

What are the criticisms of the current law on Voluntary manslaughter?

Voluntary Manslaughter, set out in the Homicide Act 1957, was established as a substitution for murder in certain circumstances. If there is evidence of Diminished responsibility then murder may be substituted for manslaughter. Diminished responsibility can be a form of insanity an 'abnormality of mind' which is somewhat advantageous if you can prove this, as would be evidence of Provocation, Infanticide or the participation of a Suicide Pact. If the defendant is convicted of Murder, there is a mandatory life sentence and will definitely be imprisoned for a term usually no less than 12 years. However, if convicted of Voluntary Manslaughter, which still embeds the Actus Reus and Mens Rea of Murder, 'malice aforethought', and the defendant may be sentenced at the discretion of the Judge. In some cases this has amounted to a full life sentence anyway, but there have also been a few where the defendant has been given a suspended sentence. Aside from this fact, is the current law on voluntary manslaughter satisfactory or is it too readily available as a defence against Murder, making the law too forgiving of serious crime?

The current laws on all types of Homicide were reformed in 1957, but a lot of dispute continued even into the late 1990s as cases using the defence of Provocation increased. The Court of Appeal debated the issue of Provocation with the Privy Council. In cases such as Campbell 1997, Parker 1997 and Smith 1998 the problem arose when comparing the defendant's action with the reasonable man. The Court of Appeal judged that special characteristics should be taken into consideration, if they are anorexic for example as in Humphreys 1995. Their criticism of the law on the reasonable man was that a person who had some eccentricity shouldn't be compared with somebody who doesn't possess the same quality, which in theory is the reasonable man. The Privy Council disagreed and said that the law had gone too far and in Luc Thiet Thuan v R 1996 the Privy Council said that they expected people to show self-control. These arguments amongst the hierarchy of courts showed an inconsistency in the law and so the House of Lords decided to draw the line in Smith-Morgan Jones 2000 when they laid down a few relevant characteristics to be considered. But still said 'the same standard of behaviour should be expected of everyone'. In one vein this is unfair as it denies individual differences and people's tolerance levels to provocation differ greatly, but in another vein this shows that a standard of behaviour has been set and that all must follow it which is beneficial as there isn't an inconsistency.

Another matter that has fallen under criticism is that self-induced provocation will still be a defence for Murder. In Johnson 1989 the defendant made uncivil comments to the victim who then in return threatened the defendant with a glass bottle and Johnson then stabbed the victim with a flick-knife. The Court of Appeal allowed Voluntary Manslaughter, however at the first hearing of this trial the jury had disagreed because the Provocation was brought about by the defendant. Some people feel that self-induced provocation is very unfair, the defendants actions however will be looked upon by the judge as an aggravating factor and it is unlikely that they will get a greatly reduced sentence.

Again more problems arose with one of the elements of Provocation to Voluntary Manslaughter and that was that 'a sudden loss of control' needs to be exercised. The problem with cases like Alhewalia 1992 and Humphreys 1995, is that there was no 'sudden and temporary loss of control'. What is now considered and accepted by the current law is the 'slow burn' principle of Battered Woman's Syndrome. But there is no way to establish when exactly the line burns out or to what extent women's self control differs from men's. So why try to incorporate a law that will lead to some injustices, as it cannot be precise. The problem with thinking along those lines is that if the Law of Provocation for Battered Wives was withdrawn completely, then even more injustices would occur, as those who really depended upon it would not have access.

Diminished Responsibility is another defence for Murder yet its meaning has often been blurred. In Byrne 1960 an 'abnormality of mind' was accepted, then in Gittens 1984 it was 'substantial impairment'/'partial insanity' or 'on the borderline of insanity'. These examples show clear differences as the Gittens case was criticised later that year by saying 'more than trivial...but...not...total or absolute impairment' in R v Seers 1984. More recently in 1992 Thornton progressed to say 'if they do not have the capacity to understand or the ability to make sensible or rational judgements'. Diminished Responsibility is so unclear that the Draft Criminal Code Bill wish to change the wording of the defence to 'Such mental abnormality as would be substantial enough to reduce the charge of murder to manslaughter' it also wishes to reconsider the M'Naughten rules that establish Diminished Responsibility by the end of 2003. However, no action has yet taken effect.

A further criticism of the defence of Diminished Responsibility is that it has become too readily available for people who can prove some form of medical history when really the crime had nothing to do with their medical affairs. In this way it can be seen to be 'diluting the law' and making murder a less serious offence as the accused can avoid a life sentence. However, this may not be the case as the amount of Diminished Responsibility being successful is falling, which may show that it is not reaching deserving people.

The criticisms that I personally raise on the current law of Voluntary manslaughter are that it doesn't help those that it always should. For example the policy on Diminished Responsibility is that this has to be 'abnormality of mind' not caused by drugs or alcohol. However what about those on prescription drugs such as O'Connell 1997. Should there not be a provision for these people or those who have been deceived and taken drugs or alcohol unknowingly? Also, a topic that should be considered is that when it comes to Voluntary Manslaughter it can be easy to be overcome by legal technicalities and to forget that it is there to prevent injustice. In Martin 2001 there have been comments that Martin Misused the law as he claimed that in protecting his property from burglars he shot them because of his 'Paranoid personality Disorder' this seems to have gone too far and that the courts may begin to disagree once more.

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