Double Punishment under 654

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When, under a multiple-count indictment or information, or, where two or more indictments or informations have been consolidated, a defendant is convicted and sentenced on more than one count, the question of double punishment may arise. If the defendant has committed but one offense charged in different statements, the imposition of more than one sentence would subject him to double punishment. In such a case the prohibition against double punishment is based on the doctrine of identity of offenses. To be distinguished is the situation where the defendant has committed a single act which gives rise to more than one offense, in which case the imposition of a multiple sentence may be barred by section 654 of the California Penal Code. If, in a given case, the doctrine of identity of offenses is deemed applicable, it would seem to preclude the applicability of section 654, since the former is concerned with two or more violations of the same statute while the latter is brought into operation when one act violates two or more sections of the Penal Code. The cases which have applied the doctrine of identity of offenses seem well in accord but no such harmony can be found among the cases which have interpreted section 654.

Some of the difficulty centers around the definition of the word "act" as used in section 654. Should the statute be applied where the defendant has committed a single, indivisible act or should the word "act" be deemed to include all acts which are part of the same transaction? Pulling a trigger once is but one act; beating, robbing and kidnapping a person includes several acts which may be part of the same transaction. To perform an abortion or to place a bomb in an automobile constitutes but one act although a series of physical movements is necessary in each case. On the other hand, to possess, transport and sell heroin indicates the commission of a series of criminal acts which are frequently part of the same transaction.

Where the court, in one case, restricts the meaning of the word "act" so as to divide a series of physical movements which appear to be inseparable,
and, in another case, broadens the meaning to include a series of acts constituting a transaction it becomes difficult to determine whether a multiple sentence does or does not impose a double punishment. Such is the present state of the law. The cases give rise to two problems: Under what circumstances should section 654 be applied? And when section 654 is applied, what procedural steps should be followed vis-à-vis the convictions and sentences?

UNDER WHAT CIRCUMSTANCES SHOULD SECTION 654 BE APPLIED?

The inquiry should be directed to a factual situation where a single act of the defendant results in the commission of two or more offenses each of which is made punishable in different ways by different provisions of the Penal Code. Suppose a person fires one shot from a pistol and kills two people. Two murders are committed and the defendant may be convicted and punished for each murder. This does not result in a forbidden imposition of double punishment because, by its terms, section 654 does not apply; the act is not being punished by “different provisions” of the Penal Code.

But suppose the bullet had missed the intended victim and killed an innocent bystander. Further, suppose the defendant is charged with murder and assault with a deadly weapon with intent to commit murder. By way of analysis we have a single act (pulling the trigger once), made punishable in different ways (by a term of imprisonment or by death), by different provisions of the code (sections 190 and 217 of the Penal Code). Upon conviction on each count it would appear that the imposition of punishment on each conviction would be barred by section 654. But, in holding that the section did not apply, the court stated, in People v. Brannon:

We do not think it [section 654] is applicable where, as here, the one act has two results each of which is an act of violence against the person of a separate individual.

No persuasive reasoning is set forth for this contention. Reliance is placed upon the fact that the section was in existence at the time the decision in People v. Majors was handed down. In the Majors case two people met death as the result of the defendant’s single act which, as was noted above, is not covered by a literal interpretation of the statute. The Brannon case does not help very much in an effort to discover the true meaning of section 654.

In People v. Coltrin the defendant performed an illegal abortion which resulted in the death of the victim. He was charged with performing an illegal abortion and murder. The California Supreme Court affirmed a double conviction and double sentence, holding that the defendant was not

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7 People v. Kehoe, 33 Cal.2d 711, 204 P.2d 321 (1949) (taking and driving an automobile).
8 Cf. People v. Majors, 65 Cal. 138, 3 Pac. 597 (1884).
10 65 Cal. 138, 3 Pac. 597 (1884).
11 5 Cal.2d 649, 55 P.2d 1161 (1936).
subjected to double punishment within the meaning of section 654. In interpreting that section the court said:\textsuperscript{12}

If the act involved in one charge is necessarily involved in the other and is merely incidental to that charge but one offense is committed and it cannot be carved into two offenses in order to inflict a double punishment.

The court is silent on what is "necessarily involved" in, or "merely incidental" to, a certain offense. By "necessarily involved" the court may have referred to an act constituting an element which must be proved to make out the offense (e.g., the act of force in relation to the crime of robbery; the act of penetration in the crime of rape). Further, by "merely incidental" the court may have referred to the manner in which the act was committed. For instance, where the act of force necessary to convict for robbery is committed by holding the victim's arms behind him while an accomplice goes through his pockets, that act could be deemed "merely incidental\textsuperscript{17}" to the crime of robbery. However, if the act of force is committed by beating the victim over the head several times with a deadly weapon it seems that this act passes outside the realm of incident. With such elaboration the Coltrin dictum may offer a starting point in setting forth a workable test to guide the lower courts in applying section 654 to a given fact situation. This possibility will receive further treatment below.

In the Coltrin case the court held that performing an abortion which results in death is something more than a single act and that at some point an act of the defendant caused the death of the victim but was not connected with the abortion. This is not very realistic unless the act which caused death can be isolated from the defendant's other physical movements. In any event, the Coltrin case stands for the proposition that the word "act" in section 654 is to be given an extremely narrow meaning.

In People v. Kynette\textsuperscript{13} the defendant placed a bomb in an automobile which, upon exploding, inflicted serious injury on his victim. He was convicted of attempted murder, assault with intent to commit murder and malicious use of explosives. He was sentenced on each conviction. Two of the sentences were to run concurrently, the third, consecutively. The Supreme Court held that all three offenses were traceable to the single act of placing the bomb in the automobile. To give effect to section 654, the court modified the judgments by causing all three sentences to run concurrently.

\textsuperscript{12} Id. at 660, 55 P.2d at 1166. The court is not strictly accurate in stating that "but one offense is committed . . . ." Though an act involved in one charge is necessarily involved in, and merely incidental to, another charge, nevertheless, two complete offenses have been committed. Section 654 provides, in effect, that where two offenses are committed, both resting upon the commission (or omission) of a single act, the defendant can be punished for only one offense.

\textsuperscript{13} 15 Cal.2d 731, 104 P.2d 794 (1940). Aside from the express holding in this case, the solution of another problem seems to have been taken for granted. Section 654 refers to "different provisions of this code," necessarily meaning different provisions of the Penal Code. (Emphasis added). However, in the Kynette case, the act violated two provisions of the Penal Code and one provision of the Health and Safety Code. No mention of this fact is made in this case nor is it discussed in later cases.
The court refused to split up the act as was done in the *Coltrin* case. In thus considering the placing of a bomb in a vehicle to be a single, indivisible act, the court seems more reasonably to have construed the word "act" as used in section 654.\(^4\)

The "single act" approach seems to have been expanded in *People v. Kehoe*.\(^5\) There, defendant stole a car in Eureka and was apprehended a week later in Salinas. He was convicted of grand theft-auto and driving a car without the owner's permission.\(^6\) The information charged that both crimes were committed in Humboldt County. In applying section 654 the court said:\(^7\)

\[\ldots\] in the absence of any evidence showing a substantial break between Kehoe's taking and his use of the automobile in that [Humboldt] county, only the conviction for one offense may be sustained.

Thus, this court deemed the meaning of the word "act" to be broad enough to include the taking and the subsequent driving of an automobile on the highways. How would this court have treated the facts in the *Coltrin* case? If the word "act" includes the taking and driving of an automobile, should it not also include the performing of an abortion? Rather it seems that the *Kehoe* case represents a broad, transactional approach, opposed to the narrower constructions found in the *Coltrin* and *Kynette* cases.

The discussion thus far has dealt with situations where an act, standing alone, has resulted in the commission of two or more offenses. Another problem arises where an act constitutes one offense and that act is joined with a further act (or element) so as to constitute another offense. Such was the case in *People v. Knowles*.\(^8\) There the defendants seized a shopkeeper and his clerk and confined them at gunpoint in a stockroom. The defendants then robbed the owner and the clerk and pilfered the cash register. Some merchandise was also taken. Convictions were returned on counts of kidnapping for purposes of robbery and armed robbery. The trial court judge imposed sentence on each conviction. The California Supreme Court held that both offenses rested upon the commission of a single act, saying:\(^9\)

\[\ldots\] If a course of criminal conduct causes the commission of more than

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\(^{14}\) Cf. *People v. Greer*, 30 Cal.2d 589, 184 P.2d 512 (1947) where the court refused to divide the defendant's single act of intercourse so as to inflict two punishments. See text at note 23 infra.

\(^{15}\) 33 Cal.2d 711, 204 P.2d 321 (1949).

\(^{16}\) Here, as in *People v. Kynette*, 15 Cal.2d 731, 104 P.2d 794 (1940), the act is punishable by provisions of different codes: grand theft—auto (Cal. Pen. Code § 487); driving a car without the owner's permission (Cal. Veh. Code § 503).

\(^{17}\) *People v. Kehoe*, 33 Cal.2d 711, 715, 204 P.2d 321, 324 (1949).

\(^{18}\) 35 Cal.2d 175, 217 P.2d 1 (1950).

\(^{19}\) *Id.* at 186-187, 217 P.2d at 7-8. Whether or not the seizure and confinement were an inseparable part of the robbery is beyond the scope of this article. This aspect of the *Knowles* case is discussed in Note, 24 So. Calif. L. Rev. 311 (1950). In that article the confusion and uncertainty which surround Section 654 are given express recognition.
one offense, each of which can be committed without committing any other, the applicability of section 654 will depend upon... whether a single act has been so committed that more than one statute has been violated. If only a single act is charged as the basis of multiple convictions only one conviction can be affirmed, notwithstanding that the offenses are not necessarily included offenses. It is the singleness of the act and not of the offense that is determinative.

The court cited People v. Greer as controlling. In that case the defendant committed a single act of intercourse but was convicted of statutory rape and lewd and lascivious conduct. By way of dictum the court explained,

Except for the rape itself, the only act of which she [the prosecutrix] accused defendant was the forcible removal of her underclothing immediately preceding the rape. To hold that the removal... constitutes an act separate from the rape, however, would be artificial in the present context and would permit double punishment. . . .

Also cited was the Kynette case where the placing of a bomb in an automobile was not coupled with another act. It is submitted that some distinction should be drawn between situations where but one act is committed, as in Kynette, and others, such as in the Knowles case, where the act in question is part of a criminal transaction. A suggestion along these lines appears below.

Reminiscent of the dictum found in the Coltrin case is this language in People v. Knowles: "Defendant committed no act of seizure or confinement other than that necessarily incident to the commission of robbery." The dictum in the Coltrin case appears to be applicable to situations involving a transaction rather than cases where the defendant has committed but one act. In the Knowles case the seizure was the act of force necessarily involved in the crime of robbery. From the manner in which it was committed it could be deemed merely incidental to that crime. If this be true, it appears that the Coltrin approach affords a better rationale for the holding in the Knowles case than either the Greer or Kynette cases.

In People v. White the defendant walked into a store and, at gunpoint, demanded money. Upon being told that there was none he beat the victim over the head with the gun butt. He was convicted of burglary, at-

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21 The defendant was awarded a new trial. The trial court erred in refusing to permit him to prove that a prior conviction of contributing to the delinquency of a minor was based upon the same acts charged in the instant case. In discussing double punishment, the court went beyond what was essential to the precise holding and disposition of the case. However, the trial court was ordered to give certain instructions which would render impossible the imposition of double punishment, in accordance with its discussion of that issue. See text at note 45 infra.
23 "If an act involved in one charge is necessarily involved in the other and is merely incidental to that charge..." People v. Coltrin, 5 Cal.2d 649, 660, 55 P.2d 1161, 1166 (1936).
24 35 Cal.2d 175, 188, 217 P.2d 1, 9 (1950) (emphasis added).
tempted robbery and assault with a deadly weapon. Since, in the Knowles case there was "no act of seizure or confinement other than that necessarily incident to the commission of robbery,"26 would not here the single act of walking into a store be "necessarily incident" to the attempted robbery of the occupant of that store? In addition to affirming the conviction for assault, the White case held: (1) the crime of burglary was committed when the defendant entered the store with the intent to commit larceny; (2) he was guilty of attempted robbery when he demanded money. On this set of facts the court distinguished the Knowles case.

It is submitted that, in the White case, the defendant was sentenced on each of three offenses while, logically, he should have been sentenced on only two—attempted robbery and assault with a deadly weapon. Testing by the Coltrin rule it would seem that the act of walking into the store was "necessarily involved" in, and "merely incidental" to, the charge of attempted robbery. It appears from the decision that the defendant made no mention of the Coltrin case but, rather, relied entirely on the Knowles case.

In some cases the courts have failed to maintain the distinction between the doctrine of identity of offenses and the statutory prohibition against double punishment. In the Knowles case the court cited People v. Clemett27 as authority. In the Clemett case the defendant was convicted of possessing and operating a still under the "Still Act."28 The court held that one of the convictions had to be reversed, not because a sentence on each conviction would subject the defendant to double punishment under section 654, but because of the identity of the offenses charged. The Still Act made possession or operation of a still unlawful. The court held that the possession was incidental to the operation and, therefore, only one offense was charged, saying:29

... co-operative acts constituting but one offense when committed by the same person at the same time, when combined, charge but one crime, and but one punishment can be inflicted as one offense.

The case is not authority for determining the applicability of section 654. When co-operative acts constitute but one offense, section 654 is not brought into operation. It is the commission of one act which constitutes more than one offense that gives rise to the problem of interpreting section 654.

It is unfortunate that the Clemett case was cited in the Knowles decision. The mischief wrought by this confusion seems to be carried a step further in People v. Logan.30 There the defendant beat a woman with a baseball bat and, while she lay unconscious, robbed her. He was convicted

26 35 Cal.2d 175, 188, 217 P.2d 1, 9 (1950).
27 208 Cal. 142, 280 Pac. 681 (1929).
29 People v. Clemett, 208 Cal. 142, 144, 280 Pac. 681 (1929).
of assault with a deadly weapon and robbery in the first degree. Sentence on each conviction followed. Of this the court said:31

The one act of inflicting force with the bat cannot both be punished as assault with a deadly weapon and availed of by the People as the force necessary to constitute the crime of robbery . . . .

The issue thus presented concerns the applicability of section 654. But, the court makes no mention of the statute. Instead, it reversed one conviction, relying on, and quoting, the language of the Clemett case.

The Logan case appears to have merged the doctrine of identity of offenses with the statutory prohibition against double punishment set forth in section 654. The same merger is found in People v. Branch32 which deals with the possession and sale of marihuana. The Branch case expressly relates the facts to section 654 and indiscriminately cites cases which are properly concerned with the statute33 along with other cases which are concerned only with the doctrine of identity of offenses.34

By way of dictum, or, at most, as an alternative ground for decision, the Logan case cites People v. Coltrin for the proposition:

If the act involved in one charge is necessarily involved in the other and is merely incidental to that charge but one offense is committed and it cannot be carved into two offenses in order to inflict a double punishment.35

By deleting the “co-operative acts constituting but one offense” language from the decision, the Logan case can be easily reconciled with the Knowles case, and, likewise, fits the rule derived from the Coltrin case.

It appears that the court in the Logan case considered the beating to be incidental to the robbery. Suppose, however, that the beating had been of such severity as to evidence an intent on the part of the defendant to inflict a great bodily injury on the person of the victim. Suppose further that the taking of the purse resulted from a last-minute impulse while the defendant was escaping. It seems quite unreasonable to say that the defendant could be subjected to only one punishment for the commission of only one offense. If the “co-operative acts” language is literally applied, this defendant, relying on the Logan decision, could probably invoke section 654 in order to have one of the convictions reversed on appeal. In the light of this supposition, such a result seems socially undesirable in that the sentence imposed for the commission of one offense (robbery) is the maximum sentence which can be imposed even though two offenses (robbery and assault with a deadly weapon) have been committed.

31 Id. at 293, 260 P.2d at 26.
33 People v. Greer, 30 Cal.2d 589, 184 P.2d 512 (1947); People v. Kehoe, 33 Cal.2d 711, 204 P.2d 321 (1949); People v. Knowles, 35 Cal.2d 175, 217 P.2d 1 (1950).
The court, in the *Logan* case, has given partial recognition to the problems in this area by saying, per Shauer, J. (quoting defendant's counsel): 36

\[ \ldots \text{no mere combination of words can result in an inflexible yardstick by which all cases may be measured; in each case the particular facts have had to be related to the legislative intent.} \]

This statement would have more effect if the legislative intent embodied in section 654 were the subject of a clear, workable declaration of that intent along with a rule, derived therefrom, which could be applied in other cases.

**Conclusion**

It is therefore suggested that the language of the *Coltrin* case be adopted, with certain amplifications, as the rule for determining the applicability of section 654. Where the defendant has committed a single act, not coupled or joined with any other act, that act ordinarily should be punished but once. However, if the act inflicts injuries on the persons of separate individuals, the statute should not be applied. 37 In this manner the ends of justice can be served without needlessly torturing the words of section 654.

The solution is not quite so simple where the defendant has engaged in a series of acts, or a course of criminal conduct, which gives rise to more than one offense. For the sake of clarity let us assume that there is a minor offense and a major offense. A single act is committed which, standing alone, constitutes the minor offense. A further act is committed which, when joined with the minor act, constitutes the major offense. Now, in terms of the *Coltrin* case, if the act which constitutes the minor offense is necessarily involved in, and is merely incidental to, the major offense, then the defendant should be punished but once. Further amplification of what is "necessarily involved" and "merely incidental" is needed in order to minimize any confusion and uncertainty which may arise on account of the usage of these general terms.

As indicated above, "necessarily involved" should refer to an act which, in a legal sense, must be proved in order to make out the major offense. The act of force in the crime of robbery or the act of penetration in the crime of rape are examples of this type of act. Also, in a factual sense, "necessarily involved" must be broad enough to include an act which, physically, is essential to the completion of the major offense. The act of walking into a store with the intent to rob the occupant of that store (the major offense being the crime of attempted robbery) illustrates this.

As to what is "merely incidental" to the major offense, a much tougher problem is presented. The application of this term must center around the manner in which the act is committed. (Of course, if the jury, under proper instruction, finds that the defendant was possessed of an intent to commit the minor offense along with a separate intent to commit the major offense, 38 41 A.C. 283, 294, 260 P.2d 20, 27 (1953).

37 Support for this contention is found in People v. Craig, 17 Cal.2d 453, 110 P.2d 403 (1941).
then the act which is common to both offenses cannot be considered incidental to the major offense.) Suppose the defendant and an accomplice have devised a plan to rob a pedestrian. The defendant holds the victim’s arms behind him while the accomplice goes through the victim’s pockets. The act of force is sufficient to convict the defendant of battery but, at the same time, it is “merely incidental” to the crime of robbery. But suppose the act of force was not committed in such a mild manner. Rather, the defendant beat the victim over the head several times with a gun butt. Such an act goes beyond the realm of incident. In most cases, it would go far beyond what is actually needed to effectuate the major purpose, i.e., robbery. When the act of force becomes thus aggravated, it cannot be argued that the legislature intended only one punishment. In such a case, section 654 should not be applied because the act in question is not “merely incidental” to the major offense.

As between the trial court judge and the appellate bench it seems that the former is in a better position to determine, in his discretion, whether or not an act is “necessarily involved” in, and “merely incidental” to, the major offense. The trial court judge sees and hears all of the witnesses as they describe the transaction which took place whereas, on appeal, only a transcript of the record is available. The trial judge could, after a review of the evidence, make such determination after receiving the verdicts from the jury and before entering judgments thereon. In the interests of justice, he could hear arguments by counsel which might aid him in making his decision. His ruling on this point would, of course, be appealable but, it would be disturbed on appeal only if the judge clearly abused his discretion.

The rule as herein suggested may be stated, for the sake of brevity, as follows: If an act involved in one charge is necessarily involved in the other and is merely incidental to that charge, upon conviction on both charges the defendant shall not be subjected to a double punishment for the commission of that act.\footnote{As shown, the language here proposed follows closely the language found in the \textit{Coltrin} decision (see text at note 12 \textit{supra}). However, that part of the \textit{Coltrin} decision which speaks of one offense being carved into two offenses has been purposely omitted in order to avoid any conflict with the doctrine of identity of offenses and the cases which are concerned with that doctrine.}

Such a rule as has been suggested can be embodied into the code by way of amendment to section 654, or, if the legislature is satisfied with the present statute, the California Supreme Court could announce such a rule when the issue is again presented. Whatever the method, it is submitted that the suggested combination of words will result in a “flexible yardstick” by which all cases may be measured.

\textbf{PROCEDURAL STEPS WHICH FOLLOW THE APPLICATION OF SECTION 654}

The second problem in this area arises out of the courses of action presently followed by the courts on the appellate level upon a finding that section 654 should be brought into operation in order to prohibit double
punishment. More simply stated, just how should double punishment be prohibited? Should the conviction on the second count be reversed? Should the conviction of the lesser offense be reversed? Should the sentences or the judgments be merged? Should multiple sentences be made to run concurrently? Perhaps one count should be dismissed from the indictment. Most important, does it make any difference how it is done just so the defendant is not subjected to a double punishment?

In People v. Greer the defendant was found guilty of rape and lewd and lascivious conduct based upon a single act of intercourse. The court held that he could not be punished under both statutes saying:

The prosecution may charge both crimes in the same information. The jury must be instructed, however, that, as in the case of necessarily included offenses, there can be only one verdict of guilty.

It is submitted that this mandate is erroneous. Section 654 is not concerned with convictions. It says that the defendant shall not be punished under more than one statute, not that the defendant shall not be convicted of violating more than one statute. If the mandate of the Greer case is adhered to, it will, in many cases, serve only to install confusion in the minds of the jurors. As applied to the Logan case in which the defendant beat a woman over the head with a baseball bat and then robbed her, the judge is faced with the absurdity of telling the jury, in effect, that if the defendant beat her he did not rob her, or, if he robbed her he did not beat her.

Suppose the defendant is charged with drunk driving and driving with a suspended driver's license. Following the Kehoe case, since both offenses arise out of the single act of driving an automobile, section 654 is applicable. Observing the mandate of the Greer case, the trial court judge must instruct the jury that if the defendant drove the car while his license was suspended he cannot be convicted of drunk driving. The fact of a suspended licence can be easily proved beyond a reasonable doubt. It is a matter of public record. Not so with the facts necessary to be proved in order to con-

40 People v. Craig, 17 Cal.2d 453, 110 P.2d 403 (1941).
42 People v. Kehoe, 33 Cal.2d 711, 204 P.2d 321 (1949).
43 30 Cal.2d 589, 184 P.2d 512 (1947).
44 CAL. PEN. CODE §§ 261, 288.
45 30 Cal.2d at 604, 184 P.2d at 521.
46 Support for this contention is found in People v. Smith, 36 Cal.2d 444, 448, 224 P.2d 719, 722 (1950): "Section 654 prohibits double punishment for the commission of a single act (citations omitted), but it does not prohibit convictions for different offenses arising out of the same act unless one is necessarily included within the other." In this case the defendant (a life termer) was convicted of first degree murder and assault by a life termer, both offenses arising out of a single act (multiple stabbing with a knife). The court upheld the dual convictions. Since there were two death sentences imposed, it was deemed useless to disturb the judgments.
47 "The operation of a particular vehicle . . . on the highway constitutes but a single act." 21 Ops. ATT'Y GEN. 168, 170 (1953).
vict a person of drunk driving. In most cases the proof of the facts must depend on opinion evidence which may be believed or doubted by the jurors. If the jurors entertain any doubt, it is not unreasonable to predict that such doubt would be resolved by an acquittal on the drunk driving charge and a conviction of the lesser offense (driving with a suspended driver's license), provided that the jury has been instructed in the manner set forth in the Greer case. Conversely, it is entirely possible, perhaps probable, that, without such an instruction, the jury would duly convict the defendant on both counts. The instruction would serve only to increase the prosecutor's burden of proof needed to convict of drunk driving.

Another approach is found in the Kynette case. The defendant was sentenced on each of three counts, convictions on which were based upon the single act of placing a bomb in the victim's auto. Two of the sentences were made to run concurrently while the third ran consecutively. The court modified the judgments by causing all the sentences to run concurrently. Although this action preserved the convictions for the record, it was contended in a recent case that such action might adversely affect the defendant when the time comes for a definite term of imprisonment to be fixed by the California Adult Authority.49

Most of the cases in this area have not gone as far as the Greer case. Rather, the conviction on the lesser offense (as determined by the severity of the prescribed penalties) has been reversed.50 This indicates to the trial court judge that one conviction has been erroneously returned. If so, it would seem to be his duty to instruct the jury in the manner prescribed in the Greer case. Why must the conviction be reversed? Why not let the conviction stand as a matter of record? As noted above, section 654 is concerned with punishments, not convictions. True, it states, "... an acquittal or conviction and sentence under either [statute] bars a prosecution under any other," but this language logically can only refer to a later prosecution. It should not interfere with the multiple-count indictment or information, some of which counts are based upon the commission of the same act. Multiple convictions under these accusatory pleadings are expressly sanctioned by Penal Code Section 954:

An accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts ... . The prosecution is not required to elect between the different offenses or counts set forth in the accusatory pleading, but the defendant may be convicted of any number of the offenses charged ... . (Emphasis added).

In the light of this it seems that some action, other than the reversal of convictions ought to be taken to avoid double punishment, to give full effect

48 "Doubt," as mentioned here, refers to that area of doubt which does not achieve the dignity of "reasonable doubt," i.e., a doubt which is not sufficient to merit an acquittal.
50 See cases cited at note 39 supra.
to the latitude allowed the prosecutor under section 954 and, at the same
time, avoid the possibility of confusing and unnecessary jury instructions.

Still another approach is that found in People v. Craig.51 There the court
said, "The 'judgments' entered by the trial court should be modified to the
extent of consolidating them into a single judgment. A new trial or reversal
with directions is not necessary for this purpose."52

It is believed that the course of action in the Craig case should be
adopted and applied in all cases in which section 654 becomes operative.
In the light of the proposed rule set forth in the first section of this discus-
sion, an addition to that rule should read: "When the trial court judge de-
termines that a multiple sentence will subject the defendant to double pun-
ishment he shall enter but one judgment which shall be deemed to include
all convictions and but one sentence shall be pronounced thereon." If the
determination that section 654 is applicable is made on the appellate level
the court can follow the example given in the Craig case.

The proposal set forth herein regarding the procedural aspect of this
problem can be made operative by way of amendment to the Penal Code,
or, by an express declaration by the Supreme Court that, when section 654
is deemed applicable, the correct course of action is to merge the convic-
tions into a single judgment rather than resort to an unnecessary reversal.

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51 17 Cal.2d 453, 110 P.2d 403 (1941).
52 Id. at 458, 110 P.2d at 405.

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