NON-SEQUITUR:
An Answer to Judge Guevara.

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THE legal exposition made by ex-judge Hon. Guillermo B. Guevara in his article entitled "The Law on Plural Crimes," where he mentions three groups of plural crimes and the authorities quoted therein are correct, but their application to the Huk rebellion, which is complexed with murder, kidnapping and other common crimes is legally assailable, and his conclusion that such complex charge is a "juridical heresy" for "there is no such animal in the juridical zoo" partakes of the common sophistic argument known as "non-sequitur."

The classification of plural crimes into three groups, *viz.*, (1) complex crime[1] which consists of 2 kinds: (a) *delito compuesto* (compound); (b) *delito complejo* (complex); (2) specific complex crime, like robbery with homicide;[2] and (3) *delito continuado* (continued) is not original. Most Spanish commentators of the Penal Code have written about the same classification. As regards the third group, Cuello Calon observes that "El codigo penal vigente, como los que le precedieron, no regula el delito continuado"[3] — "the present penal code, as well as those which preceded it, does not regulate the continued crime." We are not concerned with the second group, where the law specifically provides one penalty for special crimes. The first group, taken from article 89 of the old Penal Code, is expressly provided in article 48 of the Revised Penal Code, which reads:

> Art. 48. *Penalty for complex crimes.* — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000)

The proposed Code of Crimes could not improve on the above provision, for it merely copied the same in its article 59, which reads:

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[1] Art. 48 REVISED PENAL CODE.

[2] Art. 294 (1) *id.*

[3] 1 CUELLO CALON, DERECHO PENAL 522 (8th ed. 1947).

> Art. 59. *Repression for complex crimes.* — When a single act constitutes two or more crimes, or when one is a necessary means for committing the other, only one repression shall be imposed, which shall be that prescribed for the more serious offense. Should such repression be divisible, it shall be imposed in its upper half.

Cuello Calon comments on plurality of crimes, thus:

> Hay pluralidad de delitos en el llamado *concurso de delitos*, cuando el mismo agente ejecuta varios hechos delictuosos, de la misma or diversa indole. Se distinguen dos formas de concurso: el llamado *concurso formal o ideal* y el *concurso real.*
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> Hay concurso ideal cuando con una sola accion se producen varias infracciones de la ley penal. Tambien hay concurso ideal cuando se comete un delito como medio para la ejecucion de otro. En este caso, se observa, es verdad que hay *dos delitos*, pero se unifican en la consciencia del agente por razon del vinculo que enlaza al uno con el otro.
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> . . .
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> En el Codigo penal, el concurso ideal, si bien no se le designa con nombre alguno, reviste dos formas: (a) *cuando un solo hecho constituye dos o mas delitos* (el llamado delito compuesto); (b) *cuando uno de ellos sea medio necesario para cometer otro* (el llamado delito complejo).[4]

The first kind of complex crime, more accurately called compound crimes, is not involved in the Huk rebellion. Rather, our attention should be centered on the second kind — the complex proper — when one crime is a necessary means to commit the other.

Judge Guevara is legally accurate when he states that "the slaying of civilians, the rape of an innocent lass or the burning of their homes are not in themselves necessary means to consummate rebellion or vice-versa," for they are "crimes which have no connection with one another, like rebellion and rape." Admittedly, murder, rape, or arson are not elements, ingredients or accidents of rebellion, contrary to the thesis of the majority resolution in the *Hernandez* case.[5] For obviously, rebellion, which is committed by rising publicly and taking arms against the Government[6] for the political purpose mentioned, may be, and is, committed without the need of perpetrating murder, kidnapping, rape, arson, robbery or any other grave felony. Neither may these graver felonies be absorbed in rebellion, unless the acts of violence be indispensable to or at least reasonably necessary for the attainment of rebellion and are specifically covered by the acts enumerated in article 135 of the Revised Penal Code. Cuello Calon writes that following the theory of absorption (absorcion), "la pena del delito mayor absorbe las correspondientes a los delitos de menor grave-

[4] *Id.* at 524-25.

[5] People v. Hernandez, 52 O.G. 5506 (1956).

[6] Art. 134 REVISED PENAL CODE.

dad"[7] — "the penalty for the graver felony absorbs those corresponding to the less grave felonies." Conversely, the penalty for a grave felony cannot absorb those provided for the graver felonies.

Judge Guevara claims that "the co-mingling of the crimes of rebellion and other heinous acts committed by the members of the HMB cannot be alleged in one complaint without violating the specific provisions of rule 113, section 2 (e) of the Rules of Court and the provisions of article 48 and 70 of the Revised Penal Code." Rule 113, section 2, enumerates the grounds for a "motion to quash" a complaint or information, and paragraph (e) provides for the specific ground —

> That more than one offense is charged *except* in those cases in which existing laws prescribe a single punishment for various offenses. (Emphasis added.)

This particular ground is based on the rule against "duplicity of offense" provided in rule 106, section 12, of the Rules of Court which reads:

> A complaint or information must charge but one offense, *except* only in those cases in which existing laws prescribe a single punishment for various offenses. (Emphasis added.)

The exception expressly mentioned in the above-quoted rules refers to complex crimes, for article 48 of the Penal Code prescribes a single punishment, which is the penalty for the more serious offense, the same to be imposed in its maximum period. Thus, in *People v. Venegas,*[8] the information charged the accused with assault upon a person in authority with physical injuries. The accused moved to quash the information on the ground that he is accused of two crimes — assault and physical injuries. After quoting rule 113, section 2(e) of the Rules of Court and article 48 of the Revised Penal Code, it was correctly held that:

> In the information in question, it clearly appears that the accused is charged with a complex crime which is unquestionably within the exception of par (e), sec. 2 of Rule 113 of the Rules of Court.

If, therefore, the heinous crimes committed by the Huks are alleged specifically as necessary means to commit rebellion, the inclusion of such common crimes in the information charging the complex crime of rebellion with multiple murders, kidnappings, etc., cannot violate, but must be in in accord with rule 113, section 2(e), of the Rules of Court as well as articles 48 and 70 of the Revised Penal Code.

Judge Guevera asserts that because rebellion and rape "have no connection with one another," they "must be charged and punished separately under the provisions of article 70 of the Revised Penal Code." Article 70 presupposes that an accused has been prosecuted under and convicted

[7] 1 CUELLO CALON, DERECHO PENAL 527.
[8] (CA) 47 O.G. 5772 (1949).

in more than one information for which he has been sentenced to two or more penalties. Thus, the first paragraph provides:

> Art. 70. *Successive service of sentence.* — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit; otherwise, the following rules shall be observed: . . .

It is true that rebellion[9] is a crime against public order,[10] while rape[11] is a crime against chastity.[12] This fact, however, does not militate against a situation where one is used as a necessary means to commit the other. Thus, in the case of *People v. Geyrosaga,*[13] cited by Judge Guevera himself, the accused was found guilty of the complex crime of estafa thru falsification of public documents. Estafa[14] is a crime against property,[15] while falsification[16] is a crime against public interest.[17] One may commit estafa without resorting to falsification and conversely, one may commit falsification without committing estafa. Strictly, they are two distinct and independent crimes without any connection with each other, and yet when an accused uses one crime as a necessary means to commit the other, then the crime becomes complex, covered by article 48 of the Revised Penal Code. Similarly, in the case of *People v. De Guzman,*[18] cited by Judge Guevara also, the accused was convicted of the complex crime of abduction with rape, for while both crimes are crimes against chastity, one is independent of the other, as a person may abduct a girl without raping her, in the same way that he may rape her without the need of abducting her. But when the accused resorts to abduction[19] as a necessary means to commit rape,[20] then the crime is held to be complex. In the case of *U.S. v. Hernandez,*[21] Hernandez seduced a girl thru a fictitious marriage performed by his co-accused Bautista who, pretending to be a protestant minister, performed the marriage ceremony. Both were convicted of the complex crime of seduction with usurpation of public functions, and the Supreme Court applied article 89 of the old Penal Code, which is now article 48 of the Revised Penal Code. Seduction[22] is a crime against chastity,[23] while usupation[24] is a crime against public interest.[25] Clearly, there is nc

[9] Art. 134 REVISED PENAL CODE.
[10] Title III *id.*
[11] Art. 335 *id.*
[12] Title XI *id.*
[13] 53 Phil. 278 (1929).
[14] Art. 315 REVISED PENAL CODE.
[15] Title X *id.*
[16] Art. 171 *id.*
[17] Title IV *id.*
[18] 51 Phil. 105 (1927).
[19] Art. 342 REVISED PENAL CODE.
[20] Art. 335 *id.*
[21] 29 Phil. 109 (1914).
[22] Art. 338 REVISED PENAL CODE.
[23] Title XI *id.*
[24] Art. 177 *id.*
[25] Title IV *id.*

material or logical connection between the two but when usurpation is employed as a means to achieve seduction, the crime becomes complex. Likewise, in *Parulan v. Rodas*,[26] the crime charged was the complex crime of kidnapping with murder. Although the victim was kidnapped in Manila and was murdered in Bulacan, the jurisdiction of the Court of First Instance of Manila was upheld, because the crime charged was a complex crime of kidnapping with murder. Kidnapping[27] is a crime against personal liberty and security,[28] while murder[29] is a crime against persons.[30] Obviously, an accused may kidnap his victim without killing him, or may murder him without depriving him of his liberty. But when one is alleged as a necessary means to commit the other, the crime becomes complex. Thus, the Supreme Court held in said case of *Parulan v. Rodas*:

> We should take into consideration the facts alleged in a complaint or information and determine whether one of the two separate and different offenses charged therein was committed as a necessary means to commit the other offense; if it were the *two offenses constitute one complex crime;* otherwise the complaint or information charges two crimes or offenses independent from one another.
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> For example, the crime of falsification of a private document is not in general, an essential element of the crime of estafa, because this offense may be committed through many and varied means; but if a defendant is charged in a complaint or information with having committed falsification of a (private) document as a means for committing estafa, the offense charged would be a *complex offense of estafa through falsification.* Also, abduction is, in general, not an essential element of rape because rape may be committed anywhere without necessity of forcibly abducting or taking the victim to another place for that purpose; but if the offense charged is that the defendant abducted or carried by force the victim from one place to another wherein the latter was raped by the former, the crime charged would be a *complex crime of rape through abduction,* the abduction being in such a case a necessary means to commit the rape. And although homicide or murder may be committed wherever the victim may be found, yet if the charge in a complaint or information is that the victim was kidnapped and taken to another distant place in order to demand ransom for his release and kill him if ransom is not paid, the offense charged would evidently be a *complex crime of murder through kidnapping,* the latter being a necessary means to commit the former.[31] (Emphasis added.)

The same is the accepted rule in Spanish jurisprudence. Thus, Groizard gives another example of complex crime of rape thru trespass to dwelling:

> Ejemplo: el allanamiento de domicilio como medio de llegar al delito de violacion. No es condicion necesaria, para que la violacion pueda realizarse, al entrar en la morada ajena contra la voluntad de su dueño. Sin esa circumstancia, el delito puede existir. Ahora bien; si el criminal acepta como medio de llegar a la violacion el allanamiento de domicilio, este delito y el de violacion deben ser castigados, observandose en la aplicacion del castigo una unidad de penalidad que guarda cierta analogia con la unidad de pensamiento que llevo el culpable a la realisacion de ambos delitos. Para estos y analogos casos, la razon aprueba la imposicion de la mas grave de las penas en su grado maximo.[32]

Trespass to dwelling[33] is a crime against personal liberty and security,[34] while rape[35] is a crime against chastity.[36] From the foregoing examples of complex crimes, it is clear that the crime used as a means and the other crime as an end need not fall under the same title of the Code nor should be of a similar nature or should have some rational inherent or necessary connection between them. Article 48 is a general fundamental provision under Title III on penalties which governs and pervades the entire system of the Revised Penal Code. It is so broad that it can cover, as it should, any and all situations where an accused or a group of accused persons, thru the use of their resourcefulness, ingenuity, or other forms of craft and cleverness, should resort to one or several crimes as a necessary means to commit another. Thus, in the case of the Huk rebellion which is Communist-inspired and is a well-organized, nation-wide conspiracy,[37] the information against Hernandez (as well as other similar informations) specifically alleged that the "acts of murder, pillage, looting, plunder, arson and planned destruction of private and public property," were "to create and spread chaos, disorder, terror and fear, so as to facilitate the accomplishment of" and "as a necessary means to commit the crime of rebellion."[38] Under what legal reason or penal concept, then, may such an information which employs the explicit language of article 48 that the common crimes are a necessary means to commit rebellion be not considered as one charging a complex crime? It may not be amiss to reproduce herein a pertinent portion of the dissenting opinion of Justice Montemayor:

> ...Murder, robbery, arson, etc., are not necessary or indispensable to consummate the crime of rebellion.
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> But in other cases, this group or other groups of dissidents in order to facilitate achieving their objective to overthrow the government, according to the findings of the trial courts in several cases of rebellion, resorted to looting and robberies to raise funds to finance their movement, sometimes killing civilians who refuse to contribute or to be recruited to augment the forces of the rebels or who were suspected of giving information to the government forces of the movements of the dissidents. Sometimes, homes of town and bar-

[26] 78 Phil. 855 (1947).
[27] Art. 267 REVISED PENAL CODE.
[28] Title IX *id.*
[29] Art. 248 *id.*
[30] Title VIII *id.*
[31] 78 Phil. 855, 857 (1947).
[32] 2 GROIZARD, EL CODIGO PENAL DE 1870, at 495 (2d. 1903).
[33] Art. 280 REVISED PENAL CODE.
[34] Title IX *id.*
[35] Art. 335 *id.*
[36] Title XI *id.*
[37] See: Dennis v. United States, 341 U.S. 494 (1950).
[38] People v. Hernandez, 52 O.G. 5506, 5508-09 (1956).

rio residents are set on fire and burned to the ground in reprisal or in order to strike terror into the hearts of the inhabitants, so that they would be more amenable to the rule and the demands of the rebels. At other times, civilians were kidnapped for purposes of ransom, and some hostages killed when the ransom was not paid or was not forthcoming. In the raid on Camp Macabulos in Tarlac, besides shooting down soldiers and officers, buildings were set on fire, including the hospitals, as a result of which, patients including a Red Cross nurse were killed. In another case, a passenger bus containing about forty civilian passengers in Sta. Cruz, Zambales, was held up by these armed dissidents; the passengers were robbed of their money and jewelry and fourteen of them were shot to death. The party of Mrs. Aurora Quezon while on its way to the town of Soler, was ambused in Bongabong, Nueva Ecija by the dissidents and several members of the party, including herself, her daughter, her son-in-law, Mayor Bernardo of Quezon City, and others were killed, and their persons despoiled of jewelries and belongings. It is clear that all these acts of murder, vandalism, banditry and pillage cannot be regarded as ingredients and indispensable elements of the crime of rebellion. The aforecited acts and cases, the enumeration of which is far from complete, are not based on mere suspicion or hearsay. They are alleged as facts in the numerous counts contained in complaints or informations for rebellion with multiple murder, robbery, arson, kidnapping, etc....

Since the above mentioned crimes of multiple murder, robbery, kidnapping, etc., are not ingredients of rebellion nor indispensable to its commission but only means selected and employed by the offenders to commit rebellion and achieve their goal, a complex crime is committed under Article 48 of the Revised Penal Code.[39]

The majority resolution in the *Hernandez* bail case attempted to give some reasons why there is no complex crime of rebellion with murder, etc., or at least "that the crime charged in the amended information is simple rebellion, not the complex crime of rebellion with multiple murders, arsons and robberies"[40] which briefly are: (1) That there is only *one crime*, because rebellion, which involves war, absorbs all the other acts of violence including murders; (2) That the Supreme Court has ruled against the complex crime of *treason* with murder; (3) That article 244 of the Spanish Penal Code which penalizes particular crimes committed in a rebellion has been eliminated from the Revised Penal Code; (4) That rebellion is an offense political in nature and "that common crimes perpetrated in furtherance of a political offense, are divested of their character as 'common' offenses and assume the political complexion of the main crime of which they are mere ingredients, and, consequently, cannot be punished separately from the principal offense, or complexed with the same;"[41] and (5) That the penalty for the complex crime should be less than the penalties for the two separate offenses (*pro reo*). We are not going to answer the arguments advanced by the majority resolution nor support the minority opinion in this Article. But what is significant is that while the majority

[39] *Id.* at 5538-39, (dissenting opinion).
[40] *Id.* at 5532.
[41] *Id.* at 5524.

justices, thru Justice Concepcion, have endeavored thru legal arguments to arrive at the conclusion that the crime charged against Hernandez and his co-accused is not the complex crime of rebellion with murder but only simple rebellion, Judge Guevara on the other hand gives no legal reason whatsoever to support his conclusion that it is a "juridical heresy" to charge in the information the complex crime of rebellion complexed with murder, rape, robbery, arson, etc. The majority justices themselves during the course of the oral argument in the *Hernandez* case, tried to correct the impression which was universally created by the majority resolution by stating that the Supreme Court did not make a categorical holding or a definite ruling that there is no complex crime of rebellion with murder. We fail to find any syllogism in the article "The Law On Plural Crimes" which could justify his broad jump to his conclusion that there is no such complex crime of rebellion with murder, etc. Judge Guevara pontificates that "there is no such animal in the juridical zoo." Perhaps, his juridical zoo is limited and is far from complete, as very few zoos in the world could count with all the specimens of the animal kingdom.