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Trends. Immigration and Naturalization Service v. Aguirre, No. 97-1754: Can Crime Be Nonpolitical?

Editor

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Given that politics ultimately involves the allocation of finite resources among infinite needs, a case recently argued before the United States (U.S.) Supreme Court seems patently political. Immigration and Naturalization Service (INS) v. Aguirre, No. 97-1754, revolves around whether foreigners who have committed serious nonpolitical crimes outside the US are ineligible for refugee status regardless of the severity of persecution that would await them at their countries of origin.

Can any crime be nonpolitical? How can it be, if a crime is not a crime without it being conceived as such by formally constituted political authority? Moreover, crime inevitably affects the polis in which it occurs. Those analysts who might attempt the distinction between political acts that are accompanied by significant intent to achieve a political objective from nonpolitical acts that are not so accompanied are still left with having to delineate how an objective would not be political--unless such analysts wish to maintain that an actor who does not attribute the objective of an act to the referent "political" has then not acted politically. This last maneuver, however, would be but a sophism analogous to claiming that a speaker does not speak prose if that speaker doesn't refer to prose as prose. (If one were to suppose that an act without intent or objective was nonpolitical, one still would be left with delineating how one could identify such an act in a manner that would be factually and legally valid.)

Another Issue concerning the "nonpoliticalness" of a crime hinges on the arguments presented by the INS. The INS maintains that waiting persecution in one's home of origin can have nothing to do with the political quality of that crime committed in that home of origin. It also maintains that, by focusing on the crime and not the criminal, one can more easily support the notion of a nonpolitical crime. As well, the INS maintains that political motivation alone doesn't make a crime political. All these statements depend on arbitrary segmentations of reality that belie the basic thrust of law as a political vehicle--allocating finite resources among infinite needs.

The impetus for the INS convolutions is probably the Refugee Act of 1980, which bars relief for foreigners who have committed serious nonpolitical crimes. The bottom line is that nonpolitical is but a hypothetical construct without an ontological referent. Unfortunately, its noxious consequences for people's lives are anything but hypothetical. (See Dion, D. (1997). Competition and ethnic conflict: Artifactual? *Journal of Conflict Resolution*, 41, 638-648; Greenhouse, L. (March 4, 1999). Ability to expel foreigners is argued in court. *The New York Times*, p. A16; Kafka, H. (1997). Inhumane crimes and their healing: The personal is political. *Journal of Psychohistory*, 24, 242-251; Louw, A. (1997). Surviving the transition: Trends and perceptions of crime in South Africa. *Social Indicators Research*, 41, 137-168; Rickert, E.J. (1998). Authoritarianism and economic threat: Implications for political behavior. *Political Psychology*, 19, 707-720.) (Keywords: Immigration, INS, Law, Refugee, Supreme Court, United States.)