Criticisms & Reform

Murder
In 2006 the Law Commission published a report called *Murder, Manslaughter and Infanticide*.

In this report the Law Commission pointed out that there were many problems with murder.
Bit by bit development of the law.

• The law surrounding the crime of murder has developed 'bit by bit' over many years.

• This is particularly well illustrated by the law concerning intention and the problems surrounding oblique intention and foresight of consequences.

• In Moloney (1985) the HL ruled that foresight of consequences was not intention; it was merely strong evidence of intention.
• But, Woollin (1998) made the law uncertain as the HL stated that intention was 'found' as a result of foresight of consequences and therefore contradicted the law in Moloney.

• Matthews and Alleyne (2003) seemed to agree with Moloney on the definition but this is only a CA case and therefore would not overrule either Moloney or Woollin. Meaning that technically the law on this matter is still a little uncertain thanks to this 'bit by bit' development of the offence of murder.
Serious harm rule.

- The Law Commission stated that Parliament never intended killing to be a murder unless the D realised their conduct might cause death. They therefore believe the present definition of murder is too wide.

- Murder can be satisfied if the D only intended GBH with no foresight of death required at all.

- The D, in this situation, would be just as guilty as someone who foresaw and even intended death.
• Is it not therefore harsh for someone with this level of mens rea to be sentenced to a mandatory life sentence?

• The problem with this had been highlighted well before the Law Commission's criticism in the case of Cunningham (1981).

• In the above case Lord Edmund Davies stated that he believed the mens rea of murder should be limited to intention to kill only.

• Despite his criticism though Edmund Davies believed that a change to the law of murder could only be done by Parliament and not by the judiciary.
No defence where excessive force is used.

- If force was necessary in a certain situation (to fight off an attacker for example) **but** the D used excessive (too much) force in the circumstances then there will be no defence for murder.
- This is an 'all or nothing' defence as the D will either be acquitted and set free or found guilty and be given a life sentence.
- A life sentence is surely harsh when the D was justified in using some force but used more than was reasonable.
• The cases of Clegg (1995) and Martin (Anthony) (2002) are examples of this potentially harsh outcome.

• Should there be a 'lesser' crime of murder that a D could be found guilty of if they kill whilst using excessive force when defending themselves?
No defence of duress.

- Duress is a defence to most crimes but is not allowed for murder.
- See taxi driver example in the notes.
- The Law Commission suggested duress should be a full defence provided the D could prove that they were threatened with death/serious injury.
Mandatory life sentence.

- The judge has no discretion over what the sentence for murder should be ... it is a mandatory life sentence.
- The judge cannot give a different sentence even if he thinks the D is not as blameworthy as a deliberate killer.
- It is because of this mandatory life sentence that the defences of diminished responsibility and provocation (later to become loss of control) were introduced in The Homicide Act 1957. This allows discretion in the sentencing of 'murderers'.
The problems with sentencing are further aggravated by the Government's guidelines on minimum sentencing for murder in The Criminal Justice Act 2003.

The starting points for minimum sentences are:

a) a whole life term for exceptionally serious cases - premeditated killings of 2 or more people, sexual or sadistic child murders etc.

b) 30 years minimum for serious cases - murder of police/prison officers, murders with firearms, sexual/sadistic killings etc.

c) 15 years minimum for murders not falling within the 2 higher categories.
• so, under these rules, in Martin (Anthony) the D would have to receive the minimum of 30 years because he shot and killed a burglar. This would be the same as a contract killer who deliberately killed a victim would receive, despite the circumstances being different.
Law Commission's proposal for reform.

- Law Commission proposed 2 separate offences of murder - first degree murder, second degree murder.
- First degree murder - would cover where D intended to kill or intended to cause serious harm and foresaw the risk of death as a result.
- Second degree murder - would cover where D intended to cause serious harm but did not foresee the risk of death.
• The mandatory life sentence would therefore only apply to first degree murder and second degree murder would carry a sentence that could be anything up to life.

• How would this proposed reform affect the criticisms of bit by bit development of the law and the serious harm rule?
Government’s response.

• In July 2008 the Government issued a consultation paper called *Murder, manslaughter and infanticide: proposals for reform of the law*.

• In this consultation paper the Government rejected completely reforming murder by making it a 2 tier offence.

• The only area where the Government accepted that reform was needed was in relation to excessive force in self defence - this was covered by the Coroners and Justice Act 2009 were in the defence of loss of control a D can have a partial defence because of loss of control due to fear of serious violence.
Euthanasia.

- Under the present law the 'mercy killing' of a loved one will be murder - meaning a mandatory life sentence with the minimum of 15 years.

- Should judges have more discretion in sentencing in these situations as it is less likely that the D will be 'dangerous' or will kill again.

- In some countries (The Netherlands, Switzerland), under strict controls, doctors are allowed to end the lives of terminally ill patients.
• Doctors are allowed to withdraw treatment from patients in a permanent vegetative state (Airedale NHS Trust v Bland) but cannot act positively in order to kill a patient.

• In the light of the Tony Nicklinson case and others should this now be changed?

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