

POLITICAL CRIME IN INTERNATIONAL LAW: BETWEEN THEORY AND PRACTICE

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Abstract:

The concept of political crime is always variable and relative. The term “political crime” is difficult to grasp because it is often subject to various considerations and conflicting influences that frequently have no relation to a purely scientific or legal perspective. As previously mentioned, there is no stable, internationally agreed-upon definition of political crime due to two main reasons.

First: The fluctuating ideas surrounding political crime range from leniency and compassion to strictness when dealing with political offenders. This leads to differences in the criteria used to distinguish political crime from ordinary crime.

Second, the term “political” is inherently unstable and constantly evolves and changes with circumstances, shaping the character of the crime. Therefore, it cannot form the basis for a general theory in penal law.

Keywords: *Political Crime, Political Asylum, Political System, Crime*

Introduction:

Political crime emerged alongside the concept of the state. The existence of such an organization is considered the foundation for the emergence of political crime, a prominent form of opposition to the regime. Political crime is characterized by features that distinguish it from other crimes, resulting in different punishments. Initially, the punishment was severe; in the Roman Empire, for example, political offenders were considered enemies of the state and faced penalties including death and complete deprivation of rights.

With the emergence of the monarchical age, the treatment of political offenders remained unchanged from ancient times and often led to torture and execution. The execution of Damians is perhaps a notable example of this.

After the French Revolution in 1789, political offenders were still executed until the fall of the empire. Liberatory ideas led to a shift in perspective, and political offenders began to be treated with leniency and compassion. They were considered to have noble motives rather than personal interests. Consequently, they were granted political asylum and were exempted from extradition.

Accordingly, this research is divided into two sections.

Section One: The Nature of Political Crime

Section Two: Conditions of Political Crime

Section One: The Nature of Political Crime

Political crime, as an independent category, differs from other crimes in terms of both the intention behind the criminal act and the source of the aggression targeted. Therefore, its regulations and provisions differ from those of other types of crimes. This section is divided into two parts:

Part One: The Concept of Political Crime According to the Objective Criterion

Part Two: The Concept of Political Crime According to the Subjective Criterion.

Part One will cover the concept of political crime according to the objective criterion:

Political crime has a unique nature that distinguishes it from other crimes in international law. Legal scholars have been divided in their attempts to favor one of the two criteria on this subject. Some scholars base their legal assessment on the nature of the violated right to determine the nature of the crime, aligning with supporters of the objective theory. Others focus on motive, asserting that a crime is political if driven by a political motive. This view is supported by proponents of the subjective theory¹.

Thus, we will define political crime through these two theories, presenting the legal perspective of each while outlining critiques of both.

Definition of Political Crime According to the Objective Criterion

Objective Theory: According to this theory, the criterion that differentiates between an ordinary crime and a political crime is the nature of the political system being violated. This is the basis for distinguishing political crime from ordinary crime. Prominent scholars of this theory define political crime as follows:

Ottolan states, “We are dealing with a political crime if the actions aim to:

- A. Overthrow or change the organization of the highest authorities in the state.”
- B. Destroy the fundamental systems of the social body—meaning crimes aimed at the foundations of the social order, not just the governmental form or political status of the state.”
- C. Harm the political rights and freedoms of citizens as outlined in the Constitution.

Pillot defines political crime as “those punishable acts directed against the political system of a state.”²

Lambrozo and Walaski assert that political crimes are “any tangible assault on the rights established by the state to protect its political, social, and economic order.”

According to Roux, “political crime is a crime directed against society as a community, against the constitutional form it has chosen, and against public institutions, not as an owner of property or rights, nor against any individual, even if they hold a public office.”

Donnedien Devabres contends that political crime includes “acts directed against the organization and function of the state.” Garo defines pure political crime as “that which exclusively and absolutely targets the destruction or alteration of some or all elements of the political system.”³

According to Garo’s definition, it seems that he did not consider crimes that primarily target the elimination of the fundamental system to be political crimes, but rather, crimes for which the system in question is the sole and absolute objective. The aim is to differentiate political crimes from crimes that affect the public interest, such as forgery and embezzlement, which do not specifically target the political system. Violations of the state’s private interests lack the political character limited to assaults on the state as the bearer of authority. Such crimes may harm the state’s or individuals’ private interests, but this harm is not the objective of the crime; otherwise, it would be classified as an ordinary crime. Instead, it is a consequence that does not affect classification⁴.

In summary, we can draw the following conclusions from the above definitions:

- Crimes against public administration, such as bribery, abuse of influence, embezzlement, and exploitation of public office, are not considered political crimes.

¹- Mohammad Ali Al-Sayed, *Political Crime*, Al-Halabi Legal Publications, Beirut, Lebanon, undated, 2003, p. 41.

²- Hans defines the political system as one that ensures the state's external integrity and independence, while maintaining internal political stability without altering the constitution or form of government .

Garou describes the political system as a collection of powers responsible for serving the state's public interests, including the nation's independence, the safety of its territory, and the political freedoms of its citizens.

³- Dr Fadi Nasrallah, 'Crimes for which extradition is typically refused and those permissible for extradition', *Rights Journal*, No. 2, Sha'ban 1406 AH, Vol. 6, June 1986, p. 198.

⁴- Dr Jack Youssef Al-Hakeem, 'Political Crimes', *Law Journal*, No. 10, Vol. 41, June 1961, p. 1013.

Crimes against public authority, such as rebellion against officials, contempt of officials, and preventing officials from performing their duties, are not classified as political crimes either.

- Crimes that disrupt the judiciary or infringe upon the state's private rights are also ordinary crimes, not political crimes.

A crime is not considered political, even if it harms the state's interests or rights as a public authority, unless its realization necessitates overthrowing the state system entirely or in part⁵.

Some authors have attempted to include crimes that impact social organization within the category of political crimes; however, they addressed only the political system of the state and did not evaluate this theory or address destructive crimes⁶.

Although this theory is accepted by most scholars, it has faced criticism.

First, it is harsh towards political opponents because it aims to protect the existing system without considering the motives of the political offender.

Proponents of this theory consider the state's interests and the system of governance, disregarding the moral condition of the political offender. This allows courts to misuse their authority for revenge and retaliation against political opponents.

The objective criterion views political crime solely from a material perspective, disregarding the nobility of the motive or the honor of the intent. This allows someone who sold their homeland for a pittance to be classified as a political criminal and receive the benefits accorded to political offenders. This equates them with a revolutionary leader who aims to overthrow an unjust and tyrannical regime. However, this argument is unfounded because customarily, crimes against national security are not given lenient punishments.

The nature of the violated right alone is insufficient to distinguish political crime from ordinary crime because an assault on the state's political right cannot be considered political. For instance, if a group of individuals conspire to overthrow the regime for the benefit of a foreign state and are motivated by financial gain, legal reasoning cannot classify this as a political crime⁷.

Having addressed the objective concept of political crimes and established it as a fundamental criterion for distinguishing them from other crimes, we must now explore the personal concept of these crimes for two reasons.

First, this concept plays a complementary role alongside the objective concept in defining political crimes in legislation and scholarly opinions.

Second, the personal concept of political crimes can clarify why specific regulations are assigned to them—an important task that the objective concept has failed to fulfill⁸.

Part Two: Definition of Political Crime According to the Subjective Criterion

Subjective Theory — This theory posits that the correct criterion for distinguishing political crimes from ordinary crimes is the objective, purpose, or motive that the offender intends to achieve by committing the crime. Thus, if the motive that prompted the offender to commit the crime is political, then we classify it as a political crime, regardless of the subject matter. For a motive to qualify, it must be noble and free of selfish aims; it must pursue a political benefit.

This theory emerged among a class of legal scholars and philosophers in the mid-nineteenth century, and their views gained popularity among the general public. Chraz is among the defenders of this theory, asserting that whenever the motive for committing a crime is political, it must be considered a political crime. M. Blanche also supports this theory, stating that if the motive for committing a crime is political, then the crime itself is political because the motive distinguishes it⁹.

From this, we can conclude the following:

⁵- Muhammad Ali Al-Sayed, previous reference, p. 43.

⁶- Dr Jack Youssef, previous reference, p. 1013.

⁷- Muhammad Ali Al-Sayed, previous reference, p. 45.

⁸- Dr Jack Youssef Al-Hakeem, previous reference, p. 1015.

⁹- Dr Fadl Nasrallah, previous reference, p. 200.

Relying on the motive or goal criterion will inevitably expand the concept of political crime to include crimes far removed from the political category merely because they were committed for a political motive or purpose. For example, a crime can be classified as political if members of a political party kidnap the leader of another party's daughter to tarnish their reputation. According to this theory, we are dealing with a political crime despite its detachment from the political realm.

The concept of a political motive is not clearly defined, which leads us to question the offender's intent because a purely political motive is rarely found among political offenders.

Absolute reliance on the moral element and motives and impulses that have no inherent impact on the nature of the crime can be problematic.

Adopting the political motive as a criterion could include composite crimes and crimes that accompany political crimes within the category of political crimes while failing to recognize ordinary crimes committed alongside political turmoil as political crimes.

Through our examination and evaluation of these two theories, we explore the possibility of their complementarity or conflict.

Rather than seeking to replace the objective theory, the subjective theory aims to complement it in order to expand the concept of political crime. When defining political crime, we cannot dispense with one theory in favour of the other, as relying on a single criterion would limit the concept.

Some Arab legal scholars, including Dr Fadhel Nasrallah, argue that when defining political crimes exempt from extradition, both subjective and objective criteria should be considered. The objective criterion encompasses any assault aimed at overthrowing the state's fundamental system and disrupting its normal functioning, while the subjective criterion encompasses the motive that the perpetrator aims to achieve through their criminal activity. Therefore, crimes committed for political motives and purposes are considered political crimes¹⁰.

In practice, some courts have decided to apply both criteria equally. For example, French courts sometimes use the objective criterion to infer political crimes, disregarding the personal motives behind each individual crime. They define a 'political crime' as one that affects the constitutional system or political institutions of a nation, specifically targeting its regime. A political offender is someone who aims to undermine or disrupt certain aspects of the political system, change its institutions legitimately, threaten the organisation of public authorities domestically, or jeopardise the nation's independence, territorial integrity or relationships with other nations abroad¹¹.

The personal criterion has also been accepted by the judiciary. For example, the Paris Court rejected the extradition of a driver from the Jura province on the grounds that he was not acquainted with his victims and had prior convictions, suggesting that he acted out of political motives¹².

Furthermore, the Arab Convention of 1952¹³, the Riyadh Arab Convention of 1983, and the Arab Convention Against Terrorism of 1998¹⁴ have all defined political crime according to the legal rules in force in each state. If these rules contain a definition of political crime, there is no difficulty in this regard. However, the matter becomes problematic if the internal laws of the contracting states do not specify such definitions, as is the case for most Arab contracting states. Each state may adopt either the subjective or objective theory to define political crimes. The rationale is to respect the territorial sovereignty of nations, one of the fundamental principles these conventions aim to uphold¹⁵.

¹⁰- Dr Fadl Nasrallah, previous reference, p. 201.

¹¹- Dr Jack Youssef Al-Hakeem, previous reference, p. 1013.

¹²- Dr Fadl Nasrallah, previous reference, p. 200.

¹³- This agreement was nullified by the Riyadh Arab Agreement of 1983, which stated this explicitly in paragraph 1 of Article 72.

¹⁴- The agreement was prepared and signed by Arab League countries at the Cairo headquarters during a joint meeting of the Council of Arab Interior and Justice Ministers on Wednesday, 25 Dhul-Hijjah 1417 AH / 22 April 1998. It consists of 22 articles divided into four sections. The agreement's primary objective is to effectively combat terrorism, necessitating enhanced cooperation among countries based on international law and treaties.

¹⁵- Dr Muhammad Al-Sayed Aref, 'Extradition of Terrorist Criminals in Arab Agreements Against Terrorism: A Comparative Analytical Study', Arab Journal of Security Studies and Training, Vol. 15, No. 29, p. 283.

International practices have granted states the freedom to adopt either criterion with respect to their sovereignty. This has led to bilateral and multilateral agreements among states to regulate this important aspect of criminal law and establish the necessary conditions and controls for this type of crime.

Section Two: Conditions of Political Crime

The concept of political crime overlaps with other types of ordinary crimes. To eliminate this confusion, specific conditions and criteria have been established. Some crimes may appear to be political, but are actually ordinary crimes due to their danger to public order, severity, or because they do not meet the conditions of political crime.

This section is divided into two parts.

Part One: Conditions of Political Crime According to the Objective Criterion.

Part Two: Conditions of Political Crime According to the Subjective Criterion.

The absence of a unified definition of political crime in international law necessarily implies the lack of standardized conditions, whether at the level of international or regional agreements. Consequently, the classification and treatment of such crimes remain at the discretion of each state and its agreements. Thus, the establishment of these conditions depends on each theory's perspective, as well as on the inclusion of conditions specified in relevant international agreements.

Part One: The Conditions of Political Crime According to the Objective Criterion

The conditions are as follows:

The objective must be to overthrow or alter the organisation of the three highest state authorities.

It must also aim to demolish the fundamental systems of the social structure, meaning crimes directed against the foundations of the social order, not just the governmental form or political status of the state.

The objective must be to undermine the political rights and freedoms of citizens as set out in the constitution¹⁶.

Part Two: Conditions of Political Crime According to the Subjective Criterion

According to this criterion, the only condition is the motive or objective that the offender aims to achieve by committing the crime. If the motive is political, the crime is considered political; if it is non-political, the crime is classified as such¹⁷.

Additionally, this criterion stipulates that the motive must be noble and honorable, distant from selfish personal purposes. In other words, it should serve the public interest of society. If this condition is absent from the motive, the crime cannot be considered political.

Various international agreements and treaties also specify certain conditions for an act to be classified as a political crime.

1. The act must be overt.
2. It must support a political rebellion.
3. The movement must relate to a conflict or struggle between factions or parties competing for control of the government¹⁸.

Note that some crimes are classified as non-political by international custom, regardless of motive or the criterion adopted by the state. These crimes have been incorporated into relevant international agreements, including:

- Crimes against monarchs, heads of state, or their spouses, ancestors, or descendants.
- Crimes against heirs apparent¹⁹.

¹⁶- Dr Fadl Nasrallah, previous reference, p. 198.

¹⁷- Dr Jack Youssef Al-Hakeem, previous reference, p. 1016. See also Muhammad Ali Al-Sayed, previous reference, p. 45.

¹⁸- Dr Mohammad Al-Sayed Aref, previous reference, p. 277.

¹⁹- Dr Fadl Nasrallah, previous reference, p. 205. Also see Muhammad Ali Al-Sayed, previous reference, p. 32; Jack Youssef Al-Hakeem, previous reference, p. 1069.

This is known as the Belgian²⁰ Clause, which was included in the 1952²¹ Treaty on the Extradition of Criminals between Arab States, as well as in other related treaties.

Conclusion:

There is no consensus among scholars of international law on the concept of political crime. International jurisprudence has not established a definitive definition of it. The disagreement essentially stems from the fact that some scholars argue that, for a crime to be considered political, the nature of the violated right must be considered, whereas others emphasise the importance of considering the motive for committing the crime. The former perspective is supported by those who advocate the objective theory, while the latter is supported by those who advocate the subjective theory.

In cases of homicide, if an individual kills a member of the ruling authority or government, even for political motives, they do not benefit from the laws of rebellion in Islamic jurisprudence; rather, they face retribution. In this context, the motive for committing the crime is irrelevant because disregarding retribution in such cases would lead to significant evils, such as the proliferation of vendettas and the encouragement of murder.

On the other hand, according to the subjective theory and under international law, homicide committed for political motives is classified as a political crime, and the perpetrator is treated as a political offender. The consequences of this classification are evident. Some international law scholars have criticized this criterion for broadening the scope of political crimes and potentially encouraging criminal behavior. Furthermore, determining whether the motive arises from collective or individual interests remains highly complex since it stems from the individual's intentions.

Notably, international custom has excluded certain serious crimes from the category of political crimes, stripping them of their political aspects and classifying them as ordinary crimes.

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4. Mohammad Al-Sayed Arafa, "Extradition of Terrorist Criminals in Arab Anti-Terrorism Agreements: A Comparative Analytical Study," *Arab Journal of Security Studies and Training*, Vol. 15, No. 29.
5. *Extradition Treaty within the Arab League of 1952*.
6. "Terrorist Crimes," *Egyptian Journal of International Law*, Vol. 8, 1952.

²⁰. This is known as the Condition of Assault, which refers to Article 22-2-1956 in Belgium. This article stipulates the right to political asylum in cases of assault against foreign heads of government or their families. This rule is known as the Belgian Condition and was incorporated into the extradition agreement that France signed with Belgium on October 22, 1856. See Jack Youssef Al-Hakeem, previous reference, p. 1028.

²¹. 20. The Extradition Agreement within the Arab League from 1952 states the following in Article 4: "Extradition shall not be conducted for political crimes, but it is mandatory for the following crimes ":

- Assaults against kings, heads of state, or their spouses, ancestors, or descendants.
- Assaults against crown princes.
- Intentional homicide.

Terrorist crimes." (*Egyptian Journal of International Law*, Volume 8, 1952, p. 100).