

First Section
Third Question
Abstract

Conspiracy in Crime

By Dr. Cesar Perozzi

Assistant director of Prisons, Italy.

After a historic sketch of the Roman law and of the laws of Germany and Italy with reference to the subject of the questions involved in Section I., Dr. Perozzi says that he answers the first part of the question in the affirmative, without any hesitation. The danger that is to be feared from men associating for crime does not depend so much on the number who are associated as upon the fact that human strength is united in antisocial aims. This force may be made up of five or three, or of only two persons, but it is the same in essence: that is that a number of persons united for that purpose is a greater menace than is exerted by one person alone.

I hold that the principles adopted should apply to all forms of complicity whether the accomplices are numbered by two or five or a thousand; that they should apply to the crimes committed by thousands of rioting citizens. It is true that when criminals associate for crime they are usually habitual criminals, but it is also true that in a tumult even honest men sometimes commit crime. It is absurd to consider the crowd as a unit. In a crowd one should see distinct personalities, each of whom should be responsible for his own actions. The deportment of a man when he is alone changes at once when he is with another person. Men lose the sense of individual responsibility in the crowd. But whenever citizens profiting by their number in the crowd, break

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these bonds of responsibility to the extent of committing crime, then their responsibility increases, because they become more dangerous , and repression must be more severe.

A word must be said about ring-leaders. An imprudent demagogue may make a speech before a crowd of ignorant people, inveighing against existing social institutions which he considers bad, but he is not to be held responsible for any crimes that may afterward be committed. He is not a ring-leader. His connivance should be severely judged, but he cannot be held responsible for the individual crimes committed by others. He is the ringleader who urges the crowd to do illegal things and allows them to be done in his presence, even if he does not do them himself. The ring-leader is a type of criminal of very dangerous character and society is justified in acting in a very energetic fashion with reference to him.

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First Section
Third question.
Abstract.

By Serge Posnischeff, Professor of penal Law, Moscow.

For the sake of clearness I divide this into three questions and will examine each of them separately.

I. A man is responsible for his criminal acts whether he has committed them directly or indirectly. Those who are responsible with him for the crime are :

1. All those who have knowingly taken any part in this infraction of the law, or have contributed material objects to accomplish such a crime.

2. Those persons who have knowingly inspired others to commit the crime.

3. Those who by promises or advice have urged another to commit a crime, or have tempted to do so. . In other words the three types of accomplices are the authors, the instigators and the assistants.

The indispensable condition for establishing the guilt of an accomplice is that he should know the nature of the acts with which he was associating his own acts. The penal code should give a concise definition of the different kinds of criminal participation ..

The penal responsibility of all participants will be the same in principle but should be adapted to the circumstances which are personal to them . The instigator and the aid , in cases of crimes punishable by fine , or by short sentences, will be responsible only by virtue of special provision of law.

II. Can an understanding between persons to commit crime be considered a crime? The simple consent of a person to participate in a criminal act is not in itself an act that ~~brings~~ calls for punishment. A man may accept propositions, may promise many things, , but

By Boris Pansichoff, Professor of Penal Law, Moscow.

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by force, or by threat, or by other means, shall be responsible only by virtue

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4. Can an understanding between persons to commit crime be con-

sidered a crime? The simple consent of a person to participate in a

criminal act is not sufficient to make him a participant in the crime.

Participation can only occur when the person has taken any part in the

from that to action is a long way. Simple agreements then are not punishable, but conspiracies.

Under the term conspiracies, or criminal associations, must be understood a group of individuals who have already determined on a criminal act, to be executed by themselves or others. They must have determined on the crime, ^{and} the rôle of each participant must have been assigned.

What are the offenses to be thus considered? First let us consider the difference between crimes and misdemeanors. Crimes are actions which show the author ^{to be} below the moral plane ~~of~~ the surrounding world. The average plane of morality takes for granted a certain degree of respect for human personality and compassion for one's fellows; of honesty between man and man and towards the state and society and a regard for the property of others.. This average plane of morality differs according to nations and times.. Every act contrary to this moral ideal cannot be catalogued in the penal code, but among those found there are many that show a lack of morality, or of vice.. Of course crimes may be committed by persons who are not immoral, but they are exceptional. There is no absolute line of demarcation between a crime and a misdemeanor, nevertheless the distinction is important for the legislator.

Punishment has two missions : the moral improvement of the individual and the suggestion to him that there is a close relation between the breaking of a law and the penalty ; that the law not only threatens, but carries out its threats. Imprisonment , however, should be carried out in such a way as not to demoralize the person on whom it is inflicted. Convicts should ~~not~~ be classified, they should be allowed to work and not accustomed to habits of idleness.) The moral influences should be such as to change the character of the offender. Only in exceptional cases can imprisonment reform

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the convict , but it may change him enough to prevent his falling again into crime.. It ought , however, not only to instill a respect for the law , but to raise his own moral plane , to develop his intelligence , and by means of schools, reading, and religious instruction, to develop his intelligence and form habits of industry.

Having determined what punishment is needed, either for the man's moral improvement, or his reformation as a member of the body politic, it should be decided that certain offenses should have certain penalties and other offenses other penalties, and the offenses calling for one kind should be considered crimes, and the other k misdemeanors. This division of infractions of the law into two classes is based on sound psychology..

The answer to the question under consideration then depends on this classification. Those conspiracies formed to commit crime should be punishable.. Why? Every man who is not vicious feels a certain repulsion at the idea of committing crime under such c association. The fact that he is associated with others to commit crime shows a weakness, or absence of moral strength. Association strengthens t he criminal tendency of the separate individuals.. It weakens the moral resistance to evil. Consequently individuals who band themselves together to commit crime become more dangerous than if each ones stood alone.

To combat these criminal associations repression is necessary. Forming such an association for the express object of crime is in itself dangerous and may be regarded as delictum sui generis..

Penal legislation may distinguish among such associations :

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III. The third question involves no difficulties. The fact that a person in concert with others has committed a crime does not prove that all the participants are equally guilty and the law-maker ought not in the code to attribute to this the significance of an aggravating circumstance. . There are cases where complicity might be considered an aggravating circumstance. In other cases if the individual has been drawn into it by lack of will, complicity for him may be a mitigating circumstance, as proving a character less vicious.

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of Pont-Audemer

By A. Berlet, President of the Tribunal, Eure, France.

French law allows the punishment of an accomplice even tho the chief offender may escape. As a general rule it is contrary to equity to punish the accomplice more severely than the chief offender. However, there are cases where the accomplice is more guilty than the chief actor. Such is the case of one who instigates a minor to commit a crime, especially when the latter is not as vicious as the instigator. It is the same with a masculine accomplice where the woman is influenced by her bad associate. It is so when intelligent men influence ignorant and starving workmen to evil. It is especially so when one hypnotizes another to induce him to commit crime ; or the man who makes another drink enough till he is ready to steal or kill. In all these cases the accomplice should be punished more severely than the ^{one who committed} ~~xxxxxx~~ of the offense, who may even be acquitted if it is proved that he acted without discernment .

Why should it not be decided that sharing in the commission of a crime or misdemeanor is a special offense , or at least a cause of aggravation in the penalty of the co-actors, especially when the crime has been committed with premeditation? The instigators to crime, to revolt, to pillage , to incendiarism, to murder , would thus be reached by the penal law, even if they have only given " advice " as to these crimes, and not " instruction " . It is not always easy to prove that " instructions " have been given , while advice, the encouragement to commit the crime or misdemeanor, very often has plenty of witnesses. Is " advice " then less guilty than " instructions " ? Has it less fatal results? It is only by punishing it as a distinct offense that it will be possible to prevent certain crimes which are committed by association.

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Conspiracy in Crime.

By Mr. Brück-Faber, Luxembourg.

After discussing the question whether associating for crime should be a distinct crime the writer sums up in the following resolution:

1. Civilized countries should enact legislation making it a special infraction of the laws to organize an association of criminals or to take part in it in any way.

2. These infractions should be punished by imprisonment from one to five years and with a fine .

3. In regard to authors or accomplices in any of other crime ^{thin} belonging to a society of criminals will be considered ^{a special} an aggravating circumstance, not cumulative in regard to other aggravating circumstances which might occur.

4. The judicial proof of the existence of associations of criminals will depend on circumstances. The courts will have ^{ary power} discretion in this matter . The ordinary means of evidence will establish whether there is affiliation with such societies.

5. The courts will have power to ~~xxpronounce~~ sentence delinquents affiliated with a society of criminals to be at the disposition of the government for an indefinite time after the expiration of their sentences.

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By Mr. H. H. Fisher, Innsbruck.

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Accomplices in Crime.

By E. Garçon, Professor of Criminal Law, Paris.

Association augments the power of individuals and in criminal affairs such association becomes dangerous. ~~On the other hand~~ *The* sense of honor and of esprit de corps which inspired to the greatest virtues, the most praiseworthy actions and noble self-sacrifice, may lead, to great evils if they are exercised collectively by persons of a low moral standard. . . The question is whether criminal association should be penalized and considered a crime in itself; and is such association to be considered an aggravating circumstance. After a rapid review of the French legislation the author says that his object in such a review was twofold: first, to make known the French law on this subject; and second, to show why it was difficult to make of participation in crime a distinct offence. Such incrimination would be dangerous; it would not correspond to popular feeling and there would be the risk of the carrying out of such a law. Its rigor would prevent judges and juries from pronouncing the full penalties prescribed in the law if they were too severe and if they were too light they would be of no effect. . . To be sure that such association is truly dangerous to the public it would be necessary to have the certainty that the accomplices will have the energy to go from the plan to its execution. How, except in exceptional cases would such certainty be obtained? . The simple fact that two or more individuals have agreed to commit a crime is not enough in itself to prove ~~th~~ that measures of safety are to be adopted against them. .

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tainty be obtained? The simple fact that two or more individuals
have agreed to commit a crime is not enough in itself to prove
that measures of safety are to be adopted against them.

It seems necessary to come back to the idea that the penal law can only punish the real associations of criminals by profession whose crimes already committed prove that they are dangerous to society and public order . The affiliations of such bands of criminals can be easily proved and dealt with judicially and those who voluntarily associate themselves with such bands show that they are to be held responsible for willingness to commit crime . The prosecution may not be able to show that each one has committed some crime individually , but it is sufficient to show that they are dangerous members of society if they are willing to ally themselves with bands of criminals. . It would be useful and just to punish such association , especially if made up of recidivists.

In regard to the whole subject under discussion the following would be our conclusions:

1. The understanding between two or several individuals that they shall commit a crime or a misdemeanor ought not to be set up as a ~~separate~~ special offense.

2. The associations of dangerous criminals ought to be penalized by the law . The legal definition should be broad enough to include the actual forms of societies of malefactors.

3. It does not seem desirable , nor even possible, to make complicity an aggravating circumstance.

4. It would be legitimate to extend to new crimes or offenses a ^{special} aggravating circumstance resulting from the plurality of guilty agents.

5. As a general rule this aggravating circumstance should

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Complicity as an Aggravating Circumstance.

By Judge J. Slingenberg, Amsterdam.

Collective criminals constitute about one-fifth of all the persons sentenced. Among them is a large proportion of recidivists, of juvenile delinquents, of professional criminals and in short one is led to believe that in such assemblies of criminals crime is propagated with great facility and the question rises, How are we to combat this tendency of criminals to associate themselves together?

It seems to me very difficult. It may be held that the association of several persons in a crime is an aggravating circumstance, as is already done in some codes. This would be justified, because many associated criminals are much more dangerous than a single offenders, but we must have no illusion about ~~thisxxmitkexxxx~~ the efficacy of an increased penalty. .

To make a distinct crime of any participation, or any criminal understanding or agreement, would seem to me useless, except in the case of organized bands. The fight must be against all criminality, never losing sight of the fact that the tendency of criminals is to associate themselves together.

My conclusions then would be:

I. We must examine with care: a) the extent of collective criminality and the characteristic traits of the delinquents who participate in it;

b) the tendency to premeditated or accidental association for criminal ends, especially among recidivists.

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b) the tendency to premeditated or accidental association for criminal ends, especially among recidivists.

II . It would be necessary to simplify the penal law with reference to participation , applying to it the principle that the associates must be punished according to the antisocial tendencies which they manifest.

III. The power of the judge to raise or lessen the amount of the penalty ought to be increased: the ~~recommendation~~ raising of the maximum of the penalty one-half in the case of conspiracy is to be recommended as a general aggravating circumstance.

IV. a) For recidivists one might have recourse to the indeterminate sentence or something analogous.

b). For juvenile delinquents who have committed a crime in concert⁺ with others , especially with recidivists, it is much more important to have recourse to ~~such more~~ energetic measures of reformatory education.

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By J. Saint-Aubin ,

Doctor of law; president of the Court of Appeal, Paris.

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Among the natural, we might almost say, the necessities of man is that of association ; the effort to attain by union things which no one could accomplish alone. ~~Sometimes~~ ^{I maybe} it is association against the oppression of one person, or against the violence of many ; sometimes for the defence of common interests. In our own days we see associations of all kinds to protect material and economic interests . This right of association , which has great advantages, has also grave dangers. Legitimate in itself it may become a source of peril to a state by organizations against public order. That is why government has had to intervene, not to suppress the right of association (one does not suppress a natural right), but to regulate it ^{mete} and ~~to mark~~ out penalties when the association is criminal.

The nations themselves have had to submit to this natural law. We cite as an instance the conventions ~~v~~ between governments for the extradition of criminals , which unite nations against crime in the ends of furthering justice? Among nations , as among individuals, there is this natural tendency to association , usually for defence or for protection.

This power of association which has proved such a powerful lever among modern peoples could not escape the watchful attention of criminals. ^{If} A crime requires for its accomplishment the union of a certain number of persons, ^{it} it would seem the duty of the law-maker to provide a penalty for such a union , so

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that those who associate themselves for the purposes of crime should suffer the same penalties as those really guilty of breaking the law. In fact laws relating to this have from time to time been passed and it is certain that organized bands of criminals are less heard of at present than formerly . But to know exactly the situation of a country in this respect and whether crime is increasing or decreasing one must know the number of crimes really committed whose authors escape arrest . Looked at in this way it is evident that n bands of criminals still exist in France as well as in other countries.. In the United States the Black Hand is an organization which is not only national but ^{is related} has relation to an analogous organization in Sicily. In Italy we have the Bahana, the Camorra and the Maffia, which in spite of incessant efforts against them dissolve only to reunite , a greater menace than ever . In England and Spain and all European countries there are similar criminal bands and in the interest of public safety they should be put an end to at all hazards..

If we pass now to the large cities we find that there are ~~are here also~~ organizations of criminals for night attacks, robbery, assassination and especially for swindling. .

The truth is that with civilization there has been an evolution of crime . If it has not created the criminal it at least has not had the power to destroy him and he has known how to profit by civilization and to change the outer appearance of his crime. When railroads were invented the robber could no longer stop the diligence, but he carried on his murder and robbery on the train.

At a certain epoch associations of malefactors had a political character and a penalty was pronounced against ~~the~~ association ~~itself~~ . With that intent the French Code of 1810 was modified by the law of

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If we pass now to the large cities we find that there are ~~various organizations of criminals for night attacks, robbery, assassination and especially for kidnapping~~ ~~and~~ ~~the~~ ~~truth is that~~ with civilization there has been an evolution of crime. If it has not created the criminal it at least has not had the power to destroy him and he has known how to profit by civilization and to change the outer appearance of his crime. When railroads were invented the robber could no longer stop the diligence, but he carried on his murder and robbery on the train.

At a certain epoch associations of misdoers had a political character and a political aim. Against the association of 1810 was intended the French Code of 1810 was modified by the law of

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1893 so that unions which formerly escaped all repression could be legally prosecuted. ~~With this reform~~ ⁶ one can now charge with crime those criminal associations which have no chief and ^{no} set rules, ~~alone but it embraces all those who plan in common~~ ^{which} to commit crime. That is a step toward the extension of the theory which considers the association of malefactors as criminal in itself and as an act which the law can punish repress. It is a ~~sort of~~ ^{sort of} penalty of a preventive character, since its object is to prevent the ~~association~~ ^{tendency of} of criminals to associate with each other.

Such is the condition of French legislation. Ought we to extend the principle admitted by the ^{penal} Code and apply it to any association which has for its end the commission of misdemeanors as well as felonies? ~~Examine?~~ To answer this question we must consider the change that has come with civilization. Fraud has been substituted for violence. With the institution of financial and other associations fraud and cunning have taken the place of brute force and we find in place of highway men more aristocratic and civilized types who are moral murderers and who steal millions without moving a piece of furniture. Methods have changed. Even criminals feel ~~xxxxxxxThe softening of manners that comes with civilization.~~ ^{Violent means are repugnant to them.} the softening of manners that comes with civilization. ~~xxxxxxxEngland~~ of England and America have brought ~~xxxxxxxThe clever usages~~ ^{about this evolution.} about this evolution. The thief who robs on the street corner is a back number in the world of crime. Their ways are civilized and the new type of crime may be called commercial. It discusses the outcome with its victims. What has been the result? That attempts against life are rarer, but that the gains of the criminals are greater. They take no risks. They steal no more openly, but after the American fashion (à l'Américaine), which secures the greatest advantages and permits the greatest hope of ~~xxxxxxx~~ impunity. The two types of crime which mark our day are

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The two types of crime which mark our day are

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swindling (escroquerie) and the extortion of hush-money (chantage) (black mail.). Swindling is now carried on in such a careful way by its authors that it is like a scientific problem , how to compass their ends and at the same time escape the clutches of the law .

"Chantage" is a crime that has developed with the power of the press. It is the exploitation of the individual by the individual who profits by the vices, faults, weaknesses of humanity, making of these a source of revenue . By the aid of the papers, by perfidious publicity and deadly insinuations , the master scoundrel pitilessly exacts his booty from victims who certainly never will lodge a complaint against them. . These crimes demand patient and often difficult preparation, ~~for them~~ and for their success the assistance of several persons is necessary. If civilization extends the field of crime it also lessens the number that can be committed alone. Should we then apply penalties to those who form associations for these projects?

We reply negatively , except ~~in cases~~ in extraordinary cases . When social peril is such that it is necessary to prevent it by any means then exceptions to the common law may be made. . The safety of society does not require such measures by associations formed of ordinary delinquents. . Let the government if forewarned of the existence of an international association of criminals warn other governments , but that ~~that~~ the judicial authorities should be ~~called on to attach a penalty to what is not an accomplished crime~~ ^{called outside of what anything which is} we cannot admit.

The true way to combat the tendency of criminals to league together is to make complicity an aggravating circumstance ~~xxxxxx French law xxxxxx has only xxx the chief actor xxx and xxx the accomplice xxxxx It considers xxx bound xxx together xxx~~ The French code makes three divisions of

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complicity: antecedent, concomitant and subsequent. Complicity has for its object facilitating the commission of the deed. It is a danger in itself against which society has the right to defend itself. It is not enough to divide the guilt among the participants, as is done at present by the French code. The penalty should be increased if the crime is the work of several. .

Complicity is most frequently to be found among habitual criminals. Recidivists often bind themselves together in the prisons where they are confined and make their plans for future operations. The tendency to associate themselves is therefore to be found among the most dangerous criminals and for that reason the law-maker should make complicity an aggravating circumstance.

Crimes of complicity are increasing, especially those that rest on cupidity and ~~the~~ swindling. Crimes of passion are usually the work of a single person. The increased social danger from crimes of complicity affords another reason for increasing the penalty in those cases.

From these various reasons we can only propose the adoption of a system which will reach the desired result without running the risk of the reproach that might fall on one who should advocate punishing the mere act of association without a criminal attempt. T Accomplices may not be punished for a criminal act which they have not accomplished, but they must render an account of their copartnership and it becomes an aggravating circumstance and permits the increase of the penalty which attaches to the crime if committed. This would seem to be sufficient to put criminals on their guard against associating themselves for crime.

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cases it may exceptionally increase the punishment by reason of the number of the guilty: in case of rebellion, when the crime is committed by more than 20 persons; in case of mendicity/; in case of violation of public morals ; in case of pillage, in case of theft. It is this idea which we propose to make more general. . We therefore express the following wishopinion:

I. It does not seem to be in conformity with the spirit of penal law ~~that~~ to make of any preliminary agreement to break the law a special crime.

II. Since it is seen that there is an increase of crimes in which there is complicity ; and since the latter are the deeds of habitual criminals, ^{who are} those most dangerous to society , there is reason to consider complicity in crime an aggravating circumstance and to apply to those who have shared in it a special penalty beyond that which they would have incurred had they committed the crime alone.

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