the laws of Mann were passed down from Deemster to Deemster orally and were said to reside in the Deemster's breast.[47] In case of difficult questions the Elders of Mann[48] could be called upon to assist the Deemsters in recalling the law. In this form, a declaration of the breast law was simply a reduction of oral tradition to written precedent.[49] Accordingly, one would expect breast law, in time, to be supplanted totally by precedential law. This view, however, neglects a more potent form of judicial creativity. The Deemsters enjoyed, in practice, unfettered discretion to declare the law, especially in novel cases, according 'to the mere conscience of a judge',[50] and have it 'held for law'.[51] Where the customary laws were irrelevant, and no precedent existed, judicial creativity could fill the gap.

To the modern reader, this distinction may appear to be one without difference. Precedential law was simply the development of breast law which had been declared in a previous case. In both instances the judges were making law to some extent. But this view neglects evidence that the two were viewed differently, by at least some important individuals, before 1817. The action taken against breast law alone, discussed below, is the best example of this. It is suggested, therefore, that the validity of this distinction to the law-makers of this period must be accepted, if their actions are to be comprehensible.

Before 1736 there were signs of dissatisfaction with the concept of breast law, although not with that of precedential law. In 1636 the Lord of the Island,[52] in a passage stressing the faults inherent in such laws, directed the Deemsters to explain the breast law. Briefly, the Lord disapproved of the Deemsters being privy to law unknown to himself or to his Council; of the people of the island being subject to laws of which they could not be aware; and of such unwritten laws being incompatible either with one another or the more conventional Manx laws.[53] This appears to

have had no effect, since the Lord issued a similar order, in 1667,[54] which was itself ignored,[55] except for the compilation by Deemster Parr of 'an abridgement of the established and practical laws'.[56]

Even if these orders had succeeded in reducing the first form of breast law to writing, problems caused by judicial creativity would remain unless new declarations of law were prohibited. As well as the problems of judicial creativity common to most jurisdictions, two special problems existed in the Manx context.

First, no more than two Deemsters existed at any one time, so that the power inherent in judicial creativity was focused, rather than diffuse. While this power may have been diluted when the Keys were called to assist the Deemsters, it is probable that the Deemsters were able to dominate even the Keys by virtue of their office. It is generally accepted that focused judicial power is a problem in a case-law-based legal system, and it has been suggested that it is an important justification of the doctrine of *stare decisis*.[57]

Second, there is some evidence that the Deemsters possessed a local power base potentially antagonistic to the Lord. Although appointed by the Lord, as late as 1784 it was inconceivable that a Deemster should be other than a Manxman. This was necessary since a foreigner would not be fluent in the Manx tongue, or familiar with the breast law.[58] As early as 1648 it was recognised that the demise of breast law could allow the appointment of an English Deemster, and this has proved to be the case.[59] Accordingly, if the Manx Deemster was seen as politically dangerous, abolition of breast law could both reduce his power, and pave the way for an English incumbent. That the Deemster could be the focus of Manx dissent can be seen in a number of trials for sedition and treason.[60] While the Lord had the power to remove the Deemster at any time, use of this power could create difficulties in the context of a traditional, at times hereditary, breast law.

Accordingly, by the early eighteenth century there was dissatisfaction with the law-making powers of the Deemsters. In 1726 the Lord attempted to cancel all unwritten laws, but was thwarted by the protest of the Keys to the Privy Council.[61] In 1730 the Lord responded to complaints caused by the uncertainty of the criminal law with a promise to require trial by jury before the imposition of corporal punishment.[62] The stage was set for a change in Manx laws, arising from the special situation on the island, which would radically alter the balance between legislative and judicial law-making.

In 1736 as part of a programme of law reform it was enacted 'That no court, judge or magistrate within this Isle whatsoever shall have power for the future to inflict any fine or punishment upon any person or persons

within the said Isle, for or on account of any criminal cause whatsoever, until he ... be first convicted by the verdict or presentment of four, six, or more Men as the case shall require, upon some statute law in force in the said Island'.[63]

This section combined the general requirement of trial by jury, promised by the Lord in 1730, with a restriction on some types of non-statutory offence.[64] We will discuss the importance of this restriction below, but first the exact scope of the section must be determined.

The *prima facie* interpretation of the section is that, upon its coming into effect, only statutory offences could be prosecuted. There are problems with this interpretation. A later section of the same Act assumes the existence of the offence of murder, even though no such statutory offence existed.[65] More powerfully, there are a number of cases where offences were prosecuted successfully after this Act despite the lack of a statutory basis.[66] Accordingly, if this was the correct interpretation it was widely ignored.[67] In view of the paucity of statutory offences at the time, such a course may well have been essential to retain social order.

A second interpretation is that no prosecution could succeed unless for a statutory offence, or for a non-statutory offence that had been declared before 1736. This interpretation would preserve those offences already stated in precedential law, while preventing the Deemsters from declaring new offences. Case law does not exclude this possibility, but another source renders it unlikely. In 1797 Tynwald passed an act against, *inter alia*, forgery and perjury.[68] In the preamble, based upon the opinion of the Governor, it was stated that 'the crime of forgery and perjury, and subornation of perjury were by the common law of the said Isle, punishable with fine, imprisonment and corporal punishment' but that the Act of 1736 required a statute law to be in force if the said crimes were to be punished.[69] A number of customary law prosecutions for forgery can be found before 1736,[70] so it appears that Tynwald did not accept the second interpretation. Since Tynwald at this time contained all the principal judicial officers, as well as the officer responsible for prosecuting felons and traitors, this is important evidence that the second interpretation was not being applied.

A third interpretation is that the statutory restriction applied only to misdemeanours. Customary treasons and felonies could still be prosecuted. The cases are compatible with this interpretation, as are the actions of the legislature. Accordingly, while this interpretation is not patent from the statute, it would appear to be the correct one. In 1817 it was stated in the preamble to a statute that the Act of 1736 should 'not be construed to extend to any Treason or Felony which subsists at, by or under the common law of the said Isle'.[71] The 1817 Act was repealed in 1872, while

the Act of 1736 survived until 1978.[72] Given that the preamble never had the force of law, it is submitted that this interruption is unimportant. The preamble was a declaration, by a legislature containing the senior legal officers of Mann, of the meaning of the 1736 Act.[73]

This exclusion of judicial law-making from the area of misdemeanours, beyond interpretation of the small number of existing statutes, contributed to the overtaking of Manx criminal law by changing needs. The situation could have been remedied by an active legislature, but Tynwald was notably torpid following the Revestment of 1765. By the start of the nineteenth century commentators were united in criticising Manx criminal law for its failure to 'provide against many offences committed in the present time'.[74]

A few examples of these perceived defects must suffice. First, errors of omission. The criminal law before 1817 did not provide for summary prosecution for assault,[75] for punishment of assault with intent to commit a capital crime, for sexual intercourse with a child, for sodomy,[76] for malicious damage,[77] or for bigamy or indecent publication; or for exile or transportation as a sentence rather than a condition of pardon.[78] Manx law was also actively flawed in a number of areas. The monetary value of felony was only sixpence;[79] female felons were theoretically liable to be sewn into a sack and hurled into the sea;[80] and rapists were sentenced to hang, be decapitated or marry their victim, as she preferred.[81] Thus, while distinctive, the Manx law before the Code of 1817 was in need of reform.

THE RISE OF THE CRIMINAL CODES

In 1796 Lieutenant-Governor Shaw wrote to the Home Department to complain about the state of Manx law, which he claimed had been neglected since Revestment. In particular, the absence of Attorney-General Wadsworth Busk[82] for the preceding three years was considered especially harmful to the maintenance of effective laws, as he was the officer responsible for 'framing and digesting Acts of Tynwald'.[83]

In 1805, Colonel Cornelius Smelt was appointed Lieutenant-Governor. One of the first problems dealt with by the Colonel has a bearing on later developments. A number of defendants were arrested in relation to the passing of forged bank notes, prohibited under a Manx statute.[84] Due to a misunderstanding between Acting Attorney-General Moore[85] and the Deemsters, no attempt was made to prosecute the defendants within the statutory time limit, and the Colonel was obliged to release them without trial.[86] In 1811 the same defendants were believed to be responsible for the circulation of a substantial number of forged bank-notes. Lieutenant-Governor Smelt encouraged the passage of a Bill to reform the Manx law

governing such matters, but although it was passed by the House of Keys, the Council rejected it with a promise to consider revision of the law at a later date.[87]

These events provide important background to the first Criminal Code, which finally received Royal Assent in 1817, and which is discussed below. The problems of which Lieutenant-Governor Shaw complained had not been solved by 1813, and clearly Lieutenant-Governor Smelt was a man who felt the need for reform of the criminal law keenly. A key factor in the development of the first Code was the absenteeism of the Attorney-General, a factor mentioned above.

On 8 January 1813, Lieutenant-Governor Smelt addressed the Keys on the role of the Attorney-General.[88] The primary issue raised was whether it was possible to prosecute felons without either the Attorney-General or his Deputy leading the case, but clearly the Lieutenant-General was dissatisfied with the Attorney-General. He referred to the absence from Mann, and complete failure to perform a single public duty, of Attorney-General Frankland since before 1799, and asked the Keys, whether the state of the island required the residence of an Attorney-General and whether felons could be tried without him.[89] It seems clear that the drafting of Bills for consideration by Tynwald was a point to be considered here.

The legislature formed a Committee to review current law and recommend statutory changes, which reported on 18 February 1813.[90] The Committee had drafted a number of Bills, but lacked the time to expand most of their suggestions beyond a mere outline. Heading Eight is of special interest. Described as 'A Bill or Bills to amend the Criminal Law', the 'reasons' for the Bill merit full quotation –

> To amend the act of 1629 by increasing the sum which constitutes grand larceny and making the language of the law more precise perhaps to repeal it altogether and make a new law upon the subject more suitable to the present state of society. To make a law against arson or wilful burning of houses etc. To repeal the clause in act 1737 which says that no court shall impose fine or punishment for an account of any criminal cause etc. Where it is said that a man is liable to be hanged in this Island (as the law now stands) for stealing or pilfering in any manner of way property to the amount of sixpence half penny – and when it can also be said that a person is not liable to capital punishment as the law now stands for wilfully laying a town in ashes, there seems to be no necessity for saying more to convince any reasonable being that amendment is wanted in the Criminal Code.[91]

By the end of 1815 Attorney-General Frankland had placed a Code to revise the Manx Criminal Law before the Manx legislature. Lieutenant-Governor Smelt believed the Bill could not proceed until the British government stated how, and with what funds, Manx prisoners were to be transported under the Code.[92] Despite the availability of the acting Manx Attorney-General in London to provide advice if needed, and the prodding of the Lieutenant-Governor, the Bill was unable to proceed to Royal Assent until after Attorney-General Frankland died.[93] The final form of the Bill was very similar to the Bill at this stage, and so such differences as do exist merit some discussion.[94]

The 1815 Bill contains a number of spelling mistakes[95] and infelicitous expressions[96] which are corrected in the Act. For instance, the Bill often refers to 'an intention', which became 'intent' in the later Act.[97] Additionally, the Bill has some structural weaknesses which are corrected in the Act. For instance, the last clause of the Bill is divided into 13 sections in the Act.[98] Additionally, there appear to be some potential differences between the Bill and the Act, although these differences may not have surfaced in practice. Firstly, many clauses of the Bill do not expressly give the Court a discretion in sentencing where the Act does.[99] Secondly, arson changed in definition slightly.[100] Thirdly, the Bill provided for the removal of ears for some offenders, while the Act reduced this to mere corporal punishment.[101] Fourthly, the Bill dealt incompletely with corruption of officials.[102] Fifthly, assault with intent to commit a capital crime was reduced from felony, in the Bill, to misdemeanour in the Act.[103] Sixthly, the Act creates a separate offence of setting a notorious evil example to other subjects, while the Bill incorporated this as an additional requirement to a narrower offence.[104] Finally, the power of the Deemster to postpone sentence was introduced into the Act after the Bill was drafted.[105] It should be clear from this list that, while the Bill still required some work, it was essentially complete by this stage.[106] But the Bill still had a long way to go, and had no Attorney-General to guide it.

The Lieutenant-Governor recommended the senior member of the Manx bar for the post, but the Home Office preferred James Clarke, then Deputy Recorder of Liverpool, who was appointed Attorney-General on 9 September 1816.[107] The new Attorney-General speedily built up his duties, and made a good impression on the Lieutenant-Governor. Colonel Smelt forwarded the Code for Royal Assent on 17 November 1816, indicating it had been framed by Attorney-General Frankland 'and lately revised with great industry and ability' by Attorney-General Clarke, 'an English barrister of ... much talent'.[108]

Despite the talents of Mr Clarke, the Code was initially refused Assent, although it was some time before the grounds for doing so, and suggested

amendments, were forwarded to the Lieutenant-Governor. On 23 May the Code 'having undergone the alterations suggested by the Lords of the Council' was successfully sent for Royal Assent.[109]

An important point to draw from the legislative history of the Code should be noted. While the United Kingdom government was consulted on a number of practical matters, and would not recommend Assent until the Code was drafted to their satisfaction, no objection was raised to the principle of codification insofar as it was present in the Bill's nomenclature and contents.

The first Code consisted of 61 sections. The vast majority of these were definitions of criminal offences, or penalties, rather than general principles. In the absence of universal recognition of the need for a general part at this time, this is unsurprising. More surprising is the ambivalence of the Code as to whether it was, or was not, a complete statement of criminal offences. As we have noted above, the preamble attempted to repair the damage done to customary offences by the Act of 1736, while creating a Code of offences so extensive as to minimise the need for such offences. Additionally, the Code contained a broad clause to rectify the possible problems of an exclusive Code. By Section 46 it was provided that 'all unlawful, indecent and scandalous actings and doings, not hereinbefore specified, to the disturbance of the public peace, and against good order and morals; or to the evil example of the subjects of our Lord the King are, and shall be held to be, misdemeanours'.

The provisions of the earlier Code, as will be imagined from the legislative history of the measure, were largely based upon the English common law of the time, rather than upon an extrapolation of the principles found in existing Manx cases, combined with sections to deal with problems unknown to Manx precedential law.

After the first Code, occasional alterations were made to the criminal law by statute. Eventually, as the first Code grew increasingly elderly and unsuitable, the legislators decided to replace it. Elements of the Code as it was finally enacted in 1872 date from 1853, and it could fairly be said that it had been before the Manx legislature for upwards of 20 years, albeit intermittently.[110] The revival of serious interest in reform of the Manx criminal law, which eventually resulted in the new Code, began in 1865.

On 7 March of that year Lieutenant-Governor Loch wrote to the Home Office, stating that he wished to introduce a Bill to amend the Manx criminal law. He was 'anxious to assimilate the law as far as possible with that existing in England' and requested copies of 24 and 25 Victoria chapters 95 to 100. These English statutes later formed the bulk of the Code of 1872.[111] The Lieutenant-Governor then directed Deemster Drinkwater to prepare 'a Criminal Code to assimilate the law here with that

which exists in England, modified only so far as the peculiar character of our courts might render necessary' and the resulting measure was extensively discussed in Council. Before it could proceed to discussion in the House of Keys, however, the Lieutenant-Governor sought the opinion of the Home Office on imprisonment and transportation.[112] When this was provided, on 26 October 1868, the Bill could proceed.[113] The Code first sent for Royal Assent, as Lieutenant-Governor Loch pointed out, was 'to a certain extent a Codification of the English criminal law ... made applicable to the existing practice of the insular courts'.[114] But this was not enough to secure Royal Assent.

The Code was returned to Mann on 28 December 1870, with the report of the British Law Officers explaining what revision was needed. In the first place, the Law Officers objected to a number of provisions concerning postal offences which they understood to be contrary to an Imperial statute extending to Mann – 'it is not competent for Tynwald Court to pass enactments inconsistent with its provisions, and in some of these sections there are obvious errors'. Secondly, a number of provisions were selected as being wrong in principle – for instance a juxtaposition of sections so that theft of a letter containing property was subject to a lower maximum penalty than theft of a letter not containing property. Thirdly, to quote the Law Officers, 'we might instance a great many other provisions which appear to be ill-considered and objectionable, but the defects which we have pointed out make it clear that Her Majesty cannot properly be advised to assent'. Given the length and importance of the Bill, they suggested that it be placed before them when amended prior to entering the legislature.[115]

Attorney-General Gell did his best to advise the Lieutenant-Governor on the substantive issues raised by the Law Officers, and was forced to admit some errors in drafting.[116] The Lieutenant-Governor was clearly worried on two points. Firstly, the Law Officers had hinted at a number of other defects in the Code, without actually detailing them. Secondly, there is some evidence that the Law Officers were unaware of the advice the Governor had received from the Home Office during the drafting of the Bill. Both these factors, it is submitted, influenced him when he arranged a conference between himself, the Attorney-General and both British Law Officers, 'so that the Bill may be presented to the Insular Legislature in the form that it would be approved by the Government'.[117]

The conference, held in April of 1871, addressed a number of important issues, principally related to the issues dealt with in 1868.[118] The Bill having been amended to meet the objections of the Law Officers, it was resubmitted for Assent.[119] The Code was refused Assent once again, and a lively correspondence resulted. Once again, the Post Office was dissatisfied

with the interaction between the proposed Code and the Imperial legislation.[120] The Post Office favoured striking out all the postal sections, but the Law Officers defended the right of the Insular legislature to produce a comprehensive Code containing provisions supplemental to Imperial statutes. The Law Officers further doubted whether the Imperial measure in question applied to Mann in its entirety. Eventually the Code was amended to meet the objections of the Post Office, and was again forwarded for Royal Assent.[121]

Once again, due to the objections of the Post Office, Assent was refused. By this time Lieutenant-General Loch, who went on to hold more prestigious posts,[122] was running out of patience. He noted that the majority of the objections had 'not been previously suggested by the legal advisers of the Post Office', and asked that the redrafted Code be considered by the Post Office once again. The Post Office required one further amendment, but the Lieutenant-Governor was assured that assent would follow such amendment.[123]

At the next attempt the Code reached the Committee of the Privy Council who refused to recommend Assent.[124] The Law Officers' report to the Committee raised a number of policy and drafting objections to the Code. The Lieutenant-Governor was clearly pushed beyond forbearance by this latest obstacle. He noted that this was the first time many of the points had been raised; that the conference held in 1871, which had been attended by one of the reporting Law Officers, had been ignored although it dealt with a number of the points; and that he had already been assured by the Law Officers that the Code, in its current form, would receive Assent. After defending each of the queried sections he concluded that, in all the circumstances, he could not answer for the safe passage of the Insular Bill through the Manx legislature yet again. The Home Office responded with a request for one minor amendment, and the amended Bill received Royal Assent. The great Code of 1872 had finally become law.[125] Once again, the turbulent history of this measure indicates the acceptance of the Home Office of the basic principles of codification contained in the Code.

The Code of 1872 was vastly more detailed than its predecessor. This was partly due to greater consideration of general principles of liability and procedure, though not even this Code could claim to be comprehensive in those areas. It was more due to the verbose drafting style of the day. The Code was 'to a certain extent a codification of the English criminal law, a good number of the clauses taken from English Acts and also from recent Acts of Parliament'.[126] Once again, the Code did not exclude customary law offences. One section in particular, however, suggests that their obsolescence was envisaged. By section 347 it is provided

> Whosoever shall do any other act or thing (not hereinbefore or in any other unrepealed Act of Tynwald or bye-law made by the authority of an Act of Tynwald, specified or referred to or otherwise provided for by law) in contempt of God or religion, or in contempt of the Queen's Government, or against public justice, or against public trade, or against the public health, or to the disturbance of the public peace, or injurious to public morals, or outraging decency, shall be guilty of a misdemeanour.

Certainly, this writer is unaware of any prosecution for a customary offence since the passage of the Code.

DECLINE AND FALL?

There has been considerable revision of the statutes relating to criminal law and procedure since 1872. It should be noted, however, that this revision has not, as a rule, taken the form of amendments to the Code of 1872. Instead, the bulk of the Code has been repealed, and the areas dealt with by the Code dealt with individual statutes, almost invariably based on a similar English statute. Thus, the provisions of the Criminal Code relating to theft and similar offences against property have been repealed and replaced with statutes based on the English Larceny and later Theft Acts. The Code has been dismembered. The only provisions of the Code which remain in effect today are those based on statutes which remain in force in England, such as the Offences Against the Person Act 1861 and statutory formulations of English common law offences such as murder.[127] In both cases, no convenient English statutory update has been available.

A number of reasons can be put forward for this decline. Firstly, there has been a tendency to adopt English statutes relating to criminal law. It is easier to do this if the statutes are allowed to stand alone, rather than fitted into the format of the Code of 1872. Secondly, there is little evidence that Codification as an ethos was very powerful in the Manx legal system. The prevalence of statutory offences sprang from practical problems in Manx law, as discussed above – problems which could as easily be solved by a bundle of statutes as by a single Code.

CONCLUSION

Before 1736 law-making in Mann, in this area, was almost entirely the province of the judiciary. In 1736, as a result of legal and political problems local to Mann, rther than the influence of English models, the

power of the judiciary to create new criminal offences was curbed. Unfortunately, the legislature made no attempt to take up the role. By 1817 uncertainty, and lack of law-making, had placed Manx criminal law in a poor position. The Code of that year placed Manx criminal law on a firmly statutory basis, and the later Code continued this trend. Subsequent developments have reduced the importance of the Code, while re-emphasising the predominance of statute as opposed to judge-made law.

What then is the significance of this development outside the narrow field of Manx legal history? First, that viewing codification of the criminal law in the abstract, as good or bad in itself, has limits. The pressures which led to codification of Manx criminal law were very different from those which led to codification elsewhere in the British Empire. Second, that the nineteenth century Home Office, whenever the question arose in relation to Mann, was not opposed in principle to codification. It should be clear from the above discussion of the Codes that very many minor, and a significant number of major, points were dealt with in a forceful way by the Home Office. At any point in the progress of either Code, the Home Office could have intervened and quashed the Bill. The decision of the Home Office not to do so may indicate that responsibility for the failure to codify English criminal law lies outside that body.

NOTES

Many thanks to Helen Codd and Phil Morris, both of the University of Central Lancashire, for their comments on earlier drafts of this paper. The errors that remain are my own.

1. I will refer to the Isle of Man as Mann throughout this paper. This is partly for stylistic reasons, but also to provide some clarity of expression, as Mann is only ever used to refer to the geographical and political area under discussion. The archaic term is enjoying something of a renaissance.
2. This event is generally referred to as Revestment, although the regalities of Mann have been revested in the English crown on a number of occasions. It is a popular topic with Manx historians. See, from a much wider range, J. Johnson, *Jurisprudence of the Isle of Man*, [Douglas] 1811; G.E. Moore, 'The Effect of the Act of 1765', 7 Isle of Man Natural History and Antiquarian Society (Proceedings), 1965–66, 3.
3. Note on Manx sources of Law. Before 1792 the text of the statutes of Tynwald could be copied for private individuals by the Clerk of the Rolls. From that date until the publication of the official series in 1883 a number of private compilations of statutes were circulated. The statutes of Tynwald are most conveniently available in the bound collection first published in 1883 and continued to the present. These Statutes of the Isle of Man also contain a number of declarations of customary law, and ordinances of doubtful legal effect, which the compiler chose to reproduce in small print rather than exclude from the compilation. The Manx General Reference Library has a full collection of these, as well as more recent statutes which are awaiting binding into volumes. The volumes at the General Reference Library are especially useful for

contemporary research as manual amendments are made to them when amending statutes are enacted. In the absence of a conventional statute citator and up to date indexing system, this can be very useful. Out of date indexes are available as part of the series, and a pamphlet listing current statutes under broad headings is printed by the Manx government. Statutory instruments of the Insular authorities are also available from the General Reference Library. Manx legislation can also originate with British bodies. Two volumes have been published showing the majority of statutes and statutory instruments applicable to Mann before 1975. The records of case-law are less easily available. In 1422 it was ordered that records of cases were to be kept but it was initially decided to record proceedings on loose rolls of parchment. These Libri Rotulorum were stored in a wooden chest in Castle Rushen, but many have been lost. By 1580 the loose rolls had been replaced by bound volumes which have survived. Discussion will concentrate on the three most important series of volumes, together with their successors. Libri Placitorum, which runs between 1496 and 1601, records the proceedings of the Sheading Courts and their successors. Additionally, until 1848 the proceedings of the Court of General Gaol Delivery are also recorded here. Between 1848 and 1900 the proceedings of that Court are entered into a separate series of Criminal Books. Since the start of this century the proceedings of the Common Law Division have been kept in the Common Law Action Files, while those of the Court of General Gaol Delivery are entered in the Files. Additionally, since 1921 a series of Criminal Appeal Files has been kept, and since 1926 a series of Adoption and Summary Jurisdiction Files. Libri Cancellarii, which runs between 1578 and 1890, records the proceedings of the Court of Chancery, later the Chancery Division of the High Court. From 1891 the proceedings of that court may be found in the Chancery Actions Files. Libri Scaccarii, which runs between 1580 and 1847, records the proceedings of the Court of Exchequer. Between 1849 and 1895 these may be found in the Exchequer and Staff of Government Books, which after 1895 were transformed into the Staff of Government and Tynwald Court Files. The older records are available for examination in the Manx Museum. The majority are also available on microfilm, courtesy of the Church of the Latter Day Saints, and the Museum prefers readers to use these where possible, in order to preserve the increasingly frail originals. The later files, including those relating to this century, are retained at the General Registry. A number of collections of precedents have been made.

The reader with a more general interest in Manx law is directed to the following: D. Craine, *Mannannan's Isle*, [Douglas] 1955; D. Farrant, 'The Deemster' 42 L.Q.R. 230; S.A. Horner, *The Isle of Man and the Channel Islands. A Study of their status in Constitutional, International and European Law*, 1984, Unpublished Thesis; D. Kermode, *Devolution at Work: A Case Study of the Isle of Man*, 1979; R.H. Kinvig, *The Isle of Man: A Social, Cultural and Political History*, [Douglas] 1975; A.W. Moore, *A History of the Isle of Man*, [Douglas] 1900; D. Sherwood, *Manx Land Tenures*, [Douglas] 1899; G. Zellick, 'Corporal Punishment and the Isle of Man', 27 I.C.L.Q., 1978, 665.

4. See further, D.G. Kermode, *Devolution*, 31–56, 132–4; A.W. Moore, *History*, 669, 789, 816; R.B. Moore, 'The Roll of the Keys', 5 Isle of Man Natural History and Antiqurian Society (Proceedings), 1942–56, 47; J. Gell, *The Constitution of the Isle of Man*, [Douglas] 1881.
5. *Report of the Commissioners of the Isle of Man*, (1792) 31 Manx Soc., 1. The position of a number of these ordinances has been clarified by the Pre-Revestment Written Laws (Ascertainment) Act 1978 [An Act of Tynwald].
6. See Customary Laws 1577.
7. See M'Cawleys Case (1438) Quayles Precedents.
8. As early as 1429 some innovative legislation can be found – see Customary Laws 1429, s.1 [An Act of Tynwald]; Land Law Act 1645, s.7 [An Act of Tynwald].
9. No such problems arise in the authorities discussed here, but even a brief account of the Manx legislature would be incomplete without discussing this point.

10. An important nineteenth century writer took the same view on this point, but added the proviso that this status was not to be accorded where the declared law had been 'rendered obsolete by time and change of circumstances' – see J.C. Bluett, *The Advocates Notebook*, [Douglas] 1847, Introduction.
11. See *Report of the M'Dermott Commission*, (1959), 36.
12. Customary Laws 1417.
13. Moore, *History*, 160–62.
14. Moore, *History*, 763–8.
15. Re Keys (1581) Quayle's Precedents; Re Callow (1800) Libri Scaccarii; Re Keys (1803) Libri Scaccarii (where the second candidate was selected).
16. Moore, *History*, 669, 816.
17. Subject to certain fairly obvious exceptions – see Moore, 789.
18. Moore, 'The Roll of the Keys'.
19. House of Keys Election Act 1866 *et al.* [Acts of Tynwald] and Moore, *History*, 149–53, 763–89, 816–29; P. W. Caine, 'The Story of the House of Keys', 4 IOMNHAS (P), 1939, 430; Moore, 'The Roll of the Keys'.
20. A good start to considering this area may be made with P.R.O. – H.O. 45/13797/520373; J. Gell, *The Constitution of the Isle of Man*, [Douglas] 1881; *Report of the M'Donnell Committee* (1911).
21. This could cause considerable delay and friction – see *Mona's Herald*, 8 Nov. 1871. For a discussion of the tension between Council and Keys at the beginning of the twentieth century see M. Vaukine, *The Manx Struggle for Reform*, 1984, Unpublished M.Phil. Thesis, available at the Manx Museum.
22. Isle of Man Constitution Act 1961, s. 10 [An Act of Tynwald].
23. See, for example, the Licensing Amendment Bill 1973 [A Bill of Tynwald] which failed at this stage.
24. Sitting as a separate estate – see J. Gell, *The Constitution of the Isle of Man*, [Douglas] 1881; *First Interim Report of the Select Committee of Tynwald on Constitutional Issues, 1978.*
25. The Governor was replaced in Tynwald with a President who does not possess this power – see Constitution Act 1990, ss. 2–6 [An Act of Tynwald].
26. G.A. Ring, *The Legislature and Judicature of the Isle of Man*, [Liverpool] 1902.
27. *Commission on the Constitution, 1973*, para. 1361. Referred to hereafter as the Kilbrandon Report.
28. Royal Assent to Legislation (Isle of Man) Order 1981 [An Order of the Queen in Council].
29. Promulgation Act 1865, s.1 [An Act of Tynwald]; Promulgation of Acts Act 1895, s.1 [An Act of Tynwald].
30. Tynwald (Emergency Promulgations) Act 1916, ss. 2, 3 [An Act of Tynwald]; Promulgation Act 1988 [An Act of Tynwald]; Constitution Act 1990, s.7 [An Act of Tynwald].
31. As well as the Royal Courts, there have existed a number of Baronial and Spiritual Courts, with only loose connections to the system of Royal Courts. Judicial power has also been exercised by a larger number of lay magistrates since the development of this post in Mann during the nineteenth century. See further, J. Parr, *Abstract of Manx Lawes*, 1690, Unpublished Manuscript, Chapters 32, 34; J. Chaloner, 'A Short Treatise of the Isle of Man', 1656, 10 Manx Soc., 1; R.B. Moore, 'The Deemsters and the Manx Courts of Law', 6 Journal of the Manx Museum, 1961–62, 78; J. Clarke, *A view of the principal courts of the Isle of Man*, [Douglas] 1817; *Report of the Commissioners of the Isle of Man*, (1792) 31 Manx Soc., 1.
32. Customary Laws 1422, s.13.
33. This was not invariable – see the Courts held in 1497 and 1680.
34. Criminal Code Amendment Act 1921, s.3 [An Act of Tynwald]; Judicature Amendment Act 1921, s.2 [An Act of Tynwald].
35. This procedure is beyond the scope of this paper, see A.W. Moore, *Extracts from the Journals of the Self-Elected House of Keys*, 1905.

36. Criminal Code Amendment Act 1921, ss. 3, 5 [An Act of Tynwald]; Administration of Justice Act 1951, s. 11 [An Act of Tynwald]; Judicature Amendment Act 1921, s.2 [An Act of Tynwald].
37. Judicature Amendment Act 1918, ss. 2–7 [An Act of Tynwald]; High Court Act 1991, ss. 2, 3, 23 [An Act of Tynwald].
38. See further, K. Roberts-Wray, *Commonwealth and Colonial Law*, 1966; J. Gell, *The Titles and Powers of the Governor of the Island*, 1881.
39. And before 1765 in the case of an Act of Parliament, see 'Petition of Two Members of the House of Keys to the House of Commons', (1764).
40. K. Roberts-Wray, op. cit.; M.S. Flaherty, 'The Empire Strikes Back: *Annesley* v. *Sherlock* and the Triumph of Imperial Parliamentary Supremacy', 87 Col. L. R., 1987, 593.
41. See Home Office Minutes, 13/9/1948 (P.R.O. – H.O. 45/22981/567948).
42. *Report of the House of Keys Select Committee on Sexual Offences Bill, 26/3/1991*; S. Walpole, *The Land of Home Rule*, 1893, Chapter 17.
43. Consider the recent progress of the Sexual Offences Act 1992 [An Act of Tynwald]: *Report of the House of Keys Select Committee on the Sexual Offences Bill* (26 March 1991; Debates of the House of Keys at K1273).
44. See *Relationship between the United Kingdom, and the Channel Islands and the Isle of Man*, Kilbrandon Committee, 1973.
45. See the discussion in *O'Callaghan* v. *Teare* [1981–83] Manx Law Reports 103 (Staff of Government, Criminal Division).
46. W. Blundell, 'A History of the Isle of Man' (1648–56), reprinted in 27 Manx. Soc.
47. Deemster were often members of the same family, and took office at an early age. Ewan Christian (1579–1656) was Deemster for 51 years, from the age of 26. For the last six years his son John acted as his Deputy. See A. W. Moore, *Manx Worthies*, 1901, 59–82.
48. Almost certainly the precursors of the modern House of Keys.
49. The oral tradition was strong in the Norse and Celtic Kingdoms, and before this period Mann had been closely tied to both systems.
50. L. Adamson, 'Letter to Sir Robert Peel on the Present Code of Manx Law', 1841.
51. Camden, 'Brittanica' (1695) – reprinted in 18 Manx Soc., 16.
52. At that time the ruler within the Manx legal system, although as has been noted above, he owed allegiance to the English Crown.
53. Ordinance of 1636, s.5 [An Ordinance of the Lord of Man].
54. Appended, for no obvious reason, to the Servants Act 1667 [An Act of Tynwald].
55. See D. Mylrea, *The Ancient Customary Law of the Isle of Man*, c. 1667, Unpublished Manuscript.
56. J. Parr, *Abstract*.
57. E. Maltz, 'The Nature of Precedent', 66 N.C.L. Rev., 1988–89, 367.
58. See 'Letter from the Attorney General', (1784). The special status of the Deemster was, even at that time, very ancient – see W. Blundell, 67; Camden, 1; Commissioners Report, op. cit., appendix containing the Attorney-General's deposition.
59. Camden, 1; Callow, 'The Deemster', (1925) Great Thoughts.
60. See the cases of Edward Christian (1643) Libri Placitorum; Christian (1662) Libri Placitorum. See also W. Harrison, 'Illiam Dhone and the Manx Rebellion, 1651', (1877), 31 Manx Soc., 1.
61. The initiative was simply dropped, and so the case never reached the stage of judgment – see R. B. Moore, 'The Romance of Manx Common Law', *Ramsey Courier*, 11 Nov. 1927.
62. Letter of Lord Derby to the House of Keys, 1730.
63. Criminal Law Act 1736 [An Act of Tynwald] and see the preamble to the Act.
64. Subject to a number of exceptions, see ss. (2), (3), (5).
65. See s. (3).
66. See Incitement Case (1796) Libri Scaccarii; Breaking In Case (1804) Libri Scaccarii.
67. This is not impossible when the reaction of the Court to an argument on the meaning of this section in Miller (1814) Libri Placitorum is considered.

68. Forgery, Perjury and Cheating Act 1797 [An Act of Tynwald].
69. 'Statement of Governor Shaw to the House of Keys', (1796).
70. Consider Forgery Case (1596) Libri Scaccarii.
71. Criminal Code 1817 [An Act of Tynwald].
72. Criminal Code 1872 [An Act of Tynwald]; Pre-Revestment Written Laws Act 1978, s. 1 [An Act of Tynwald].
73. Against this interpretation is the statement of the Committee of the Legislature that the proposed Code should repeal the 1736 Act – see *Report of the Committee of Tynwald*, 18 Feb. 1813 [P.R.O. – HO 98/68].
74. J. Feltham, *A Tour through the Isle of Man*, (1798). See also letter of Lieutenant-Governor Smelt to Lord Sidmouth, 7 Dec. 1815 Governors Letterbooks (available at the Manx Museum and hereafter referred to as *Letterbooks*), II, 173; H.A. Bullock, *History of the Isle of Man*, 1816, 312–13.
75. Turf and Ling Act 1661, s. 4 [An Act of Tynwald]; Parsons (1692) Liber Scaccarii; Bridson (1727) Libri Scaccarii; Bridson (1811) Libri Scaccarii.
76. On this point, see Statute Laws Act 1665, s. 11 [An Act of Tynwald] as explained by the letter of Lieutenant-Governor Smelt to J. Beckett, 23 May 1817, *Letterbooks*, II, 204.
77. With the exception of the limited offences stated in Quayle (1645) Liber Placitorum; Kerruish (1659) Liber Placitorum; Gell (1660) Liber Placitorum; Cottier (1669) Liber Placitorum; Caine (1648) Liber Scaccarii; Cottier (1668) Liber Chancelarii.
78. See for example, Waterson and Waterson (1786) Liber Placitorum; Quilliam (1816) Liber Placitorum.
79. See Bell (1418) Libri Rotulorum; Cashen (1517) Libri Rotulorum; Larcenies and Other Offences Act 1629, s. 3 [An Act of Tynwald].
80. Wife's Case (1520) Libri Rotulorum. This had fallen into disuse in practice – see J. Chaloner, 'A Short Treatise of the Isle of Man', (1656), 10 Manx Society, 1.
81. Declaration of Law (1603) Liber Placitorum; Customary Laws (no. 2) 1577, s. 15. See Feltham, Tour.
82. An Englishman – see 'Letter from the Attorney General reporting discussions in the House of Keys', 1784, 11.
83. Lieutenant-Governor Shaw to Home Office, 7 May 1796 [H.O. 98/65]; Shaw to Home Office, 26 May 1796 [H.O. 98/65]; Shaw to Home Office, 22 July 1796 [H.O. 98/65]. The Lieutenant-Governor found the powerful protection available to Mr Busk from his friends, including the British Lord Chancellor, especially distressing – see Shaw to Home Office, 26 May 1796 [Ho. 98/65].
84. Forgery, Perjury and Cheating Act 1797, s. 1 [An Act of Tynwald].
85. The Attorney-General being absent from Mann, a surrogate fulfilled some of his functions.
86. Smelt to Deemster Lace, 8 Nov. 1806 *Letterbooks*, II, 43; Smelt to Earl Spencer, 13 Sept. 1806, *Letterbooks*, II, 37; Earl Spencer to Smelt, 18 Sept. 1806, *Letterbooks*, II, 38; Smelt to Acting Attorney. General Moore, 29 Oct. 1806, *Letterbooks*, II, 41; C.E. Powell of Her Majesty's Mint to Smelt, 8 Oct. 1806, *Letterbooks*, II, 38; Acting Attorney-General Moore to Smelt, 1 Nov. 1806, *Letterbooks*, II, 42; Smelt to Earl Spencer, 13 Nov. 1806, *Letterbooks*, II, 45; Smelt to Earl Spencer, 27 Nov. 1806, *Letterbooks*, II, 46.
87. Smelt to J. Beckett (for Secretary of State Ryder), 13 June 1811, *Letterbooks*, II, 104; Smelt to J. Beckett (for Secretary of State Ryder), 10 June 1811, *Letterbooks*, II, 106.
88. Address of Lieutenant-Governor Smelt to the House of Keys, 8 Jan. 1813 [Atholl Papers, AP X/71–4 to 8 inclusive, available at the Manx Museum].
89. It should be noted that Attorney-General Frankland, like his absentee predecessor, Mr Busk, was well connected in British political circles.
90. Copy available at H.O. 98/65.
91. *Report of the Committee of the Legislature*, 18 Feb. 1813, enclosed with letter from Governor Atholl to Lord Sidmouth, 15 April 1813, P.R.O. – HO 98/68.
92. Lieutenant-Governor Smelt to Lord Sidmouth of the Home Office, 7 Dec. 1815, *Letterbooks*, II, 173.

93. Smelt to Home Office, 26 Dec. 1815, HO. 98/65; Smelt to Sidmouth, 18 April 1816, *Letterbooks*, II, 181.
94. Unfortunately, it has not proved possible more accurately to determine the exact legislative history of the first Code. It seems likely that the penultimate draft of the Bill was amended by annotation and returned to Mann. Given this uncertainty, it seems particularly important to detail the differences between the Bill in 1815 and the Act as it became law in 1817. Comparisons in the following paragraph are between the Code 1817 (printed in the Manx Statute Book, Vol. I, 384–91), and the draft Bill sent to Lord Sidmouth by Lieutenant-Governor Smelt on 7/12/1815 (P.R.O. – H.O. 98/68). References to the Bill are identified as clauses, and to the Act as sections.
95. Clause 2: s. 2.
96. Clause 16: s. 16; Clause 20: s. 20.
97. Clause 12: s. 12.
98. Clause 46: s. 46–61.
99. For instance, Clause 17: s. 17; Clause 19–20: s. 19–20.
100. Clause 13: s. 13.
101. Clause 23: s. 23. This was a traditional Manx punishment for some offences.
102. Clause 35: s. 35.
103. Clause 43: s. 43.
104. Clause 46: s. 46.
105. Clause 46: s. 56.
106. A full list of sections which were amended, often in a very minor way, between this Bill and the Act is as follows: ss. 2, 6–8, 10, 12–29, 32–35, 39, 41, 43, 46–1.
107. Smelt to Sidmouth, 25 July 1816, *Letterbooks*, II, 189; J. Becket (for Lord Sidmouth) to Smelt, 5 Sept. 1816, *Letterbooks*, II, 197; Lord Sidmouth to Smelt, 9 Sept. 1816, *Letterbooks*, II, 192.
108. Smelt to Sidmouth, 17 Nov. 1816, *Letterbooks*, II, 195.
109. Smelt to Sidmouth, 24 April 1817, *Letterbooks*, II, 204. See note 93 above; Smelt to Sidmouth, 23 May 1817, *Letterbooks*, II, 211.
110. See Attorney-General Gell to Lieutenant-Governor Loch, 24 July 1871, *Letterbooks*, XIX, 158; Loch to Under-Secretary of State (Home Office), 12 March 1872, *Letterbooks*, XX, 259.
111. Loch to H. Waddington, 7 March 1865, *Letterbooks*, X, 616.
112. Loch to Secretary of State of the Home Office, 17 Oct. 1868, (draft in GO 5/41, Manx Museum).
113. Mr. Beach to Loch, 26 Oct. 1868, (GO 5/41, Manx Museum).
114. Loch to Secretary of State of the Home Office, 1 Nov. 1870, *Letterbooks*, XVIII, 542.
115. A. Liddell of the Home Office to Loch, 28 Dec. 1870, *Letterbooks*, XVII, 656.
116. Attorney-General Gell to Loch, 11 Jan. 1871, *Letterbooks*, XVIII, 37.
117. Loch to Under-Secretary of State, Home Office, 24 Jan. 1871, *Letterbooks*, XVIII, 107.
118. Also considered were a number of distinctive sections dealing with sheep-stealing. While the Lieutenant-Governor did not approve of them *per se*, he saw their inclusion as a necessary concession if the Code were to become law, and defended them on that ground.
119. Liddell to Loch, 6 Feb. 1871, *Letterbooks*, XVIII, 164; G. S. Leferne to Loch, 20 Feb. 1871, *Letterbooks*, XVIII, 284; Loch to Under-Secretary of State, Home Office, 30 March 1871, *Letterbooks*, XVIII, 436; Liddell to Loch, 3 April 1871, *Letterbooks*, XVIII, 450; Loch to Under-Secretary of State, Home Office, 29 May 1871, *Letterbooks*, XVIII, 633.
120. Additionally, the proposed power of the Lieutenant-Governor to open letters was queried by the Home Office.
121. Liddell to Loch, 12 July 1871, *Letterbooks*, XIX, 84; Gell to Loch, 24 July 1871, *Letterbooks*, XIX, 158; Gell to Loch, 3 Aug. 1871, *Letterbooks*, XIX, 202; Loch to Under-Secretary of State, Home Office, 9 Aug. 1871, *Letterbooks*, XIX, 231; Liddell to Loch, 2 Sept. 1871, *Letterbooks*, XIX, 270; Loch to Home Office, 19 Oct. 1871, *Letterbooks*, XIX, 402.

122. Commissioner of Woods and Forests, 1882–84; Governor of Victoria, 1884–89; Governor of Cape of Good Hope and High Commissioner of South Africa, 1889–95.
123. Liddell to Loch, 6 Jan. 1872, *Letterbooks*, XX, 57; Loch to Under-Secretary of State, Home Office, 9 Jan. 1872, *Letterbooks*, XX, 69; Loch to Unter-Secretary of State, Home Office, 4 Jan. 1872, *Letterbooks*, XX, 48a; Liddell to Loch, 22 Jan. 1872, *Letterbooks*, XX, 104.
124. Loch to Under-Secretary of State, Home Office, 31 Jan. 1872, *Letterbooks*, XX, 153.
125. Liddell to Loch, 4 March 1872, *Letterbooks*, XX, 259; Loch to Under-Secretary of State, Home Office, 12 March 1872, *Letterbooks*, XX, 259; Liddell to Loch, 12 April 1872, *Letterbooks*, XX, 349a; Loch to Under-Secretary of State, Home Office, 9 May 1872, *Letterbooks*, XX, 478.
126. Loch, 1 Nov. 1870, (P.R.O. – H.O. 45/9319/16550).
127. Offences Against the Person Act 1861 [An Act of Parliament]; Code 1872, s. 18 [An Act of Tynwald].