Denver Journal of International Law & Policy

Volume 2
Number 1 *Spring*

Article 4

January 1972

# Political Crimes: A Historical Perspective

M. Denis Szabo

# Political Crimes: A Historical Perspective

## Keywords

Crimes, Political Crimes, Prisoners, States

# POLITICAL CRIMES: A HISTORICAL PERSPECTIVE

*Professor Szabo's thesis is that the definition of political crime is dependent upon a temporal, socio-cultural context for a specific meaning. He describes political crimes as "those infractions committed for reasons over and above the self-interest of their perpetrator and which are an attempt to achieve changes of a political, social or religious order". Following a historical outline of political crime, the author concludes with a discussion of political crimes on the international level.* ED.

M. DENIS SZABO*

The repression of political crimes was originally used to protect the person of the tribal chief who was the first embodiment of collective public authority. This repression was severe because in ancient primitive societies and the theocentric Middle Ages the chief was believed to have divine power on earth.

An initial investigation of political crime shows that it is a complex phenomenon involving psychological, social, moral, legal and judicial aspects, all of which should be carefully distinguished. It is also evident that each civilization engenders political crimes deriving from its own particular values; because of the contemporary nature of civilizations, the concept of political crimes is essentially contingent upon and varies from one epoch and civilization to another.

For these reasons we shall start with a definition of political crime from the socio-cultural, legal, and judicial viewpoints. An historical outline will permit us to examine the various concepts of political crime during the Greco-Roman period, the Christian Middle Ages and modern times. The essay will conclude with the incidence of political crime in international law.

*Definition of Political Crime*

From a strictly judicial point of view the political crime is impossible to define as it is contingent upon the meaning of "political". How can one follow the rule of legality if the mean-

* Prcfessor Szabo is Director of the Department of Criminology and Professor of Criminal Law and Criminology at the University of Montreal (Canada).

ing of the term "political" can be constantly changed? The only clear answer is in the restrictive enumeration of all acts known as "criminal". Among all the large countries of today only Great Britain makes use of this solution. The others pattern their laws on definitions much less precise, sources which could be arbitrary and should the occasion arise, could be a threat to public liberties. The political crime is in essence an exceptional offense, causing a defensive reaction on the part of society against internal attack, and menacing freedom by the threat of despotism which it inevitably carries with it.

From a practical point of view, the particularly dangerous character of political crime is obvious. Since the role of penal law is to enable the state to regulate the repression of acts contrary to its interests, the law maker is confronted with the problem of having to define this particular type of crime.

If we consider the motivation or the goal of the so-called political crime — its subjective elements — we see that its perpetrators are generally motivated by drives over and above their own personal interest. To a large extent their aims are unselfish. Because of this, certain preferential treatment is accorded them, such as the right of foreign asylum. Some people even believe this crime is not an infamous one at all, but rather an honorable one, since it is motivated by altruism. Those taking this factor into account, however, are careful to exclude anyone from this category who has acted for selfish reasons, such as greed or spite. They consider socio-political delinquents to be political offenders — persons whose aim is to take action in a general way without physically interfering with the existence or the organization of the state.

Judicial doctrine also makes a distinction in the case of related offenses. According to the definition of the Institute of International Law, complex infractions or those connected with political crimes are considered political offenses as long as they do not involve the most serious crimes from the point of view of morals or common law.[1] These would include assassination, murder, poisoning, mutilation, grave wounds, all of which are voluntary and premeditated; attempts to commit crimes of this nature; attempts against property by fire, explosion or flood; and robbery, particularly armed robbery and robbery with violence.

[1] RESOLUTIONS OF THE INSTITUTE OF INTERNATIONAL LAW 103 (J. Scott ed. 1916).

*The Contingent Character of the Political Crime*

As a result of these brief considerations concerning the definition of political crime, it would seem to be an essentially conditional concept which requires an examination of the conditions of civilization under which the political offense takes place. We shall do this by examining the various forms of political crime in history as well as their place in contemporary restrictive laws. It seems appropriate here to recall the observation of a great moralist of our times, Albert Camus. When confronted by the frightening spectacle of ideological fanaticism, he questioned the conscience of the honest man. For the man disoriented by warring gods, deceived by absolutes, and who accepts the absurdity of existence, the one and only manifestation of liberty is rebellion; a rebellion born of an irrationality which results from an unjust and incomprehensible situation. But his spirit blindly insists on order in the midst of chaos and cohesion in a changing world. Rebellion seeks to change, but to change is to act and to act may be to kill. Rebellion therefore engenders that very act we ask it to justify. It must find its own justification for it can never find it elsewhere.

These thoughts of Camus strikingly reflect the profound doubt which seized men of the western world after the holocaust of the Second World War. The basic morals of the established order are now giving way under the fire of adverse ideologies, and the sense of duty is becoming more and more ambiguous in this era of crisis. Certain groups and individuals who were accused of shaking the very foundations of the established order have ended up by representing the established order. In many countries, the monarchists were replaced by republicans, the liberals by socialists or the colonialists by the colonized and their power is already being threatened by other groups.

Before examining the forms which political crime has assumed throughout the course of history, let us sum up with some observations on the contingent character of political crime. First, the word "political" is a poor description of these crimes because it is too narrow. Many infractions of religious laws are devoid of selfish motives; for examples, sacrilege, heresy, and blasphemy. These infractions have been considered the gravest of crimes for a very long time. Some socio-political crimes such as union fights and political demonstrations also belong in the same category. That is why some authorities

have suggested the term "ideological crime". Secondly, more than all the others, state crimes are contingent upon the current views and the dominant principles in any society. Thirdly, since political delinquents are usually moved by unselfish motives, they often receive special treatment in democracies. Their situation, however, is still complicated in regard to the law. The law distinguishes between complex infractions and related infractions. In the case of a complex infraction, the crime is political in its aims and general in its result, for example, the assassination of a chief of state. In the case of the related crime, a common law crime is committed for political reasons, for example, the looting of an armory. Fourthly, the lenient attitude towards political crime is relative; the moment the deed stirs up public indignation even slightly, the favorable situation of the offender no longer obtains.

As a definition, then, we may state that political crimes are those infractions committed for reasons over and above the self-interest of their perpetrator and which are an attempt to achieve changes of a political, social or religious order. When they run counter to public opinion because of the methods used, they are always deprived of their special character and become common law infractions.

*Ancient History*

We know that before the French Revolution, no distinction was ever made between political crime and common law crime. The interests of the state and public order were one with those of the monarchy. Moreover, the most dreadful forms of torture were reserved for persons charged with *lese majesty*. It was for these offenders that the principle of punishing only the culprit was waived in favor of confiscation of goods and banishment of the next of kin as well. Later, extradition was introduced into the state laws to regain jurisdiction over political offenders.

It is not surprising then, that in the ancient city, in Rome as in Athens, there were on special laws for political crimes. They were punished with the utmost severity. We read in the Decree of Demophante in 410 B.C. that if any person overthrew the democratic government of Athens he would be considered an enemy of the Athenians. He might be killed with impunity and his goods confiscated. Whoever killed him, or advised that he be killed, would be deemed innocent and pure.

We also know that penal law during this period showed humanity in its punitive measures by the possibility of escap-

ing death by exile, the protection of life and decency for the slave as well as the free man. As opposed to the retaliatory law practiced by other states, Athens recognized to a certain extent the principle of the legality of suppression. That is, no person could be punished for acts which were not punishable under the provisions of a law.

But all this humanity disappeared where crimes against the state were concerned. Those in power could incriminate any act which seemed to endanger the rule of the City. Criminal intent was enough to incriminate a person. In effect, for other crimes the punishment should follow th misdeed, but in attempts against the government it should precede it.

Among the Romans, the one guilty of *crimen majestatis immunitae* was considered in a class with the foreign enemy. The provisions made for him, as in Greece, were marginal to the legal system: the suppression of these crimes, especially in the Early Empire, was a manifestation of either the violence of popular reaction or the despotism of Caesar. The Romans considered the political offender synonymous with a foreign enemy and treated him as such. As in Greece, a hostile intention was enough to incriminate a person and during the later Roman Empire the worst vengeance took place under the guise of repression of *crimen majestatis immunitae.* Capital punishment was most often used and banishment was evolving towards deportation, which entailed the confiscation of inheritance and loss of civil rights. The *Les Quisquis* under Arcadius in 397 even made provision for the punishment of descendents of criminals guilty of *crimen majestatis immunitae.* Included among this crime were treason, the overthrow of the constitution or any attack upon the authority of the most insignificant functionary representing the state or the Emperor. Infidelity to the national religion was punished by death, as was a declaration before a court that one belonged to the Christian religion. The confusion between the profane and the sacred is as much in evidence here as it was in Greece.

*The Middle Ages*

We have seen in ancient law how often the legal regulations and the religious laws were intermingled. It is interesting to note that both Christ and Socrates were accused of wanting to introduce new gods into the City. We still find traces of Roman law in the Christianity of the Middle Ages; crimes of divine *lese majesty* fell under ecclesiastic jurisdiction, and crimes of human *lese majesty* fell under royal jurisdiction.

They were usually judged by special commissions and set apart from the common law.

Beginning with the Carolinian period the responsibilities stemming from the oath of fidelity were considerably broadened and any interference with them were submitted to arbitrary royal power. Ties of fidelity, strengthened by an oath of allegiance which was the basis of the feudal political system, were protected against traitors by severe punishment. In 1351 England instituted the Treason Act to punish any breach of allegiance with the lords, and above all, with the King. The death penalty was usually called upon for this crime, as well as "blood taint" which stipulated that an offender disinherit all his issue. In Germany, rebellion and riot against the royal authority were dealt with by death and confiscation of goods.

In French law the main political crimes were breach of feudal allegiance, failure to protect the King, serve in the army or serve the cause of justice. A crime against the state as represented by the Prince was a breach of vassal bondage and resulted in death or exile as well as the loss of fief and the confiscation of goods. Should a vassal lift a hand against his lord he was deprived of his sword; if he escaped by flight he was banished from the baronial domain; if he did not come to his lord's assistance in time of danger his goods were confiscated.

The church, which was a secular as well as religious power, exercised its jurisdiction within the political confines of the Christian states. The principle crimes punished by the church were heresy and blasphemy, and both soon became integrated in the temporal penal law. Considering the close ties between political and religious authority during the Middle Ages, the main political crimes were considered religious crimes even though they were punished by the public authorities. Thus sacrilege covered both crimes against the church and crimes against the sovereign. Excommunication, often used by the church for purely temporal reasons, had serious consequences in civil law. The secular power strongly supported the church, and during this era to be excommunicated was paramount to being placed outside the law.

In conclusion we see that in the Middle Ages the influence of Roman law was predominant, with the use of extreme severity and arbitrary action in the suppression of crimes against the state and above all its representatives. The guaran-

tees of justice, legality and leniency which were being gradually introduced in other sectors of the law were absent in those dealing with political crime.

An important evolution was taking place, however, with regard to the completely arbitrary character of the old society. In political philosophy, and in a parallel way in positive law, the distinction between king and tyrant permitted the introduction of the right to rebel against a usuper. This right to rebel is expressly recognized in the Magna Carta of England in 1215, in the Golden Bull of Hungary in 1222, in the Peace of Fexhe of the Principality of Liege, and in the Joyeuses Entreés of Brabant in 1356.

This evolution is exemplified by a change in English law. In England the traditional feudal context continued to characterize political crimes, but in 1351 the barons imposed "statutes" upon the king limiting high treason to seven categories. These statutes constituted the first attempt to guarantee the independence of the individual before the power of the state in criminal matters. This strengthening of the distinction between treason and protesting against a tyrant, first made in the Middle Ages and developing here, will be seen to serve as the basis of the public law concept in modern times.

*Modern Times*

The secular aspects of power were more fully developed after the sixteenth century. The kings became increasingly independent of the church and central power took precedence over that of the great barons. *La raison d'ètat,* or the good of the state, was substituted for the ties of feudal allegiance and the most outrageous acts of political vengeance were committed in its name. Alleged political crimes were removed from the regular courts and submitted to the legal principle of *nullum crimen, nullum poenasine lege.* These courts themselves qualified the crime and determined the punishment. Richelieu defended these special courts by saying that in the regular courts justice required knowledge and evidence of proof, but that this was not the case in the affairs of state since conjecture must often take the place of proof.

It was the century before the French Revolution that the English people put an end to royal absolutism and this beneficent evolution owes much to the influence of the philosopher John Locke. He defines the principle of the social compact as follows. What gave birth to the society politic is the agreement of a certain number of free men, represented by the

greatest number among them. This gives birth to a legitimate government. Thereafter, liberty constitutes the fundamental welfare of man, for which the state must be responsible. Its role is limited from this time on; it must protect the liberty of its citizens. Crimes of state lessen in importance as absolutism of the state decreases. Whoever is accused of treason from this time forward has legal guarantees. Among these are: first, the right to know who constitutes his panel of jurors before entering into proceedings; second, the right to be informed of the act charged; third, the right to be assisted by a lawyer; fourth, the right to propose and to name witnesses for his defense; fifth, the right not to be condemned without a minimum proof of his guilt. Finally, treason cannot be prosecuted except within a period of three years from the date of the infraction.[2]

Thus, during the eighteenth century we note a certain "depersonalization" of the crime of state which was becoming an abstract entity detached from the person of the Prince. The concept of public law was being developed and the characteristics of feudalism diminished in importance.

*The French Revolution*

During the French Revolution a Declaration of Rights appeared in the constitutions of most of the North American states, and the French Declaration of Human Rights and the Rights of the Citizen which followed established the liberal ideas which were to spread throughout the world. The omnipotence of the law superceded that of the judge and the administrator. The concept of the liberal state was born; it became the guardian and trustee of public and private liberty. Political crime may be severely punished, but it is punished according to laws instituted by legislation. Through the medium of the revolution sovereign power has decidedly changed hands. The person of the Prince has been replaced by the abstract entity of the state, the absolute power of the King by human rights. This is the great legacy of the French Revolution.

In the new public law, the moral entity of the state is clearly distinguished from its agents. Crime against the state is conceived in two ways. The first views crime against the state as treason; an external attack against the state, its very existence and its laws. The second views crime against the state as an internal attack against the agents of the state, its government and its political institutions. This distinction is

[2] TWO TRACTS OF GOVERNMENTS OF GOVERNMENT — JOHN LOCKE 230 (P. Abrams ed. 1967).

essential: the first offense endangers the very existence of the state, whereas the second has less serious consequences. Their suppression differs accordingly, being much more harsh in the case of the first type of offense.

Liberty of conscience, one of the fundamental principles of the new system, implies liberty of expression in politics and religion. The Christian religion, then, ceases to be a basis of public order, and becomes a private affair. To maintain public order, the power to prohibit acts harmful to society without compromising the liberty of the individual falls to legislators elected by the people. Herein lies the famous principle of the legality of crime and punishment. Punishment becomes fixed by the elimination of arbitrary decisions by the judge, and it becomes personal by excluding punishment of the family and confiscation of the criminal's property. To sum up, the omnipotence of the law has been substituted for that of the judge and the administrator.

*Political Crime in the Liberal Democracies*

In the liberal democracies the idea prevails that political crimes are less serious than common law crimes and should be punished less strictly. The origin of this idea lies in the gradual separation between temporal power and religious power, in the secularization of the state whereby an attack against the political order is divested of all sacreligious connotation. A profound political skepticism is born, however, because of the alternating of the parties in power, and political delinquents very often appear to be unlucky gamblers rather than criminals.

Under the old system political crimes were the acts of oligarchs plotting against the sovereign; in modern times they are expression of a protest or a popular demand which can be made legal in due time by an electoral majority. In this way they attain the stamp of legitimacy. The great jurist Guizot was one of the theoreticians of this new concept of political crime.

> The immorality of the political crime is not as clear or as immutable as that of the common law crime; constantly modified and observed according to the vicissitudes of life, it varies with the times, the events, the laws and the quality of power; it changes from one moment to the next under the force of circumstance, which claims to fashion it according to its needs. In the realm of politics, it is hard to find innocent or deserving acts which did not receive legal indictment in some part of the world.[3]

[3] M. GUIZOT, ASPECTS OF FRENCH HISTORY 1789-1874, (D. Johnson transl. 1963).

Thus, whereas no one wants to legitimize crimes against the person or property, there is always a sizeable portion of the population which approves of political crime within certain limits.

Therefore, in the liberal democracies inspired by the ideas of Locke the political crime tends to be tempered by justice. The general trend is toward the gradual disappearance of political courts, or where they do exist, toward their gradual submission to the common law.

*Attacks Against the Established Order:*
*Backlash in the Liberal Democracies*

This evolution has not been without difficulties and marked regression. Subversive propaganda, influencing militant elements and attacking the foundation of the political and social order put the liberal state on the defensive.

At the end of nineteenth century and the beginning of the twentieth, sporadic outbreaks of anarchy proved to be a turning point in social reaction. These outbreaks provoked a new stringency in sentencing and the re-introduction of laws providing for the protection of the state against subversive intrigue. Only England resisted this development; the crime of sedition still exists but since 1832 prosecutions have been rare and acquittal has become the general rule.

In the United States the legal basis of anti-subversive law rests upon the Smith Act (1940) as well as upon the judgment by the Supreme Court in *Dennis v. United States.*[4] This judgment condemned the leaders of the Communist Party for having organized the American Party, the goal of which was to overthrow the legal government of the country. This legislation and judgment were violently criticized by liberal opinion in the United States as a serious attack on freedom of thought.

The Algerian War and the state of quasi-civil war which it created in the metropolis gave rise to a new French jurisdiction: a special court called the Court of State Security. Events revealed that the means of subversion had changed and that the most modern techniques of psychological warfare were being put to use by those seeking to take power. The rebel movement was relying on bases situated outside the country and benefitting from secret assistance from foreign powers. It used terror to maintain its hold over the population and common law crimes were committed to maintain an atmosphere of

[4] Dennis v. United States, 341 U. S. 494 (1951); Smith Act, 18 U. S. C. § 2385 (1940).

violence. The favorable bias which the political offender once enjoyed because of his altruistic motivation began to disappear almost completely.

French liberal opinion, like that of the United States, was roused because such rigid legislation posed a threat to public liberty and freedom of thought. In addition to the re-imposition in 1939 of the death penalty for treason, the extension of the jurisdiction of the Court constituted a real and constant threat to those in opposition to the authorities. Articles in the Criminal Code[5] refer the following crimes to this special court: crimes of treason and espionage; attempts, plots and other infractions against the authority of the state; crimes intended to disturb the state by massacres or devastation; mutinous movements; harboring of things or persons; and non-denunciation of crimes against the safety of the state. The power of the Court is extended to include minors of 16 to 18 years and preventive detention has become unlimited. These and other stipulations indicate the gravity of the setback suffered by the law and the liberal tradition developed during the nineteenth century.

Within the realm of actual law one of the oldest problems raised by political crime is that of extradition. In ancient times and during the Middle Ages the right of asylum was accorded all criminals coming under this law, provided they were accused of a crime against the state on religious grounds. Liberal theories on political crime emanating from the French Revolution brought certain privileges and the purpose of extradition was to bring the accused before judges best qualified to render him justice. This was because in political matters an accused had but a slim guarantee of impartiality if he were judged by an authority under the influence of his political enemies. The right of asylum thus played a benevolent role in protecting the offender from the vengeance of his adversaries. Certain limitations, however, soon became apparent in the practice of extradition within international law. Under pressure from the Holy Alliance and state governments, and because of the alarm engendered by the social ills of the nineteenth century, regicides and anarchists were denied the benefit of the right of asylum.[6]

[5] *See* AMERICAN SERIES OF FOREIGN PENAL CODES, THE FRENCH PENAL CODE 43-54 (1960).

[6] It should be noted, however, that England and the Scandinavian countries, in spite of great foreign pressure, maintained the tradition of asylum.

*Complement to the Definition of Political Crime*

By means of this historical sketch, we begin to see the essential outlines of political crime as they emerge through the evolution of customs and legal systems. The attitude of tolerance in the suppression of crimes against the state is of recent date; it is the product of the period from the end of the seventeenth century in England to the middle of the nineteenth century in the countries of Western Europe. During the nineteenth century popular sentiment and the law underwent a change prejudicial to the interests of the "political offender". Manifestations of anarchy and flare-ups of social unrest such as the Paris Commune and violent strikes provoked a harsh social and penal reaction with regard to this type of crime.

We distinguish the pure political crime from the relative political crime. The first is exclusively an attack against the state; the second also attacks the legal benefits of every individual. In the definition of pure political crime there is a confrontation of two theories. The subjective theorists see the intention of the offender as the only criterion of political infraction. The objective theorists believe that it is the nature of the law violated that is the decisive factor.

The subjective theories find their origin in the ideas of liberals for whom the model of the political offender is the revolutionary of noble ideas and unselfish motives. But if the motive is an important element is assessing the degree of criminality of an accused, it is in no way sufficient that it should be the sole criterion of the infraction. If this were so, all crimes motivated by political considerations would become political offenses.

In the objective theory, it is the nature of the law violated which is important. Crimes are political when they are crimes committed intentionally against the security of the state or of a foreign state, as well as when directed against the head of a government and the political rights of citizens. The state is the passive object of all political crime, the latter attacking the interests and rights of the state in its capacity as public authority. Crimes against the administration and other rights and prerogatives of the state are not included in this qualification of "political crimes". A simple violation of the political order is not in itself sufficient to constitute a political crime; there must be an intention to totally or partially destroy the political order.

We see that in strict legal terms it is exceedingly difficult,

if not impossible, to give a satisfactory answer to the problems posed by "political crimes". The qualification "political" defies all attempts a reasonable definition, but in other respects, it serves as a basis for legal codification. The arbitrary element in the fate reserved for political delinquents by various legislations and state powers is great and without doubt will remain so.

*Political Crime at the International Level*

The advent of powerful nationalistic states resulted in weakening the church's control over the state. The theory of "just wars" as developed by the theologians and canon law became obsolete. The *raison d'etat* alone became the prime consideration. A new stage in the development of international relations began with the establishment of the League of Nations shortly after the First World War and the United Nations Organization after the Second World War. The Kellogg-Briand Pact denounced wars of aggression and recourse to violence as a means of settling disputes between states.[7] The jurisdiction of the International Court at The Hague was theoretically recognized to settle these matters.

The rise of the totalitarian states between the two wars cut short this development, but their defeat gave the United Nations Organization a chance to continue the earlier developments. Its charter condemned wars of aggression and crimes against humanity. However, its field of jurisdiction is still very limited because of the deep-seated ideological differences which exist between the great powers. The rule of law which guarantees safety and justice to citizens in the liberal democracies seemingly has a long way to go before it can be extended to the international field.

The problem of the legal responsibility of individuals on an international scale dates back to the First World War. The question arose of bringing German Emperor William II to trial before an international court of law made up of representatives of the Allied countries, and charging him with offenses against international morality and the inviolability of treaties. This project was never carried out.

The same problem arose in 1945 after the capitulation of Germany. The perpetrators of the war of aggression and the accompanying crimes committed in the occupied territories, against religious minorities in particular, had to be tried in

[7] Kellogg-Briand Peace Pact, Aug. 27, 1928, 46 Stat. 2343, T.S. No. 796 (1928).

courts of law. The difficulty lay in finding an appropriate jurisdiction. Some authorities thought the most suitable courts would be those of the countries of origin of the accused. However, the complete subjugation of German sovereignty after its unconditional surrender necessitated another solution.

This solution found expression in the London Statute which was concluded on August 8, 1945, between the governments of the United States, the United Kingdom, France and the Union Soviet Socialist Republics.[8] An international military tribunal was set up to judge the leading war criminals. About twenty such war criminals were tried by the Nuremberg Tribunal. It was a military tribunal similar to the courts set up in each state to handle similar crimes within its own borders. But it was also international, representing the joint interests of those nations who had come under German aggression. Those tried were holders of responsibility — governors, diplomats, financiers and generals — whose criminal acts were committed throughout the entire theatre of the war. The procedure was based on prosecutionary law, and the customary guarantees of Anglo-Saxon law were accorded the accused throughout the trial. The trial was made public and every detail of the formalities in the presentation of proof by the prosecution was observed.

The most important aspect of the London Statute is the recognition of the individual as a subject of international law. The Statute also recognized the criminal responsibility of any individual for crimes committed on behalf of the state, its agents or representatives.

The main criticisms of the London Statute were that it distorted the principle of the legality of crime and punishment owing to the absence of positive international penal legislation; the retroactive character of the crimes and the refusal to accept the lack of responsibility of the agent. This last criticism was due to the fact that all the power was concentrated in the hands of the Fuhrer and according to German law those who were tried were merely his agents.

Current attitudes towards political crime on the international level may be seen in the problem of extradition. Traditionally, one accused of political crime was accorded the right of asylum. With the development of the liberal theories of the French Revolution and the resulting extension of legal protection to political criminals, extradition served the useful pur-

[8] The London Statute, Aug. 8, 1945, 59 Stat. 1544 (1945), E.A.S. No. 472.

pose of bringing the accused before judges best qualified to judge him.

With the gradual restriction of the protection of the political offender which was seen to be the result of social developments of the nineteenth century, limitations of the validity of extradition as a means of protecting the offender began to develop. On July 2, 1968, a London court decided that James Earl Ray should be returned to the United States to stand trial as the accused assassin of Dr. Martin Luther King. The principal argument of Ray's attorney was that since Dr. King was a "political figure", his murder was a political crime and consequently not an extradictable offense. This defense was based on the provision of the British-United States Extradition Treaty of 1931 which provides that "a fugitive criminal shall not be surrendered if the crime or the offense in respect of which his surrender is demanded is one of a political character".[9] The argument of David Calcutt, the barrister who represented the United States was decisive:

> A lone murder of a politican, still less of a mere political figure, cannot satisfy the definition of an offense of political character. . . . There is not one shred of evidence here to show that the killing took place to further a larger enterprise. There is no evidence of a conspiracy. . . .

The chief metropolitan magistrate agreed and the decision was not appealed.[10]

This unwillingness of the international community to expand the definition of political crime is further illustrated by the Tokyo Convention in Article 2.[11] While admitting that certain instances of aircraft hijacking may be political crimes, such crimes were not to be granted the traditional immunity from extradition treaties that other political crimes were given.

*Conclusions*

This brief outline has shown that the idea of political crime, or more appropriately, ideological crime, has undergone profound changes throughout the course of history. From a highly arbitrary reaction on the part of the City in self-defense, the concept of political crime has evolved toward a set of rules intended to ensure the security of the international community. While those rules have evolved under different circumstances

[9] Extradition Treaty with Great Britain, Dec. 22, 1931, art. VI, para. 1, 47 Stat. 2122, T.S. No. 849 (1931).

[10] N.Y. Times, July 3, 1968, § 6, at 1, col. 1.

[11] The Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, [1970] 20 U. S. T. 2941, T.I.A.S. No. 6768 (effective Dec. 4, 1969).

as witnessed by the evolution of French and English law, general tendences are apparent. Most states apply such rules more stringently in time of war, and more freely in time of peace. However, more subtle variations are apparent regarding the application of such law against political crime when connected with internal security. Liberal traditions with specifically ennumerated charges of indictment have less fluctuation than other more structured traditions.

The concepts of the nation-state and of territorial jurisdiction have impeded the development of a truly international penal law concerning both states and individuals. The Nuremberg Tribunal stands as a solitary and unfollowed example. The slowly emerging criminal definitions of political crimes, such as genocide by the United Nations, have not been easily duplicated. Thus on the international level the prevalent institutions and attitude will have to undergo a radical transformation if the establishment of an international criminal legal system[12] were to become a reality.

[12] For a study of the various problem areas associated with such an establishment *see, e.g.*, INTERNATIONAL CRIMINAL LAW (C. Bassioni & V. Nanda eds. 1972).