

# The Emergence of Political Crime Concept

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## Abstract

At the early stages of the formation of human developed societies, penal reactions to political crimes were mainly within the protection sphere provided for the sovereign as the first representation of public sovereignty. Defending collective interests was the main reason on which the survival and continuity of societies were depended. In the sense that the concept of political crime finds its meaning in interaction between the sovereignty and individual freedoms; it is considered a relative and changing notion; which means the more the scope of public liberties extend, the more possible circumstances related to committing crimes will reduce. The present article has provided a brief but inclusive historical background of the evolution of political crime, the manner in which the political criminals were treated and punished by the authorities and the current approaches taken by states toward it.

**Keywords:** Political Crime, Political Criminal, Sovereignty, Individual Freedoms, Public Liberties

## Introduction

Historical studies, the examination of the political crime concept and its punishment has proven that this concept; perhaps as the oldest of all crime-types,<sup>1</sup> has emerged at the beginning of the first human societies formation. At the time the societies transformed into political organization, they were forced to defend against domestic and foreign enemies. Defending collective interests was the main reason on which the survival and continuity of societies were depended, so all the nations had considered the resistance against enemies as their duty.

At the beginning, penal reactions to political crimes were mainly within the protection sphere provided for the sovereign as the first representation of public sovereignty. Those reactions intensified as much as the rulers were considered to be the representatives of divine power on Earth; any insults to them, even sometimes to their delegates, were regarded an affront to the realm of the God,<sup>2</sup> whether in primitive societies, or ancient times or the Middle Ages.

In the sense that the concept of political crime finds its meaning in interaction between the sovereignty and individual freedoms; it is considered a relative and changing notion; which means the more the scope of public liberties extend, the more possible circumstances related to committing crimes will reduce. The western history witnesses the relativity of the political crime concept within different eras and in various political systems; since it is dependent upon the legislator, and differs considerably from place to place.<sup>3</sup> The formation of democratic political systems has made it difficult to be defined. Reaction to this category of crimes and the evolution course of political crime criminal system is the evidence for the claim that how political offenders of yesterday has become the national heroes of today. However, it should be mentioned that it is just one aspect of this historical complicated category, since the history proves that all political offenders do not enjoy the same

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<sup>1</sup> Stephen Schafer, *The Concept of the Political Criminal*, 62 *J. Crim. L. Criminology & Police Sci.* 380 (1971), p. 380.

<sup>2</sup> Derek Jones, *Censorship: A World Encyclopedia*, Routledge, 2001, p. 1398

<sup>3</sup> Robert Ferrari, *Political Crime*, *Columbia Law Review*, Vol. 20, No. 3 (Mar., 1920), pp. 308-316

degree of spirit greatness and sense of sacrifice, sometimes self-interest and base incentives had been their stimulus to commit such a crime.

However, prior to describing a section of political crime evolution history, perhaps in agreement with French Lawyer, Henry Lévy-Bruhl,<sup>4</sup> it can be stated that the word “political” is insufficient to define and to describe the various conducts that are in a way contrary to the sovereignty pillars and political structure. Lévy-Bruhl believes that violation of religious commandments such as apostasy, blasphemy or disrespecting sanctities are regarded of importance in some societies without being taken into account as infringing individual rights. In this respect, there are similarities between these crimes and political ones. In some cases, the distinction of “political” descriptive word from anti-religious features of such acts is difficult; since the public authority is regarding itself as the protector of the religious values; in some societies, the pillars of political system is in principle based on religious bastion, which associate with the directions of political systems of the Middle Ages of Western societies.

With a view to social history of western nations, we will examine some aspects of the evolution of the political crime concept into contemporary elements.

## A . T h e H i s t o r y o f P o l i t i c a l C r i m e

It can be stated that prior to French Revolution (1789), there was no distinction between ordinary and political crime. Interests of the state and public order were considered as the interests of the monarchy (King). Those who were charged with the Great Crime (*crimen majestatis* (*crimes de lese-majeste*)<sup>5</sup>, were punished with the most extreme rigor; and the penalties were of exceptional severity. Contrary to the Principle of personalization of penalties, their properties were confiscated and their relatives also were expelled. Later, extradition of such offenders was an opportunity to conclude cooperation agreements among the states.

### I . A n c i e n t T i m e s

In the ancient cities, in Rome or in Athens, there were no special procedural laws for judicial investigation of political crimes; the offenders were punished with the most severity. It is stated in the Decree of Démophante in 410 B.C. that “if any person overthrew the democratic government of Athens, he would be considered an enemy of the Athenian people. He might be convicted to death penalty and his goods confiscated... Whoever killed him, or provoked someone else to kill him, would be deemed innocent and pure. May all the Athenians swear to this: I shall kill by my own hand if I can anyone who would destroy democracy in Athens, who would hold an official post when democracy is destroyed, who would become a tyrant or who would assist someone to become a tyrant. If someone else kills such a person, I shall declare him sacred before the gods and demons for being the slayer of an enemy of Athens.”<sup>6</sup>

Fustel de Coulanges proves that during this era, to what extent the punishment of religious violations was of political aspect.<sup>7</sup> Religious beliefs of people were one of the main factors in maintaining social solidarity, which in turn helped to strengthen the pillars of the state. Insult to the gods of Olympus was considered as crime against the state realm and conversely treason was a sacrilegious act against sacred realm of religion.

<sup>4</sup> Henri Lévy-Bruhl, Les délits politiques: Recherche d'une définition. In: *Revue française de sociologie*, 1964, 5-2. pp. 131-139. Lévy-Bruhl a dit: «Le mot «politique» est mal choisi pour le désigner: il est trop étroit. Les infractions engendrées par des conflits d'ordre social, religieux ou philosophique, etc. ne se distinguent pas, par leur nature, de celles qui concernent le gouvernement des Etats. Toutes sont inspirées moins par des intérêts que par des théories; plus exactement par des intérêts qui ont subi une élaboration théorique; il convient donc de les appeler délits idéologiques ...».

<sup>5</sup> Crimes against the divine right of a government.

<sup>6</sup> Original version in Démosthène, *Peri tes ateleias pros Leptinen*, paras. 159-t60. A French translation is in D. Szabo, *Criminologie et politique criminelle*, Montreal, Presses de l'Université de Montreal, 1965, 197.

<sup>7</sup> N. D. Fustel de Coulanges, *La cite antique*, Paris, Durand, 1864, pp. 517-518 in Elisabeth Zoller, *Introduction to Public Law: A Comparative Study*, Martinus Nijhoff Publishers, 208, p. 8

Among the Romans, the one guilty of *crimen majestatis* (The Great Crime) was considered as a foreign enemy. As in Greece, an inimical intention was enough to expose a person to the severest punishment. Capital punishment was most often used to punish suspects of such crimes. However, the penalty of banishment led to deportation, confiscation of inheritance and loss of their civil rights.

The *Les Quisquis* law under Arcadius<sup>8</sup> ruling period in 397 A.C. provided for the punishment of descendants of criminals guilty of *crimen majestatis* (the great crime).<sup>9</sup> In addition to treason, the overthrow of the political system or any attack upon the authority of the officials' position, i.e. representatives of the state or (the Emperor) led to the punishment similar to that of the great crime. Also, the punishment provided for infidelity was death.

## II. The Middle Ages

As we have seen in legal system of Athens and Rome, the legal regulations and the religious laws were combined. All the laws were derived from the religious understanding of the universe. Even Christ and Socrates were accused of wishing to introduce new gods into the city. The traces of Roman law were still evident in the Middle Ages Christianity. Investigating the crimes against the divine realm fell under ecclesiastic jurisdiction, and great crimes opposed to grand authorities fell under jurisdiction of royal courts; special commissions usually were responsible of judging and the trial was not run under ordinary regulations.

However, an important evolution took place regard to the arbitrariness of the old society; the distinction between king and tyrant which was prevalent in both political philosophy, and in positive laws, permitted the right to rebel against a Usurping power. This right is expressly stated in the Magna Carta of England (1215), in the Golden Bull of Hungary (1222)<sup>10</sup>, in the Peace of Fexhe<sup>11</sup> of the Principality of Liege, and in the Joyous Entries of Brabant<sup>12</sup> in 1356. After the Carolingian period, the responsibilities arising out of the oath of fidelity were considerably broadened and the judging any interference with them was fell under the absolute power of the king. In fact, a tie of fidelity with an oath of allegiance (adherence) was the basis of the political order in Feudalism time that was protected against rebellious vassals by severe punishment. In 1351, England declared the Treason Act,<sup>13</sup> under which any breach of allegiance with the lords, especially with the King, was to be punished severely. The death was often the penalty for such acts. At the same time, in Germany,<sup>14</sup> rebellion and riot against the authority of the Royal Cortege led to death and confiscation of assets.

In French law, the main political crimes were failure to keep the feudal allegiance, to protect the King, to serve in the army or to serve in a judicial district (jurisdiction). A crime against the state (the King) was considered a breach of vassal bondage (Lord - Vassal Bondage) which its penalty was death, exile, the confiscation of assets of the vassal and loss of fief. In cases, in which a vassal lift a hand against his lord, his hand was cut off; if he escaped, he was banished from the domain of his lord; if he did not assist his lord in time of danger, his goods were confiscated. However, a vassal had the right to set himself free from the yoke of servitude in cases his wife or daughter was deceived by his lord.<sup>15</sup>

<sup>8</sup> Flavius Arcadius Augustus known as Arcadius was Eastern Roman Emperor from 383 to 408.

<sup>9</sup> Denis Szabo, *Criminology and Crime Policy*, Lexington Books, 1979, p. 133

<sup>10</sup> The Golden Bull of 1222, a golden bull, or edict, issued by King Andrew II of Hungary. See: <https://www.britannica.com/event/Golden-Bull-of-1222>

<sup>11</sup> The Peace of Fexhe, signed in 1316, in the reign of Adolph of La Marck (1313-44), regulated the relations of the prince bishop and his subjects. For more, see: <http://www.newadvent.org/cathen/09236a.htm>

<sup>12</sup> A Joyous Entry is the official name used for the ceremonial royal entry ([https://en.wikipedia.org/wiki/Joyous\\_Entry](https://en.wikipedia.org/wiki/Joyous_Entry)). In 1356 the duke of Brabant issued a coronation charter upon entering his duties; reciprocally, his subjects swore obedience to him. For more, see: <http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100025900>

<sup>13</sup> John Hamilton Baker, *The Oxford History of the Laws of England: 1483-1558*, Oxford University Press, 2003, p. 585

<sup>14</sup> Herbert Reinke, *Crime and Criminal Justice History in Germany: A Report on Recent Trends, Crime, Histoire et Sociétés*, Vol. 13, No. 1, 2009, pp. 117-137.

<sup>15</sup> For more on feudalism of France, see: Theodore Evergates, *Feudal Society in Medieval France*,

Also, In England, it was the feudal system that determined the characterization of political crimes. Notwithstanding, in 1351, the nobles imposed "statutes" upon the King that limited the great treason to seven act categories.<sup>16</sup> These statutes were the first attempt to guarantee the freedom of the individual versus the public power in crimes against the state.

The history shows that in the territory of the Christian kings, punishments were unequal on one side depending on the social class of a criminal, and they were arbitrarily determined on the other side, i.e. judges or lords, decided on them in accordance with their will and desire. It should not be forgotten that at the same time, the church was considered both a secular and religious institution and power. Ecclesiastical courts<sup>17</sup> had wide jurisdiction over crimes such as blasphemy and heresy within the political confines of the Christian states. These crimes soon were introduced in the customary penal law. With regard to the close ties between political and religious authority, during the Middle Ages, the main political crimes were regarded religious crimes;<sup>18</sup> though they were punished by the public authorities. Thus, heresy was considered both crimes against the Christianity faith and crimes against the sovereign realm.

One of the severe penalties of this time was excommunication,<sup>19</sup> used by the church lords for reasons such as spreading opinions and ideas that did not conform to religious orders. Excommunication had serious consequences on civil rights of citizens; since excommunication was regarded as being expelled from the congregation of believers and being deprived of citizenship rights.

As the historians have stated, the influence of Roman law was predominant in the Middle Ages.<sup>20</sup> Among the features of this era, there were inequality before the law, issuance of arbitrary rulings and perplexity of laws.

### III. Modern Times

The secular aspect of public power was more developed after the sixteenth century.<sup>21</sup> The kings became increasingly independent of the church and the central power took precedence over the local power of the aristocrats. High interest of the state was substituted for the ties of feudal allegiance relationships and the worst acts of political vengeance were committed on this pretext.

Alleged political crimes were removed from the jurisdiction of regular courts and submitted to the special courts under the legal principle of *nullum crimen, nulla poena sine lege*. Richelieu in defense of these special courts<sup>22</sup> stated that in the regular courts, access to justice in ordinary cases required clear and transparent evidence of proof, but this was not the case in the affairs related to the state; since often in reaching the truth, the conjecture takes the place of proof. He asked the Pope's permission to put the political enemies to death surreptitiously.

For many years, in western states, during 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> centuries, there was no considerable change in public opinion, penal laws and procedure with regard to political crime. The only notable case was the development occurred during the Glorious Revolution of 1688 in England<sup>23</sup> as a step

University of Pennsylvania Press, 2011

<sup>16</sup> For more information, see generally: R. H. Helmholz, *The Oxford History of the Laws of England: The Canon law and ecclesiastical jurisdiction from 597 to the 1640s*, Oxford University Press, 2003, p. 178

<sup>17</sup> For more on ecclesiastical courts, see: Wilfried Hartmann, Kenneth Pennington, *The History of Courts and Procedure in Medieval Canon Law*, CUA Press, 2016, pp. 247-299.

<sup>18</sup> Xavier Rousseaux, *Crime, Justice and Society in Medieval and Early Modern Times: Thirty Years of Crime and Criminal Justice History, Crime, Histoire et Sociétés*, Vol. 1, No. 1, 1997, pp. 87-118.

<sup>19</sup> Uta-Renate Blumenthal, Anders Winroth, Peter Landau, *Canon Law, Religion, and Politics*, CUA Press, 2012, pp. 113-114.

<sup>20</sup> For more information, see: H Patrick Glenn, *The Cosmopolitan State*, OUP Oxford, 2013, p. 39.

<sup>21</sup> For more, see: Harold J. Berman, *Law and Revolution, the Formation of the Western Legal Tradition*, Harvard University Press, 2009, p. 280.

<sup>22</sup> Denis Szabo, Political Crimes; A Historical Perspective, *Journal of International Law and Policy*, Vol. 2, 1972, p. 13

<sup>23</sup> For more information on this historical event see: Steven C. A. Pincus, 1688: *The First Modern Revolution*, Yale University Press, 2014.

toward regulating the penalties of crimes against the state. In fact, a century before the French Revolution, English people put an end to royal absolutism and the Stuart monarch was overthrown. Some scholars believe that this evolution owes to the ideas of the English philosopher John Locke; he states his idea on the principle of the social compact in his well-known book “Treatise on Civil Government”<sup>24</sup> 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, human liberty is the fundamental endowment that the state must be its protector and guardian. The role of the state is protection for the liberty of its citizens. Crimes against state lessen in importance as absolutism of state’s power decreases. Whoever is accused of treason from this time forward will have legal guarantees. Some of those guarantees are:

1. The right to know who the members of Jury are.
2. The right to be informed of the indictment
3. The right to have the assistance of a lawyer
4. The right to summon witnesses to testify in his favor;
5. The right to be presumed innocent.<sup>25</sup>

In France, Charles-Louis Montesquieu by writing “the Spirit of Laws”<sup>26</sup> attempted to prove the relativity of laws and the effect of peoples’ customs and traditions of on formation of these rules around the world. At the same time, Jean-Jacques Rousseau's Social Contract<sup>27</sup> helped to develop Locke's thoughts and opinions in Europe<sup>28</sup> and prepared the public opinion for a great change. Although, the chaos arising out of the French Revolution led to a stable legal and political system; but many political claimants sacrificed their lives to achieve these developments.

During the ruling period of Napoleon, liberal ideas became popular again, and then in 1810, the political crimes were separated from the ordinary crimes<sup>29</sup> under the French penal law.

The French lawyer, François Guizot, one of the famed theorists on political crime wrote in his pamphlet titled “Capital Punishment for Political Offences”<sup>30</sup> in 1822:

“At that time, a King was a symbol of power and state administration, the execution of political offenders was somewhat effective, since the king by executing his opponents, not only relieved his sense of personal revenge, but secured his security and that of the country as they were interdependent... But the situation has changed completely with the progress of civilization, the king and noble families has lost the power and authority, now the public have the power. If people participate in a riot or revolution, their aim will be achieving political and democratic ideals... in this perspective, eliminating a number of people as the rebels or revolutionary would not be sufficient; since specially, a specific person is not their attack target, ultimately it is just a conflict between different thoughts.”<sup>31</sup>

As results of these ideas and thoughts, during the rule of July Monarchy (*Monarchie de Juillet*), under the 1830 law,<sup>32</sup> the jurisdiction for political crimes which was previously within the jurisdiction of the country courts, was placed under the jurisdiction of provincial court; therefore, the situation of political offenders was improved and their trial in presence of the jury was provided under the Penal

<sup>24</sup> John Locke, *Second Treatise of Civil Government*, Narcissus. me, Edition of 2016.

<sup>25</sup> M. Denis Szabo, *op. cit.*, p. 14.

<sup>26</sup> Charles-Louis De Montesquieu, *The Spirit of the Laws*, University of California Press, 1977, p. 34.

<sup>27</sup> Jean-Jacques Rousseau, *On the Social Contract*, Courier Corporation, Edition of 2012.

<sup>28</sup> John T. Ishiyama, Marijke Breuning, *21st Century Political Science: A Reference Handbook*, SAGE Publications, 2010, p. 592

<sup>29</sup> Philip Ingram, *Napoleon and Europe*, Nelson Thornes, 1998, p. 20

<sup>30</sup> *The Oxford Companion to Comparative Politics: Index*, Oxford University Press, 2013, p. 141.

<sup>31</sup> For more see: M. Guizot (François), *The History of France from the Earliest Times to 1848*, Volume 8, Burt, 1848, pp. 296-297.

<sup>32</sup> Stéphane Gerson, *The Pride of Place: Local Memories & Political Culture in Nineteenth-century France*, Cornell University Press, 2003, pp. 98-99.

Code of 1830. In 1831, the French government declared principle of non-extradition of political offenders.<sup>33</sup>

After Louis-Philippe removal and establishment of the Republic government in France following the revolution of 1848, the condition of political offenders improved and the capital punishment was abolished for political crimes<sup>34</sup> and was replaced by imprisonment in a fortress. However, some western states including Germany and Italy did not receive favorably this manner.

In this era, some advantages were granted to political offenders which can be summarized in the four important principles as following: Page | 14

1. Prescribing special punishment for the political crimes
2. The abolishment of capital punishment
3. non- extraditions of political criminals
4. Trial of political offenders in the presence of the jury.

Granting such privileges continued until the end of the 19<sup>th</sup> century. However, the developments of the last decades of this era including formation of anarchist groups and the opposition against the political authorizes, entered into a new phase of law review and return to former laws. The western European authorities presumed that anarchist groups are intending to overthrow the democratic governments. On the other hand, the labour movements under the leadership of the communist and social democratic parties were victims of this crisis which led to the First World War.<sup>35</sup> The political leaders of these movements faced with a destiny that they did not deserved due to their political status. During this time, the capital punishment which was abolished in 1889 was re-introduced again.<sup>36</sup> After the end of war in 1918, confiscation of the political offenders' assets was reinstated in penal law of France and the capital punishment was reintroduced along with other criminal penalties prescribed under the law.

Another time, the horrible events of the Second World War made the world to ponder the idea of determining the scope of human rights and freedoms against tyranny and despotism of the rulers. This attempt led to the adoption of the Universal Declaration of Human Right.<sup>37</sup> Public wide participation in all aspects of social and political spheres gradually led to decrease in the importance of political crimes in post war democracies and the public fundamental rights were recognized. At the present, though many of the acts that were considered crime against the poetical democratic system are decriminalized; political offences in its traditional sense, under the titles such as treason to the state or espionage, are still regarded as criminal acts in penal laws of these countries.

## C o n c l u s i o n

As already discussed, the concept of political crime has emerged at the beginning of the first human society's formation. At the time the societies transformed into political organization, they were forced to defend against domestic and foreign enemies. However, different interests and concerns have led the relevant actors to define the term of political concept in a manner more compatible with their desire and will. Also, the punishments provided by religious or political bodies through the history are under the effects of religious expediency or political will. Notwithstanding these historical transformations, at the present, though many of the acts that were considered crime against the poetical democratic system are decriminalized; political offences in its traditional sense, under the titles such as treason to the state or espionage, are still regarded as criminal acts in penal laws of many countries.

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<sup>33</sup> *International Summaries*, U.S. Department of Justice, National Institute of Justice, National Criminal Justice Reference Service, 1978, p. 140.

<sup>34</sup> For more see: Robert Aldrich, Kirsten McKenzie, *The Routledge History of Western Empires*, Routledge, 2013, p. 109.

<sup>35</sup> For insight on this matter, generally see: Stewart Ross, *Causes and Consequences of the First World War*, Evans Brothers, 2003.

<sup>36</sup> On capital punishment, see generally: Peter N. Stearns, *The Oxford Encyclopedia of the Modern World: 1750 to the Present*, Oxford University Press, 2008, pp. 37-38.

<sup>37</sup> For more on history of Universal Declaration of Human Right, see: Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press, 2010.

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