

# Felony Murder, the Merger Limitation, and Legislative Intent in *State v. Heemstra*: Deciphering the Proper Role of the Iowa Supreme Court in Interpreting Iowa’s Felony-Murder Statute

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*ABSTRACT: In State v. Heemstra, the Iowa Supreme Court overturned nearly twenty-five years of precedent controlling the felony-murder doctrine by adopting the merger limitation as applied to felonious assault. In so doing, the Court brought ambiguity to statutory interpretation in the State of Iowa and created confusion in an area of criminal law that previously had been clear. This Note highlights the mysteries surrounding the felony-murder doctrine and its subdoctrines and provides analysis of Iowa’s approach to the felony-murder doctrine. As a result, this Note critiques the State v. Heemstra decision and proposes that the Iowa Supreme Court show increased deference to the legislature and to precedent, especially when dealing with a criminal-law topic that Iowa courts have repeatedly stressed only should be altered by the legislature, not the courts.*

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## I. INTRODUCTION

Scholars have described the felony-murder doctrine as “[o]ne of the most controversial doctrines in the field of criminal law.”<sup>1</sup> The controversy directly results from the abnormal approach that the felony-murder doctrine takes to mens rea. The traditional form of murder requires proof that a defendant committed a criminal act with intent to kill, knowledge that the act may kill another, or gross recklessness.<sup>2</sup> The felony-murder doctrine, on the other hand, permits a criminal to be found guilty of murder if the individual commits a felony resulting in the death of another even if the individual only had the requisite mens rea for the felony and did not intend to kill another person.<sup>3</sup>

In the State of Iowa, the controversy surrounding the doctrine culminated when the Iowa Supreme Court opted to severely limit its use in the 2006 case *State v. Heemstra*.<sup>4</sup> Two feuding farmers, Heemstra and Lyon, entered into a heated argument on a rural country road in January 2003, and the argument ended with Heemstra shooting and killing Lyon after Lyon lunged at him.<sup>5</sup> The district court found Heemstra guilty of murder after the judge issued a jury instruction permitting the jury to find Heemstra guilty of murder if he had willfully injured Lyon by dangerously brandishing his gun, a forcible felony in Iowa.<sup>6</sup> On appeal, the Iowa Supreme Court, acting without any prompting by the Iowa Legislature, adopted a new limitation—the merger limitation—on the felony-murder doctrine and overturned Heemstra’s conviction.<sup>7</sup> The court’s monumental decision and the emotionally charged facts of the case spawned a media frenzy.<sup>8</sup>

At the heart of this highly scrutinized decision lies a pertinent legal issue that deserves the attention of criminal-law scholars. The opinion calls into question the respective roles of the Iowa Legislature and Iowa courts in creating, interpreting, and applying the criminal law. The balance of powers among the different branches of the state government presents serious

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1. Erwin S. Barbre, Annotation, *What Felonies Are Inherently or Foreseeably Dangerous to Human Life for Purposes of Felony-Murder Doctrine*, 50 A.L.R. 3d 397, 399 (1973).

2. See JOHN C. KLOTTER & TERRY D. EDWARDS, CRIMINAL LAW 65–66 (5th ed. 1998) (explaining that “malice aforethought” is a common-law element of murder and each of the following can constitute malice: intent to kill, knowledge that an act will kill, and “conduct that is reckless, wanton, and a gross deviation from reasonable standards of care . . . warrant[ing] [an inference] that the defendant was aware of a serious risk of death or serious bodily harm”).

3. See *id.* at 74 (“[A] defendant may be found guilty of murder even if he or she does not ‘intend to kill’ or participate in the act that results in the killing[.]”).

4. *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006).

5. *Id.* at 551.

6. *Id.* at 552.

7. *Id.* at 558.

8. See Jeff Eckhoff, *Convicted Farmer to Get New Trial*, DES MOINES REG., Aug. 26, 2006, at A1 (remarking on the highly controversial nature of the *Heemstra* decision).

implications for many areas of Iowa law. However, the legislative and judicial powers in the criminal-law arena may have the most direct effect on the public's sense of justice.

This Note undertakes the challenge of analyzing this sensitive legal issue in the context of the felony-murder doctrine in Iowa and critiques the Iowa Supreme Court's decision in *Heemstra*, concluding that the felony-murder doctrine and merger limitation should be altered only by the legislature and not the courts. Part II of this Note presents the basic background of the felony-murder doctrine and its general application in the United States. Part III takes an in-depth look at the evolution of the felony-murder doctrine in the state of Iowa. Part IV analyzes the *Heemstra* decision and the Iowa Supreme Court's justifications for its precedent-altering holding. Part V highlights the judicial deference that courts in other states and previous Iowa decisions show when approaching felony-murder statutes, and suggests reasons why such deference should continue. Finally, Part VI offers a critique of the *Heemstra* decision and suggests what roles the Iowa Legislature and courts should play in shaping criminal law.

## II. BACKGROUND

### A. THE BASIC FELONY-MURDER DOCTRINE

The felony-murder doctrine is controversial because it allows the prosecution in a murder case to prove the existence of "imputed" malice, rather than actual malice, and still meet the mens rea requirement for murder.<sup>9</sup> Typically, to prove that a person committed first-degree murder, the State must show that a person acted with deliberation and premeditation in killing another.<sup>10</sup> For any type of murder conviction, the mens rea standard usually does not fall below gross recklessness.<sup>11</sup>

The felony-murder doctrine relaxes the mens rea requirement for killings committed during the course of a felony. Under the felony-murder doctrine, "a felon is held strictly liable for *all* killings committed by him or his accomplices in the course of the felony."<sup>12</sup> Although many exceptions to the felony-murder doctrine exist,<sup>13</sup> the state can prosecute the perpetrator

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9. See Barbre, *supra* note 1, at 399–400 (stating that the felony-murder rule allows an accidental killing, which lacks actual malice, to be classified as a murder).

10. James J. Tomkovicz, *The Endurance of the Felony-Murder Rule: A Study of the Forces That Shape Our Criminal Law*, 51 WASH. & LEE L. REV. 1429, 1439–40 (1994).

11. See *id.* at 1439 ("Our legal tradition ordinarily defines murder as a killing with at least gross recklessness—a conscious disregard of a risk to human life of sufficient magnitude to evince a callous or depraved indifference to the value of human life.").

12. *People v. Stamp*, 82 Cal. Rptr. 598, 602 (Cal. Ct. App. 1969). William Blackstone famously described the felony-murder doctrine in its most basic form when he wrote, "[I]f one intends to do another a felony and undesignedly kills a man, this is also murder." WILLIAM BLACKSTONE, 4 COMMENTARIES \*200.

13. See *infra* Part II.A.iii (listing the exceptions limiting the felony-murder doctrine).

for murder as long as the prosecution proves that the defendant possessed the mens rea that the felony requires and that the defendant's felonious act resulted in the killing of another human.<sup>14</sup> The felony-murder doctrine boils down to a basic logical formula: "a felony + a killing = murder."<sup>15</sup> This manipulation of murder's mens rea requirement acts as fodder for those who claim that the felony-murder doctrine undermines the American notion of justice that traditionally correlates punishment with a criminal's mental state.<sup>16</sup> As a result, some courts assert that the felony-murder doctrine "erodes the relation between criminal liability and moral culpability."<sup>17</sup>

### 1. The Origin of the Felony-Murder Doctrine

The felony-murder doctrine is not rooted in one particular case; various scholars disagree over whether the doctrine originated as early as the sixteenth century or as late as the eighteenth century.<sup>18</sup> Some commentators assert that the doctrine most likely can be traced to a time when all felonies were punishable by death.<sup>19</sup> Under this criminal-law scheme, the felony-murder doctrine was not as controversial as it currently is because a felon would have been sentenced to death for his crime regardless of whether the felony resulted in another person's death.<sup>20</sup> However, this view of the felony-murder doctrine's historical roots is not uniformly accepted in legal circles.

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14. See Tomkovicz, *supra* note 10, at 1429–30 (explaining the most basic form of the felony-murder doctrine, where it has not been subject to any restrictions).

15. JOSHUA DRESSLER, *CASES AND MATERIALS ON CRIMINAL LAW* 304 (3d ed. 2003).

16. See MODEL PENAL CODE § 2.02(1) (1962) (mandating that a person is guilty of a crime only if he acted with negligence, recklessness, knowledge, or purpose, with regard to each element composing each respective crime); Robert Mauldin Elliot, Comment, *The Merger Doctrine as a Limitation on the Felony-Murder Rule: A Balance of Criminal Law Principles*, 13 WAKE FOREST L. REV. 369, 395 (1977) ("Without question, a continued blanket acceptance of the felony-murder rule frustrates the philosophy of the American criminal justice system."). But see Kevin Cole, *Killings During Crime*, 28 AM. CRIM. L. REV. 73, 139–41 (1990) (pointing out the inconsistency inherent in the theory that the Model Penal Code correlates punishment with intent, when the Model Penal Code permits negligence to be a mental state justifying punishment even though negligence involves no intent).

17. *People v. Washington*, 402 P.2d 130, 134 (Cal. 1965).

18. See Tomkovicz, *supra* note 10, at 1442–43 (discussing the source of the felony-murder doctrine and debating whether the doctrine was the result of rational lawmaking).

19. David Crump & Susan Waite Crump, *In Defense of the Felony Murder Doctrine*, 8 HARV. J.L. & PUB. POL'Y 359, 360 n.7 (1985) (citing ROLLIN M. PERKINS, *CRIMINAL LAW* 44 (2d ed. 1969)).

20. See *id.* (describing the "relativ[e] unimportan[ce]" of the felony-murder doctrine at its origin because it did not subject a felon to any greater punishment). At the time the felony-murder doctrine was created, the number of crimes labeled felonies was small in comparison to the number of crimes that are labeled felonies in current criminal codes. KLOTTER & EDWARDS, *supra* note 2, at 67. With fewer crimes listed as felonies, the felony-murder doctrine's impact was not as harsh as it is under current criminal codes containing extensive lists of felonies, including some minor offenses. *Id.*

Other scholars believe the felony-murder doctrine sprouted in a later American era: “The first felony-murder rules were enacted not in medieval England, but in nineteenth-century America. They were developed not by common-law adjudication but by means of legislation and statutory construction.”<sup>21</sup> Scholars who believe the felony-murder doctrine originated in the nineteenth century claim a different original rationale for the doctrine than those who believe that the felony-murder doctrine originated earlier.<sup>22</sup> Regardless of when the felony-murder doctrine originated, most states retain the doctrine and individuals committing felonies that result in another’s death continue to be prosecuted for murder under the doctrine.<sup>23</sup>

## 2. Justifications for the Felony-Murder Doctrine

Various rationales support the felony-murder doctrine, including deterrence, retribution, condemnation, and limitation of potential defenses.

A core rationale for the felony-murder doctrine is deterrence.<sup>24</sup> The deterrence argument often consists of two parts: (1) the felony-murder rule deters a felon from acting negligently or accidentally during the commission of the felony; and (2) the felony-murder rule deters people from taking part in dangerous felonies in the first place.<sup>25</sup> Scholars have even argued that the

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21. Guyora Binder, *The Origins of American Felony Murder Rules*, 57 STAN. L. REV. 59, 64 (2004). For support of Binder’s assertion, see David Lanham, *Felony Murder—Ancient and Modern*, 7 CRIM. L.J. 90, 101 (1983) (stating that the felony-murder rule “is not a rule that can claim a respectable common-law ancestry”).

22. See Binder, *supra* note 21, at 63–66 (advancing the theory that the felony-murder doctrine developed after capital punishment ceased being enforced whenever a murder occurred and noting that this theory made it seem rational that killings that were less serious could now justly be labeled murder).

23. Leonard Birdsong, *Felony Murder: A Historical Perspective by Which to Understand Today’s Modern Felony Murder Rule Statutes*, 32 T. MARSHALL L. REV. 1, 3 (2006). The felony-murder rule’s regular application is shown by the fact that “nearly 20 percent of all murders annually are felony murders.” Anup Malani, *Does the Felony-Murder Rule Deter? Evidence from FBI Crime Data 1* (Dec. 3, 2007), available at <http://graphics8.nytimes.com/packages/pdf/national/malani.pdf>. For examples of states that maintain statutes enforcing felony-murder provisions, see, e.g., ALA. CODE § 13A-6-2(a)(3) (2005) (laying out Alabama’s felony-murder provision); GA. CODE ANN. § 16-5-1(c) (2004) (laying out Georgia’s felony-murder provision); IOWA CODE § 707.2 (2007) (laying out Iowa’s felony-murder provision).

24. See *People v. Washington*, 402 P.2d 130, 133 (Cal. 1965) (stating that the purpose of the felony-murder rule is “to deter felons from killing negligently or accidentally by holding them strictly responsible for killings they commit”).

25. See Nelson E. Roth & Scott E. Sundby, *The Felony-Murder Rule: A Doctrine at Constitutional Crossroads*, 70 CORNELL L. REV. 446, 450–53 (1985) (explaining the two strands of deterrence but questioning the actual deterrent effect of the felony-murder doctrine in light of the dubious prospect of deterring unintended acts and the absence of statistical evidence for the proposition that a “disproportionate number of killings occur during felonies”). For another argument that the rule does not deter, see Malani, *supra* note 23, at 25 (concluding that “the felony-murder rule does not substantially improve crime rates [and] [i]f the main reason a state retains the rule is to reduce crime, it should reconsider the rule”).

controversy surrounding the felony-murder doctrine and its notoriety increase its deterrence value.<sup>26</sup>

Courts have also cited ends-based retribution in support of the felony-murder doctrine. In *Commonwealth v. Almeida*, the Pennsylvania Supreme Court, in justifying the felony-murder doctrine, described the retributive rationale: "He whose felonious act is the *proximate cause* of another's death is *criminally* responsible for that death and must answer to society for it . . . ."<sup>27</sup> Although the Pennsylvania Supreme Court later overruled *Almeida*, the opinion accurately expresses the retributive rationale for the felony-murder doctrine.<sup>28</sup> Some legal scholars have supported ends-based retribution as a justification for the felony-murder doctrine, stating that "the law should not be over solicitous toward the violator of public peace and safety, and if a man through the commission of a crime of violence contributes substantially to the death of another, there is no injustice in declaring the contribution murder."<sup>29</sup> The retributive rationale satisfies the innate human demand for payback and serves as a catalyst for the continuation of the felony-murder doctrine in America's legal system.

Another innate human desire, condemnation, serves as a rationale for the felony-murder doctrine. Some criminal-law scholars assert that without the felony-murder doctrine, the law would characterize a felony that results in death in the same manner as a felony that does not lead to death and the punishment would be the same for each.<sup>30</sup> Condemnation allows the citizenry to express its solidarity with the victim and the victim's family, and the felony-murder doctrine confirms this significant expression.<sup>31</sup>

The felony-murder doctrine also limits the potential defenses a defendant may raise to a murder charge. If a defendant kills another person during the commission of a felony and is tried under a statute requiring the murder to be willful, deliberate, or premeditated, the defendant may be able to raise a defense of provocation or self-defense.<sup>32</sup> Consider a defendant who

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26. Crump & Crump, *supra* note 19, at 370–71 ("The felony murder rule is just the sort of simple, commonsense, readily enforceable, and widely known principle that is likely to result in deterrence.").

27. *Commonwealth v. Almeida*, 68 A.2d 596, 599–600 (Pa. 1949), *overruled by* *Commonwealth ex. rel Smith v. Myers*, 261 A.2d 550, 559–60 (Pa. 1970).

28. *See Myers*, 261 A.2d at 552–53. (discussing the proximate cause of death involved in the case and highlighting how retribution relates to cause).

29. Frederick C. Moesel, Jr., *A Survey of Felony Murder*, 28 TEMP. L. Q. 453, 466 (1954).

30. *See Crump & Crump, supra* note 19, at 367–68 (stating that without the felony-murder doctrine, the law would communicate to the citizenry that it did not value human life because a felony resulting in death of a victim and a felony that did not result in the death of a victim would be punished in the same manner).

31. *Id.* at 368.

32. *See Binder, supra* note 21, at 203–04 ("It is clear that . . . barring the justification and mitigation of homicides in the course of crime was part of the law of defenses in England from the sixteenth century onward, and in nineteenth-century America as well."); Cole, *supra* note 16, at 109 (suggesting that part of the support for the felony-murder doctrine may result from

robs a convenience store—a felony in the applicable state. If the store proprietor tries to use a gun to fend off the defendant and the defendant shoots the proprietor, the defendant will be unable to claim self-defense to the felony-murder charge because felony murder only requires an intent to commit the initial felony of robbery. Under a traditional murder charge (as opposed to a felony-murder charge), the defendant could plead self-defense. Though perhaps more of a historical rationale for the felony-murder doctrine than a contemporary one,<sup>33</sup> the limiting-defenses rationale may explain part of felony murder’s durability. These various rationales are utilized in defending the felony-murder doctrine and may be responsible for its continued existence.

### 3. Common State Approaches to Limiting the Felony-Murder Doctrine

States have taken various approaches to dealing with the felony-murder doctrine. Many disfavor the felony-murder doctrine because it confuses the direct criminal-law connection between moral culpability and liability.<sup>34</sup> In Michigan, for example, the Supreme Court abandoned the felony-murder doctrine in *People v. Aaron*.<sup>35</sup> However, Michigan, unlike most other states, enacted and enforced its felony-murder doctrine by common law rather than by statute.<sup>36</sup> Some states—such as Hawaii, Ohio, and Kentucky, which statutorily define murder—have abolished the felony-murder doctrine by revising their statutes so that the statutory murder requirements do not allow enforcement of a felony murder.<sup>37</sup> Other states have abolished the felony-murder doctrine by requiring a mens rea for murder “beyond the

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the manner in which it prevents a felon from using the defenses of provocation or self-defense and a person’s innate sense that a felon who kills should not be entitled to those defenses).

33. See Binder, *supra* note 21, at 204 (highlighting the fact that “the law of defenses formerly had a larger role in the criminal law than it does today” and that felony murder could have served to limit the use of defenses such as accident or mistake).

34. See *People v. Smith*, 678 P.2d 886, 888 (Cal. 1984) (citing *People v. Washington*, 402 P.2d 130, 134 (Cal. 1965)) (describing the various additional reasons the felony-murder rule has encountered general disfavor in American jurisprudence).

35. *People v. Aaron*, 299 N.W.2d 304, 335 (Mich. 1980) (declaring that “the offense popularly known as felony-murder . . . shall no longer exist in Michigan”).

36. See *id.* at 319–23 (stating that murder does not have a statutory definition in Michigan and demonstrating how the Michigan courts have historically defined murder, the implications of its definition, and the definition’s relationship to the felony-murder doctrine); Binder, *supra* note 21, at 202 (asserting that the statutory felony-murder rules had become the norm by the end of the nineteenth century).

37. See *Aaron*, 299 N.W.2d. at 314–15 (noting various state statutes that abolish felony murder (citing HAW. REV. STAT. § 707–701 (2005); KY. REV. STAT. ANN. § 507.020 (Lexis 2005); OHIO REV. CODE ANN. § 2903.01 (West 2006))). The Ohio statute requires a person to “purposely” cause the death of another during a felony for the crime to qualify as aggravated murder in Ohio. OHIO REV. CODE ANN. § 2903.01.

intent to commit the felony.”<sup>38</sup> Though these states have abolished the felony-murder doctrine, it remains in many other states.<sup>39</sup>

Where the felony-murder doctrine persists, states have heavily restricted it.<sup>40</sup> Approaches to limiting the felony-murder doctrine include (1) listing particular felonies and allowing only those felonies to serve as the predicate offenses triggering the felony-murder doctrine; (2) providing that if the felony committed in a particular case that causes the death of another does not fall within a listed group of offenses, only a second-degree murder conviction can result; and (3) limiting the predicate felonies for felony murder to “inherently dangerous” felonies.<sup>41</sup>

#### B. THE MERGER LIMITATION ON THE FELONY-MURDER DOCTRINE

The historical basis of the merger limitation explains its modern development. Scholars believe that the roots of the merger limitation in the United States sprang from the 1878 case of *State v. Shock*.<sup>42</sup> In *Shock*, a man severely beat a young boy with a sycamore fishing pole and a grapevine, causing the boy's death.<sup>43</sup> The Missouri Code in effect at the time stated: “Every murder which shall be committed . . . in the perpetration or attempt to perpetrate any arson, rape, robbery, burglary or other felony, shall be deemed murder in the first degree.”<sup>44</sup> In reversing the defendant's felony-murder conviction based on erroneous jury instructions, the Missouri Supreme Court cited the relevance of its manslaughter statute and ultimately held:

[T]he words “other felony” used in the first section refer to some collateral felony, and not to those acts of personal

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38. *Aaron*, 299 N.W.2d at 315. *But see* Kristy L. Albrecht, Note, *Iowa's Felony-Murder Statute: Eroding Malice and Rejecting the Merger Doctrine*, 79 IOWA L. REV. 941, 960–61 (1994) (explaining that even though the language of Iowa's first-degree murder statute appears to require malice for all forms of first-degree murder—which would severely limit the felony-murder doctrine and possibly prevent its enforcement at all—Iowa has allowed an underlying felony to supply the requisite malice and, therefore, fails to limit the first-degree murder statute in the manner that the statute appears to facially demand).

39. *See, e.g.*, ALA. CODE § 13A-6-2(a)(3) (2005); GA. CODE ANN. § 16-5-1(c) (Lexis 2007); IOWA CODE § 707.2(2) (2007) (prescribing the felony-murder doctrine). At last count, “forty-three American states still retain [the felony-murder doctrine].” Malani, *supra* note 23, at 1.

40. *See Tomkovicz, supra* note 10, at 1465–69 (“An unlimited felony-murder doctrine, however, is *not* the law of our land. In most places, the rule is cabined in a number of ways.”).

41. *See generally* SANFORD H. KADISH, STEPHEN J. SCHULHOFER & CAROL S. STEIKER, CRIMINAL LAW & ITS PROCESSES 444–66 (8th ed. 2007) (explaining the general approaches states have taken to limiting the felony-murder rule, the effectiveness of these approaches, and the rationales behind them).

42. *State v. Shock*, 68 Mo. 552 (1878); *see Binder, supra* note 21, at 191 (referencing *Shock*); Elliot, *supra* note 16, at 376 (claiming that *Shock* was one of the original cases that developed some version of the merger limitation on the felony-murder doctrine).

43. *Shock*, 68 Mo. at 557.

44. *Id.* at 558 (citing the MO. REV. CODE, CRIMES AND PUNISHMENTS § 1 (1845)).

violence to the deceased which are necessary and constituent elements of the homicide itself, and are, therefore, *merged* in it, and which do not, when consummated, constitute an offense distinct from the homicide.<sup>45</sup>

The merger limitation is the most significant restriction placed on the felony-murder doctrine. The merger limitation is best exemplified by the California Supreme Court case *People v. Ireland*.<sup>46</sup> The defendant in *Ireland* shot and killed his wife over an array of marital issues.<sup>47</sup> The court concluded that an assault-with-a-deadly-weapon felony could not serve as the predicate felony for a felony-murder conviction.<sup>48</sup> In so holding, the court provided a key description of the merger limitation: “[A] second degree felony-murder instruction may not properly be given when it is based upon a felony which is an integral part of the homicide and which the evidence produced by the prosecution shows to be an offense included *in fact* within the offense charged.”<sup>49</sup> Under the merger limitation, a defendant is only guilty of felony murder if the underlying felony is independent from the resultant killing.<sup>50</sup>

Part of the rationale behind the merger limitation is to ensure that the different degrees of murder, manslaughter, and other homicide crimes remain distinct categories.<sup>51</sup> If the merger limitation did not limit the felony-murder doctrine, nearly every assault resulting in death would lead to a murder conviction.<sup>52</sup> Therefore, in many states—such as Texas—where the

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45. *Id.* at 561–62 (emphasis added). The adoption of the merger limitation in *Shock* faced the same criticisms it does today, as the dissent asserted that the majority’s interpretation of the Missouri homicide statute contradicted precedent and legislative intent. *See id.* at 568–69 (Norton, J., dissenting) (criticizing the majority’s interpretation of the homicide statute).

46. *People v. Ireland*, 450 P.2d 580 (Cal. 1969).

47. *Id.* at 580–83.

48. *Id.* at 590.

49. *Id.*

50. *See People v. Burton*, 491 P.2d 793, 801–02 (Cal. 1971) (noting that the key factor in determining whether a felony is independent of the killing is whether the felony committed had a purpose independent of the felony itself—rape or robbery are prime examples since both have a distinct purpose from that of the bodily injury of another person).

51. *See State v. Branch*, 415 P.2d 766, 767 (Or. 1966) (discussing this rationale). In *Branch*, the court explained:

In order to preserve the distinctions between the degrees of murder and manslaughter, courts in other states have held that where the only felony committed (apart from the murder itself) was the assault upon the victim which resulted in the death of the victim, the assault merged with the killing and could not be relied upon by the state as an ingredient of a “felony murder.”

*Id.*

52. *See Garrett v. State*, 573 S.W.2d 543, 545 (Tex. Crim. App. 1978) (stating that allowing assault to be the predicate felony “would make murder out of every aggravated assault that

felony-murder statute does not specifically mention assault as a felony that triggers the felony-murder doctrine, the courts have held that to trigger the felony-murder doctrine “[t]here must be a showing of felonious criminal conduct other than the assault causing the homicide.”<sup>53</sup> Many states thus preserve the distinctions between manslaughter and the degrees of murder and retain the coherence of the mens rea requirement for murder and manslaughter since it is also possible for an assault resulting in death to qualify as manslaughter under some state statutes.<sup>54</sup>

Unlike preservation of the murder and manslaughter distinction, not all repercussions of the merger limitation strike scholars as positive. Claire Finkelstein notes the resulting injustice from a merger limitation that regards assault, but not burglary, as a merging felony: a person using a deadly weapon to violently assault his victim will only be convicted of murder if he has the mens rea that murder (not felony murder) requires, while a burglar who is frightened by a homeowner and accidentally shoots and kills the homeowner will be liable for felony murder since burglary is not a merging felony.<sup>55</sup> This result cuts against most contemporary notions of fairness and demonstrates a glaring weakness of the merger limitation.

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results in a death”), *overruled on other grounds by* Johnson v. State, 4 S.W.3d 254, 255 (Tex. Crim. App. 1999). In *People v. Hansen*, the California Supreme Court also stated this rationale:

[A]pplication of the felony-murder rule to felonious assaults would usurp most of the law of homicide, relieve the prosecution in the great majority of homicide cases of the burden of having to prove malice in order to obtain a murder conviction, and thereby frustrate the Legislature’s intent to punish certain felonious assaults resulting in death (those committed with malice aforethought, and therefore punishable as murder) more harshly than other felonious assaults that happened to result in death (those committed without malice aforethought, and therefore punishable as manslaughter).

*People v. Hansen*, 885 P.2d 1022, 1028 (Cal. 1994).

53. *Garrett*, 573 S.W.2d at 546; *see, e.g.*, *State v. Essman*, 403 P.2d 540, 545 (Ariz. 1965) (concluding that assault with a deadly weapon merged into the resulting homicide and could not serve as a predicate felony); *State v. Strauch*, 718 P.2d 613, 625 (Kan. 1986) (concluding that a felony that “is an integral part of the homicide” merges with the homicide and cannot serve as a predicate felony); *State v. Hanes*, 729 S.W.2d 612, 617 (Mo. Ct. App. 1987) (concluding that assault merges into the resulting homicide and cannot serve as a predicate felony); *Sullinger v State*, 675 P.2d 472, 473 (Okla. Crim. App. 1984) (concluding that assault on a corrections officer merged into the resulting homicide and could not serve as a predicate felony).

54. *See* ALA. CODE § 13A-6-3(a)(1) (2005) (defining manslaughter as “recklessly caus[ing] the death of another person”). *But see* Claire Finkelstein, *Merger and Felony Murder*, in *DEFINING CRIMES: ESSAYS ON THE SPECIAL PART OF THE CRIMINAL LAW* 218, 225–26 (R. A. Duff & Stuart P. Green eds., 2005) (explaining that the merger limitation does not solve the mens rea dilemma with regard to murder statutes since felonies such as burglary will still trigger the felony-murder doctrine even though the requisite mens rea for murder is not present in that felony either).

55. *See* Finkelstein, *supra* note 54, at 219–20 (using this example to show results of the felony-murder doctrine that “sometimes border on incoherence”).

In states where the legislature has listed explicitly the felonies that can trigger the felony-murder doctrine, courts will likely not apply the merger limitation to those specific felonies.<sup>56</sup> This is a logical trend when one considers that many courts will claim that legislative intent regarding the merger limitation is easier to decipher when a statute lists the applicable predicate felonies. A list of predicate felonies demonstrates that the legislative body in that state chose to bar the merger limitation as to those enumerated felonies.<sup>57</sup> Though more prevalent in states with less precise felony-murder statutes, the merger limitation remains a significant limitation on the felony-murder doctrine in many states.<sup>58</sup> As *State v. Heemstra* illustrates, the manner by which states adopt this limitation can be a contentious issue.<sup>59</sup>

### III. FELONY-MURDER DOCTRINE IN THE STATE OF IOWA

#### A. BACKGROUND OF FELONY MURDER IN IOWA

The State of Iowa does not enforce a common law felony-murder doctrine but rather has adopted a statutory felony-murder scheme.<sup>60</sup> Iowa's current felony-murder statute punishes a person who commits murder "while participating in a forcible felony."<sup>61</sup> The Iowa Code lists the following crimes as forcible felonies: felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, first-degree arson, and first-degree burglary.<sup>62</sup> Therefore, Iowa limits the application of the felony-murder rule

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56. See *State v. Godsey*, 60 S.W.3d 759, 774–75 (Tenn. 2000) (rejecting the defendant's assertion that the assault he committed should merge with the killing and stating that by enumerating specific predicate felonies and including assault as one such felony, the Tennessee General Assembly specified its intent that assault should not merge with a resultant homicide for felony-murder purposes).

57. See *id.* at 775 (recognizing that the intent of the legislative body should preclude the defendant's claim).

58. See KADISH ET AL., *supra* note 41, at 446 (describing the merger limitation as one of the "major" limitations on the felony-murder rule).

59. See generally Eckhoff, *supra* note 8 (describing the controversy surrounding Iowa's adoption of the merger limitation).

60. See IOWA CODE § 707.2(2) (2007) (stipulating that a person can be held liable for first-degree murder if the individual kills while engaged in a felony). For a different interpretation of murder statutes structured like Iowa's statute, see *People v. Dillon*, 668 P.2d 697, 710–12 (Cal. 1983) (asserting that some statutes structured in the same manner as the Iowa statute could be viewed as degree-fixing statutes rather than as statutes defining felony murder).

61. IOWA CODE § 707.2(2). The full text of § 707.2(2) reads: "A person commits murder in the first degree when the person commits murder under any of the following circumstances: . . . 2. The person kills another person while participating in a forcible felony." *Id.*

62. *Id.* § 702.11(1). The full text of section 702.11(1) reads: "A 'forcible felony' is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree." *Id.* (emphasis added).

by listing explicitly the felonies that can serve as predicate felonies under the felony-murder doctrine.<sup>63</sup>

However, some criminal-law scholars question whether the specific list of predicate felonies effectively limits the scope of the felony-murder doctrine. Robert Rigg, a criminal-law professor at Drake University, noted the potentially limitless scope of Iowa's felony-murder approach: "The legislature can, unintentionally, expand the felony murder doctrine by creating new criminal statutes that are felonious assaults."<sup>64</sup> Professor Rigg's fear of expansion, however, ultimately stems not from the structure of Iowa's felony-murder doctrine, but from the belief that the Iowa Legislature carelessly will label certain crimes felonious assaults without realizing the potential felony-murder implications.<sup>65</sup> Other forcible felonies also listed in the Iowa statute present a risk of unintended expansion.

Iowa also limits the felony-murder doctrine by requiring that the felony lead to a "murder" and not just a mere killing for a first-degree-murder conviction to follow.<sup>66</sup> The statute's use of the term "murder" rather than "killing" makes malice aforethought an element that must be proved for a felony-murder conviction, just as it is for other types of first-degree murder convictions.<sup>67</sup> Though Iowa courts sometimes struggled to present a concrete definition of "malice aforethought," they have since come to a general consensus and agree that malice aforethought includes a pre-commission plan to do harm to another.<sup>68</sup>

When dealing with assault as the predicate felony, proving a separate mens rea element for both the assault and the murder became a problematic issue.<sup>69</sup> Prior to the decision in *State v. Heemstra*, Iowa courts

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63. See 4 ROBERT W. RIGG, IOWA PRACTICE: CRIMINAL LAW § 3:14, at 74 (2005) (highlighting the various ways that states have approached limiting the felony-murder rule and explaining that Iowa chose to limit the underlying felonies that would trigger felony murder).

64. *Id.* § 3:16, at 77.

65. See *id.* § 3:16, at 76–77 (demonstrating the serious effects of labeling sexual assault with intent to commit sexual abuse a predicate felony for felony murder but opting not to make some types of willful injury forcible felonies that could trigger the felony-murder rule).

66. IOWA CODE § 707.2.

67. *Id.* ("A person commits murder in the first degree when the person commits murder under any of the following circumstances . . ."). The use of the word "murder" implies that malice aforethought is required to prove first-degree murder. See *id.* § 707.1. ("A person who kills another person with malice aforethought either express or implied commits murder."); *State v. Newell*, 710 N.W.2d 6, 21 (Iowa 2006) ("An essential element of first-degree murder is malice aforethought."). If section 707.2 were drafted differently and only required "a killing," then malice aforethought would not be required.

68. *State v. Berry*, 549 N.W.2d 316, 318 (Iowa Ct. App. 1996) ("Malice aforethought is an essential element of second-degree murder. It is generally defined as '[a] fixed purpose or design to do some physical harm to another which exists prior to the act committed.'" (quoting *State v. Sharpe*, 304 N.W.2d 220, 226 (Iowa 1981))).

69. The following example highlights the problem: if *A* assaults *B* with a sharp object intending to injure *B* seriously but not necessarily intending to kill *B*, the prosecution may have sufficient evidence to prove *A* intended to commit the assault, a predicate felony. The Iowa

generally approached the problem by permitting the prosecution to use the same evidence to prove both the intent of the underlying felony and the mens rea requirement for murder.<sup>70</sup> This approach led many critics to question whether the use of the term “murder” in the Iowa Code actually limits the felony-murder doctrine at all.<sup>71</sup> At the same time, however, Iowa courts emphasized that the evidence used to meet the mens rea requirement for the predicate felony did not necessarily meet the burden of proving malice aforethought, and the presence of malice aforethought would depend upon the facts surrounding the commission of the felonious assault or other forcible felony. In some cases the evidence used to prove the intent to commit the felony would also be sufficient to prove malice aforethought, and in other cases, it would not be sufficient to prove malice aforethought.<sup>72</sup>

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Code appears to require mens rea (“malice aforethought”) for the murder as well for felony murder to apply. The prosecution may have difficulty finding evidence to prove that *A* possessed “malice aforethought,” especially if that evidence is required to be separate evidence than that used to prove that *A* possessed the intent to commit the underlying felony.

70. *State v. Ragland*, 420 N.W.2d 791, 794 (Iowa 1988), *overruled by* *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006); *see also* Albrecht, *supra* note 38, at 949–50 (arguing that allowing the prosecution to use the same evidence to prove the necessary mens rea for both the felony and the murder converts the murder requirement into a mere killing requirement). At least one other court approached this issue in the same manner. In *State v. King*, the Tennessee Supreme Court held that even after its legislature changed the state’s felony-murder statute to require a “murder” rather than a “killing” for a felony-murder conviction to follow, malice was not an element of felony murder and the prosecution did not bear the burden of proving it existed. *See State v. King*, 694 S.W.2d 941, 946 (Tenn. 1985) (“[N]or does felony-murder require proof of malice.”). The Tennessee legislature has revised the felony-murder statute since *King* and the statute now requires only a “killing” rather than a “murder” for a felony-murder conviction. TENN. CODE ANN. § 39-13-202(a)(2) (Supp. 2007).

71. *See RIGG*, *supra* note 63, § 3:16, at 76–77 (stating that allowing an inference of malice from the underlying felony basically guarantees a first-degree-murder conviction); *see also* Albrecht, *supra* note 38, at 955 (“[W]hile the [Iowa] felony-murder statute, on its face, requires a finding of murder, that requirement is hollow.”).

72. *See State v. Escobedo*, 573 N.W.2d 271, 279–80 (Iowa Ct. App. 1997) (summarizing the relationship between proving both malice and specific intent to cause injury when willful injury is the predicate felony). The court in *Escobedo* established that the presence of intent to cause injury does not necessarily mean that malice was also present: “[T]he evidence to establish the specific intent to cause serious injury will often be the same for proving malice aforethought for murder. Notwithstanding, intent to cause serious injury and malice aforethought remain distinct elements, and the presence of one does not establish the other.” *Id.* at 279 (citation omitted). The court also distinctly pointed out that malice cannot be inferred from looking at the felony in the abstract, “[h]owever, the instruction . . . did not permit the jury to find malice based on a willful injury conviction in the abstract.” *Id.* at 279–80. Rather, malice can only be inferred from the particular facts of the felony in each case. *Id.* at 280 n.9 (“Thus, to infer malice from the commission of willful injury means to derive a finding of malice from the facts involved in committing willful injury.”). *But see* Albrecht, *supra* note 38, at 951–55 (discussing the Iowa courts’ inconsistency in dealing with how to find malice when willful injury is the predicate felony in a felony-murder case).

## 1. The Pre-Revision Iowa Criminal Code

The pre-revision Iowa Criminal Code listed specific crimes that could serve as predicate crimes for a felony-murder conviction.<sup>73</sup> The first-degree-murder statute stated, “All murder which is perpetrated by means of poison, or lying in wait, or any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate any arson, rape, robbery, mayhem, or burglary, is murder in the first degree . . . .”<sup>74</sup> The first-degree-murder provision required a murder and not a mere killing for a conviction of first-degree murder,<sup>75</sup> and the requirement of murder meant the prosecution had to prove either express or implied malice.<sup>76</sup>

The 1977 version of the Iowa Criminal Code did not include a provision defining *forcible felony*. Instead, it used an inclusive and broad description to define felony rather than list specific crimes: “A felony is a public offense which is, or in the discretion of the court may be, punished by imprisonment in the penitentiary or men’s reformatory or women’s reformatory.”<sup>77</sup> These Iowa Code provisions formed the basic framework against which the Iowa Legislature would compare subsequent revisions and proposed revisions to the Iowa Criminal Code.

## 2. The Proposed Iowa Code of 1974

Much of the controversy surrounding both the felony-murder doctrine and the merger limitation in Iowa stems from two sources: (1) the Iowa Legislature’s refusal to adopt the homicide provision of Senate File 1150, known as the Proposed Code of 1974; and (2) the differences between that homicide provision and the provision codified in the 1976 Iowa Criminal Code.<sup>78</sup>

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73. IOWA CODE § 690.2 (1977) (current version at IOWA CODE § 707.2 (2007)).

74. *Id.* This provision included the felony-murder doctrine, though at this point in time the statute did not use the term felony because it listed the crimes that could trigger the felony-murder doctrine within the statute.

75. *Id.*

76. *Id.* § 690.1 (current version at IOWA CODE § 707.1 (2007)) (“Whoever kills any human being with malice aforethought, either express or implied, is guilty of murder.”).

77. *Id.* § 687.2 (current version at IOWA CODE § 701.7 (2007)). Instead of a general provision defining felony, the Iowa Criminal Code’s current approach is to have each statute defining a particular offense declare whether that offense is a felony. IOWA CODE § 701.7 (2007) (“A public offense is a felony of a particular class when the statute defining the crime declares it to be a felony.”). For purposes of this Note, the definition of felony and the absence of a provision defining forcible felony and how those two considerations affected the 1973 version of the Iowa Criminal Code are unimportant. Regardless, they do serve an important purpose for this Note by providing insight into the legislative intent behind the revisions and proposed revisions to the Iowa Criminal Code.

78. See John J. Yeager, *Ten Years with the Iowa Criminal Code*, 38 DRAKE L. REV. 831, 831 (1988–1989) (explaining the chronology of the adoption of the new criminal code).

The Proposed Code of 1974 was the result of a four-year, extensive overhaul of the then-current Iowa Criminal Code.<sup>79</sup> The Proposed Code intended to replace many statutes, including those detailing the crimes of homicide and felony.<sup>80</sup> A large number of those statutes had been in effect since 1851 and required major revision.<sup>81</sup> To that end, the Proposed Code of 1974 substantially altered the previous felony-murder statute and stated that a person commits first-degree homicide in the following circumstances:

(1) He intentionally commits a homicide, provided that none of the mitigating circumstances as stated in sections seven hundred four (704) and seven hundred five (705) of this division exist.

(2) While participating in a felony other than homicide or assault, or while escaping or attempting to escape from lawful custody, he directs violence toward any person which causes the death of such person or another person.

(3) He participates in a forcible felony other than homicide or assault and thereby causes the death of some person.<sup>82</sup>

In connection with §§ 703(2) and 703(3), the Proposed Code labeled the following crimes forcible felonies: felonious homicide, assault, sexual abuse, kidnapping, robbery, arson in the first degree, and burglary.<sup>83</sup> Therefore, only these crimes, with the exception of assault and homicide, could serve as predicate felonies for felony murder under the Proposed Code.<sup>84</sup> By explicitly listing homicide and assault as felonies that could *not* serve as predicate felonies, the Proposed Code contained the basic components of the merger limitation in its language.<sup>85</sup>

### 3. The 1976 Revised Iowa Criminal Code

In 1976, the Iowa Legislature finally adopted a new criminal code. The Code, which took effect in 1978, contained substantial differences from the prior Iowa Criminal Code and the Proposed Code of 1974. For the purposes of this Note, the most important change was the stark contrast in the definition of first-degree murder: “A person commits murder in the first

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79. John J. Yeager, *Crimes Against the Person: Homicide, Assault, Sexual Abuse and Kidnaping in the Proposed Iowa Criminal Code*, 60 IOWA L. REV. 503, 503 (1975).

80. See *Iowa Criminal Law—A Need for Reform*, 51 IOWA L. REV. 883, 883 (1966) (stating that “the primary purposes and goals of the criminal law ha[d] changed considerably” since 1851 and the former code required major revisions).

81. *Id.*

82. S. 1150, 65th Gen. Assem., 1974 Reg. Sess. (Iowa 1974).

83. *Id.* § 211.

84. See Yeager, *supra* note 79, at 509 (discussing the definition of criminal homicide under the Proposed Code).

85. See *supra* Part II.B (discussing the basic components of the merger limitation).

degree when he or she commits murder under any of the following circumstances: 1. The person willfully, deliberately, and with premeditation kills another person. 2. The person kills another person while participating in a forcible felony.”<sup>86</sup> Though the structure of the statute was different, the Revised Iowa Criminal Code defined “forcible felony” in a manner very similar to the Proposed Code. The Revised Code listed felonious assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, and burglary in the first degree as forcible felonies, just as the Proposed Code had done.<sup>87</sup>

#### 4. Key Distinctions Between the Former Iowa Criminal Code, the Proposed Code of 1974, and the Revised Iowa Criminal Code of 1976

Marked distinctions exist between the first-degree murder and forcible-felony portions of the Proposed Code and the portions passed by the Iowa Legislature in the Iowa Criminal Code. Most significantly, the Iowa Legislature elected not to explicitly list assault and murder as felonies that could not serve as predicate felonies, thereby rejecting the Proposed Code’s suggestion.<sup>88</sup> On the face of the statute, therefore, the Iowa Legislature appeared to refuse to adopt the merger limitation in the Revised Iowa Criminal Code of 1976.

The Iowa Criminal Code also elected to use the term “murder” rather than “homicide” to define the crime.<sup>89</sup> The Iowa Proposed Code eliminated the use of the words malice and murder, and instead incorporated the definitions of those words into the description of the crime.<sup>90</sup> The Iowa Legislature rejected the Proposed Code’s approach and instead required “a murder” to trigger the felony-murder doctrine, which made malice an

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86. IOWA CODE § 707.2 (1)–(2) (1979). Subsections (1) and (2) of Iowa Code section 707.2 remain unchanged in the current version. *See* IOWA CODE § 707.2 (1)–(2) (2007) (demonstrating the similarity).

87. IOWA CODE § 702.11 (1979); S. 1150, 65th Gen. Assem., 1974 Reg. Sess. (Iowa 1974). Section 702.11 has undergone some changes since it was enacted in 1976, most notably the addition of felonious child endangerment as a forcible felony and the addition of subsection 2 which lists some specific offenses that will not qualify as forcible felonies. IOWA CODE § 702.11 (2005).

88. *Compare* IOWA CODE § 707.2 (1)–(2) (1979) (failing to single out any particular forcible felonies), *with* S. 1150, 65th Gen. Assem., 1974 Reg. Sess. (Iowa 1974) (eliminating assault and homicide as forcible felonies that trigger the felony-murder doctrine).

89. IOWA CODE § 707.2 (1979).

90. *See* Yeager, *supra* note 79, at 509 (noting that the Proposed Code’s definition of “criminal homicide” included descriptive mens rea terms like “intentionally” and “recklessly,” meaning that the prosecution would need to prove one of those mens rea states of mind as an element of the crime, whereas under codes where the term malice is used in defining murder mens rea states like “intentionally” and “recklessly” are factors to consider when determining if malice exists, but are not elements of the crime that the codes require the prosecution to prove).

essential element of felony murder.<sup>91</sup> The inclusion of a malice requirement for the felony-murder doctrine may have been a holdover requirement from the pre-1978 Iowa Criminal Code, which required a finding of malice for both first- and second-degree murder, including felony murder.<sup>92</sup> The Iowa Legislature may have believed that the malice requirement was a significant burden on prosecutors seeking convictions on either murder grounds (the non felony-murder versions) or felony-murder grounds and indispensable to a functional criminal code.<sup>93</sup> The Iowa Legislature may also have intended this limitation to supplant any need for the merger limitation offered in the Proposed Criminal Code.<sup>94</sup>

The Iowa Criminal Code of 1976 also adjusted the Iowa felony-murder doctrine by creating a new subsection of the code defining forcible felonies.<sup>95</sup> Instead of expressly listing any predicate felonies within the murder statute, the felony-murder statute stated that any forcible felony could serve as a predicate felony.<sup>96</sup> The pre-1978 Iowa Criminal Code simply listed the predicate felonies within the first-degree-murder statute itself.<sup>97</sup> The change, however, did not merely transfer the predicate felonies listed in § 690.2 of the pre-1978 Iowa Criminal Code into the new forcible-felonies section (§ 702.11) of the Revised Iowa Criminal Code.<sup>98</sup> Instead, the Revised Iowa Criminal Code's subsection of forcible felonies "broadened the scope of the first-degree felony-murder rule in some ways and narrowed it in others."<sup>99</sup> Section 702.11 of the Revised Iowa Criminal Code listed assault among the forcible felonies, and assault remains a forcible felony in the current version of the Iowa Code.<sup>100</sup>

91. IOWA CODE § 707.1 (1979) ("A person who kills another person with malice aforethought either express or implied commits murder.").

92. See IOWA CODE § 690.1–3 (1977) (repealed 1978) (requiring a murder, and, consequently, malice, for various degrees of a killing). The definition of malice is not included in the Iowa Code and, as a result, has been the subject of pointed analysis in legal scholarship and court opinions. See *State v. Berry*, 549 N.W.2d 316, 318 (Iowa Ct. App. 1996) (defining malice as an intent to do "harm to another that exists prior to" the commission of the criminal act); Yeager, *supra* note 79, at 505–06 (defining malice, in the context of the Iowa Code, as "either the attempt to wrongfully injure another, or the intent to act in such a way as to cause an extreme and unjustified risk to the lives and safety of others").

93. See *supra* notes 66–72 and accompanying text (discussing the effect of a malice requirement for purposes of the felony-murder rule).

94. See *supra* notes 66–72 (discussing the same).

95. IOWA CODE § 702.11 (1979).

96. See *id.* § 707.2(2) (defining one type of first-degree murder as murder that occurs when "the person kills another person while participating in a forcible felony").

97. IOWA CODE § 690.2 (1977) (current version IOWA CODE § 707.2 (2007)).

98. Compare *id.* (listing "arson, rape, robbery, mayhem or burglary" as predicate felonies), with IOWA CODE § 702.11 (1979) (listing "felonious assault, murder, sexual abuse, kidnapping, robbery," first-degree arson, and first-degree burglary as forcible felonies).

99. Kermit L. Dunahoo, *The New Iowa Criminal Code*, 29 DRAKE L. REV. 237, 260 (1979–1980).

100. IOWA CODE § 702.11 (2007).

The comprehensive revision of the felony-murder statute and the addition of the forcible-felony section to the Iowa Criminal Code suggest that those two sections were intended to function together. The inclusion of assault in the forcible-felony section and the Iowa Legislature's refusal to exclude assault from the list of predicate felonies for felony-murder purposes, as the Proposed Code suggested, operate as a "clear rejection of the view that felonious assaults may not provide a basis for applying the felony-murder doctrine."<sup>101</sup> The statute's plain meaning suggests a rejection of the merger limitation.<sup>102</sup>

*B. IOWA'S APPROACH TO THE MERGER LIMITATION ON THE FELONY-MURDER DOCTRINE PRIOR TO STATE V. HEEMSTRA*

Prior to *Heemstra*, Iowa courts uniformly had opposed the use of the merger limitation and generally accepted assault as a predicate felony for a felony-murder charge.<sup>103</sup> The courts rigidly rejected the merger limitation due to the clear wording of the Iowa statutes defining first-degree murder and forcible felony, as well as the Code's inclusion of assault as a forcible felony.<sup>104</sup>

*State v. Beeman* most clearly demonstrated Iowa's outright rejection of the merger limitation.<sup>105</sup> In *Beeman*, the State charged the defendant, William Beeman, with first-degree murder.<sup>106</sup> Beeman had taken his former girlfriend to a park and after the woman refused his sexual advances, he kicked her in the head with his steel-toed boots, repeatedly stabbed her, and took off her clothes and sexually abused her.<sup>107</sup> Beeman appealed his murder conviction, objecting to the felony-murder instruction given to the jury and claiming the merger limitation precluded the use of assault as a predicate felony.<sup>108</sup> The court rejected Beeman's objection solely on the

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101. *State v. Heemstra*, 721 N.W.2d 549, 566 (Iowa 2006) (Carter, J., dissenting).

102. *Id.* at 565.

103. *See State v. Anderson*, 517 N.W.2d 208, 214 (Iowa 1994) (rejecting the merger doctrine), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Rhomberg*, 516 N.W.2d 803, 805 (Iowa 1994) (same), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Ragland*, 420 N.W.2d 791, 793 (Iowa 1988) (same), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Mayberry*, 411 N.W.2d 677, 682–83 (Iowa 1987) (same), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Beeman*, 315 N.W.2d 770, 777 (Iowa 1982) (same), *overruled by Heemstra*, 721 N.W.2d at 558.

104. *See IOWA CODE* § 707.2(2) (2007) (defining a killing during the commission of a forcible felony as first-degree murder); *id.* § 702.11(1) (listing assault as one of eight forcible felonies).

105. *See Beeman*, 315 N.W.2d at 770 (rejecting the merger limitation).

106. *Id.* at 772.

107. *Id.*

108. *See id.* at 776 (stating Beeman's basic objection and highlighting the fact that the court was aware of the merger limitation as it had acknowledged the limitation's existence without making a decision as to its merits in *State v. Hinkle*, 229 N.W.2d 744, 750 (Iowa 1975)).

applicable statute's plain meaning<sup>109</sup> and the legislature's clear intent that assault may operate as a predicate felony.<sup>110</sup>

Thereafter, *Beeman* played a significant role in Iowa's felony-murder jurisprudence. *Beeman* spawned significant progeny and became the controlling case whenever a litigant raised the merger-limitation issue in the Iowa Supreme Court.<sup>111</sup> Various Iowa courts showed a strong commitment to the decision in *Beeman* and an unquestioning reliance on its holding: more than ten years after the *Beeman* decision, the Iowa Supreme Court held, "[w]e have steadfastly declined . . . invitations to disavow the principles established in *Beeman*. We again do so here."<sup>112</sup> Lower Iowa courts showed similar dedication to *Beeman*'s holding: "The legislature intended [that] felonious assaults, including willful injury under [Iowa Code §] 708.4, be felonies that may serve as the basis of a felony-murder and that the merger doctrine . . . not apply to such assaults."<sup>113</sup> Thus, prior to *Heemstra*, the State of Iowa staunchly maintained a felony-murder doctrine that stood in direct opposition to the popular merger limitation adopted by many other states.

#### IV. STATE V. HEEMSTRA AND IOWA'S JUDICIAL ADOPTION OF THE MERGER LIMITATION

For nearly twenty-five years, Iowa courts adhered to *Beeman* and refused to adopt the merger limitation, over time acknowledging that any change in the law should come at the hands of the Iowa Legislature.<sup>114</sup> However, Iowa's approach to the merger limitation took a marked turn in *State v. Heemstra*, which commenced a new era of felony-murder jurisprudence in the state.

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109. See *id.* ("By their terms, sections 707.2(2), 702.11 and 708.4, The Code 1979, make willful injury a proper underlying felony for a felony-murder instruction.")

110. See *Beeman*, 315 N.W.2d at 776-77 (recognizing that earlier Iowa Supreme Court decisions, rules of statutory construction, and the timing of the passage of a new criminal code reflect the Iowa Legislature's intent that felonious assaults be included as predicate felonies for felony-murder purposes).

111. See *State v. Rhomberg*, 516 N.W.2d 803, 805 (Iowa 1994) (following *Beeman*), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Ragland*, 420 N.W.2d 791, 793 (Iowa 1988) (same), *overruled by Heemstra*, 721 N.W.2d at 558; Jerold P. McMillen, *Prosecuting Child Abuse Homicides in Iowa: A Proposal for Change*, 44 DRAKE L. REV. 129, 139 (1995) ("The *Beeman* decision nevertheless remains the authority cited in all of the Iowa Supreme Court's subsequent decisions addressing similar merger issues.")

112. *State v. Anderson*, 517 N.W.2d 208, 214 (Iowa 1994), *overruled by Heemstra*, 721 N.W.2d at 558.

113. *Steinkuehler v. State*, 507 N.W.2d 716, 723 (Iowa Ct. App. 1993). Subsequent Iowa appellate-court decisions pledged allegiance to *Beeman*'s holding regarding the merger limitation. See *State v. Dixon*, No. 4-759/03-1887, 2004 Iowa App. LEXIS 1335, at \*12 (Iowa Ct. App. Dec. 22, 2004) (referencing the holding in *Beeman* and enforcing that holding); *State v. Rhode*, 503 N.W.2d 27, 40 (Iowa Ct. App. 1993) (referencing the holding in *Beeman* and refusing to depart from that holding).

114. See *Rhomberg*, 516 N.W.2d at 805 (reflecting on the cases providing controlling precedent on the merger limitation and concluding that "[a] proposed change in the law, if desired, is in the province of the legislature").

## A. THE FACTS OF STATE V. HEEMSTRA

The details of the *Heemstra* case make it a controversial decision. For nearly six months, the defendant, Rodney Heemstra, and the deceased victim, Tom Lyon, feuded over some rural land that Lyon rented from a third party.<sup>115</sup> During July 2002, Heemstra purchased the land that Lyon was renting, but Lyon was entitled to remain in possession until March 1, 2003.<sup>116</sup> The two regularly threatened one another and argued over the land at issue.<sup>117</sup> The dispute came to a boiling point on a county road in January of 2003, when the men encountered one another while driving and ended up stopping their respective vehicles to have a face-to-face encounter.<sup>118</sup> A verbal argument ensued, and after Lyon threatened Heemstra, Heemstra grabbed a shotgun from his vehicle.<sup>119</sup> Heemstra claimed he only retrieved the gun for the purpose of neutralizing the situation, but he ended up shooting Lyon in the head after Lyon allegedly lunged at him.<sup>120</sup> Heemstra then dragged Lyon's body behind his truck to a nearby cistern.<sup>121</sup>

Heemstra was charged with first-degree murder, and the jury received instructions pertaining to both felony murder and willful, deliberate, and premeditated murder.<sup>122</sup> The State contended that displaying the gun in a dangerous manner or intentionally pointing the gun at Lyon was sufficient to constitute willful injury, which qualifies as a forcible felony triggering the felony-murder doctrine.<sup>123</sup> The jury convicted Heemstra of first-degree murder, but failed to specify whether it based its decision on the felony-murder instruction or on the willful, deliberate, and premeditated murder instruction.<sup>124</sup>

On appeal to the Iowa Supreme Court, Heemstra contended that the district court erred in its felony-murder instruction.<sup>125</sup> The Iowa Supreme Court agreed, but rather than limiting its holding to the facts of the case, it held that "if the act causing willful injury is the same act that causes the victim's death, the former is merged into the murder and therefore cannot

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115. *Heemstra*, 721 N.W.2d at 551.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Heemstra*, 721 N.W.2d at 551.

121. *Id.*

122. *Id.* at 552–53.

123. *Id.* at 553. It is also significant to note, for later discussion, that Heemstra claimed on appeal that his use of the gun in a dangerous manner or by pointing it at Lyon did not qualify as willful injury under the established statutory definition, and the court held that this was a valid claim. *See id.* at 553–54 (discussing the error and implications of the district court's jury instruction that pointing or displaying the gun in a dangerous manner constitutes willful injury).

124. *See id.* at 551 (stating only that the jury convicted Heemstra of first-degree murder).

125. *Heemstra*, 721 N.W.2d at 552.

serve as the predicate felony for felony-murder purposes.”<sup>126</sup> In so holding, the court effectively and explicitly overturned *Beeman* and its progeny and ushered in a new era of Iowa felony-murder jurisprudence—one that adopts the merger limitation.<sup>127</sup>

B. THE IOWA SUPREME COURT’S REASONING IN STATE V. HEEMSTRA

The court justified its decision by pointing out the necessity of maintaining manslaughter and the degrees of murder as separate and distinct crimes.<sup>128</sup> The court cited an Oregon case holding that the adoption of the merger limitation served this purpose.<sup>129</sup> The *Heemstra* majority likely feared that § 707.2(1) of the Iowa Code, the willful and premeditated first-degree murder crime, would become obsolete without the merger limitation.<sup>130</sup>

The *Heemstra* court also claimed to base its decision on statutory construction, explaining that the Iowa Legislature likely intended to use assault as one of the forcible felonies, but only when an assault occurred preceding the assault that killed the victim.<sup>131</sup> According to this theory, the

126. *Id.* at 558.

127. *Id.* at 558. The Iowa Supreme Court explained its new approach:

We realize that this view is inconsistent with our prior cases, including *Beeman* and its progeny. We therefore overrule those cases, insofar as they hold that the act constituting willful injury and also causing the victim’s death may serve as predicate felony for felony-murder purposes. Those cases include *Beeman*. We also overrule the cases that followed it . . . .

*Id.* (citations omitted).

128. *See id.* at 556–57 (citing this same reasoning in cases from other states, including Massachusetts, California, and Oregon).

129. *See id.* at 557 (citing *State v. Branch*, 415 P.2d 766, 767 (Or. 1966)) (expanding on the benefits of adopting the merger limitation). The Oregon court explained:

In order to preserve the distinctions between the degrees of murder and manslaughter, courts in other states have held that where the only felony committed . . . was the assault upon the victim which resulted in death of the victim, the assault merged with the killing and could not be relied upon by the state as an ingredient of “felony murder.”

*Branch*, 415 P.2d at 767.

130. *See* IOWA CODE § 707.2(1) (2007) (“The person willfully, deliberately, and with premeditation kills another person.”). The court likely feared that because most homicides that are willful, deliberate, and premeditated also constitute willful injury, a defendant who committed a willful injury that led to a victim’s death would always be prosecuted under § 707.2(2), completely relieving the prosecution of ever having to prove the elements of § 707.2(1), and, therefore, eroding any distinction between first- and second-degree murder. *See also* RIGG, *supra* note 63, § 3:14, at 76–77 (2005) (stating that allowing willful injury to serve as the predicate felony makes a first-degree murder conviction a “virtual certainty”).

131. *See Heemstra*, 721 N.W.2d at 557 (asserting that the legislature never specifically rejected the merger limitation, and therefore, it was a feasible interpretation of the statute to believe that the willful injury required to trigger the felony-murder doctrine was a willful injury other than the one causing death).

defendant would have to commit two distinct assaults—the second assault killing the victim and the first assault serving as the predicate felony—for assault to serve as a predicate felony.<sup>132</sup> The court cited to other jurisdictions permitting assault or willful injury to serve as an underlying felony only when the assault was one independent of that causing death.<sup>133</sup> The majority held that this interpretation of the Iowa felony-murder statute was reasonable.<sup>134</sup>

With the policies underlying the felony-murder doctrine subject to heavy criticism, it was fitting that Justice Larson, writing for the majority, solidified the court's decision with policy justifications; the majority analyzed a few seemingly unjust outcomes that might result under the felony-murder doctrine if the merger limitation was not adopted.<sup>135</sup> For example, a father who would face life imprisonment after leaving a child home alone if that child died while the father was absent.<sup>136</sup> The majority used this hypothetical to legitimize its decision to adopt the merger limitation and to illustrate the injustice that could result without the limitation.<sup>137</sup>

## V. JUDICIAL DEFERENCE IN THE FELONY-MURDER CONTEXT

### A. VARIOUS STATE INTERPRETATIONS OF FELONY-MURDER STATUTES DEMONSTRATING JUDICIAL DEFERENCE

Other states approach the merger limitation as Iowa did prior to *Heemstra*, refusing to adopt the merger limitation and stressing that the issue should remain in the legislature's domain.<sup>138</sup> In a Wyoming Supreme Court case, a criminal defendant that committed child abuse was convicted of felony murder when the child died.<sup>139</sup> The State convicted the defendant under a felony-murder statute that did not require an independent finding of malice for the felony-murder doctrine to apply.<sup>140</sup> Child abuse is a likely

132. *See id.* (explaining how willful injury could still serve as a predicate felony for felony murder even under a merger regime).

133. *See id.* at 556 (citing *Commonwealth v. Gunter*, 692 N.E.2d 515, 526 (Mass. 1998) (holding that an assault against apartment occupant number one could support felony murder but the assault resulting in apartment occupant number two's death could not serve as the predicate felony for felony murder) and *Commonwealth v. Kilburn*, 780 N.E.2d 1237, 1240 (Mass. 2003) (involving two assaults with a weapon prior to a killing)).

134. *Id.*

135. *Id.* at 555–56 (citing *Albrecht*, *supra* note 38, at 941).

136. *See id.* (citing *Albrecht*, *supra* note 38, at 941) (providing two examples of the apparent unfairness of the felony-murder doctrine without the merger limitation).

137. *See id.* at 555 (describing these hypotheticals as “several scenarios that, in the absence of sound prosecutorial discretion, could test the outer constitutional parameters of our felony-murder law under the *Beeman* line of cases”).

138. *See infra* notes 103–14 and accompanying text (discussing the deference that Iowa courts showed to the legislature in the felony-murder-limitation context).

139. *Johnson v. State*, 61 P.3d 1234, 1244 (Wyo. 2003).

140. WYO. STAT. ANN. § 6-2-101(a) (2005). The Wyoming statute states:

candidate for applying the merger limitation because child abuse that results in death, like an assault that results in death, would not be considered independent of the killing, but rather merged in it. However, the defendant never raised the merger issue and the court never addressed merger.<sup>141</sup>

The defendant in *Johnson v. State* may have elected not to raise the merger issue because the Wyoming Supreme Court had previously taken a firm position against any judicial revision of the felony-murder statute in *Mares v. State*.<sup>142</sup> The defendant in *Mares* objected to the harsh nature of Wyoming's felony-murder statute and requested a modification of the statute, but the court firmly deferred to the legislature: "The wisdom or desirability of a change in the felony-murder statute is solely a matter for the consideration of the legislature, and, accordingly, arguments concerning the addition of elements to the statute should be addressed to the legislature, not this court."<sup>143</sup>

The Tennessee Supreme Court also emphasized judicial deference as a crucial basis for its refusal to adopt the merger limitation in *State v. Godsey*.<sup>144</sup> In *Godsey*, as in *Johnson*, child abuse was the predicate felony under dispute<sup>145</sup> and arguably could have merged with the killing under a merger-limitation regime. In rejecting the defendant's appeal to the merger limitation, the court emphasized that the limitation should not be applied in situations where the legislature rejected it by enumerating specific predicate felonies capable of triggering the felony-murder doctrine.<sup>146</sup> This argument functioned on the logic that only the legislature is equipped to alter a statute that clearly expresses legislative intent, and a statute explicitly listing predicate felonies that can trigger the felony-murder doctrine is an example of expressed legislative intent.<sup>147</sup>

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Whoever purposely and with premeditated malice, or in the perpetration of, or attempt to perpetrate, any sexual assault, sexual abuse of a minor, arson, robbery, burglary, escape, resisting arrest, kidnapping or abuse of a child under the age of sixteen (16) years, kills any human being is guilty of murder in the first degree.

*Id.*

141. See generally *Johnson*, 61 P.3d 1234 (lacking any discussion of the merger doctrine).

142. *Mares v. State*, 939 P.2d 724 (Wyo. 1997). *Mares* participated in a burglary with a coconspirator who killed a person during the commission of the burglary. *Id.* at 726–27. With burglary serving as the predicate felony in the charge against him, *Mares* was convicted of murder under the felony-murder doctrine. *Id.* at 727.

143. *Id.* at 730. The defendant in *Mares* appealed to the Wyoming Supreme Court in hopes that it would modify the felony-murder statute by requiring a finding of malice for the statute to apply, but the court refused to modify the felony-murder statute and emphasized that it was the role of the legislature to adopt any modifications. *Id.* at 728–29.

144. *State v. Godsey*, 60 S.W.3d 759, 775 (Tenn. 2001).

145. See *id.* at 773 (describing child abuse as one of the enumerated predicate felonies).

146. See *id.* at 775 (stating that it is sufficient to decipher legislative intent to exclude certain felonies from a list of specifically enumerated felonies).

147. *Id.*

State courts applying the merger limitation without any prompting from the state legislature are typically located in states with broad felony-murder statutes.<sup>148</sup> Many of these states feature felony-murder statutes allowing “a felony,” “any felony,” or “any felony inherently dangerous to human life” to trigger the felony-murder doctrine.<sup>149</sup> Presumably, such statutes demonstrate less-specific legislative intent regarding which felonies should trigger the felony-murder doctrine since the legislatures in those states failed to explicitly enumerate the predicate felonies. In these states, greater judicial intrusion into a broad statutory scheme may be justified.

In essence, the Iowa felony-murder doctrine resembles the statutory felony-murder schemes in Tennessee and Wyoming, at least to the extent that it requires a forcible felony and specifically enumerates which felonies qualify as forcible felonies.<sup>150</sup> The Iowa murder statute does not contain the broad language included in murder statutes in states where courts have adopted the merger limitation.<sup>151</sup> Therefore, the logic utilized in Tennessee and Wyoming solidifies the reasoning used in *Beeman* and its progeny: where a state legislature enumerates a list of felonies capable of serving as predicate felonies for felony-murder purposes, courts should follow the statute's plain meaning and apply the felony-murder doctrine according to legislative intent.<sup>152</sup>

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148. See *Foster v. State*, 444 S.E.2d 296, 297 (Ga. 1994) (applying the merger limitation where the “felony murder statute is very broad” and the statute allows “any felony” to serve as the predicate felony for the felony-murder doctrine). For a list of states and cases where courts have applied the merger limitation because of broad felony-murder statutes, see *Godsey*, 60 S.W.3d at 775 n.9.

149. See *Godsey*, 60 S.W.3d at 775 n.9 (providing a list of states applying the merger limitation and the wording of their respective statutes). For example, the State of Georgia enforces the merger limitation on the felony-murder doctrine. *Foster*, 444 S.E.2d at 297. Georgia's felony-murder statute states, “[a] person also commits the offense of murder when, in the commission of a felony, he causes the death of another human being irrespective of malice.” GA. CODE ANN. § 16-5-1(c) (2007). Georgia's statutory definition of “felony” is very open-ended: “‘Felony’ means a crime punishable by death, by imprisonment for life, or by imprisonment for more than 12 months.” *Id.* § 16-1-3(5). The key difference in Iowa is that Iowa uses the term “forcible felony” in its felony-murder statute and specifies the particular crimes that qualify as forcible felonies. See IOWA CODE § 707.2(2) (2007) (using the term “forcible felony”); *id.* § 702.11 (listing particular crimes that qualify as forcible felonies).

150. This is not to say that differences do not exist between the Iowa felony-murder scheme and those in Tennessee and Wyoming. Most noticeably, both Tennessee and Wyoming only require a killing, not murder, for the felony-murder doctrine to apply and both states list the predicate felonies in the murder statute itself rather than in a separate statute as Iowa does. Compare IOWA CODE § 702.11, and *id.* § 707.2, with TENN. CODE ANN. § 39-13-202(a)(2) (2002), and WYO. STAT. ANN. § 6-2-101(a) (2005).

151. IOWA CODE § 707.2.

152. See *State v. Beeman*, 315 N.W.2d 770, 777 (Iowa 1982) (explaining that the court based its interpretation of Iowa's felony-murder statute on its understanding of legislative intent), *overruled by* *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006).

B. THE INFLUENCE OF STATE V. HINKLE ON BEEMAN'S INTERPRETATION OF IOWA'S FELONY-MURDER SCHEME

When the Iowa Supreme Court wrestled with possible interpretations of the Revised Iowa Criminal Code's felony-murder and forcible-felony statutes in *Beeman*, it relied on *State v. Hinkle* in resolving its merger dilemma.<sup>153</sup> In *Hinkle*, the court analyzed the merger limitation, though the court did not consider the issue on its merits since it was not adequately raised on appeal.<sup>154</sup> The *Beeman* court found the merger discussion in *Hinkle* highly relevant to its interpretation of the statute: "The legislative inclusion of felonious assaults . . . may be in response to our felony-murder discussion in *State v. Hinkle*."<sup>155</sup> Such an interpretation is logical, considering that the Iowa Supreme Court rendered the *Hinkle* decision in 1975 and the Iowa Legislature enacted the Revised Iowa Criminal Code shortly thereafter in 1976. The Iowa Legislature might rationally have considered the *Hinkle* merger discussion and might specifically have chosen not to adopt the merger limitation.<sup>156</sup>

Although the *Beeman* court's interpretation of the felony-murder statute may not have been infallible, the emphasis that the court placed on the chronology of the *Hinkle* decision and the following legislative enactment enhanced the interpretation's logic. Additionally, the subsequent Iowa Supreme Court decisions acquiescing to *Beeman*'s interpretation provided enhanced authority to *Beeman*'s logic.<sup>157</sup> This reasoning demonstrates that the early Iowa courts interpreting the Iowa felony-murder statute sought to implement the legislature's intent and that subsequent courts deferred to *Beeman* for the proper interpretation of that intent. Prior to *Heemstra*, the prevailing view was that any change to the felony-murder scheme should be at the discretion of the legislature, not the courts.<sup>158</sup>

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153. *Beeman*, 315 N.W.2d at 776.

154. *See State v. Hinkle*, 229 N.W.2d 744, 749–51 (Iowa 1975) (laying out the basic elements of the "felony merger" principle" as applied in other states).

155. *Beeman*, 315 N.W.2d at 776.

156. *See id.* at 776–77 (highlighting that it was only *after Hinkle* that the legislature passed the pertinent statutes). *But see* Albrecht, *supra* note 38, at 957–58 (pointing out that the timing of the Iowa Revised Criminal Code's enactment did not necessarily reflect an intent to allow assault to function as a predicate felony and stating that the *Beeman* court's analysis "about legislative response to *Hinkle* may not be sound").

157. *State v. Anderson*, 517 N.W.2d 208, 214 (Iowa 1994), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Rhomberg*, 516 N.W.2d 803, 805 (Iowa 1994), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Ragland*, 420 N.W.2d 791, 793 (Iowa 1988), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Mayberry*, 411 N.W.2d 677, 682–83 (Iowa 1987), *overruled by Heemstra*, 721 N.W.2d at 558.

158. *See Anderson*, 517 N.W.2d at 214 ("A settled construction of a statute, coupled with the passage of time, invokes the principle that issues of statutory interpretation settled by the courts and not disturbed by the legislature have become tacitly accepted by the legislative branch."); *Rhomberg*, 516 N.W.2d at 805 ("A proposed change in the law, if desired, is in the province of the legislature.").

VI. CRITIQUE OF THE IOWA SUPREME COURT'S ROLE IN *STATE V. HEEMSTRA* AND SUGGESTIONS FOR FUTURE MEANS OF ALTERING THE CRIMINAL LAW

The felony-murder doctrine and its subdoctrines—including the merger limitation—represent one of criminal law's great mysteries, especially when one considers the significant role they play in the criminal law of many states and the ongoing scholarly criticism of these doctrines.<sup>159</sup> The criticisms are well founded, and the felony-murder doctrine does compromise the basic system of criminal culpability.<sup>160</sup> Regardless, the doctrine persists.

Justifications for the doctrine have been sufficient for legislators choosing to continue the doctrine and courts continuing to enforce it. The felony-murder doctrine's ongoing application led one legal scholar to state, "[T]here can be no universally valid answer to the question of the justice of 'the' felony murder rule. Instead, we must evaluate each felony murder rule as it is defined and put into practice in a particular jurisdiction, in a particular legal and cultural context."<sup>161</sup> The relevant question then becomes not simply whether to abolish the felony-murder doctrine, but how to do so and what procedures should define and limit the doctrine in each jurisdiction.

This question is imperative in Iowa, as it is in other jurisdictions. When the Iowa Supreme Court limited the felony-murder doctrine in *Heemstra* and adopted the merger limitation as applied to willful-injury felonious assaults, overturning *Beeman* and its progeny, the court asserted that its decision was "based on legal precedent, common sense, and fairness."<sup>162</sup> But should the Iowa Supreme Court have been the branch of government making this decision? Legal precedent, common sense, and fairness are indeed important considerations, but this Note shows that legal precedent, common sense, and fairness equally can be said to support the felony-murder doctrine's continued application as enforced prior to *Heemstra*.

In light of this dilemma and the controversy surrounding the felony-murder doctrine, this Note is not intended to laud the accolades of the felony-murder doctrine or denigrate the merger limitation and its functions. Rather, this Note's purpose is to demonstrate that the Iowa Legislature should be the governmental branch that adjusts the criminal law and, specifically, the felony-murder doctrine as needed. A court, when reading Iowa's felony-murder statute in historical context could interpret the statute

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159. See Tomkovicz, *supra* note 10, at 1431 (claiming that although felony murder has been the subject of much criticism, it will continue to persist in American jurisprudence).

160. See *id.* at 1434–41 (outlining the relationship between culpability and fault and explaining how the felony-murder doctrine deviates from the normal relationship between the two).

161. Binder, *supra* note 21, at 207.

162. *Heemstra*, 721 N.W.2d at 558.

to demonstrate legislative intent to reject the merger limitation as it applies to assault. Because subsequent court decisions supported the initial interpretation without any legislative action contradicting that interpretation (and other jurisdictions have interpreted similarly structured statutes in the same way), any change in the existing law is best left in the legislature's hands.

The *Heemstra* court sought to make a "fair" adjustment to the felony-murder doctrine by adopting the merger limitation,<sup>163</sup> and many consider the substantive change an improvement.<sup>164</sup> The court's actions, however, leave Iowa with criminal-law statutes that can be sensibly interpreted to reject the merger limitation<sup>165</sup> and a recent judicial decision accepting the merger limitation.<sup>166</sup> If the merger limitation is a logical limit on and substantive improvement to the state's felony-murder statute, then Iowa should adopt this limitation.<sup>167</sup> However, the Iowa Supreme Court violated the basic separation of powers when it, rather than the Iowa Legislature, adopted this limitation.

By revising the current felony-murder scheme, the Iowa Legislature would serve its constituents well and bring clarity to a mysterious criminal-law topic. However, should future controversies arise regarding the interpretation of criminal-law statutes in areas where previous Iowa Supreme Court decisions have interpreted a statute in a reasonable manner, the court would do well to hold, as it did in *State v. Rhombert*, that "[a] proposed change in the law, if desired, is in the province of the legislature."<sup>168</sup> The Iowa Supreme Court should strive for the clarity, uniformity, and fairness that this deference will bring to the criminal law.

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163. *Id.*

164. See Albrecht, *supra* note 38, at 963–64 (advocating for Iowa to adopt the merger limitation and stating that doing so would bring clarity to the relationship between punishment and culpability).

165. See IOWA CODE § 707.2 (2007); *id.* § 702.11. The *Beeman* line of cases interpreted these statutes and their identical predecessors to reject the merger limitation. See *State v. Beeman*, 315 N.W.2d 770, 777 (Iowa 1982), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Anderson*, 517 N.W.2d 208, 214 (Iowa 1994), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Rhombert*, 516 N.W.2d 803, 805 (Iowa 1994), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Ragland*, 420 N.W.2d 791, 793 (Iowa 1988), *overruled by Heemstra*, 721 N.W.2d at 558; *State v. Mayberry*, 411 N.W.2d 677, 682–83 (Iowa 1987), *overruled by Heemstra*, 721 N.W.2d at 558.

166. *Heemstra*, 721 N.W.2d at 558.

167. In fact, most states do agree that "felonious assault may not serve as a predicate felony that automatically makes any resulting death a murder" and consequently apply the merger limitation when that is the case. KADISH ET AL., *supra* note 41, at 455.

168. *Rhombert*, 516 N.W.2d at 805, *overruled by Heemstra*, 721 N.W.2d at 558.