

# Homicide law problems - intent to kill



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“ Homicide law should be reformed as it is inappropriate for someone to be held liable for murder if they did not intend to kill.”

To what extent do you agree with this statement?

Homicide is the collective term for both murder and manslaughter in England and Wales. Murder is a common law offence that has developed through the courts over time. The common definition of murder comes from Edward Coke who wrote, murder occurs when a person of sound body and mind unlawfully kills any human being under the Queen’s peace with malice aforethought.

[1]This definition lays out both the actus reus and mens rea of the offence.

The actus reus is uncontroversial: the killing of any human being during the Queen’s peace. This makes murder a result crime; liability flows from an action (or omission) of the defendant resulting in death. Controversy and academic debate surrounds the second part of the offence, namely the mens rea element. Malice aforethought has been interpreted by the courts as meaning with intent to kill or cause grievous bodily harm. It is this second interpretation of malice aforethought that brings the debate. It means a person can be convicted of the legal system’s ultimate, heinous crime despite a lack of intention to kill. Lord Steyn expressed the problem eloquently in *R v Powell*; “ in English law, a defendant may be convicted of murder who is in no ordinary sense a murderer.”[2]

The proponents of change base their arguments around fair labelling, mandatory sentencing, interpretation of the current law and the contradictory results of as is. Debate only follows where there are two points of view, and despite the pitfalls of the current law on murder, there are

proponents of the current system. The arguments for the current system revolve around the sanctity of life, difficulty of overcoming the evidential burden, a deterrent approach and a view of social responsibility. These differing viewpoints will be explored below in more detail.

One of the major complaints about the current law is based on the idea of fair labelling. In our society it is seen as unjust to label someone inaccurately, especially when that label is one of murderer. Glanville Williams wrote, “ the particulars stated in the conviction should convey the degree of the offender’s moral guilt, or at least should not be positively misleading as to that guilt... In any case, a man may feel a sense of injustice if the terms of the conviction do not represent his real guilt.”[3]To be labelled a murderer without holding the intention to kill would not be representative of the defendants ‘ real guilt’. Being convicted of murder not only results in a mandatory life sentence, but once, or if, the defendant leaves prison, the label remains. This will impact on that person’s life potentially destroying his family, his career and right to a normal life after serving his sentence. Roger highlights the problem of fair labelling, “ present labels of murder and manslaughter are each much too broad and lose their core meaning on account of their breadth. The law of murder at present equates the paedophile who kills his victim to ensure his silence with the man who intends to cause grievous bodily harm because he is getting carried away in an argument, or perhaps in defending his property.”[4]Society draws a great distinction between the two individual scenarios mentioned by Roger however the label of murderer does not. When this label is present, society

tends to overlook the details of the individual circumstances and takes the label on its own.

Another major problem with the current law is the mandatory life sentence for murder. Many people would agree the most heinous crime deserves the most severe punishment however, as has been highlighted already, a convicted murderer has not necessarily carried out this heinous act as perceived by society. Currently, judges have no discretion with a murder conviction. Since the Murder (Abolition of Death Penalty) Act 1965 a conviction of murder carries with it the sentence of life imprisonment[5]. The precise length of the sentence varies under the guidelines derived from Coroners and Justice Act 2009[6] however this still sets the minimum sentence at 15 years for a defendant over the age of 18. This is to be contrasted with manslaughter for which the judge has absolute discretion on sentencing up to a maximum of life imprisonment. This allows for a judge to mitigate the severity of the crime through the sentence, a mechanism unavailable in murder[7]. Due to a court interpreted definition of murder, a defendant faces a mandatory life sentence instead of a much lower sentence based on the crime he truly had the mens rea for. It is this draconian approach to sentencing that makes someone held to be liable for murder when they did not intend to kill inappropriate.

There are practical issues alongside legalistic ones, such as is the definition of grievous bodily harm, or serious bodily harm. If the liability for murder depends on the intention to cause this level of harm, there should be very clear and concise guidelines as to what this level of harm is. William Wilson writes about the obscurity of grievous bodily harm, “ it is defined to mean <https://assignbuster.com/homicide-law-problems-intent-to-kill/>

nothing more precise than “ serious” as opposed to “ actual” bodily harm.”[8]This definition and guidance is not robust enough to fairly legitimise a murder charge. Further, to the abstruseness of the level of harm required, allowing grievous bodily harm to lead to a murder charge at all can result in the prosecution and conviction of a person for not only something he did not intend, but actually for something he precisely intended to avoid. There are several famous examples of this undesirable outcome such as that of kneecapping, a practice whereby the knees are targeted to punish the victim but with the precise intention of keeping them alive. Lord Goff entertained this scenario along with another of glassing. Despite the resulting death and clear intention to cause serious bodily harm with a broken glass, the jury “ could not bring themselves to call him a murderer” and Lord Goff sympathised with them.[9]

It is the combination of the above arguments that lead people to cry out for reform of the law of homicide as it is currently inappropriate in regards to a murder charge without the intention to kill. However, there are also proponents of the current law.

There is a strong argument for the law to enforce responsibility for one’s actions. If one attacks another with the intention to cause them serious bodily harm, and that attack results in the death of victim, then the attacker is morally culpable for the victim’s death. This is a view endorsed by William Wilson and others, “ I take the uncomplicated view, as the Criminal Law Commissioner has elsewhere argued, that those who intentionally attack others are morally responsible for and so fully legally accountable for the consequences of so doing whether or not such consequences were

foreseen.”[10]This view depends on one’s idea of the purpose of the criminal law however, for the law to hold society responsible for the outcome of their actions is more than acceptable for the majority. The current law also fits with the harm principle whereby, “ the State is justified in criminalizing any conduct that causes harm to others”[11]. This view is compatible with sanctity of life arguments. For many in society, sanctity of life is sovereign, as shown by its inclusion in the European Convention of Human Rights[12]. This granting of the Right to Life necessitates any taking of life to be regulated tightly. This has led to problem areas in the law such as euthanasia and abortion, the laws for which are based on the law of murder. In light of high profiles decisions of the court system in these areas such as *Nicklinson v Ministry of Justice* [13] the time for change in the homicide area is not now. Parliament refuses to reform the law and neither do the courts. These decisions have been made in light of high volumes of political and legal argument yet the current system has won through. Changing the definition of murder could not only have a negative impact on the law of homicide, but also these other, highly emotive and controversial areas of law.

The current law is not only compatible with these controversial areas but has also been affirmed at the highest level. The so called ‘ GBH rule’ was the subject of a House of Lords decision in *R v Cunningham* [14] in which the rule was affirmed by the House including the then Lord Chancellor. Further, “ the adjective ‘ serious’ has not caused problems in the past, where juries have been instructed in murder cases”[15], and as such does not need to be reformed. This affirmed law is aligned with arguments for the law to act as a

deterrent of social harms. The intentional causing of serious bodily harm is without doubt something society wants deterred, and having a severe punishment for this harm, not only in the law of homicide but also through the Offences Against the Person Act 1861[16], is a method of deterrence. Without the inclusion of this element in the law of homicide, not only would the deterrent for serious bodily harm be weaker, but many 'true' murderers would escape conviction for murder, thus creating a fair labelling problem, contradicting one of the arguments put forward by proponents of change. This is because it is very difficult to prove true intent to kill. There would be many scenarios where the defendant did intend to kill the victim however this couldn't be proved due to the evidential burden. However, by using the intention to cause grievous bodily harm, a number of these defendants could be found guilty of murder.

On balance there are strong arguments for homicide law to be left as is to deter violent crimes and make society responsible for their actions. However the law cannot be left simply because other areas of law are based upon them. There are many problems with the law as it is currently, particularly surrounding fair labelling, mandatory sentencing and difficulty of interpretation and implementation. These problems go right to the core of our legal system and cannot continue to go unchanged. The Law Commission has been ignored repeatedly by parliament but their worries remain and proposals could improve the current system. Homicide law should be reformed as it is inappropriate for someone to be held liable for murder if they did not intend to kill and equality for all under the law must always be the ultimate practice.

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[1]3 Co Inst 47.

[2][1999] 1 AC 1, 14.

[3]Glanville Williams, ' Convictions and Fair Labelling' [1983] CLJ 85, 85.

[4]Jonathan Roger, ' The Law Commission's proposed restructuring of homicide' (2006) 70(3) J Crim L 223, 226.

[5]Murder (Abolition of Death Penalty) Act 1965, s1.

[6]Coroners and Justice Act 2009, s120.

[7]Criminal Justice Act 2003, sch, paras 4-7. For further guidance see, Crown Prosecution Service, ' Sentencing Manual' ( *CPS* , Jan 2012) accessed 21 August 2014.

[8]William Wilson, ' The structure of criminal homicide' [2006] Crim LR 471, 475.

[9]Robert Goff, ' The mental element in the crime of murder' (1988) 104 LQR 30, 48.

[10]Wilson (n 8) 475.

[11]Andrew Ashworth and Jeremy Horder, *The Principles of Criminal Law* (7th edn, OUP 2013) 28.

[12]Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 2.

[13][2014] UKSC 38.

[14][1982] AC 566.

[15]Andrew Ashworth, 'Principles, Pragmatism and the Law Commission's Recommendations on homicide law reform' [2007] Crim L R 333, 335.

[16]Offences Against the Persons Act 1861, s18.