

# part one

## placing homicide in context

### 1 Deconstructing Homicide

#### Chapter overview

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Homicide is the most serious form of violent crime. It is uniquely harmful and strikes at the very heart of what most of us hold most precious – our life. As Falk (1990: xi) put it, ‘the only possession any of us truly have is our lives’. As well as the obviously devastating consequences to victims of homicide, the effects reach far wider to family and friends of the victim, offenders themselves and the community as a whole. Whilst homicide is undoubtedly a tragic event, at the same time it holds, for many, great interest and, in some cases, fascination. It is the subject of constant press attention and of numerous popular books and films. By contrast, however, homicide has undergone relatively little rigorous study by criminologists in the UK for some significant time. There are a small number of exceptions. For example, some Home Office funded homicide related projects, such as possible ways to reduce or prevent homicide in the UK (see Brookman and Maguire, 2003), and an ESRC funded project dealing with homicide in Britain.<sup>1</sup> Generally speaking though, homicide had suffered from academic neglect in the UK and for this reason alone this text is long overdue. Its overarching aim is to fill a glaring gap in the literature by provide an accessible and comprehensive yet challenging overview of homicide for both teaching and research purposes. Whilst clearly focused upon the UK experience of homicide, the text necessarily draws upon international

literature, research and debate. At the same time it draws upon the author's own research into homicide in the UK.<sup>2</sup> In traversing different features, aspects and forms of homicide, important questions at the very heart of theoretical debate about this phenomenon will be addressed.

## Plan of the Book

The remainder of this chapter comprises a detailed consideration of the meaning of the term 'homicide' – from both a legal standpoint and in terms of how homicide is socially constructed. Although legal categories of homicide may appear clear cut, in reality a very fine, and often artificial, line divides 'murder' from 'manslaughter' or 'accident' or, as Croall (1998: 179) notes, 'licensed killings' by law enforcers or euthanasia. As will be revealed, the divide between acceptable and unacceptable killings is socially, historically and culturally constructed. In addition, this chapter will explore the 'dark figure' of homicide and critically consider the widely held view that homicide is amongst the most 'visible' crimes in society. This is followed, in Chapter 2, by an overview of patterns, trends and forms of homicide in the UK, in other words, a consideration of how homicide in the UK 'looks'. In particular, we will consider a number of socio-demographic characteristics of killers and their victims (such as the gender, age, social class and race) as well as features of the homicide event (such as the methods or weapons most often used by killers, and temporal and spatial features of homicide). A basic classification of homicide in the UK is also presented and discussed in Chapter 2; subsequent chapters unravel in much finer detail the particular characteristics and underlying motives of different forms of homicide.

The text then turns, in Part Two, to explanations of homicide. We will consider, in some detail, the three major disciplines of biology, psychology and sociology and their contribution to understanding homicide. Each of these chapters deals with homicide essentially as a 'whole', paying only occasion attention to particular manifestations of homicide.

Chapters 6 through to 9 (Part Three of the text) unravel the nature, circumstances and possible explanations of a number of distinct forms of homicide. There are various ways of classifying or 'slicing up' homicide for the purposes of description and explanation. For example, one can focus upon the 'social relationships' that unite offenders and victims (that is, domestic homicide, stranger homicide, infanticide, gang-related homicide and so forth) or alternatively focus upon issues of motivation (that is, revenge killings, sexually-motivated homicide, robbery homicide and so forth). Chapters 6 and 7 take as their starting point the gender of the perpetrator and victim of homicide. Using case study material we will unravel the nature, circumstances and explanations of different forms of homicide committed by men and women, which is in large part determined by the sex of the victim. For example, male-perpetrated domestic homicide is usually very distinct from those occasions when men kill other men. Chapter 8 is devoted to the killing of infants and children and once again a clear distinction is made between male and female perpetrators of child homicide. Chapter 9 considers the phenomenon of multiple homicide, focusing specifically upon serial, mass and spree killers, terrorism (with

a particular emphasis upon Northern Ireland) and corporate homicide. Each of these chapters follows a common format, beginning with discussions of the prevalence of each form of homicide, then providing descriptive examples of each type, followed by evaluations of theoretical explanations.

Finally, in Part Four of the text, we consider how homicide is investigated by the police in England and Wales (Chapter 10) and the potential for reducing or preventing homicide (Chapter 11). The book ends by teasing out some of the most important and recurring issues and themes raised in the text as a whole, as well as taking stock of progress to date in understanding homicide and some potentially useful directions for future research.

The starting point for any comprehensive understanding of the phenomenon of homicide is to make sense of the term itself, to which we now turn.

## Defining Homicide

We all think we know what homicide is. Each year, in the very first lecture of the homicide course I teach to final-year undergraduates, I ask the students to write down what they understand by the term 'homicide' and how they would define it. What is most significant about the responses is reference to the term 'murder'. Over half of the class generally include the term 'murder' in their brief explanation. Linked to this, the terms 'deliberate', 'intentional', 'unlawful' and 'unjust' are found in the vast majority of definitions provided by the students. At the broadest end of the spectrum, some students define homicide as the taking of a life, whilst at the narrowest, reference is made specifically to pre-meditated, intentional killing by one human being of another. And of course each of these are correct – at least in part. What we perhaps do not recognise on initial consideration, however, is the extent to which homicide, like all other crime categories, is socially constructed. Unlawful homicide is not an absolute. Rather, various categories have been constructed over the years that are said to comprise unlawful homicide. Crime cannot exist without the creation of laws by a given society to criminalise particular actions or behaviours.<sup>3</sup> The fact that legal codes vary between different countries and across different historical periods is a clear indication of the socially constructed nature of crime and deviance. Hence the creation of crime categories is a product of societal interaction and reaction to particular behaviours. Very rarely does the image of a large corporation flouting Health and Safety legislation (thereby causing deaths amongst its workers) spring to mind when one thinks of unlawful homicide. This is perhaps not surprising, since the law rarely deals with these 'killings' as homicides. Examples include the slow and painful deaths of thousands of individuals exposed to pernicious dusts, such as asbestos, despite ample evidence, known to employers, of the potentially fatal health risks, or the negligent and fraudulent safety testing of drugs by the pharmaceutical industry, or environmental crimes that cause death due to the dumping of hazardous wastes and illegal toxic emissions (see Slapper and Tombs, 1999 for an overview of corporate crime).

Yet to complicate matters further, whilst, on the one hand, there is little doubt that there exists some sense of a shared meaning of homicide amongst members of

a given society, it is also the case that there is considerable blurring at the edges when one moves into the domain of trying to ascertain responsibility, culpability, intent and so forth. So whilst it may be relatively straightforward (some of the time) to discover whether one individual or group of individuals has taken the life of another, any simplicity ends here. The circumstances that surround homicide vary enormously, as does public and media response to different forms of homicide. The death of one young man at the hands of another during a pub brawl is likely to be viewed very differently from the rape and killing of a young woman by an unknown male whilst making her way home at night. The killing of child by a paedophile will tend to be viewed as particularly heinous, whilst the killing of a new-born baby by its mother may be viewed less harshly. As Hazel May observes, 'there is no single social meaning attached to the killing of one person by another' (1999: 489). An interesting question that follows then is what sorts of factors affect our conceptions of homicide?<sup>4</sup> Specifically, what makes some killings seem less heinous than others and why does mass public outrage follow certain killings and not others? According to May (1999), social meanings attached to acts of violence (including homicide) seem to revolve around notions of culpability and victimization. Culpability refers to the degree to which the perpetrator is seen to be responsible for the violent act and its consequences. There are many ways by which the law of homicide mitigates culpability, which we will examine below in further detail. Suffice it to say, issues such as intent, mental state, self-defence and so forth are often taken into consideration. Beyond the law, however, members of society often make up their own minds about how heinous a particular killing is and how guilty the perpetrator is – often in conjunction with media coverage of the crime. In part, this owes something to the 'status' or 'social profile' of the killer, that is, his or her age, gender, social class and background and relationship to the victim. Hence, when women and children kill this generally provokes greater shock and outrage than when men kill each other. However, another important feature of this decision is, according to May, based upon notions of victimization. For example, if the victim was seen to have provoked the offender in some way (often referred to as 'victim-precipitated' homicide), they may be viewed as in somehow responsible for the violent actions that followed and hence are not wholly innocent. Alternatively, at the other end of the spectrum, victim vulnerability can play an important role in fostering high levels of condemnation toward the offender. So where children or the elderly are killed, emotions generally run very high. Hence, as May puts it, 'culpability and victimization can be seen to be inextricably bound' (1999: 490).

May's work raises further important questions. In particular, what factors affect how victimization and culpability are conceived in the first instance? Why are we particularly shocked and appalled when the very young or elderly are killed? After all, in some societies under certain conditions, these 'vulnerable' groups would be the first to be left to die. For example, among the Inuit, who live(d) in conditions that Europeans usually considered unsurvivable, infanticide or abandonment of the sick or elderly was not considered a crime in times of food shortage. The hunter was the most valuable member of the family or group, and thus was the last to starve (see Mowat, 1951). There is much evidence that the practice of infanticide, as a method of controlling population size, has occurred in many societies (Resnick, 1972)

and it was not until the nineteenth century that there emerged the beginnings of a public outcry against infanticide (Lambie, 2001). Despite this, the practice continued in the UK and throughout Europe, Canada and the US due to financial concerns and the social stigma associated with illegitimate births (Moseley, 1986). So in various cultures, under certain circumstances, not only is 'murder' acceptable but the decisions as to who must be left to die may appear particularly distasteful and immoral to those not part of that culture. As Levi and Maguire observe in their discussion of the role of culture in shaping people's attitudes to violence, 'those who commit "crimes of obedience" define themselves and are commonly defined in their culture, or at least their narrower reference group, as "loyal" rather than as being "violent conspirators in a process of genocide"' (2002: 799). Examples of this cultural 'state of denial' apply, for example, to the murder of some 800,000 Tutsis in Rwanda during the 1990s or the millions killed in the Nazi Holocaust (see Levi and Maguire, 2002). Recent research findings from the ESRC (Economic and Social Research Council) Violence Research Programme found that unlike recent notorious crimes, such as the murders of James Bulger and Sarah Payne, Victorian equivalents failed to ignite widespread social anxieties (Archer et al., 2002). For example, in 1855, 7-year-old James Fleeson was abducted by two 10-year-old boys who knocked him to the ground with a half brick and drowned him in the Leeds-Liverpool canal. All three boys lived in the same street and the entire street (apart from Fleeson's parents) soon came to realise what had occurred and shielded the perpetrators' identities from the police. Once caught, the boys were convicted of manslaughter and imprisoned for one year (Archer et al., 2002). This case, which bears striking similarities with the abduction and murder of James Bulger 138 years later in 1993, received a very different public and criminal justice response.<sup>5</sup> Clearly, many factors, such as cultural and religious values, historical processes, socio-demographic factors (such as class, age, gender), social conditions and the effects of the media in reporting crime can impact upon how a given individual or group of people comes to perceive and react to homicide. The extent to which homicide, like all crime categories, is socially constructed will be a recurring theme of this chapter.<sup>6</sup> First, however, it is necessary to outline the legal framework of unlawful homicide before moving toward a critique.

### Study Task 1.1

Make a list of five very different scenarios of killing (that is, the killer(s), victim(s) and the circumstances of the killing) and consider the extent to which each of these might cause public outcry and the reasons for such reactions. Be imaginative. Consider examples such as euthanasia, abortion, corporate homicide or fatal child abuse cases in order that you can explore issues such as 'shared responsibility' for death. Place your examples on some kind of continuum from 'excusable' at one end of the scale to 'most unacceptable' and 'heinous' forms of killing at the other. Consider what influences your choices and decisions.

## The Law of Homicide

It is not possible to discuss the law surrounding homicide in the UK as a whole due to differences in definition across certain jurisdictions. Of the four countries that make up the UK, England and Wales share a common legal system and are treated as a single entity for the purposes of recording crime. Scotland has a very different legal system based on Roman law whereby offence definitions are often inconsistent with those of England and Wales. Northern Ireland has a separate Criminal Justice System that has been profoundly affected by terrorist troubles (Jenkins, 1988). Due to these anomalies, and for the sake of clarity, it will be necessary to deal mainly with the law related to homicide in England and Wales, referring separately to Scotland and Northern Ireland where necessary.

The term 'homicide' refers to the killing of a human being, whether the killing is lawful or unlawful. Examples of lawful homicide would include the killing of another human being during wartime combat, the implementation of the death penalty or the accidental killing of a boxer by his opponent. Where homicide is defined as unlawful it may be legally classified, in England and Wales, as murder, manslaughter or infanticide. Causing death by dangerous or careless driving are generally marked out as separate categories and will be considered later. Where the law in England and Wales makes a distinction between lawful and unlawful killings, in Scotland a similar distinction exists between criminal homicide and non-criminal homicide. The latter includes 'cases of justifiable or excused killing, and casual homicide, that is, where a person kills unintentionally, when lawfully employed and without culpable carelessness' (Gane and Stoddart, 1988: 479).

Murder, manslaughter and infanticide share a common *actus reus* (guilty act) and are currently the three major offences to fall into the category of homicide. However, the issue becomes complicated somewhat in terms of intent or what is often referred to in law as *mens rea* (guilty mind). Whilst it is relatively straightforward to prescribe or define a particular act with particular consequences as a guilty act, it is far from straightforward to determine to what extent the act or its consequences were intended. In other words, it has to be acknowledged that not all killings are intended and that there exists, therefore, different levels of culpability or guilt amongst perpetrators. Let us now consider how the law has met these complex challenges.

## Unlawful Homicide

The major criteria under which offences subsumed under the heading of unlawful homicide are differentiated essentially revolve around the issues of culpability or intention, which includes some estimate of the degree of premeditation and the mental capacity of the defendant (Mitchell, 1991). The principal distinction made in English and Welsh law is that between murder and manslaughter – not least because historically there has existed a vast difference in the penalties for murder and manslaughter – murder was a capital offence and manslaughter was not (Murder (Abolition of the Death Penalty) Act 1965). Whilst there is only one definition

**Table 1.1 Summary of the definition of unlawful homicide in England and Wales**

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A person is liable for murder through causing a person's death, whether by act or omission, either with intent to kill or with intent to cause grievous bodily harm. That liability to conviction for murder may be reduced to manslaughter if the killing stemmed from provocation, diminished responsibility, or a suicide pact. These are commonly referred to as forms of 'voluntary manslaughter'. Alternatively, where there is no apparent intent to murder, an individual may be liable to conviction for 'involuntary manslaughter' if it is shown that they acted in a reckless or grossly negligent manner or that death resulted from an unlawful and dangerous act.

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Adapted from Ashworth and Mitchell, 2000.

**Table 1.2 Summary of the penalties for unlawful homicide in England and Wales**

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- *Murder* carries a mandatory penalty of life imprisonment.
  - *Manslaughter* carries a maximum penalty of life imprisonment.
  - *Infanticide* carries a maximum penalty of life imprisonment but generally attracts a non-custodial sentence (usually a Probation Order).
  - *Death by dangerous driving* and *causing death by careless driving when under the influence of drink or drugs* both carry a maximum penalty of 10 years' imprisonment.
  - *Causing death by aggravated vehicle-taking* carries a maximum penalty of five years' imprisonment.
- 

of murder (and infanticide), there are a number of different ways of defining manslaughter. Moreover, the vast majority of unlawful killings that do not fall under the heading of murder are included in the category of manslaughter which is, therefore, very broad and diverse, encompassing killings under very different sorts of circumstances. The law has also created special provisions for a mother who kills her baby in the form of the Infanticide Act 1938. Table 1.1 gives a definition of unlawful homicide and the penalties are listed in Table 1.2. The various legal categories that comprise unlawful homicide in England and Wales are considered below.

## Murder

The classic definition of murder, and that which is generally accepted both academically and in practice, is that of Lord Chief Justice Coke from the early seventeenth century;

[W]hen a person of sound memory, and of the age of discretion, unlawfully killeth within any county of the realm any reasonable creature in rerum natura under the kings peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc., die of the wound or hurt, etc., within a year and a day after the same. (Cited in Card, 1998: 184)

Let us briefly unpick this definition. First of all it is worth noting that Coke's definition was recently amended to exclude reference to 'a year and a day after the

same'.<sup>7</sup> The phrase '*rerum natura*' refers to the notion that one can only be held to have killed someone who is 'in being' (as opposed to an unborn child, for example). Finally, the term 'malice aforethought' refers to intent. A conviction for murder requires proof of intention to kill. However, what is not clear from the above extract is that intent to cause grievous bodily harm (that ultimately results in death) is also sufficient for a conviction for murder. We will return to the complex issue of establishing intent below, suffice it to say that intent can be inferred from evidence that the 'defendant foresaw death or grievous bodily harm as a natural and probable (virtually certain) consequence' (Childs, 1996: 54). In essence, the law attempts to distinguish between different categories of homicide in terms of their apparent seriousness or gravity. The extent to which it succeeds is debatable. For example, Ashworth questions whether the 'grievous bodily harm' rule extends the definition of murder too far: 'If the point of distinguishing murder from manslaughter is to mark out the most heinous group of killings for the extra stigma of a murder conviction, it can be argued that the "grievous bodily harm" rule draws the line too low' (1999: 270).

The important point to bear in mind is that murder is a legal category (as, of course, are the other offence categories that we discuss below). A death is not considered a murder in the true sense of the term until a number of legal processes are undergone (see Chapter 10), such as the suspect being charged by the police, committed to Crown Court and ultimately found guilty of murder by a jury (as opposed to a lesser charge of manslaughter, for example or a 'not guilty' verdict). As Adler and Polk point out, 'in a typical jurisdiction only a small number of homicides prosecuted in a year will result in a criminal conviction on the specific charge of murder' (2001: 17). In England and Wales for the period 2000, only 30 per cent of cases resulted in a conviction for murder.<sup>8</sup>

## Manslaughter

Generally any unlawful homicide which is not classified as murder is categorised as some form of manslaughter. This offence is 'extremely broad and ranges in its gravity from the borders of murder right down to those of accidental death' (Law Commission, 1996: No. 237, p. 1). There are two generic types of manslaughter: voluntary and involuntary.

### Voluntary Manslaughter

Voluntary manslaughter describes cases where the accused intended to cause death or serious injury (that is, kills with malice aforethought), but under circumstances which the law regards as mitigating the gravity of the offence. There are three categories of mitigating circumstance, namely that the accused was:

- provoked to kill; or
- was suffering from an 'abnormality of mind' such that his/her mental responsibility for his/her behaviour was substantially impaired ('diminished responsibility'-commonly referred to as Section 2 manslaughter); or
- he/she killed in pursuance of a suicide pact (where the killer is a survivor of the pact) (Homicide Act, 1957: ss 2-4).

### Involuntary Manslaughter

This expression covers cases where there was no intention to kill or to cause serious injury, but where the law considers that the person who caused death was blameworthy in some (other) way. In recent years it has generally been accepted that someone may be convicted of involuntary manslaughter by one of two routes – constructive (or unlawful act) manslaughter or reckless/gross negligence manslaughter. Constructive manslaughter is said to occur where the defendant commits an unlawful and dangerous act likely to cause physical harm such that death is the accidental result of an unlawful act. Recklessness/gross negligent manslaughter occurs where a person caused death through extreme carelessness or incompetence. The Law Commission note that ‘frequently the defendants in such cases are people carrying out jobs that require special skills or care such as doctors, ships’ captains or electricians, who fail to meet the standards which could be expected of them and cause death’ (1996: para. 2.8).

### Infanticide

Infanticide is a defence to a particular form of murder. It applies when a woman causes the death of her own (biological) child under 12 months while ‘the balance of her mind was disturbed by reason of her not having fully recovered from the effects of having given birth to the child, or by reason of the effects of lactation consequent upon the birth of the child’ (Infanticide Act 1938: s 1). The Infanticide Act provides that a woman found guilty of infanticide should be dealt with as though guilty of voluntary manslaughter. The creation of this Act has a long and interesting history (see Ward, 1999). For some commentators, the Infanticide Act affords women special treatment and leniency that is no longer appropriate (see Lambie, 2001). The separate form of legislation for mothers was originally introduced in 1624 (Act to Prevent the Destroying and Murdering of Bastard Children – see Gunn and Taylor, 1995) to lessen the penalties for unmarried women who killed their babies during, immediately after, or within a few days of birth in order to conceal the illegitimate pregnancy.<sup>9</sup> This has subsequently been extended to cover the first year following childbirth and is essentially less about social factors of poverty and illegitimate childbirth and more about the association between the effects of childbirth and temporary psychoses. The idea that women are prone to ‘temporary madness’ following childbirth (Ward, 1999) has a long and persistent history. Some critics argue that there is no need for a specific offence dealing with one form of mental disturbance (that is, post-partum psychosis) when the law offers the general defences of insanity and diminished responsibility (Mackay, 2000). Wilczynski and Morris (1993) argue that many women are treated much more leniently, not simply in terms of the reduction of infant killing from murder to manslaughter, but regarding the sentencing practice and disposals of the female offenders involved. Furthermore, some commentators note that psychiatrists themselves cannot agree upon the nature and aetiology of post-partum disorders (Maier-Katkin and Ogle, 1993) (we will return to the issue of insanity/diminished responsibility shortly).

Scottish legislation, in contrast to the law of England and Wales, makes no special provision for maternal infanticide. A mother or father who kills his or her infant in Scotland is charged with either murder or common law culpable homicide

as for any other homicide offence (Marks, 1996). So whilst the parent's mental state may be taken into consideration at trial, there is no legal recognition of a causal link between maternal mental illness and infanticide (Marks, 1996).

### Causing Death by Driving

As indicated earlier, the manner in which statistics are collected on homicide in England and Wales is such that only murder, manslaughter and infanticide are grouped together and subsumed under this general heading.<sup>10</sup> However, a great number of deaths occur each year that arise as the result of the dangerous or careless driving of a motor vehicle. That these are not treated as cases of murder or manslaughter owes less to the culpability of the perpetrators and more to the context in which these killings take place. As Clarkson observes, 'when a person has been unlawfully killed, the law's response is strongly influenced by the context in which the killing took place' (2000: 133). Hence in the case of dangerous or careless driving leading to death or fatal breaches of Health and Safety at Work legislation, the most common response is for a prosecution to be brought in relation to the underlying dangerous activity. It is, therefore, important to be clear as to the law surrounding vehicle-related killings.

The law surrounding deaths on the road has changed frequently over the past 15 years and remains in a state of flux. Moreover, there remain calls for more stringent penalties for those who cause death by some form of dangerous or negligent driving. We will return to these debates shortly. For now we will simply deal with the current legislation surrounding death by driving. Most of the provisions we discuss are contained in the Road Traffic Acts of 1988 and 1991.

The most serious charge in connection with a death on the roads is manslaughter (or in Scotland, culpable homicide) for which the courts have the highest penalties available – life imprisonment, unlimited fine and unlimited period of disqualification (DETR, 2000). However, the provision of manslaughter is very rarely used in cases of causing death on the roads (to which we return shortly). What remains, in England and Wales, are three categories of causing death by driving:

- causing death by dangerous driving;
- causing death by careless driving when under the influence of drink or drugs; or
- causing death by aggravated vehicle-taking.

In terms of a hierarchy of seriousness, causing death by dangerous driving ranks highest (Road Traffic Act, 1988: s 1). The offence requires two separate elements. The first is dangerous driving, which is defined under section 2 of the Road Traffic Act 1988 and refers to driving 'far below the standard of driving expected of the competent and careful driver' and 'driving in circumstances which showed complete disregard for any potential dangers'. The second element is that the Crown must prove that the driving caused death, that is, there must be a direct relationship between the driving and the death. If these factors are proven the Court can impose a sentence of up to 10 years imprisonment, an unlimited fine, a period of disqualification (which

could be for life) and an extended retest. Forfeiture of the vehicle is also available (DETR, 2000). Causing death by careless driving when under the influence of drink or drugs is next on the seriousness tariff and again carries a maximum prison sentence of 10 years (Road Traffic Act, 1991). Under this offence, drivers' responsibility for death is greatly increased, when compared to the lesser offence of careless driving, by being under the influence of substances known to affect judgement and driving ability (Home Office Department for Transport, 2002). Finally, causing death by aggravated vehicle-taking (commonly referred to as 'joy-riding') carries a lesser maximum prison term of five years. This offence involves the theft and subsequent dangerous driving of a vehicle resulting in death (Aggravated Vehicle Taking Act 1992).

## Summary

So far the discussion had centred upon establishing the legal categories of unlawful homicide in England and Wales, with some reference to Scotland.<sup>11</sup> In addition, the often neglected offence categories related to causing death by driving have been outlined. What follows is some critical reflection of these legal boundaries in an attempt to unravel more carefully the term 'homicide' and to move toward an appreciation of its socially constructed nature.

## Assessing the Legal Framework of Unlawful Homicide

Many legal professionals have noted problems with the various categories of law relating to unlawful homicide, some of which we will consider here.

### The 'Broad' Category of Manslaughter

For many years there has been sustained criticism of the very broad category of manslaughter, which encompasses vastly different sorts of killings. As the Law Commission observes, 'it ranges in gravity from cases that only just fall short of murder (e.g. arson that results in death) right down to cases that are only slightly more serious than accidental death' (1996: 2) (for example, where a person with a particularly thin and fragile skull is subjected to a very minor assault, bangs his or her head and dies of a fractured skull). Because of the enormous breadth of this offence, it has been observed that difficulties exist in delineating where it can logically be seen to begin and end (see Card, 1998; Dine and Gobert, 1998). Furthermore, critics have observed that the 'law is riddled with confusion' in respect of the two categories of involuntary manslaughter as a result of overlap between the two categories amongst other things (Padfield, 1998).

Clear evidence of the difficulties surrounding the existing law in relation to manslaughter becomes evident when considering recent calls for reform. In May 2000, the government published a consultation paper concerned with reforming the law on involuntary manslaughter (unintentional killings). This paper was based

upon, and represented a partial response to, the Law Commission's earlier proposals for reform of the law on involuntary homicide (Law Commission, 1996). Both reports reviewed several of the problems with the existing law in relation to involuntary manslaughter. Notably, the Law Commission observed that having one offence of involuntary manslaughter 'to cover such a wide range of mischief presents judges with significant problems, particularly when determining what the appropriate sentence should be in a given case' (Home Office, 2000: 9). A further criticism outlined was the ineffectual nature of current legislation to deal with corporate killings, to which we shall return below. Between them, both documents outline a number of reforms, some quite significant, such as the introduction of two separate offences of 'reckless killing' and 'killing by gross carelessness' and a new offence of 'corporate killing'. In addition, the government proposed the introduction of a third offence of 'death resulting from intentional/reckless causing of minor injury'. This proposal is not in keeping with the Law Commission proposals and in fact goes against one of their main concerns in relation to the law surrounding 'accidental' homicides. Under the current law, a person who commits what would otherwise be a relatively minor assault (either intentionally or as the result of some reckless act) will be guilty of involuntary manslaughter if the victim dies as a result – even if death was unforeseeable. For example, if, during the course of a fight, A gives B a small cut – but A had no way of knowing that B had haemophilia – and B then dies, A would be liable under 'dangerous and unlawful act manslaughter', which carries a maximum penalty of life imprisonment (Home Office, 2000). Essentially, the Law Commission argues that people should not be punished for an unlucky event or 'the lottery effect'. It believes that such events should carry a maximum penalty of five years' imprisonment. The government feel that 10 may be more appropriate (see Home Office, 2000: 12).

### Proving Intent

In relation to murder, numerous commentators have observed how reliance on the concept of intention has caused much difficulty in the 'delineation of murder' (Lacey and Wells, 1998: 574). What constitutes intention is a debated issue, as Rock notes:

[I]ntent is not easy to prove – and it may well reflect judgements about the moral worth of the defendant and his victim, tactical judgements about the prospect of securing a conviction, and the success of defences mobilised around the vexed question of a sound mind, rather than some ontologically absolute distinction between classes of behaviour. (1998: 3)

In short, proving intent presents formidable problems and criminal law has grappled for some time with the evidentiary substance of this requirement.

### Diminished Responsibility

Similarly complex issues surround the plea of 'diminished responsibility'. This 'defence' allows for discretion in relation to the sentencing of mentally abnormal

offenders charged with murder. Though not intended as such, it has eclipsed and in many respects replaced both the 'insanity' and 'unfit to plead' defences (see Mackay, 2000). Most relevant to the current discussion, critics have argued that 'diminished responsibility is interpreted in accordance with the morality of the case rather than as an application of psychiatric concepts' (Williams, 1983: 693). So, aside from the well-established difficulties of assessing whether an individual is suffering from some mental abnormality (see Davidson and Neale, 2001; Ritsher and Luckstead, 2000; and Rosenhahn, 1973), there are arguments to suggest that the use of this defence is not, in practice, wholly concerned with unravelling the mental health of the defendant. Criticisms have also been made of the medical basis of the Infanticide Act 1938. For example, Ashworth observes that the medical basis of the Act 'is now discredited ... [and] ... reference to the effect of lactation is without foundation' (1999: 292). Whilst not wishing to deny the fact that some women do suffer from psychiatric disorders connected with the after-effects of childbirth, Ashworth (1999) points out that the specific links between lactation and infanticide are somewhat tenuous, whilst recognition of the wider social and situational factors that can give rise to mental disturbance are slowly being acknowledged.

### Provocation

Similar difficulties of interpretation surround the defence of provocation. The Homicide Act does not make fully clear the definition of provocation (Jefferson, 1999). This has allowed for significant debate in relation to what amounts to provocation (for example, the law before 1957 took into account only acts; words as well as deeds can now be taken to constitute provocation). Debate has also ensued regarding the notion that a response to provocation is one of 'sudden and temporary loss of self-control'. Hence, any 'cooling-off' time between provocation and reaction to it, the weaker the case for using provocation as a defence to murder, since provocation is seen to normally occur on impulse in hot blood. Critics have observed that this defence distinguishes between men and women. Women are more likely to kill their spouses as a result of planning (often referred to as 'slow burn') than men, who tend to kill in the heat of the moment (Jefferson, 1999). Hence, the provocation defence can be seen to favour men. Yet it has been argued that women may not be able to act on the spur of the moment against a stronger male aggressor and may have to wait to strike back when he is asleep. Because of the 'sexually biased' nature of the provocation defence, several critics have called for its abolition. For example, Horder (1991) argues that the requirements of sudden retaliation fails to capture the reality of the lives of many (battered) women (see also Wells, 2000 and Edwards, 1996). Whatever the rights and wrongs of this issue, it is clear that as one begins to unpick the circumstances of different kinds of homicide, the law seems unable to cope and the notion of any clear-cut or realistic distinctions between particular legal categories quickly dissipates.

### Murder and Attempted Murder

An interesting example of the oddity of the law surrounding homicide is illustrated by contrasting the burden of proof and penalties for murder and attempted

murder. The Committee on the Penalty for Homicide (1993) observe that there is a common misapprehension amongst non-legal individuals that a person can be convicted of murder only where it has been established that he or she intended to kill. In fact, the prosecution need only prove intent to cause serious injury. If death ensues, however unexpected and unintended, the offence of murder is established and the mandatory life sentence follows (Committee on the Penalty for Homicide, 1993: 19). It is these cases which form the majority of convictions for murder – not those where an intent to kill has been established. This begs the question of how different in reality many homicides resulting in murder convictions are from those of manslaughter and illustrates the real difficulties in ascribing motives and apportioning distinct levels of culpability. This is exemplified when the offence of murder is contrasted with that of attempted murder. For, unlike murder, it is necessary for the prosecution to prove a specific intent to kill (not simply cause serious injury) in cases of attempted murder. So one might suggest that the burden of proof is higher in cases of attempted murder. Yet at the sentencing stage we find that the mandatory sentence of life imprisonment does not apply, sentencing being at the discretion of the judge. Whilst the different penalties for murder and attempted murder obviously reflect, in part, a recognition of the importance of the loss of life, the moral culpability in the offence of attempted murder, with its necessary intent to kill, is often much greater than the offence of murder where 'intent to kill is not a necessary ingredient' (Committee on the Penalty for Homicide, 1993: 19).

### Study Task 1.2

As indicated earlier, it has been argued that 'diminished responsibility is interpreted in accordance with the morality of the case rather than as an application of psychiatric concepts' (Williams, 1983: 693). Consider to what extent you agree with this view. Does 'morality' play a role in other legal defences of homicide?

### Killings that Don't Count

Because of a range of complexities involved in establishing culpability and guilt and because of the different social meanings attached to homicide, killers are not treated equally. Rather, certain types of killings are rarely prosecuted, or where they are, they are prone to collapse. Put another way, certain groups of individuals are much less likely than others to be held accountable for killing. Of course, the reverse is also true in that certain sections of society are more likely than others to feel the full wrath of the law. The operation of the death penalty in parts of the US is perhaps a very clear example of the arbitrary and discriminatory nature of criminal law. Amnesty International has detailed widespread examples of racially-motivated prosecutions, convictions and death sentences (visit [www.amnesty.org](http://www.amnesty.org)). Overall, it has been well established that black and working-class individuals are much more

likely than white middle-class individuals to undergo a capital murder trial. Hence, if found guilty, they are sentenced to death, whereas their white counterparts will be sentenced to life imprisonment (see Radelet and Pierce, 1985; Hood, 1996; International Commission of Jurists, 1996). Here I will focus upon some examples of 'killings' that are often treated more as though accidents than acts with some responsible or liable culprit.

### Corporate Killings

Though rarely perceived as homicide or prosecuted as such, various forms of corporate crime kill; for example, unsafe working environments or conditions, unsafe pharmaceutical products, unfit food products and illegal emissions into the environment (see Slapper and Tombs, 1999). Corporate (business) crime has been defined as illegal acts or omissions 'which are the result of deliberate decision making or culpable negligence within a legitimate formal organization' (McLaughlin and Muncie, 2001: 56). Hence, corporate killings can be referred to as deaths which result, at least in part, from negligence or deliberate decisions by a corporate body (see Chapter 9). It has been argued, that in terms of the number of lives lost, such deaths represent the most significant single category of homicide in the UK (Levi, 1997).

The Law Commission, in its review of involuntary manslaughter in 1996 (report No. 237), noted that many people die each year in factory and building site accidents, many of which could and should have been prevented. Moreover, they found only four prosecutions of a corporation for manslaughter in the history of English Law (1996: 1.10), only one of which resulted in a conviction. The Law Commission observed that part of the reason for the absence of convictions in such cases revolves around the difficulties of mounting a manslaughter prosecution against a large-sale corporate defendant. Significantly, of the four cases mentioned above, it was a one-man company that resulted in a conviction. In short, difficulties arise in identifying individuals to hold responsible who are part of a large company where responsibilities are diffuse and shared. This is further exacerbated, of course, where companies or their components are spread across the globe. Croall (1998) also refers to the 'diffusion of victimisation', whereby the victim is not always identifiable, or may not yet be aware of their victimisation (it may be so minimal that they have not noticed, or will only become apparent over a period of time, thus there is no immediate reaction or detection). For example, the immediate impact of the Chernobyl nuclear power station fall out in 1986 was blatantly clear, however, the full affects and its wider consequences will only become evident after several decades (Hughes and Langan, 2001).

Finally, it has been suggested that prosecuting authorities fail adequately to investigate such crimes due to a general culture which does not recognise corporate crime as being 'real' crime (Box, 1983, 1996; Slapper, 1993; Wells, 1995). Bergman (1994) estimated that less than 40 per cent of workplace deaths from fatal injuries are typically followed by a prosecution.

It is worth considering some figures for work-related fatalities here briefly. In order to work with confirmed figures and avoid estimates, it is necessary to retreat back a few years. Hence we will consider the period 2001/02. The figures we

consider relate to Great Britain (that is, England, Wales and Scotland combined). The Health and Safety Executive (HSE) recorded 292 fatal injuries to workers (that is, employees and the self-employed) during 2001/02 (HSE, 2003: 1). Whilst the HSE claim that their figures for workplace deaths are virtually complete, these figures are, according to several critics, a gross undercount of the 'true' extent of work-related deaths and merely represent a 'headline figure' (see Slapper and Tombs, 1999). Whilst new 'counting rules' have rectified some of these shortfalls (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 1995) under-reporting is still believed to be significant. In particular, it is still the case that deaths whilst driving in the course of employment are not included in the HSE statistics.

Regardless of these and other shortfalls, there remains a further significant category of fatalities that must be considered in order to determine the number of people killed as a result of work activity, that is, deaths arising from occupationally caused fatal illness. Once again, these statistics are compiled and published by the HSE and, once again, they are a gross under-estimate. Of particular significance here are flaws in the system of death registration and classification, such that doctors and coroners are unlikely to record occupational causes on death certificates (see Slapper and Tombs, 1999: 72). Nevertheless, if we consider the 'official' figure for occupationally caused deaths<sup>12</sup> (that is, asbestos-related deaths of which there are two forms – mesothelioma and lung cancer – and 'other' occupationally-caused diseases, such as farmer's lung and pneumoconiosis<sup>13</sup>) we find a figure of 2,112 (HSE, 2001). Added to our earlier figure of fatal injuries (292), this gives us an official total of 2,404 fatal injuries and diseases to workers, which is *two and a half times greater* than the annual average of recorded homicides for the equivalent jurisdictions. For England, Wales and Scotland combined during 2001,<sup>14</sup> there were 939 homicides recorded (832 for England and Wales and 107 for Scotland).

Finally, we should not forget those relatively rare but highly publicised 'disasters' in which at least an element of corporate negligence can be claimed (Brookman and Maguire, 2003). A quick reckoning of the total deaths in just some of the major disasters in the UK during the last 20 years (such as the Piper Alpha and King's Cross fires, the Bradford Stadium fire and the Hillsborough stadium crush, the Manchester plane fire and the M1 aircraft crash, the sinking of the Marchioness and the Southall and Paddington rail crashes) produces a figure of around 650 deaths (an equivalent of approximately 33 deaths per year). These tragedies have led to growing public concern at the failure of the criminal law to deal effectively with companies whose actions or inaction have played a hand in such disasters and have also played an important role in leading the Law Commission and government to propose the introduction of a new offence of 'corporate killing' (Law Commission, 1996).

### Death by Driving

Another important example of killings that are not treated as 'real' homicides comes in the form of fatal road traffic accidents, which invariably do not appear as homicides in the official statistics (the exception being where a vehicle is used as a weapon to kill). Essentially these killings do not fit the conventional definition of homicide, though there is scope to argue that a number of these fatalities could be

considered as such. The question is whether the context in which such killings take place justifies the present separate offences, or whether such killings should be brought back within the general homicide offences (see Clarkson, 2000, for a summary of some of the debates surrounding the distinction of death by driving from the category of unlawful homicide).

Around ten people are killed in road traffic incidents in the UK every day, which translates to approximately 3,500 in an average year ([www.roadpeace.org/index.php](http://www.roadpeace.org/index.php)). RoadPeace, a charitable organisation, continue to campaign for more effective penalties for drivers who kill on the roads. They note that only around 10 per cent of drivers who kill on the roads are charged with causing death by dangerous driving and the manslaughter provision is so rarely used as to be effectively redundant. The important question this raises in the context of the current discussion is what proportion, if any, of these fatal road accidents should 'count' as instances of unlawful homicide? Roadpeace are clearly of the opinion that the proportion is significant. They argue that the existing system of offences is 'a hotch-potch of ineffectively and inconsistently enforced laws' (RoadPeace, 2001: 13) and cite flaws in the processes of investigation and prosecution as underlying explanations for the 'startling low numbers of prosecutions for dangerous driving and manslaughter' (2001: 15–16).

Michalowski (1975) observes that unlike more conventional homicides and assaults, 'vehicular homicides' are seen to represent an impersonal rather than an interpersonal form of violence. This might explain the greater attention given to 'road rage', as it may 'fit' more readily our conceptions of interpersonal violence. However, research by Michalowski challenges the view that these sorts of behaviour are completely separate or discrete. In exploring the possible relationship between violence on the roads (in the form of vehicular homicide) and criminal aggression more generally Michalowski found that the sociological characteristics of vehicular homicide are nearly identical to those of other urban crimes of violence and claims to have found a strong positive relationship between traffic offences and a history of aggression. He discovered that individuals with a prior history of criminal aggression comprised a significant proportion of vehicle homicide offenders.

In December 2000, the government released a consultation paper in relation to road traffic penalties in which it outlined proposals to increase the maximum penalties for those who kill whilst driving a vehicle (See DETR, 2000 and ROSPA, 2001). Examples of some of the proposals include extending disqualification periods to a minimum of three years (and up to life) for causing death by dangerous driving or careless driving while under the influence of drink or drugs and creating an automatic life-long disqualification period for both offences where the offender has previously been convicted of a serious driving-related offence. In addition, it is proposed to increase the maximum term of imprisonment from five to ten years for causing death by aggravated vehicle taking (DETR, 2000). These proposals have now been reviewed (see Home Office Department for Transport, 2002) and are yet to be implemented.

Whilst calls are being made to introduce more stringent penalties for those whose dangerous or careless driving causes death, it seems likely that these offences will remain 'separate' from the general homicide offences. As Clarkson observes, 'the

use of motor-vehicle, despite their inherent dangers, is so widespread and accepted that we assign responsibility to (even bad) drivers differently to those who cause deaths in different contexts. Their wrong is “situationally relevant” to ourselves’ (2000: 149). Clearly powerful cultural and social factors play a role in our interpretation of these killings as ‘less serious’ than other forms of homicide.

### Study Task 1.3

The last five years have seen increased attention and debate about the penalties for those who kill whilst driving dangerously or carelessly. Consider why such debates might have emerged and what impact they might have upon the laws surrounding unlawful homicide.

### Deaths in Custody and During the Course of Arrests

Of equal concern and relevance, albeit a considerably less frequent occurrence, is the issue of deaths in prison or police custody or at the hands of the police in the course of arrests. When police or prison officers cause the deaths of those they encounter (either as suspects or convicted criminals), these deaths are often not viewed as having been committed unlawfully or, where they are, the Crown Prosecution Service (CPS) rarely feels compelled to prosecute. Research conducted by Inquest, a charitable organisation that monitors deaths in custody, indicates that an average of one person a week dies in custody.<sup>15</sup> In 2002 there were 35 known deaths in police custody across England and Wales (which includes road traffic accidents, pursuits and police shootings). In the same year, 54 deaths occurred in prisons across England and Wales that were not believed to have been self-inflicted ([www.inquest.org.uk](http://www.inquest.org.uk)). Inquest believes that many of these deaths are the result of excessive violence on the part of the police towards suspects, or prison officers towards inmates. Even in those cases where an inquest jury<sup>16</sup> confirms that police officers unlawfully killed a suspect, the CPS rarely take action against the officers involved.

### Summary

Thus far we have reviewed and critiqued the legal framework of homicide with particular reference to England and Wales. It should now be clear that the law of unlawful homicide is somewhat arbitrary in its application and administration. What is finally included in the relatively broad category of unlawful homicide does not necessarily represent the most serious offences that result in loss of life – either in scale or quality. The important point to retain for the moment, and to carry forward into the second section of this chapter, is that who becomes accountable for causing the death of another individual (or group of individuals) and in what particular manner rests on a complex set of doctrines, some very antiquated. The fact that a

number of these anomalies have recently been amended (such as the year and a day rule) and that a number of commentators are arguing for additional reforms (such as the amendments to the law of involuntary manslaughter discussed earlier) only serves further to highlight the problematic nature of the criminal law in this area. There remains a further complication that must be acknowledged. In addition to problems of defining or delineating homicide, the counting of homicides (like the counting of every type of crime) is afflicted by the problem of the 'dark figure', that is, unreported and unrecorded crime. The following section considers this in some detail.

### Study Task 1.4

Using a range of resources (that is, the Internet, books, journals and the media), find three examples of proposals to changes in the law of homicide in England and Wales over the last three years or examples of such changes. What do these changes or proposals for change tell us about the nature of the law of homicide?

## Counting Homicide

The issue of the 'true' level of crime is a difficult concept. It represents the total amount of crime which takes place in a given country, whether or not it is recognised as a crime and whether or not it is reported to and recorded by the police. It is now readily acknowledged by Home Office statisticians, the police, politicians and criminologists alike that recorded crime in England and Wales only represents the 'tip of the iceberg'; below lies an unknown and uncertain mass of hidden crime, known as the 'dark figure'. The problem of the dark figure is common to all the social sciences. Whilst a number of measures have been introduced (essentially since the 1980s in England and Wales) to try and measure the dark figure, these only unearth part of the hidden crime. Examples include self-report studies and local and national victim surveys. The former involves questioning individuals about their own participation in crime and whether that crime has been detected. The latter entails members of the public being questioned about their experiences of crime and whether they have reported all crime known to or experienced by them (for a comprehensive overview of the dark figure of crime, see Coleman and Moynihan, 1996). In short, the statistics of offences recorded by the police, as well as those accumulated via other means (such as self-report studies and victim surveys), provide only a partial picture of the amount of crime committed.

Estimates of the amount of hidden crime vary across offence categories, and hence, the limitations of police statistics are more profound for some categories of crime than others. It is generally asserted that the police come to know about a very high proportion of homicides (Lewis, 1992; Morrison, 1995; Williams, 1996) and, possibly because of this general assumption, researchers often neglect to consider

in any real detail the extent of the dark figure of homicide. Yet there are several important ways in which the conventional and authorised version of events may be underestimating or distorting the number of homicides across England and Wales each year. This issue has partly been addressed in the previous section by highlighting the legal 'biases' in counting homicide. Here we focus upon the complexities of unearthing those hidden homicides that *would* tend to be considered 'real crimes', that is, those for which a murder or manslaughter charge would normally apply.

### The 'Dark Figure' of Homicide

The seemingly simple question of how many homicides take place in a particular year cannot be easily answered. Several factors influence the official registration of homicides.

#### Hidden Bodies

First and foremost comes the finding of a corpse. This is without doubt the most common source of discovery of killings which have taken place in the open, in public places, on commercial premises at night and of homicides where attempts have been made to hide the body from the scene of the crime (Morris and Blom-Cooper, 1964: 273). What we do not know, of course, is how many killers dispose of the bodies of their victims without trace. As Polk has pointed out, for some planned murders, 'part of the forethought may consist of disposing of the body in such a manner that its discovery is unlikely' (1994a: 10). Certainly it is not unheard of for the police to unexpectedly discover a corpse in the course of investigating other crimes. Hence, the discovery of a body can sometimes happen by chance, as in the cases of Dennis Nielson whose offences lay hidden for many years. Ultimately he was convicted of 15 murders. During August of 1997, four amateur subaqua divers discovered skeletal remains wrapped in a series of bags and bin liners in the Coniston Waters of the Lake District area in Cumbria, England. Forensic investigations revealed that the remains were that of a female school teacher, Carol Park, who had vanished 21 years previously from her home some 15 miles away. Police subsequently launched a murder investigation, focusing upon Gordon Park, the victim's husband at the time of her disappearance. He was eventually charged with her murder, but the case against him was dropped. In August 2000 a skeleton was discovered in a pub outbuilding in the Welsh village of Ystradgynlais, near Swansea by builders who were converting the beer store into a pub extension. Forensic scientists soon discovered that the remains were that of Barbara Maddocks, the landlady of the pub (the Aubrey Arms), who had disappeared 27 years earlier in 1973, when she was aged 47. At the time of her disappearance, local police officers launched a search and dug up a roundabout and part of a road but found nothing. Her husband, who died eight years previously, had told detectives at the time of her disappearance that he had been visiting friends and that when he returned to the pub, his wife was gone. Some local people believed she had returned to her native Australia after a row with her husband, others believed she had been murdered. A second woman, a friend of Barbara, is also alleged to have disappeared at around

the same time. These are just a few of the known examples of hidden bodies that have come to light.<sup>17</sup> Moreover, there are undoubtedly others that have never been discovered.

### Missing Persons

Second, there exists a considerable register of 'missing persons'. The National Missing Persons Helpline (NMPH), established in Britain in 1992, estimate that more than 250,000 people are reported missing in the UK each year. The vast majority return safe and sound within 72 hours – but thousands do not. Whilst many of these persons will have deliberately sought obscurity, it is possible that some have become the victim of homicide. Further, there are undoubtedly persons 'missing' who are not registered as such, who again may have become the victims of homicide, but we have no way of knowing. Personal communication between the author and a charity member from the NMPH (January 2003) revealed that roughly 7 per cent of registered missing persons end up dead. Three people on the charity's books are known to have been victims of serial killer Frederick West. A recent report by the Policing and Reducing Crime Unit suggests that whilst only a small proportion of missing persons are likely to be the victims of serious crime, police procedures for identifying a 'suspicious' missing person are currently underdeveloped (Newiss, 1999). The report recommends a number of measures to assist the police in identifying suspicious cases from the mass of reports they receive.

### Establishing Mode of Death

Finally, of relevance to the issue of the dark figure of homicide, it is important to consider some of the complexities that exist in establishing cause of death. In the case of a discovered body, it is not always possible to determine immediately (if at all) whether the death was the result of foul play. Apart from establishing cause of death, one of the key purposes of a medico-legal autopsy is to establish the mode of death. Generally, four modes of death are possible: natural, accidental, suicide or homicide (Geberth, 1996). Distinguishing between the four categories is not always a straightforward procedure. For example, people who have apparently died from overdoses of medicine or 'natural causes' may sometime in fact be homicide victims. In the case of the nurse Beverley Allitt, found guilty in 1993 of murdering four children, it was a matter of contention for some time as to whether or not the children died of natural causes (White, 1995: 130). The now infamous case of Harold Shipman, the doctor convicted of murdering 15 of his patients by lethal injection (but suspected of killing in excess of 200 patients over a 20-year period), illustrates the potential ease with which the medical profession are able to conceal homicide.

Another area in which the complexities involved in establishing mode of death has been well documented relates to infant deaths. It is recognised that distinguishing an infant homicide from Sudden Infant Death Syndrome (SIDS) or 'cot death' can be very difficult (Meadow, 1999). SIDS is characterised by the death of seemingly healthy babies where the cause of death cannot be identified (Beckwith, 1970). It has been estimated that around 20 per cent of SIDS cases are in fact suspicious infant deaths, in that these deaths are thought to be largely attributable to the effects of child abuse (CESDI, 1998; Green and Limerick, 1999; White, 1999). There are many reasons for

misdiagnoses, including inadequate police inquiries into the victim's background where suspicion is present (Bacon, 1997; Meadow, 1999), lack of multi-agency co-operation and communication, misdiagnosis by pathologists due to lack of information, a lack of specialism in paediatric pathology, and time pressures in returning the body to the family. Affecting each of these investigative layers would appear to be the inherent problems of handling such sensitive cases, leading some to suggest that professionals err on the side of caution in adopting the SIDS label too readily when in doubt (see Millington and Smith, 1999, for a review of this area).<sup>18</sup>

### Study Task 1.5

What does von Hentig mean when he states that 'Murder is not only a legal abstraction but a medical phenomenon' (1938: 112)?

### Open Verdicts

Mortality statistics, compiled and disseminated by the Office of National Statistics, provide details of all deaths registered in England and Wales. Perusal of the statistics concerned with death by injury and poisoning reveal some interesting findings. For example, recent mortality statistics (1999) indicate that 'open verdicts' were recorded on over 1,500 people in 1999 in England and Wales (OPCS, 2001). Essentially, these deaths remain unresolved with respect to whether the fatal injuries sustained were accidentally or purposely inflicted, either by the victim (that is, was it accident or suicide?) or some other unidentified person (in which case it could be deemed a homicide). One can only speculate as to what proportion, if any, of these deaths could have been the result of unlawful killings. In addition there exists a category referred to as 'unknown causes of morbidity and mortality', which refers to cases where the underlying cause of death is unknown. There were a total of 915 cases in 1999, 548 of which were given an open verdict (the remainder were classified as accidents or natural causes of unknown origin). Once again, it is possible that some of these deaths may have been the result of undetected 'foul play'. There is a further interesting category from the point of view of questioning the counting of homicide qualitatively. There were 83 recorded cases of 'misadventures to patients during surgical and medical care' in 1999 as determined by an inquest verdict. Could it be that some proportion of these 'misadventures' were due to medical negligence? That these deaths have ultimately been classified as accidental misfortunes may owe more to the complex death registration system than any clear reflection upon the precise circumstances of these deaths. Emmerichs (1999) has argued that a significant number of murders were missed in nineteenth-century England, either deliberately or due to inadequacies in the institution of Coroners' inquests. The extent to which the modern system is less flawed is open to question.

In summary, difficulties involved in certifying the cause of death mean that a number of homicides may go undetected each year. It follows that even if only

a small proportion of all deaths regarded as natural were homicides, then the numbers of offences currently recorded as homicides would be an underestimate. In combination, the effects of undiscovered bodies and misdiagnoses of death could provide for a substantial underestimate of homicides. If we add to this deaths that could be treated as homicides (such as corporate killings, causing death by driving, deaths in custody and during the course of arrest), then we begin to see how the picture of homicide could look substantially different given different definitions, counting rules and perceptions of what it means to commit an unlawful homicide. This statistical bias or imperfection has further implications in respect of theory formulation. As far as the offenders are concerned, we know nothing of those who go undetected. The important question is whether these 'hidden homicides' are in some way qualitatively different from those we come to know about. Max Atkinson, some 20 years ago, summed up the complexities involved in studying the phenomenon of suicide, drawing attention to both the inaccuracies of suicide statistics and, more particularly, the socially defined (rather than naturally defined) nature of this phenomenon (Atkinson, 1979). Clearly, similar problems present themselves to the would-be homicide researcher.

## Chapter Summary and Conclusions

After brief consideration of the socially constructed nature of homicide and the difficulties involved in defining homicide, this chapter presented an overview of the legal categories of unlawful homicide in England and Wales before moving on to consider numerous problems with the legal framework. There is little doubt that the law of homicide is a complicated affair. Perusal of any recent criminal law texts quickly reveals the extent and nature of debates surrounding the need for reform in relation to the law surrounding unlawful homicide. This partly reflects a recognition by many lawyers and penal reformers that the law of homicide presents difficulties of application and consistency (Rock, 1998). Researchers of homicide, in relying upon such legal categories, have to work with a definition that is both arbitrary and, to some extent, restrictive. This is not simply a technical matter; rather, the legal framework has important implications for how we come to view homicide and the kinds of theories that are developed to explain this phenomenon. For example, if deaths from negligence and corporate manslaughter were more readily included in the statistics of homicide, the picture would include larger numbers of skilled working-class and middle-class offenders and victims, significantly altering what is currently a perception of homicide as dominated by working-class individuals. In addition, despite the popular view of the visibility of unlawful homicide, this chapter has illustrated the potential for a 'dark figure'. Moreover, the phenomenon of homicide is somewhat unique in that some of the techniques devised to uncover the dark figure of crime are simply not feasible to adopt. In particular, victim surveys (for example, the British Crime Survey) which have shed light on the dark figure of offences, such as burglary and domestic violence (see Mirrlees-Black et al., 1998; Kershaw et al., 2000), cannot be applied in the case of homicide.

The most important message to take away from this chapter is that homicide, like most other forms of crime, is not a concrete phenomenon that we can easily define, count, judge or punish. The 'official' version of events (in the form of criminal statistics compiled by the Home Office) is just that – 'a version'. It by no means captures, nor intends to, all homicides. It is vital to bear this in mind as we proceed to Chapter 2, for here we will be relying upon the official picture in order to provide an overview of patterns and trends of homicide in the UK. Of course, trying to explain and understand homicide is an equally complex task and will be dealt with in subsequent chapters.

### Review Questions

- What distinguishes voluntary and involuntary manslaughter? Using examples drawn from the media coverage over the last four years, list two examples of each type of manslaughter.
- What evidence exists to illustrate that unlawful homicide is a social construct?
- How can researchers try to assess the 'dark figure' of homicide and what particular difficulties would they face?
- On 7 May 2003, the Home Secretary (David Blunkett) announced his plans to introduce tougher sentencing 'principles' for the minimum periods that certain life sentence prisoners should serve. Among the particular kinds of murders singled out for increased minimum sentences are the abduction and murder of a child, terrorist-related murders and killings involving the death of a police or prison officer in the course of their duty (Travis, 2003). Access archived news articles and review the proposals along with criticisms from human rights commentators and legal experts. What are the major objections to these proposals?

### Further Reading

The most up to date critical review of the law of homicide in England and Wales is *Rethinking English Homicide Law* (Ashworth and Mitchell, 2000: Oxford University Press). Also useful is Barry Mitchell's *Murder and Penal Policy* (1990: Macmillan) and *Law Relating to Violent Crime* (1997: CLT Professional). On the social construction of homicide, refer to Hazel May's 'Who Killed Whom?: Victimization and Culpability in the Social Construction of Murder' (1999: *British Journal of Sociology*, Vol. 50/3, pp. 489–506). An excellent text that deals with many aspects of corporate crime, including corporate homicide, is *Corporate Crime* (Slapper and Tombs, 1999: Longman). A useful chapter dealing with the law surrounding homicide is found in *Principles of Criminal Law* (Ashworth, 1999: Oxford University Press). For an excellent discussion and analysis of the construction and deconstruction of crime, refer to Chapter 1 of *The Problem of Crime* (Muncie and McLaughlin, 2001: Sage). Also Mike Levi and Mike Maguire's chapter 'Violent Crime' in the *Oxford Handbook of*

*Criminology* (Maguire et al., eds, 2002: Oxford University Press) contains a very useful section on attitudes to and constructions of violence. Finally, for a comprehensive overview of the relationships between legal constructions of crime (generally) and social constructions of crime and criminals, refer to Lacey's excellent chapter in the *Oxford Handbook of Criminology* 'Legal Constructions of Crime' (Maguire et al., eds, 2002: Oxford University Press).

## Useful Internet Sites

A very useful Internet site dealing with the law surrounding death by driving is [www.oraclelaw.co.uk](http://www.oraclelaw.co.uk). The Home Office website [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) offers a vast amount of information on many aspects of crime and criminal justice. In relation to this chapter, the publications section contains the latest official homicide statistics which, as well as information on the number of homicides recorded and various characteristics of offenders and victims, contain details relating to counting rules and definitional issues pertinent to this chapter. In addition, a search of the subject index will reveal a number of useful links, such as deaths reported to coroners where links to statistical information on deaths in police custody can be found, and motoring offences statistics. The Law Commission is a useful resource for legislative reform [www.lawcom.gov.uk](http://www.lawcom.gov.uk). Health and Safety Statistics, such as the number of fatal injuries to workers and occupational diseases, can be found on the Health and Safety Executive/Commission web page at [www.hse.gov.uk](http://www.hse.gov.uk).

## Notes

1 The Economic and Social Research Council (ESRC) funded the Violence Research Programme between 1997 and 2002. One of the 20 projects is concerned with homicide in Britain (see [www1.rhbnc.ac.uk/sociopolitical-science/VRP/realhome.htm](http://www1.rhbnc.ac.uk/sociopolitical-science/VRP/realhome.htm)).

2 Brookman (2000b) analysed a total of 97 covering reports from police murder files as part of her doctoral research (see Brookman, 1999). From these data, case summaries were compiled that comprise condensed versions of important aspects of the cases and provide an understanding of the nature and circumstances of a diverse set of homicides. In addition, analysis of the Home Office HI for the period 1990–2001 (which includes a total of 9,029 cases) has been undertaken. Findings from both data sources will be presented throughout this text. The HI data is clearly more extensive in that it covers a much larger number of homicide cases. By contrast, the police murder file data can be described as intensive in that it contains richer and more detailed information about homicide cases (see Lewis et al., 2003 and Dobash et al., forthcoming for a further discussion of the strengths and weaknesses of such forms of homicide data).

3 See Clarke (2001) for a discussion of social constructionism.

4 See Levi (1997: 843–5) for a similar discussion in relation to the broader category of violent crime.

5 See also Rowbotham et al., 2003 for a similar discussion regarding media coverage, public attitudes and criminal justice responses to the Bulger and Burgess murders, 1993 and 1861.

6 See Lacey (2002) for a comprehensive overview of the legal construction of crime.

7 Until 1996 an individual could not be prosecuted for murder if the individual they had harmed died after a year and a day of the original attack. One of the original rationales for this rule lay in the difficulty in proving a causal connection between old injuries and subsequent death. However, this rule came under increasing criticism, especially as modern medicine

and life-support machines meant that a murderer could avoid liability simply because of lengthy medical attempts to save someone's life. Hence, in 1995 the House of Commons' Select Committee on Home Affairs and the Law Commission produced papers recommending the abolition of the rule, and Parliament did so in the Law Reform (Year and a Day Rule) Act 1996.

8 36 per cent resulted in a conviction for manslaughter, a little over 1 per cent resulted in convictions for lesser offences (such as ABH) and less than 1 per cent of convictions were for infanticide. 13 per cent of cases resulted in an acquittal or proceedings were discontinued (for example, due to a lack of evidence or a decision that it was not in the public interest to prosecute). In a further 5 per cent of cases there were no court proceedings due to the death of the suspect. Proceedings remain pending for 12 per cent of cases from this period.

9 Fear of social disgrace or poverty was seen as the motivation for such actions and hence some protection from the full rigours of the law (that is, the death penalty for murder convictions) in what were perceived as tragic cases emerged.

10 See Flood-Page, C. and Taylor, J. (2003), *Crime in England and Wales: Supplementary Volume* (Chapter 1 by Judith Cotton, 'Homicide').

11 For useful summaries of related legal issues for Scotland refer to Scottish Executive, 1999; Charlton and Bolger, 1999, Soothill et al., 1999 and Christie, 2002 and for Northern Ireland refer to Quinn, 1998, and Hanly, 1999.

12 These figures relate to the period 1999, the most recent year for which accurate figures are available.

13 The Health and Safety Executive, who produce figures for occupationally-caused deaths, acknowledge that they are not always comprehensive. In particular, asbestos-related cancers are believed to be a gross under-estimate since most cases are clinically indistinguishable from tobacco-related deaths (HSE, 2000: 74). The HSE acknowledge that the likely true numbers of asbestos-related cancers are probably at least equivalent to the numbers caused by mesothelioma, of which there were 1595 in 1999.

14 The homicide figures for 2001 as opposed to 2002 have been included as they are more accurate. Annual totals of homicide are subject to frequent downward revision for the first two or three years after initial reporting, as individual cases are reclassified (see Brookman and Maguire, 2003).

15 This figure includes deaths in police custody and in prison, some of which may have been self-inflicted. The information that Inquest receive from the police and prisons authorities is often limited in detail, making it difficult to determine accurately the circumstances of death (personal communication, June 1999).

16 An Inquest Jury or Coroners' Jury is made up of between seven and 11 members of the public, summoned at random from the electoral roll like other jurors. There are times when a coroner must summon a Jury, which include cases where there is 'reason to suspect' that the death occurred in prison, in police custody or as a result of injury inflicted by a police officer and in an industrial accident. The coroner also has discretion to summon a jury in other cases. Any verdict which appears to determine criminal liability on the part of a named person or civil liability is forbidden. However, 'unlawful killing' is permitted as a verdict so long as the killer is not named. The commonest verdicts are: natural causes, misadventure, suicide and open verdict (where there is insufficient evidence to justify any definite verdict) ([www.inquest.org.uk](http://www.inquest.org.uk)).

17 See also the case of Margaret Hogg, whose body was found in 1984 at the bottom of Wastewater lake in Cumbria. Her husband was ultimately found guilty of manslaughter. And Sheena Owlitt, whose body was found in Crummock Water in 1988. Her husband ultimately confessed to her murder and was sentenced to life imprisonment.

18 See also Wilczynski (1997a, Ch. 2) for a comprehensive overview of the 'dark figure' of child homicide and Jackson (2002) for an historical perspective on the issue of child homicide and concealment.