1 The Law: Present and Future

Since one of the primary aims of my research has been to determine whether the criminal law should be reformed, it is appropriate to look at the definition of murder, the legal limits of the offence and how it differs from manslaughter. This requires a detailed examination of the law relating to murder and an outline of the scope of manslaughter. It is also necessary to review some of the major criticisms that have been made of existing law and proposals for legal reform.

The word ‘homicide’ refers to the killing of a human being, whether the killing is lawful or unlawful, but there is no crime of homicide. At common law, unlawful homicide comprises the two offences of murder and manslaughter. Other types of unlawful homicide have been created by Act of Parliament, such as manslaughter by reason of diminished responsibility or a suicide pact, infanticide, and causing death by reckless driving. There is only one definition of murder, whereas there are a number of different ways of defining manslaughter. The essential distinguishing features between murder and manslaughter are the element of fault and the presence of mitigating circumstances. In murder, death must have been caused ‘with malice aforethought’, whereas in some forms of manslaughter this element is absent. In other types of manslaughter, the defendant may well have killed ‘with malice aforethought’ but there was also some extraneous or mitigating circumstance which justifies a manslaughter conviction instead.

The classic definition of murder, and that which is generally accepted both academically and in practice, is that of Sir Edward Coke:

Murder is when a man of sound memory, and of the age of discretion, unlawfully killeth within any county of the realm any reasonable creature in rerum natura under the King's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc. die of the wound or hurt, etc. within a year and a day after the same.\(^1\)

Manslaughter, on the other hand, is either ‘voluntary’ or ‘involuntary’. It is voluntary where the offender (i) was provoked to kill; or
(ii) was suffering from such abnormality of mind that his mental responsibility for his behaviour was substantially impaired, so that he might plead 'diminished responsibility'; or (iii) killed in pursuance of a suicide pact. In the majority of cases of provocation and suicide pacts, the killer acts with malice aforethought so that the offence may be regarded very much as one of 'mitigated murder'. The person who kills with diminished responsibility may also act with malice aforethought, though this is less likely than in other instances of voluntary manslaughter. Conversely, where there is no malice aforethought, and no mitigating circumstances, the offence is one of involuntary manslaughter. Here, the state of mind of the offender must fall within one of two possibilities. Either the killing must have been committed recklessly, or the fatal act (which was unlawful and dangerous) must have been committed intentionally. In each case, a manslaughter verdict is justified on the ground that the offender lacked sufficient foresight or awareness of the consequences of his actions for a conviction for murder.

In essence, in both murder and manslaughter, the prosecution must show that one person has unlawfully caused the death of another, and death must have occurred within a year and a day of the commission of the fatal act. In practice, arguably two of the most controversial aspects of the law have centred on causation and the meaning of 'malice aforethought'.

CAUSATION

Since all human beings are mortal, it follows that killing a person is only an acceleration of what would otherwise be the natural process of death. For the purposes of murder or manslaughter, it is irrelevant that the victim may already be suffering from a terminal illness or may be under sentence of death. It is part of the task of the prosecution to show that life has been foreshortened.

In cases where there is only one possible cause of death, there will usually be no difficulty in deciding whether or not the accused is criminally responsible. However, there are instances where there is more than one possible cause – the deceased may have been attacked more than once, or a badly-injured victim may be given inappropriate medical treatment and subsequently die. In such situations it appears that the law has changed recently, arguably in a manner which assists the prosecution to obtain a conviction. Consider first the case of