

higher and touchstone to verify the legal validity of human laws. Conflicts between them should be resolved in favor of the moral law, although the consequences of such a decision may be very different.

The idea of law is truly one of the most fundamental factors in the development of the world community, and its contribution to modern civilization is impossible overestimated. System of concepts with which people explain the world around him, and to form them for a long historical path society are a vital feature of the human culture and help to identify the higher animals. How the particular individual sees the world and its place in human society, it finds reflected in the various regulatory systems - religion, ethics and morality in his ideas about the content and purpose of law. Each of these systems displays its outlook and fundamental views so or otherwise.

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COMPLICITY IN INTERNATIONAL CRIMINAL LAW

Complicity is a traditional form of criminal liability. Each legal system reviewed in these theses defines complicity in one way or another and attaches certain consequences to its application. Complicity is comprised of different subcategories, including aiding and instigating. In cases with several accused removed from the scene of the crime – typical international criminal law scenario – it can be difficult to distinguish complicity from co-perpetration. Yet, the main problem is not the distinction itself, but rather providing a comprehensive definition of both kinds of responsibility.

The definition of complicity, as well as of all other forms of criminal participation, shall, preferably, rely on the principles derived from the range of legal systems. This is essential for two reasons. First, any legal concept developed methodologically with the view of the «general principles of law recognized by civilized nations» has a more solid foundation as a source of international law than a concept borrowed from just one single legal system. Second, exploring the variety of legal systems allows discovering the best solutions for the complex factual and legal situations that undeniably mark international criminal law.

The synergy of legal systems allows finding the best solutions for a variety of complex legal and factual situations arising out of international

criminality, that's why the place of complicity in the context of particular legal systems will be illustrated further.

Complicity in England

Despite efforts to codify the criminal law of England, it still relies heavily on the common law and the judicial decisions, especially when it comes to the general part of criminal law. The principle of individual autonomy underlies the concept of complicity as a form of responsibility in English law.

English law recognizes two types of parties to a crime: principals and accomplices. The English law allows holding two or more persons as co-principals (coperpetrators) if each of them satisfies some part of the conduct element of substantive crime, and if each of them has the necessary mental element. Indirect perpetration manifests itself in English law in the doctrine of «innocent agency». An innocent agent brings about the actus reus without being a participant in the crime due to infancy or insanity. The indirect perpetrator will be the one whose act is the most immediate cause of the innocent agent's act.

The accomplice in English law (sometimes called «an accessory» or a secondary party) is anyone who aids, abets, counsels or procures a principal. Accomplices in English law are punished as a principal offender (Accessories and Abettors Act 1861). The distinction between the co-principals and accessories is often a subtle one. Presumably it is based on the causality principle and common agreement. If the offender causes actus reus of the offence being in agreement with the other co-principals, he is deemed to be a perpetrator. If the acts of the accused amount to just assisting or encouraging the commission of the crime, he is the secondary party.

Complicity in the United States

In the eighteenth century, the American colonies adopted «common law» of England. The courts then continued to improve the law until the legislature took over this role. Nowadays almost every state has a criminal code as a primary source of law, and the courts merely interpret the law. The major criminal code revision occurred in the United States after the American Law Institute promulgated the Model Penal Code in 1962.

The Model Penal Code provides for the following crime participants:

- A direct perpetrator who personally engages in the proscribed conduct (Section 2.06(1));
- An indirect perpetrator who causes an innocent or irresponsible person to engage in the proscribed conduct (Section 2.06(2)(a));
- An accomplice who, with the purpose of promoting or facilitating the commission of the offence,
 - Solicits such other person to commit it (Section 2.06(2)(c) & (3)(a)(i));

Aids or agrees or attempts to aid such other person in planning or committing it (Section 2.06(2)(c) & (3)(a)(ii)).

The perpetrator satisfies the objective conduct requirement through his own conduct or the conduct of an innocent agent, while the accomplice satisfies the objective element of an offence through the perpetrator's conduct by facilitating it through solicitation or aiding.

Case law consistently held that two criteria need to be cumulatively satisfied to attract complicity: first, there must be evidence that the person intended to aid or promote the underlying offence, and second, there must be evidence that the person actively participated in the crime by soliciting, aiding, or agreeing to aid the principal. The accomplice can be prosecuted even though the direct perpetrator has not been prosecuted or convicted provided the fact of commission of the offence is proven (Model Penal Code Section 2.06(7)).

The Model Penal Code does not draw a distinction between the punishment of principals and accessories. Consequently, the distinction between crime participants made no impact on the sentence. The case law suggests confirms that the accomplice is subject to the same punishment as principal in crime's commission.

Complicity in France

The first French Penal Code was adopted in 1791. It was strongly influenced by the ideas of Enlightenment, and, in particular, by the philosophy advocated by Beccaria. The second Penal Code came into existence in 1810 and was commonly referred to as the «Napoleonic Code». In 1992, France adopted its third Penal Code after a few unsuccessful attempts to reform the Napoleonic Code.

The French Penal Code recognizes only two participants in crime: perpetrator and accomplice. The perpetrator commits the prohibited act. The accomplice either (1) facilitates its preparation or commission by aid and assistance, or (2) incites the commission of an offence by means of a gift, promise, threat, order, or an abuse of authority or powers, or gives the directions to commit it (Articles 121.4-121.7 French Penal Code). In French law, the instigator is an accomplice, and he does not occupy a separate niche in the scheme of crime participants. The accomplice is punished as the primary actor (Article 121.6 French Penal Code).

The mens rea of complicity under French law consists of the knowledge of the intended crime and the intention to assist (meaning there cannot be aiding and abetting negligent offences). The performance of the actus reus of the offence is the line that divides co-perpetrators and accomplices under French law. The co-perpetrators perform the actions, which constitute an offence, while the accomplice carries out ancillary acts with the view of assisting the offence. This distinction does not lead to

differentiated punishment. The accomplice is punished as if he were a perpetrator (Article 121.7 French Penal Code).

French law, however, is also equipped with specific offences tackling participation by several accused. These offences are called collective offences and they involve the plurality of persons. Examples of such offences are «plotting to execute an attack» (complot) or «criminal association» established with a view to the preparation for the crime. In both cases, the steps need to be taken in furtherance of the agreement (Articles 412-2 and 450-1 French Penal Code).

Complicity in Germany

The German Penal Code retained its conceptual structure, despite having been regularly amended since its initial adoption in 1871. The German Penal Code attaches a conceptual importance to differentiating among different actors involved in the commission of the crime. The following crime participants can be identified based on the provisions of the German Penal Code:

- A primary perpetrator is an actor who commits the criminal act himself (Article 25(1));
- A co-perpetrator is a person who commits the offence jointly with others (Article 25(2));
- An indirect is a principal who commits the offence through another (as per the German definition) (Article 25(1));
- An instigator is any person who intentionally induces another to intentionally commit an unlawful act (Article 26);
- A facilitator is any person who intentionally assists another in the intentional commission of an unlawful act (Article 27 (1)).

The instigator and facilitator are punished as a principal offender (Article 26, 27 (2) German Penal Code).

The objective theory holds as perpetrators only those who have partially or entirely committed the offence, described in the special part of the penal code. All others are instigators and aiders. The subjective theory, on the other hand, distinguishes between perpetration and mere participation based on the internal cognitive processes of the individual, such as will, motives and intentions. There is a division within the subjective theory between those who consider that the factor distinguishing perpetration and participation is individual will, and those who stress the importance of acting in your own interest or someone else's interest.

The rule is that if one of the participants lacks a certain quality necessary for the particular offence or lacks the necessary mens rea, he cannot be a joint principal of that offence. In addition to that, the deviation of a joint principal from a common plan cannot be attributed to the other participants.

German law recognizes some kind of criminal conspiracy: "a person who declares his willingness or who accepts the offer of another or who agrees with another to commit or abet the commission of a felony shall be liable under the same terms." Withdrawal from the plan or an earnest attempt to prevent the completion of the crime suffices to exempt such a participant from liability (Articles 30(2) and 31).

The summary of the general trends shows that, despite the visible disparity of the legal systems in setting the boundary between complicity and perpetration, common grounds can be identified. It also shows that there exist more than one solution offered by different legal systems for crimes committed by several defendants or by the accused that did not physically perform the *actus reus* of the offence. Thus, there is no need to rush into adopting a concept devised by domestic law of one single country. Perhaps, it is wiser to learn what various legal systems have to offer, identify some common trends, and utilize the mechanisms that best of all address the nature of international wrongdoing. Comparing different jurisdictions is already a reasonable exercise in itself because it gives a perspective and a deeper understanding of rationale behind the doctrine of criminal participation.