# IDENTIFYING THE POLITICAL OFFENDER*

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HISTORICAL BACKGROUND. If Justice Holmes was correct and "the best test of truth is the power of the thought to get itself accepted in the competition of the market,"[1] then the political offender will remain the oldest and the most important criminal phenomenon in human society. And he is so today, because "there is now a widespread tendency to argue that one can only defend democracy by totalitarian methods."[2] For the social value of the political offender lies in his function as a continuing question mark, forever warning against the perils of thinking in terms of a single immutable truth and only one possible system of justice.

Because of this role as gadfly to authority, the political offender was severely repressed in ancient times. One of the earliest known treaties, apparently concluded in the thirteenth century between the king of Egypt and the king of the Hittites, provided for the mutual surrender of political offenders.[3] In the days of empire, the Roman guilty of *crimen majestatis* was subjected to capital punishment or to banishment, and even his descendants could be punished.[4]

In the Middle Ages, the quintessential political offense, treason, was punished with death and confiscation of goods in such countries as England, France, and Germany. Some political offenses were considered to be religious offences at the same time, such as sacrilege, and were punished by the church with excommunication.[5] The persecution of the political offender during the Middle Ages arose from the need to avert the displeasure of an offended sovereign, abetted by the absence of the right to revolution in the prevailing political theory. Thus, the surrender of political refugees was sanctioned by such writers as Grotius[6] and Hobbes.[7]

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[1] Holmes, J., dissenting, in *Abrams v. U.S.*, 250 U.S. 616, 40 S. Ct. 17, 63 L. Ed. 1173 (1919).

[2] Orwell, *The Freedom of the Press,* THE TIMES LITERARY SUPPLEMENT, 15 September 1972 at 1033.

[3] Harvard Research in International Law, *Extradition,* 29 AM. J. INT'L. L. 666 (Supp. 1935), citing BREASTED, HISTORY OF EGYPT 437 *et. seq.* (1905).

[4] Szabo, *Political Crimes: A Historical Perspective,* 2 DENVER J. INT'L. L. 8 POL. 15 (1972).

[5] *Id.,* at 13.

[6] GROTIUS, DE JURE BELLI AS PACIS LIBRE TRES, bk. 2, chap. 21,sec. 5(5) (1925).

[7] HOBBES, LEVIATHAN 233, 236 (1947).

It was only during the French Revolution against nineteenth century despotism and absolutism that the term "political offence" and the doctrine of political asylum made an appearance in both theory and practice.[8] Ironically, while the French government granted asylum to foreigners fleeing political persecution, foreign states concurrently granted asylum, to French emigrants fleeing from the Reign of Terror in the homeland.

The democratic achievements of the French Revolution were supported by writers such as John Locke and John Stuart Mill. Under Locke's theory of the social compact, the absolutism of the state decreased, and the political offence diminished in importance.[9] Under Mill's concept of liberty, if the ruler infringed the political liberties or rights of the individual, resistance or rebellion was justified.[10]

It is controversial as to which state first prohibited the extradition of political offenders. But in 1833, Belgium became the first state to interdict expressly the extradition of foreign political offenders in her municipal law, and the following year, she signed with France a treaty of extradition which put into practice the political offence doctrine. The doctrine gradually found universal acceptance among the other Powers such as the United States, Great Britain, and Russia. It is now widely acknowledged in extradition treaties and municipal legislation, and universally upheld in state practice, thus passing into customary international law.

WHY NON-EXTRADITION OF POLITICAL OFFENDERS. Under the political offence doctrine, political offenders are exempt from extradition. This doctrine is supported by three reasons.

*Firstly,* the political offender deserves humanitarian treatment. Extradition law proceeds on the premise that the protection of the lives and property of individuals produces a common interest in the repression of crimes violating them. But the element of common interest is absent in political offences, because legal and value systems differ.

If the political offender were surrendered to trial in the requesting state, he would be subject to the politicization of his human rights, i.e., his penalty would probably be out of proportion to the severity of his offence. Experience shows that the attempt to impose legal responsibility for political acts usually degenerates into a politicization of legal procedure,[11] exposing the political offender to the risk of summary execution or at the very least, to the risk of trial and sentence by political passion wearing the robes of justice.

*Secondly,* the political offender possesses the right to revolt against tyranny, and if this right is to be meaningful, then in case of failure he

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[8] I OPPENHEIM, INTERNATIONAL LAW, A TREATISE 704 (1955).
[9] LOCKE, TWO TRACTS ON GOVERNMENT 230 (1967).
[10] MILL, ON LIBERTY 2 (1947).
[11] VON REDLICH, THE LAW OF NATIONS 194 (1937).

should be entitled to political asylum. The rise of totalitarianism in the twentieth century has in certain instances rendered revolt morally obligatory, and the struggle for independence by oppressed peoples has in certain situations given rise to a justification for rebellion.[12]

*Thirdly,* the principle of neutrality and non-interference in the internal affairs of another state dictates that where there is a "contest" between the government and a segment of the population, the political offender should not be extradited. For if the political offender is surrendered, the asylum state thereby assists one of the parties in the struggle and becomes a partisan in the civil strife. Under the political offence doctrine, the asylum state avoids dangerous decisions on the legality and the conduct of a foreign government.

KINDS OF POLITICAL OFFENDERS. Different writers adopt different ways of classifying political offences, but they may be divided basically into two categories, the *pure* political offence and the *relative* political offence.

The *pure* political offence is an act exclusively against the political order of the state, including its independence, the integrity of its territory, its relation with other states, the form of its government, the organization of public powers, their mutual relations, in short, the political rights of citizens.[13] Put in another way, pure political offences are acts against the security of the state, such as treason, sedition, armed rebellion, and espionage.

Pure political offences lack the essential elements of an ordinary crime, such as malice. Since the offender acts merely as an agent of a political movement or party, he injures no private right whatever, but only the public rights of the state.[14]

The *relative* political offence is an act in which a common crime is either implicit in or connected with the political act.[15] The same act might be directed at the political order and at private rights, e.g., the hijacking of privately-owned aircraft for political purposes; or, the act may not be directed against the public order, but is closely connected with another act which is so directed, e.g., fraudulently obtaining paper in order to print subversive literature.[16]

It is the definition of the relative political offence, so as to distinguish it from a common crime, which constitutes a major challenge in interna-

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[12] KUTNER, A PHILOSOPHICAL PERSPECTIVE ON REBELLION, INTERNATIONAL TERRORISM AND POLITICAL CRIMES 61 (1975).

[13] GARRAUD, PRECIS DE DROIT CRIMINEL 88 (1912), cited in Ferrari, *Political Crime and Criminal Evidence,* 3 MINN. L. REV. 365 (1919).

[14] Garcia-Mora, *The Present Status of Political Offences in the Law of Extradition and Asylum,* 14 U. PITT. L. REV. 375 (1953).

[15] Deere, *Political Offences in the Law and Practice of Extradition,* 27 AM. J. INT'L. L. 248 (Supp. 1933).

[16] SHEARER, EXTRADITION IN INTERNATIONAL LAW 166 (1971).

tional law. Courts in various jurisdictions have adopted three approaches in trying to solve this problem of definition:

THE ANGLO-AMERICAN POLITICAL INCIDENCE APPROACH adopts the definition laid down in Sir J. Stephen's book, under which a political offence is a crime incidental to and forming a part of political disturbances. It was first applied by the English court in the famous case of *Re Castioni*,[18] involving a local uprising in Switzerland because the government declined to take a popular vote on a request for a revision of the Constitution. An armed crowd broke into the municipal palace and appointed a provisional government, which was later dispossessed by the armed intervention of the federal government.

In the rush to the palace, the respondent Castioni shot a municipal official, and was charged with wilful murder. He fled to England and was arrested on the requisition of the Swiss government, for the purpose of extradition. On an application for *habeas corpus*, the English court ruled that the shooting was incidental to and formed a part of political disturbances, and therefore was an offence of a political character within the meaning of the British Extradition Act of 1870, and the prisoner could not be surrendered, but was entitled to be discharged from custody.

Unfortunately, Castioni was followed by *Meunier*,[19] where the prisoner was an anarchist. It was there ruled that to constitute an offence of a political character, there must be two or more parties in the state, each seeking to impose the government of their own choice on the other. The *Meunier* test for a political offence — that there should be two or more parties contending for power — is too narrow to protect the individual or the group acting independently of any party affiliation, and in many cases operating out of foreign territory.[20] The *Meunier* test is obsolete today.

The third major English case which discusses the political incidence approach is *Regina v. Governor of Brixton Prison Ex Parte Kolczynski and Others*.[21] In September 1954, seven Polish nationals serving on a Polish trawler fishing in the North Sea, overpowered the captain and other members of the crew. They brought the vessel into an English port, where they were arrested and detained. The magistrate found that the only object of the prisoners in seizing the trawler was to escape from their native country in which they had suffered frustration and repression.

The High Court ruled that the words "offence of a political character" must always be considered according to the circumstances existing at the time when they have to be considered. The present time is very different

17 2 SIR J. STEPHEN, HISTORY OF THE CRIMINAL LAW IN ENGLAND 71 (1881).
18 1 Q. B. 149 (1891).
19 2 Q. B. 415 (1894).
20 Garcia Mora, *The Nature of Political Offences: A Knotty Problem of Extradition Law*, 48 VA. L. REV. 1241-42 (1962).
21 21 I.L.R. 240 (Queen's Bench Division, England, 1954).

from 1890 when *Castioni* was decided. Now, a state of totalitarianism prevails in some parts of the world, and it is a crime for citizens in such places to take steps to leave. Since the members of the crew were under political supervision, they revolted by the only means open to them, and what they committed was thus an offence of a political character.

In *Kolczynski,* the two justices apparently found too narrow the *Castioni* definition of a political offence as a crime which is incidental to and forms a part of political disturbances. But it is respectfully submitted that the *Castioni* definition could have been interpreted more broadly without doing violence to its language. The *Kolczynski* court could have provided the phrase "political disturbances" with an interpretation covering not only a political uprising, but also flight from political persecution. The court neither supplied a substitute definition for a political offence, but it did extend the categories of political offences to limits to be determined only by broad considerations of humanity, and thus established a libertarian cast to this controversial term.

The last of these famous four cases is *Regina v. Governor of Brixton Prison, Ex Parte Schtraks.*[22] A Jewish couple found it hard to find work in Israel, so they left their children with the grandparents. Later, the grandfather refused to return the grandson because he thought that the parents would not give the child the religious education of an orthodox Jew. Schtraks, the child's uncle, abducted the child and detained him in the home of a rabbi. Schtraks went to England, where he was arrested on charges of perjury and child stealing. He applied for a writ of *habeas corpus,* on the grounds, *inter alia,* that the charges against him were made in furtherance of a struggle between the various political parties in Israel arising out of the conflict between the religious and secular forces in the state. He alleged that the religious conflicts had assumed a political character.

Both the Divisional Court and the House of Lords held that the application must be dismissed. There was nothing to indicate that the accused acted as he did in order to force or even promote a change of government, or even a change of government policy, or to achieve a political objective of any kind. The idea that lies behind the phrase "offence of a political character" is that the fugitive is at odds with the state that applies for his extradition on some issue connected with the political control or government of the country.

*Schtraks,* may be viewed as a moderating but not inhibiting influence on the advance towards a liberal interpretation. It held that the offence was not political because the evidence strongly showed that the actions of the accused were privately motivated rather than in any real sense directed towards demonstrating against the policy of the state.

[22] 33 I.L.R. 319 (Divisional Court, Queen's Bench Division, England, 1962).

THE FRANCO-BELGIAN POLITICAL OBJECTIVE APPROACH determines the character of the act by the act itself, and not by the motive, the intention, or the end sought by the author. In the words of Garraud:[23] "If the violation of the law is committed in the course of political happenings, as an insurrection or a civil war, pillages, murders, burnings, which would be legitimate if produced in a state of regular war, they would, in a measure, be absorbed by the political crimes of which they are the necessary consequences or the accidents... But if, in the course of the insurrection, crimes are committed against persons or property which would be condemned by the law of nations, even in a state of regular war, these crimes would come within the ordinary penal law."

This approach is indicated in the French extradition law, Article 5: "Insofar as the extradition concerns acts committed in the course of an insurrection or a civil war by one or the other parties engaged in the struggle, and in the interest of its cause, surrender shall be refused unless these acts constitute acts of odious barbarity and of vandalism forbidden by the laws of war." It can thus be seen that the political objective approach tends to identify only pure political offences, such as treason.

THE SWISS PREDOMINANT MOTIVATION APPROACH determines a political offense by a test which, paradoxically, was first proposed by the French criminologist Ortolan, as follows:[24] "Which of the two elements is the more grave? Is it the political or the common? Which contitutes the greatest peril to society, and consequently the greatest interest to repression, the political or the non-political element? If the political right and interest are the more conspicuous, the offence is political. Otherwise, it is not political."

While in principle the Swiss approach is a broad one, in practice it is subject to the threefold qualification laid down in the case of Victor Platonovitch Wassilieff:[25] (1) The offence must be committed for the preparation or execution of a pure political offence, i.e., a criminal act directed against the political or social organization of the state; (2) The crime committed must be directly related to the end sought by the party, and the accused bears the burden of this proof; (3) The common law element predominates over the political character of the crime, if the means employed to attain the end sought are characterized by disproportionate atrocity and barbarity. This is the "test of predominance" or the "test of proportionality."

The test of proportionality is well discussed in the landmark case of *Re Kavic, Bjelanovic, and Arsenijevic.*[26] This was a request by Yugoslavia for the extradition of three Yugoslav nationals, members of the crew of a

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23 GARRAUD, PRECIS DE DROIT CRIMINEL 88 (1912), cited in Ferrari, *Political Crime,* 20 COLUM. L. REV. 308 (1920).

24 1 ORTOLAN, ELEMENTS DE DROIT PENAL 311 (1875), cited in AFRICA, POLITICAL OFFENCES OF EXTRADITION 127 n. 1 (1927).

25 Africa, *supra,* note 24, at 71-73 (Federal Tribunal, Switzerland, 1908).

26 19 I.L.R. 371 (Federal Tribunal, Switzerland, 1952).

Yugoslav passenger plane, who had diverted the plane from its lawful destination in Yugoslavia to Switzerland, and had there sought asylum.

The Swiss Federal Tribunal ruled:

> [T]here could also be applied the principle that the relation between the purpose and the means adopted for its achievement must be such that the ideas connected with the purpose are sufficiently strong to excuse, if not justify, the injury to private property, and to make the offender worthy of asylum. Freedom from the constraint of a totalitarian state must be regarded as an ideal in this sense. In this case the required relationship undoubtedly existed, for on the one hand, the offences against the other members of the crew were not very serious, and, on the other hand, the political freedom and even existence of the accused was at stake, and could only be achieved through the commission of these offences.

DEFINITION BY PHILIPPINE SUPREME COURT. The Philippine Supreme Court has confronted the issue of political offences only in connection with applications under amnesty proclamations issued by the President, pursuant to his constitutional power.[27] No cases in connection with extradition have as yet arisen, because the Philippines signed its first extradition treaty only in 1976,[28] and promulgated an extradition law only the next year.[29]

In *U.S. v. Luzon*,[30] an early case decided at the turn of the century, the majority opinion did not define a political offence, but ruled only that the political character of the crime had not been shown. The charge was illegal detention against the defendant and an armed band of six persons, of which he was the leader. They compelled a couple to leave their house, robbed it, then carried the couple into a neighboring barrio. The band killed the husband in the woods, and kept the wife for nine days, when she escaped.

The court rejected the argument that, the offense having been committed by insurrectionary soldiers, it must be presumed, in the absence of any evidence as to motive, that it was to further the purposes of the insurrection, and was therefore political in nature. Significantly, the Court stated: "While at the time here in question there may have existed in this locality small bands of former insurrectionary soldiers, like the one led by this defendant, there was nothing that could in any sense be called an organized, disciplined, fighting force — nothing that could in any respect be called an army."

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[27] The 1935 Constitution vested in the President "the power to grant amnesty with the concurrence of the Congress of the Philippines" (Art. VII, Sec. 10(6); while the 1973 Constitution provides that "The Prime Minister may ... with the concurrence of the National Assembly, grant amnesty." (Art. IX, Sec. 14). Under the 1981 Amendments "The President may, ... with the concurrence of the Batasang Pambansa, grant amnesty." (Art. VII, Sec. 11).

[28] Extradition treaty between the Republic of the Philippines and the Republic of Indonesia. It entered into force on 25 October 1976.

[29] Presidential Decree No. 1069 took effect on 13 January 1977.

[30] 2 Phil. 380 (1903).

It seems that if there had been two contending armies on the scene, the Court could have been persuaded to accept the crimes of robbery and probable murder as political offences. As it was, the Court's ruling was clearly designed to discourage what it termed "those bands of outlaws who, up to 1 May 1902, committed so many murders and robberies throughout the provinces." The reasoning and result of this case is highly reminiscent of the *Meunier* case decided by the English court, which required that, in order to constitute an offence of a political character, there must be two or more parties in the state. The requirement of two contending armies or two contending parties may have been adequate in the nineteenth and early twentieth centuries, but it is now obsolete because political contests today are carried out by the individual or group of individuals acting independently of any group or party affiliation.

It was predictable that in a dissenting opinion, J. McDonough would argue for a liberal construction of the amnesty proclamation. He quoted the *Castioni* definition of a political offence as an act incidental to, and forming a part of, political disturbances, and asserted that the acts of killing, plundering, and confiscating were an incident to, and part of, the insurrection. Implicitly, however, like the majority, he invoked the *Meunier* ruling by stressing that the acts of organized and unorganized bands were "in furtherance of the views of one party or the other."

The next two Philippine cases — *Peralta v. Director of Prisons*[31] and *Herrero v. Diaz*[32] — were decided at the end of the second world war, and hence, were concerned only with the concept of pure political offences, and not with the more important concept of relative political offences. The Court, although it did not expressly say so, was thus following the Franco-Belgian political objective approach in defining a political offence.

In *Peralta,* the court did not define a political offence, but only made a statement as to what acts could be considered crimes of political complexion, thus: "Crimes penalized by Act No. 65 (Author's note: These were acts committed by persons charged or connected with the supervision and control of the production, procurement, and distribution of foods and other necessaries.) — as well as crimes against national security and the law of nations, to wit: treason, espionage, inciting to war, violation of neutrality, correspondence with a hostile country, flight to an enemy's country, piracy; and crimes against public order, such as rebellion, sedition, and disloyalty, illegal possession of firearms and others, penalized by Ordinance No. 7 and placed under the jurisdiction of the Court of Special and Exclusive Criminal Jurisdiction — are all of a political complexion, because acts constituting those offences were punished, as are all political offences, for public rather than private reasons, and were acts in aid or favor of the enemy and directed against the welfare, safety, and security of the belligerent occupant."

[31] 75 Phil. 285 (1945).
[32] 75 Phil. 489 (1945).

Similarly, in *Herrero,* the Court described crimes of political complexion as "acts which tend directly or indirectly to aid or favor the enemy and are directed against the welfare, safety, and security of the belligerent occupant. As examples we have crimes against national security, such as treason, espionage, etc., and against public order, such as rebellion, sedition, etc., crimes against the Commonwealth or the U.S. Government under the Revised Penal Code which were made crimes against the belligerent occupant."

Finally, in the famous case of *People v. Hernandez,*[33] the Supreme Court gave a definition of political offences which represents a mixture of the objective and the subjective theories by requiring that the act must be aimed at a political object, and the offender must carry it out under the influence of a political motive and/or for a political purpose.

In the words of the *Hernandez* Court:

> Political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive. If a crime, usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government of the territory of the Philippine Islands or any part thereof," then said offence becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter...
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> Thus, national, as well as international, laws and jurisprudence overwhelmingly favor the proposition that common crimes, perpetrated in furtherance of a political offence, are divested of their character as "common" offences and assume the political complexion of the main crime of which they are mere ingredients and, consequently, cannot be punished separately from the principal offence, or complexed with the same, to justify the imposition of the graver penalty.

The *Hernandez* definition covers both pure political offences, which it describes as "those directly aimed against the political order," and relative political offences, which it describes as "such common crimes as may be committed to achieve a political purpose," where the decisive factor is the intent or motive. It is respectfully submitted that this definition could be made more specific by making it clear that the crime must not only be politically motivated, but must also be inextricably connected with a political act, such that there is a direct relationship between the common crime and the political objective.

It is further respectfully submitted that the *Hernandez* definition could avoid the danger of overbroadness by specifying that a common crime qualifies as a political offence only if the political character of the crime predominates over the common law element, and the means employed are

[33] 99 Phil. 515 (1956).

proportionate to the political purpose, such that the damage caused must be proportionate to the result sought. In brief, the *Hernandez* definition must be applied in the light of the test of predominance, and the test of proportionality.

DEFINITION AND DESCRIPTION OF POLITICAL OFFENCES. With the reader's indulgence, the following definition and description of political offences is taken from the author's book, *Political Offences in International Law.*

In brief, the description of a political offence must be "mixed, in that it must contain both objective and subjective elements. In this light, and bearing in mind its preeminently circumstantial nature, *A political offence might be described in a basic way as an ideologically motivated act, expressing political opposition, directed against the security of the state; or another act similarly motivated and so inextricably linked to it that the political element predominates over the element of common criminality, including any act committed to avoid persecution arising from participation in the struggle for national independence or political freedom.*

While a more precise definition does not seem feasible, the description and limitation of the concept could be attempted. For in the words of Viscount Radcliffe:[34]

> Indeed it has come to be regarded as something of an advantage that there is to be no definition. I am ready to agree in the advantage so long as it is recognized that the meaning of such words as "a political offence," while not to be confined within a precise definition, does nevertheless represent an idea which is capable of description and needs description if it is to form part of the apparatus of a judicial decision.

An eclectic description of political offences, using the elements identified by the various approaches of domestic courts, may now be formulated. Such elements may be described by integrating the expressions used by jurists as they have unburdened themselves on this knotty problem. It is submitted that contemporary conditions of political life render it desirable that in deciding in each particular instance upon the character of the offence according to the facts of the case, the tribunal must use a liberal approach. Such an approach must take into consideration not only the nature of the offence and its objective but also the character of the offender and his motive. Under this liberal approach, the following elements may be used to describe a political offence:

1. The purely objective criterion based on the nature of the act determines only the pure political offence. An offence is purely political when it injures the political organism and the proper rights of the state.

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[34] *R. v. Brixton Governor ex parte* Schtraks (1963) 1 Q. B. 55 (1962), 1 W.L.R. 1031 (D.C.).

2. The purely subjective criterion based on the motive of the offender is not sufficient to determine the relative political offence. The political motive of a criminal offence does not in itself prove that the offence is political. The crime becomes political only where it serves a political purpose, i.e., where the offence is intended to bring about a change of political circumstances, and not where it serves a personal purpose, albeit one influenced by political motives. To qualify as a political offence, the crime must not only be politically motivated but must also be inextricably connected with a political act, such that there is a direct relationship between the common crime and the political objective. The act should have been committed to prepare or assure the success of a pure political offence.

3. The criminal action must be intimately connected with its political object. Such a connection can only be predicated where the act is itself an effective means of attaining this object, or where at least it forms an integral part of acts leading to the end desired, or where it is an incident in a general political struggle in which similar means are used by each side.

4. The connection between the common crime and the political act exists when the act is incidental to and forms a part of political disturbances. It is no longer necessary that there must be two or more parties in the state, each seeking to impose the government of their own choice on the other. It is sufficient if an act is committed as part of a political movement with the object of influencing the policy of the governing party of the state.

5. The element of "political disturbance" does not require disturbance of public order; it conveys the idea of political opposition between the fugitive and the state that applies for his extradition on some issue connected with the political control or government of the country. The requesting state is after the offender for reasons other than the enforcement of the criminal law in its ordinary aspect.

6. More specifically, it is sufficient if the act is committed to avoid political persecution or prosecution for a political offence. "Political persecution" includes action by the home country against the fugitive, representing deprivation of or danger to life, property, or personal liberty.

7. The connection exists if the political character of the crime predominates over the common law element, and the means employed are proportionate to the political purpose. The ideals connected with this purpose must be sufficiently strong to excuse, if not justify, the injury to private property. Freedom from the constraint of a totalitarian state must be regarded as an ideal in this sense.

8. The damage caused must be proportionate to the result sought, i.e., the interests at stake should be sufficiently important to excuse, if not justify, the infringement of private legal rights. Since homicide or murder is one of the most heinous crimes, such a relationship exists only if the

killing is the *ultima ratio,* the sole means of safeguarding more important interests and attaining the political aim.

9. The search for an objective standard has led to the theory of the right to ideological self-preservation or political self-defense. An act qualifies as a political offence if it was committed to vindicate fundamental human rights under serious violation by the state without affording lawful means of redress. This right is predicated on three categories of factors: those bearing upon the nature of the "rights" involved, those bearing upon the conduct of the state, and those bearing upon the conduct of the individual.[35]

10. The behavioral element could be the safest indication of a political offence, but it involves social psychology. If there is a scheme reflecting variations in the social and personal qualities of values, it is possible to imagine a value continuum, consisting at one end of totally personal value orientations, and at the other end of totally social value orientations. According to this proposed theoretical framework, the political offender's behavior demonstrates a consistent opposition of the values of another society to those of the society in which the offence is committed. For example, theoretically a skyjacker qualifies as a political offender when he is ideologically motivated, i.e., if he identifies the ideological bases of his behavior, identifies himself with an ideological social group, and denounces the ideology of the social group against which the offence is committed.[36]

11. The act is political if it was committed by a convictional criminal as distinguished from a pseudo-convictional criminal, i.e., it must have been committed from an altruistic-communal motivation rather than an egoistic drive. The act possesses a political character when it is committed out of a sense of convinced obligation for the actor's morality; it becomes a common crime when it is committed to advance a personal goal.[37]

12. The political offence doctrine is limited by war crimes, crimes against humanity, anarchy, international terrorism and aerial hijacking. These crimes are therefore extraditable.

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[35] Bassiouni, *Ideologically Motivated Offences and the Political Offence Exception in Extradition—A Proposed Juridical Standard for an Unruly Problem,* 19 DE PAUL L. REV. 254-57 (1969); reprinted in part in BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 411-16 (1974); and in INTERNATIONAL TERRORISM AND POLITICAL CRIMES 430-34 (1975).

[36] Sewell, in INTERNATIONAL AND POLITICAL CRIMES, *supra,* note 35, at 19-23 *passim.*

[37] SCHAFER, THE POLITICAL CRIMINAL, THE PROBLEM OF MORALITY AND CRIME 145-58 (1974).