THE LAW ON PLURAL CRIMES:
A Rejoinder to Solicitor General Padilla.

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FOR a clear understanding of our thesis that there is, or there can be, no such an offense as the "complex crime of rebellion with murder, arson, robbery, rape, etc.," it is necessary to draw the attention of the readers to the law on rebellion . Article 134 of the Revised Penal Code runs as follows:

> The crime of rebellion or insurrection 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.

An analysis of the definition of the crime of rebellion discloses two elements: one normative and one subjective.

Rising publicly and taking arms against the Government is the normative element of the offense, while *removal from the allegiance to the Government or its laws, the territory of the Philippines, 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,* is the subjective element.

In the subsequent article, however, article 135 of the Penal Code divides or classifies the rebels into two groups, namely:

(a) Heads, leaders, promoters or maintainers; or public officers who take part in the rebellion by engaging the forces of the government, destroying property or committing serious violence, effecting contributions, or diverting funds from the lawful purpose for which they have been appropriated, and

(b) Persons merely participating or executing orders of the heads or leaders.

Rebels under the first classification shall suffer the penalty of *prision mayor,* that is, from 6 to 12 years and a fine not exceeding ₱20,000, while

rebels falling under the second classification shall only suffer *prision mayor* in its minimum period, that is, from 6 to 8 years imprisonment.

The crime of rebellion, therefore, was complete the very moment Taruc and his followers rose publicly and took up arms against the Government, for the purpose of seizing the same by force as early as 1946 when they ran to the mountains. It is not necessary, to consummate rebellion, that the rebels succeed in overthrowing the Government. Murder, rape, arson, kidnapping and other common offenses do not appear, even by remote inference, as elements of the above definition of the crime of rebellion. The rising publicly and taking arms against the Government do not involve, or necessarily presuppose, the commision of the crime of kidnapping or murder, arson, or rape of innocent civilians.

This is the reason why the penalty for the crime of rebellion is comparatively mild: only *prision mayor* or from 6 to 12 years imprisonment and a fine of not exceeding ₱20,000. The framers of the present Code knew perfectly well, or expected at least, that if any rebel, besides rising publicly and taking arms against the Government, should commit other common offenses, like murder, rape, etc., he will be prosecuted and punished for the latter offenses.

It is for this reason that the commission in charge of revising the Penal Code of 1870 did not think it necessary to incorporate in the revised Code the provisions of article 244 of the old Code, which runs as follows:

> All other crimes committed in the course of a rebellion or seditious movement, or on occasion thereof, shall be punished in accordance with the rules of this Code.
>
> If the perpetrators of such crimes cannot be discovered, the principal leaders of the rebellion or sedition shall be punished therefor as principal.

It would be sheer naivete to believe that while an ordinary person committing murder, kidnapping or rape, may be sentenced to 20 years imprisonment, or death, a rebel perpetrating the same acts can only be sentenced to a maximum of 12 years imprisonment! This is tantamount to making of the crime of rebellion a license to commit murder or rape.

In the celebrated case of *People v. Hernandez,*[1] however, the Supreme Court, while holding the proposition that heinous common offenses, like murder, arson, kidnapping, rape, etc., cannot be mingled with rebellion, in other words, that there is no such a thing as the *complex* crime of rebellion with murder, arson, rape and so forth, still opined that the latter offenses are inherent or absorbed by the crime of rebellion. The Supreme Court, in arriving at this conclusion, took into account a previous doctrine laid down in the case of *People v. Prieto,*[2] wherein it was held that a Fili-

[1] 52 O.G. 5506 (1956).
[2] 45 O.G. 3329 (1948).

pino who, besides acting as a spy for the Japanese Army, takes part in the murder or killing of a member of the underground resistance, commits only *one single* crime, that of treason, and not the *complex* crime of treason with murder, nor the *multiple* crime of treason and murder, for the reason that the murder or killing, under the above circumstances, was merely absorbed or inherent in the crime of treason. Reasoning out the above doctrine, the Supreme Court, speaking through Mr. Justice Tuason, said among others:

> Under the Philippine Treason Law and under the United States Constitution defining treason, after which the former was patterned, there must concur both adherence to the enemy and giving him aid and comfort. One without the other does not make treason.
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> In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason, it becomes identified with the latter crime and cannot be the subject of a separate punishment or used in combination with treason to increase the penalty as Article 48 of the Penal Code provides.

With all due respect, we believe that the above doctrine, as well as the one laid down in the *Hernandez* case, is diametrically opposed to the established principle of criminal jurisprudence and penal science.

The crime of treason is well defined in article 114. It is committed by any person who, owing allegiance to the United States or the Government of the Philippines, should levy war against them or adhere to their enemy, giving them aid or comfort.

While we have no quarrel with the writer of the above-quoted decision in the proposition that the giving of aid or comfort to the enemy necessariiy involves bodily movement or physical action, and not merely a mental operation, stili we maintain that such aid or comfort should and must be limited to acts which facilitate the design of the enemy, such as news about the movement of the resistance troops, supplying of food and war materials, etc. But when a renegade Filipino, besides acting as informer or spy to the enemy, harbors another criminal resolution, equally penalized by our statutes, and puts such resolution into execution, like the killing or murdering of some members of the resistance movement, it does not stand to reason to hold him responsible for treason only. All the normative and subjective elements of the crime of treason were present the very moment a person owing allegiance to the Republic, consented to act as informer or spy of the enemy. If, in addition to being a spy, the culprit harbors another criminal resolution and commits murder, sound and well settled principles of criminal jurisprudence and penal sciences demand that the subject be

dealt with and prosecuted for treason and for as many other common offenses as have been committed by him.

My learned friend, Solicitor General Padilla, while seemingly accepting as correct the exposition made by the writer of "The Law on Plural Crimes," and the proposition that murder, arson, rape, robbery and kidnapping are distinct and independent crimes from rebellion and, as such, are not absorbed by, or inherent in, the latter, still insists that they could be mixed together in one criminal complaint or information when there is an allegation that the multiple murders, arson, rape and kidnapping were resorted to by the culprit "to create chaos, disorder, terror and fear, so as to facilitate the accomplishment of" and "as a means to commit rebellion."

To begin with, the allegation that murder, arson, robbery, rape, etc., have been resorted to "to create and cause chaos as a necessary means to commit rebellion," is not, per se, or in itself, sufficient to bring in one criminal complaint such heterogeneous offenses, under the provisions of article 48. What is a necessary offense to commit another, for an imaginative prosecutor, may turn out to be unnecessary or foreign matter to the court.

But under what rule of syllogism or logic can one maintan the proposition that the heinous and dastardly murder of Mrs. Aurora Quezon and her party some time in April, 1949, was a necessary means for the crime of rebellion which, by the way, was already complete and consummated by Taruc and his followers since the latter part of 1946? How could the rape and murder of some nurses in Camp Makabulos in 1950 be considered related, or necessary, for the crime of rebellion which has already been consummated prior to the commission of such rape and murder?

With a little knowledge of penal sciences and a little bit of logic, it would not be difficult to understand that heinous common offenses are not a necessary ingredient of the crime of rebellion. Neither can they be considered as means to commit the latter. Rebellion and common heinous offenses spring up from different criminal will and are aimed at different unlawful ends. They cannot be mixed together in one complaint, any more than oil and water.

The able Solicitor General Padilla cannot explain why the writer believes in the connection or correlation between estafa through falsification, seduction through usurpation of function, and rape through forcible abduction, while he fails to see any possible connection between rebellion and rape, murder, or arson. We repeat that with a little bit of logic and penal sciences, it is easy to understand that the party who forges the signature of the victim in a government warrant could not possibly attain his main purpose of cashing the warrant without resorting to such falsification. So is the seducer who was confronted with stubborn opposition of an honest girl to surrender her body and virtue without going through some marriage ceremony, or the satyr who, obsessed by the desire to possess

his victim by hook or by crook, has resorted to violent or forcible abduction to attain his lustful desire.

But in all these cases it can be seen that there is a unity of criminal resolution from the beginning and oneness of unlawful purpose.

As for my juridical zoo being small, according to my good friend, Solicitor General Padilla, I wish to say that it is not a question of having a large or small zoo, but of being able to scientifically classify the animals, and this cannot be done by merely reading the text of the Penal Code and the Philippine Digest, without a scientific juridical background.

NON-SEQUITUR: A Reply to Judge Guevara.

Ambrosio Padilla

THREE distinct views have been expressed regarding the prosecution of rebellion and the common crimes of murder, kidnapping, robbery, arson, rape, etc. The first view is that the crime of rebellion *absorbs* all such common crimes as ingredients or elements thereof. The second view is that such common crimes are *independent* of, and cannot be absorbed in, rebellion, and should therefore be prosecuted and punished separately. The third view is that such common crimes, if alleged and proved as necessary means for committing rebellion, may be and should be *complexed* therewith.

The first view was adopted by Judge Narvasa in sentencing Huk supremo, Luis Taruc, who pleaded guilty to the information charging the complex crime of rebellion with multiple murder, etc., but was however, sentenced to the maximum penalty for rebellion[1] or a prison term of 12 years. This same view seems to be the thesis of, and the stand adopted by, the majority resolution of the Supreme Court in the *Hernandez* bail case,[2] wherein thru Justice Concepcion, it held that there was only one crime — rebellion; that the elimination of article 244 of the Spanish Penal Code precludes the punishment of common crimes as independent of, or complexed with, rebellion; and that common crimes perpetrated in furtherance of political crimes are absorbed therein as necessary elements thereof.

The second view was in effect adopted by the Supreme Court in the case of *People v. Umali*,[3] where the accused, although prosecuted and convicted for the complex crime of rebellion with multiple murder, etc., were sentenced on appeal only for the separate crimes of sedition, multiple murder, arson, etc. This was justified because there was no clear evidence of rebellion and much less that the common crimes were resorted to as a necessary means to commit rebellion.

The third view was the one adopted by the prosecution in the Politburo cases and other similar information against Huk indictees, which resulted in

[1] See art. 135 REVISED PENAL CODE
[2] 52 O.G. 5506 (1956).
[3] G.R. No. L-5803, Nov. 29, 1954.