CRITICAL ANALYSIS OF MENS REA AS FUNDAMENTAL ELEMENT OF CRIME WITH SPECIAL REFERENCE TO MURDER AND CULPABLE HOMICIDE

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ABSTRACT

The paper undertakes a review of the mental element in murder. Section 4 of the Criminal Justice Act, 1964 defines the mental element in murder as an intention to kill or to cause serious injury. In what follows we examine whether there are morally reprehensible killings which fall outside the present definition of murder, but which nevertheless ought to be punished as murder. Although there is little reported Irish authority on the meaning of 'intention', in England that concept has been interpreted as embracing, in addition to situations where it is the actor's conscious object or purpose to kill, situations where, although it may not be the actor's object or purpose to kill, he nevertheless foresees death as virtually certain to result from his actions. On that construction it follows that no matter how culpable the taking of the risk in question may be, it cannot be murder unless the actor foresees death as a virtually certain consequence of his actions. This would exclude from the definition of murder many forms of socially unacceptable risk-taking which fall short of a virtual certainty.

INTRODUCTION

Often, we see the word 'homicide' being used in legal dramas (Suits!) and mass media that tend to equate it to a murder, but homicide is much wider than that. According to Black's Law Dictionary, a homicide includes an act or an omission of a person which results in the death of another. Hence, it can be said that when one has caused another to die, it is a homicide.

There can be a lawful homicide and an unlawful homicide in law. The term lawful does not mean it is legal to cause a person's death[i]; it means that the homicide is either excusable or justifiable under certain situations under the law. Often, they are used as defenses by the accused in court.

An excusable homicide means that the homicide can be excused at law due to the condition of the offender (either the offender is a child, of unsound minds such as an insane person, or is involuntarily under intoxication due to alcohols or drugs), accident, and in some cases where consent had been obtained from the victim.

Meanwhile, a justifiable homicide often includes a situation where a person wrongly believes that he or she is justifiable or bound by law to kill. For instance, a soldier fires at the target upon receiving the instruction from the commander. Homicide is also justified when a person has successfully shown the necessity of sacrificing one's life to prevent greater harm to the society. Besides, in private defence, if death results, it could also be justified, provided that the person did not go overboard in protecting their own life or property.

Other than the stipulated situations, a homicide is an unlawful one. By law, the offence of *criminal* homicide can be broken down into different levels, according to its seriousness, guided by the Penal Code.

There are three primary homicide offences, which includes culpable homicide not amounting to murder (section 299), murder (section 300), and causing death by rashness or negligence (section 304).

The offences are classified in such a way that each of them attracts different punishment accordingly. For example, section 302 contains a mandatory death penalty as its punishment

for murder while section 304 contains imprisonment as punishment as it deals with the offence of culpable homicide[ii] not amounting to murder, which is a less serious offence than murder.

The Possible Mens Rea:

Since the police, in this case, have classified the case as a murder, the relevant law is section 300 of the Penal Code. However, we need to look into the offence of culpable homicide not amounting to murder as well. This is because all cases of murder fall under culpable homicide and, both provisions have the same *mens rea* requirements, so both sections need to be scrutinised together to show the difference. This explains why the police choose to charge the offender with murder instead of culpable homicide not amounting to murder.

Collating the facts of the situation from news reports, it can be argued that the relevant *mens rea* would be the knowledge of causing the death instead of the intention to cause the death. It is unlikely for the offender to intend to kill someone by throwing a chair, but more likely that the person was just getting rid of the chair and took the easiest way to dispose of it, while knowing well that if the chair were to hit someone, it can be fatal. The intention to kill was not present, but the question of whether the offender knew about the outcome of the action, which was death, is worth answering.

The standard common law test of criminal liability is expressed in the Latin phrase actus reus non facit reum nisi mens sit rea, i.e. "the act is not culpable unless the mind is guilty". In jurisdictions with due process, there must be both actus reus ("guilty act") and mens rea for a defendant to be guilty of a crime (see concurrence). As a general rule, someone who acted without mental fault is not liable in criminal law. Exceptions are known as strict liability crimes.

In civil law, it is usually not necessary to prove a subjective mental element to establish liability for breach of contract or tort, for example. But if a tort is intentionally committed or a contract is intentionally breached, such intent may increase the scope of liability and the damages payable to the plaintiff.

Mens Rea in the Indian Penal Code 1860 sets out the definition of offences, the general conditions of liability, the conditions of exemptions from liability and punishments for the respective offences. Legislatures had not used the common law doctrine of mens rea in defining these crimes. However, they preferred to import it by using different terms indicating the required evil intent or mens rea as an essence of a particular offence.

Guilt in respect to almost all offences created under the IPC is fastened either on the ground of intention, knowledge or reason to believe. Almost all the offences under the IPC are qualified by one or other words such as 'wrongful gain or loss', 'dishonesty', 'fraudulently', 'reason to believe', 'criminal knowledge or intention', 'intentional cooperation', 'voluntarily', 'malignantly', 'wantonly', 'maliciously'. All these words indicate the blameworthy mental condition required at the time of commission of the offence, nowhere found in the IPC, its essence is reflected in almost all the provisions of the Indian Penal Code 1860. Every offence created under the IPC virtually imports the idea of criminal intent or mens rea in some form or other.

Under the traditional common law, the guilt or innocence of a person relied upon whether he had committed the crime (actus reus), and whether he intended to commit the crime (mens rea). However, many modern penal codes have created levels of mens rea called modes of culpability, which depend on the surrounding elements of the crime: the conduct, the circumstances, and the result, or what the Model Penal Code calls CAR (conduct, attendant circumstances, result). The definition of a crime is thus constructed using only these elements rather than the colorful language of mens rea.

The Law Reform Commission is an independent statutory body whose main aim is to keep the law under review and to make practical proposals for its reform. It was established on 20th October, 1975, pursuant to section 3 of the Law Reform Commission Act, 1975.

The Commission's Second Programme for Law Reform, prepared in consultation with the Attorney General, was approved by the Government in Autumn 2000. The Commission also works on matters which are referred to it on occasion by the Office of the Attorney General under the terms of the Act.

To date the Commission[iii] has published sixty-four Reports containing proposals for reform of the law; eleven Working Papers; sixteen Consultation Papers; a number of specialized Papers for limited circulation; and twenty-one Reports in accordance with Section 6 of the 1975 Act.

Should murder distinction be retained?

A number of arguments may be made in favour of abolishing the murder/manslaughter distinction and replacing it with a single offence of unlawful homicide. Firstly, the distinction can appear arbitrary from a moral point of view.

> "Having regard to the multiple factors which enter into consideration of sentence in the case of a homicide, there would not appear to me to be any grounds for a general presumption that the crime of manslaughter may not, having regard to its individual facts and particular circumstances be in many instances, from a sentencing point of view, as serious as, or more serious than, the crime of murder."

Secondly, the introduction of a single offence of unlawful homicide might lead to a greater number of guilty pleas, with a consequent saving in court time and expense. At present one of the main issues in homicide cases is whether a particular killing amounts to murder or manslaughter. If the distinction was abolished that issue would lapse, thus greatly simplifying and expediting the trial process. Furthermore, the introduction of a single offence of unlawful homicide would avoid many of the problems of classification which arise under the present law.

The test for the existence of mens rea may be:

(a) subjective, where the court must be satisfied that the accused actually had the requisite mental element present in his or her mind at the relevant time (for purposely, knowingly, recklessly etc) (see concurrence);

(b) objective, where the requisite mens rea element is imputed to the accused, on the basis that a reasonable person would have had the mental element in the same circumstances (for negligence); or

(c) hybrid, where the test is both subjective and objective.

The court will have little difficulty in establishing mens rea if there is actual evidence – for instance, if the accused made an admissible admission. This would satisfy a subjective test. But a significant proportion of those accused of crimes makes no such admission. Hence, some degree of objectivity must be brought to bear as the basis upon which to impute the necessary component(s). It is always reasonable to assume that people of ordinary intelligence are aware of their physical surroundings and of the ordinary laws of cause and effect (see causation).

Thus, when a person plans what to do and what not to do, he will understand the range of likely outcomes from given behaviour on a sliding scale from "inevitable" to "probable" to "possible" to "improbable". The more an outcome shades towards the "inevitable" end of the scale, the more likely it is that the accused both foresaw and desired it, and, therefore, the safer it is to impute intention. If there is clear subjective evidence that the accused did not have foresight, but a reasonable person would have, the hybrid test may find criminal negligence.

In terms of the burden of proof, the requirement is that a jury must have a high degree of certainty before convicting, defined as "beyond a reasonable doubt" in the United States and "sure" in the United Kingdom. It is this reasoning that justifies the defenses of infancy, and of lack of mental capacity under the M'Naghten Rules, an alternate common law rule (e.g., Durham test), and one of various statutes defining mental illness as an excuse. Moreover, if there is an irrebuttable presumption of doli incapax – that is, that the accused did not have sufficient understanding of the nature and quality of his actions – then the requisite mens rea is absent no matter what degree of probability[iv] might otherwise have been present. For these purposes, therefore, where the relevant statutes are silent and it is for the common law to form the basis of potential liability, the reasonable person must be endowed with the same intellectual and physical qualities as the accused, and the test must be whether an accused with these specific attributes would have had the requisite foresight and desire.

The various considerations include:

First, the distinction is rooted in the historic principle that criminal liability presupposes an intention to commit the relevant actus reus. This principle has long been recognised as a cornerstone of the criminal law. Since Coke's time it has been regarded as one of the

distinguishing insignia of criminal liability so that offences which do not conform to it are treated as deviations from the normal pattern of liability.

Second, the law ought to distinguish between more serious and less serious killings. The effect of abolishing the distinction would be to lump together into a single category the most cold-blooded murders with the least blameworthy manslaughters.[5] This category would be particularly uninformative as it would describe and label crimes of such varying culpability in identical terms. For example, killings committed with diminished responsibility or under provocation would be described and labelled in the same manner as contract killings.

Third, a conviction for murder carries a unique stigma which emphasises the seriousness of the offence and may also have significant deterrent value. The term 'murder' has a very important symbolic and declaratory effect, and serves to convey the seriousness of the particular killing and to indicate to society the nature and quality of the offender's crime.[6] Differentiating between homicide offences emphasises the differing stigma attaching to each. Removal of murder as a distinct offence would result in a failure to convey adequately the degree of stigma and revulsion society attaches to particularly heinous killings.

Fourth, abolishing the murder/manslaughter distinction would effectively shift the centre of gravity of homicide trials to the sentencing stage, thus marginalising the role of the jury in the criminal process. At present, important questions of fact, such as whether the defendant acted under provocation, are decided, following detailed evidence, by the jury prior to verdict. If, however, a single offence of unlawful homicide was created, only the judge would be able to decide, as relevant to culpability and the level of sentence to be imposed, many of these important questions of fact at sentencing stage. At present, matters of mitigation, examined after conviction, are often only “skimpily gone into.”

Deprived of the detailed evidence such as might presently be called at trial, the judge would have less material upon which to make these decisions. Furthermore, this would shift important questions which are presently decided by the jury to the judge alone, possibly leading to the undermining of the right to trial by jury[v].

Finally, to abolish the murder/manslaughter distinction would be to abolish a distinction which has been in the law for hundreds of years, and which is "deeply imbedded in our social and legal culture."

The Law Reform Commission of Victoria noted a similar result from its consultations: "no submission favoured the unlawful homicide approach". In New Zealand the Criminal Law Reform Committee proposed replacing the term 'murder' with that of 'culpable homicide'; however, this proposal proved extremely contentious and attracted widespread criticism. In 1989 the New Zealand Crimes Consultative Committee accepted that there was widespread support for the retention of the term 'murder'. Thus, it appears that the public as a whole supports the distinction. This may be a factor to be taken into account in retaining public confidence in the criminal justice system. It is perhaps also significant that the vast majority of common law jurisdictions have retained the distinction.

In light of the considerations set out above this paper presupposes the continued existence of the murder/manslaughter distinction.

Criminal Negligence

The general rule under common law and statutory law is that "ignorance of the law or a mistake of law is no defense to criminal prosecution." However, in some cases, courts have held that if knowledge of a law, or if intent to break a law, is a material element of an offense, then a defendant may use good faith ignorance as a defense:

The proliferation of statutes and regulations has sometimes made it difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by the tax laws. . . . [T]he Court almost 60 years ago interpreted the statutory term "willfully" as used in federal criminal tax statutes as carving out an exception to the traditional rule."

Crimes like tax evasion are specific intent crimes and require intent to violate the law as an element of the offense. In *R. v. Klundert*, for example, the Ontario Court of Appeal found as follows:

"[55] Section 239(1)(d) is part of an Act which is necessarily and notoriously complex. It is subject to ongoing revision. No lay person is expected to know all the complexities of the tax laws. It is accepted that people will act on the advice of professionals and that the advice will

often turn on the meanings to be given to provisions in the Act that are open to various interpretations. Furthermore, it is accepted that one may legitimately structure one's affairs so as to minimize tax liability. Considered in this legislative context, I have no difficulty in holding that a mistake or ignorance as to one's liability to pay tax under the Act may negate the fault requirement in the provision, regardless of whether it is a factual mistake, a legal mistake, or a combination of both."

A good-faith belief that a law is unjust or unconstitutional is no excuse, but "reasonable compliance upon an official statement of law, afterward determined to be invalid or erroneous" does not constitute a criminal act.

However, a law must be reasonably clear; it must be worded so that a reasonable layman can comprehend the specific prohibited acts. Otherwise, the law may be unconstitutional pursuant to the Vagueness doctrine.

Here, the test is both subjective and objective. There is credible subjective evidence that the particular accused neither foresaw nor desired the particular outcome, thus potentially excluding both intention and recklessness. But a reasonable person with the same abilities and skills as the accused[vi] would have foreseen and taken precautions to prevent the loss and damage being sustained. Only a small percentage of offences are defined with this mens rea requirement. Most legislatures prefer to base liability on either intention or recklessness and, faced with the need to establish recklessness as the default mens rea for guilt, those practising in most legal systems rely heavily on objective tests to establish the minimum requirement of foresight for recklessness.

In such cases, there is clear subjective evidence that the accused foresaw but did not desire the particular outcome. When the accused failed to stop the given behavior, he took the risk of causing the given loss or damage. There is always some degree of intention subsumed within recklessness. During the course of the conduct, the accused foresees that he may be putting another at risk of injury: A choice must be made at that point in time. By deciding to proceed, the accused actually intends the other to be exposed to the risk of that injury. The greater the probability of that risk maturing into the foreseen injury, the greater the degree of recklessness and, subsequently, sentence rendered. In common law, for example, an unlawful homicide committed recklessly would ordinarily constitute the crime[vii] of voluntary manslaughter. One

committed with *"extreme"* or *"gross"* recklessness as to human life would constitute murder, sometimes defined as *"depraved heart"* or *"abandoned and malignant heart"* murder.

The Consultation Process

This Consultation Paper is intended to form the basis for discussion and accordingly the recommendations contained herein are provisional only. The Commission will make its final recommendations on this topic following further consideration of the issues and consultation with interested parties. Submissions on the provisional recommendations included in this Consultation Paper are welcome. In order that the Commission's Final Report may be made available as soon as possible, those who wish to do so are requested to make their submissions in writing to the Commission by 30th June.2001.

CATEGORISATION OF THE OFFENCE OF HOMICIDE AND ITS IMPORTANCE

One may wonder, "Why going the extra miles to separate the offences, is it not easier to make everyone who is guilty of causing death to be tried for the same offence?" Well, perhaps, the practical reason is to ease the burden of the judges, but fundamentally, a sanction is not one size fits all- a person guilty of the crime must have acted and had the state of mind towards the commission of the crime.

In court, they are called *actus reus* (action) and *mens rea* (intention) respectively. In determining a criminal case, the judges will always look into what the offender has done (*actus reus*) before looking into why he or she did so (*mens rea*). These two elements form the basis of criminal law, and for a person to be found guilty of a criminal offence, he or she must satisfy both conditions. To give a simple example, the act of one person stabbing another with a knife is *actus reus,* and if he or she intends to stab, *mens rea* exists.

In real life, it is much harder to prove *mens rea* than it is for *actus reus*. *Mens rea* is more abstract than *actus reus* as we can hardly construe know what the offender was thinking of or

had in mind at the time of the criminal act. Thus, proving *mens rea* has become a routine by lawyers, and it always becomes the centre of arguments in court proceedings.

Likewise, in the present situation, the *actus reus* is quite clear, that is, the act of throwing a chair from high up. Therefore, identifying *mens rea* becomes crucial as different *mens rea* suggests a different offence- hence a different punishment.

Therefore, before we know what offence was committed, we have to study their *mens rea* before concluding the offence. One way to study the *mens rea* is through the provisions of the Penal Code.

The Commission envisages that this paper will be the first in a series which will focus on various aspects of the law of homicide. Topics which the Commission is considering for examination include (though not necessarily in this order): provocation, legitimate defence, manslaughter, causation and the proper limits of exculpation.

In early modern criminal law the focus was on malice – in all its forms, express, implied and constructive – rather than on intention. However, as the reforming influences of the French Revolution[viii] began to spread, a greater emphasis came to be placed on the deterrent aspect of the penal sanction. This resulted in an attempt to define mens rea in terms of conscious mental states, capable of being deterred. This approach continued to gather momentum throughout the nineteenth century, when it was considered sufficient that the defendant had reconciled himself to committing the relevant actus reus, whether or not he directly intended it.

Thus, the Criminal Law Commissioners of 1833 regarded the meaning of 'malice' as being knowingly to incur the risk of the relevant actus reus, as well as actually intending it, but as excluding everything else. Article 244(b) of Stephen's Digest of the Criminal Law[18] provided an alternative mental element for murder in addition to intention. According to this article, malice aforethought would include “knowledge that the act which causes death will probably cause the death of, or grievous bodily harm to, some person...although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused”. This provision was also incorporated into section 174 of the Draft Criminal Code, 1879.

Most of the records agree that early criminal law developed from the blood feud and rested upon the desire for vengeance. It is worthy of note that the criminal law concerned itself with those injuries which were highly provocative and the most injurious of these are the intentional ones. Justice Holmes wrote: "Vengeance imports a feeling of blame and an opinion, however distorted by passion, that a wrong has been done. It can hardly go very far beyond the case of a harm intentionally inflicted; even a dog distinguishes between being stumbled over and being kicked ... The early English appeals for personal violence seem to have been confined to intentional wrongs." It must be borne in mind that the cumbersome early forms of trial precluded the drawing of fine distinctions based upon factors not apparent to all.

Deep-seated injuries are the essence of blood feuds; the nice considerations of the mental factors prompting the inquiry do not constitute the feuds. Sayre writes: "In trial by battle the issues must be framed in the large; if the defendant cannot readily satisfy the judges that he is above suspicion, he may be ordered to settle the dispute by his body, and there is an end of the matter." It must also be noted that in these early developments[ix] there was no distinction between tort and crime. It might be said that the early English law grew from a point bordering on absolute liability. It has been written: "Law in its earliest days tries to make men answer for all the ills of an obvious kind that their deeds bring upon their fellows.

" Wigmore states: "The doer of a deed was responsible whether he acted innocently or inadvertently, because he was the doer; the owner of an instrument which caused harm was responsible because he was the owner, though the instrument had been wielded by a thief; the owner of an animal, the master of a slave, was responsible because he was associated with it as owner, as master; the master was liable to his servant's relatives for the death, even accidental, of the servant, when his business had been the occasion of the evil; the rachimburgius, or popular judge, was responsible for a wrong judgment, without regard to his knowledge or his good faith; the oath-helper who swore in support of the party's oath was responsible, without regard to his belief or his good faith; one who merely attempted an evil was not liable because there was no evil result to attribute to him; a mere counsellor or instigator of a wrong was not liable, because the evil was sufficiently avenged by taking the prime actor, and where several cooperated equally, a lot was cast to select which one should be held amenable; while the one who harbored or assisted the wrong-doer, even unwittingly, was guilty, because he had associated himself with one tainted by the evil result."

We must have regard to the rank of the injured person or his kin, because, if his or their rank is distinguished, a larger bribe is needed to keep them quiet. “Granting the limitations of the early records, it is manifest that at least prior to the twelfth century, criminal intent was not sine qua non for criminality. Walter states,' that the old Westgothic Law was "Whoever shall have killed a man, whether he committed the homicide intending to or not intending to . . . let him be handed over into the power of the parents or next of kin of the deceased."

Though it is necessary to draw very guarded conclusions from the fragmentary records regarding criminal intent in the early law[x], still it seems reasonable to assert that a criminal intent was not always essential for criminality and many evil doers were convicted on proof of causation and without proof of an evil intent to harm. To comprehend the beginnings of the mens rea concept at the end of the twelfth century, two specific influences must be observed. One was the Roman law, recently revivified and sweeping over the European continent with renewed vigor. It was again recalled that Cicero (Pro Tullio, 22,51) had set it down that it is an implied rule of mankind (tacita lex est humanitatis) to punish not the occurrence but the 'consilium,' and that 'sciens dolo malo' had been found in the laws of Numa. The Roman 'dolus' and 'culpa' were being grafted onto the English Law and along with them the notion of mental element in crime."

The second influence, more powerful than the first, was canon law and a consequent insistence upon moral guilt. A consideration of sin from the view point of canon law involves the mental element almost equally with the physical act. In the Sermon on the Mount, Christ seems to have laid the philosophy to support this proposition (Matt. 5:27-28). Here, as was pointed out, the desire, wish, and intent determine culpability. Although, as previously observed, Leges Henrici Primi (c. 5 §28) clearly set forth the early notion of absolute liability regardless of evil intent, nevertheless, in discussing perjury, the same work offers "reum non facit nisi mens rea" as the law applicable thereto.

"The general law is that a man is liable for the harm which he has inflicted upon another by his acts, if what he has done comes within some one of the forms of action provided by the law, whether that harm has been inflicted intentionally, negligently, or accidentally. In adjudicating upon questions of civil liability the law makes no attempt to try the intent of a man, and the conception of negligence has as yet hardly arisen. A man acts at his peril."

So, if a man be killed by misadventure, as by an arrow at butts, this hath a pardon of course; but if a man be hurt or maimed only, an action of trespass lieth, though it be done against the party's mind and will; and he shall be punished in the law, as deeply as if he had done it of malice . . . So, if an infant within years of discretion, or a madman kill another, he shall not be impeached thereof; but if he put out a man's eye, or do him like corporal hurt, they shall be punished in trespass."

It is safe to assert at the outset, that the general concept of mens rea necessary for criminality was very vague. But with the ever developing but painfully slow processes of the law, more precise and discriminating[xi] lines were being established regarding the evil mind necessary when a given set of circumstances was present. It was just as logical then as now, that since every felony involved different social and public interests, the mental requisites for criminality in one must needs differ from the other.

The point to be remembered is that there was no dividing into murder and manslaughter. The mental element was of negligible importance. The succeeding two centuries, however, saw the rise and prevalence of the 'mental element' in homicide and the relieving from criminal responsibility of those who killed without criminal intent. The greatest homicide was murder. At the end of the twelfth century this consisted of 'homicide which is committed in secret, no one seeing or knowing it' (Glanville, 14, c. 3). At that time the mental element had no important place in murder. The original "murdrum" Bracton writes 7 was introduced into England by King Cnute to prevent the Danes from being secretly slain by the English, and consisted of a heavy amercement for which the "hundred' was liable. By the middle of the fourteenth century the 'presentment of Englishry' was abolished by statute. However, in the popular mind, the term lived on as the worst form of homicide.

The presence or absence of 'malice aforethought' was, therefore, made the test. Sayre stated' that in the beginning "malice was construed in its popular sense and was purely a physical element. The early evidence all points to its being general malevolence and cold-blooded desire to injure." However, the term was soon embracing things far afield from its original meaning. Coke, 35 defines murder as unlawful killing "with malice aforethought, whether expressed by the party or implied by law." This latter phrase 'implied by law' was far-reaching in its implications and paved the way for a later 'implied malice.' Sayre has stated that, "a term used at the beginning to designate a purely physical element was thus given a tortured and artificial

meaning in order to enable courts to visit with a severe penalty killers, who in the public opinion of the day, ought not to be let off with the comparatively slight punishment[xii] attaching to clergyable offenses."

It would certainly seem, from the data available, that the public state of mind had a great deal to do with the meaning which the term 'malice' was assuming. Rising from Coke's 'implied malice' the term has assumed such proportions that Stephen defines it: "Malice aforethought means any one or more of the following states of mind preceding or co-existing with the act or omission by which death is caused, and it may exist where that act is unpremeditated:

a) An intention to cause the death of, or grievous bodily harm to, any person, whether such person is the person actually killed or not;

b) Knowledge that the act which causes death will probably cause the death of, or grievous bodily harm to such person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

c) An intent to commit any felony whatever;

d) An intent to oppose by force any officer of justice on his way to, in, or returning from the execution of the duty of arresting, keeping in custody, or in prison, or the duty of keeping the peace or dispersing an unlawful assembly, provided that the offender has notice that the person killed is such an officer so employed."

Just as specific mental intents were required for specific felonies, after the twelfth century, so, certain specific defenses were beginning to take form. In so far as freedom of will or choice entered into the idea of a criminal mental intent, so did the lack or absence of this freedom constitute the basis of freedom from blame or fault therein. This can better be illustrated by examining briefly several of these 'new' defenses showing lack of criminal intent.

In the earlier development[xiii] of mens rea, this so-called defense was not permitted on account of the act of becoming drunk was in and of itself morally blameworthy. As one writer G put it: "The reason why ordinary drunkenness is no excuse for crime is that the offender did wrong in getting drunk." This so-called defense has never really completely emerged from the moral significance originally attached to it. Coke wrote: "Although he who is drunk is for the time

non compos mentis, yet his drunkenness does not extenuate his act or offense, nor turn to his avail; but it is a great offense in itself, and therefore aggravates his offense, and doth not derogate from the act which he did during that time, and that as well in cases touching his life, his lands, his goods, as any other thing that concerns him."

Likewise, Hale has stated: Is "By the laws of England, such a person, i. e., one intoxicated, shall have no privilege by this voluntary contracted madness, but shall have the same judgment as if he were in his right senses." Also, Hawkins wrote: "And he who is guilty of any crime whatever through his voluntary drunkenness, shall be punished for it as much as if he had been sober." Sayre comments: It is only within fairly modern times, with the growing realization that criminal liability is to be sharply differentiated from moral delinquency, that intoxication has been allowed as an indirect defense in so far as it negatives the existence of a specific intent required for certain crimes."

In tracing the development of a mens rea in the criminal law it is difficult to escape the fact that mental intent as a necessity for criminality has ever been a variable. It seems to have varied directly with the ideals and objectives of criminal justice. In the very beginning, the main task of criminal administration was to placate through its efforts, groups of people who would accept it as a substitute for the prevailing system of blood feuds. In this stage, courts had to decide between a malicious intent and an accidental happening. After this, there occurred a shifting in the objectives of criminal justice towards the punishment of unmoral acts. This latter was due to canon law and Church influence on the morals of the people. Moral blameworthiness came into the picture and mens rea was measured by the yardstick of the moral code. Sayre has written: ". . . our modern objective tends more and more in this direction, not of awarding adequate punishment for moral wrongdoing, but of protecting social and public interests."

Instances of this change of 'flavor' in mens rea are noted in cases where the intent prompted by religion and ethics did not stay the conviction of a Mormon who married a second time while his first wife was living. And, where the violation of a Sunday ordinance by one who in conscience believed the Sabbath should be observed, was convicted of crime. 5 In earliest times such cases would have been measured according to their respective degrees of moral blameworthiness, whereas, now the social and public interests require protection both against such ideas together with their evil intentions.

Most crimes require what attorneys refer to as "mens rea," which is Latin for a "guilty mind." In other words, what was the defendant's mental state and what did the defendant intend when the crime was committed. Mens rea allows the criminal justice system to differentiate between someone who did not mean to commit a crime and someone who intentionally set out to commit a crime.

To give an example, imagine two drivers who end up hitting and killing a pedestrian. Driver 1 never saw the person until it was too late, tried his or her best to brake, but could do nothing to stop the accident and in fact ended up killing the pedestrian. Driver 1 is still liable, but likely only in civil court for monetary damages.

Driver, on the other hand, had been out looking for the pedestrian and upon seeing him, steered towards him, hit the gas pedal and slammed into him, killing him instantly. Driver 2 is probably criminally liable because he intended to kill the pedestrian, or at least he intended to cause serious bodily harm. Even though the pedestrian is killed in both scenarios (the outcome is the same), the intent of both drivers was very different and their punishments will be substantially different as a result.

Careless vs. Criminal

Carelessness is generally referred to as "negligence" in legal terminology, and generally results in only civil liability. However, at some point general carelessness turns into something more culpable, and some criminal[xiv] statutes have heightened negligence standards such as criminal or reckless negligence. For example, it may be simple negligence to leave items out on your sidewalk that cause a neighbor to fall and hurt themselves. It may be more than simple negligence, however, if you left out a chainsaw, some knives and flammable material on your sidewalk, resulting in your neighbor's serious injury.

Intentional vs. Unintentional

Intentional harmful behavior is often criminal, but unintentional harmful behavior comes in two basic forms. The first is "mistake in fact" and the second is "mistake of law."

Mistake in fact means that, although your behavior fit the definition of a crime in an objective sense, you were acting based on mistaken knowledge. For example, a person could objectively

be selling drugs, but mistakenly believe that he or she is just selling a bag of baking soda. As a result, that person is likely lack the necessary mens rea or mental intent necessary under a drug law, because he or she never intended to sell an illegal drug, just baking soda (although few people will believe that you honestly thought baking soda could be sold for that much money).

Mistake of law however, will almost never save you from criminal liability. You've probably heard the phrase that "ignorance of the law is no excuse" and that's exactly how the law sees it. Using the example above, mistake of law would be if the person knew that he or she was selling cocaine, but honestly believed that it was legal to do so. Unlike mistake of fact, this would not relieve you of liability. It may seem slightly unfair that the person who was essentially dumb enough to believe that the white powder was baking soda gets off, but the well-intentioned person who honestly thought it was legal to sell cocaine doesn't get off. However, allowing ignorance of the law as a defense would discourage people from learning the law and undermine the effectiveness of the legal system.

Strict Liability No Mens Rea Required

Finally, there are some criminal laws[xv] that don't require any mens rea or mental state. These strict liability laws apply to certain acts which deserve criminal punishment regardless of intent, usually those involving minors. This is best illustrated by statutory rape laws which punish the act of having sex with a minor even if the perpetrator honestly thought that the minor was over. These laws often seem harsh, but they are grounded in the protection of minors.

Committing a Crime "Knowingly"

Many criminal laws require a person to "knowingly" engage in illegal activity. Which part of the offense needs to be done knowingly depends on the crime. For example, a drug trafficking law might require that the person "knowingly" import an illegal drug into the United States. If the defendant had been given a gift to deliver to someone in the U.S., and the defendant honestly did not know that the gift contained an illegal drug, then the necessary mens rea or mental state has not been established and no crime was committed.

Committing a Crime "Maliciously" or "Willfully"

Some criminal laws use the term malicious and willful to describe the necessary conduct. Generally, this adds nothing that isn't already covered by intentionally and knowingly. However, in some murder[xvi] statutes it is a "heightened" form of intentionally/knowingly, and will result in a higher degree murder charge. The difference being that it is one thing to get mad at someone and kill them in passion, but it's quite another thing to devise an elaborate plan to stalk and kill a victim.

Committing a Crime with the "Specific Intent"

Specific intent crimes are crimes where an act has to be accompanied by a particular intent to do something and are often written as "[performed some physical act] with the intent to." An easy to understand example of this is theft.

Most theft statutes require that you not only take some object (the physical act), but that you take it with the intent to "permanently deprive" the rightful owner of that object. For example, imagine that you took your friends pair of sunglasses for the day, but you did so with the intent to give them back later that afternoon. You had no right to take those glasses, they belong to your friend, but what you did wasn't theft because you never had the intention of permanently keeping the sunglasses.

CONCLUSION

Knowledge plays a significant role in the offence of murder and culpable homicide. The degree of it determines which offence is more relevant. If the degree is high, that is the offender knows for certain the victim of the criminal act will most probably die; it is most likely murder and *vice versa.*

To conclude, the police has taken the right step in reclassifying the charge to murder. Taking this stern action into account, we hope this would galvanise a difference in the residents of the flat who has made littering a habit to be more responsible to their living environment.

"In these various ways the law, starting from the idea that a mens rea or element of moral guilt is a necessary foundation of criminal liability, has so defined and elaborated that idea in

reference to various sorts of crimes, that it has come to connote very many shades of guilt in different connections. But though mens rea has thus come to be a very technical conception with different technical meanings in different contexts, it has never wholly lost its natural meaning; and, because its natural meaning has never been wholly lost sight of, the necessity for its presence, in some form, has supplied the principle upon which many of the circumstances, which will negative criminal liability are based. These, in their turn, have been so developed that they have become the foundation of different bodies of technical doctrine; and in these ways a large part of our modern criminal law has been developed."

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