

COMPARATIVE CRIMINAL LAW, INTERNATIONAL CRIMINAL JUSTICE, THEORY OF CRIMINAL LAW

# QUESTIONS FROM THE UNCONVINCED

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To be satisfied with the unitary theory, you must be content with the most simple solution. In my view this is not the best approach to cope with the variety of social and criminal life. As soon, however, as you wish to pay attention to the varieties of the performances of crimes, you must be prepared to make differentiations – and this may unavoidably be a source for different demarcations. But even if this entails controversies, can this be a reason to sacrifice individual justice (by distinguishing between perpetration and participation) on the altar of (unitary) simplicity?

To become convinced of the latter alternative, I would like to have these questions answered:

- Regarding the argument that the differentiation models would not correspond to real life, is this more the case if causation is considered the only basis of imputation, thereby ignoring any differences in the manner in which, and in the weight by which, a contribution is made to the performance of a crime?
- And if there is a factual and social difference, as can hardly be denied if the view is not normatively and holistically preprogrammed, should this difference be paid attention to only at the sentencing stage or should it rather be expressed already in the guilty verdict?

- And if only on the sentencing level, how and according to which criteria should this be done? This is a question, by the way, which is neither dealt with in your article nor are any suggestions by your proponents of the unitary theory visible.
- If indeed, however, even the unitary theory cannot avoid taking notice of different types and manners in which a person can be involved in the performance of a crime, why couldn't and shouldn't this be made public in the verdict?
- So the only practical advantage the unitary theory seems to offer so far is a procedural one: that the problem of recharacterization may be avoided. Yet, is this really the case if even according to the unitary theory differences in the crime performance are (to be) made at the sentencing stage? In a murder case, for instance, what could a defendant do if he had defended himself by merely involuntary having told where the victim might be met but finds himself sentenced to life imprisonment because of being proven to have been on the scene and directly involved in the killing? Could his appeal be rejected by simply referring to his causal contribution, thus rendering any differential circumstances irrelevant? Or shouldn't it rather be in the interest of individual justice to assess the penalty according to the type and weight of his contribution? However, if he thus succeeded in getting his sentence adjusted to his minor contribution, as I think he should, could this be done without differentiations and recharacterizations? So what, in the end, is finally left of assumed procedural advantages of the unitary theory?
- Regarding your references to political and ideological superpowers smaller countries were able to free themselves from by introducing the unitary theory, should such sovereignty aspects indeed play a role as to whether criminal theory is good or bad?

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