

# THE CALIFORNIA SUPREME COURT AND THE FELONY MURDER RULE:

## *A Sisyphean Challenge?*

MIGUEL A. MÉNDEZ\*

### INTRODUCTION

This article examines the California Supreme Court's major encounters with the felony murder rule. In its unvarnished version, this rule allows a prosecutor to convict a defendant of murder without having to prove the mental states of murder as defined in the California Penal Code. The prosecutor, however, must prove that the homicide occurred during the commission or attempted commission of a felony. As will be explained, under California law the homicide will constitute first degree murder if the felony underlying the homicide is among the felonies enumerated in Section 189 of the Penal Code.<sup>1</sup> It will constitute second degree murder if the underlying felony is not among those felonies.

To appreciate the effects of the felony murder rule, it is necessary to understand how California law defines and punishes various homicides.

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\* Professor of Law and Martin Luther King, Jr. Scholar, UC Davis School of Law; Adelbert H. Sweet Professor of Law, Emeritus, Stanford University. I want to thank my colleagues, Floyd Feeney, Elizabeth Joh, Donna Shestowsky, and Robert Weisberg, for their helpful comments. I alone, however, am responsible for any errors.

<sup>1</sup> See CALIFORNIA PENAL CODE § 189 (West's 2010 Desktop Edition) [hereinafter CAL. PENAL CODE].

Part A provides this overview. Differentiating among the various homicides in turn requires an understanding of different homicidal mental states. Part B presents the classification of different homicidal mental states. Part C introduces the core doctrine surrounding the felony murder rule in California. It is followed by Part D which describes the major limitations the California Supreme Court has imposed on the doctrine. Part E traces the statutory roots of the second degree felony murder rule, as described by the California Supreme Court. Part F examines potential problems with the Court's explanation of the rule's roots. Part G explores the Court's construction of the Penal Code provisions setting out the first degree felony murder rule and questions whether it was necessary for the Court to rely on legislative history in construing the provisions. Part H presents a critique of the Court's felony murder jurisprudence by examining the felony murder rule's place in California's law of murder. Part I attempts to shed some light on why the Court has taken extraordinary measures to preserve the felony murder rule and concludes with a call on the California Legislature to reconsider the wisdom of retaining the rule.

## A. AN OVERVIEW OF HOMICIDE IN CALIFORNIA

As a review of any standard criminal law casebook will attest, homicide is considered the most "graded" offense. This means that both the Common Law and statutory treatment of homicide focuses on the circumstances that differentiate one form of homicide (e.g., murder) from another (e.g., negligent homicide). Since the harm is the same in all cases — the death of a human being — the judicial and statutory focus has been on the mental state of the offender. If the offender, for example, intended to bring about the death of the victim, the offender will be deemed guilty of murder;<sup>2</sup> if on the other hand, the offender did not even contemplate the death of the victim, the offender may be guilty only of negligent homicide.<sup>3</sup>

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<sup>2</sup> See, e.g., CALIFORNIA PENAL CODE §§ 187-188. That would be the case unless, of course, the offender acted within the parameters of such doctrines as self-defense or defense of others, see, e.g., CAL. PENAL CODE § 197(1), or heat of passion. See CAL. PENAL CODE § 192(a).

<sup>3</sup> See CAL. PENAL CODE § 192(b).