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“Guilty” for the Crimes of their Father

Ricky and Raymond Tison
and the Felony Murder Rule

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Introduction

From its inception our criminal justice system has required that two elements be present before imposing liability for the commission of a crime. It must be shown that the defendant had a culpable state of mind (*mens rea*) and that he committed a bad act, an *actus reus*. From this we might conclude - not unreasonably - that to convict someone of a crime the state would have to show that the defendant acted with intent to break the law. Indeed, if someone kills another human being accidentally or unintentionally, we quite reasonably hold that person as being less responsible for the crime than if he acted with "deliberateness" or "malice aforethought."

Indeed we take this line of reasoning even further, believing that it is appropriate to punish a person more severely the more culpable his or her state of mind.

Still, as widely shared as this principle may be, there are several exceptions to it.

The "felony murder rule" is one of those exceptions.

I. Guilty for the Crimes of the Father

Imagine the following case has come before you:

Ricky and Raymond Tison would visit their father, Gary, in the Arizona State Prison and during those visits their father suggested that they plan a "break-out." The boys loved their father and together with their father they "hatched" a plot to spring "dad" from jail where he was serving "life without parole."

As Alan Dershowitz tells the story in *The Best Defense*, pp. 289-318,

"On a hot summer visiting day in July of 1978, the . . . Tison brothers arrived . . . with their perennial picnic basket . . . in place of fried chicken and rum cake, they brought weapons. But their father had assured them - promised them - that nobody would get hurt. 'We told Dad,' Raymond said, 'we'll do this on one condition - that no one gets hurt.' Gary assured the boys, 'We'll make it out without firing a shot or being fired at' and the boys believed him. They believed him and they believed in him. To them he was not a killer.

"Once out, they drive along a series of back-roads into the Arizona desert where the old white Lincoln loaned to them by their Uncle Joe gets a second flat tire and has to be abandoned. They hail a passing car with a family who is on vacation from L. A., transfer them to the Lincoln and drive the Lincoln seventy yards into the desert. Gary tells the boys to get a water jug he spotted in the family's car and Raymond and Ricky go back to the other car 'relieved that the [family] would be left with enough water to survive until help arrived.'

"In their new, commandeered car they continued their escape along back-roads towards Flagstaff and eventually are captured as the result of a set of roadblocks set up by the police. The boys learn that their father shot and killed all the occupants of the car (a mother, a father, their two year-old son and their fifteen year-old niece).

"The father died of exposure in the desert and the boys are arrested and charged with aiding and abetting his escape from prison and stealing as well as first degree murder under Arizona's felony murder rule."

It may seem "fair" to charge Ricky and Raymond with helping their father escape from prison and with stealing, but first-degree murder? To be convicted of first-degree murder it is usually necessary to have acted in a premeditated way or to have committed the murder under circumstances presumed to be premeditated. The boys did not plan or plot to kill the occupants of the car or plan or plot to kill anyone for that matter.

Indeed they did not "specifically intend that the victims die" or "actually pull the trigger which inflicted the fatal wounds." But the felony-murder rule is an exception to these requirements. The rule simply states that if, during the course of the commission of a felony a killing occurs, all accomplices can be charged with murder.

The rule is sometimes thought to be among those offenses imposing, what has been called, strict criminal liability, the key element of which is the refusal to require proof of the actor's state of mind as a prerequisite to liability. Although there may be justifications for the creation of strict liability offenses, criminal defendants should be punished, many have argued, only when they exhibit a blameworthy state of mind for the offense with which they have been charged.

In this case, too, there is an added wrinkle to the case, because conviction of the charge of first-degree murder opened the boys up to the death penalty and Dershowitz enters the case at this precise juncture, after the boys are sentenced to death for the murder of the occupants of the car.

You may wish to read the SUPREME COURT'S review of the death penalty for Ricky and Raymond:

TISON v. ARIZONA (1986)

<http://people.brandeis.edu/~teuber/tison.html>

The death penalty is not what is at issue here, the felony murder rule is, but even so that the boys had to face capital punishment for something their father did may raise some concern about their having been charged with first-degree murder at all.

Was that fair?

What do you think?

Imagine that you were asked by the boys' mother, Dorothy, to take the boys' case on appeal before Dershowitz enters the scene and you are asked to defend the boys against the charge of first-degree murder.

How would you defend them against the murder charge?

Or if you think it was both appropriate and just to convict the boys of murder, imagine that you are the prosecutor in the case.

How would you make the case for their conviction and how would you respond to objections from the other side?

And whether you are on the side of the prosecution or the defense, what do you think of the felony murder rule?

Do you think it is a good rule?

Do you think that cases like the one presented by the Tison brothers shows the need for such a rule or do you think their case shows just the opposite, i.e., shows that the rule needs to be completely rewritten or abandoned?

Then consider the following John and Alice hypothetical case also based on a real Illinois case:

II. John and Alice Break Into a Liquor Warehouse at Night and are Accused of First-Degree Murder

John and Alice decide that they would like to celebrate their wedding anniversary, but it's Sunday and the liquor stores are closed in their state. They decide to break into a liquor warehouse and steal some liquor. As they emerge from the burglary at the warehouse, John and Alice are surprised by police officers. They attempt to escape by running to a wooded area on the opposite side of the parking lot next to the warehouse. One of the police officers spots them, then loses sight of them. A few seconds later the police officer sees a man running with a handgun towards some bushes at the northwest corner of the parking lot. He orders the man to "drop it." When his warning is not heeded, he fires his shotgun at the individual, who later turns out to be Detective Lotscheider from the police force. Lotscheider is killed by a blast from his fellow police officer's shotgun.

One half-hour later John and Alice are arrested as they are walking on a street approximately two and a half blocks from the warehouse. Neither is carrying a weapon. After a trial John and Alice are found guilty of burglary, criminal damage to property, and murder. John and Alice file a motion to arrest the judgment of murder that was granted. On appeal, however, the Appellate Court of Illinois reverses this decision, finding John and Alice guilty of murder under the felony-murder doctrine, which holds that all accomplices in a felony are chargeable with murder, if a killing occurs during the course of the commission of a felony.

As already mentioned, generally speaking, to be convicted of murder, one must either have acted with the intent to kill, or have exhibited extreme recklessness with regard to a human life, say, by emptying a loaded revolver into a crowded room. To be convicted of first degree murder, it is usually necessary to have acted in a premeditated fashion, or that the killing have taken place under circumstances presumed to be premeditated, for example, by administering poison. As has been stressed already, the felony-murder doctrine is an exception to these requirements. As the court stated in the actual case upon which the John and Alice scenario above is based, at the time of their arrest two and half blocks away from the "scene" of the break-in, "neither of the defendants had a weapon on his person" but a killing did occur in the course of the felony they committed. In the mad dash through the San Francisco streets, in that case, John did act recklessly and caused the death of another human being. But here in this case one police officer shoots another. Did not the police officer's act break the causal chain set in motion by John and Alice when they entered the warehouse?

Imagine that John and Alice appeal their case all the way to the State Supreme Court. Imagine, too, that you have been appointed to the bench and that you are one of the Justices who must decide this case. What is your opinion? You have ten days to think about it and write it up. It is to be delivered along with the opinions of the other Justices on the Court on Monday, March 7th. Armed with your view of Raymond and Ricky guilt or innocence of the charge of first degree murder in the Tison case, do you think John and Alice should be found guilty of murder? Should a defendant face murder charges when a police officer accidentally or mistakenly kills someone else? Should it matter if that victim is a bystander, one of the suspects, or a police officer? If so, why, on what grounds?

PEOPLE v. HICKMAN (1974)

<http://people.brandeis.edu/~teuber/hickman.html>

III. John and Alice Steal Some Tires Only To Be Arrested and Charged with First-Degree Murder

Now imagine, for example, that the following case, one also based on a real case, this time a California case, comes before you:

John and Alice break into an unoccupied Toyota Van at 8:15 A.M. on a Sunday morning in San Francisco, California. There are eight brand new tires in the Van. John and Alice had already removed four of these tires and loaded them into the trunk of John's Chevy Sedan which was parked a little way down the street when they are spotted by a police officer who sees the two of them rolling two tires each toward the parked car. The officer makes a U-turn, John and Alice drop the tires, jump into the Chevy, and drive off in an attempt to elude the pursuing officer. In the chase that follows, John, who is driving the Chevy, runs a red light and crashes into another car, severely injuring the other driver. John and Alice are arrested (neither was hurt in the accident) and are charged with burglary. Several days later the driver of the other vehicle dies in the hospital and John and Alice are charged with first-degree murder under the felony-murder rule.

It may seem "fair" to charge John with vehicular homicide. He, after all, was the one who ran the red light. But what about Alice? She was just a passenger. Is she also guilty?

In California the felony-murder rule is restricted to those cases (to those felonies) where the felony is "inherently dangerous to human life." The felony murder rule is not applicable to just any felony, and this is, in fact the case in all state felony murder statutes. In the state of California the crime of burglary is considered to be just such a dangerous felony. However, when the California criminal code was first enacted in 1872, the crime of burglary required a nighttime breaking and entering of a dwelling house and this was the dangerous felony to which the felony-murder rule was originally hitched.

Since then - in this century - California legislators have expanded the contours of burglary, first dropping the requirement of a breaking, then including daytime as well as nighttime entries, and finally, in California, by expanding the "dwellings" that can be entered to include motor vehicles with locked doors. Thus, by entering the Toyota Van with the intent to take the tires, John and Alice could be charged with burglary.

To complicate matters even further, many states, including California, have considered in their application of the felony murder rule killings that occur while escaping from a felony to be under certain specified circumstances "killings that occur 'in perpetration' of a felony." And so the accident at the intersection became a killing in perpetration of a burglary and thus supported a charge of murder, not only against John, who was driving, but against Alice, the passenger, as well. The trial was held and both John and Alice were found guilty of burglary and first-degree murder.

Alice may have committed burglary, but is she a murderer as well?

Imagine that a friend calls and asks you whether you would be interested in arguing Alice's appeal or if you think Alice's murder conviction should be affirmed, imagine that you are asked to be the lead attorney for the prosecution to argue the state's case against Alice on appeal.

You should feel free to expand upon the "facts" of this case as outlined above in order to explore how a change in this or that fact might affect your answer. To imagine, for example, that Alice had no reasonable ground to believe that John would "run" the red light nor did she urge John to do so. She did not say, at that moment, just before John "ran" the light, "Come on, John. Faster! Faster!" Or "come on, John step on it!" Would it make any difference to your defense, if she had?

Imagine, too, that Alice did not have, on her person, a deadly weapon. If she did, would this make a difference to how you would argue the case? Why?

Armed with your opinion in the Tison case, make a case for or against finding Alice guilty of murder, offer what you believe are the best arguments that the attorney for the "other" side might make, and respond to them.

PEOPLE v. FULLER (1978)

<http://people.brandeis.edu/~teuber/fuller.html>

And (again) what about the felony-murder rule itself? Can it be justified? Do its justifications, if justifications there were, outweigh our departing from the requirement of a showing in criminal cases that a defendant had a culpable or blameworthy state of mind before he or she can be said to have committed a crime? Do you think Alice deserves to be treated as a murderer in either of the above two hypothetical cases?

Perhaps the application of the felony murder be applied depend on a defendant's degree of participation in the crime?

Think back to Alice, sitting in the passenger seat. Should she be held equally guilty of murder, along with John who recklessly drove through a red light?

If not, why not? If so, why?

Here are some questions you might entertain in sorting out your answer or answers to these questions.

You may wish to take turns reading each of these questions and comments aloud and then discussing the answer or what you think should be the answer amongst yourselves.

- (A.) *It is tempting to question Alice's criminal liability for murder, perhaps not unsurprisingly, by focusing on what transpired after the break-in and the car chase that followed. To see, for example, Alice's presence "in the car with John" as a sign that she ought to be held responsible for anything and everything that happened to the car, as a sign that the two were in "conspiracy and thus, to hold Alice responsible for whatever John did, to view John and Alice as if they were "two peas in a pod" and what one of them did, once they were working so closely together, "in tandem" and as "accomplices," the other could be held as "having done" also. But putting aside the fact that this account is not what lies behind the felony murder rule which takes the position, more simply, that all parties engaged in a "dangerous" felony may be found liable for murder if a killing occurs during the commission of that felony or while escaping from that felony, to "lump" Alice and John so inextricably together makes it difficult, if not impossible, to determine their individual responsibility for the crimes they commit and blocks any possibility of being able to entertain what each of them thought and did at the time and that might be brought forward in their own defense.*
- (B.) *It is also tempting, however, to take Alice as an "innocent" bystander, a passive passenger whisked through the streets and through a red light "smack" into another car without so much as having lifted a finger. Well, she did get into the car, that much has to be conceded, but then she was, some might think, literally, "taken for a ride." This opposite view, opposite to (1) seems to go too far in the "other" direction and only succeeds or rather only appears to succeed because a small slice of time is isolated from what is — as a matter of fact — a much larger sequence of events.*
- (C.) *Many, however, will find that there is something disturbing about holding Alice responsible for what appears — on its face — to be something John did and that Alice herself did not intend. What's disturbing about this, many of you thought, is*

the implication that the common understanding of why we would hold a person responsible for a crime in the first place seems to be ignored. Finding Alice guilty of murder seems – on its face – to violate our shared understandings of moral culpability and criminal justice. She neither “did it,” i.e., she neither committed the homicidal act, nor intended it.

- (D.) *Here, however, it is also not unusual to overlook the possibility that prosecutors in cases of this kind are likely to be just as concerned about the need to show that an accomplice in a position like Alice’s did meet the requirements necessary for murder. Prosecutors know that they will have to convince a jury that a defendant in a felony murder case did “do” what she was charged with having done and so did have the requisite *mens rea*, the requisite intent.*
- (E.) *So the argument on the other side, i.e., the argument against Alice, would not simply “fall back” on the felony murder rule itself. Prosecutors are unlikely to say to a jury, “well, we do not have to show *mens rea* (intent) because the felony murder rule does not require such a showing.” They are more likely to say that Alice did “intend” to engage in a felony where a killing might occur and since no one disputes that she intended to “steal some times,” she did – in that respect – intend the killing that came about, even though she might not have been able to anticipate the exact steps whereby it (the killing) came about.*

This “move” is sometimes described in legal terms as “transferred intent.” The intent to commit burglary is “transferred” to the killing. Now I am not saying that this argument is absolutely convincing or that there are not good arguments to be made against it. I am only saying that prosecutors in cases of this kind are not likely to pretend that an accomplice such as Alice had neither the requisite intent nor did she fail to commit the “bad act” with which she is charged. The argument, more exactly, might run as follows: Alice set out on that Sunday morning intending to steal tires from a locked van. This act is seen in the State of California as a burglary. No one can deny that she did intend to commit burglary. “Burglary” in the State of California is defined by statute as “inherently dangerous.” An “inherently dangerous” felony is a felony where a killing is likely to occur. In this case a killing did occur. Therefore it is not unreasonable to hold Alice responsible for that killing.

- (F.) *What’s wrong with this? Well, again, none of the arguments on either side are the sort of arguments one might describe as a “knock-down” argument, that is, an argument that will “knock down your opponent and keep him or her down for a count of “ten.” But, as many of you know, although I do not think that there is always “only one right answer,” there can be and often are, good and/or better answers. There are three sorts of responses Alice’s attorney might make to a prosecutor’s attempt to show that she had the requisite *mens rea*.*

(1) First, the argument could be made that she lacked the requisite intent because the “felony” she is purported to have committed was, as a matter of fact, not “dangerous.” She stole some tires from a locked van. That is true. But the van was unoccupied and parked in an empty parking lot. Only “inherently dangerous” felonies can trigger the felony murder rule and burglary is not “inherently” dangerous; it depends on the burglary.

As a result some States require a showing, that is, they require prosecutors to show in any given case of felony murder that the felony that triggered the rule was, IN FACT, dangerous. This is not, however, how the California law reads. It simply “defines” burglary as “inherently dangerous.” But this is not very convincing. If the owner had been inside the van with a loaded shot-gun

determined to “guard” his tires while John and Alice snuck up on the van with pistols drawn, one might have to admit that the burglary that John and Alice committed was, in fact, dangerous. But no such thing of this kind occurred. Tax evasion is a felony. But there is no state in the union that lists “tax evasion” as one of the felonies that triggers the felony murder rule.

Why? Well, the answer is fairly straightforward: people do not often get killed while doing their taxes. This is also true when someone steals, say, a camera from the front seat or the glove compartment of an unoccupied car. Breaking into someone’s house at night may, indeed, be seen as “inherently dangerous.” Perhaps not as obviously “inherently dangerous” as robbing a bank, but “dangerous” nonetheless.

Alice’s attorney could challenge the law itself, arguing that burglary as it was originally understood in the 19th century in California as breaking and entering a dwelling house of another at night-time might properly be regarded as dangerous, but the 20th century version of burglary as breaking into a car or truck in the day-time is less obviously so and should not automatically trigger the felony murder rule. In the latter case prosecutors should have to show that it was in fact dangerous to justify the triggering of the rule as they are required to do in other states.

Or Alice’s attorney might argue that the two forms of burglary, the 19th century version and the 20th century version should be separated from one another and labeled “Burglary One” and “Burglary Two.” “Burglary One” should remain among the list of felonies that trigger the rule; “Burglary Two” should not.

Now, of course, the law cannot be changed in the middle of a trial; the California legislature has to do that. Although she is likely to be reprimanded by the judge, Alice’s attorney could let slip that she is planning to head off to Sacramento, the State Capitol, to testify before a legislative committee that the law be changed and that it be changed as outlined above.

Juries do not have to follow the law, even though they are instructed to do so. If a jury thinks a defendant is being tried unjustly, that jury may simply refuse to convict. And in this case they are likely to listen.

(2) Second, the argument could also be made that even if Alice can be shown to have set out to commit a so-called “inherently dangerous” felony, either because she knew that burglary was considered to be so in the State of California or because she should have known and ignorance of the law is, in any case, no excuse, the intent to commit such a “dangerous” felony is too general, too vague to justify its transference to the killing that occurred. Her intent to steal some tires cannot in this case be expanded to include the killing that occurred because it would be irresponsible to insist that she could have reasonably foreseen with sufficient specificity that a killing would occur to hold criminally liable for the killing that did occur. Here the argument would hinge on what – under the circumstances – is and what is not “reasonably foreseeable.” And here we see how complex and confusing foreseeability can be. Judges sometimes make a terrible mess of foreseeability because they define it much too broadly.

So, for example, in *Palsgraf v. Long Island Railroad*, although it was not a criminal case, if it is claimed that the railroad officials should have “foreseen” that their helping a passenger onto a moving train could lead to “an accident,” then, it might also be claimed that the railroad officials should have been able to foresee that an “accident would occur. Some of you may remember that case:

Palsgraf v. Long Island Railroad (1928)

Helen Palsgraf, who lived in Brooklyn, purchased a train ticket to travel to Rockaway Beach. While she waited on the platform for her train, various other trains to other destinations came and went. As one of these was pulling away, a man with a brown paper package under his arm ran out of the station and across the platform in an effort to board the train as it was picking up speed. He appeared to be losing ground when two of the railroad's employees came to his assistance, pulling and pushing him onto the moving train. In the process, the package slipped out from under the man's arm and fell under the wheels of the train. A spark from the train ignited the fireworks which the package so happened to contain. A huge explosion occurred and the sound from the explosion ricocheted throughout the station, causing a set of heavy scales at one end of the platform to topple over onto poor Mrs. Palsgraf, who was standing there clutching her ticket to Rockaway Beach. She sued the Long Island Railroad alleging that the negligence of its employees (in helping the man with the package onto a moving train) was responsible for her injury. Did the negligence of the railroad employees cause Mrs. Palsgraf's injuries?

But Cardozo did not think that the railroad officials were liable for her injuries and he made his position clear by a more specific account of why it is thought that helping someone onto a moving train is "negligent" in the first place. It is negligent because it creates certain risks of injury, in particular, to the passenger one is helping onto the train, and the injuries that result from those risks are the injuries that the railroad officials can be expected to reasonably foresee. The injuries to Mrs. Palsgraf are not – on Cardozo's view – reasonably foreseeable. So, you see it all depends upon how broadly or loosely one characterizes foreseeability and the *Palsgraf* case suggests that justice may require that we not characterize it too loosely. Alice's attorney might argue that her intent to steal some tires and her intent to commit murder is too "loose" a fit.

(3) Finally, Alice's attorney might claim that Alice has defense that should distinguish her culpability for the killing from that of her partner John. In some states, other than California, accomplices are given the opportunity to offer four affirmative defenses. If they can show all four, they can relieve themselves of liability for felony murder.

What are the four defenses?

If an accomplice can show that . . .

- (1) he or she did not commit the homicidal act;
- (2) he or she did not encourage it in any way;
- (3) he or she did not bring a deadly weapon to the crime scene; and
- (4) he or .she did not know that her partner had a deadly weapon,

. . . the accomplice cannot to be held criminally liable under the felony murder rule. In this case, Alice, of course, can make at least the first three of these four defenses.

But she may have some trouble with the fourth. Why?

In most states a car driven over the speed limit or through a red light becomes a "deadly weapon." Thus, when Alice gets into the car to avoid arrest, she knew or should have known that a partner would – in fairly short order – be in possession of a deadly weapon.

There is a reason that some states allow accomplices to offer these four affirmative defenses and that reason may simply be that otherwise the felony murder rule appears too harsh on accomplices in those situations where the defenses would be successful.

- (G.) *The case of Rock and Hickman (Rock and Hickman were the actual defendants in the case, not John and Alice, but in thinking about the case, about this case, you can substitute John and Alice for Rock and Hickman) tells a slightly different story and some may be tempted to shift the discussion in this case to talk of causation and sine qua non. But to argue here that “but for the fact that Rock and Hickman broke into a liquor warehouse at night, a police officer would not have been killed,” leaves one vulnerable to all the criticisms brought to bear against all “but for” types of reasoning. “But for the fact that the mothers of Rock and Hickman gave birth to their sons, a police officer would not have been killed,” is also a necessary condition of Lotscheider’s death and examples of this sort show that sine qua non types of reasoning prove one’s case all too well. Such reasoning “over-proves” the case and so does not really get at the grounds for or not holding Rock and Hickman responsible for Lotscheider’s in this case.*
- (H.) *Some of you, however, might think that the bullet fired from one of the police officer’s guns was fired negligently and so the negligence of that police officer “broke” the causal chain between the sequence of events set in motion by the burglary and ending with the death of Lotscheider. This does not seem so unreasonable, although we would probably wish to know more about the case before we rush to the judgment that the police officer acted negligently.*
- (I.) *Interestingly in this case, however, Rock and Hickman can offer the four affirmative defenses mentioned above. As a side note, in Tison v. Arizona the Tison brothers would not have been able to defend themselves in this fashion since they not only brought a deadly weapon to the scene of the crime; they brought a whole picnic basket full of weapons!*
- (J.) *It is also true that here it is much easier to show that the felony Rock and Hickman set out to commit was “inherently dangerous.” Breaking into a liquor warehouse at night may also have the added danger that the warehouse would have been hard-wired into the police station. Although it does not say as much, it is a reasonable assumption that an alarm probably went off inside the police station shortly after Rock and Hickman “broke in.” Why else did 17 police officers suddenly arrive on the scene with their guns drawn? So it would be hard to argue that the crime they intended to commit was not dangerous and if they could be expected to know that it was, it may not seem unreasonable to hold them criminally liable for the killing that occurred.*
- (K.) *One final point: some states (California is one) add a sentence or a clause to their felony murder law that states “the felony murder rule does not apply unless the killing that occurs is brought about by one of the alleged felons or one of the perpetrators of the original felony.” Since neither Rock or Hickman “brought about” the killing of Lotscheider, under this added qualification, they would not have been convicted of murder in the first degree in California. What is interesting about this particular wrinkle is not, of course, that some states add this qualification to their felony murder law but that they do so because they perceive that there is something not quite “fair” about the rule unless some such qualification is added.*

Conclusion

So, where do you stand?

Having gone through this exercise, you now know, believe it or not, a whole lot about the law. You are now an expert of sorts on the felony murder. You can count yourself among the top .5% who can reflect on the law and have something intelligent to say about it.

Make an argument for or against the felony murder rule in light of your opinion of the guilt or innocence of Raymond and Ricky Tison with the two John and Alice cases outlined above as "test" cases, i.e., as a means of testing your theory of Raymond and Ricky's guilt or innocence of a charge of first-degree murder.

Do you agree not only on how the cases should be decided but also on the reasons and grounds for arriving at your decision in each case?

Did you discover that in thinking about how you would decide John and Alice's fate in the two John and Alice cases that you revised your opinion in the Tison case? Why? Why was that?

Does the felony murder rule undermine basic notions about individual responsibility and proportionate punishment in our seeking to administer an effective as well as fair criminal justice system? What do you think? How might the rule be defended?

And if you find you are opposed to the rule, how would you respond to the best defenses of the "rule."



Suggestions for Further Reading

Cases:

People v. Hickman, 59 Ill. 2d 89; 319 N.E.2d 511 (1974)
<http://people.brandeis.edu/~teuber/hickman.html>

People v. Fuller, 86 Cal. App. 3d 618; 150 Cal. Rptr. 515; 1978 Cal. App. (1978)
<http://people.brandeis.edu/~teuber/fuller.html>

Tison v. Arizona, 481 U.S. 137; 107 S. Ct. 1676; 95 L. Ed. 2d 127 (1987)
<http://people.brandeis.edu/~teuber/tison.html>