THE THEORY OF PARTIAL ABSORPTION IN REBELLION

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HISTORIC issues of law have the curious habit of appearing even in the smallest litigations. A barren piece of land that is a parcel of contention can give rise to the most bitter debates and the creation of a judgment, to shake a legal system at its very roots. Everything matters. The basis of a court decision can be just a single word from a witness or a frightened look in his eyes. And a suit between two peasants may depict, as an image, the philosophy of a people, their lament of their suffering and grief, the very shape of current history.[1] For in law there is always deep significance in apparent trifles.

This paradox seems to be the effect of another paradoxical attitude of democracy incomprehensible to totalitarians, that supreme confidence in common and ordinary men as to leave in their hands, with extremely few inhibitions, the performance of tremendously important things such as the mating of the sexes, the rearing of the young, the formation of governments.[2] With such power in common and ordinary men, much of their human action immaterial it may seem will have a penetrating impression into the structure of society, capable of breaking the stillness of the peace.

It is not surprising, therefore, that the communist uprising in the Philippines, a part of a universal challenge to the ideals dearest and most traditional to man, will be typified by a case reflecting in their intensity all the

* LL.B., 1957.

[1] The classic example of this is the Dreyfus Case in France.

Reality in French politics became increasingly obscured by a kind of vicious, ideological sentimentality, and the long existing split in French national life was deepened. That split has again and again threatened to place French democracy at the mercy of a pack of authoritarian intransigents, from the extremists in Dreyfus' day to the Communists and Poujadists of today. That is the real tragedy still evoked by the Dreyfus Case. See GUY CHAPMAN, THE DREYFUS CASE 301 (1956 ed.).

[2] Just with a brief perusal of the Philippine Constitution, the reader can easily find the powers, almost frightening in their immensity, that Philippine democracy recognizes to be in the common people, which they can exercise mainly by their own initiative: to make and unmake governments, to construct gigantic corporations, to rear the family which is the foundation strength of human society, to build cities with houses like those of giants, etc.

hatreds in that uprising, all the passions and the tears. Such a case is *People v. Hernandez*.[3]

Many questions have been raised in this case that have troubled the consciences of responsible men in their quest for an enduring master plan to secure order and justice for the young republic. But the one most important, which is also a doubt as to the adequacy of the law to cope with the communist problem, is: can rebellion be complexed with murder, arson, etc.; can rebellion ever be complexed with any other crime?

One hypothesis is suspected to favor an affirmative reply to the questions. The people in the country have been restive against government abuses. They had a man, *A*, whom they worshipped as a living hero. *B*, wanting to cause an insurrection, murdered *A* and spread the false rumor that the government was responsible for the elimination of *A*. Like other rebellions where the people had risen in arms at the appropriate psychological moment, certain inhabitants, because they were led to believe that the government initiated the murder of *A*, rebelled two weeks later, led by *B*. But they were suppressed.

Under these facts, one possible way to explain the relation between the murder and revolt is to say that it is an instance of rebellion complexed with murder. One reason for this is that the murder, with other factors, hastened and facilitated the public uprising and that the murder may not be absorbed by such uprising, since the latter did not exist at the commission of the former.[4]

But the facts in the *Hernandez* case are entirely different. The two informations involved in this case (which were later merged into one) charged that on or about March 15, 1945, and for some time before the said date and continuously thereafter until the present time, the accused committed rebellion and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, have then and there committed acts of murder, pillage, looting, plunder, arson and planned destruction of private and public property on May 6, 1946, in June, 1946, on August 6, 1946, April 10, 1947, May 9, 1947, August 19, 1947, April 28, 1949, March 28, 1950, March 29, 1950, August 25, 1950, August 26, 1950, September 12, 1950, October 15, 1950 and October 17, 1950, etc.[5]

[3] G.R. No. L-6025, July 18, 1956; 52 O.G. 5506 (1956).

[4] This hypothesis is not intended to be answered categorically in this Article, without exhaustive study of it. We have chosen to concentrate ourselves on the facts and issues of the *Hernandez* case, which are entirely different from those of the hypothesis.

[5] The two informations which were later merged into one specifically alleged the commission of the following acts as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof:

(1) On May 6, 1946, the 10th M.P.C. Co., led by First Lt. Mamerto Lorenzo, while on patrol duty in barrio Santa Monica, Aliaga, Nueva Ecija, was, with evident premeditation on the part of the Huks, ambushed and treacherously attacked by a band of well-armed dissidents and rebels. Ten enlisted men of the Company were killed and First Lt. Lorenzo was captured and beheaded.

In other words, unlike the hypothesis where the murder preceded the actual uprising, the theory of the prosecution, considering the dates of the alleged offenses, is that in the course of a rebellion, during the pendency of the rising publicly and taking arms against the government, certain other crimes may be committed with which the rebellion is complex. This is the issue to which the following discussion will be limited.

In 1863, during the civil war in the United States, there appeared an important distinction, which in the end can be truly decisive of the present controversy. In the famed *Instructions for the Government of Armies of the United States in the Field*, it was provided:

14. Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

15. Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally unavoid-

(2) In or about the month of June, 1946, Alejandro Viernes, alias "Stalin," Commander of Joint Forces No. 108, with about 180 men, entered the town of Pantabangan, Nueva Ecija, and there raised their Huk flag for more than 24 hours. The municipal officers did not offer any resistance because of the superiority in number of the Huks. After demanding from the civilians foodstuffs such as rice, chicken, goats, and carabaos, they left the town, admonishing the civilians always to support the Huk organizations. The M.P. forces under Capt. Ponciano Halili, S-3, of Nueva Ecija, proceeded to Pantabangan with the forces of the 112th M.P. Co. under Capt. Nicanor Garcia to verify the information but they were not able to contact the dissidents. They proceeded to barrio Marikit, between Pantabangan and Laur, where they engaged some dissidents. On their way home, they were pocketed by the dissidents at the zigzag road but they were able to extricate themselves from their precarious position and were able to fire their mortars and cal. .50 and .30 machineguns. Investigations made on the field of battle showed that the Huks suffered heavy casualties which were verified later to have been 7 cartloads of dead men.

(3) On August 6, 1946, a group of more than 30 Huks under the leadership of Salvador Nolasco raided the municipal building of Majayjay, Laguna, and were able to get away with one pistol, one typewriter, and stationery.

(4) On April 10, 1947, 14 enlisted men under the command of Lt. Pablo Cruz, while on their way to investigate a hold-up in barrio San Miguel na Munti, Talavera, Nueva Ecija, were ambushed and fired upon by Huks armed with .30 caliber rifles, machineguns, and grenades. Lt. Cruz and a private were killed and 6 others were wounded.

(5) On May 9, 1947, about 100 Huks under Lomboy and Liwayway raided the town proper of Laur and forced Municipal Treasurer Jose Villoria to open the treasury safe from which the dissidents were able to extract ₱600. They also took Policeman Fermin Sanchez together with one Springfield rifle and robbed the townspeople of their money, personal belongings, rice and carabaos.

(6) On August 19, 1947, Capt. Jose Gamboa, First Lt. Celestino Tiansec, and Second Lt. Marciano Lising, all from the 115th M.P. Co., while riding in a jeep following an armored car, were fired upon by a group of about 100 dissidents and lined up on both sides of Highway No. 5 near the cemetery of San Miguel, Bulacan. First Lt. Tiansec and Second Lt. Lising were killed.

(7) On April 28, 1949, Mrs. Aurora Aragon Quezon and her party were ambushed by an undetermined number of dissidents under Commanders Viernes, Marzo, Lupo and Wulong at Kilometer 62, barrio Salubsob, Bongabong, Nueva Ecija. The P.C. escort exchanged fire with the dissidents. A patrol of the First Heavy Weapons Co., 1st P.C. Battalion, were dispatched to reinforce the P.C. escort. The following were killed: Mrs. Quezon, Baby Quezon, Mayor P.

able in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the Army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. *Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.*

16. Military necessity does not admit of cruelty — that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

17. War is not carried on by arms alone. It is lawful to starve the hostile

Bernardo, Major P. San Agustin, Lt. Lasam, Philip Buencamino III, and several soldiers. General Jalandoni and Capt. Manalang sustained slight wounds.

(8) On March 28, 1950, a group of more than 100 dissidents attacked the headquarters of a detachment of the 111th P.C. Co., then stationed at Montalban, Rizal. Four enlisted men were killed and 11 were wounded.

(9) On March 29, 1950, a group of more than 100 armed Huks under Commander Rufing attacked and raided San Pablo City, Laguna. Major Alikbusan was killed. The Huks looted the stores of the town and raised their flag before they fled.

(10) On March 29, 1950, Capt. Luis C. Dumlao and several enlisted men under him were ambushed and fired upon by armed Huks in Arayat, Pampanga. Capt. Dumlao and four others were killed, and two others were wounded.

(11) On August 25, 1950, Camp Macabulos, Tarlac, Tarlac, was attacked, raided and set afire by the Huks. Among the casualties therein were: Major D. E. Orlino, Capt. T. D. Cruz, Lt. G. T. Manawis, Lt. C. N. Tan, Lt. Eusebio Cabute, Sgt. Isabelo Vargas, Sgt. Bernardo Cadoy, Sgt. Bienvenido Dugay, Sgt. Samuel Lopez, Cpl. Vicente Awitan, Cpl. Ruiz Ponce, Cpl. Eugenio Ruelra, Pvts. Agustin Balatbat, Saturnino Guarin, E. Cabangan, Antonio Monte, Felix Quirin, Gregorio Cacoco, Jose Mojica, Cornelio Melegan, Carlos Mojade, Rodrigo Espejo, and Rosario Sotto, a Red Cross nurse.

(12) On August 25, 1950, about 200 Huk officers and men belonging to FC-22, 24 and 25, led by Linda Bie and Vice-Commander Sevilla, raided and attacked the poblacion of Tarlac, Tarlac, and unlawfully released 50 prisoners from the provincial jail.

(13) On August 25, 1950, a group of more than 300 armed Huks attacked and raided the town of Arayat, Pampanga, and took from the municipal building public funds in the amount of ₱1,000, typewriters and adding machines belonging to the municipal government of Arayat, and 10 sacks of PACSA rice. Before they left, the rebels killed Attorney Mariano Samia, a resident of the town.

(14) On August 26, 1950, Huks numbering about 400 including some women, raided the municipality of Sta. Cruz, Laguna. They brought the cashier of the provincial treasury from his house to the provincial capitol and at gunpoint forced him to open the vault from which the Huks took more than ₱80,600. They also took typewriters and other office supplies which they found in the office of the Treasurer, burned five buildings in the town proper, released several prisoners from the provincial jail, and wounded and/or killed several P.C. officers and men and prison guards.

(15) On September 12, 1950, a group of more than 20 armed Huks dressed in fatigue uniforms of the Philippine Army, seized a scout car of the Armed

belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

18. When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender. (Emphasis added.)[6]

It is clear in these Instructions that a distinction was established between *an act which has a semblance of a crime and a crime itself*. In other words, in the course of a war, there will be acts committed which have all the elements of a crime, such as murder, but such are considered mere acts of war and therefore permissible because, in the language of the Instructions, they are indispensable for securing the ends of the war, and lawful according to the modern law and usages of war. Once they are not indispensable or once they violate such laws and usages, they do not have the semblance of the crime but are the crime itself, to be treated separately.

A company of soldiers, for instance, desires to attack a small garrison of the enemy. The plan was deliberated for weeks and the assault was carried with superior force of arms, taking advantage of night time. Here, all the elements of murder are present: the killing, the evident premeditation, the treachery. If the assault was carried for purely military purposes, to insure victory in the war, even at first blush it is absurd to say that the assault is murder. Rather, the act is a prosecution of the war and must be absorbed in the war itself as one of the manifestations thereof. The act has only the semblance of murder but is not murder in itself. But if the military commanders on both sides happened to have personal grudges towards each other and the assault was made just to give vent to their personal hate, so that the assault is totally unconnected with the conduct of the war, the attack becomes a clear case of murder. The act no longer has the mere semblance of a crime; it is a crime in itself.

And even if the attack was originally in pursuance of a legitimate military objective, when in the course thereof there were deeds of the soldiers violating the rules of war, such as an unprovoked massacre of prisoners or innocent civilians, the soldiers shall still pay for such deeds. They are no longer a part of the war; they are crimes in themselves.

The same distinction was carried in the *Hague Conventions*. Articles XXII and XXIII of the regulations annexed to the convention signed at

Forces of the Philippines, while on patrol in barrio Mapalad, Arayat. They rode into town in the same vehicle and murdered Teodoro Evangelista and Adriano Navarro before they made good their escape.

(16) Between October 15 and 17, 1950, Lt. Jose Velasquez, P.C., led three platoons of soldiers to the southwestern slope of Mount Malipuno at Lipa City, upon receipt of a report that about 200 Huks were gathered in that place. While climbing the mountain, they were suddenly attacked and fired upon by the Huks, resulting in the death of one soldier and the wounding of four others.

[6] GEN. ORDERS No. 100 (1863).

The Hague on October 18, 1907, respecting the laws and customs of war on land provide:

> In addition to the prohibitions provided by special Conventions, it is especially forbidden —
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> (a) To employ poison or poisoned weapons;
>
> (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
>
> (c) To kill or wound an enemy who, having laid down his arms, or having no longer any means of defense, has surrendered at discretion;
>
> (d) To declare that no quarter will be given;
>
> (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
>
> (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
>
> (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;
>
> (h) To declare abolished, suspended, or unadmissible in a Court of law the rights and actions of the nationals of the hostile party.
>
> A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

It is obvious that the purpose of the distinction is to humanize war, to temper the brutality and harshness of the conflicts between men so that sorrow and tragedy, whenever inevitable, should be the least.

Down to the Middle Ages war was waged with savage and unsparing cruelty. The influence of Christianity and of medieval chivalry succeeded in mitigating the horrors and ruthlessness of war towards the latter part of the Middle Ages. However, although milder as compared to those of earlier times, the practices were still barbarous by modern standards. During the 17th century, the devastation and general suffering caused by the Thirty Years War led writers like Grotius to sound an appeal to humanize war. In setting forth what he called the *temperamenta* of warfare, Grotius advocated moderation in the conduct of hostilities for reasons of humanity, religion and farsighted policy.[7]

It is not surprising therefore that this distinction between an act with the semblance of a crime and the crime itself had to come forth. If every act of killing and destruction in the course of a war is reprehensible, where is the just war that is tolerated? But if there are wars that must be justified and tolerated and since wars have always the probability of being utterly savage and barbarous, the toleration cannot go far. War cannot go on

[7] SALONGA & YAP, PUBLIC INTERNATIONAL LAW 358 (1956 ed.).

without limit. Otherwise there will be the absurdity of justifying every criminal act in that bloodshed by the end and purpose of the bloodshed. Hence, the distinction is of imperative necessity so that the act with the mere semblance of a crime is considered as a part of the war and therefor allowed, while the crime itself is condemned and the conduct of armed struggles of men is thus controlled.[8]

Though the distinction is explicitly found in international law which is not as binding to a particular state as its own municipal laws, yet the necessity and justness of the distinction leads one to believe that a similar principle must have been considered by the framers of our Revised Penal Code in their deliberations on the penalty for rebellion.

According to the Revised Penal Code, rebellion is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.[9]

In other words, rebellion has the following elements:

1. The rising publicly and taking arms against the Government;

2. The purpose of such struggle against the government which is to server the allegiance to it or to deprive the Executive or Legislature of their powers and prerogatives.[10]

From this definition this much is clear: any act done in the course of rising publicly and taking arms against the government, so long as it is connected with the purpose of the rebellion, is simply an incident of the rebellion and absorbed therein.

But what is rising publicly and taking arms against the government? By the very word itself, it should mean an armed struggle with the government; it may be of a small scale, but as a rule rebellion should mean war. This is suggested by the situation itself. In fighting against the government the rebels will have to contend with the armed forces of the government, one principal purpose of which is to maintain the existence and integrity of that government. In fact, the Philippine Constitution itself gives occasion to this affair of honor when it empowers the President to call out the armed forces of the Philippines to prevent or suppress rebellion.[11] And the Revised Penal Code, in speaking of rebellion, explicitly mentions war against the forces of Government as one mode of insurrection.[12]

[8] See GROTIUS, DE JURE BELLI AC PACIS (1625).

[9] Art. 134 REVISED PENAL CODE.

[10] See 2 REYES, THE REVISED PENAL CODE 56 (2nd ed. 1956); 1 KAPUNAN, REVISED PENAL CODE 519 (1951 ed.); 2 FRANCISCO, REVISED PENAL CODE 302 (2nd ed. 1954); GUEVARA, REVISED PENAL CODE 273 (1946 ed.); ALBERT, THE REVISED PENAL CODE 325 (1946 ed.).

[11] PHIL. CONST. Art. VIII § 2.

[12] Art. 135 REVISED PENAL CODE.

This is true both historically and legally. Throughout the records of man, rebellion usually means a clash of arms. For the abomination and disgust of men believing themselves to be oppressed will be translated into a revolt of blood and iron which, when triumphant, is entered in human memory as a perfect act of heroism and which, when vanquished, is consumed in an instant of annihilation, despised and castigated by the state. This truism was formally accepted in *United States v. Lagnason*[13] where the Supreme Court, in contrasting rebellion from treason, maintained that the former had the similar aspect of the latter which is the levy of war.

But because of the ingenuity of man in carrying out his military objective, war assumes an elastic meaning. Now it is mere burning of the barrios and towns; then it is actual shooting; now it may be mere ambuscades and skirmishes between patrols; in other cases, it may be full military campaign. Hence it cannot be said that simply because in previous cases the Supreme Court punished the defendant as a rebel without proof of violent uprising, in the popular term, without proof of a bloodbath, the incidents of war such as ambushes and razing down of villages should be outside the concept of rebellion and can be explained only by the doctrine of complex crimes. Due to the elasticity of the concept, rebellion can embrace every conceivable military operation or combat so long as it does not have the character of treason or sedition.

Yet we are confronted with an objection, rational as it is, that it is an indulgence unwarranted by justice and a fair interpretation of the law to impose a relatively light penalty as *prision mayor*, which at most is twelve years imprisonment, to all forms of rebellion, even at its worst.[14] That is an authorization to barbarism.

In other words, there is the dilemma which is also a paradox that while rebellion may be considered reprehensible, yet in a true sense, rebellion is

[13] 3 Phil. 472 (1904): "That the acts committed by the defendant constituted a 'levying of war' as that phrase was understood at the time the act of the Commission was passed, cannot be doubted. Neither can it be doubted that these same acts constituted a 'rebellion or insurrection.'" See also League v. People, 73 Phil. 155 (1941).

[14] The penalty of *prision mayor* shall be imprisonment from six years and one day to twelve years. Art 27 REVISED PENAL CODE. Those who promote maintain, or head a rebellion or insurrection, or who, while holding any public office or employment, take part therein, engaging in war against the forces of the Government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated, shall suffer the penalty of *prision mayor* and an additional fine of 20,000 pesos. Art. 135 REVISED PENAL CODE. This punishment is very light compared to the penalty for murder which at its worst is death and at its least is *reclusion temporal*, that is, from twelve years and one day to twenty years. Arts. 27, 248 REVISED PENAL CODE. Aside from this there will be further indemnity to the heirs of the victim. Art. 100 REVISED PENAL CODE.

also a cherished right of a people, their only hope in certain cases to wipe out governmental oppression from their lives.[15]

Thomas Jefferson once said, "I hold it that a little rebellion now and then is a good thing. . . . God forbid we should ever be 20 years without such a rebellion."[16] The right of resistance is deeply ingrained in the human spirit and has had the blessings of great political theorists such as Vattel and Locke.[17]

We are faced with the annoying problem: when the acts of rebellious uprising take the character of other acts of destruction such as murder and arson and such rebellious acts are punished with equal severity as in murder which may be the capital penalty itself, a subjugated people may in the end be deprived of their last chance for freedom. But if rebellion is allowed or given a very light penalty, it may mean in practical effect the warranty for every conceivable human evil usually committed in war.

It is respectfully submitted therefore that the penalty for rebellion which is *prision mayor* and a fine not to exceed ₱20,000 is some sort of a compromise. The penalty has enough gravity to deter; but it is not harsh enough to destroy a mode of redress. One is tempted to say that the framers of the Revised Penal Code had the haunting suspicion and fear that in a given case they may be punishing an act which is right.

It can therefore be said that, specially in those instances when the different acts of rebellion are similar to other crimes such as murder so that both have the same practical effect upon the victims, *prision mayor*, which is the penalty for rebellion, is relatively lighter, taking into account that the punishment for murder can run up to death. When the rebels, for example, attack a town, burning all the houses and killing treacherously all those who defend the government, the rebels are practically getting away with the crime when given only *prision mayor*, in contrast to the treacherous killing of just a single individual which can be penalized by death.

But the imposition of a light penalty, not exactly commensurate with the terrible effect of the crime, specially when other crimes of like effect upon the victims are given stiffer retribution, is tolerance. Such vacillating tolera-

[15] Philip C. Jessup, representing the most modern attitude towards rebellion, aptly summarized the opposition between the legal and ethical points of view on the crime. While his observation is tinged with the peculiarity of international law, it is still pertinent to the present discussion:

"If the state has relinquished its right to resort to war, so the individual must relinquish any right to overthrow his own government by force. This, in pragmatic terms, means merely that he adds to the usual risks of rebellion the risk of international aid to the government he attacks. From the point of view of the ethical right of revolution, the right is inalienable; its exercise is forgone when the government provides the processes for correcting abuses by non-violent means." JESSUP, THE MODERN LAW OF NATIONS 186 (1949 ed.).

[16] 4 THE WRITINGS OF THOMAS JEFFERSON 1784-1787 (1894), at 462 (Ford ed.).

[17] LAUTERPACHT, AN INTERNATIONAL BILL OF THE RIGHTS OF MAN 43, 46 (1945 ed.).

tion in rebellion may be justified by the paradoxical character of the act that in certain cases it may be ethically right while in others it may be wrong.

Yet the tolerance cannot go on forever.

In the present *Hernandez* case it was said:

> One of the means by which rebellion may be committed, in the words of Article 135, is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war." These expressions imply everything that war connotes, namely: resort to arms, requisitions of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war carries in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of "engaging in war" and "committing serious violence," said resort to arms, with the resulting impairment or destruction of life and property, constitutes, not two or more offenses, but only one crime — that of rebellion, plain and simple.

It is respectfully presented that the statement should be modified. To impose the comparatively light penalty of *prision mayor* to any kind of rebellious war is tolerance of all its brutishness. The indulgence cannot go that far. Somewhere along the line, the law must take a harsh attitude proportionate to the dreadful evil of human conflicts.

This dividing line can be found in the international rules of warfare which, as aptly stated in the influential *Instructions for the Government of Armies of the United States in the Field* and admitted by the *Hague Conventions of 1907*, means: measures are considered parts of the war which are indispensable for securing the ends of war and which are lawful according to the modern law and usages of war; once such measures are no longer indispensable, or once they violate the modern law and usages of war, they are intolerable and must be treated as separate crimes.

Varied reasons support the conclusion.

When the framers of the Revised Penal Code contemplated the crime of rebellion, they, being logical men, must have foreseen that rebellion as committed could be a real military campaign. This is evidenced by their provision that one form of rebellion is engaging in *war* against the forces of the government.[18] Yet, despite their knowledge that such a war could have a disruptive disintegrating effect upon the fabric of national life, they tolerated it by giving it a penalty that is light compared to the devastation and suffering created by the war. The internecine strife they had in mind, for which they were indulgent, must have been one accomplished according to the modern law and usages of warfare. At least, they had reason to be tolerant to a kind of war which philosophers and moralists have justi-

[18] Art. 135 REVISED PENAL CODE.

fied.[19] But any act in that war, which is prohibited by the rules and customs of war or is not indispensable to the military operation, must be outside the scope of that rebellion they were thinking of and must be prosecuted as a separate offense.

It is hard to believe that while men of various nationalities who have founded such rational laws and customs of warfare would condemn excessive brutality in war as it should be, the framers of the Revised Penal Code would tolerate it by prescribing for it a comparatively light sentence. It is hard to believe that the framers intended to govern rebellion with all its complexity only by two provisions which are very abstract and can be applied to specific cases only with great difficulty. They must have meant these provisions to be amplified by accepted rules and usages of warfare.[20]

The best proof is that the idea of rebellion embodied in the Revised Penal Code is Anglo-American in origin, at least, in so far as its trait as war is concerned. At once it is obvious that Anglo-American authorities, being those of the original statute itself, should be immensely persuasive while Spanish commentaries, being entirely alien, should be weak in influence, if not irrelevant.[21]

Upon the passing to the United States of sovereignty over the Philippines by the Treaty of Paris, the provisions in the Spanish Penal Code having to do with such subjects as treason, lese majeste, religion and worship, *rebellion*, sedition, and contempts of ministers of the crown, ceased to be of force.[22] For these were political offenses within the domain of political law and it is axiomatic that on the acquisition of territory, the previous political relations of the ceded region are totally abrogated and every nation acquiring territory, by treaty or otherwise, must hold it subject to the Constitution and laws of its own government and not according to those of the government ceding it.[23] Otherwise, an impairment of the rights of

[19] See JESSUP, *op. cit. supra* note 15.

[20] The Philippine Constitution adopts the generally accepted principles of international law as part of the law of the Nation. PHIL. CONST. Art. II § 3. We do not however intend to use this provision as authority in the present work, because it seems that international principles are hereby adopted *as such*. Consequently, the present accused may be liable, granting they are liable, under international law, not under the Revised Penal Code, which is beside the point.

[21] The Supreme Court of the Philippine Islands has always felt itself bound by the rulings of the Supreme Court of the United States in construing and applying statutory enactments modelled upon or borrowed from English or American originals. Cuyugan v. Santos, 34 Phil. 100 (1916). When the legislative history of a law shows it to be of American origin, American precedents are in point in determining its construction. Mitsui Bussan Kaisha v. Hongkong & Shanghai Bank, 36 Phil. 27 (1917). *Accord*, Ibañez de Aldecoa, v. Hongkong & Shanghai Bank, 30 Phil. 228 (1915); Tamayo v. Gsell, 35 Phil. 953 (1916); Castle Bros., Wolf & Sons v. Go Juno, 7 Phil. 144 (1906); Cerezo v. Atlantic, Gulf & Pacific Co., 33 Phil. 425 (1916); Jocson v. Soriano, 45 Phil. 375 (1923); U.S. v. Dumandan, 8 Phil. 61 (1907).

[22] People v. Perfecto, 43 Phil. 887, 897 (1922).

[23] People v. Perfecto, 43 Phil. 887 (1922); Roa v. Collector of Customs, 23 Phil. 315 (1912).

sovereignty of the acquiring state would result.[24]

The elimination of the Spanish idea of rebellion therefore brought about the substitution in Philippine territory by a type of law on the offense coming from America, promulgated here by the Philippine Commission.[25] In fact, in construing this mandate of the Philippine Commission, the Philippine Supreme Court leaned heavily on common law dogmas.[26]

And in common law, specially in the United States, rebellion is subject to the rules of war. In the *Prize Cases*, cited by the concurring opinion in the Philippine case of *U.S. v. Lagnason*, the American high tribunal, in speaking of rebellion, made a comment the unbreakable importance of which cannot be overlooked:

> Insurrection against a government may or may not culminate in an organized rebellion but a civil war always begins by insurrection against the lawful authority of the government.
>
> This being the case, it is very evident that the common laws of the war — those maxims of humanity, moderation and honor — ought to be observed by both parties in every civil war. Should the sovereign conceive he has a right to hang up his prisoners as rebels, the opposite parties will make reprisals, etc., etc.; the war will become cruel, horrible, and every day more destructive to the nation.
>
> The law of nations is also called the law of nature; it is founded on the common consent as well as the common sense of the world. It contains no such anomalous doctrine as that which this court are now for the first time desired to pronounce, to wit: That insurgents who have risen in rebellion against their sovereign, expelled her courts, established a revolutionary government, organized armies, and commenced hostilities, are not enemies because they are traitors; and a war levied on the government by traitors, in order to dismember and destroy it, is not a war because it is an "insurrection."[27]

[24] *Ibid.*

[25] "Every person who incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or of the Government of the Philippine Islands, or the laws thereof, or who gives aid or comfort to anyone so engaging in such rebellion or insurrection, shall upon conviction, be imprisoned for not more than ten years and be fined not more than ten thousand dollars." Act No. 292 § 3.

The Philippine Supreme Court correctly noticed that this provision had been lifted from the Revised Statutes of the United States. See U.S. v. Lagnason, *supra note* 13, at 477.

[26] The best example is U.S. v. Lagnason, a major product of the early Philippine Supreme Court, which set the later tone of the tribunal on the subject of rebellion. In this case, the authorities relied upon by the majority, concurring and dissenting opinions were all American. See U.S. v. Lagnason, *supra* note 13. The same style of statutory construction was followed in U.S. v. Del Rosario, 2 Phil. 127 (1903); U.S. v. Racines, 4 Phil. 427 (1905); U.S. v. Pineda, 3 Phil. 376 (1904).

[27] The original text in the American decision: "Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the government. A civil war is never solemnly declared; it becomes such by its accidents — the number, power and organization of the persons who originate and carry it on. When the parties in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off

But precisely, the notion of rebellion in the present Revised Penal Code must retain the same one issued by the Philippine Commission. This Code took effect during the American regime[28] and, in making it, the Philippine Government, being at that time merely an agent of the United States Congress in the civil administration of the Philippines,[29] could not legally change by itself alone the sovereign wish of its principal as to what the definition of insurrection should be.[30] In other words, there is no historical fact

their allegiance; have organized armies; have commenced hostilities against their former Sovereign, the world acknowledges them as belligerents, and the contest as war. They claim to be in aims to establish their liberty and independence, in order to become a sovereign State, while the soverign party treats them as insurgents and rebels who owe allegiance, and who should be penalized with death for their treason.

"The laws of war, as established among nations, have their foundations in reason, and all tend to mitigate the cruelties and misery produced by the scourge of war. Hence the parties to a civil war usually concede to each other courtesies and rules common to public or national wars.

"A civil war, says Vattel, breaks the bonds of society and government, or at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledges no common judge. These two parties, therefore, must, necessarily, be considered as constituting, at least for a time, two separate bodies, two distinct societies. Having no common superior to judge between them, they stand in precisely the same predicament as two nations who engage in a contest and have to recourse to arms.

"This being the case, it is very evident that the common laws of war — those maxims of humanity, moderation and honor — ought to be observed by both parties in every civil war. Should the sovereign conceive he has a right to hang up his prisoners as rebels, the opposite parties will make reprisals, &c., &c.; the war will become cruel, horrible, and every day more destructive to the nation.

"The law of nations is also called the law of nature; it is founded on the common consent as well as the common sense of the world. It contains no such anomalous doctrine as that which this court are now for the first time desired to pronounce, to wit: That insurgents who have risen in rebellion against their sovereign, expelled her courts, established a revolutionary government, organized armies, and commenced hostilities, are not enemies because they are traitors; and a war levied on the government by traitors, in order to dismember and destroy it, is not a war because it is an 'insurrection.'" Prize Cases, 67 U.S. 459, 476-77 (1863).

[28] This Code shall take effect on the first day of January, nineteen hundred and thirty-two. Art. 1 REVISED PENAL CODE.

[29] The Philippine government, throughout the mutations it underwent by reason of the changes effected in the organic laws, remained an agency of the Congress of the United States for the civil government of the country, owing its existence wholly to the United States, and was not much different so far as its legal basis was concerned, from the military agency of Congress, — the United States army. See Tan Te v. Bell, 27 Phil. 354 (1914).

[30] True, the repealing clause in the Revised Penal Code includes Act 292 of the Philippine Commission together with its provision on rebellion. See Art. 367 REVISED PENAL CODE. But it is respectfully argued that this does not mean that the present code completely abrogated such a provision or went back to the Spanish definition of the offense. Because, the Revised Penal Code still adheres to the basic idea of the Philippine Commission that rebellion can mean war so that the former merely amplifies the latter. And also because, aside from the fact that there is no express indication of a return to the Spanish concept, the Spanish Penal Code, in this respect, is completely different from that embodied in the Revised Penal Code. Compare Arts. 134, 135 REVISED PENAL CODE, with Act No. 292 § 3, *supra* note 25, and with Art. 243 CODIGO PENAL ESPAÑOL DE 1870.

conclusively proving that the framers of the Revised Penal Code ever legally disregarded the doctrines on rebellion as conceived in America and transplanted in the Philippines by the Philippine Commission.[31]

Such tolerance in our laws therefore must be for only one kind of rebellious warfare — that which is in harmony with the established laws and usages of warfare. In others words, it is very respectfully submitted that there should be the principle of partial absorption: any act which is indispensable to the prosecution of the war and tolerated by the modern law and usages of war is absorbed by rebellion; but any act which is not thus indispensable or is in contravention with such laws and usages and is prohibited by the Revised Penal Code must be punished separately under this Code.

Thus, the terms in the definition of rebellion, *rising publicly and taking arms against the government* is given a sensible meaning: that it connotes, as it must connote, to a certain extent, the incidents of war, *i.e.*, shooting, killing, burning of towns, etc. But, by the distinction between the act with the semblance of a crime and the crime itself, the doctrine has its own self-limitation and thus answers the fear that the process of absorption would lead to the grant of light penalties for the gravest wrongs and in the end to the legalization of brutality.

But the objection has been raised that an act with the nature of murder, being a greater crime, cannot be absorbed by a lesser one like rebellion. The proposition, on its face, appears impregnable. But, with due respect to the great men who raised it, it is very respectfully submitted that the proposition unfortunately begs the question. It assumes that the act is murder when precisely the issue is that the act is not murder but merely the semblance of it and is an incident of war. It cannot be said that a greater thing has been absorbed by a smaller one, because there is no greater thing in the first place.

If an act done in the course of rebellion, characterized by qualifying circumstances such as advantage of superior force that can qualify the act as

[31] Since the bulk of the Revised Penal Code was taken from the Penal Code of Spain of 1870, one possible source of the Philippine definition of rebellion can be Spanish. Yet, the corresponding provisions in Spain are entirely different. Thus the Spanish code of 1870: "Son reos de rebelion los que se alzaran publicamente y en abierta hostilidad contra el Gobierno para cualquiera se los objetos siguientes: "1. Destronar al Rey, deponer al Regente o Regencia del Reino, o privarles de su libertad personal u obligarles a ejecutar un acto contrario a su voluntad. "2. Impedir la celebracion de las elecciones para Diputados a Cortes o Senadores en todo el Reino, o la reunion legitima de las mismas. "3. Disolver las Cortes o impedir la deliberacion de alguno de los Cuerpos Colegisladores o arrancarles alguna resolucion. "4. Ejecutar cualquiera de los delitos previstos en el art. 165. "5. Sustraer el Reino o parte de el o algun cuerpo de tropa de tierra o de mar, o cualquiera otra clase de fuerza armada, de la obediencia del Supremo Govierno. "6. Usar y ejercer por si o despojar a los Ministros de la Corona de sus facultades constitucionales, o impedirles o coartarles su libre ejercicio. (Articulo 167, Cod. Pen. de 1850. — Veanse las demas concordancias del art. 181.)"

murder, should always be treated as real murder, the classification would have no end. Every killing would be murder or homicide; every taking of property would be robbery or theft; every burning would be arson, etc. But if every act in the public uprising should be treated as a separate crime, where is the public uprising, where is the rebellion?[32] If every branch of a tree is a tree in itself, where is the original tree? If every part of a female body is a girl in itself, where is the original girl that one must pursue and adore?

To treat every criminal act in the uprising separately will therefore extinguish the notion of rebellion out of the Code which is impossible. Equally impossible is the alternative of punishing the rebels for the rebellion with separate penalties for the uprising itself and every constituent act therein. That is double jeopardy which cannot be done.[33] The only choice left is to insist that the taking of arms within limits should be regarded only as rebellion, though acts in the course thereof have the appearance of other crimes, or to charge the accused for liability for such separate acts without calling them rebels at the same time, if evidence sustains the latter view.

But another objection has been poised: when a crime is indispensable to another, it is absorbed; but when it is merely necessary to the latter, the elements of article 48 of the Revised Penal Code being present, then there is a complex crime. Hence, if a killing with the character of murder is indispensable to rebellion, the killing is absorbed. But when the killing is merely necessary, it is a case of rebellion complexed with murder or homicide, as the case may be.

There is great evidence, if we are given the privilege to comment on the theory, that this distinction between the indispensable and necessary acts truly exists in the Revised Penal Code. But it is begged to be considered that this distinction can hardly be applied to rebellion, the moment the public uprising starts.

The distinction is so refined that it should presuppose a crystal-clear conception of the specific acts constituting the crime. It is only with the masterly understanding of the essence of things that one can detect the

[32] We have no quarrel with the analysis in minor logic about the universal idea and the particular idea, by which the uprising will be the universal idea and acts comprising the rebellion will be the particular idea, so that rebellion and its constituent acts will be separately and simultaneously retained. But this is an example of an assumption in philosophy not being followed in law. Otherwise, there will be double jeopardy in the present case.

[33] "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." PHIL. CONST. Art. III § 1 (20). "The conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information." RULE 113 § 9.

microscopic differences between them. The distinction is easy to employ in other crimes whose definitions by the Revised Penal Code are specific.

Estafa, for instance, which is complexed with other crimes, is minutely described by the law.[34] The definition of estafa proper which is a description of just one single act is one of the longest provisions in the penal code. And yet the law is not satisfied; it supplements this article with three other provisions.[35] We have clearly the principal element of murder and homicide, that is, the killing of a person.[36] Such clarity and minuteness of description are present in the other crimes enumerated in the Code. Yet when we come to rebellion which requires every conceivable series of acts destroying life and property, too numerous to count, the law uses general terms such as "rising publicly,"[37] "taking arms against the Government,"[38] "engaging in war against the forces of Government,"[39] "destroying property," [40] "committing serious violence,"[41] and "exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated."[42] Exactly what acts of devastation should there be, the law and its commentators do not qualify.[43]

But it is a basic principle of logic that as long as an idea remains abstract and general, it is incapable of minute distinctions such as that between the indispensable and necessary. The specification of the unspecified is a contradiction in terms.[44] Such minute details were not even passed upon by the masters of the business of war such as those who formed the *Hague Convention of 1907* and the *Instructions for the Government of the Armies of the United States in the Field*. The best the human mind can do, and this is what was done by the masters of war who should know its intricacies and who created the rules of it, is to say that either an act is indispensable for securing the ends of the war and lawful according to the modern law and usages of war or it is totally unconnected with the war or unlawful according to its law and usages and therefore should be treated separately.

[34] Note the almost meticulous particularity of the kilometric provision of the Revised Penal Code in defining the crime of estafa. Art. 315 REVISED PENAL CODE.

[35] Arts. 316, 317, 318 REVISED PENAL CODE.

[36] Arts. 248, 249 REVISED PENAL CODE.

[37] Art. 134 REVISED PENAL CODE.

[38] *Ibid.*

[39] Art. 135 REVISED PENAL CODE.

[40] *Ibid.*

[41] *Ibid.*

[42] *Ibid.*

[43] This willful vagueness of definition can also be seen in treason (Art. 114 REVISED PENAL CODE) and in sedition (Art. 139 REVISED PENAL CODE).

[44] It is not intended to reject the assertion in philosophy that an abstract idea is given form when we proceed from one specific case to another, thus forming genus and species. But it is suggested that in criminal cases, where so much is at stake, this principle in philosophy should not be stretched to its farthest limit. Rather, clear lines of thought should be followed, *i.e.*, that an act is connected or not connected with the public uprising. To draw the unclear distinctions of the necessary and indispensable in rebellion will lead to arbitrariness and irreparable injustice.

One can distinguish in broad daylight. Under the sun, the view of the landscape is clear and it is easy to see the difference in shades and colors, the variety in sizes and shapes of things as they stand naked in the light of noon. But when the sun has set, distinction fails and one can only generalize, because the varied forms of things have been subdued and, as it were, abstracted by the darkness of evening.

The net result is an extreme difficulty in the practical order of things to differentiate the necessary and the indispensable. One should sympathize with the judge who is given the terrible task of making thin distinctions of the indispensable and necessary among one thousand acts of one thousand rebels constituting every conceivable kind of violence.

The point is illustrated by the *Hernandez* case itself.

The information states, among other things:

> 1. That on or about March 15, 1945, and for some time before the said date and continuously thereafter until the present time . . . the said accused and their other co-conspirators . . . did then and there willfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command the . . . (Huks) to rise publicly and take arms against the Republic of the Philippines, or otherwise participated in such armed public uprising, for the purpose of removing the territory of the Philippines from the allegiance to the government and laws thereof as in fact the said . . . "Hukbalahaps" have risen publicly, making armed raids, sorties and ambushes, attacks against police, constabulary and army detachments as well as innocent civilians and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, have then and there committed acts of murder, pillage, looting, plunder, arson and planned destruction of private and public property to create and spread chaos, disorder, terror, and fear so as to facilitate the accomplishment of the aforesaid purpose, as follows, to wit:
>
> (1) *On May 6, 1946, the 10th MPC Co. led by First Lt. Mamerto Lorenzo, while on patrol duty in barrio Santa Monica, Aliaga, Nueva Ecija, was, with evident premeditation on the part of the Huks, ambushed and treacherously attacked by a band of well-armed dissidents or rebels. Ten enlisted men of the MP Company were killed and First Lt. Mamerto Lorenzo was captured and beheaded by the rebels.* (Emphasis added.)

It should be noted, we pray, that the ambush stated in sub-paragraph (1), specially when repeated several times, can itself constitute rebellion.

The Philippine-American war at the start of the century developed an abundance of jurisprudence on this point.[45] A case of authority, with facts very similar to the ambush in question, is *People v. Baldello*.[46]

[45] U.S. v. Del Rosario, 2 Phil. 127 (1903); U.S. v. Racines, 4 Phil. 427 (1905); U.S. v. Pineda, 3 Phil. 376 (1904); U.S. v. Lagnason, 3 Phil. 472 (1904). The contribution to this jurisprudence from the Sakdal uprising in 1935 is League v. People, 73 Phil. 155 (1941). For the sake of accuracy in citing proper principles, all the Supreme Court and Court of Appeals decisions on the present Huk insurrection were deliberately excluded, to eliminate any objection that we are begging the issue.

[46] 3 Phil. 508 (1904).

Here, a band of twelve men, among whom were the defendants, armed with daggers and one revolver, attacked the municipal building in Guagua, Pampanga. They overpowered the clerks in the offices, and seized four other guns and certain ammunition, which they obtained by breaking open the chest in which it was kept. They attacked and wounded another policeman and took his gun.

On leaving the municipal building they marched through the streets, crying to the people to follow them and attack the Government. The people not only refused to join the party, but, with the policemen of the place, pursued them. A running fight was kept up for some distance, during which two of the party of the defendants were killed and one wounded and five of the pursuers were wounded. The pursuit ended with the capture of the defendants. After trial, the defendants were convicted of rebellion.

It is apparent that aside from being similar to the ambush in question, the facts in the *Baldello* case show a much less violent uprising. The ruling in this case therefore can easily be applied to the ambush in question, where there was more ferocity on the part of the Huks; so that the ambush *alone*, just as much as the other facts assumed by the information to be rebellion, can likewise constitute the same offense.

Since the ambush can be insurrection, it can also be indispensable to the crime, being part of its essence. Why, though the ambush and the other facts mentioned in the main body of the information are of the same category, the ambush when it accompanies such other facts should become just necessary to the accomplishment of rebellion and why it is the ambush that should be pinpointed as necessary and not the other facts is something hard to explain. And the saddest point for us to raise is that this inconstancy of classification runs throughout the information, where ambush after ambush has been denominated as merely necessary to the formation of rebellion.

The gradation, we very respectfully plead, is too arbitrary. What should be said is that the fighting during the ambush should be part of the insurrection but the beheading of the lieutenant, being an unnecessary cruelty to a prisoner of war,[47] should be condemned as a separate crime of murder.

One can therefore imagine the chaotic mutations of the law that will be caused by a simple judge, considering that this controversial classification of the ambush was done by the proponents of the theory of rebellion complex with murder, etc., who are brilliant, incisive and mighty in their sound experience in making legal distinctions.

That there is always extreme difficulty and confusion in separating the indispensable from the necessary in cases of rebellion suggests that in rebellion the distinction does not exist. Otherwise, it can be accurately

[47] See the Instructions for the Government of the United States Armies in the Field. (GEN. ORDERS No. 100 § 16 (1863). See also HAGUE CONVENTIONS OF 1907 Art. XXII (c).

grasped by a talented man who has specialized on the matter and is veteran long enough.

This argument gains strength when complemented with what has been said before, that rules of war govern the actions of rebels and that such rules have never accepted the theory that rebellion, during its pendency, can be complexed with some other crime.

Somewhere it was objected that the Huk rebellion has not reached the stage of full-scale war. It is only a series of armed clashes, skirmishes, ambuscades, and raids, not the whole scale conflict of civil war like that between the Union and the Confederate forces in the American Civil War. From this fact it was argued that the rules of war will not apply to the Huk rebellion, since the rules are meant only for a real war where the rebels are declared as belligerents, not for any other turbulence of lesser magnitude.

The answer is that, if these rules should govern war, then with more reason should they be applied at the very inception of an armed clash called rebellion so that it will not grow into a total war which humanity detests. For the movement of the rebels can be controlled right from the start and the horror rising along the trail of war may be diminished, if not avoided.

REFERENCE DIGEST

CRIMINAL LAW: REBELLION COMPLEXED WITH OTHER HIGH CRIMES? The resolution in G.R. Nos. L-6025-26, July 18, 1956, granting bail to Amado V. Hernandez, may have indeed dragged itself to some far-reaching implications when it abruptly settled the controversy heretofore unresolved—whether there can be a complex crime of rebellion with murder and other common crimes.

The two main premises upon which the resolution of the majority was based were: (a) that under the allegations of the information, Hernandez was guilty of the crime of simple rebellion, a non-capital offense; and, (b) that in the exercise of its discretion, the Court had laid down the policy of granting bail to persons accused of non-capital offenses while their cases are on appeal.

Under the allegations of the amended information, the majority believed that Hernandez was guilty of only one crime, that of rebellion plain and simple — and not of the complex crime of rebellion with murders, arsons and robberies because the latter crimes were alleged in the information as mere "necessary means to commit rebellion and in the furtherance thereof" and could, therefore, be considered as falling under two of the five ways of committing rebellion, namely, "engaging in war against the forces of the government," and "destroying property or committing serious violence."

That was the resolution of the majority as expressed thru Mr. Justice Concepcion who penned the resolution. The dissenting opinion interposed by Mr. Justice Montemayor expressed the view that "the commission of rebellion is complete and consummated if a group of persons, for the purpose enumerated in article 134 of the Revised Penal Code, rises publicly, takes up arms and assembles; and following the distinction pointed out by Groizard between an indispensable and necessary means, the murders, arsons and robberies are not indispensable means but only necessary means, and could, therefore, be complexed with rebellion.

According to the author in his comments, the majority opinion laid emphasis on the concept of rebellion rather than on the concept of complex crimes interposed by the dissenting opinion. The author goes on in his comments by analyzing par. 1, art. 135 of the Revised Penal Code, saying that the five classes of acts enumerated therein quality only their immediate antecedent, namely the public officer or employee. Par. 1, art. 135 in