

INTRODUCTION

THOU SHALT NOT KILL



*‘Scarlet billows start to spread’*

The recording begins with the crackle of a gramophone, before the barrel organ starts to grind out an eerie fairground melody. The reedy voice begins to sing in German, the tongue rolling over the letter ‘r’ with a sinister relish. Even for those who don’t speak the language, the nursery-rhyme rhythm of the song sounds vaguely but disconcertingly familiar:

*Und der Haifisch, der hat Zähne, Und die trägt er im  
Gesicht ...*

*(And the shark, he has teeth, and he bears the scars of them  
in his face ...)*

The singer is Bertolt Brecht and the song is ‘Der Moritat von Mackie Messer’, the opening number from *The Threepenny Opera*, the 1928 musical written by Brecht and composer Kurt

Weil. The *Opera* tells the story of the gangs of beggars and thieves that inhabit the underworld of Victorian London. Chief among these is the villainous Macheath, notorious for his murderous deeds around the streets and alleyways of the city, which are listed in the song for the audience's benefit. In the 1950s a production of the show opened off Broadway, and in 1955 Louis Armstrong recorded a tightened translation of the song set to a jaunty jazz tune – 'Mackie Messer' had been transformed and given a new American identity as 'Mack the Knife'.

Bobby Darin released another cover version of the song a couple of years later and the tune has become a lounge singer standard, covered by Frank Sinatra, Ella Fitzgerald and countless others. But its creepy origins as a 20th-century take on the traditional '*moritat*', or 'murder ballad', are often overlooked. These pieces, popular for centuries throughout Germany and the rest of Europe, set stories of murder, vengeance and justice to simple tunes. Tom Jones's 'Delilah' is another modern song that owes a similar debt to the tradition, a brutal crime of passion told from the murderer's point of view, with an instantly recognisable tune and a memorable chorus.

Mackie, and later Mack, is the embodiment of the murderer as a kind of folk hero, reviled and revered in almost equal measure. The celebration of his exploits goes to the heart of our grisly fascination with murder; we are simultaneously intrigued and revolted. His deeds are listed with relish and the song congratulates him on his ability to evade detection. The Armstrong and Darin versions cleaned up Mack's antics considerably – the original German verses are much darker,

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accusing him of raping and killing several women – but there is still a thinly disguised admiration, even affection, for him underlying all of the modern versions of the song. Darin's swinging portrait of Mack, whom he had recast as a suave gangster, earned him a Grammy for the 1959 Record of the Year. But the minstrels who wrote and sang the original ballads would still recognise the tale of death and bloody vengeance in 'Mack the Knife'.

Throughout our history, violent death at the hands of another has been part of the songs that we sing, the names that we give things and the stories that we tell each other. In Scottish folklore, the *sluagh* is a swarm of malevolent spirits said to haunt the night sky. No longer earthbound, they fly across the Hebrides seeking out the living, particularly those who have sinned, snatching them up and dropping them back down to earth from a fatal height. In their rarely glimpsed physical form, they appear as a flock of black birds, usually crows. The coal-black bird has had a long career in folk tales as an omen or even a harbinger of death; it scavenged on the bodies of the dead, irresistibly drawing it to sites of death such as battlefields and graveyards. Nowhere is this grim association more apparent than in the collective noun for a flock of crows – a 'murder'.

The appetite for stories of terrible deeds and the people who commit them is an enduring part of human nature. It can be traced from the medieval *moritats*, through Victorian penny dreadfuls, right up to the true crime documentaries and podcasts that we consume so voraciously today. The medium may have changed from ballad sheets to Netflix, but beneath the surface the stories are the same. Whether in fact or fiction,

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murder can be all things to all people. At a basic level, it is a tale of good versus evil, where the roles of victim and villain are clearly laid out before us. More often than not, there is an element of mystery at its heart, a riddle to be solved. The glut of detective novels in the first half of the 20th century epitomised this appeal, with the victim and their death often simply a vehicle to get into the intellectually satisfying fun of collecting and analysing the clues to unmask the killer. Then there is of course the voyeuristic and vicarious chill we get from reading about horrible things happening to other people, whether real or imagined.

In the midst of life, we are in death – and that’s exactly how we like it. In his 1946 essay *Decline of the English Murder*, George Orwell was adamant that murder had peaked in a golden age between 1850 and 1925, but over seventy-five years later it seems that his report of murder’s terminal decline was greatly exaggerated. Whether in fiction or on the news, murder exerts a fascination unlike any other crime, and our appetite for the homicidal is robustly insatiable. We invite it into our homes every night on the television and we go to sleep with it on the bedside table between the covers of a paperback. There is now no small-town homicide or suburban slaying too obscure to be picked over in minute detail in a podcast or documentary. In drama, tales of murder recur as plot devices in everything from Shakespeare to soap operas. As a genre, crime fiction has been a literary behemoth ever since the Victorians popularised the detective story. Our fictional encounters still usually climax with the apprehension of the culprit and the tacit conclusion that justice will be done, but in

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real life the solving of the crime is only half the story. There are many hurdles to leap before the captured killer becomes the convicted murderer.

Aside from its dark appeal, the act of murder itself is a blank canvas onto which we can project all manner of meanings. It can be an act of straightforward revenge or rage, be prompted by mercenary motivations or by reasons known only to the killer. It has been used as a tool of political expediency and an expression of personal honour. While some kill seemingly at random, there are those who murder because their own life depended upon it. At the heart of all of this sits a very real, lethally complex and endlessly fascinating offence that is the most hallowed in the annals of the criminal law. The label of 'murderer' carries a stigma far and above that of any other crime. Murder is the only offence for which a court must impose a life sentence on conviction and, for many years over the 19th and 20th centuries, was the only crime that justified taking a life. The law is the cornerstone of all of this.

Despite the pervasiveness of this crime in all aspects of our culture, popular or otherwise, there is nothing black and white about it. The law relating to homicide is a complete jumble of antique rules, odd judicial decisions and ambiguous interpretations. When it comes to murder, we really don't know the half of it. But we're so used to watching and reading about it, we think we know more than we do – and a little knowledge can be a dangerous thing.

As I was putting the finishing touches to this book, a story was reported in the press that summed up all the contradictions and captivations of our relationship with murder. The

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names and details are unimportant, as it could be one of many similar tragedies that take place every year. A man had killed a woman in circumstances that, however improbably, he claimed were accidental. He was acquitted of murder and convicted of manslaughter. Although the news report itself was a reasonably even-handed summation of the case, a quick glance below the byline to the reader comments revealed a maelstrom of outrage, misunderstanding and divided opinion.

Some said the man had got away with murder and the case was a miscarriage of justice. Others, obviously trolls, blamed the victim for her own demise and openly sympathised with her killer's actions. But many of the comments revealed our collective ignorance of the legal realities of murder and manslaughter as they currently stand in this country. Plenty of armchair lawyers proclaimed that the killing could not possibly be considered murder because it was not planned in advance or otherwise apparently premeditated. Others offered authoritative statements on the law that were several degrees removed from reality.

Trivial as they may seem, these pronouncements from keyboard warriors matter – because here are the people who end up sitting on juries or answering opinion polls on criminal justice that drive government policy on law and order. These misapprehensions can have a very real effect on how the justice system ultimately works for all of us. If we're going to indulge our darker sides with gruesome stories and graphic deaths in print and on screen, then at the same time we have a duty to educate ourselves about the lethal reality of the crime that exerts such a spell over us.

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Statistically speaking, our collective obsession with murder is out of all proportion to our likely encounters with it. Each year, the Office for National Statistics publishes reports on the whys, hows and wherefores of the country's death toll for the previous twelve-month period. Heart disease and cancers unsurprisingly top the charts year on year. But the ONS also gathers data on unnatural causes of death in the population, including the UK's 'murder rate'. According to their figures, in the twelve months up to March 2019, out of the 519,000 people that died in England and Wales, 671 were victims of homicide. Out of a population of around 58 million souls, this equates to a fatality rate for homicide of eleven per million population.

With such small numbers involved, tracking trends in murder at a population level can be difficult. The ONS counts the number of victims based on the year in which their death was officially recorded as a homicide, which can lead to some anomalous results. The country's murder rate spiked dramatically in 2003, when the 173 people believed to have been killed by Dr Harold Shipman were formally recorded as homicide victims by the public inquiry into the case, although the murders themselves dated back to the 1970s.

Similarly, the deaths of the ninety-six people killed in the 1989 Hillsborough stadium disaster did not appear in the statistics until almost thirty years later, when a new inquest verdict of manslaughter was recorded in respect of their deaths. A single incident involving a high death toll, such as a terrorist attack, will produce a similar jump in the rate for a particular year. 2017 to 2018 saw successive tragedies, including the

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Manchester Arena bombing and the London Bridge attacks, contribute to a peak in the national homicide figures unseen in the preceding years.

But some broad conclusions can be drawn from the latest data. Men are overwhelmingly more likely to kill and be killed, making up 64 per cent of victims and 92 per cent of homicide suspects. For both men and women, the home is the deadliest place to be, with the vast majority of killings taking place in the victim's residence. Staggeringly, over 40 per cent of female victims were killed by their current or former partner, but men are most often murdered by a friend or acquaintance. While serial killers like Dr Shipman steal the headlines, stranger danger is not borne out by the statistics; only 6 per cent of female victims were killed by a stranger, although this rises to 22 per cent of male victims.

Age and ethnicity also produce some noticeable variations. Black people made up 14 per cent of all murder victims in the 2019 figures, the highest number in twenty years; but of those victims, almost half of them were under the age of twenty-four. This contrasted with a trend of decreasing numbers of younger victims across other ethnic groups. Female killers were likely to be older than male ones, outnumbering them by around half in all of the older age categories. A sharp instrument has been the method of choice for killers for several decades, and is still the most common weapon used in attacks on both men and women. Guns are involved in only 5 per cent of the deaths recorded.

The banality of murder when laid out in cold, hard statistics is a world away from our dramatic, even romantic, images of



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a Mack the Knife; but it is perhaps even more terrifying. Behind each headline and datapoint is a life and death of a real person. This book is about the true story of murder in this country, viewed through the prism of one of our oldest and most notorious laws. Since its inception almost a thousand years ago, this most infamous crime has been shaped above all by *real* people – the killers and victims whose cases are tried by the court; the judges, juries and lawyers who preside over their fate; and the politicians and monarchs who have held lives in their hands even after the law has taken its course. This homicidal history of Britain takes in big questions about when, if ever, taking a life can be justified or excused, and the allowances that we should make for those good people who sometimes do very bad things.

Hand in hand with this story of crime goes the question of punishment. For much of its history the law operated by the maxim of ‘a life for a life’, but homicide was far from unique in attracting a lethal punishment. Over the course of the 18th century, England entered the age of the so-called ‘Bloody Code’, as the use of the death penalty expanded exponentially, with statute after statute turning an ever-increasing list of offences into capital ones. Writing in 1826, just as the tide was beginning to turn, the editors of the *Newgate Calendar* (a popular compendium of notorious criminal trials) observed:

*The penal laws of the British empire are, by foreign writers, charged with being too sanguinary in the cases of lesser offences. They hold that the punishment of death ought to be inflicted only for crimes of the highest magnitude; and*

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*philanthropists of our own nation have accorded with their opinion. Such persons as have had no opportunity of inquiring into the subject will hardly credit the assertion that there are above one hundred and sixty offences punishable by death.*

We are accustomed to murder having an exalted status above all other crimes. It is elevated above all other offences within the criminal law. From 1861 until the abolition of capital punishment just over a century later, murder was in effect the only crime punishable by death. The gruesome formalities of executions took place behind closed prison doors after 1868, lending an added layer of mystique to the convicted killer's final moments that didn't accompany other crimes.

When hanging was finally abolished in 1965 the capital sentence was replaced by one of life imprisonment, and murder is still the only offence for which the court must impose a life sentence upon conviction. But not all murders are created equal – and the question of whether all murderers should be treated equally has vexed the justice system for a long time. Imposing the same sentence, whether for life or death, does not take into account the infinitely variable shades of grey in the horror and culpability of the crimes caught by the same criminal offence. And as medical science and psychiatry advanced in the 19th century, so the courts had to recognise that some killers were as much in need of help as they were of punishment.

The truth of murder is stranger, darker and more compelling than any fiction. It is made up of a patchwork of stories, stories of crime and punishment but also of justice and injustice, of

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people, places and very personal tragedies; all taking place against a backdrop of perpetual social shifts and political cataclysms. In tracing this history, we can see the effect that these deaths have had on all of our lives today. After all, the scariest stories are always the ones that are true.

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In the England of a thousand years ago, a rudimentary legal system was only just beginning to emerge and it was a time when life truly was nasty, brutish and short – and violent death was a fact of it. Each man carried his own *wergild*, which was the financial value placed upon his life. If he were to be killed, his killer was required to make *bot*, or compensation, to the deceased's kin to the value of his particular *wergild*. And that, by and large, was the end of the matter. The payment of *bot* had exculpated the killer's act and the law took no further interest.

Things began to change following the landing of the Vikings on English shores in the 9th century. The kingdom that they established here, which covered a swathe of eastern and northern England, was known as the Danelaw and was subject to the rules and customs of the occupying Norsemen. One of these outlawed the killing of a Dane on English soil. This was one of the earliest examples of a discrete category of killing being recognised by the law, and it would pave the way for the creation of a distinct crime of murder in the centuries that followed.

Around the 10th century, from a primordial soup of mud, woad, Old English and bastardised French, the concept of

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*mordor* emerged. This was the first time that the law acknowledged separate classes of homicide, although scholars are divided on the original meaning of *mordor*.<sup>\*</sup> It was clearly related to, if not directly derived from, the French idea of *mordre* and the German word *morth*. Both of these denoted a killing with an element of secrecy or concealment, and it was the subterfuge, rather than the killing itself, that marked it out as a special category. By the reign of King Cnut in the early decades of the 11th century, *mord* or *mordor* was generally accepted as referring to a secret killing, and, importantly, one that could not be simply atoned for by the payment of *wergild*. Just a short time later, in the laws set down during Edward the Confessor's reign between 1042 and the Norman conquest in 1066, the offence had been renamed *murdrum* and was punishable by death. Unlawful killing was now a matter sanctioned by the state, rather than being simply a question of compensation between citizens. Murder's long and fascinating criminal career had begun.

The modern offence of murder is a direct descendant of *murdrum*, but there is a world of difference between the crimes they denote. *Murdrum* still retained the original sense of a secret slaying inherent in the original *mord*; other killings, even if deliberate, were treated as lesser homicides or may not have even been considered criminal at all. By medieval times, the meaning of the crime was undergoing a shift that remains

<sup>\*</sup> It has been suggested that J. R. R. Tolkien borrowed the term when seeking a name for his fictional Middle Earth realm ruled over by the Dark Lord Sauron.

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fundamental to our understanding of it even today. The focus had moved from the secret nature of the act to the malicious intention that had motivated the killing. Legal texts from the 13th century separated homicides into *voluntarium* (intentional) and *casuale* (accidental). *Murdrum* was generally included in the category of *voluntarium* killings. Through the 14th century, the term made increasingly frequent appearances in official records and legal documents, gradually becoming anglicised to ‘murder’. The concept of manslaughter, as a secondary category of culpable homicide below murder, took a little longer to emerge. The word is first recorded in a legal tract from the early 1500s, and it wasn’t until the middle of the century that lawyers and courts began to seriously concern themselves with the differences between these two types of homicide.

By the time the renowned jurist Sir Edward Coke was writing his voluminous and influential legal textbook *Institutes of the Lawes of England* in the first half of the 17th century, the law had become relatively sophisticated in its treatment of homicides. Coke’s was the pre-eminent legal mind of his day. He was called to the bar in 1578, the start of an illustrious legal career that encompassed stints as attorney general and chief justice, serving both Elizabeth I and James I. As attorney general, Coke was the main prosecutor and legal adviser to the Crown and was involved in many of the great trials of the day. The contentious accession of James to the throne was the catalyst for all manner of plots and conspiracies, and Coke was kept busy with a caseload of treasons. He prosecuted Sir Walter Raleigh for treason in 1603, following the uncovering of his

involvement in a plot to make Lady Arabella Stuart monarch in James's place. Coke's most notorious trial was of the surviving Gunpowder plotters in 1605. This was his last major trial before his elevation to the judiciary in 1606, when he became Chief Justice of the Common Pleas, a title he shares incongruously with a Wetherspoons in Keswick, Cumbria.

Coke was clearly a shrewd political operator, as he managed to keep head and neck together while proving a thorn in the side of parliament and the Crown after his judicial appointment. In 1616 James eventually ran out of patience and Coke was removed from his judicial post. This fall from grace proved no barrier to a subsequent political career for Coke, and in 1621 he became MP for Liskeard on the order of James. Coke retired from politics in 1629 and lived out a lengthy (in 17th-century terms) retirement at his Buckinghamshire estate. He died in 1634 at the grand old age of eighty-two, having fitted in two marriages, twelve children and an extensive corpus of legal writing alongside his career.

So what does the august Coke have to say on the subject of bloody murder and manslaughter?

*Murder is where a man of sound memory, and in 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.*

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According to Coke, a killing was to be considered manslaughter when it took place ‘upon a sudden occasion; and therefore is called chance-medley’. This was a historic term, a corruption of the French *chaude melle*, meaning literally ‘hot fight’, separating the premeditated ‘cold-blooded’ murder from the spontaneous ‘hot-blooded’ (but still intentional) attack, which was treated as chance-medley or manslaughter. Throughout its history, the legal dividing line between murder and manslaughter has been one of the most contentious issues in the canon of homicide law, and even following Coke’s statement the positioning of the boundary between the two crimes would continue to tax the courts for the next two hundred years. But in the main, Coke’s words were accepted as being the definitive statement of the law and have become something akin to the founding gospel of the English crime of murder.

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In the four hundred years since Coke set out his definition it has not really been improved upon or superseded. A couple of centuries of case law have finessed its elements and introduced new aspects, but essentially this remains the legal definition of murder. Of course, Coke didn’t create the offence – he was simply writing down the law as it was understood to be at that time. But his statement, chanted like an incantation by innumerable law students down the years, has been brought to life by successive generations of judges and lawyers applying it to the crimes that come before them and has long been applied as the definition of the crime of murder within English law. To get to the bottom of what murder truly means, we’ll explore the

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crimes and cases that have been instrumental in shaping the conception and understanding of the law of murder, manslaughter and all things homicidal since Coke put pen to paper back in Jacobean times.

Under the umbrella term of ‘homicide’ sits a raft of crimes in descending order of heinousness, culpability and, consequently, notoriety. Top of this grisly pile is murder, defined by the presence of an intention to kill or cause serious harm to the victim concerned. All murders are homicides, but not all homicides are murders. Beneath murder sits manslaughter and, as we will see, ‘of all crimes, manslaughter appears to afford the most difficulties of definition, for it concerns homicide in so many and varying circumstances’. Indeed, the spectrum of human tragedy covered by the offence of manslaughter ranges from the essentially murderous to the almost accidental. It encompasses those who kill deliberately in response to some antagonising action on the part of the deceased, right through to the careless or neglectful, who fail to heed the consequences of their actions.

The development of this concept of committing manslaughter by gross negligence has liberalised the idea of when and by whom manslaughter can be committed, incorporating deaths that occur in less traditionally murderous situations, such as healthcare settings and, for a while, out on the road. It also paved the way for the increasing criminalisation of companies in the 20th century, meaning that organisations and entities whose shoddy employment practices or disregard for public safety cause fatalities can be caught within the ambit of unlawful killings recognised by the law.



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Finally, this ‘pyramid of homicide’ is supported by a broad base of other crimes relating to deaths in specific circumstances, where the legal requirements of murder and manslaughter are not met. These include the causing death by driving offences arising from fatal road traffic accidents, infanticide, and some offences under health and safety legislation. These offences are generally viewed as less serious; they are distinct from but are still descended from and related to the law of murder, its second cousins once removed, perhaps.

The offence of murder that Coke defined consists of two elements. Then, as now, a jury must be satisfied of both beyond reasonable doubt in order to convict someone of murder. The first is the killing of another person – in legal terms, this is known as the *actus reus* or prohibited act. The second element of the crime is the mental element, or *mens rea*. Literally, this translates as ‘guilty mind’ and is essentially the mental intention to commit an offence, which creates the concept of criminal ‘fault’. To be guilty of murder, it is not enough to simply kill someone; you must have done it intentionally, as, by and large, you should only be criminalised for things you did on purpose. In Coke’s parlance, it is that the killing was done ‘with malice aforethought, either expressed by the party or implied by law’.

The phrase ‘malice aforethought’ has entered the lexicon and inspired the title of many a potboiler down the years. But it has also given rise to the most common misconception about the law of murder, which still informs much debate and discussion about the crime today. The modern interpretation of Coke’s ‘malice aforethought’ is the intention to kill or commit

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serious physical harm. In popular culture, this has translated into a preoccupation with premeditation. While this can be strong evidence of intention, it is not a requirement of the definition. You don't need to have purchased the ice pick or dug the shallow grave in just the right spot for the jogger or dog walker to stumble over it in advance of the killing. The only thing that matters is what you intended at the time of the fatal act. It is irrelevant that this intention may have only crystallised in the seconds before you pulled the trigger or that it dissipated in the following instant, when the enormity of taking a human life hit you. At her trial for the murder of her lover David Blakely in 1955, Ruth Ellis, to whom we will return, was asked by the prosecution what she intended to do at the time that she shot him. Her reply is probably the most precise and succinct statement of the *mens rea* of murder ever uttered in a courtroom, and it probably signed her death warrant – 'It's obvious. When I shot him, I intended to kill him.'

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In the intervening centuries, the law of homicide has undergone a remarkable transformation from the parameters first set down by Sir Edward Coke to the crimes that come before our courts today. To understand this, we must delve into the cases that make the headlines but also into plenty that don't, to explore the crimes and the characters who have been so instrumental in shaping the law over time, what it means for all of us today and the journey it has been on to get here.

The number of ways and means of ending a human life may have mushroomed over the years, but the fundamental reasons

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for doing so are enduringly constant. Greed, lust, rage and gain are the archetypal triggers for taking a life, and this is as true today as it has ever been. But in the century or so following Coke's bold statement of what murder was, the most important issue for the law was determining what it was *not*. The reasons for which it was excusable or even permissible to take a life would be born out of some of the most dramatic cases to ever trouble a courtroom.

While these stories reveal much about the time and place in which they occurred, they continue to resonate with us today. The circumstances in which we criminalise those who kill have revolved and evolved countless times since the law of murder was last defined half a millennium ago, changing and shifting to reflect the fears and obsessions of each successive generation. The law itself has been shaped by a cast of thousands over several centuries, more often than not being moulded by the unfortunate, ill-judged and misguided, rather than the truly wicked. In large part the history of the law of homicide is a tale of everyday human interactions gone slightly awry, with terrifying consequences for all concerned.