

'The law governing homicide in England and Wales is rickety structure set upon shaky foundations. Some of its rules have been unaltered since the seventeenth century, even though it has long been acknowledged that they are in dire need of reform' (Law Commission, 2005)

Sir Edward Coke (lord chief Justice, early 17th century) defined the act of murder as 'unlawfully killing a reasonable person who is in being and under the king's peace, the death following within a year and a day with malice aforethought'. This is the definition of murder which is a common law crime within England and Wales. Homicide is made up of this and manslaughter, the goal of this essay is to analyze and explain while rickety the laws around homicide are doing what is necessary and that reformation is not as direly needed as some sources suggest.

Manslaughter is the actus reus of murder without the mens reus. In Laymans terms it is accidentally killing somebody by accident or omission. In terms of homicide manslaughter only becomes necessary when in relation to a partial defense which will be analyzed next. Even then though if a partial defense is met in court the only available lower sentence would be voluntary manslaughter. The Sentencing council (2018) shows that if charged with voluntary manslaughter the defendant can serve 3-40 years in custody and dependent on severity can even receive life imprisonment.

Partial defenses are safeguards for people that commit voluntary manslaughter from facing the punishment of murder. Voluntary manslaughter is the only thing that murder can be taken down too. The (1957) homicide act brought about the idea of diminished responsibility through 'where a person kills or is party to a killing of another, he shall not be convicted of murder if he was suffering from such abnormality of the mind as substantially impaired his mental responsibility for his acts and omissions in doing or being a part of the killings. While partial defenses regarding homicide do what they are supposed to do they have had controversies around them, this can be seen best when analyzed through the subjective interpretation of the law.

Professor RD Mackay authored an essay called Diminished responsibility and mentally disordered killers. Within this essay he made the claim that 'We do note that at present mercy killings are often seemingly somewhat inappropriately seen as cases of diminished responsibility.' This can be seen as an issue as this is not what diminished responsibility is for. At present mercy killings within the United Kingdom are prosecuted as murder and should not be eligible for diminished responsibility. Following on a good case to show an example of how subjectivity can drastically influence a case and its outcome is *r v Smith* (2001). This case occurred during the period when the reasonable

man test was apart diminished responsibility. In practice it asked the jury to decide whether the defendant acted in a manner that a 'reasonable' person would. In *r v Smith* the judge directed the jury to not consider the defendants mental health issues when considering if he acted similarly to how a reasonable man would. This initially resulted in a guilty verdict however the result was appealed twice. The first time the appeal was accepted as it was decided that the defendant's mental health should be considered. This resulted in the charge dropping from murder to voluntary manslaughter. However, the third appeal was unsuccessful as the prosecution disagreed and argued again that mental health should not be considered. This case is an exemplar display of how 'the reasonable man test' was too subjective to be of use in a legal system that can alter one's life. This also shows how subjectivity of the law not only affects the public but judges and those who are expected to have a more extensive knowledge of the legal system.

Another controversial aspect of diminished responsibility is the concept of 'provocation.' Provocation regarding diminished responsibility, this is the idea that the defendant was provoked into the act, and until the 1957 act words were not considered as provocation unless it was in exceptional conditions. An example of a case that has benefitted from this is *r v Duffy* (1945). In this case the husband of the defendant beat her for years then one day she had enough of it and killed him. Due to the years of domestic violence, it was determined that the years of abuse constituted provocation and resulted in voluntary manslaughter. In (Horder, 2005, p. 123 –140) Reshaping the subjective element in the provocation defense, Horder discusses the idea that at the heart of the provocation defense is the concept that it is human nature to react in a retaliatory way when provoked. Another interesting excerpt is 'make it easier for jealous and possessive men to claim partial excuse for their angry violence against "provocative" partners who cross him'. While previously I accented that provocation is useful as it aids the victims of domestic abuse Horder makes an interesting claim that while it assists victims of domestic abuse it also 'downplays the defendant arming and being set upon revenge from the start'. This concept of 'being set upon revenge' follows into the next point made by Horder that indicates the forearming to be contradictory to the idea of loss of control, which indicates you not being in the right mind.

Intent is the mens rea and is an important part of homicide as it can lower a charge of murder to voluntary manslaughter. The previous segments on partial defenses rely on the intent of the defendant. An example being the partial defense of loss of control. If the defendant is proving to be acting with a desire for revenge the defense would not apply. An interesting article called (Flynn, Sandra; Ibrahim, Saeid et al. 2021, p.210-216) Mental disorder in people convicted of homicide: Long-term national trends in rates and court outcomes, displays data that indicates a decrease in overall crime within the UK but an increase in those committing the crime displaying forms of mental disorders.

The law is set in place to punish offenders, deter would be offenders and finally rehabilitate offenders. However, if this issue is shown to be prevalent within a certain section of the public it may be in our best interest to invest more resources tackling whatever is allowing them to slip through the cracks than reform a system that is currently working as intended.

Regarding reform, what has changed? Firstly, provocation was replaced with loss of control in sections 54-55 of the Coroners of Justice Act 2009. Another change can be found in the Ministry of Justice, 2009:[337] Subsection 1(a) as it responds to gender bias criticism by removing the reference from common law to a 'sudden loss of control. This idea of gender bias will be looked at in the next paragraph.

As can be expected many unsuccessful ideas have been put forward such as Horder's from (Horder, 2005, p. 123 –140) 'Clearer distinction in law between evidence of more delay as such and evidence of pre planning or revenge taking'. This is in reference to loss of control and in particular gender bias. The idea Horder is putting forward is that for loss of control women should be allowed to take longer and arm themselves as they are weaker than men in domestic disputes. Men can deal more harm to women than vice versa. The Law Commission (2003) proposed firstly abolish the defense and the mandatory sentence, secondly retain the defense in a more restricted form/ with the argument for abolition of the mandatory sentence varying in strength according to the extent of the restriction, thirdly retain defense, abolish 'reasonable man' and fuse provocation and diminished responsibility. The final idea put forward was written by the 2006 Law Commission, and the idea is to completely change the structure of murder in British law. The concept is to change the structure from two parts to three. It would end up as First-degree murder, second degree murder finally voluntary manslaughter. The punishment of life sentence would only apply to the first tier.

Why would some reforms be accepted, and others be denied? There are many reasons (Quick, Wells, 2012, p 337-350) Partial reform of partial defenses. Developments in England and Wales make some interesting points as to why. The reasons for a lack of substantial reform provided is 'The two major difficulties with the law of murder have been the continuing commitment to the mandatory penalty of life imprisonment and the impossibility of capturing culpability in a nuanced way through the mechanics of the mental element of intention to cause death or serious bodily harm'. The reference to the attachment to life sentence has been an issue faced by a few diverse sources. The 2006 Law Commission felt strained as they were directed to continue with the notion mandatory life sentence would be kept. When questioned about the insistence of the mandatory life sentence the government states it is the will of the people, however this may not be true. (Mitchell, Roberts, 2011, p.141-148) Sentencing for murder: exploring public knowledge and public opinion in England and Wales, decided to explore how the

public really feels about life sentences by giving the public different scenarios. It was found that the public knew little about law and what was going on, concluding in the idea that the public needs to be better educated in the legal system. This feeling of the public being left out of important decisions on law reform can also be found in (Horder, 2012, p.63) Homicide and the politics of law reform.

In conclusion the laws surrounding homicide may appear rickety, however I believe in practice it is in fact very sturdy. The current system's main flaws can be found in the subjectivity used for diminishing responsibility when looking at the mens rea for a crime. Bringing in a third step or any new idea will not remove the vagueness of subjectivity. While many calls for reform have occurred, many of the calls are different iterations of the same concept and eventually do get reformed. Rather than trying to perfect a system for punishment we should look at what is causing homicides and tackle that issue.

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