**It’s Murder! (?)**

**Some Puzzling Cases based on Examples used in Hart and Honore, *Causation in the Law*[[1]](#footnote-1)**

Here’s how it works: read each case (separately if possible) and then make an intuitive judgment concerning the correct resolution to the problem presented. [Ideally, each case/variant would be at the bottom of a different page, with directions to turn to the next installment, to prevent “reading ahead.”] Legal knowledge is not required and legal precedents can be used only as arguments/reasons to justify a conclusion, not as legally dispositive. Then, having made intuitive judgments with regard to each case individually, attempt to formulate an overall account of the general conditions governing assignments of causal responsibility in the case of the deaths discussed. Then post your results to the discussion thread on our website. I think you’ll agree – IT’S MURDER!

**Case #1 and Variants**

A and B both desire to kill C, and encounter C on a public street. Being armed, both fire simultaneously at C. Now consider these following outcomes:

**Variant A**: A’s bullet penetrates C’s heart 1/1000th of a second before B’s, killing C instantly. B claims that he is not liable for C’s murder because C was already dead when his bullet pierced C’s heart.

**Variant B**: As in Variant A, except that forensic science is unable to determine which bullet first entered C’s heart.

**Variant C**: A’s and B’s bullets simultaneously pierce C’s heart. Each is charged with a separate count of murder due to the fact that each acted independently of the other and the outcome, C’s death, was secured by each attacker without the cooperation of the other. Further, there was no common or overlapping causal coincidence of their two acts. A’s and B’s lawyers then argue that, since A and B can only have murdered C if each killed him, and can have succeeded in killing him if each was separately the cause of his death. If so, then both can be C’s murderer only if C died twice, since unless this is so, C cannot have been separately killed by both A and B, and thus cannot have been separately murdered by both. Since unique responsibility for C’s death cannot be assigned to either A or B, their lawyers conclude that neither A nor B is chargeable with murder and urge the court to throw out their indictments.

**Variant D**: A’s and B’s shots are wild and have no hope of reaching their intended target. However, A’s bullet intercepts and is deflected by B’s bullet, and consequently finds its way directly to C’s heart, killing him instantly. A disclaims responsibility for C’s death, on the grounds that the action of B’s bullet was the proximate cause of A’s bullet killing C. B disclaims responsibility for C’s death on the grounds that his bullet would not have been the proximate cause of C’s death except for its interaction with A’s bullet, which was neither intended, foreseen, or something for which B was causally responsible. Lawyers for A and B ask for a judgment of accidental death from the Coroner’s court.

**Variant E**: As in Variant A above except that the sight of the armed A and B induced a heart attack in C, which he would not have otherwise had, and which killed C prior to the bullets’ piercing his heart.

**Variant F**: As in Variant E above, except that C saw only A and not B.

Who, if anyone, is guilty of murder in these cases?

**Case #2 and variants**

D, faced with a competent diagnosis of terminal illness, elects not to endure his condition, and instead requests physician assisted suicide without, however, informing anyone of this fact. After ingesting poison, D slips into an irreversible coma. Just at this time, D’s enemy E, who believes that D is merely asleep, sneaks into D’s hospital room and stabs him in the heart, killing him. E is charged with D’s murder. However, E’s lawyer argues that since D’s life was at that point irretrievable, D was irreversibly comatose, both dying in short order and comatose by his own hand in accordance with the dictates of his own will, E’s act of killing D ought not to be regarded as murder, despite the fact that he both intended and acted so as to secure this result.

**Variant A**: D, faced with a competent diagnosis of terminal illness, elects not to endure his condition and instead requests physician assisted suicide. E, persuaded that D would damn his soul to Hell by committing suicide, rushes to his hospital room in order to prevent D’s ingesting poison. He is too late and by the time he arrives, D’s condition is irretrievable and he has already slipped into an irreversible coma. E then kills D by stabbing him in the heart, in order to prevent his dying a suicide and losing his soul on that account. E then argues that, since D could not be saved in any case and E acted with the intent to benefit E by sparing him the pain of eternal punishment, his action is really a case of “mercy killing” and ought not to be treated as an ordinary homicide.

**Variant B**: As above, in variant A, except that E is mistaken in believing that he can save D’s soul by killing him before he dies as a consequence of his suicidal act, because his suicidal intent and voluntary action to realize that intent already damn him

**Variant C**: As above, in variant A, except that D’s diagnosis is not competent and he is completely mistaken in believing that he has a terminal illness and that without that belief he would not have requested physician-assisted suicide.

Is E guilty of murder?

**Case #3**

F’s wife poisons his scotch and serves it to him for tea. After F has consumed generous portions of the poisoned liquor, F’s wife informs him that she has poisoned him, that there is no antidote for the poison, and that F will be dead within minutes. Drunk, distraught, and desirous of protecting his wife from a murder prosecution, F decides to leap out the window of his sixth floor apartment shouting, “I am committing suicide by my own free will!” in the hearing of several competent witnesses. He is killed on impact with ground, prior to the poison working its fatal effect. In the jurisdiction in which the Fs live, neither suicide nor abetting a suicide is a crime.

Is F’s wife guilty of his murder?

**Case #4 and variants**

G has two enemies, H and J. H entices G to the top of a forty story building on a pretext and then proceeds to push G off the top of the building. Meanwhile, J is searching the building for G and intending to shoot G with a gun. As G falls past a window on the tenth floor, J is startled and discharges his gun, with the result that the bullet pierces G’s heart, killing him instantly. H and J are arrested, but each argues that he is innocent of murder. H argues that, due to J’s intervention, H’s act of pushing G is not the cause of G’s death, since G was dead before he hit the ground. J, for his part, argues that though his bullet killed G in accordance with his prior intention, J’s act of firing the gun was unintentional due to J’s having been startled. Lawyers for both men argue that no charges of murder should be filed in this case.

**Variants**: As before, H pushes G off the top of a forty-story building. However, in these variant cases, J is in the building’s ground-floor atrium through which G’s downward flight is visible.

**Variant A**: J sees G falling toward the ground, and in accordance with his prior murderous intention, pulls out his gun and fires through the atrium ceiling, killing G. J argues that, due to H’s original push, G’s death was certain and irreversible. As such, J’s act of shooting G shortened his life by mere seconds. More than this, J’s action spares G from a far more gruesome (and practically certain) death and thus compensates G for the trivial reduction in the length of his life. At any rate, J contends that, given the circumstances, it would be absurd to charge J with murder as opposed to some lesser crime.

**Variant B**: As G falls toward the ground, he shouts “For the love of God, someone shoot me!” and is heard to do so by several competent witnesses. J, his heart filled with murderous intent, answers “Gladly!,” pulls out his gun, and shoots G, killing him before he hits the ground. He argues that he is not a murderer, because he was only acting in accordance with G’s request, sparing him a more gruesome death that G clearly desired to avoid even at the cost of dying through having been shot.

**Variant C**: As in variant B above, except that in this variant J does not hear G’s plea for death. However, G’s wish to be spared a gruesome death through being shot is heard and reliably reported by others. J’s lawyer argues that, though J’s action was otherwise murderous in intent, G’s plea to be shot expresses G’s autonomous wish and constitutes explicit permission on the part of all comers to shoot G. As such, respect for G’s autonomy requires that we absolve J from any blame for G’s death.

Is J a murderer in these cases?

**Case #5**

K and L are father and son. One evening, K and L go drinking in a bar, where L picks a fight with M. The men, along with other witnesses, retire to an alley behind the bar to settle their differences. In the course of the fight, L pulls a knife and mortally wounds M. K, realizing that L will be charged with murder if M dies by his hand, intervenes by taking the knife and inflicting a killing blow to M before M dies from the wound delivered by L. K then argues that, since M died by his hand and not L’s, that L should be absolved from all blame for M’s death.

Is K correct?

**CASE #6 AND VARIANT (Based on Harry Frankfurt, “Alternative Possibilities and Moral Responsibility”[[2]](#footnote-2))**

N has two enemies, P and Dr. Q. P is resolved to kill N, and Dr. Q is privy to this fact. However, Dr. Q is not convinced that P will stick to his resolve and so, unbeknownst to P, implants an electrode in P’s brain that will override P’s will in case he changes his mind about killing N. As such, P will kill N regardless of whether or not he changes his mind about doing so, so that nothing he can do now can prevent him from killing P. As it turns out, however, P does stick to his resolve and carry through on his project of killing N, so that the electrode never is activated and plays no role in determining P’s act of killing N.

Is P guilty of N’s murder, despite the fact that he could not have refrained from killing N?

**Variant:** As above, except that P discovers what Dr. Q has done, and in order to evade responsibility for killing N, deliberately changes his mind, thus activating Dr. Q’s electrode, which then overrides P’s will, resulting in P’s killing N. P then argues that, since he was acting under the aegis of forces outside of his control, that he cannot be held guilty of N’s murder.

Is P correct?

1. A. M. Honore and H. L. A. Hart, Oxford, Clarendon Press, second edition, 1985. [↑](#footnote-ref-1)
2. Harry G. Frankfurt, “Alternative Possibilities and Moral Responsibility,” *Journal of Philosophy*, 66(1969), 829-39. [↑](#footnote-ref-2)