

PREFACE

Although the felony murder rule is one of the most criticized features of American criminal law, no book has ever been written on the topic before.

Such a book is needed for many reasons. Felony murder liability is part of homicide law in almost every American jurisdiction. It is important that lawyers, lawmakers, and voters understand how it works and how it can be improved. Legal scholars have long viewed it as an irrational vestige of ancient English law that does not cohere with the rest of modern criminal law. This view is unfortunate. Felony murder law is more modern and less harsh than commonly believed. Excluding it from general accounts of criminal law as an archaic exception distorts our understanding of the overarching principles of modern criminal law. This book sets out to correct the historical record, explain modern felony murder law, identify needed reforms, and show how, by taking account of felony murder liability, we can improve our understanding of the basic principles of American criminal law.

I am grateful to many people who encouraged and assisted me in the preparation of this book.

George Fletcher, my teacher at Yale and my supervisor in a research fellowship at U.C.L.A., first awakened my interest in criminal law. In this regard, my experience is not unique. George has enlivened criminal law scholarship the world over and more or less invented the field of criminal law theory in the United States. Thus George not only enabled me to produce this book, but also created an audience for it.

Markus Dubber, my colleague at Buffalo for many years, has made indispensable contributions to this project at every stage. He first attracted my attention to the felony murder problem by inviting me to write a review essay on Samuel Pillsbury's excellent book on homicide, *Judging Evil*. Many opportunities followed to contribute to conferences and symposia too numerous to recount, and many of those papers informed this project. Co-teaching courses with Markus

on the history and theory of criminal law led to many conversations on the themes of culpability, common law history, and codification. Markus steadily encouraged me to publish a book on the topic, and eventually suggested that I contribute it to his series, “Critical Perspectives on Crime and Law.”

Four other scholars have patiently encouraged the project, and improved it by commenting on its component papers. Robert Weisberg, my coauthor on a criminal law textbook and a theoretical work on law and literature, has taught me a great deal about both statutory and doctrinal interpretation, and instilled a conviction that deep questions lurk in the concrete details of homicide law. The remarkable theoretical work of Mark Kelman and Ken Simons on the concepts of strict liability and negligence has greatly shaped my own thinking. Both have generously shared their reactions and suggestions. Jonathan Simon’s path-breaking work on the politics of criminal justice has helped me think about how to bring theoretical scholarship and democratic politics into dialogue on questions of criminal justice. Jonathan has also served as an acute reader.

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Although many people have helped me research and write this book, all errors and opinions are my own.

This book incorporates substantial portions of three articles. Chapters 1, 9, 10, 11, and 12 include substantial portions of Guyora Binder, "Making the Best of Felony Murder," 91 *Boston University Law Review* 403 (2011), reprinted with the permission of the *Boston University Law Review*. Chapters 5, 6, 7, and 8 include substantial portions of Guyora Binder, "The Origins of American Felony Murder Rules," 57 *Stanford Law Review* 59 (2004), reprinted with permission of the *Stanford Law Review*. Chapters 2, 3, and 4 include substantial portions of Guyora Binder, "The Culpability of Felony Murder," 83 *Notre Dame Law Review* 965 (2008), reprinted with permission of the author.