

First, What is homicide? Must a child be fully born before it can be killed? Or is it homicide to kill a living unborn infant? Is it homicide to frighten a man to death, or to break a woman's heart by systematic unkindness which, operating on weak nerves, causes paralysis and death? Is it homicide to allow a man to die when you can save him without danger or serious trouble, *e.g.*, by throwing a rope to a drowning man? If a person having the charge of a child or infirm person omits to render proper services whereby death is caused, is that homicide? If a physician causes his patient's death by mistaken treatment, is it homicide? If A injures B and B refuses to submit to a surgical operation and dies, has A killed B? Or suppose the operation is performed and B dies of the operation, has A killed B? Does it make any difference if the operation was unnecessary or was unskillfully performed?

Next, in what cases is homicide unlawful? The full answer to this question involves a statement of the law as to the cases which justify the use of personal violence, and in particular its use for self-defence, for the prevention of crimes, for the arrest of criminals, for the execution of legal process, and for the assertion of particular legal rights. A, a far stronger man than B, comes by force into B's house and stays there making a disturbance. B tries to remove him. A successfully resists. At what point if at any point may B shoot A or stab him with a knife?

When we have assigned, by answering these questions, a definite meaning to the expression "unlawful homicide," it becomes necessary to distinguish between the two classes into which it is divided by defining each of the words "malice" and "aforethought." Does the word "aforethought" imply premeditation extending over a day, an hour, a minute, or is it a practically unmeaning word? A variety of authorities show that it is practically unmeaning. If a man with a loaded gun in his hand suddenly conceives and executes the intention to shoot dead an unoffending passer-by, his crime is regarded by the law of England as being, to say the very least, quite as bad as if he committed it after long deliberation.

As for the word "malice" I have already described the strangely unnatural meaning which has been attached to it in relation to this matter. The most important of these meanings are (1)

an intention to kill, (2) an intention to inflict grievous bodily harm, (3) an intention to commit any crime described as a felony, (4) knowledge that the act which causes death is dangerous to life, and a determination to run the risk of killing. For instance, when a man intending to rescue a prisoner from a prison, exploded a barrel of gunpowder against the wall of the prison and blew part of it down, destroying at the same time the lives of many people in the neighborhood of the explosion, he was held to have acted with "malice aforethought" though he probably knew none of the people who were killed, and hoped, if he thought about the subject at all, that they might be absent at the time of the explosion or otherwise escape its effects.

The law relating to the infliction of bodily injuries short of death has in itself no special interest, but it has a curious history. In Anglo-Saxon times the laws provided a scale of fines or *weres* for bodily injuries almost surgically minute. Thus twenty shillings were to be paid to one whose great toe was struck off, and five to one who lost his little toe. Under the early English kings *weres* went out of use; but maiming, *i.e.*, destroying any member of the body which might be used in fighting or which was essential to manhood, was a felony; but it was the only felony (except petty larceny) not punished with death, and it came to be treated as a misdemeanor only. I suppose that in ages when violence was extremely common, people were left in this matter to defend and to revenge themselves. The effect of this was that till quite modern times the most violent attempts to murder were only misdemeanors. By degrees, however, public attention was attracted by particular acts of violence, and laws were passed for their punishment; but this legislation was occasional and fragmentary to an almost incredible degree. Thus, for instance, in the reign of Charles the Second, the enemies of Sir William Coventry set upon him and gashed his face, and in particular his nose, in order to disfigure him. Hereupon an act was passed (long known as the Coventry Act) which made it felony without benefit of clergy, to cut a man's nose or face with intent to disfigure him. All this fragmentary and occasional legislation was thrown together, first in an act passed in 1827, and afterwards in the act now in force which was passed in 1861. The strangest instance of its character which can be