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## Thoughts on Professor Crump's Comparison of Traditional American Homicide Law and the Model Penal Code

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## **THOUGHTS ON PROFESSOR CRUMP'S COMPARISON OF TRADITIONAL AMERICAN HOMICIDE LAW AND THE MODEL PENAL CODE**

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*Neil P. Cohen\**

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### I. INTRODUCTION

This Comment is a brief response to Professor David Crump's interesting article, *"Murder, Pennsylvania Style": Comparing Traditional American Homicide Law to the Status of Mode Penal Code Jurisdictions*, in this issue of the *West Virginia Law Review*. My purpose is not to express each quibble I have with Professor Crump's piece but rather to discuss some larger issues raised by Professor Crump's work. Indeed, I agree with many of Professor Crump's conclusions,<sup>1</sup> particularly those faulting the Pennsylvania model for its imprecision.

In general terms, Professor Crump, as is typical of his scholarship, has addressed an interesting issue, made many insightful points, and offered some

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<sup>1</sup> Among the sound suggestions Professor Crump makes are: putting the burden of proof of "heat of passion" or the like on the defendant on the theory that he or she possesses the information needed by the jury to assess this (though I am concerned that it forces the accused to admit killing the victim); that "malice aforethought" should be abolished as a named concept because it is such a misnomer and can be replaced by a definition that accurately describes its meaning; and that premeditating "in an instant" seems to be inconsistent with the real meaning of that term, requiring some kind of advance planning.

bold, specific solutions to the problems he identifies.<sup>2</sup> One cannot help but learn any time Professor Crump takes pen in hand or, more accurately, keyboard to fingers.

Professor Crump's choice of a topic recognizes a significant issue for anyone interested in substantive criminal law, especially the law of homicide. Quite correctly, he notes that the two prevalent American models of homicide are the Model Penal Code (MPC) and the Pennsylvania Statute of 1794. The concept of comparing them as they are applied by the various states is most informative and worthwhile. His conclusion that the MPC model is far better than the Pennsylvania approach is, in my opinion, quite sound. However, perhaps *as applied*, the two do not function as differently as Professor Crump opines. Moreover, while I strongly agree with Professor Crump that the Pennsylvania approach does create muddled categories and needs significant clarification, I do not agree that the Pennsylvania approach, *as applied*, is *necessarily* an irrational way to organize the law of homicide.

This Comment examines Professor Crump's considerable piece from several perspectives. After suggesting that Professor Crump's analysis would benefit from a broader look at the American jurisdictions adopting the Pennsylvania or MPC approach to homicide, it turns to the critical issue of assessing relative moral blameworthiness, which is at the heart of Professor Crump's critique of the Pennsylvania model. This Comment then discusses whether, in fact, the Pennsylvania model is actually so complex and poorly articulated that it produces unacceptable results. To better ensure that the Pennsylvania-based homicide provisions actually serve their underlying policies, this Comment suggests that better legislative history and jury instructions would be a helpful complement. Moreover, an accurate assessment of the Pennsylvania and MPC models will require far better empirical data about how they work in practice. Finally, this Comment argues that merely changing decision makers to allow the judge, rather than jury, to fine-tune homicide law by differential sentencing based on differences in moral blameworthiness will not, in my view, produce results that better reflect the community's assessment of moral blameworthiness.

## II. INCOMPLETE SURVEY OF TWO SYSTEMS

One problem with this piece is that it does not paint with as broad a brush as it might. Professor Crump focuses primarily on the homicide laws of California and Texas and leaves developments in the rest of the country largely untouched or relegated to a few references in the footnotes. Indeed, at some points, especially in the latter pages of the article, one gets the impression that the point of the article is to critique California homicide law by pointing out its

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<sup>2</sup> My favorite is David Crump & Susan Waite Crump, *In Defense of the Felony Murder Doctrine*, 8 HARV. J.L. & PUB. POL'Y 359 (1985), where he forcefully argues in favor of the felony murder rule, contrary to the vast weight of academic scholarship.

significant faults that would be virtually eliminated if it were more like that of Texas.<sup>3</sup> While in many ways this observation is accurate, it does little to provide a general study of either the Model Penal Code or the Pennsylvania approach because many of the details Professor Crump addresses in the two statutes were not part of either the MPC or the Pennsylvania homicide laws. These specific provisions were added by the California or Texas legislature or courts, sometimes—but not always—in response to deficiencies in the MPC or Pennsylvania statutes.<sup>4</sup> Another window into the Pennsylvania and Model Penal Code provisions could be opened if developments in many other states were also addressed. Indeed, developments in Pennsylvania since 1794 might be helpful<sup>5</sup> because Pennsylvania used its extensive experience with its own homicide structure to conclude that significant changes were needed. Surely the statutes and case law in those states may contain instructive illustrations of good and bad developments in the etiology of these two approaches to homicide law and may reveal that the Pennsylvania model as applied is not as deficient as portrayed by Professor Crump.

### III. CONUNDRUM OF “MORAL BLAMEWORTHINESS”

Another issue that bears mention is the elusive concept of moral blameworthiness. Professor Crump frequently notes that a part of the California or Pennsylvania statute does not accurately reflect the killer’s moral blamewor-

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<sup>3</sup> Professor Crump states that the homicide law of Texas is preferable to that of California “in virtually every respect in which it differs.” David Crump, “*Murder, Pennsylvania Style*”: *Comparing Traditional American Homicide Law to the Statutes of Model Penal Code Jurisdictions*, 109 W. VA. L. REV. 257 (2007).

<sup>4</sup> For example, Professor Crump criticizes California first degree murder law for including discharging a firearm from a motor vehicle with the intent to kill someone outside the vehicle. Crump, *supra* note 3, at 291-292; CAL. PENAL CODE § 190 (West 2005). He argues that this does not correlate with moral blameworthiness because first degree murder covers a person who is shooting from inside a car but does not cover a person who is sitting on a curb, waiting for a ride, and impulsively intentionally shoots someone on the street. While it seems to me appropriate for the California legislature to say that shooting from a car merits special harsh treatment, perhaps because of a rash of such crimes or the difficulty of apprehending drive-by killers, Professor Crump’s disagreement with this policy choice is just that—his personal values, which differ from those of California legislators. More importantly for present purposes, it must be noted that Professor Crump’s concerns about the issue do not really address the Pennsylvania model since this category of first degree murder was never part of the Pennsylvania law but rather was added by California legislative authorities addressing a California-specific concern. The same issue would be presented under the Model Penal Code if the legislature, expressing local values, somehow made homicide committed by a drive-by shooting an aggravating factor, meriting harsher punishment.

<sup>5</sup> The California courts have looked to Pennsylvania precedents when interpreting language in the early Pennsylvania statute. *See, e.g., Keeler v. Superior Court*, 470 P.2d 617, 621 (Cal. 1970) (in interpreting the phrase “human being” in California homicide law, the California Supreme Court looked at a 1797 Pennsylvania case, indicating that a “human being” for this purpose must have been “born alive”).

thiness. At the heart of this issue, of course, is the notion that homicide law should permit actors to be sorted according to their moral blameworthiness. After all, the reasoning goes, each person charged with a homicide has killed someone.<sup>6</sup> The issue is what to do with this killer. Should he or she be assigned to the most serious group of killers, meriting the most serious punishment, or to a lesser group, qualifying at most for some lesser sanction?

A simple illustration is the hired killer who uses a car to kill the intended victim who is crossing the street. The contrasting illustration is the driver who does not see a pedestrian crossing the street and accidentally kills that person. In both the hired killer and careless driver cases, the defendant-driver operates a car in such a way as to kill the victim, but generally accepted moral theory says the two should be treated differently by the criminal law. The hired killer “deserves” greater punishment than the careless driver because killing intentionally is morally worse than killing carelessly, even though it might not matter to the victim’s family whether the defendant killed purposely or carelessly. Sentencing law in every jurisdiction recognizes this and authorizes far greater punishment for the intentional killer than for the criminally negligent one.

Professor Crump, correctly in my view, recognizes this fundamental concept in criminal law but, like so many of us, does not have any overall theory of weighing or even assessing moral blameworthiness. The matter is presented as an *ipse dixit* based on the author’s gut feeling about what is more blameworthy and therefore deserving of greater punishment. It would have been interesting to have seen an effort to systematically deal with the idea that moral blameworthiness should be more than a gut assessment of gravity.<sup>7</sup>

Of course, one could argue that scaling moral blameworthiness is exactly what homicide law is all about and exactly what each jurisdiction has done in deciding what conduct to include in each level of homicide and what sanction to authorize for that conduct. In other words, when a legislature decides to include drive-by killings in its definition of first degree murder, it is making a judgment about moral blameworthiness in that jurisdiction.

A good illustration is provided by the general statement that killing someone should be considered more morally blameworthy than stealing a valu-

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<sup>6</sup> Thus, the analysis is different from that involving the relative moral blameworthiness of murderers versus attempted murderers. See, e.g., Russell Christopher, *Does Attempted Murder Deserve Greater Punishment Than Murder? Moral Luck and the Duty to Prevent Harm*, 18 NOTRE DAME J.L. ETHICS & PUB. POL’Y 419 (2004).

<sup>7</sup> A good illustration of an effort to treat moral blameworthiness systematically is found in Mitchell Keiter, *With Malice Toward All: The Increased Lethality of Violence Reshapes Transferred Intent and Attempted Murder Law*, 38 U.S.F. L. REV. 261 (2004). I am sympathetic to arguments against getting too theoretical in analyzing legal issues, especially by state legislators who are simply responding to a local concern and do not have the background or interest to tackle incredibly difficult issues of moral philosophy. See generally RICHARD POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* (The Belknap Press of Harvard University Press 1999).

able necklace. After all, our gut tells us that life is surely a predominant value in our society and should be so rated in the criminal law. The problem is that this generalization is not followed in many jurisdictions. In some locales, for example, killing someone accidentally (perhaps categorized as involuntary manslaughter or criminally negligent homicide) carries less of a punishment than stealing a valuable item.<sup>8</sup> In other words, if sentence categories reflect moral blameworthiness, some jurisdictions simply do not rate taking human life as graver than stealing an expensive piece of jewelry.

While many of us may disagree with this assessment of relative gravity, we must remember that this process of deciding the relative gravity of crimes is essentially a *political* decision. In our system of criminal justice, often this decision is made by the legislature with little judicial oversight.<sup>9</sup> This means that irrespective of what any academic thinks, in that jurisdiction the political process has created a structure in which theft of a high-end car is viewed as more morally blameworthy than a careless killing of a human being. While one could easily disagree with this conclusion, one must remember that it is a political decision rather than a necessary product of either the MPC or the Pennsylvania model. Thus, when Professor Crump opines that a particular statutory provision has improperly assessed relative moral blameworthiness, one must remember that this critical assessment is subject to considerable disagreement by people actually charged with representing community values in scaling the moral blameworthiness of various means of killing someone.<sup>10</sup>

A better illustration is Professor Crump's view that the Pennsylvania model's focus on premeditation and deliberation chooses "mens rea as the sole determinant of the most serious grade of murder, and a particular defined mens rea at that," and thus "creates an artificial standard that prevents crime grading from correlating with offense severity."<sup>11</sup> Although I share Professor Crump's view that the premeditation-deliberation formula presents problems in outer-limit cases, I cannot quarrel with a legislature that votes to make planned, cool killings the most serious variety of homicide, possibly even meriting the death penalty. To me this seems to be a rational view of moral blameworthiness. A legislature choosing this value structure, in my view, is neither irresponsible nor

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<sup>8</sup> See, e.g., TEX. PENAL CODE ANN. §§ 19.05, 12:35 (Vernon 2005) (criminally negligent homicide is a state jail felony punishable by jail confinement of 180 days to two years; §§ 31.03(e)(6), 12.33 (1974) (theft of item valued at \$100,000 to less than \$200,000 is second degree felony punishable by not less than two nor more than twenty years).

<sup>9</sup> See, e.g., *Keeler*, 470 P.2d at 624 (subject to limitations on cruel and unusual punishment, "the power to define crimes and fix penalties is vested exclusively in the legislative branch").

<sup>10</sup> A fascinating example is provided by Texas law, reflecting the state's history and values. Stealing ten or more head of cattle during a single transaction is a felony of the third degree carrying a penalty of not less than two or more than ten years, while negligent homicide carries a maximum sentence of two years. TEX. PENAL CODE ANN. §§ 31.03(e)(5)(A), 12.34, 12.35, 19.05 (Vernon 2005). In other words, the *minimum* sentence for stealing ten head of cattle is the same as the *maximum* sentence authorized for negligent homicide.

<sup>11</sup> See Crump, *supra* note 3, at 275.

driven by values far from the mainstream of Americans.<sup>12</sup> Thus, I disagree with Professor Crump's statement that a thoughtless, senseless, frenzied, and bizarre homicide should not be valued less severely than a deliberate, premeditated killing. In my mind, there is a meaningful moral difference, and differential treatment is not inappropriate. The Pennsylvania model's decision to recognize this difference is quite defensible.

I also see a qualitative difference between premeditation-deliberation and intent. While Professor Crump would be comfortable with using intentional killing as a definition for murder, he concedes that there still must be distinctions in sentencing because not all intentional killings are the same. I agree, but I think that a deliberate, premeditated one deserves aggravated punishment, as recognized by the Pennsylvania homicide provision.

#### IV. TOO COMPLICATED FOR REASONABLE RESULTS?

Another issue is that of whether the Pennsylvania model is so general and so complicated that it invites juries to use their own values rather than those prescribed by the criminal law. One underlying concern is that the juries will discriminate against people in certain ethnic or economic groups. Professor Crump, for example, notes that the Pennsylvania model's focus on premeditation may cause imprecise jury instructions that provide the jury with little guidance. He cites the classic study by Kalven and Zeisel<sup>13</sup> for the proposition that jurors conscientiously attempt to follow the judge's instructions. From this, he infers that the jury will (1) receive jury instructions that are too vague, (2) try to follow those instructions, and (3) make arbitrary decisions in at least some cases. While I do not disagree with any of these statements, I am reminded that Kalven and Zeisel themselves actually concluded that juries usually make the same decision as the judge would have made.<sup>14</sup> In other words, irrespective of the legitimate critique of jury instructions, juries—somehow—usually get it right.

It is interesting that Professor Crump actually cites very few cases illustrating how states following the Pennsylvania model produce bizarre or even inconsistent results. He relies primarily on the famous California case of *People v. Anderson* and argues that the court resolved the case in a manner that did not accurately reflect the moral blameworthiness of the defendant. While of course one could easily disagree with *Anderson*, as have some subsequent California

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<sup>12</sup> Indeed, this seems to be the California legislature's exact approach that was seemingly endorsed in the much-maligned *People v. Anderson*, 447 P.2d 942, 948 (Cal. 1968) (willful, deliberate, and premeditated killing is only proper if the slayer killed as result of careful thought and weighing of consideration, as a deliberate judgment or plan, carried out coolly and steadily according to a preconceived design).

<sup>13</sup> HARRY A. KALVEN & HANS ZEISEL, *THE AMERICAN JURY* (Little, Brown, & Co. (Canada) Limited 1966).

<sup>14</sup> *Id.* at 429-430 (judge thought jury decision was "without merit" in nine percent of cases; forty-three percent of this disagreement between judge and jury was when there was a "hung jury").

courts, Professor Crump does not provide us with many other illustrations of how a Pennsylvania model does—or is likely to—have a wrong result. One reason for this lack of authority is that, in reality, states with a Pennsylvania model may well *not produce anomalous results* with any frequency.

As proof for this admittedly speculative proposition, I note how few cases of such anomalies are cited by the anti-Pennsylvania scholars and how many legislatures have stuck with the Pennsylvania model after many years of seeing it in action.<sup>15</sup> If the model works so poorly, in a heavily charged political atmosphere of a state legislature, where the actors face election regularly, one would expect there to have been many changes as perceived injustices in well-publicized cases are dealt with by new legislation.

By way of contrast, many other areas of laws have undergone significant change when legislatures have perceived a problem with the existing schema. Recent examples include criminal laws dealing with child abuse, methamphetamines, and drunk driving. If the homicide laws are not being changed, this may well indicate that, to those who actually use them, they seem to work just fine, despite some theoretical problems spotted by academics.

A terrific example is the death penalty. Many jurisdictions have altered their list of aggravating circumstances in response to particular situations where legislators think that a certain category of offenders should be made eligible for the death penalty in order to recognize their moral blameworthiness. If the substantive Pennsylvania-type homicide laws are not being fine-tuned this way, perhaps it is because they adequately recognize the jurisdiction's concepts of relative moral blameworthiness and, as applied, produce sensible results.

#### V. HOW ABOUT MEANINGFUL LEGISLATIVE HISTORY?

Courts faced with the daunting task of interpreting statutes like those using Pennsylvania-type terms, such as “premeditation” and “deliberation,” would be well-served if legislators enacting such laws would make sure there is adequate legislative history that sketches, at least with a broad brush, what conduct is to be covered.

One could imagine two types of legislative history. One might be rather precise, clearly spelling out the type of killer to be included in a particular category. Another variety might be far more general, making it clear that the jury is to be given some leeway in assessing a case. The meaning of premeditation or deliberation could be included in the former, more precise category. Perhaps “extreme emotional disturbance” or even “heat of passion” could be in the latter category, giving jurors significant leeway in assessing moral blameworthiness.

This approach to legislative history would have many advantages. It would not only force legislators to think critically about the categories they create, it would also provide guidance for the preparation of jury instructions and

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<sup>15</sup> Professor Crump acknowledges this in stating that the thesis of his article is that the Pennsylvania approach poorly defines crime but has “surprising staying power.”

for courts interpreting the laws. This, in turn, may more properly assign responsibility between the legislature, courts, and juries. In my view, the legislature should make the fundamental decisions about scaling moral blameworthiness. Appellate courts should try to follow that guidance rather than supply its own measure. Juries should also follow that guidance, which in some instances would be expressed in rather general terms that invite the jury to apply community values, much as the death penalty sentencing structure does in the ultimate decision whether the defendant should receive the death penalty or a lesser sanction.

Professor Crump's observation that deliberation-premeditation may be confused with intent under the Pennsylvania model is an excellent example of concepts that could easily be distinguished by decent legislative history. It would not be difficult for a legislature to indicate clearly that its deliberation-premeditation formula is not the same as mere intent. Indeed, my understanding of the Pennsylvania approach is that intent and premeditation-deliberation overlap but are not the same, and only the latter fits the extreme moral blameworthiness test appropriate for first degree murder. The fact that some jurisdictions may confuse these rather different concepts does not mean that the concepts are faulty, but rather that the means of articulating them need improvement. Clear legislative history may provide an appropriate vehicle for ensuring state policy is known and followed.

## VI. THE FORGOTTEN CURE: BETTER JURY INSTRUCTIONS?

Professor Crump accurately points out how confusing some of the Pennsylvania-based concepts have become. Does it make sense to say that first degree murder requires premeditation, but one can premeditate in an instant? A far better approach would be to recognize what the fundamental concept behind deliberation is and to have judges who honor this and juries that apply it. As suggested above, crystal-clear legislative history may assist in having the law interpreted in a way that is consistent with its basic purpose.

Indeed, would it even be possible for the legislature to draft jury instructions for use in such cases? I know many people would question whether the legislative process is appropriate for this function, but perhaps combining the drafting statutes and the implementing jury instructions would produce workable products consistent with the intent of the legislature. Wouldn't it be interesting if this were tried on a small, experiential basis?

## VII. EMPIRICAL DATA WOULD HELP

Professor Crump's work, like that of just about everyone else analyzing criminal law, tries to deal with reality—what actually happens. Many fundamental conclusions are bottomed on a view of what really goes on inside a jury room. For example, Professor Crump characterizes a jury as not understanding some jury instructions, possibly acting on improper motives, and sometimes reaching a wrong result. He even suggests that the “[invidious] values of the

people of the State are more likely to be carried out in the grading of the State's most serious crimes." <sup>16</sup>

The problem is that each of these conclusions is subject to empirical verification and, in my view, rarely based on accurate information about the law *as applied*. One reason for my skepticism is my own completely unscientific observations of trials, in many locales, and conversations with countless criminal trial lawyers. As a general rule, I have rarely seen a jury that is way off base in its conclusions. Similarly, virtually all the trial lawyers I have informally interviewed conclude that juries actually do understand the facts and somehow—despite data showing juries sometimes simply do not understand their jury instructions—make sensible decisions, resolving conflicting evidence in a way that is consistent with the evidence and the spirit of the applicable laws.

This possibility is illustrated by Professor Crump's observation that under the Pennsylvania model, a mercy killing, which may be characterized as deliberate and premeditated, could be treated as first degree murder and therefore more seriously than more blameworthy homicides. Of course, this *could* happen, but Professor Crump cites no cases suggesting that it actually does happen, and my hunch is that it simply does not. If a jury actually believes that the killing was a mercy killing, as opposed to, say, one designed to let the killer inherit from the victim, I have a hard time believing that a jury would actually convict the defendant of first degree murder (or even that a prosecutor would charge this crime).

What is needed is a serious, comprehensive study of what actually happens in criminal trials. For example, do jurors collectively understand the issues and the evidence? Do they follow jury instructions?<sup>17</sup> Do they make sensible decisions? Do they discriminate against the poor, certain ethnic groups, and the like? While obtaining answers to these questions may be difficult and perhaps even impossible, the data would go far in helping us understand what is actually broken and needs to be fixed in the American criminal justice system.<sup>18</sup>

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<sup>16</sup> See Crump, *supra* note 3, at 300.

<sup>17</sup> Though the studies are in conflict, a very recent one concluded that, in homicide cases, where the jury could choose either murder or manslaughter based on defendant's emotion-driven behavior, jury instructions describing manslaughter in terms of subjective or objective standards did not significantly affect the outcome. The authors conclude that the jurors interpreted the instructions to fit their pre-instruction understanding of the distinctions between murder and manslaughter. Jurors also based their decision on factors about the defendant's emotional history. Matthew Spackman et al., *An Analysis of the Effects of Subjective and Objective Instruction Forms on Mock-Juries Murder/Manslaughter Distinctions*, 26 LAW & HUM. BEHAV. 605, 605 (2002).

<sup>18</sup> One of Professor Crump's points bears special mention. In arguing against the Pennsylvania deliberation-premeditation formula, he suggests that somehow the Pennsylvania pattern "has created a climate in which millions of dollars' worth of scarce criminal justice resources are spent on nothing of value, when they could be spent on victim compensation" and the like. See Crump, *supra* note 3, at 291. I have strong reservations that this is accurate and that the elimination of the deliberation-formula would result in less expensive judicial proceedings. For example, I question whether there would actually be fewer appeals if the premeditation approach were

### VIII. DIFFERENT RESULTS WITH DIFFERENT DECISION MAKERS?

Professor Crump seems to suggest that altering the structure of homicide law, such as by having degrees of moral blameworthiness assessed at sentencing rather than in the definition of crime, would produce superior results. Although I can see many merits in this procedure, I wonder whether this would actually produce better results. My hunch—again not informed by any empirical data—is that the results would not be much different in the two approaches. I suspect that the jury takes moral blameworthiness into consideration routinely in deciding whether someone acted with a depraved heart for second degree, Pennsylvania-type murder or criminal negligence for Pennsylvania-type involuntary manslaughter. The same is true for the premeditation-deliberation application for first degree murder versus the extreme passion assessment needed for voluntary manslaughter. Empirical research on this issue would be quite instructive.

Moreover, as Professor Crump notes, changing an assessment of moral blameworthiness from the guilt phase to the sentencing phase may result in a change of decision makers; the jury assesses guilt, and the judge assigns the sentence. Professor Crump is comfortable with having the judge decide these moral blameworthiness issues. I, on the other hand, feel quite comfortable with the jury deciding issues such as the defendant's mental state at the time of the act or the amount of suffering the victim endured.

### IX. CHANGE STILL A GOOD IDEA

Despite my own reservations about a few of Professor Crump's conclusions, I agree with him that the Pennsylvania model of homicide needs considerable work to make it clearly serve its purposes. Thus, clear jury instructions, legislative history, and appellate decisions that reflect the conceptual heart of the model make sense, even if they do not produce many changes in outcomes. It is important that the law maintain its legitimacy. Well-written, clearly articulated rules serve this purpose far better than muddled ones, even if by some odd mechanism the results of the two differ only slightly. Of course, absent good empirical data, we do not really know how or even whether the two models actually produce different results as applied.

Professor Crump has done us a good turn by pointing out a litany of problems with the Pennsylvania-California model, suggesting improvements,

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replaced by an intent one with the sentencing system playing a large role in assessing moral blameworthiness. Or would counsel simply appeal both intent and sentence issues rather than premeditation-deliberation issues? One more related point. To some extent Professor Crump's argument is that the confusion of *Anderson* and its progeny are responsible for the added appellate costs, but of course this is a critique of the California cases rather than the Pennsylvania model itself. *Anderson* is not a necessary result of the Pennsylvania approach, despite the inherent ambiguities in using premeditation and deliberation as key ingredients for first degree murder.

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and generally making us more aware of the complex values underlying American homicide law.

