

Indirect Co-Perpetration

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Abstract National and international criminal law systems are continually seeking doctrinal and theoretical frameworks to help them impose individual liability on collective perpetrators of crime. The two systems move in parallel and draw on each other. Historically, it has been mostly international criminal law that leaned on domestic legal systems for its collective modes of liability. Currently, however, it is the emerging jurisprudence of the International Criminal Court that is at the forefront of innovation, with the doctrine of indirect co-perpetration taking the lead in international prosecutions. The article assesses the potential contribution as well as the limits of this compound doctrine to domestic criminal law jurisprudence, particularly with regard to small-group criminality. Four modes of indirect co-perpetration are discussed, namely shared control, concerted control, controlling board, and flawed triangle perpetration. A doctrine of indirect co-perpetration would enable liability in these modes of perpetration, perhaps with the exception of the latter, which marks the limits of its applicability.

Keywords Criminal responsibility · Co-perpetration · Perpetration by means · International criminal law

Introduction

The emerging jurisprudence of the International Criminal Court in The Hague (ICC) assigns a significant place to a novel mode of liability that merges the doctrines of co-perpetration and perpetration by means (indirect perpetration) to form the composite “co-perpetration by means” or “indirect co-perpetration.” The present article provides an analytical framework for assessing the potential contribution of this compound doctrine to domestic criminal law. Specifically, it contemplates the role of indirect co-perpetration in responding to commonplace small-group criminality, as opposed to large-scale system criminality, in the context of which it was developed by the ICC.

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