DOUBLE CRIMINALITY AS A REQUIREMENT TO JURISDICTION

Dr. Christine van den Wyngaert
Professor, University of Antwerp

1. Meaning of the rule

Double criminality as a condition to jurisdiction means that, for the criminal law of a state to be applicable to a given conduct, that conduct should also be punishable under the criminal law of another state, usually[1] the state where the crime was committed. The conduct in question should fall under the criminal law of two states, the state where it is prosecuted, and the other state. Accordingly, the criminality of the conduct should be "double".

Double criminality does *not* mean *identity of norms*. The condition of double criminality, both in extradition and in jurisdiction cases, is fulfilled when the conduct is punishable under the law of both states. The norms prohibiting the conduct must not be identical, it is sufficient for the conduct to be punishable under both laws, whatever the denomination under the statute. For example, writing out a cheque with unsufficient funds is a specific crime in Belgium, but not in France or the Netherlands. Nevertheless, the conduct prohibited in the Belgian statute may be criminal in France or the Netherlands as, for example, swindling or obtaining money by false pretenses.

2. Applicable scope

Double criminality as a condition to jurisdiction in practice only applies to crimes committed outside the territory of the state, *i.e.* "extraterritorial crimes". With regard to "territorial crimes", no such restriction exists: for these crimes, the judge will always apply domestic law, regardless of any

[1] Not always: *see infra*, 3.4. *in fine*.

"foreign elements" in the case such as the nationality of the perpetrator, the victim, the protected interests, *etc.*

Theoretically, the court judging "territorial crimes" committed by or against a foreigner or against foreign interests could take into account the law of the state where the foreigner (perpetrator or victim) resides (*lex domicilii*) or of whom he is a national (*lex personae*). However, no state restricts its criminal jurisdiction in such a manner. For territorial crimes, domestic law (*lex fori*) is always applicable, without any restrictions drawn from the *lex domicilii* or the *lex personae*. For example, a Moroccan who commits bigamy on French territory can be punished, regardless of the fact that bigamy is not punishable under Moroccan law. A Dutchman who wines and dines in a restaurant in Brussels without paying the bill commits the crime of *grivellerie* in Belgium, notwithstanding the fact that in the Netherlands, such conduct is only a tort, not a crime.

Consequently, double criminality as a condition to jurisdiction never applies to "territorial crimes". It may, in certain circumstances apply to crimes committed abroad. However, even in that case, the rule does not imply that the law of the place where the crime was committed (*lex loci delicti*) is actually applicable to the conduct in question. For extraterritorial crimes, the applicable law is always the domestic law of the state in which the crime is tried, *i.e.* the *lex fori*. Unlike the general rule in international private law regarding *torts*, (which, when committed abroad, are judged according to the *lex loci delicti*), extraterritorial *crimes* are invariably tried on the basis of the domestic law of the court judging the case. Accordingly, double criminality does not amount to actually applying foreign law, but only to taking it into account as a potential bar for the application of domestic law.

Exceptionally, some legislations may go one step further by applying the rule of the *lex mitior* to extraterritorial crimes: if there is a difference in penalty between the *lex loci delicti* and the *lex fori*, then the lowest penalty applies.[2] In practice, this means that if the penalty under *lex loci delicti* is lower than under domestic law, then the maximum, provided by domestic law, is reduced to the maximum penalty under the *lex loci delicti*.

[2] For example, Austrian penal code, 1974, art. 65 (1) 2 ; Swiss penal code, 1937, art. 6 (1); Model penal code for Latin America, 1973, art. 1 (4). *See also* art. 25 of the European Convention on the Transfer of Criminal Proceedings (Strasbourg, 1972, *E.T.S.*, nr. 73) and art. 17 (1) of the Benelux Treaty on Transfer of Criminal Proceedings (Brussels, 11 May 1974).

Consequently, there is no room, thus far, for the application of foreign criminal law.[3] This has not always been the case. In Bartolus' time a court judging a crime committed abroad could apply its domestic law (*lex fori*) to matters of procedure, but as far as substantiave law was concerned, application was to be made either of the *ius commune*, *i.e.* Roman law, or of the *lex loci delicti*.[4] With the French revolution and the rise of the nation-state, however such cosmopolitism in the application of foreign criminal laws disappeared. Since then, states restrict the application of their laws to conduct, committed on their territories (territoriality principle), and, in the exceptional cases in which jurisdiction for extra-territorial crimes exists, the law applicable to such crimes is domestic law. This approach is based in part on the social contract theory, but mainly on the idea that applying foreign criminal law would be incompatible with the principle of state sovereignty.

In the course of the 19th and 20th centuries, the range of possibilities of extraterritorial jurisdiction has been gradually widened. New theories on crime and punishment gave rise to other forms of inter-state co-operation in criminal matters that are more offender-oriented than giving effect to the demands of state sovereignty (*e.g.* transfer of criminal proceedings, execution of foreign judgments, transfer of offenders). However, this new approach has not resulted in the direct application of foreign criminal laws. The only current but restricted recognition which is being given to such laws is under the doctrine of double criminality which, however does not apply to *all* extraterritorial crimes.

[3] Some authors have proposed a generalized application of the *lex loci delicti* to extra-territorial crimes. *See* DONNEDIEU DE VABRES, H., *Les principes modernes du droit pénal international*, Paris, 1928, 188 *et seq.*; TROUSSE, P.E., "Le règlement sur le plan européen des compétences législatives et judiciaires en matière pénale", in *European criminal law*, Brussels, 1970, 387-421, at 419. *See also* International Penal Law Association, 8th Congress, Section IV, Resolution II (2), *Rev.Dr.pén.crim.*, 1961-62, 501 and HUET, A., "Pour une application limitée de la loi pénale étrangère", *Journal de droit international*, 1982, 653.

[4] For an analysis of the writings of Bartolus and Voet on this point, *see* KEIJZER, N., "Double incrimination", in *Beginselen. Opstellen over strafrecht aangeboden aan G.E. Mulder*, Arnhem, 1981, 143-163.

3. Double criminality under the various theories of extraterritorial jurisdiction

3.1. The active personality principle

The most current application of the double criminality rule is under the *active personality principle*. According to this principle states have jurisdiction over offences, committed abroad by their nationals. The principle is based on a double rationale: state sovereignty (*i.e.* a state should have the right to monitor the behaviour of its citizens abroad) and international solidarity (*i.e.* cooperation with the state on whose territory the crime was committed).

Not all countries, however, restrict their jurisdiction under the active personality principle through the double criminality rule. Some penal laws contain no restriction at all.[5] In practice this lacuna may be filled by case law: for example, in Belgium, where the principle was only codified in 1964, the courts nevertheless applied it in practice before that date.[6]

Some statutes, while generally recognizing double criminality as a requirement for jurisdiction under the active personality principle, nevertheless make exceptions for certain crimes. These exceptions may be based on the *seriousness of the crime* (for example, in France, the test only applies to *délits*, not to *crimes*[7]), the *particular nature of the crime* (for example, the German penal code lists abortion and a number of sexual offences among those that do not require double criminality[8]) or the fact that the crime was committed by *certain categories of persons* (for example in Belgium, double criminality does not apply to offences by the military abroad[9]); some countries provide that crimes committed abroad by or against their public officials are punishable, regardless of the principle of double criminality[10].

[5] See *e.g.*, Iceland, penal code, 1940, art. 5 (1); Finland, penal code, Chapter 1 art. 2; Rumania, penal code, art. 4; Turkey, penal code, art. 5.

[6] Supreme Court, 15 July 1907, *Pasicrisie*, I, 1907, 334.

[7] *See* art. 689 of the French code of criminal procedure.

[8] Art. 5(9) of the penal code of the German Federal Republic.

[9] Art. 10bis of the Preliminary Title to the code of criminal procedure.

[10] *E.g.*, Art. 6 of the Dutch penal code.

3.2 The passive personality principle

The second theory of extraterritorial jurisdiction is the *passive personality principle*, according to which states have jurisdiction over offences committed abroad against their nationals. This theory is less widely accepted than the preceding one. Some states, like the German Federal Republic, have had it in their statutes for many decades, whereas countries like France and Belgium have only recently introduced it.[11] Many states are still reluctant towards the principle and do not allow for extraterritorial jurisdiction on this basis. Usually, states that recognize passive personality as a basis for jurisdiction, accept the rule of double criminality as a restriction to that jurisdiction.

3.3. The protection principle

On the contrary, double criminality never applies when extraterritorial jurisdiction is based on the *protection principle*. Usually, this principle applies to crimes committed against state security, but it may, rather exceptionally, also encompass crimes against the economic interests of a state. Under most statutes, such crimes when committed abroad are punishable, regardless of the question whether the conduct concerned is also a crime according to the *lex loci delicti*. Many such crimes are only prescribed under the law of the state against which they are directed. As states usually only protect their own state security and not the security of other states, the condition of double criminality is very unlikely to be fulfilled for crimes falling under this principle. Moreover, extradition will in most cases be excluded by the political offence exception. This explains why states apply their criminal laws to such behaviour without looking at the *lex loci delicti*.

3.4. The universality principle

The question as to whether the double criminality test applies to crimes falling under the *universality principle* is difficult to answer in general. The universality principle confers jurisdiction on the *judex deprehensionis*, regardless of the place where the crime was committed and of the natio-

[11] Art. 10(5) of the Preliminary Title to the Belgian code of criminal procedure; Art. 698–1 of the French code of criminal procedure.

nality of the author(s) or victim(s) of the crime. It applies to many, but not all international crimes.[12]

A possible approach would be to say that these crimes, by their "universal" vocation, are punishable in all states and that therefore double criminality can be presumed. The difficulty here is that the notion 'international crime' has, so far, no clear technical definition.[13] Can all crimes which have been defined in multilateral international conventions (war crimes, genocide, hijacking, torture, apartheid, *etc.*) be considered as international crimes, by virtue of their inclusion in an international convention, or is the label "international crime" to be restricted to those crimes only which have been explicitly declared international? And, assuming that a crime qualifies as "international", the question remains what the practical implications of this characterisation are: does it mean that the universality principle applies, that there is a duty to extradite or to prosecute? Under international law, the question is by no means clear. Domestic laws on the subject vary.[14]

Most domestic laws do not restrict their universal jurisdiction to the condition of double criminality. Usually, the crimes to which the universality principle applies are indicated explicitly.[15] Only some codes contain an "open provision", extending their jurisdiction to international crimes, without further specifying or enumerating these crimes.[16] Without too much generalization, it can be said that for crimes falling under the universality principle, the condition of double criminality usually does not apply.

[12] For example, there is no universal jurisdiction for *genocide* under the 1948 Genocide Convention (Convention for the prevention and suppression of the crime of genocide, Paris, 9 december 1948).

[13] This problem will be discussed by the IVth Section of the 14th International Congress on Penal law, to he held in Vienna on 1–7 October 1989.

[14] *Ibid.*

[15] *See* for example, Art. 6 (1)–(8) of the German penal code (which also lists crimes for which no universal jurisdiction exists under international law, such as genocide (art. 6 (1)) and Subventionsbetrug (obtaining subsidies by false pretenses) (art. 6 (8)). *See also* Art. 4 of the Dutch penal code.

[16] See *e.g.* Art. 6 (9) of the German penal code, which refers to crimes that must be prosecuted under an international convention that binds the German Federal Republic.

3.5. The representation principle

A fifth and last theory of jurisdiction is based on the so-called "representation principle", also called *"derived jurisdiction"* or *"subsidiary universal jurisdiction"*. Under this principle, states have jurisdiction over offences committed abroad for which they have refused extradition, after having received an extradition request. The jurisdiction of the state who denied extradition is "derived" from the jurisdiction of the requesting state. The difference from *absolute* universal jurisdiction is that the latter presumes that both the requesting and the requested states are competent to adjudicate the case. Jurisdiction under the representation principle or subsidiary universal jurisdiction only exists if extradition has been requested by a state having jurisdiction, but was refused. The jurisdiction of the requested state is "derived" from the jurisdiction of the requesting state, it is "subsidiary" to that of the latter; the requested state only "represents" the requesting state.[17] Whereas absolute universal jurisdiction goes together with the maxim *"aut dedere aut judicare"*, subsidiary universal jurisdiction is focused on *"primo dedere, secundo judicare"*.

This theory of jurisdiction is relatively recent, although it has a forerunner in the active personality principle which originally served as a compensation for the non-extradition of nationals. More recent applications are the European Convention for the Suppression of Terrorism[18] and the European conventions on transfer of offenders,[19] on the international validity of European criminal judgments[20] and on the transfer of prisoners.[21]

This theory of jurisdiction quite obviously assumes that the behaviour to which it is applied is punishable under the law of the state asking for the international cooperation (extradition, transfer of proceedings, execution of criminal judgments). Usually, that state shall be the state where the offence was committed (*locus delicti*), but this is not necessary: the jurisdiction of the requesting state may also be based on other jurisdiction

17 For example, Art. 65 (1) 2 of the Austrian penal code; Art. 4a of the Dutch penal code.

18 Convention for the Suppression of Terrorism, Strasbourg, 27 January 1977, *E.T.S.*, nr. 90.

19 European Convention on the Transfer of Criminal Proceedings, *supra*, note (2).

20 European Convention on the International Validity of Criminal Judgments, The Hague, 28 May 1970, *E.T.S.*, no. 70.

21 Convention on the Transfer of Sentenced Persons, Strasbourg, 21 March 1983, *E.T.S.*, no. 112.

claims such as the active or passive personality principles. Consequently, unlike the jurisdiction theories discussed above, where the condition of double criminality always referred to punishability under the *lex loci delicti*, double criminality here refers to punishability under the law of the requesting state, which may not be the state of the *locus delicti*.

4. Double criminality as a condition to jurisdiction v. double criminality as a condition to extradition

Double criminality as a condition to jurisdiction is to be distinguished from double criminality as a condition to extradition.

The question of double criminality as a *condition to extradition* relates to the punishability of behaviour under the law of the *lex fori*. The court, deciding in a extradition case will have to examine whether the behaviour for which extradition is requested is punishable under its *domestic law*. If Germany requests extradition from Belgium of a person accused of *Betrug*, the Belgian court will examine whether *Betrug* is punishable under Belgian law.

Conversely, the question of double criminality as a *condition to jurisdiction* relates to the punishability of the behaviour under the law of the place of commission (*lex loci delicti*). Here, the judge will have to examine whether the conduct is punishable also according to the *law of the other state*. If a Belgian who has wined and dined in a Dutch restaurant without paying the bill (*grivellerie*) is prosecuted in Belgium, the question will be whether such conduct is punishable under Dutch law.

This explains some of the differences which may exist in the interpretation of the double criminality rule between extradition cases and jurisdiction cases. In extradition cases, where the aim of the procedure is to surrender a person to another state to have him prosecuted or punished *there*, double criminality is a more or less hypothethical question: the extradition judge will not have to judge the case himself, he must only inquire whether the conduct for which the surrender is requested, would have been a crime if it had been committed in his own territory, *i.e.* the territory of the requested state. In jurisdiction cases, the judge will actually decide about the case before him. The question of double criminality here is not whether the conduct is punishable under domestic law, but whether it was also a crime under the law of the place where it was committed (*lex loci delicti*).

5. Double criminality: in abstracto or in concreto?

The most important theoretical debate concerning double criminality probably relates to the question whether the rule has to be interpreted *in abstracto* or *in concreto*. When double criminality is considered only *in abstracto*, it is enough for a crime to be punishable under the laws of both states, regardless of the question as to whether, in the concrete circumstances of the case, prosecution and/or punishment would be possible.

Double criminality *in concreto* goes much further: in order to be punishable, the conduct should, in the concrete case, be criminal in both states. In other words, it is not sufficient for the crime to be punishable "in the books"; the judge must also look at the elements which, in the concrete circumstances, either justify or excuse the act (substantive elements) or make prosecution impossible (procedural impediments). It is obvious that the "in concreto" – interpretation is more favourable for the offender, because it will make prosecution more difficult.

An example of a *substantive impediment* would be that of a drug offender, prosecuted for a drug offence abroad, who invokes having been the victim of an *agent provocateur* in that country. An abstract double criminality test would not take this argument into account, whereas the concrete test would.

Also *procedural impediments* could result in that, in the given circumstances, an offence which meets the double criminality test *in abstracto*, can nevertheless not be punished for lack of double criminality *in concreto*. For example, a Dutchman has committed an aggravated robbery in Ruritania. When the case is brought before a Dutch court, the time for prosecution in Ruritania has elapsed. Double criminality in concreto would mean that prosecution in the Netherlands would be barred by the statute of limitation under Ruritarian law.

There is no clear-cut answer as to which of the interpretation models, the abstract or the concrete, prevails in practice. In extradition law, the abstract model seems to prevail, at least as far as the substantive elements are concerned.[22]

In the law on jurisdiction, the situation is less clear. The answer may be different according to the theory of extraterritorial jurisdiction that is

[22] There are, however, many extradition statutes and treaties that list some procedural impediments (such as *non bis in idem* and statutes of limitation) as bars to extradition, which are examples of the in concreto interpretation.

applicable in the concrete case (active or passive personality, protection or universality principle, *etc.*), but also according to the rationale behind the double criminality rule itself. In general terms, the systems inspired by the German tradition (German Federal Republic, Austria, Switzerland) seem to have a tendency towards the *in concreto* interpretation, whereas the countries of the French tradition rather tend towards the *in abstracto* interpretation.[23]

6. Rationale of the double criminality test

There are different factors composing the rationale of the principle of double criminality. Depending on whether the rule is applied in an extradition or a jurisdiction case, varying parts of the rationale may be emphasized. And within the various theories on jurisdiction, different parts of the rationale may prevail, depending on whether the active/passive personality, the protection principle or the universality principle applies.

6.1. State sovereignty

The first part of the rationale is based on *state sovereignty*. This is especially true for extradition: a state will not cooperate in the suppression of conduct which, according to his own concepts, is not criminal. There is also an element of reciprocity behind this reasoning: states only extradite for behaviour they both consider as criminal. The argument of state sovereignty also applies to jurisdiction. States should, as a matter of principle, restrict their criminal legislation to their territories. By criminalizing conduct outside their territories, regardless of the applicable law on the place of commission, states would interfere in the domestic affairs of the other state (*hineinregieren*) which is contrary to the principle of non-intervention. Restricting the extraterritorial application of criminal laws to the condition of double criminality is one of the practical embodiments of this principle.

[23] KEIJZER, N., *o.c.*, 155 *et seq.*

6.2. International solidarity

Double criminality, in the second place, has to do with *solidarity* among states. Extraterritorial jurisdiction is not only a matter of sovereignty, of extending the "arm of the state" abroad, it may also be based on the wish to cooperate with another state in the suppression of crime. In this perspective, the state exercising extraterritorial jurisdiction will act in the place of the *judex loci delicti*. This idea of 'replacing' (*stellvertretende*) jurisdiction underlies some theories of extraterritorial jurisdiction (mainly the active personality principle and the representation principle) and also the more recent forms of cooperation between states in criminal matters (transfer of criminal proceedings, execution of foreign criminal judgments and transfer of offenders). Unlike extradition, which still primarily relies on a rationale of state sovereignty, these recent cooperation forms mainly stem from an idea of international solidarity in the interests of a global criminal justice policy. This part of the rationale favours the *in concreto* interpretation of the double criminality rule: if the state judging the case acts on behalf of the state where the crime was committed, it should only intervene to the extent in which the conduct was actually punishable in the concrete circumstances in which it occured in the state of commission.

6.3. The legality principle

Last but not least, double criminality can be considered as an aspect of the *legality principle*. In this perspective, the reason for the rule would be that a person should only be accountable for conduct that was punishable according to the law of the place where it was committed.

The last point undoubtedly raises a number of questions: if double criminality is a sort of emanation of the legality principle, which is recognized as one of the most fundamental,[24] even 'notstandsfeste' human rights,[25] are the exceptions to this rule compatible with the legality principle? In most legislations, the double criminality rule does not apply to all extraterritorial crimes. Accepting the aforementioned premise would mean that, in those legislations, double criminality should apply even if it is not explicitly mentioned as a condition to jurisdiction. Seen within the context of the legality principle, the double criminality rule as a condition

[24] European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 7; International Covenant on Civil and Political Rights, art. 15.

[25] European Convention, art. 15; International Covenant, art. 4.

to jurisdiction should probably be interpreted *in concreto*, certainly as to the substantive impediments to prosecution in the state where the crime was committed.

7. Final observations

The questions raised in the last paragraph indicate that the double criminality rule may be more than just a technical principle within the very technical discipline which the law on jurisdiction undoubtedly is.

It is possible to give a legalistic answer to the questions based on a comparative analysis of the domestic laws of various states. Problems not only of criminal law but also of constitutional law would have to be dealt with for each state, for example the question of the relationship between domestic law and international (human rights) law. There is no room for such an analysis here.

Instead, the questions have been formulated more in general, in the sense of questions that call for common, criminal justice policy-oriented answers. The questions we discuss here with respect to double criminality are inherent to the fundamental issue of the criminal law in general, *i.e.* the problem of balancing the rights of the individual against the needs of (domestic and/or international) suppression of crime.

The preliminary question to be answered for the purposes of the problem we are dealing with here is: what are the rights of an offender who is prosecuted for an extraterritorial offence under the legality principle? Does the legality principle imply that a person should not be prosecuted for behaviour that was not punishable, not only *tempore delicti* but also *loco delicti*?

Giving a positive answer to this question would have far-reaching practical implications. It would mean that states would have no jurisdiction to prosecute crimes against their state security committed abroad, and that jurisdiction vis-à-vis many international crimes would be blocked in the absence of double criminality. It would also mean that states which do not recognize the double criminality requirement for all or for some crimes falling under the active personality principle would have to adapt their legislation (or give direct application to the relevant provisions of the international human rights instruments).

For international crimes, an exception to the legality principle in this respect could be drawn from the texts of the relevant provisions of those

international human rights instruments, that provide a general exception for what we would now call international crimes.[26] But the difficulty referred to above remains: what is the technical meaning of the concept "international crime"?

For crimes against state security, it could be argued that (criminal) jurisdiction over such crimes belongs to the inherent sovereign right of a state to defend itself. The question then is whether such a right allows departure from an internationally recognized human right, *i.e.* the legality principle? Neither the European Convention on Human Rights nor the International Covenant on Civil and Political Rights allows any restriction in this respect.[27] A way to circumvent the problem would be to locate extraterritorial crimes against the state on the territory of that state by means of the effects doctrine, in which case the territoriality principle would apply. This approach, however, is a potential for abuse. Efforts by some states to "territorialize" extraterritorial behaviour by means of the effects doctrine, in order to avoid the condition of double criminality, have been vehemently criticized in European literature.[28]

Another way to argue in favour of a restricted application of the double criminality rule would be to say that it is not a substantive rule (like the legality principle), but only a rule of procedure. This argument would overlook the fact that in most legal systems, the rules on (extraterritorial) jurisdiction, including the principle of double criminality, are dealt with in the criminal codes, not in the codes of criminal procedure, and are therefore to be considered as substantive rules.

Of course, the problem of a person being prosecuted in a state for behaviour not punishable in the state where the behaviour occured in practice only arises if that person is within the *in personam jurisdiction* of the prosecuting state, *i.e.* when he is physically present on the territory of that state (the problem of *in absentia* judgments is left aside). This physical presence can have been assured in two ways: by force or voluntarily.

By force would be in case of his return after a regular extradition procedure or after an irregular rendition procedure (disguised extradition,

[26] European Convention, art. 7 (2); International Covenant, art. 15 (2).

[27] Art. 15 of the European Convention and art. 4 of the Covenant.

[28] See *e.g.* the debate over the measures of the Reagan administration in 1982 that criminalized activities which were not punishable in Europe but which applied extraterritorialy to American enterprises that violated the U.S. embargo against the Soviet Union by acts, located in the territory of the E.E.C., *see* X, "Does Mr. Reagan's writ run in Europe?", *Common Market L.R.*; 1982, 497.

kidnapping, *etc.*). Extradition would be unlikely, since the crime was, in our hypothesis, not punishable on the place where it was committed; extradition would normally be excluded by the double criminality requirement to extradition (unless extradition is requested from a third state). Therefore, return "by force" would more likely be irregular. There is no room here to discuss the subject of irregular extradition, but it seems to me that, in addition to the question of the legality of the *in personam* jurisdiction, questions as to the substantive jurisdiction over the crime for which the abducted or irregularly extradited person is held responsible can be raised.

What if a person, after having committed a crime abroad, that was not punishable under the law of the *locus delicti*, has returned voluntarily to the state where his behaviour is punishable? Can it be said that the person by his voluntary return has waived his right not to be prosecuted? Or should the legality principle exclude prosecution anyway?

I shall not answer these questions here, but submit them to the audience. It is the privilege of an introductory report to identify the issues and answer the preliminary questions. I have abused this privilege by, going further than that, raising some additional questions to which I have no ready answer myself.