

The poLitical Crime From The Perspective Of Various Models Of Criminal Policy Governing Criminal Systems

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Abstract

The political crime has a long history in legal systems and has always become a challenge between governments and perpetrators of these batch of crimes. The political crime or many components including criminal policies governing the society, security, principles of constitution and civil freedoms stated in the constitutions of countries, The mutual rights of governance and society and rulling ideology have been relevant, and the legal or legislative process of this crime has bee faced with many issues and problems in criminal systems. In this paper, we began to examine the attitudes of various legal systems based on the considerable models of criminal policy in the countries and the international criminal system and the attitude of countries' criminal policy models on the nature of political crime.

Keywords: Political crime, Securityism, political activity, civil liberties

1. Introduction

Political crime is related to many components, including the criminal policy governing society, security, the constitution of countries and civil liberties specified in the constitution, the mutual rights of government and society, and the political ideology governing societies, and the legislative process of this crime in systems. Punishment has been accompanied by the escape of many landings.

The treatment of penal systems and criminal criminal policies of countries with political crime can be considered as a component of the amount and manner of freedom and democracy in different countries.

2. Main Discussion

1- All Types of criminal policy models and the type of attitude on the concept of freedom

A: AllTypes of criminal policy models

About the Relationship between Criminal and Ideological Policy , a bilateral relationship exist

This means that the ideology of governments has always played a key role in determining the components and variables of criminal policy And, of course, on the other hand, criminal

politics is somehow influenced, conquered and served by ideology and in the ideology rullerof any system, and in the particular sense of any government with all the desired goals of the system that is dedicated broadly or narrowly as a result of criminal rights, The tradition, customs and beliefs of the system, benefits from criminal policy to achieve the goals and excellence of its considered ideology.

Liberalist criminal policy

The word liberalism means seeking for freedom, has been taken from the word Liberty. The word liberal is a French word, meaning a freedom-loving person or a fan of freedom. The liberalism has principles and characteristics such as:

-Individualism: The individual and his rights are preceded by everything, and even governments must serve the demands of the societies' individuals as well as the benefit of society is important. -Absolute value of freedom: The only limit of freedom for liberals is the freedom of individuals.

- Humanism

Individualism

The liberal criminal policy model is regarded as a fundamental model in many European countries and countries with liberal thinking. But it does not mean that the criminal policy system fits in all respect to this model. The diversity of criminal policy in these countries is so much that a manifestation of each of the criminal policy models finds a place in these countries (Delmas Marty, 1395, 151) Perhaps, it can be said that the most authentic feature of liberal criminal policy is the role and position of civil organizations and subsidiaries of civil society and the government, as a legislator seeking for assignment of preventive and repressive responses to these social organizations, while interfering with the emergence and disagreement of various reactions to accept these reactions.

- Criminal policy based on universal authoritarian

Authoritarianism is called to a kind of behavior of institutions, social organizations that obedience to authority and its brokerage offices is distinguished as a distinguished feature, The concept is usually opposed to individualism and democracy.

In the science of politics, authoritarian government is a state in which political authority is concentrated by a small group of politicians. This concept is often in front of individualism, democracy, and libertarianism. Authoritarianism emphasizes on the law of governance rather than the governance of law, this form of government often has possessed the electoral mechanisms, Political decisions are made by a group of officials and behind closed doors,

A kind of bureaucracy that sometimes operates independent of rules, which does not oversee the elected officials and they fail in addressing the concerns of the constituencies that are supposed to represent. In authoritarianism, there is also an observable tendency for informal and nonframework acts of political power,

A "Self-read leader, which even if selected, cannot be replaced by the citizens' free choice from among the election competitors.

And the citizens' tyrannical deprivation from civil liberties and the little tolerance of significant oppositions is also evident in this kind of government. One of the consequences of authoritarianism is the security of criminal policy that directly has an impact on the political crime in the various communities. It should be noted that security sometimes seems to operate due to a structural characteristics that systematically results from the political effects of using ruling political ideology. (Wæver, 2011)

Security-oriented ideology which was based on suppression and severity of criminal action (Gholami, 2005) And the basis of Jean -Claude's view of this ideology from the disadvantages and inseparable electoral concerns. A feeling called insecurity that exists among the people has been created that was formed by the mass media. In the various societies, securityism has faced with many ups and downs and in most cases, it has been affected by social and security conditions. For example, in the United States, a patriotic bill

was raised in Congress and US legislative agencies immediately after the 9/11 attacks (2001) and it was approved by the Senate and American Congress with a very high vote (Patriot ACT) and converted to a necessary law. This law makes it difficult to enable non-American citizens residing in the United States by incorporating numerous provisions of immigration and security laws and it permits the executive device to take preventive action within the United States more freely than ever before. The patriotic law has a lot of changes in regulatory laws that made government spying much easier for ordinary Americans. Telecommunications and email monitoring powers was possible without a court order. Access to bank and credit records actually while most Americans think to restrict terrorist activity, the law of patriotism actually turns ordinary citizens into suspects. In securityism, the government response to these social deviations and the reaction to a dangerous state is very important. Answers to the crimes are usually publicly manifested in the form of punishment and the answers given to deviances are done as social reaction and the use of civil society leverage (Maffei & Betsos, 2007, 462).

- The absolute authoritarianism-based Criminal policy

In this model of criminal policy, we are in the service of legislator in preservation and expansion of the authoritarian tools such as the formation of specific courts and private and executive authorities.

They have possessed the legal and judicial guarantees which these authorities are divided by the offender's credibility and the subject of crime. In this type of system due to totalitarian thoughts and its conflict with the rights of individuals and individual and social freedoms, which is sometimes accompanied by political-fascist ideology whose mythical essence in shaping various fundamental changes is a clear type of extremist populist nationalism based on regeneration (Skinner, 2020) and the struggle against the current situation and opposition to it becomes a kind of value, and political activities under the general title of opposition to the current

situation with the aiming to overthrow, Systemic change has reached its peak, and these political activities are accompanied by the name of political crime, but in essence, the issue is associated with aggressive and security crimes and violence. The main characteristic of this model and its difference with the totalitarian and authoritarian model is the distinction between crime and deviance. There is a distinction between crime and deviation in the authoritarian model.

And in the totalitarian model, there is no distinction between crime and deviation, but in both models, the government is the only reference to deal with crime and deviation.

2- The nature and concept of political crime

Unfortunately, in the case of political crime, the precise definition is very serious, and the best reason for that is the failure to provide a definition is free of aggression and objection, and this is due to a variety of reasons. The unknown nature of political crime and the provision of a non-obvious example of it are among these causes.

And so there is no definition that has not been severely exposed as soon as it is announced. In addition, a political crime, like other crimes, does not have a fixed and specific objective existence in order to be able to define its constituent elements and other properties. The concept of political crime was formally entered into French law in 830 AD and was separated from ordinary crimes, but no definition was provided, its examples are mentioned later.

A political crime is known as a criminal act in which either the motivation was to overthrow the political and social system, and disrupting the political management and to inflict the damage to the governance of the country. Or any criminal act that results in the overthrow of the political and social system and harm to political officials and head of the state. (Hashemi, 1992, p. 137).

- Political freedom

Definitely, the concept of political freedom should be considered for explaining the political crime.

These works basically includes the freedom to use the tools through which the citizen can make his voice heard and have a practical impact on government (Cohen, 1995, 18)

3- Components and examples of political crime in the laws of countries

Until the 19th century, governments treated cruelly with political criminals, punishment of them generally with horrific deaths and inhumane tortures, Burying alive, blinding, and amputation of criminals was as severe as possible. Emotions against political criminals in this period are so intense that Bekaria, a jurist who fought for the abolition of the death penalty. In the case of political crimes, he believed in the execution penalty in times of political crisis, but gradually European people changed their minds.

The founder of this transformation was François Guizot (a prominent jurist). With the advent of the neoclassical school, political criminals enjoyed special status and privileges. Trial of them in public courts with the presence of a jury, exemption from work, non-use of prisoners' uniforms, Suspension of pursuit or punishment for misdemeanor offenses in some countries, Inclusion of general amnesty, Failure to use the procedure for crimes evident in some countries, exemption from extradition of criminals between countries, Exercising the right of asylum, repeated convictions (sentences) laws do not apply to political offenders,

Failure in detaining the political offenders in criminal issues as an execution guarantee for payment of fines and damages, Shorter duration required to restore the status of public crimes, etc. Anyway, the opinion of legal scholars towards political criminals is a compassion and privilege. From the perspective of some legal systems (for example, Schaefer in his book -Political Criminals, Ethical Considerations, and Crime) states:

A political criminal is different from an ordinary criminal because of his altruistic motivations for breaking the law. Whereas ordinary criminals break the law for personal gain, regardless of whether they are injured or harmed by such interests, the Political crimes are committed with

the aim of a better society and a better life for others.

A political criminal intends to act on the basis of a moral belief that does not care the personal gain or loss; For political convicts, lawlessness is a precise tool for promoting the concept of a more moral society, which is prohibited by current law.

Political Criminal: The Problem of Morality and Crime (Schaefer, 1974), Gizo indicates; the political crimes threaten the organization of country, but do not disturb the peace of the people. Gizo believes that these are accelerating the path of history in the event that the actions of public criminals for society are regressing, here. Garofalo believes that political crime has an artificial aspect and lacks an unethical aspect.

Silg says, the spirit of self-sacrifice and having complete belief in what political criminals do, forces them to commit political crimes. in so far as Professor Artalan believes that even when the intentions of the perpetrators are not benevolent and honorable and are based on corruption, decadence and egoism. Again, this corruption is very different from the corruption that forces people to commit non-political crimes. For example, in the German penal code and in Article 3 of the German law approved of 1929m, which discusses political crime under the pretext of extradition of criminals, He defined this crime as "a political offense is any criminal act that is against the basis of the country or its security or against the head of state or a member of the government because he is considered a member of the government". It is either against the Constituent Assembly, or political rights of the elector or the elected individual, or it is committed against good relations with strangers. In France and in the introduction to the French law approved in 1927 on the extradition of criminals in the definition of a political crime, it is stated that "A political criminal is known as an individual who has been driven so much due to the political opinion that he/ she has committed an offense. In Italy and Article 8 of the Italian Penal Code: "In terms of the implementation of criminal law, a crime that is regarded as against the political interests of a country "Or to be done against one of the citizens' political rights is

regarded as a political crime". Also, non-political crimes in which all or some of its motivations are political. Libyan Penal Code: According to the criminal law, any crime that is against the political interest of the government or an individual's political right. Also, any ordinary crime whose main motivation for committing to be political is considered a political crime.

Iraqi Penal Code: A political crime is a crime committed for political motivation or against the individual or public political rights of persons in a society. Syrian Penal Law Code: The political crimes are crimes that committed by a politically motivated perpetrator. The crimes against individual and public political rights are also considered as the political crimes. As long as it perpetrator has not committed the crime due to and post and personal motivation. The Lebanese Penal Code also defines the same definition of political crime in the Syrian Penal Code. In the United States, according to the realdefinition of political crime, mentioned that Betrayal to the United States means fighting them or joining their enemies and giving them help and comfort. Provocation is the issuance of any scandalous and biased false statement against the government, the president or the Congress with the intention of ,disgracing ,Creating disturbance, anxiety and disrespect to arouse the hatred of the citizens towards them, but anti-sedition laws can not be contrary to the obligations of the First Amendment of the Constitution. the Espionage is the acquisition of military information by foreign governments. It can be observed that political crime consists of three elements in the United States;

The treason, conspiracy and espionage, but by examining the history of political crimes in the United States, we can consider two other elements, namely corruption and misconduct, which of course are associated with American officials, are instances of political crime in the United States . one of the instances of political crimes in the United States include the case of Iran Contra (McFarlane's arms sale during Ronald Reagan's presidency and violation of Iran's arms embargo).

It is also required to mention that the scope of political crime is wide in the view of Western theorists, for example, it is one of the important cases of the political crimes. dynamics

Jeffrey Aian Ross showed us the most comprehensive and contemporary discussion of the phenomenon of political crime – the crimes that committed by both the government and gainstthe government over the past three decades in the United States, Canada and the United Kingdom.

Ross discusses both violent and nonviolent crimes as well as government crimes such as political corruption, illegal internal surveillance and human rights abuses

And lists some of them are considered as the political crimes.

4- Negative confrontational political crime in the securityist and liberal view of political crime:

Nowadays, a new concept of political crime called asnegative political crime has come to the attention of jurists. Accordingly, a negative political crime, contrary to the concept, is a political crime that includes the crimes of various groups and individuals against the government and the political system. The negative political crime called the crimes committed by the government penal institutions, such as the police and the Citizens' scientific security institutions of their own foreign nationals or their governments (Ross, 2012, p. 29). In other words, the basic pillar of crimes of violation of citizens' civil rights and based on human rights violations is committed by government brokers (Haeri et al., 2012, p. 51).

The criminal act of government agents in violating the rights of public freedoms can be interpreted as a negative political crime with a political description from a social perspective and the crime of government agents of scientific rights and public liberties. the instances of this

type of criminalization can include the retention and non-transfer of power in dictatorial or quasi-dictatorial regimes. the actions of Electoral monitoring bodies to disqualify individuals with political motivations and deprive individuals of membership in Legislative assemblies or councils or other institutions. the crimes of government agents against human rights and the individual freedoms of people are specified in the constitutions of countries, which are examples of negative political crime. Also restricting individuals from political participation, such as preventing the right to elect government representatives, preventing the political activity of the opposition and political organizations, And promoting the ability to create constraints on context of freedom of expression (selfish arbitrariness of press), unreasonably restricting the activities of unions or restricting communities;

Lack of fair judgement, discrimination based on race, ethnicity, gender, religious reasons, etc. are other examples of such crimes (Ross, P. 160).

5-Criteria for Criminalization of political crimes

As observed in the previous definitions of political crime, there are known three types of criteria in the definition of political crime: objective, subjective and mixed cases, according to legal scholars. First, we must provide a brief definition of costs and criteria.

- Objective criterion

According to the objective rule regarding a political crime, it is any action (only in the form of an action) that directly harms the ruling political body or seeks to waver the path or change outside the norm of custom of the political pillars of sovereignty is considered as the objective rule of political crime.

- criterion Mental

based on this type of rule, which is a local interpretation of a political crime, any actions and behavior that are politically motivated against the ruling political system and even the territorial integrity of the country. Even assuming that ordinary and security crimes are committed with

a political intent and motivation, it is known a political crime. And many ordinary and security crimes are included in political crimes with this type of view and regulation.

- Mixed rule (syncretist)

With the items mentioned, we see a kind of conflict between the purpose and motive of the perpetrator of political crime and public order and social rights.

Hence, some scholars believe in a syncretist definition of objective and subjective criteria. According to this, a political crime is considered a criminal act that directly attacks and attacks individuals' political motives and the basis of government and the individuals' political rights with political motives and purposes.

The advantage of this definition is that it explicitly clarifies the content of a political crime and avoid spreading the concept of political crime indiscriminately. (Mohseni, 1996, 98)

6- Political asylum and non-extradition of political criminals

The case of granting asylum, especially diplomatic asylum to political criminals, is one of the most important issues in the political and legal environment of the international community in the two contemporary centuries, which has become very important due to wars, coup d'etat and revolutions. According to the Universal Declaration of Human Rights (1948) and the Convention on the Status of Refugees (1951m), individuals who are persecuted for having a political views contrary to the menus of their respective governments. They can apply for asylum from other governments, Of course, provided that they have not previously committed war crimes or important non-political crimes. Although the general principles and rules of international law do not mention the granting of diplomatic (extraterritorial) asylum to political criminals by embassies, However, this right has been recognized based on specific international regional documents of Latin America, including the Montevideo Diplomatic Asylum Convention (1933m) and Caracas (1954). (Hashemzadeh Harisi, 2019, 16)

one of the other advantages and cases associated to political criminals is granting shelter and defection to these people, given that some countries know the political criminals as ideological criminals who

In the way of expressing an opinion, social freedoms, fighting against injustice, etc. are oppressed in their own country as dissidents and they deserve refuge in another country. According to this belief, political criminals do not have the security cost and the risk as disrupting the social security of the host country and are not considered in dangerous criminals list.

7- Theory of non-existence and subjectivity of political crime in democratic societies

Some jurists in Western societies and even at home believe that in societies based on democracy, political crime has no external subjectivity and objectivity. The foundations of this theory are as follows:

A: here ,the definition of political crime is neither theoretically nor practically desirable.

This issue is not specific to our country and is precedent in other societies. Here are some instances:

thedemocratic systems began to take shape After the revolutions of the 18th century,

In France, according tothe historical background and the fear that the ruling government may return;

The political crime was envisioned as a guarantee for opponents and protesters. They said their motivation was honorable,

However, in public crime , public order is in danger; In political crime, political order is in danger, and what matters is the injury of public emotions, not the prevailing .emotions

With the subsequent developments, especially after the World War, the fundamental rights and freedoms of the citizens have been respected by the governments and the tools of protest and

struggle have been anticipated in the current systems. In the spirit of elections and the length of one's power, there is a democratic process, so there is no need for political crime. Anymore This is why it is no longer considered a political crime in the French Constitution or Penal Code, but it is still provided for anticipating this item in the French Code of Criminal Procedure. For clear instance, it is provided in the criminal registry that it is not considered a political crime in the registry record. therefore, the political crime has been eliminated either in an authorized or in a practical way. In Belgium, political crime has been practicallyeliminated, theoretically there are protest tools in a democratic political system, And there is no necessity in the possibility of political crime. The technical and practical problem of political crime is that everything goes towards the definition of political crime But any definition is dangerous. For example, there is a definition of the Supreme Court of Belgium, but it is similar to the definition in the 2003 law of the definition of terrorist crimes.

B: In a democratic system, the subject of political crime is a place of doubt

The question must first be asked that t he study of political crime is the subject of which legal field and then he answered that at first this issue was a part of criminal law, but over time and with the development of public law studies, in its heart of which the issue of political science and lawyers ofpublic law also opens to this discussion. Whether along with a criminal lawyer or independently of him. The common ring of the disciplines is either individual rights and freedoms or the field of human rights.

Fundamental principles such as freedom, equality, majority rule and the protection of minority rights, separation of powers and the rule of law are mentioned asthe democracy criteria which are observed in a democratic government, it is observed in a partial or skewed manner in a semi-democratic government as well as it is not observed at all in non-democratic governments and systems. In a democratic system, political crime is not raised in its current form because in this system there is regulation of power and guarantee of fundamental rights and freedoms

and entry strategies to the policy are logically possible. This is not the case in non-democratic societies because it is clear that the government does not intend to give points to the people, but in semi-democratic societies the situation of political crime is known as a paradoxical state (According to such views and in the beliefs and laws of some countries) Basically, the definition of political crime is not possible with the conditions of a democratic system.

G: The motivational position of political criminals in democratic societies

Some people believe that a politically motivated crime with honorable motivations and by democratic standards should be committed without terrorist acts and crimes against the integrity of the body and soul of the people, otherwise it is considered as a normal crime. Others people believe that if a political crime committed with honorable motivations, Any action that a person does, even if it is with beatings and maim must be only based on the internal criteria. What is apparent is that the best measure for political crime seems to be actions which were taken by the protesters for changing the situation in a country.

And certainly this crime should be committed on the basis of honest thought without regard to personal advantage and violent acts can not justify violent acts, and political crime is performed based on political thinking and this criterion can be considered as a good criterion. These crimes should not conflict with human rights criterions, and restricting the political crime to a part of the government does not seem to be met with legal criterions

A point that we must pay attention to it, is that the perpetrators of political crime are basically individuals and groups who, by known criteria, are based on thoughts that relate to certain things. They take action and the type of action is different. In fact, we can not identify every political critic as a political criminal and in the framework of political crime, we may not be able to take actions such as defamation, offense, demonstrations that lead to conflict,

Put the actions taken to change the government within a framework, because someone may say and write something in criticism of the government and the system. The Criticism causes governanceto be corrected . In a society where there exists thecriticism, corruption is less and criticism exposes the corruption of the officials. T he Criticism causes the healthy section of a political system to besensitive to the unhealthy section And clarifications makes it possible to identify individuals who abuse the power to plunder government treasury or properties.

Therefore, rational and reasoned criticism should not be considered as a political crime. the political crime is in factconsidered as the formation of groups, activities, propaganda against the system and the government,

Accordingly, if we base this criterion then espionage, terrorist acts will be excluded, and actions that lead to criticism of the regime will be excluded . too

Conclusion

In today's society, political crime is linked with problems and issues, and in some societies, the political criminal is regarded as a liberal and social reformer and in some societies, consequently the authoritarian and securityist view, an equal political criminal is defined as an example of a security criminal who seeking for destroy the security of society. Criminal policy and today's modern societies have taken two methods for dealing with political crime:

A: Elimination of political crime and pluralism of the concept and spread of security crimes to political crime

B: In some societies with a liberal view and based on human and democratic principles, the subject matter of political crime has been eliminated.

Of course, at some point in time, according to the conditions of society, such as the terrorist incidents associated to 9/11 in the United States, this view has been associated with extremism due to thecurrent priority of the security of society.

Nowadays, we observe that in ademocratic societies, political crime has given its way to the negative political crime (crimes of sovereignty against the rights and civil liberties of citizens) and even concepts such as pluralism and political pluralism have expanded party activity, having right to protest, referendums, and referendums have taken on the function of preventing political crime in democratic societies.

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