**Who is a murderer?**

**Questioning the role of ‘intention’ in murder liability**

Should ‘intention’ lie at the heart of the wrong or evil of murder, or is ‘intention’ as interpreted a somewhat ill-fitting proxy for something else?

What else could lie there instead?

**Current Law (E&W)**

Intention to kill or intention to cause GBH.

Foresight of virtual certainty – evidence of intention (also for secondary liability post *Jogee*)

**Over inclusive: Are intentional killings the most morally blameworthy?**

1. (Intent to cause GBH with no intent or foresight of death)
2. Mercy killings
3. Medical

*In re A* [2001] Fam 147: ‘Unpalatable though it may be … to stigmatise the doctors with “murderous intent”, that is what in law they will have if they perform the operation and Mary dies as a result.’

**Under inclusive: Can non-intentional killings be just as morally blameworthy as intentional killings? How far does that stretch?**

1. Terrorist example – Lord Steyn in *Woollin*
2. Others?

**Comparative:**

1. (Germany)
2. US Model Penal Code
3. Ireland
4. Scotland

Law Commission for Scotland citing JHA Macdonald, *Practical Treatise on the Criminal Law of Scotland*: “Murder is constituted by any wilful act causing the destruction of life, whether intended to kill, or displaying such wicked recklessness as to imply a disposition depraved enough to be regardless of consequences.”

What could E&W learn from other jurisdictions to reduce over-inclusion and under-inclusion within murder?

Criticisms and other aspects to consider

How far does the principle extend?

Consider Grenfell Tower

Who should draw key moral distinctions – the prosecutor, the judge or the jury?

Areas of interest:

Operation of the defences

Has the criminal law over-excluded motive?

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