

Holding Organized Crime Leaders Accountable for the Crimes of their Subordinates

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Abstract Criminal law doctrine fails to provide an adequate solution for imputing responsibility to organized crime leaders for the offenses committed by their subordinates. This undesirable state of affairs is made possible because criminal organizations adopt complex organizational structures that leave their superiors beyond the reach of the law. These structures are characterized by features such as the isolation of the leadership from junior ranks, decentralized management, and mechanisms encouraging initiative from below. They are found in criminal organizations such as the American Mafia, the Japanese Yakuza, and even outlaw motorcycle gangs. The paper offers a doctrine that may transcend this shortcoming. Referred to as “leaders’ liability,” this doctrine will be assessed and appraised through a comparison with competing theories such as accomplice liability, *Organisationsherrschaft*, and conspiracy.

Keywords Organized crime · Criminal responsibility · Complicity

In a previous article published in this journal (Eldar 2010), I argued in some length that both considerations of retribution and deterrence are inadequate to the task of providing a convincing foundation for the prevailing intuition that the organized crime leader should be punished more severely than the direct perpetrator for each given offense committed within the organizational framework. My analysis, drawing from theoretical criminology and empirical studies of organized crime, led me to rule out such rationales as coercion, causation, bureaucratization, fungibility of subordinates, facilitation of crime and augmented utility in the punishment, which many find inherent to the “leader-solider” relationship. I concluded that this intuition stems from a confusion between a wish to hold an organized crime leader responsible for the sum total of all acts committed by organization members—overall responsibility greater than the individual responsibility of each member—and a belief that he should be treated more harshly than the direct perpetrator for each separate offense. The leader should be subject to greater punishment than a subordinate

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