

The Criminal Intent in American Criminal Law and its Special Provisions in Murder

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ABSTRACT

In American criminal law, criminal intent is an essential element of crime, which determines the precise accusation of this crime or that crime, and even the total difference from guilt and innocence. In criminal law legislation, criminal intent is usually divided into general intent which is the least requirement to accuse a crime, and specific intent which is only necessary for some particular crimes. As for the conviction and sentencing of murder, there was no such general or specific crime intent requirement in early common law, that is, as long as the actor illegally caused the death of others even with no intent to kill, he could be prosecuted of murder. With the development of criminal law in the United States, the actor's intention and motive when the crime committed gradually stand out and become an important factor of sentencing, which produces a series of special provisions on criminal intent. On the basis of general intent of American criminal law, this article mainly analyzes the specific intent and its special provisions of murder laws, and points out that premeditation and malice aforethought are the important criterions for judging the type and severity of murder in most American states.

KEYWORDS

American Criminal Law; Murder; Criminal Intent; Malice Aforethought.

1. DEFINITION OF CRIMINAL INTENT

The definition of criminal intent in American criminal law is inherited from English common law. In Early England, the conviction of murder does not require the actor to have any criminal intent, as long as there is illegally death caused by the actor, he would be convicted of murder. The term "criminal intent" that we are familiar today, originates in Roman law and ecclesiastical law as "mens rea", and initially applies to the broad sense of "evil will" with moral implications. Along with the separation of politics and religion, the definition of criminal intent slowly turns to emphasize the actual psychological activities of the accused which is now expressed as culpability or mental state required for conviction.

In early American criminal law, there were few provisions regarding fault or intent; most still rested on descriptions of criminal acts, as did federal criminal law. If the rules were strictly observed, strict liability would be normal because most legislations did not require criminal intent, and thus accidents could also constitute crimes. In the past, although state courts and federal courts chose different theoretical approaches, both of them regarded criminal intent as a more appropriate constituent element for the development of common law. While some states specified particular rules for criminal intent, more states left this question for courts, and even if the criminal law is clearly stated, judges are unlikely to strictly follow this definition. Thus, in most states, courts still use common law concepts and terms to define the relevant standard of criminal intent. [1]

Regarding the concept of criminal intent, it is usually associated with culpability. In *Morissette v. United States* [2], the judge points out that the law is a belief in human free will and the ability and obligation of ordinary people to choose between good and evil. If harm is intentionally done, then punishment is inevitable. [3] This is in line with both retributivism and utilitarianism.

From the perspective of retributivism, on the one hand, people have free will and should pay for their choice to violate social rules. [4] On the other hand, punishment should be imposed properly on these offenders in keep with their crimes. The greater the malice, the heavier the crime. Therefore, criminal intent becomes one of the bases for determining whether people constitutes a crime and what kind of punishment they should be subjected to. From the perspective of utilitarianism, crime and punishment are painful to the individual and should not exist in an ideal society, except that punishment is able to reduce crime and improve the overall well-being of society, and then the punishment could be justified. The classical utilitarian further took pleasure and pain as the motive force and the main consideration of human action, assuming that people act rationally who will calculate the pleasure and pain of an action when they decide whether or not to do something. [5] In order to nip the criminal intent in the bud, punishing the evil intention or even through penalty is acceptable and justifiable for utilitarianism. In any case, criminal intent has an important impact on the determination the severity of the charges and punishment.

2. GENERAL INTENT AND SPECIFIC INTENT IN AMERICAN CRIMINAL LAW

From the perspective of legal regulations, most American states classify criminal intent into general intent and specific intent. This classification derives from English common law: for some crimes, general criminal intent is enough to be guilty, while for other crimes, specific criminal intent is required in addition to the general criminal intent. Usually, the punishment for specific intent crimes is more severe. For example, in the crime of infringing personal rights, whether the actor has the intention to harm the victim or not (the actor only needs to know that he is committing a crime), as long as he attacks others in a way that may cause harm, he would be guilt of hurting crimes. However, if the actor has the intention to cause serious injury or death to others, it may constitute a more serious crime of murder and impose a more severe penalty. [6]

In American judicial practices, the distinction between general intent and specific intent originally stemmed from the response to the issue of intoxication. On the one hand, the moral accountability of voluntary drunk is generally lower than that of a sober person committing the same crime. On the other hand, a person who voluntarily gets drunk and commits a crime in that state should not be exempt from legal sanctions. Before the 19th century, English common law was prevalent in American legislative institutions and courts, which believed that intoxication could negate the criminal intent of the actor. However, such view could completely undermine traditional rules, since criminal intent was an essential element of all crimes other than strict liability. [7] In order to limit this view, as well as to balance sympathy and condemnation towards intoxicated individuals, the courts both in England and the United States have distinguished between general intent and specific criminal intent. In the case of the United States, not all states use intoxication to differentiate criminal intent, and there are also differences in detail. For example, some states believe that intoxication merely indicates that the defendant has difficulty forming specific criminal intent, while other states believe that intoxication can negate specific criminal intent. The majority of states believe that intoxication can negate some specific criminal intent but they hold different views on the particular crimes and intent. However, all jurisdictions agree that intoxication cannot negate general criminal intent. It is a powerful argument in American criminal law that intoxication cannot negate culpability. [8]

As for the distinction between general intent and specific intent, the most famous case is *People v. Stark* [9] heard by California Supreme Court. The court reiterates the definition of general intent and

specific intent that when the definition of a crime only involves the description of specific behavior and no intent to further conduct or achieve some future result, we will ask the defendant whether they intend to engage in the prohibited behavior. If so, then this intent is general intent. When the answer involves the defendant's further conduct or the intent to achieve some additional result, the crime is one of specific intent. [10]

In most cases, general intent refers to “the intent to commit a criminal act”. Considering that crimes consist of three elements: (1) act: the description of the prohibited act; (2) situation: the factual description of the defendant's behavior; (3) result: the description of the specific harm caused by the defendant's behavior. In common law, general intent focuses only on the first element, that is, the accused does not need to have an intention for the consequences of the act; but must have an intention to commit an act prohibited by criminal law. [11] In many states' criminal laws, general intent can be inferred from the wrongdoer's actions, besides being explicitly expressed in the form of “willfully” or “malice”. In the case of proving intentionally acting, the rational person criterion is often used, that is, if a rational person in normal society is or could be aware of the harmful consequences of an act, and the actor is aware that he or she is doing such an act, the actor can be presumed to have a general purpose. However, in recent court decisions, the judges hold that the general intent is the intention to do particular act and only requires the accused to be aware of his subjective state, rather than the intention to violate the law. On the contrary, in the context of specific intention, the defendant not only needs to have the general intention to commit a specific act, but also the specific intention to break the law, that is, the defendant committed a criminal act in order to produce the consequences of legal prohibition, or its desired result is actually illegal. [12]

If the defendant intends to cause certain harm or result in harmful or legally prohibited consequences, specific intention may be constituted. In contrast to general intent, specific intent usually requires the actor not only to recognize what he is doing, but also to be culpable for the specific behavior or consequence, such as “malice” or “criminal negligence”. If the specific intent is a separate element of the crime, it needs to be demonstrated separately from the criminal act. For example, in *United States v. Cortes-Caban* [13], the judge holds that since Article 841(a)(1) of Penal Code is an offence with a specific intent, even if the act of the police officer that framing the victim for a drug offence in itself constitutes a drug distribution, the prosecutor could not therefore conclude that the police officer intent to distribute poison as provided for in the above-mentioned Article. It is therefore still necessary to prove a specific intent.

Of course, in judicial practice, due to the complexity of the definition of the two terms, many scholars suggest to abandon the two terms. [14] Generally, the general intention and the specific intention are determined solely by the mental states of “intention” and “malice”. If the definition of a crime is concerned only with the description of a particular act, and not with the further act or the achievement of some future result, we will judge whether the accused intends to do the act prohibited by law. An intention is a general intent. When the definition involves the defendant's further actions or achieving a certain additional result, it requires specific criminal intent.

3. THE SPECIAL PROVISIONS OF CRIMINAL INTENT IN THE AMERICAN MURDER

The criminal intent becoming the essential element of murder in the American criminal laws has gone through a process from scratch. In the beginning of the 13th century in English common law, all homicides were criminally liable except for the execution of an arrest warrant or sentence. Whether or not there was a criminal intent to commit murder did not seem to matter at that time. In the development of the following centuries, the criminal intent began to emerge as a constitutive element of murder and gradually formed the contemporary distinction of different types of murder based on subjective intent. [15] However, in the judicial practice of the United States, there is still significant controversy regarding whether criminal intent can independently constitute the offense of murder and

how to prove the establishment of criminal intent. And the definition of its subjective element is also constantly changing. Currently, neither the American criminal law nor federal and state judges can provide an exact definition, and even disagreements exist. Therefore, it is necessary to explain the evolution of criminal intent in the American murder rules and the application of its special provisions. [16]

3.1. Premeditation and Deliberation (Murder with Premeditation)

Premeditation and deliberation are usually referred to as premeditation, which is a kind of specific intent and requires the actor to be willful, deliberate, and premeditated in the commission of killing. For ordinary murder like second-degree murder or the simplest killing, the actor only needs to have a general intent to kill. Specific intent is usually used to distinguish the most subjectively responsible crimes from ordinary crimes. [17] Therefore, murders with premeditation and deliberation are usually subject to the harshest penalties. Many states classify such murder as first-degree murder, which can be sentenced to death or life imprisonment.

In *Commonwealth v. Coleman* [18], the defendant had a quarrel with the victim in a bar and was attacked by two men from the victim's side. During the fight, the defendant left the scene, took out a pistol from a nearby car, and went back to shoot the victim. He even fired another shot at the victim after the latter fell to the ground before he drove away with his three other friends. The evidence indicates that when the defendant went out for the gun, the victim left with him, but there is no evidence that could prove the victim had a gun on him at the time of the shooting. Paramedics arrived shortly after the shooting and the victim died two hours later. The court holds that to prove the defendant's first-degree murder, it was necessary to prove that not only the defendant had malice aforethought for the shooting killing, but also he is "premeditated and deliberated" to illegally deprive another person's life. [19] Regarding the definition of premeditation and deliberation, the judge in *Commonwealth v. Ruci* [20] believes that premeditation referred to the perpetrator's reflection on his plan to kill, while the judge in *Commonwealth v. Davis* [21] holds that premeditation requires that the decision to kill was the product of the actor's "cool reflection", and that cool reflection only required that the actor had already identified the target and decided to kill before carrying out the killing. Such criminal intent was sufficient to satisfy premeditation and malice aforethought.

In this case, the defendant agrees with the claim that premeditation can be formed in a very short time, but believed that he was forced into the fight and that the killing occurred suddenly and no enough time to plan. The judge disagrees with the defendant's statement, as three witnesses testified that they had heard the defendant's partner handing him the gun from the trunk and tell him that it was not over yet. After the defendant fired the first shot, the victim had already fallen to the ground and was no longer a threat, yet the defendant fired at least one more shot. The judge held that the defendant could have formed his plan on the way to his partner to get the gun, and that he had at least briefly reflected on his plan when he fired the second and third shots. Therefore, the judge held that the defendant had premeditated and constituted first-degree murder.

As the literal meaning of premeditation and deliberation, the *American Heritage Dictionary of the English Language* gives its answers that "deliberate" is carefully considering alternatives or similar things when thinking about something; and "premeditated" is intentional and making decisions carefully and slowly. [22] *Black's Law Dictionary* defines "deliberate" as "intentional, premeditated, fully considered," and considers deliberate and premeditated to have the same meaning, but to a different degree: deliberate is long-term premeditated. In other words, meditation is premeditated in a state of calm, when the actor is not disturbed by extreme emotions (such as passion). Reflection not only requires the perpetrator to think about the killing in advance (which can happen in a flash), but also requires the perpetrator to reflect and weigh the killing after calming down. Meditation can only be carried out in the calm state of the actor, while premeditation can be carried out in the case of the actor in an extreme emotional disorder. [23]

Based on this, many courts no longer simply require the actor to have premeditation when determining whether the murder is premeditated, but have adopted the premeditation-deliberation formula, which requires that the act of killing is based on pre-planning, and even a meticulous or careful planning, that the defendant must have both premeditation and contemplation and there must be prior planning and consideration of whether the act is criminal. In the instructions to the jury in *Byford v. State* [24], the judge points out that to constitute first-degree murder, the actor must kill in an intentional, deliberate, and premeditated manner. The term “willful” means that the actor must have the intention to kill, and there is no need for a clear time interval between the act of killing and the intention to kill. “Deliberate” means that the act of killing is weighed, including reasons for and against killing. “Premeditated” does not require that the decision to kill must take a long time to make. Even if the decision to kill is made in the heat of passion, as long as the perpetrator calms down and thinks about it, it can constitute the premeditation and deliberation required for first-degree murder.

3.2. Malice (Murder without Premeditation)

Malice aforethought is the most common description of the actor's criminal intent in murder cases. It originates from the early English common law, and has gradually deviated from its original meaning with the development of murder legislation, at least “malice” doesn't just mean “malignity” or “deliberation”.

“Malice” originally means hatred, grudge, ill will, or spite. Nevertheless, the expression “malice aforethought” does not refer to the above meaning. Killing out of hatred or resentment may constitute murder, but the crime may be committed without malice. For example, in *Ellis v. State* [25], a mother killed her bastard son to cover up her shame. It is hard to say that she hated her son or anyone else, or more precisely saying that she even loved the victim, but this didn't influence her to murder him because she cherished her reputation more. Therefore, “malice” in the legal sense is different from its daily or original meaning. Even though hatred, resentment and other similar ideological states can be equal to malice, they are not necessarily the same in the legal sense. [26]

As for “deliberation”, its legal meaning in murder is also different from original ones. Literally, “deliberation” means thinking ahead about something, perhaps even for a long time. But even “malice with willfulness, deliberation and premeditation” that can constitute first-degree murder or aggravated murder does not require that the actor must have thought for a long time before killing. For example, in *People v. Weeks* [27], the court holds that this “willful, deliberate and premeditated” murder could be committed after such little consideration that the time for premeditation can be short enough to flash through the mind. In that serious first-degree murder and aggravated murder did not require long-time thought before killing, some judges and scholars began to assign no meaning to “deliberation” in malice aforethought because the intent to the killing must precede the act [28], thus equating “malice premeditation” with “malice”. [29]

In common law, “malice” is the essential element that traditionally distinguishes murder from other homicides. Under the legal background of homicide, malice has gradually evolved into a legal term containing different degrees of culpability, which contains the intention to kill, to cause serious injury, to show the extreme indifference to the value of people's lives, and to commit a felony that substantially threatens others' lives. [30]

Malice in murder can be divided into explicit malice and implied malice. With regard to the definitions, the California Supreme Court in *People v. Knoller* [31] stated that if the actor deliberately intent to deprive other person's life, it is express malice. If there is insufficient provocation, or the circumstances indicates that the actor is indifferent and malicious, it is implied malice. Express malice is often referred to intent killing that the actor willfully causes the death of the victim. Implied malice usually refers to extremely indifferent killing. [32] The former refers to the intention to kill or seriously injure another person, while the latter often refers to knowing that one's actions may cause the death of another person, but showing extreme indifference or wanton disregard for such risks.

In *Taylor v. State* [33], the victim drove his car to the gas station to fill up oil, but was heavily stuck by a speeding vehicle when he went out of the car to pay. The police caught the defendant according to the clues provided by the witnesses, and found that these two persons had quarrels before through the evidence searched in the defendant's car. Although the victim was rushed to hospital quickly and later discharged to recuperate, he still died 16 days later for blood clots. Medical tests show that the victim's blood clots were caused by injuries sustained in the car accident. The Court therefore holds that the accused constituted malicious murder and assault with aggravating circumstances. The judgement says that if it can be proved that there was an explicit or implied intent to kill illegally, murder accusation may sustain. The meaning and constitution of intentional murder require that the accused intentionally cause a result prohibited by law, and this can generally be understood to include situations in which a person knows that his conduct is likely to cause such death result, whether he wishes it to happen or not. Therefore, the accused's deliberate and unlawful deprivation of the life of another person, and the whole circumstances of the killing, despite that there is not quite enough provocation, indicate the presence of indifference and malevolence of mind and thus constitute malicious murder.

It can be seen that express malice refers to a person killing another person with cool, deliberate consideration and an established design which is demonstrated by criminal intent presumed by external evidence, such as lying-killing, threatening, quarrels, and plans to cause serious bodily harm to another person. [34]

In another case (*People v. Knoller* [35]), a large dog owned by the defendant and her husband bit and killed the victim (the defendant's neighbor) in the hallway of their apartment. The California Supreme Court affirms the "implied malice" standard stipulated in *People v. Phillips*[36] that there is implied malice if death is caused by a life-threatening act that the actor knowingly disregards when he or she knows that his or her actions would endanger the lives of others. In short, implied malice requires the defendant to act knowing that his or her actions would substantially threaten the lives of others. In this case, the defendant knew that the big dog she raised was dangerous, and during the breeding period, there were many incidents of dog wounding. Her neighbors complained about her dog many times, but the defendant always ignored, and even the defendant's husband was once bitten by his own big dog. The victim lived next to the defendant and met her large dog almost every week. The victim had been bitten once before by a large dog, so she tried hard to avoid them since that. Until the day of incident, the victim was attacked by the big dog in the corridor when she went home from work, no one dared to go out to rescue, and the defendant had been hiding in the house to ignore the wounding incident. An autopsy revealed 77 wounds on the victim's body, with the fatal wound being in the neck, where her throat had been crushed, an injury usually inflicted by carnivores trying to kill their prey.

The issue in this case is whether the defendant knew that her dog would kill the victim, that is, whether the intent to inflict serious injury constitutes the implied malice murder. The Supreme Court notes that according to precedents, the actor only acts with an awareness of endangering the lives of others in order to constitute implied malice. That rule has been in place for years, but the Appeal Court held that the charge of second-degree murder with implied malice could be based on the actor's perception of a risk of serious bodily harm. In Supreme Court view, implied malice requires that the defendant knowingly ignores the danger to the lives of others. Therefore, to constitute second-degree murder, it must be shown that the defendant was able to recognize the risk that his actions would result in death, rather than merely having an intent to cause serious injury. From the California judgment, implied malice requires that the perpetrator has an extreme disregard for the value of the lives of others, not just the value of the body, and that although the perpetrator does not have a direct intention to kill, he knows that his actions create a risk of death and recognizes this risk, but still chooses to continue to act and ultimately cause the death of others. This implied malice is not much less culpable than express malice[37] and therefore constitutes murder.

3.3. Felony Murder

The other kind of behavior that constitutes murder is that the death result happened in the commission of actor's intent to commit another dangerous felony. To constitute a crime, the actor's specific subjective mentality or criminal intent is usually required. [38] As Justice Jackson states in *Morrisette v. United States* [39]: "Only intentional harm can constitute a crime, which is not a narrow or temporary concept. It is universal and enduring in a mature legal system, just as we firmly believe that everyone has free will, and normal people have the ability and obligation to choose between good and evil." Punishing criminal intent is as instinctive as a child using "I didn't mean to" as an excuse, and to constitute any crime, "malice" is the primary condition. [40] The specificity of the felony murder lies in the fact that the actor may not have the premeditation required in traditional murder, but because of the intent to commit a felony, the result of a death in the commission of a felony and the felony itself are treated as murder.

In *People v. Billa* [41], the defendant and his two accomplices conspired to fire their truck to obtain insurance. All three were present at the scene of the crime, but during the arson, one of the accomplices was covered in gasoline and accidentally burned himself severely and died. Section 189 of California Penal Code states that murder in the commission or attempted commission of a particular felony, such as arson, constitutes first-degree murder. Previously, the California Supreme Court ruled in *People v. Dillon* [42] that the felony murder rule in Section 189 of Penal Code applies to all cases of unintentional homicide resulting from recklessness, negligence or simple accident. The issue is whether the death of his accomplice could be blamed to the defendant. The Court held that if the defendant is found guilty of murder, then assuming the victim is not dead, then as an accomplice, he is also criminally responsible for the act of burning himself, which is absurd. Even if the felony murder rule allows the actor to be responsible for accidental deaths in the commission of a felony, the death of an accomplice should be excluded.

Therefore, it is not necessary for the felony murder actors to have the specific intention to cause the death of others or such general intention. The reasoning lies in that the requirement of malice in murder can be satisfied when the actor maliciously commits a felony. To accuse the actor constituting murder, it must be shown that the serious crime committed or intended to commit carries a substantial risk to cause death or serious injuries, and that the actor is aware of such risk and still determined to kill or ignore risk. Since this felony risk is comparable to murder in the severity of consequence, this offence is punished as serious as murder. [43] However, felony murder rule requires less criminal intent and sentenced more stringent in criminal liability, so many U.S. states impose restrictions on the application of this rule, such as that the actor must be at least negligent to the victim's death, or that the felony itself carries the risk to death or serious injuries.

4. SUMMARY

Through the analysis of criminal intention, it can be affirmed that in the determination of criminal responsibility, a person who bears criminal responsibility for his behavior must have a legal psychological state, that is, an act without criminal intention can not constitute a crime and an act committed without necessary criminal intent is not a crime. In the affirmation of murder culpability, there are some special provisions such as premeditation, malice aforethought and felony murder in judicial practice. Thus, many states' murder laws make it clear that the actor's criminal motive and intention are the important judgment standard of conviction and sentencing, and the Criminal Model Code goes further, which divides criminal intent into purposely, knowingly, recklessly and negligently so as to distinguish murder from manslaughter. It can be seen that, in American criminal law of murder, the determination of criminal intent is clearly linked to the responsibility of the crime, and is formally established as the elements and defenses of murder.

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