Political Crime in Europe: A Comparative Study of France, Germany, and England

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Barton Ingraham begins Political Crime in Europe by complaining that most speakers use the term “political crime” imprecisely — that they apply it indiscriminately — to condemn any criminal justice system with which they disagree and to support any prisoner with whom they sympathize. Because of this emphasis on ideology, analysis of political crime has become, Ingraham claims, “simply a question of whose ox is being gored” (p. ix). To Restore integrity to the analysis, Ingraham ignores the criminal’s political ideology and focuses instead on how governments respond to political crime. He defines political crime broadly as any act which a government currently in power perceives as challenging its legitimacy or threatening its power base. Thus for the purposes of his analysis, a crime is characterized as political without reference to how the current government came to power — whether through peaceful elections or a violent military overthrow.

Having laid this groundwork, Ingraham attempts to show, through analysis of the laws of Germany, France, and Great Britain, that governments have stressed preventive methods of handling political criminals, rather than employing punitive measures after the final revolutionary act. Prosecutions of the anticipatory crimes of attempt and conspiracy and of speech offenses such as seditious libel demonstrate this focus on prevention. Ingraham’s thesis is that the most effective way to prevent political crime is through “the resolute, timely and decisive application of repressive measures” (p. 321). He asserts that the government’s choice of repressive measures is limited, however, to those which are in accord with the country’s prevailing political philosophy.

Ingraham devotes most of his book to examining the treatment of political crime in England, France, and Germany during five historical periods: 1770-1789, 1789-1830, 1830-1851, 1851-1914, and 1914-

1. Ingraham’s book is one of the few recent works which attempt to define and analyze political crime. For a study which uses the type of ideology-based definition of political crime that Ingraham rejects, see S. Schaefer, THE POLITICAL CRIMINAL (1974). Schaefer defines a political crime as an act motivated by “a settled belief, essentially a deep-seated consideration in the political criminal’s conscience that makes him feel that he has a rendezvous with destiny, that he is a David striking at a Goliath of injustice on a world scale, capable of imposing order on the chaos of reality.” Id. at 146.
Each chapter in this section describes one country's general political history during that period, including its foreign affairs, internal political structure, and significant political and cultural subgroups, and then discusses the enactment and administration of laws passed to suppress political opposition to the ruling government. Ingraham then summarizes the period's prevailing legal and philosophical views on political crime, criminals and punishment. This philosophical history focuses primarily on the growth, development, and decline of Liberalism, and the subsequent rise of Positivism. It is an excellent study of society's changing view of the morality of the political criminal and the effect that view has had on the severity of punishment for political crimes. Ingraham's survey also gives the reader some understanding of the development of laws dealing with political crime. Unfortunately, significant omissions detract from the otherwise comprehensive analysis.

First, Ingraham makes only passing reference to the Reign of Terror during the French Revolution, even though he calls this era "the paradigm of my model of political repression" (p. 67). Ingraham states that he omitted this period because it made no lasting contribution to the development of French laws on political crime. But he fails to document this assumption. While the actual laws adopted during this period may have been repealed, the French experience with severe repression may have had a significant impact on the types of laws and the methods of enforcement common in later periods. And if Ingraham views the Reign of Terror as the paradigm that proves his thesis of the effectiveness of repressive techniques in stifling political crime, he should have included this era regardless of its particular relevance to the development of French law. A de-

2. Ingraham cites more than 250 repressive laws which these three countries have enacted over the past 200 years. Pp. 354-66. Typical among these are the French Decrees of February 17 and 25, 1852, which required that all political and "social-economic" journals be approved by the government prior to publication and which authorized the government to suspend publication of any journal which had committed two misdemeanors within the space of two years. Pp. 171-72.

3. According to Ingraham, pre-Enlightenment society viewed the political criminal as one attempting to undercut the basis of society by challenging the legitimacy of the ruler. The political criminal was thus characterized as dishonorable. Punishment of political crime in this era was harsh; the death penalty was frequently invoked. With the rise of Liberalism, the political criminal came to be seen as an honorable, though perhaps misguided, individual who was attempting to change what he considered to be an unjust, unrepresentative government, rather than to threaten the underlying social order. During this period, punishments became less severe and the death penalty was used less frequently. Positivism became influential at the beginning of the twentieth century. Because positivists accept the right of any current government to exist, they see no justification for the actions of the political criminal. As the influence of positivist theory grew, political criminals were no longer seen as honorable or deserving of leniency. Consequently, the death penalty is now being used more frequently for the most serious political crimes.
etailed description would have shed considerable light on the validity of Ingraham's thesis.

Ingraham also omits any discussion of the persecution of Jews in Nazi Germany, even though this is another classic example of unbridled repression in action. In a footnote, Ingraham states that Jews were "objective enemies" of the State (p. 258 n.32); this apparently distinguishes them from political criminals. Unfortunately, he never explains the meaning or significance of this distinction. The omission is all the more puzzling since Ingraham in an earlier chapter discusses the repression of German Catholics under Bismarck (pp. 193-94), a seemingly analogous case.

Because Ingraham's interest in repression lies solely in its effectiveness at preventing political crime, he may have wished to avoid these emotionally charged examples, fearing that they would distract the reader by conjuring up extraneous considerations of morality and individual liberty. This narrowness of inquiry is also reflected in Ingraham's failure to confront the difficult issue of the proper response to illegitimate government. He focuses only on the likelihood of government success in preventing political crime, without considering either the chilling effect of that repression on innocent citizens or the possible legitimacy of the political criminal's cause. In The Political Criminal, Steven Schafer states that "no critical penetration into the political crime problem can be made without confronting the moral aspects which are at its center." Ingraham apparently disagrees, since his analysis pointedly ignores these moral aspects.

Political Crime in Europe presents a comprehensive picture of the development of government legislation and administration in this field, as well as a detailed historical survey of mainstream Western European legal and political philosophy of the past 200 years. Nevertheless, his novel approach to political crime is marred by his failure to confront two of the most powerful examples of repression in European history. And in the end, his argument that repression is the most effective means for controlling political crime remains ill-defined and unsatisfyingly abstract.

4. S. Schafer, supra note 1, at 58.