

Criminal law

BMPL4009

Assignment 1

Reform of Homicide

Looking at the law of homicide in England and Wales, to say the least the law is a mess as Chalk (2020) posits. The law lacks a rational structure where it is opaque and creates injustice to defendants and the society. Many are legal bodies that have put forward suggestions to reform the homicide law seeing that part of it has been unchanged since the seventeenth century. This essay endeavors to proof if indeed the homicide law requires reform based on the aspects that will explored here.

Homicide is defined as the killing of another human being. The law in England and Wales distinguishes between manslaughter and murder into two broad categories (Crown Prosecution Service, 2019). The most heinous type of homicide, known as murder, is when someone is intentionally killed with “malice aforethought”. Malice aforethought covers both the desire to kill which is “expressed” and the desire to harm another person severely (GBH) “implied”. The victim's death must have been directly caused by the defendant's activities, and the defendant must have been in the required mental condition (Rocket, 2019). A broader category known as manslaughter covers incidents in which the offender kills another person without having the intended murderous motive. Two basic categories can be used to classify manslaughter. When a defendant kills with the purpose to kill or cause GBH, but their guilt is mitigated by circumstances like provocation or lessened blame, this is referred to as voluntary manslaughter. When a defendant murders via carelessness or negligence without meaning to kill or seriously damage someone, it is considered involuntary manslaughter.

Partial defenses happen to be different from complete defenses. They include diminished responsibility, concealed partial defence and loss of control then killing in pursuit of a suicide pact. A defendant may be found guilty of manslaughter rather than murder and receive a lighter sentence thanks to partial defenses like reduced culpability and provocation. These situations include all the elements of murder, but if an argument is made persuasively, the crime can be categorized as voluntary manslaughter. These defenses are important as they admit that not all murders are equally guilty. But then, there are difficulties with this. The partial defense of diminished responsibility takes into account the possibility that a defendant's mental competence may be compromised, resulting in lesser guilt. The partial defense of diminished responsibility

was first articulated in *R v. Byrne* (1960) where the Homicide Act of 1957 which provides that the accused must prove to have been suffering from an abnormality of mind when committing the crime (OXBRIDGE LAW TEAM, 2020). According to the Court of Criminal Appeal, it is sufficient if the defendant's aberrant mental functioning had a significant role in the killing rather than having entire impairment of his or her mental faculties. However, the term "abnormality of mental functioning" might be vague, and it might be challenging to determine the precise cutoff for regularly using this defense.

Looking at loss of control, there was the defense of provocation. If the defendant lost control as a result of a "sudden and temporary" lack of self-control, provocation is a valid defense. The Coroners and Justice Act 2009 did abolish the common law for partial defense of provocation replacing it with a new defense to murder which can be attributed to fear and anger (Crown Prosecution Service, 2019). There were reasons for replacing the provocation defense as it favored men defendants, and it was often challenging to apply the legal criteria for provocation hence inconsistency. For the loss of control defense to be successful, the defendant must demonstrate that a qualifying trigger was the reason for their acts. This could be a combination of these causes, such as a dread of extreme violence or a legitimate sense of injustice. A person of the defendant's sex, age, and background should also be taken into account while analyzing the defendant's emotional response (Yeo, 2010). The new defense is not without its own difficulties, though. According to Fitz-Gibbon (2013) subjective judgments can nonetheless result from the requirement that a "person of the defendant's sex and age" would have reacted similarly. There have also been worries that the new defense may not appropriately handle situations involving long-standing abusive habits, such as domestic abuse.

Murder is defined by the law as having "malice aforethought", which comprises both an intention to kill and a purpose to cause serious bodily harm (GBH). There have been discussions over this dual-intent requirement which cause some controversies in intent. First, there is a lack of nuance, according to critics who claim that this binary difference fails to take into account circumstances in which a defendant's purpose could vacillate between these two categories. For instance, the law as it is does not adequately address situations in which a criminal intended

substantial harm but not death. Also, in circumstances when a criminal did not have a deliberate intent to cause a death but yet did so while executing another crime, the need of intent might present challenges and potentially harsh results (Hughes, 2015). The House of Lords (2019) defined the law on intent in the *R v. Woollin* (1998) case, holding that the jury should be instructed to establish intent if the defendant was aware that their conduct were almost certain to cause death or serious harm.

Liakopoulou (n.d.) explicates that in England and Wales, there has been discussion and criticism regarding the scope of mens rea for manslaughter legal category. Some contend that the category is actually very broad as it covers a wide range of conditions and scenarios, which can make it difficult to apply consistently and possibly lead to results that are not necessarily consistent with the gravity of the violation. Manslaughter cases might range from those having egregious negligence to those involving lesser responsibility. The broad breadth may make it difficult to decide on the proper charge and sentencing, which could result in uneven results. Manslaughter cases may entail varied degrees of guilt, ranging from situations where there was evident negligence but insufficient for murder to situations where there was clear purpose but insufficient for murder (Tadros, 2008). Manslaughter cases, according to some, may entail varied degrees of guilt, ranging from situations where there was evident negligence but insufficient for murder to situations where there was clear purpose but insufficient for murder (Clarkson, 2000).

The law governing homicide in England and Wales has been the subject of several reform proposals from the Law Commission and other judicial authorities. These ideas seek to fix alleged problems, make things more clear, and make sure that the legal system is still applicable in modern society. Some that the government has approved include those that seek to clarify and simplify the law so that it is easier for legal experts, juries, and the general people to understand. Clear laws improve the administration of justice by reducing confusion. In order to make the legal system fairer and more egalitarian, the government may support reforms that address perceived inequities like gender prejudice or inconsistent results (Justice, 2008).

The government has the power to reject a reform plan if it overly favors individual freedoms and rights without taking into account the general welfare and safety of the public. A reform's

potential unintended repercussions are carefully taken into account. The government may opt to maintain the status quo if a change has the potential to bring up new issues or unanticipated consequences (Decker, 2021). Whether the administration was correct to accept or reject particular reform proposals depends on perception and judgment. Legal reform decisions are difficult to make and may include trade-offs. From one perspective, a choice might be praised; from another, it might be ridiculed. How closely the decision adheres to the ideals of justice, fairness, and the general welfare of society determines whether the government made the right choice. Ultimately, the ongoing assessment of these choices is influenced by public debate, professional judgments, and the effects of adopted reforms over time.

For lawyers, judges, and the general public, the current legal system offers a degree of stability and assurance. Reform could bring along new complexity, doubts, and unanticipated effects that disturb the current legal order. Some reform opponents worry that making modifications to particular homicide law provisions could serve as a model for additional changes, possibly leading to a more drastic reworking of the entire legal system. Reform is feared because it might have unanticipated negative effects. Changes could potentially reduce the effectiveness of the legal system by unintentionally introducing loopholes, boosting litigation, or failing to address the intended problems (Burhany, 2016).

From this essay, the homicide law in England and Wales deserves some reforms because as seen there is a lot of ambiguity. The debate over homicide law in England and Wales emphasizes the need for changes. Inconsistency, injustice, and gender bias have resulted from outdated laws, ambiguous intent, excessively broad manslaughter classifications, and problems with joint enterprise. Modernizing partial defenses, defining intent standards, and improving manslaughter distinctions can improve the fairness of the law and its clarity. To ensure fair and equitable sentencing, increase mental health considerations, and develop a more reasonable and coherent legal framework for handling complicated homicide cases in today's evolving society, reforms are essential.

Reference list

Beard, J. and Politowski, B. (2016). *Reforming the Law on Homicide*. [online] Parliament.uk. Available at: <https://researchbriefings.files.parliament.uk/documents/CDP-2016-0094/CDP-2016-0094.pdf>.

Burhany, K. (2016). Arguments for and against a reform of the law of murder. *www.academia.edu*. [online] Available at: https://www.academia.edu/40056989/Arguments_for_and_against_a_reform_of_the_law_of_murder [Accessed 18 May 2023].

Chalk, A. (2020). *Homicide Law Reform - Hansard*. [online] Parliament.uk. Available at: <https://hansard.parliament.uk/commons/2016-06-30/debates/D5042476-8A97-4E5F-82BB-5908AB04F0AA/HomicideLawReform>.

Clarkson, C.M.V. (2000). Context and Culpability in Involuntary Manslaughter: Principle or Instinct? In: *Rethinking English Homicide Law*. pp.132–165. doi:<https://doi.org/10.1093/acprof:oso/9780198299158.003.0006>.

Crown Prosecution Service (2019). *Homicide: Murder and Manslaughter | the Crown Prosecution Service*. [online] Cps.gov.uk. Available at: <https://www.cps.gov.uk/legal-guidance/homicide-murder-and-manslaughter>.

Decker, C. (2021). *Reform and ‘modernisation’ of legal services in England and Wales: motivations, impacts and insights for the OECD PMR Indicators*.

Fitz-Gibbon, K. (2013). Replacing Provocation in England and Wales: Examining the Partial Defence of Loss of Control. *Journal of Law and Society*, 40(2), pp.280–305.

House of Lords (2019). *House of Lords - Regina v. Woollin*. [online] Parliament.uk. Available at: <https://publications.parliament.uk/pa/ld199798/ldjudgmt/jd980722/wool.htm>.

Hughes, D. (2015). *The Law Commission A NEW HOMICIDE ACT FOR ENGLAND AND WALES?* [online] Available at: https://www.lawcom.gov.uk/app/uploads/2015/03/cp177_Murder_Manslaughter_and_Infanticide_consultation_overview_.pdf.

Justice (2008). *Homicide law reform - JUSTICE*. [online] JUSTICE. Available at: <https://justice.org.uk/homicide-law-reform/>.

Liakopoulou, V. (n.d.). The Scope of the Mens Rea Requirement for Murder. *www.academia.edu*.

OXBRIDGE LAW TEAM (2020). *R v Byrne [1960] 2 QB 396*. [online] *www.oxbridgenotes.co.uk*. Available at: https://www.oxbridgenotes.co.uk/law_cases/r-v-byrne.

Risno, M. (2018). *Holding someone liable for murder even if they did not intend to kill. On reform of homicide law*. [online] Medium. Available at: <https://medium.com/@mistrec/holding-someone-liable-for-murder-even-if-they-did-not-intend-to-kill-on-reform-of-homicide-law-8cc2b6001aa>.

Rocket, S. (2019). *Murder – A Level Law AQA Revision*. [online] Study Rocket. Available at: <https://studyrocket.co.uk/revision/a-level-law-aqa/criminal-law/murder>.

Tadros, V. (2008). The limits of manslaughter. In: *Criminal Liability for Non-Aggressive Death*, 1st ed. Routledge.

Yeo, S. (2010). ENGLISH REFORM OF PROVOCATION AND DIMINISHED RESPONSIBILITY: WHITHER SINGAPORE? *Singapore Journal of Legal Studies*, [online] pp. 177–191. Available at: <https://www.jstor.org/stable/24870550>.