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Supposed Corpses and Correspondence

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The correspondence requirement is a fundamental doctrinal principle in Anglo-American criminal law. It maintains that, in general, a particular relation between mens rea and actus reus is necessary for liability. Yet the nature of this relation is contested. Contemporaneity Theorists maintain that correspondence requires temporal overlap between mens rea and actus reus, while Causal Theorists maintain that correspondence is a non-deviant causal connection.

In this paper, I argue that neither Contemporaneity Theory nor Causal Theory is able to account for the intuition that a special class of defendants—defendants in so-called supposed corpse cases—are liable for murder. Supposed corpse defendants attempt to kill at t1, erroneously suppose they have done so, and then act again to cause death at t2. I go on to provide a novel positive proposal of correspondence in such cases. I argue that supposed corpse defendants are liable for murder because their killing is explained by ignorance that is in turn explained by an apparently successful execution of their intention to kill. The result serves as demonstration that the relation between intention and action grounding culpability is not the same as the relation grounding an action's status as intentional.

I. INTRODUCTION

The correspondence requirement is a fundamental doctrinal principle in Anglo-American criminal law.[1] The requirement maintains that, in general, a particular relation must obtain between a defendant's mens rea, or "guilty mind," and a defendant's actus reus, or "guilty act," in order for a defendant to be criminally liable.[2] As one commentator put it, the correspondence requirement functions "to make it quite clear that criminal conduct, not thinking or movement or both of them unrelated to each other, is required to incur criminal liability."[3]

To illustrate, consider a murder statute with a mens rea requirement that can be satisfied by an intention to kill, and an actus reus requirement that is satisfied by a killing. A defendant will not be liable for murder simply because he possessed an intention to kill and killed. Rather, a defendant will be liable for murder only if, in addition, the defendant's intention to kill is related in the right way to the killing. The defendant's mens rea must *correspond* with his performance of the actus reus.

Despite the centrality of the correspondence requirement to criminal liability, the nature of the correspondence relation is poorly understood. In this paper, I explore just one puzzle to emerge out of the caselaw: the puzzle presented by so-called supposed corpse cases. In each supposed corpse case, a defendant attempts to kill at t1, erroneously supposes he has succeeded, and then acts again at t2, causing the victim's death. Glanville Williams once claimed that "ordinary ideas of justice and common sense require that such a case shall be treated as murder."[4] Virtually all theorists who have considered supposed corpse cases have agreed with Williams, but explaining the intuition proves to be a thorny task. I set out to do so here.

My paper is divided into three parts. In the first part (Section II), I clarify the nature of the intuition that supposed corpse defendants are criminally liable for murder. In doing so, I make clear why supposed corpse cases should be interesting not just to criminal legal theorists, but to anyone interested in how intentions ground an agent's culpability for action.

In the second part (Sections III and IV), I argue that even when most charitably construed, neither dominant theory of correspondence in the criminal theory literature helps explain the intuition that supposed corpse defendants are liable for

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[1] Wayne R. LaFave, *Criminal Law*, 6th ed. (St. Paul, MN: West Academic Publishing, 2017), 10–12.

[2] Wayne R. LaFave, *Substantive Criminal Law*, 3rd ed. (Eagan, MN: Thomson West, 2024), § 6.3; Joshua Dressler, *Understanding Criminal Law*, 3rd ed. (Lexis Publishing, 2001), 197–99.

[3] Jerome Hall, *General Principles of Criminal Law* (Indianapolis: Bobbs-Merrill, 1960), 185–86.

[4] Glanville Williams, *Criminal Law: The General Part*, 2nd ed. (London: Stevens & Sons, Ltd., 1961), ¶ 65, 174.

murder.[5] According to the most plausible construal of Contemporaneity Theory, the correspondence relation requires temporal overlap between a defendant's mens rea and their performance of an actus reus. According to the most plausible construal of Causal Theory, the correspondence relation is a particular causal relation that obtains between mens rea and actus reus—a "non-deviant" one, such that the actus reus is intentional in virtue of the defendant's mens rea. However, once one accepts, contra prior theorists but in accord with pre-theoretical intuition, that supposed corpse defendants perform the actus reus at t2, neither Contemporaneity Theory nor Causal Theory can account for supposed corpse defendants' liability for murder.

In the third part (Sections V and VI), I offer and defend a novel explanation for supposed corpse liability that is compatible with a supposed corpse defendant's t2 conduct constituting the actus reus. I argue that a particular *deviant* causal connection between the supposed corpse defendant's intention to kill at t1 and his killing at t2 is sufficient for liability, because sufficient for culpability. When the killing is explained by ignorance that is in turn explained by an apparently successful execution of the defendant's intention to kill, the defendant is culpable for the killing even though the killing is not intentional. It follows that the relation between intention and action grounding culpability must be different in kind from the relation between intention and action that grounds an action's status as intentional.

II. SUPPOSED CORPSE LIABILITY FOR MURDER

What do I mean when I claim that it is intuitive that supposed corpse defendants are criminally liable for murder?[6]

According to Joel Feinberg, "murder" denotes a technical legal concept, such that whether a defendant is criminally liable for murder is a question that can only be answered by recourse to the (oftentimes elaborate) doctrinal rules of a particular jurisdiction.[7] But when I claim that it is intuitive that supposed corpse defendants are criminally liable for murder, I cannot mean that they are intuitively criminally liable for murder because it is intuitive that some specific definition of murder applies to their cases. What I say does not depend on application of any specific definition of murder.

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[5] Dawkins v. United States, 189 A.3d 223, 231 n. 11 (D.C. 2018), noting correspondence is sometimes understood as requiring "simultaneity" (what I call Contemporaneity Theory) and sometimes, as requiring "actuation" (what I call Causal Theory).

[6] My thanks to anonymous reviewers for urging me to tackle this question directly.

[7] Joel Feinberg, "On Being 'Morally Speaking a Murderer,'" in *Doing and Deserving: Essays in the Theory of Responsibility* (Princeton: Princeton University Press: 1970), 44.

Instead, when I claim that supposed corpse defendants are intuitively criminally liable for murder, I make a normatively loaded claim—one that is essentially comparative in nature. I claim that, all else equal, a criminal legal system would be justified in treating supposed corpse defendants just the same as those defendants in a run-of-the-mill murder case who intend to kill their victims and do. It would be justifiable to convict, and sentence, both kinds of defendants for the same crime.[8]

This is to make a claim about sufficient conditions for justifiable imposition of criminal liability for murder. It is not to make a claim about necessary conditions. What I say about supposed corpse liability leaves open the (very plausible) contention that there are defendants with mental states other than intentions to kill their victims who could justifiably be held criminally liable for murder, too. Perhaps defendants who possess an intention to *cause grave bodily harm* to their victim can be similar enough to defendants who possess an intention to *kill* their victim, such that a criminal legal system would be justified in treating both groups of defendants the same.[9] Perhaps defendants who simply *know*, but do not intend, that they will kill their victim can be sufficiently similar to those who *intend* to kill their victim, such that a criminal legal system would be justified in treating both groups of defendants the same.[10] Finally, perhaps defendants who intend to kill *someone who they mistake their victim for* can be sufficiently similar to those who intend to kill their *victim*, such that a criminal legal system would be justified in treating both groups of defendants the same.[11] But beyond making the modest assumption that an intention to kill one's victim should be sufficient to serve as mens rea for murder, I do not here weigh in on the normative question of what mens rea for murder should be like. The thought is that once the nature of the

[8] It would be justifiable to convict supposed corpse defendants of other sorts of crimes too. For example, supposed corpse defendants could justifiably be held criminally liable for attempted murder. And some supposed corpse defendants could justifiably be held criminally liable for negligent homicide (although, in what follows, I argue this is not a universal feature of the cases). Paul H. Robinson, "Imputed Criminal Liability," *Yale Law Journal* 93, no. 4 (1984): 650, https://doi.org/10.2307/796295. But the intuition that supposed corpse defendants are liable for *murder* reflects the intuition that it is justifiable to treat supposed corpse defendants the same as those defendants who, in run-of-the-mill murder cases, intend to kill their victims and do.

[9] For discussion, see Jeremy Horder, "A Critique of the Correspondence Principle in Criminal Law," *Criminal Law Review* (1995); Barry Mitchell, "In Defense of a Principle of Correspondence," *Criminal Law Review* (1999). Note that Horder and Mitchell use the term "correspondence" differently than I do. Their term describes a match in the content of a mens rea state and the performance of an actus reus, while I use the term to describe a relation between mens rea and actus reus.

[10] Model Penal Code § 210.2(1)(a), providing that criminal homicide is murder when "it is committed purposely *or knowingly*" (emphasis added).

[11] Gideon Yaffe, "Intoxication, Recklessness, and Negligence," *Ohio State Journal of Criminal Law* 9, no. 2 (2012): 549.

correspondence relation between an intention to kill one's victim and one's killing of that victim is clarified, supposed corpse liability for murder can be explained by appeal to that very intention, without the need to invoke any other mens rea state.

In a similar vein, what I say leaves open that there are defendants who could justifiably be held criminally liable for murder even though they do not even perform an actus reus of killing. On theories of derivative liability, defendants who do not, themselves, kill can nevertheless be held criminally liable for murder. For example, someone may be criminally liable for murder because they paid someone else to kill. But with respect to supposed corpse defendants, the thought is that once the nature of the correspondence relation is clarified, supposed corpse liability can be grounded in the fact that a supposed corpse defendant isn't just related to a killing—they, themselves, killed.[12]

So understood, the intuition that supposed corpse defendants are criminally liable for murder is, I think, motivated by a deeper intuition—an intuition that remains largely inchoate in the criminal legal literature, but that should be of interest even to those who are not interested in the shape of criminal legal doctrine. I take it that we think it justifiable for a criminal legal system to treat supposed corpse defendants like defendants who intend to kill and who kill in run-of-the-mill murder cases, because we think that these defendants are similarly *culpable* for killing in virtue of their intentions to kill. It is uncontroversial that culpability—responsibility for wrongdoing—ought to make at least some difference to criminal liability—to the legal determination that it is appropriate to criminally punish a defendant. And I take it that the correspondence relation matters to *culpability*, in the following sense: assuming no defenses apply, correspondence secures culpability for an actus reus in virtue of a defendant's mens rea.[13] To explain the intuition that supposed corpse defendants are criminally liable

[12] Depending on which mechanisms for broadening liability for murder beyond the run-of-the-mill case are justifiable, supposed-corpse-style fact patterns different from the one I focus on here would also justifiably generate liability for murder. As just one example, imagine it turned out that an intention to cause grave bodily harm should suffice as mens rea for murder. Then a supposed-corpse-style case where, at t1, the defendant acted on an intention to cause grave bodily harm (instead of on an intention to kill) could also be justifiably held liable for murder. I do not consider such fact patterns in what follows, though, because I aim to isolate just a single dimension of departure from the run-of-the-mill cases featuring a defendant who intends to kill their victim and does so. That single dimension of departure concerns the correspondence relation between mens rea and actus reus. By isolating cases that depart from the run-of-the-mill case only in this one respect, we have a better chance of leveraging supposed corpse cases to make progress on understanding correspondence.

[13] Kenneth Arenson gets close to articulating this thought when he claims that correspondence "serves a very legitimate purpose in ensuring that the attribution of criminal responsibility for offenses of *mens rea* requires some degree of moral culpability for one's conduct." Arenson, "Thabo Meli Revisited: The Pernicious Effects of Result-Driven Decisions," *Journal of Criminal Law* 77, no. 1 (2013): 43, https://doi.

for murder, then, we need to find a relation between a supposed corpse defendant's intention to kill and their killing that enables us to say that the defendant is culpable for their killing, in virtue of their intention to kill. So while I use intuitions about criminal liability as my guide to locating a correspondence relation, in Section VI, I explain why we should expect the discovered relation to be capable of grounding culpability.

III. CONTEMPORANEITY THEORY

Contemporaneity Theory emphasizes a relationship of temporal overlap between mens rea and actus reus.[14]

On the strongest reading of Contemporaneity Theory, temporal overlap is both a necessary and sufficient condition for correspondence; correspondence is contemporaneity by another name. But the briefest of forays into the literature on philosophy of action ought to convince the reader that contemporaneity is at least insufficient for correspondence. Counterexamples abound. Consider, for instance, Roderick Chisholm's classic hypothetical in which a Murderous Nephew forms the intention to kill his uncle.[15] The intention to kill so unnerves Murderous Nephew that one day, he speeds while driving. While speeding, the nephew accidentally kills a pedestrian who turns out to be his uncle. Murderous Nephew harbors an intention to kill at the time that he kills, but intuitively, Murderous Nephew is not liable for murder.

In recognition of such counterexamples, some theorists have positioned contemporaneity as a merely necessary condition for correspondence.[16] A Contemporaneity Theorist of this ilk must say more about what correspondence amounts to, but on the view, the appeal to temporal overlap still performs important work: a defendant who fails the contemporaneity condition is ineligible to be held liable.

However, even when construed as specifying merely a necessary condition, Contemporaneity Theory remains problematic. A theorist in the grips of

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org/10.1350/jcla.2013.77.1.817. But it is worth being careful with how one puts the point. A defendant who satisfies correspondence may fail to be *morally* culpable for performance of an actus reus, because what he does may be legally, but not morally, wrongful. Legal wrongfulness is sufficient for the kind of culpability at issue here. Gideon Yaffe, *The Age of Culpability: Children and the Nature of Criminal Responsibility* (Oxford: Oxford University Press, 2018), 66–73, https://doi.org/10.1093/oso/9780198803324.001.0001.

[14] Contemporaneity Theory is the orthodox theory of correspondence. It is the theory frequently cited by courts. See, for example, the influential pronouncement in *Fowler v. Padget* (1798) 7 T.R. 509: "The intent and the act must both concur to constitute the crime."

[15] Roderick Chisholm, "Freedom and Action," in *Freedom and Determinism,* ed. Keith Lehrer (New York: Random House, 1966), 30.

[16] Dressler, *Understanding Criminal Law*, 197–98; Alexander F. Sarch, "Knowledge, Recklessness and the Connection Requirement Between Actus Reus and Mens Rea," *Penn State Law Review* 120, no. 1 (2015): 7. But see ibid., 8, n.28, expressing some ambivalence about contemporaneity's necessity.

Contemporaneity Theory cannot explain supposed corpse liability for murder.[17] To concretize the discussion, consider the facts of the seminal supposed corpse case, *Thabo Meli*.[18] Defendants plotted to kill their victim and then make the death look accidental. At t1, in order to kill their victim, the defendants struck him on the head. At t2, in order to make the death look accidental, they rolled the supposed corpse over a nearby shallow cliff and left him there. An autopsy revealed that the victim did not die from the head injury, but rather, from exposure to the cold.

Intuitively, the *Thabo Meli* defendants are liable for murder. But an application of Contemporaneity Theory appears to conflict with this intuition. It seems as if the *Thabo Meli* defendants killed their victim after they no longer intended to kill him. By the time they rolled their victim's body off the shallow cliff, the defendants thought their victim was dead.

That's not the end of road for Contemporaneity Theory. Theorists dedicated to the necessity of contemporaneity have engaged in various conceptual gymnastics to try to demonstrate that the lack of contemporaneity in *Thabo Meli* is only *apparent*. They have employed two main tactics toward that end.[19] According to causal analysis, the t1 conduct is the killing. According to single transaction analysis, the killing is one "transaction" that includes both the t1 conduct and the t2 conduct. Neither tactic is successful.

III.A Causal Analysis of Actus Reus

Proponents of a causal analysis of the actus reus suggest that the t1 conduct is the actus reus. If the defendants' t1 conduct were the actus reus, the *Thabo Meli* defendants' intention to kill would prove contemporaneous with the killing after all. The defendants' intention to kill and their killing would temporally overlap at t1.[20]

Causal analysis is a "causal" analysis, because in claiming that the t1 conduct is the actus reus, the causal analyst relies on the further claim that the t1 conduct

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[17] Joshua Dressler recognizes as much and frames supposed corpse cases as exceptions to the correspondence requirement. Dressler, *Understanding Criminal Law*, 199. But the framing is not satisfying. One desires to know *why* such cases are purported exceptions.

[18] Thabo Meli v. Queen (1954) 1 WLR 228.

[19] See generally Stanley Yeo, "Killing a Supposed Corpse: In Search of Principle," *Comparative and International Law Journal of South Africa* 31, no. 3 (1998). I borrow my labeling of these tactics from Yeo.

[20] Arenson, "Thabo Meli Revisited," 54; Elizabeth Macdonald, "The Twice-Killed Corpse—A Causation Issue," *Journal of Criminal Law* 59, no. 2 (1995); Celia Wells, "Goodbye to Coincidence," *New Law Journal* 141 (1991); Geoffrey Marston, "Contemporaneity of Act and Intention in Crimes," *Law Quarterly Review* 86, no. 2 (1970): 218–19; P.M.A. Hunt, "Murdering a 'Body' by Disposing of It," *South African Law Journal* 85, no. 4 (1968): 386–87; Francis Adams, "Homicide and the Supposed Corpse," *Otago Law Review* 1 (1968): 287.

is a particular kind of cause of the victim's death—a "proximate," or legal, cause of the death. The view is attractive because it is conservative. As every first-year law student learns, in every criminal case, no matter how simple or complex, a defendant's conduct cannot count as an actus reus unless it proximately causes the result prohibited by the law.[21]

I will not attempt to adjudicate the dispute between diverse theories of proximate causation here. Instead, I content myself with noticing that despite all their diversity, such theories aim either to capture a notion of causation familiar from ordinary causal explanation, or else to capture a technical notion of causation that is uniquely suited to law. Both kinds of theory of proximate causation are in tension with a causal analysis of what constitutes the actus reus in supposed corpse cases.

Theorists committed to a notion of proximate causation that accords well with ordinary causal explanation should not be causal analysts.[22] To account for all supposed corpse cases in which correspondence is satisfied, causal analysis must distort the notion of proximate cause beyond pre-legal recognition. This is revealed most starkly by cases in which a supposed corpse defendant commits a graphically violent act at t2. Take the Kentucky case *Jackson v. Commonwealth*.[23] Jackson intended to kill his victim by poisoning her. He poisoned his victim at t1, but the poison merely rendered the victim unconscious. At t2, Jackson decapitated his victim's supposed corpse to facilitate its disposal.

To secure correspondence, the proponent of causal analysis must say that Jackson's poisoning was the proximate cause of his victim's death. But that runs quite counter to ordinary notions of causation.[24] An ordinary causal explanation would cite the decapitation, and not the poisoning, as the cause of the death.

How does causal analysis sit with theorists who think that proximate causation is a distinctively legal phenomenon? Consider, as an exemplary member of this camp, the theorist who believes proximate causation can be identified using a test of "reasonable foreseeability."[25] According to the test, when there is a cause at t2 that intervenes between some instance of t1 conduct and a particular result at t3, the intervening cause

[21] LaFave, *Substantive Criminal Law*, § 6.4.

[22] For examples, see Joshua Knobe and Scott J. Shapiro, "Proximate Cause Explained: An Essay in Experimental Jurisprudence," *University of Chicago Law Review* 88, no. 1 (2020): 209; Michael S. Moore, *Causation and Responsibility: An Essay in Law, Morals, and Metaphysics* (Oxford; New York: Oxford University Press, 2009), 4.

[23] Jackson v. Commonwealth, 100 Ky. 239 (1896).

[24] This point is made in C. C. Turpin, "The Murdered Corpse—Thabo Meli Extended," *Cambridge Law Journal* 27, no.1 (1969): 22.

[25] Thanks to Scott Hershovitz for pressing me to address reasonable foreseeability.

only "severs" the causal connection between the t1 conduct and the t3 result if the t2 intervening cause was not reasonably foreseeable at t1. Conversely, if the intervening cause was reasonably foreseeable, the t1 conduct is a proximate cause of the result notwithstanding the intervening cause.[26]

If one were to apply this technical test to *Thabo Meli*, it's likely that the t1 conduct would count as a proximate cause of death despite the defendants' intervening t2 conduct. It's likely that it was reasonably foreseeable that as a result of the t1 strike, the defendants could have killed their victim by rolling him over the shallow cliff at t2.[27] But change the details of the case, and it looks like the test fails even though intuitions concerning liability stand. Say that rather than simply striking their victim on the head, the defendants had used a tried-and-true method at t1—a method that successfully led to death every other time it had been deployed. Say that given the method, it was a miraculous fluke that the victim survived past t1. On such a variation, it would *not* be reasonably foreseeable at t1 that the victim would be killed by the t2 intervening cause. But even on such a variation, the defendants would be intuitively liable for murder.

A proponent of the reasonable foreseeability test might insist that I confuse an inquiry into reasonable foreseeability with an inquiry into likelihood. In tweaking the facts of *Thabo Meli*, I have only decreased the *likelihood* that a t2 killing would follow on from t1 conduct. The problem with this response is that the theorist's claim regarding reasonable foreseeability begins to sound ad hoc. If the reasonable foreseeability test is met even in my variation, I am left unsure what the test tracks. The purported outcome of the test risks serving as a restatement of the very conclusion theorists aim to explain—that supposed corpse defendants are liable for murder—under the guise of different terminology.

In sum, if judgments of proximate causation reflect judgments of ordinary causation, the causal analyst will be hard pressed to account for supposed corpse liability in graphically violent cases like *Jackson*. If judgments of proximate causation do not reflect judgments of ordinary causation, the causal analyst leaves us wondering what proximate causal claims do reflect, if not the very intuitions we seek to explain.

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[26] *People v. Acosta*, 284 Cal. Rptr. 117 (Cal. App. 4th 1991) provides an illustrative example. At t1, the defendant engaged in a high-speed car chase with the police. At t2, two police helicopters hovering above the chase collided, and at t3, multiple people died as a result. The court contended that whether the defendant proximately caused the deaths depended on whether it was reasonably foreseeable that the collision would occur as a result of the defendant's engagement in the chase. See also State v. Wilson, 421 P.3d 742, 748, 750 (Kan. 2018); Johnson v. State, 224 P.3d 105, 110–11 (Ala. 2010); People v. Schaefer, 703 N.W.2d 774, 784–85 (Mich. 2005).

[27] See Arenson, "Thabo Meli Revisited," 48–50.

III.B Single Transaction Analysis

I turn now to an evaluation of the second tactic for locating temporal overlap between mens rea and actus reus in supposed corpse cases: single transaction analysis. Courts and commentators who subscribe to single transaction analysis contend that an actus reus can be "stretched" in time across multiple instances of conduct.[28]

By including the defendant's t2 conduct in the actus reus, the Contemporaneity Theorist need not make any counter-intuitive proximate causal claims. If the actus reus is characterized as one transaction made up of both t1 and t2 conduct, then a Contemporaneity Theorist could appeal to the fact that the entire transaction, including the t2 conduct, proximately caused the victim's death. But this approach is less conservative than causal analysis. The theorist must appeal to a new piece of conceptual machinery—a "transaction principle"—that dictates when more than one instance of conduct falls within one transaction.

The *Thabo Meli* appeals court used single transaction analysis to uphold the defendants' conviction.[29] And while the court declined to explicitly provide a transaction principle, some have interpreted the court as implicitly putting forth the following principle: all acts in execution of a "preconceived plan" constitute one transaction.[30] The *Thabo Meli* defendants had formed a preconceived plan that consisted of two main parts: they planned to first kill their victim and then make the death appear accidental. According to a plan-based transaction principle, it follows that the t1 conduct and t2 conduct constituted one transaction that overlapped with the defendants' intention to kill (albeit only partially).

Unfortunately, a transaction principle reliant on the structure of supposed corpse defendants' plans is under-inclusive. There is a class of supposed corpse cases that the principle cannot handle: cases in which a supposed corpse defendant abandons whatever plan they had at t1 before acting at t2. Consider the following hypothetical:

> **Reformed Burier:** At t1, Reformed Burier strikes his victim on the head with the intention of killing him and then getting away with it. As a result of the strike, the victim appears dead. Overcome with remorse, Reformed Burier decides he is no longer interested in getting away with murder. The best thing to do now, thinks Reformed Burier, is to conduct a burial out of respect for the victim. The defendant buries the victim at t2 in order to pay his respects, and the victim dies.

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[28] John E. Stannard, "Stretching Out the 'Actus Reus,'" *Irish Jurist* 28/30 (1993): 207–10.

[29] Thabo Meli v. Queen (1954) 1 WLR 228, 230.

[30] Yeo, "Killing a Supposed Corpse," 364. Yeo cites courts in *R v. Chiswibo*, 1961 2 SA 714 and *Ramsay*, 1967 1NZLR 1005 as so reading *Thabo Meli*.

According to a plan-based transaction principle, Reformed Burier's t1 conduct would not be part of the same transaction as his t2 conduct. In acting at t2, Reformed Burier does not act pursuant to his earlier plan; he forms a new plan entirely. However, intuitively, Reformed Burier is also liable for murder. He, like the *Thabo Meli* defendants, should come out as satisfying correspondence.

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I have provided no knock-down arguments against either causal analysis or single transaction analysis. A proponent of causal analysis could respond by defending a theory of proximate causation that neither burdens proximate causal claims with the requirement that they accord with ordinary causal claims, nor relies upon the very intuitions concerning liability that the theorist aims to explain. A proponent of single transaction analysis could respond by providing a transaction principle that captures a salient similarity between *Thabo Meli* and Reformed Burier. But considering the difficulties raised, it is high time to consider a different approach to identification of the actus reus in supposed corpse cases. Why not simply claim that a supposed corpse defendant's t2 conduct constitutes the actus reus—that the *Thabo Meli* defendants killed their victim by rolling him over the shallow cliff and leaving him in the cold; the *Jackson* defendant killed his victim by decapitating her; and Reformed Burier killed his victim by burying him?

The approach both accords well with ordinary causal explanations and requires no new conceptual machinery to posit. However, it is not a live option for the Contemporaneity Theorist. If a supposed corpse defendant's t2 conduct constitutes the actus reus, the existence of supposed corpse liability indicates that contemporaneity is not necessary for correspondence after all.

IV. CAUSAL THEORY OF CORRESPONDENCE

The second dominant reaction to supposed corpse cases has been to pivot to an approach that stresses causation rather than contemporaneity. According to a Causal Theory of correspondence, a particular causal relation can serve as both a necessary and a sufficient condition for correspondence.[31] Correspondence is a particular causal relation by another name.

What causal relation is that? Clearly, not just any causal relation will do. Return to Chisholm's Murderous Nephew. The intention to kill not only temporally overlaps

[31] LaFave, *Substantive Criminal Law*, § 6.3; Peter W. Edge, "Contemporaneity and Moral Congruence: Actus Reus and Mens Rea Reconsidered," *Liverpool Law Review* 17, no.1 (1995); Rollin M. Perkins and Ronald N. Boyce, *Criminal Law* (New York, N.Y.: Foundation Press, 1982), 933.

with the killing; it also causes the killing. The intention to kill so unnerves Murderous Nephew that it causes him to speed, which in turn results in his uncle's death.

The causal connection between Murderous Nephew's intention and his killing is what philosophers of action have called "deviant," but some philosophers hold out hope that specification of a non-deviant causal connection is possible—a causal connection between intention and action in virtue of which an action counts as intentional. And on one very plausible construal of Causal Theory, the very same non-deviant causal relation is the correspondence relation.[32]

So construed, a Causal Theory of correspondence is very attractive. If it were true, then criminal legal theorists could explain correspondence by lifting wholesale from causal theories of intentional action. What might have looked like two questions—"What is intentional action?" and "What does it take for a mens rea intention to correspond with an actus reus?"—would turn out to be the same question.[33]

Unfortunately, however, if a supposed corpse defendant's t2 conduct constitutes the actus reus, Causal Theory runs into trouble. The t2 conduct counts as a killing that is *not* intentional.

Why is that? Well, whatever the conditions for non-deviant causation, the conditions must accord with the following basic explanandum regarding intentional action, as highlighted in both Donald Davidson and G.E.M. Anscombe's field-shaping work: intentional actions are actions rationally explainable by reference to the reasons for which the action's agent acts.[34] As Anscombe influentially put it, intentional actions are actions for which a certain "Why?" question gains application.[35] Say, for example, that you see me in my garden with a shovel in my hand swinging down and launching soil over my shoulder. You ask me, "Why are you digging holes in your garden?" In response, I could cite my reason for digging holes in my garden: "To plant new tomato plants!" That I could so answer demonstrates that it was an intentional action of mine to be digging holes in my garden. In contrast, if we asked Murderous Nephew, "Why did you kill your uncle?", he could not provide an explanation that would cite to any

[32] See, for example, Sarch, "Knowledge, Recklessness and the Connection Requirement," 5.

[33] This simplifies somewhat, as some actus rei are omissions rather than actions. In this paper, I focus only on actus rei that are actions.

[34] Donald Davidson, "Actions, Reasons, and Causes," in *Essays on Actions and Events* (Oxford: Clarendon Press; New York: Oxford University Press, 2001), https://doi.org/10.1093/0199246270.003.0001; G.E.M. Anscombe, *Intention* (Cambridge: Harvard University Press, 2000).

[35] Anscombe, *Intention*, § 5; see also Ram Neta, "The Basing Relation," *Philosophical Review* 128, no. 2 (2019): 181, https://doi.org/10.1215/00318108–7374945.

of his reasons for killing.[36] The causalist regarding intentional action is committed to claiming that whatever non-deviant causation is, it is present in cases like the tomato planting case, but not in cases like Murderous Nephew.

I take it that non-deviant causation is sufficient for correspondence. Assuming no defenses apply, a defendant who performs an intentional killing is liable for murder. The problem with Causal Theory is that it cannot help us with our particular puzzle. It cannot help us understand why *supposed corpse defendants* are liable for murder. Causal Theory cannot explain supposed corpse liability, because Reformed Burier's t2 conduct does not count as an intentional killing. The question "Why did you kill?" is just as inapplicable when asked concerning Reformed Burier's t2 conduct as it is when asked concerning Murderous Nephew's driving. Imagine asking Reformed Burier "why" he killed at t2. Reformed Burier cannot answer by appeal to a reason of his that rationally explains the killing. After all, he believes he is dealing with a corpse at t2—a thing that cannot be killed, and so, a thing that he wouldn't (on pain of serious irrationality) have reason to kill.

Thus, even once Contemporaneity Theory is abandoned in favor of Causal Theory, the supposed corpse cases remain puzzling. Supposed corpse defendants are liable for murder even though their killings fail to be intentional.

V. THE POSITIVE PROPOSAL PART ONE: DAISY CHAIN CONDITIONS

In the prior two sections, I argued that existent theories of correspondence do not adequately explain supposed corpse liability. Supposed corpse cases do not feature either contemporaneity or non-deviant causation.

At this point, a skeptic might despair of the possibility of providing any explanation for supposed corpse liability, beyond naked appeal to intuition.[37] But I think that would be too quick. I want to explore a path less traveled: a path hinted at by Glanville Williams in 1961,[38] dismissed by Judge Francis Adams of New Zealand's Supreme

[36] Both Davidson and Anscombe appreciated that whether an action counts as intentional depends on how the action is described; an action is intentional under some descriptions, but not others. Anscombe, *Intention*, § 6; Donald Davidson, "Agency," in *Essays on Actions and Events* (Oxford: Clarendon Press; New York: Oxford University Press, 2001), 46, https://doi.org/10.1093/0199246270.003.0003. For example, if one describes what I was doing by digging holes as "disrupting a colony of ants," under that description, what I did was not intentional. If one describes what Murderous Nephew was doing as "driving," under that description, what he was doing *was* intentional. The claim that an agent engages in an intentional X'ing should be construed as shorthand for the claim that what the agent did, describable as an X'ing, is intentional under that very description.

[37] Robinson, "Imputed Criminal Liability," 619–20, 650. Robinson reasons that supposed corpse defendants are liable for murder because they are equivalently culpable to those who intentionally kill, but that in appealing to equivalent culpability, "the best one can do is to restate the conclusion."

[38] Williams, *Criminal Law*, ¶ 65.

Court as involving "metaphysical speculations" in 1968,[39] and virtually absent from the literature since. In particular, I want to test Williams's suggestion that by better understanding the role played by a supposed corpse defendant's mistaken belief that their victim is dead, we can arrive at a route to explaining liability for murder. Williams's suggestion to focus in on the role of the supposed corpse defendant's mistaken belief is enticing, because supposed corpse defendants' mistaken beliefs are precisely what make the cases troublesome for Contemporaneity Theory and Causal Theory. It would be demystifying, then, if these very same mistakes could be recruited to positive effect.

In this section, I refine Williams's brief remarks on the subject into a respectable conjecture about the conditions for supposed corpse liability. I do so by identifying a number of tweaks to the Reformed Burier fact pattern that extinguish the intuition that he is liable for murder.[40] In the next section, I argue it is plausible to think the conditions discovered through this process indeed pick out a relation that matters to culpability.

In his *Criminal Law: The General Part*, Glanville Williams briefly opines on the "general principle" that an "intention to mutilate or destroy a corpse is [in]sufficient *mens rea* to convict of murder [even] if the supposed corpse should turn out to have been a living person."[41] Simply put, an intention to mutilate a corpse is not the same as an intention to kill. But Williams notes that *Thabo Meli* and *Jackson* create difficulty for the principle. After brief summaries of both cases, he concludes, without elaboration:

> [I]t is necessary to make an exception to the general principle, and to hold that although the accused thinks that he is dealing with a corpse, still his act is murder if his mistaken belief that it is a corpse is the result of what he himself has done in pursuance of his murderous intent.[42]

It may sound as if Williams is making a claim about the nature of mens rea—that an intention to mutilate or destroy a corpse can be substituted in for an intention to kill as mens rea for murder, provided that certain conditions obtain.[43] But Williams could just as well have been proposing a route to satisfaction of *correspondence*. After all, the defendants that Williams's exception applies to are all defendants who at one

[39] Adams, "Murdering a 'Body,'" 280.

[40] I focus on just Reformed Burier in what follows because it is the hardest case to explain, but the focus does not result in loss of generality.

[41] Williams, *Criminal Law*, ¶ 65, 173–74.

[42] Ibid., 174.

[43] For an approach to supposed corpse cases that appeals to just such a broadening of the mens rea requirement, see Chan Wing Cheong, "The Requirement of Concurrence of 'Actus Reus' and 'Mens Rea' in Homicide: Shaiful Edham Bin Adam v PP," *Singapore Journal of Legal Studies* (2000): 91, borrowing from G. R. Sullivan, "Cause and the Contemporaneity of Actus Reus and Mens Rea," *Cambridge Law Journal* 52, no. 3 (1993), https://doi.org/10.1017/s0008197300099980.

time did possess a "murderous intent."[44] On this reading, an intention that does not satisfy murder's mens rea requirement—what I will call a non-mens rea intention—would only ground liability in virtue of a role it plays connecting up a supposed corpse defendant's intention to kill with their killing through a "daisy chain" of relations, as follows:

mens rea intention → t1 conduct → mistaken belief → non-mens rea intention → **t2 conduct**

Williams's comments need quite a bit of fleshing out. What are the right relations involved in this daisy chain, and what must the intermediaries be like? Williams hints at some answers—for example, he claims that the t1 conduct must be conduct a defendant "himself has done in pursuance of his murderous intent," and that the mistaken belief must be the "result" of the t1 conduct.[45] But we need more of a story.

Rather than try to isolate and analyze each arrow and entity in the daisy chain, I break it up into three sections and analyze each. The daisy chain I have outlined (represented in the first row of the below table) proves equivalent to a much shorter chain (represented in the second row)—a chain made up of a t2 mistaken killing, a t1 attempt, and a relation that obtains between the two.

mens rea intention → t1 conduct	→	mistaken belief → non-mens rea intention → t2 conduct
t1 attempt	→	t2 mistaken killing

V.A The T2 Mistaken Killing

In the course of arguing against Contemporaneity Theory, I argued that the Reformed Burier's t2 conduct was the actus reus. But we should now characterize the actus reus with a little bit more precision: importantly, Reformed Burier's killing is a *mistaken* killing, rather than an accidental one.

The distinction between a mistaken killing and an accidental killing is well recognized. While neither kind of killing is intentional, they are not intentional for different reasons. To draw out the difference, J.L. Austin once remarked on two ways to regrettably kill the wrong donkey:

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[44] Williams, *Criminal Law*, ¶ 65, 174.
[45] Ibid.

> You have a donkey, so have I, and they graze in the same field. The day comes when I conceive a dislike for mine. I go to shoot it, draw a bead on it, fire: the brute falls in its tracks. I inspect the victim, and find to my horror that it is your donkey. I appear on your doorstep with the remains and say—what? "I say, old sport, I'm awfully sorry, etc., I've shot your donkey by accident"? Or "by mistake"? Then again, I go to shoot my donkey as before, draw a bead on it, fire—but as I do so, the beasts move, and to my horror yours falls. Again the scene on the doorstep-what do I say? "By mistake"? Or "by accident"?[46]

In both cases, Austin ended up killing his neighbor's donkey even though he did not intend to do so. But the second killing of the neighbor's donkey was not intentional because of an unanticipated kink that developed in the causal chain between Austin's pulling the trigger and the outcome that resulted. The neighbor's donkey moved. In contrast, the first killing of the neighbor's donkey was not intentional because of a particular false belief—a belief that caused Austin to direct his efforts toward killing a donkey that wasn't the "right" donkey to kill.

To better appreciate the difference between the two cases, consider how Austin's best attempt to answer Anscombe's "Why" question—"Why did you kill your neighbor's donkey?"—would sound with respect to both scenarios. In neither case would Austin be able to appeal to a reason for which Austin acted. This confirms neither killing of the neighbor's donkey was intentional. But in the accidental killing case, Austin's best attempt at an answer would cite to a defect in the causal chain that interfered with his ability to act on his reason: "I didn't mean to kill your donkey! Yours got in the way!" In the mistaken killing case, Austin's best attempt would cite to his mistaken belief: "I didn't mean to kill your donkey! I thought your donkey was mine!"[47]

Our intuitions about supposed corpse liability appear to depend upon whether, once supposing the victim dead, the defendant kills accidentally or mistakenly. Consider a defendant who is just like Reformed Burier through t1, but at t2, while reaching for his shovel so as to bury his supposed corpse, he trips, killing his victim. This would be an accidental killing, and intuition suggests that such a defendant would not be liable for murder. In contrast, Reformed Burier's killing is mistaken.

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[46] J. L. Austin, "A Plea for Excuses: The Presidential Address," *Proceedings of the Aristotelian Society* 57, no. 1 (1957): 11 n.4, https://doi.org/10.1093/aristotelian/57.1.1.

[47] I take it this is a loyal elaboration of George Fletcher's gloss: "Accidents occur in the realm of causation. When expected forces go awry, the result is an accident. Mistakes occur in the realm of perception." George Fletcher, *Rethinking Criminal Law* (Oxford; New York: Oxford University Press, 2000), 487.

It is worth noting that the parallel between Reformed Burier's mistaken killing and Austin's mistaken killing is not perfect. Austin is mistaken not about whether pulling the trigger will be a killing, but rather, about the identity of the donkey that is the target of his action, while Reformed Burier is mistaken not about the identity of the person who is the target, but rather, about whether the burying would be a killing. However, the cases are similar in the following sense: in both, a mistaken belief explains the agent's killing of their target. In Reformed Burier's best attempt to answer the question "Why did you kill your victim?", he too would cite to his mistaken belief: "I didn't mean to kill my victim! I thought he was already dead!"

J.W. Cecil Turner is one of very few theorists who has denied that supposed corpse defendants are liable for murder, and it is telling that in his argument denying supposed corpse liability, Turner misses the relevancy of the accident/mistake distinction.[48] Turner argues against supposed corpse liability by recruiting help from the following hypothetical: A defendant mistakenly thinks he has succeeded in killing his victim at t1. He flees the country. He returns several years later only to kill the same person in a car accident. Turner mounts the following argument:

> (P1) Such a defendant is not liable for murder.
>
> (P2) The only difference between this case and a case like *Thabo Meli* (that is, a supposed corpse case in which the defendants are purportedly liable for murder) is the length of time between t1 and t2.
>
> (P3) The length of time between t1 and t2 does not make a difference to liability.
>
> (C) The defendants in a case like *Thabo Meli* are not liable for murder either.

The argument is not sound. P2 is false. Some defendants who mistakenly think they have killed their victim at t1 then *accidentally* kill their victim at t2, while some defendants who mistakenly think they have killed their victim at t1 then *mistakenly* kill their victim at t2. Moreover, intuition counsels that this difference makes a difference to liability. To reinforce the point, we might consider a scenario in which a fleeing supposed corpse defendant accidentally kills their victim while in the process of fleeing the scene. Intuitively, such a defendant would be no more liable for murder than is Turner's fleeing defendant.[49]

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[48] William Oldnall Russell (1785–1833), *Russell on Crime*, 12th ed., ed. J. W. Cecil Turner (London: Stevens, 1964), 57–59.

[49] For a description of just such a case, see Marston, "Contemporaneity of Act and Intention in Crimes," 219; Yeo, "Killing a Supposed Corpse," 356.

Notice that it is not as if a supposed corpse defendant who kills by accident rather than by mistake has a mistaken belief that is wholly unrelated to their killing. For example, in my tripping case, the mistaken belief in the victim's death causes the defendant to form a non-mens rea intention to bury the defendant, and this intention causes the victim's death. But the causal chain between the non-mens rea intention and the death is deviant. The killing is explained by appeal to this deviance, rather than by appeal to any mistake. In contrast, when a supposed corpse defendant mistakenly kills, the non-mens rea intention resulting from the defendant's mistaken belief *non-deviantly* causes what it is that the defendant intends, thus killing the victim. Thinking his victim dead, Reformed Burier intends to bury his victim at t2, and in virtue of a non-deviant causal connection between this intention and what he does, he engages in an intentional burying at t2 that kills the victim.[50]

V.B The T1 Attempt

Williams suggested that t1 conduct "done in pursuance of … murderous intent" that results in a mistaken belief that the victim is dead will generate supposed corpse liability.[51] We should be more particular than Williams about the kind of t1 conduct required, though: a supposed corpse defendant's t1 conduct must have been an *attempt* to kill.

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[50] An anonymous reviewer challenges the salience of the mistake/accident distinction by appealing to the doctrine of transferred intent. I briefly alluded to the doctrine in Section II (although not by name), while discussing the sufficiency for mens rea of an intention to kill someone mistaken for the victim. However, the doctrine does more than broaden the mens rea requirement for murder. Paradigmatically, it also secures liability for murder in "bad-aim" cases where a defendant accidentally kills a bystander while acting on an intention to kill someone else. Douglas N. Husak, "Transferred Intent," *Notre Dame Journal of Law, Ethics & Public Policy* 10, no. 1 (1996): 65–66; Bello v. State, 547 So.2d 914, 916 (1989). In such cases, the doctrine also broadens the *correspondence* requirement, because it condones liability despite causal deviance between an intention to kill and a killing.

If both mistaken killings and accidental killings can count as murder on the doctrine of transferred intent, why should it matter whether a supposed corpse defendant kills mistakenly or accidentally at t2? It may well be justifiable to treat bad-aim killers the same as those who find their targets, just as it may well be justifiable to treat a killer who has made a mistake about the identity of their victim the same as a killer who has not. But it does not follow that there is no salient difference between mistakes and accidents when the puzzle involves explaining supposed corpse liability. The supposed corpse defendant who accidentally kills at t2 is a very different sort of character than is the bad-aim killer. He is not attempting to kill when he does kill; he attempts to do something that he thinks would not constitute a killing at all. My sense is that this difference in character evokes a difference in intuitions concerning liability that is worth capturing. In any case, exploring the relationship between the doctrine of transferred intent and suppose corpse liability is a project worthy of further research, as both bear on the nature of the correspondence relation.

[51] Williams, *Criminal Law*, ¶ 65, 174.

It may be tempting to narrow the scope of attempts that can serve as t1 conduct. Reformed Burier engages in not just any attempt to kill at t1—he engages in a "last act" attempt.[52] By this, I mean that in striking his victim on the head, Reformed Burier does all that he believes will be required for completion. What happens at t1 diverges from what Reformed Burier expected in only one, very particular way: the victim only apparently, rather than actually, dies as a result.

Given that all the other supposed corpse cases I have discussed are like this too, it would be easy to extrapolate and suppose that supposed corpse liability requires a last act attempt.

However, with the benefit of an additional hypothetical, we can appreciate that supposed corpse liability does not depend on the defendant's having engaged in a last act attempt. Consider the Patient Poisoner, a defendant who plans to fulfill his intention to kill by administering a small dose of poison to his victim each day. Patient Poisoner believes killing his victim will require ten doses, but as a result of the fifth day's dose, his victim appears dead. Although Patient Poisoner's attempt is not a last act attempt, were the poisoner to then mistakenly kill his victim by disposing of the supposed corpse's body, intuition counsels that he would be liable for murder. The example suggests that supposed corpse liability is not limited to cases where the defendant apparently kills just as the defendant had expected he would actually kill.

Rather than narrow the scope of attempts by appeal to what the defendant *believes* will be required for completion, one might instead be tempted to narrow the scope of eligible attempts to just those attempts that would have actually been sufficient for completion, assuming no frustrations.[53] Yet this proposal is no more plausible. To see why, we need only add a stipulation to the prior hypothetical. We need only stipulate that Patient Poisoner's belief that ten doses will be required to kill his victim was false, and that he would have killed on the *seventh* day unless his seventh-day dosing was in some way frustrated. Adding this stipulation does nothing to alter the intuition that in poisoning his victim on the fifth day, Patient Poisoner already does enough to ground supposed corpse liability.

Despite my discussion of Patient Poisoner, one might harbor the worry that there are attempts that are, in some sense, too distal from completion to ground supposed corpse liability. We could easily design a set of facts according to which procurement of

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[52] See Model Penal Code § 5.01(1)(b). See also Gideon Yaffe, *Attempts: In the Philosophy of Action and the Criminal Law* (New York: Oxford University Press, 2011), 25.

[53] Gideon Yaffe deploys such an objectivized notion of a "last act" in his disjunctive account of what it takes for an act to satisfy the act element of an attempt. Ibid., 272. He defines "last acts" to be just those acts that "*will* lead without further conduct on the defendant's part to completion, if not interrupted." Ibid., 14 (emphasis added). So defined, a defendant may falsely believe an act is a last act when it is not. Ibid., 272.

a murder weapon counts as an attempt to kill, although such conduct is neither believed to be sufficient for completion, nor is it actually sufficient for completion (assuming no frustrations).[54] And such an attempt may well result in an apparent death. A defendant could accidentally collide with his victim on the way back from having procured the murder weapon, thus apparently killing him. However, it would be rather odd to claim that such a defendant would be liable for murder if he reacted by disposing of the supposed corpse.

While I find the example compelling, I need not narrow the scope of t1 conduct to a subset of attempts to account for it. As I explore in the next subsection, supposed corpse liability depends on more than a mistaken killing following on from an attempted killing. The defendant's mistaken killing must depend on the attempted killing in a particular way.

V.C The Dependency Relation between T1 and T2 Conduct

So far, I have marshaled hypotheticals suggesting that intuitions about supposed corpse liability are sensitive to the presence of an attempt at t1, whether last act or otherwise, as well as to the presence of a mistaken killing at t2. We are left with the task of explaining how the t1 and t2 conduct must be related.

Not just any relation will do. A defendant—call him RB1—flees into the woods after an attempt to kill his victim, V1. There, he finds and buries a supposed corpse belonging to someone else, V2. RB1 is intuitively not liable for murdering V2, even though he attempts to kill at t1 and mistakenly kills at t2. The defendant's mistake needs to be more directly tied to the t1 attempt. As Williams put it, the supposed corpse defendant's mistaken belief must be "the result of what [the defendant] himself has done in pursuance of his murderous intent."[55] But what does this mean?

There are three plausible answers. We might claim that what is crucial is some connection in the world between the defendant's t1 conduct and his mistaken belief regarding the status of the supposed corpse, irrespective of the defendant's own understanding of that connection. Alternatively, we might claim that what is crucial is the defendant's understanding of a connection between his t1 conduct and his mistaken belief, irrespective of what is true about the world. Finally, we might conclude that both a connection in the world and a connection in the defendant's mind are needed.

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[54] In the parlance of the Model Penal Code, such conduct would count as a "substantial step in a course of conduct planned to culminate in … commission of the crime." Model Penal Code § 5.01(1)(c).

[55] Williams, *Criminal Law*, ¶ 65, 174.

I think that the third route forward is the most promising route. Neither a connection in the world alone, nor a connection in the mind alone, can successfully distinguish Reformed Burier from hypotheticals where, intuitively, the defendant is not liable for murder.

Focusing just on a connection in the world, we might be inclined to rule out RB1 as liable by stressing the fact that in the Reformed Burier case but not in the RB1 case, the t1 conduct non-deviantly resulted in a condition of apparent death—in whatever condition provided the defendant with evidence for the mistaken belief that the victim was dead.[56]

Appeal to non-deviant causation is crucial here. We can see why by returning to the example, offered up at the end of the last subsection, of a defendant whose procurement of a murder weapon causes a condition of apparent death in his victim. Such a defendant could not be liable for murder, not because procurement is the wrong sort of attempt to ground supposed corpse liability, but because his procurement cannot have non-deviantly caused a condition of apparent death.[57] In contrast, Reformed Burier's strike not only causes a condition of apparent death; it does so non-deviantly.

To be clear, that there is a non-deviant causal connection between Reformed Burier's strike and the condition of apparent death does not mean that what Reformed Burier does is intentional under the description "causing a condition of *merely apparent* death." After all, Reformed Burier intends to cause actual death, not merely apparent death. Nonetheless, in carrying out his attempt, he intentionally causes a condition that we, knowing all the facts, can refer to as a condition of merely apparent death.[58]

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[56] This is to introduce a separate non-deviant causal link into the account than the link I appealed to in distinguishing between mistaken and accidental killings at t2. I earlier appealed to non-deviance between the t2 non-mens rea intention and whatever results in the victim's death. Here, I appeal to non-deviance between the t1 mens rea intention to kill and the condition of apparent death.

[57] Last act attempts may also fail to non-deviantly cause a condition of apparent death. To adapt an example from Donald Davidson, imagine a defendant attempts to kill by shooting his victim, but the shot misses and scares a pack of wild boars that trample the victim, who appears dead as a result. Donald Davidson, "Freedom to Act," in *Essays on Actions and Events*, (Oxford: Clarendon Press; New York: Oxford University Press, 2001), 78, https://doi.org/10.1093/0199246270.003.0004.

[58] In some cases, that the attempt has been performed at all may itself serve as the condition of apparent death. To use an example from Gabriel Mendlow (in conversation): say a storm trooper on the Death Star pushes a button to crush resistance fighters who have fallen into the Death Star's windowless trash compactor. Supposing the fighters dead, the trooper pushes a second button to evacuate the contents of the compactor into space. Unbeknownst to the trooper, the fighters had jammed the compactor, so they were unscathed until evacuated. In such a scenario, the condition of apparent death is simply the condition of the first button's having been pushed.

But consider RB2. RB2 is like Reformed Burier with respect to non-deviantly causing the condition of apparent death. However, he is operating in a war zone, and once he supposes he has killed his victim at t1, he becomes so overcome with remorse that he forms an intention to bury any dead body he finds in honor of his victim. He spends some time burying corpses in the area before burying his victim at t2. His victim appears dead as a non-deviant result of the defendant's t1 strike. But by t2, RB2 has lost track of the fact that the supposed corpse belongs to his t1 victim. While the reader's intuition about liability in this case may not be particularly strong, I am inclined to think that RB2 is no more liable for murder than RB1 is, even though, unlike RB1, RB2's t1 conduct non-deviantly causes his victim's apparent death.

Focusing just on continuity in the mind, we might instead stress Reformed Burier's understanding of the connection between his t1 conduct and his belief that the supposed corpse is dead. Perhaps what is essential to Reformed Burier's liability is that he believes the apparent death is a (non-deviant) result of the attempt, regardless of whether that is true. Both RB2 and RB1 would then be distinguishable from the Reformed Burier, because neither RB2 nor RB1 believe that the supposed corpse appears dead as a result of the t1 conduct.

However, there are counterexamples to this formulation of the connection as well. Say that like RB2, RB3 operates in a war zone burying any supposed corpse he can find. Eventually, RB3 comes around to killing a supposed corpse that he believes appears dead as a result of what he did at t1. But RB3's belief is false: the supposed corpse appears dead as a result of someone else's earlier act of violence.

The reader's intuition may be weak with respect to this case too, but it would be hard to believe RB3 should be liable for murder if RB2 is not. And if neither RB2 nor RB3 are liable for murder, it looks like Reformed Burier's liability must be grounded in both a world connection and a mind connection. Reformed Burier must have a belief that he non-deviantly caused the condition of apparent death, and that belief must be true.[59]

* * *

At this point, we are ready to step back and appreciate all the features that characterize Williams's daisy chain. By fitting intuitions about liability to an array of hypotheticals, I arrived at the following four conditions:

1. the defendant's t1 conduct is an attempt to kill;
2. the defendant's t2 conduct is a mistaken killing;

[59] Reformed Burier does not believe he caused the victim to be *merely* apparently dead. He believes that he caused the condition that we, knowing all the facts, can refer to as a condition of apparent death.

3. the defendant's t1 conduct non-deviantly caused the condition of apparent death that is explanatory of the defendant's mistake; and
4. the defendant is aware his t1 conduct caused that condition.

When these conditions are satisfied, the relation that obtains between an intention to kill and a killing is causal, but it is far from equivalent to the relation relied upon by Causal Theorists. It is a deviant causal relation. The intention to kill causes a killing without its being the case that the killing is intentional.

VI. THE POSITIVE PROPOSAL PART TWO: CULPABLE CREATION OF IGNORANCE

In the last section, I discovered a set of conditions that together specify a relation between Reformed Burier's intention to kill at t1 and his killing at t2 that appears sufficient to explain supposed corpse liability. But a skeptic might continue to worry. The relation in place when these conditions are satisfied may appear too clever by half. Why should we expect a murder conviction to depend upon satisfaction of such technical conditions?

Answering this question requires that I directly address the connection between correspondence and culpability, first flagged in Section II. There, I claimed that correspondence shapes intuitions concerning liability, because correspondence matters to *culpability*—to a defendant's responsibility for wrongdoing. So, if the daisy chain relation from the prior section is a correspondence relation, assuming no defenses apply, satisfaction of the daisy chain relation should secure culpability for t2 killing in virtue of a defendant's t1 intention to kill.

It is indeed plausible to suppose the daisy chain's conditions secure culpability for an actus reus at t2 in virtue of mens rea at t1. Moral philosophers of diverse persuasions have long supposed that agents can be culpable for ignorant conduct when their ignorance can be "traced" to earlier culpable conduct.[60] The daisy chain conditions establish just such a "trace," although its structure departs in interesting ways from the kind traditionally recognized.

Tracing is a strategy deployed to solve a conundrum in moral philosophy. Usually, an agent's ignorance as to whether conduct will bring about a particular consequence defeats an agent's culpability for bringing about that consequence through their conduct. But ignorance does not exculpate without exception—"I didn't know!" is

[60] Steven Sverdlik, "Pure Negligence," *American Philosophical Quarterly* 30, no. 2 (1993): 139–40, finds roots for the tracing strategy in Aristotle. I can afford to remain neutral on the controversial question of whether ignorant action can only be culpable if the ignorance is traceable to an earlier culpable act. See George Sher, *Who Knew? Responsibility Without Awareness* (New York: Oxford University Press, 2009), 24, laying out purported non-tracing cases of culpable ignorant action.

not always an excuse. Moral philosophers who have endorsed a tracing strategy have proposed that agents may be culpable for conduct ignorantly performed when an earlier instance of culpable conduct explains the ignorance.

Consider, for example, scenarios involving what Holly Smith has called the "prevent[ion of] subsequent discovery."[61] In these scenarios, "[a person] would have believed [a wrong act B] to be wrong if he had not at an earlier time induced ... a condition which made it impossible at the time of B for him to acquire true belief as to B's nature."[62] Smith provides the example of a near-sighted driver who decides to leave home without her glasses at t1.[63] At t2, while on the road, the driver swerves to avoid a dog, but by swerving, she injures a nearby child she hadn't seen. The driver's ignorance explains why she swerved; the driver would not have swerved if she had been aware of the nearby child. A proponent of tracing maintains that the driver is nonetheless culpable for injuring the child, because the driver's ignorance at t2 is the product of prior culpable conduct of leaving home without her glasses at t1.

Reformed Burier resembles Smith's driver in crucial respects. Reformed Burier also acts ignorantly at t2. Because he believes that his victim is dead, he lacks awareness of the fact that his t2 conduct will (or even, might) kill. Yet his ignorance is the product of his prior culpable conduct. The isomorphism between Smith's driver and Reformed Burier renders plausible the contention that a supposed corpse defendant is culpable for his t2 killing, because his culpability can be traced back to his culpability for acting on his t1 mens rea.

Satisfaction of the daisy chain conditions ensures the isomorphism. Condition (2)—that the t2 conduct is a mistaken killing—ensures an explanatory link between the t2 killing and the Reformed Burier's ignorance. Reformed Burier's belief that his victim is dead explains the killing. The remaining conditions ensure the ignorance is explained by the Reformed Burier's t1 culpable conduct. It is no fluke that Reformed Burier's victim ends up in a condition of apparent death: when conditions (1) and (3) are satisfied—when an attempt to kill non-deviantly causes a condition of apparent death—the supposed corpse defendant is responsible for the condition in virtue of his t1 conduct. The apparent death is the product of an apparently successful execution of the defendant's intention to kill. And when condition (4) is satisfied—when Reformed Burier is aware his t1 conduct caused the condition of apparent death—there is no explanation for the Burier's coming to believe his victim is dead besides one that appeals to this apparently successful execution.

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[61] Holly Smith, "Culpable Ignorance," *Philosophical Review* 92, no. 4 (1983): 544, https://doi.org/10.2307/2184880.

[62] Ibid.

[63] Ibid., 544–45.

While satisfaction of the daisy chain conditions suggests that culpability for supposed corpse defendants' t2 killing can be traced to t1 conduct, there are some intriguing differences between supposed corpse cases and traditional tracing cases. Discussions regarding the propriety of tracing have typically focused only on cases where culpability for ignorant action is explained by appeal to culpable ignorance—ignorance that is *itself* culpable, because it fails to measure up to some epistemic standard. Smith only focuses on cases in which an agent's ignorance is itself "criticizable."[64] Smith's near-sighted driver should have been aware of the child but was not. Other theorists have contended that, quite generally, agents can only be culpable for ignorant action if their ignorance is culpable.[65] Yet supposed corpse cases break this mold. Supposed corpse defendants do not necessarily fail to measure up to an epistemic standard by believing their victim is dead. If a supposed corpse defendant's victim looked *convincingly* dead at t2, it is not as if that fact would be at all exculpatory.[66] So while suppose corpse defendants are culpable in creating their ignorance, they do not necessarily create culpable ignorance.

Another difference between supposed corpse cases and traditional tracing cases concerns the epistemic state of play at t1. Proponents of tracing have supposed that in order for t2 ignorant conduct to be culpable in virtue of t1 culpable conduct, it must have been, at the very least, reasonably foreseeable at t1 that the t2 conduct might result.[67] But as should be clear from my discussion of proximate causation and the reasonable foreseeability test, I do not think a condition like this must be met to establish supposed corpse liability. It may *not* be reasonable for a supposed corpse defendant to foresee at

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[64] Ibid., 543.

[65] See, for example, the following indicative passage, from Gideon Rosen:

> We are under an array of standing obligations to inform ourselves about matters relevant to the moral permissibility of our conduct: to look around, to reflect, to seek advice, and so on. … [W]henever a person acts badly from some sort of ignorance, the question will always arise whether [he] has discharged these "epistemic" obligations. If he has—if he has been neither negligent nor reckless in the management of his opinion—then his ignorance is blameless and so is the act done from ignorance.

Gideon Rosen, "Culpability and Ignorance," *Proceedings of the Aristotelian Society* 103, no. 1 (2002): 63, https://doi.org/10.1111/j.0066–7372.2003.00064.x.

[66] Contrast with Robinson, "Imputed Criminal Liability," 650; Jeremy Horder, *Ashworth's Principles of Criminal Law*, 9th ed. (Oxford: Oxford University Press, 2019), 180, contending supposed corpse defendants are liable for negligent homicide at t2. Negligence entails failure to measure up to an epistemic standard; negligent defendants should have been aware of a risk but were not. Model Penal Code § 2.02(2)(d).

[67] See John Martin Fischer and Neal A. Tognazzini, "The Truth About Tracing," *Noûs* 43, no. 3 (2009): 536–38, https://doi.org/10.1111/j.1468–0068.2009.00717.x. Some have proposed a stronger epistemic condition than mere reasonable foreseeability. For her part, Smith contends that to be culpable for injuring the child, the driver must have actually *known* that in leaving her glasses at home, she may injure someone later on. Smith, "Culpable Ignorance," 551.

t1 that he risks killing at t2. If the defendant uses a tried-and-true method to attempt to kill, it is a miraculous fluke that a victim survives the attempt. But it is not as if that fact would be at all exculpatory, either.

My skeptic will likely perceive these two differences as providing opportunity to undercut the suggestion that the daisy chain relation is normatively significant. However, given the strength of the intuition that supposed corpse defendants are liable for murder, the differences might instead prove instructive fodder for more expansive research regarding just when tracing is possible.

VII. CONCLUSION

Supposed corpse defendants are intuitively liable for murder, but neither of the two orthodox theories of correspondence can explain why. Contemporaneity Theory cannot help; a supposed corpse defendant's intention to kill does not temporally overlap with the killing. Less obviously, Causal Theory cannot help either. The relation between a supposed corpse defendant's intention to kill and the killing is deviant. In this paper, I have posited a new kind of correspondence relation to explain supposed corpse liability—a "daisy chain" relation that runs through a supposed corpse defendant's mistaken belief. When the daisy chain is present, a supposed corpse defendant's mistaken belief both explains the supposed corpse defendant's killing and is explained by their apparently successful execution of an intention to kill.

Given isomorphisms between such cases and traditional "tracing" cases in the literature on culpable ignorance, I have argued that it is of no surprise that the daisy chain relation would make a difference to a defendant's culpability. Notice, however, that I have nowhere claimed that Causal Theory, together with an appeal to my daisy chain relation, provides necessary and sufficient conditions for correspondence. I am open to the discovery of new fact patterns that may require alternative analyses.[68]

Regardless, by paying attention to supposed corpse cases, we will have learned an important lesson concerning the connection between intention, action, and culpability.

[68] An anonymous reviewer raises an interesting hypothetical in which a defendant attempts to kill his victim at t1 and mistakenly kills his victim at t2, but never mistakenly believes his victim is dead. Jacob attempts to kill Sarah by giving her what he falsely believes is poison; in reality, the pills are sleeping pills. Jacob then comes to mistakenly believe that Sarah is dying, and full of remorse, Jacob gives Sarah an antidote. If Jacob had poisoned Sarah, the antidote would have saved her, but coupled with the effects of the sleeping pills, the antidote kills her. This case is not like the supposed corpse cases in the criminal legal literature. There is never a supposed corpse. But by attending to supposed corpse cases, we can make in-roads into thinking through why correspondence likely obtains here, too. Jacob is like a supposed corpse defendant in that he also culpably creates a condition of ignorance that explains his subsequent mistaken killing.

Focused as they are on the phenomenon of intentional action, philosophers of action might easily assume that the relation between intention and action that grounds an action's status as intentional is identical to the relation between intention and action that grounds culpability. Supposed corpse cases reveal that to be a mistake. The relations are not the same. According to the causalist about intentional action, non-deviant causation grounds intentionality, but supposed corpse cases suggest that a *deviant* causal relation is sufficient to serve as grounds for culpability. A theory of non-deviant causation will only carry the causalist so far toward understanding why agents can count as culpable for an action in virtue of an intention to so act.

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Competing Interests

The author has no competing interests to declare.