

UPPER GOOSE CITY  
EAST DOVER, VT.  
TEL. WILLIAMSVILLE, VT. 22-21

43 Sunset Avenue  
Amherst, Mass  
September 11, 1958

Professor Otto Kirchheimer  
New School of Social Research  
17 West Eleventh Street  
New York City

Dear Kirchheimer:

I had hoped to see somewhere and sometime a reaction on your part to my recent book "Political Power and the Governmental Process" of which you received a copy upon publication. You are one of the very few in this country whose opinion on what the book accomplished or failed to accomplish would have been of great value to me.

It now happens that the American Journal of Comparative Law has asked me whether I would know someone who could (and would be willing) to review the book for them. Would it suit you to write to Miss Vera Bolgar (Dr. Vera Bolgar), the secretary, that you would be inclined to undertake the review? The address is Legal Research Building, University of Michigan, Ann Arbor, Michigan. You would do me a great favor regardless of what you think of the book.

To publish learned books in this country is truly discouraging. In contrast to my previous publications which were widely reviewed in the daily press this book met with a conspiracy of silence and as yet I have seen no critique in any of the learned journals.

I hope you had a good year and I am eager to learn what progress you enterprise on law and justice has made. I did not go to St. Louis because of the waste of time and effort connected with the meetings of the Association, I also shunned the meeting of the International Political Science Association in Rome because I disliked the program and the thought of sitting admiringly at the feet of Herr Baron James K. Pollock when he delivers the presidential address, appaled me. But I attended the meeting of the Academy of Comparative Law at Brussels in August where I was general reporter on the subject, "the legal institutionalization of political parties." Afterwards I visited Spain that until now I had not known, a distressing experience for a man who (still) believes in democratic values (whatever they may mean) but very good food. The de Gaulle constitution is of course much in the foreground of my interest. Nobody believes that the Vth republic will last longer or as long as the IVth. For the time being and for a change, Latin America is the only region where in terms of constitutional developments some real progress is being achieved.

Incidentally, my book will be published in Germany under the title Verfassungslehre in the near future.

If you have come across of a review of my book that has escaped me please call my attention to it.

Hoping that you will comply with my request and with best regards,

Yours as always

Karl Loewenstein

*Karl L.*

AMHERST COLLEGE

Amherst, Massachusetts

DEPARTMENT OF POLITICAL SCIENCE

43 Sunset Avenue  
September 1, 1960

Professor Otto Kirchheimer  
2801 Beechbank  
Silver Springs, Maryland

Dear Kirchheimer:

Last spring the Princeton Press asked me to review your manuscript for them. Now they have authorized me to release the review to the author, as per copy enclosed.

I take such assignments seriously (in contrast to many other people) But beyond this it is indicative of the very high esteem I hold for you and your work that I devoted several weeks to the reading and evaluating job, the former not made easy by the rather deplorable shape in which your manuscript was submitted. I hope the observations I included will be of help for your final revision. The Princeton people wrote me that you expected to finish the revision prior to your departure for Germany. I am sorry that my remarks could not be made accessible to you earlier, and if I were in your shoes I would not rush the final revision. This could be a major contribution, but in its present status it seriously militates against its own value.

I conducted a lecture tour in Germany this early summer, speaking all told 20 times (plus three radio appearances) within a single month. In view of the two books I published recently in Germany (and, perhaps, for some other reasons) I was more than satisfied with the personal reception accorded me. The general impressions of Germany as a country are mixed and about the law schools you will form your own judgment. I liked Tübingen and Münster

best, Erlangen second. Berlin was affected by the Fakultätenstreit between Fränkel and Quengler into which I was drawn against my will. Highlights were the Juristische Gesellschaft in Berlin and the equivalent in Karlsruhe.

I have another Rockefeller grant for the coming year which I plan to devote to my historical studies. I have been stuck in Roman public law for more than a year now and do not regret it. All good luck to you and take time to let me know from your.

Sincerely yours,

*Karl Loewenstein*  
Karl Loewenstein

I hope you will find the enclosed for you  
and for the mass.

September 11, 1960.

Dear Professor Loewenstein:

I had hoped to have a chance to see you at the Political Science meetings in New York and therefore did not answer your letter immediately after receiving it. You were perfectly right not to attend - it surely was not worthwhile.

Let me first thank you for the painstaking effort you devoted to my mss. I shall be in your debt forever and I want you to know how much I appreciate what you did for that mss. When you will see it in its final form - which alas will not be till next fall - you will realize to what great extent I followed your suggestions, especially in regard to the introduction and the importance to differentiate clearly between collective mass action and the repression of individual acts of non-conformism.

Miss Brokaw probably misunderstood me when she wrote you about my going to Europe. I stayed home all summer to take care of the revisions, delivering the mss just last week. There were a number of weighty reasons which militated against taking your advice to let the mss cool off for some time before undertaking the revision. a) it would have been at least a year if not longer until I would have time to work at it again. Columbia has offered me a graduate seminar for the coming academic year, which will make considerable work and given the unrealistic pay scale of the Graduate Faculty I saw no possibility to refuse. b) the Graduate Faculty is changing rapidly; Staudinger has retired as Dean and has been replaced by a Madison Ave, type academic business man which places many question marks in the future. c) ~~xxxx~~ I am teaching in Freiburg next summer.

I have already heard via Friesenhahn about your great success. I wish I had your energy and zest for lecturing. Incidentally, Miss Brokaw was very much interested when I told her that you are now working in the field of Roman Public Law and she asked whether you have already made arrangements for a publisher.

I do hope I shall have an opportunity to see you during the coming year. If you should foray to New York on any Tues, Wed, or Thursday and let me know in advance, we could have a meal together. I would love nothing more than to explain to you in detail which changes I made or, the reasons in the much fewer cases in which I did not follow your suggestions. For the moment, let me thank you once more. Receiving the readers' comments from Miss Brokaw beginning of June, it was, from the outset obvious to me, that the 9 page comment could only come from either you or Praenkel; and given the short time available, it was obviously done in this country, and therefore from you.

I hope you will allow me to thank you in the preface for all you did for the mss.

Gratefully yours,  
September 11, 1960.

Dear Professor Rosenzweig:

I had hoped to have a chance to see you at the Political Science meetings in New York and therefore did not answer your letter immediately after receiving it. You were perfectly right not to attend - it surely was not worthwhile.

Let me first thank you for the painstaking effort you devoted to my mss. I shall be in your debt forever and I want you to know how much I appreciate what you did for that mss. When you will see it in its final form - which also will not be till next fall - you will realize to what great extent I followed your suggestions, especially in regard to the introduction and the importance to differentiate clearly between collective mss action and the repression of individual acts of non-conformism.

Miss Brokaw probably misunderstood me when she wrote you about my going to Europe. I stayed home all summer to take care of the revisions, delivering the mss just last week. There were a number of weighty reasons which militated against taking your advice to let the mss cool off for some time before undertaking the revision. (a) It would have been at least a year if not longer until I would have time to work at it again. Columbia has offered me a graduate seminar for the coming academic year, which will make considerable work and give the unrealistic pay scale of the Graduate Faculty. I saw no possibility to return. (b) The Graduate Faculty is changing rapidly; Staudinger has retired as Dean and has been replaced by a Madison Ave. type academic business man which places many question marks in the future. (c) Since I am teaching in Leipzig next summer.

I have already heard via Rosenzweig about your great success. I wish I had your energy and zest for lecturing. Incidentally, Miss Brokaw was very much interested when I told her that you are now working in the field of Roman Public Law and she asked whether you have already made arrangements for a publisher.

I do hope I shall have an opportunity to see you during the coming year. If you should fancy to New York on any Tues. Wed. or Thursday and let me know in advance, we could have a meal together. I would love nothing more than to explain to you in detail which changes I made or the reasons in the much fewer cases in which I did not follow your suggestions. For the moment let me thank you once more. Receiving the readers' comments from Miss Brokaw beginning of June, it was, from the outset obvious to me, that the 9 page comment could only come from either you or Rosenzweig; and given the short time available, it was obviously gone in this country, and therefore from you.

AMHERST COLLEGE

*Amherst, Massachusetts*

DEPARTMENT OF POLITICAL SCIENCE

43 Sunset Avenue  
June 13, 1955

Professor Otto Kirchheimer  
2801 Birchbank  
Sliver Springs, Maryland

Dear Kirchheimer:

I am very happy about the good news contained in your letter of June 10, 1955. The little I have done was only in order: to get the right man for the right job. The New School could have made no better choice. I doubt whether the contemplated marriage between Leibholz and the New School would have been a happy one for either partner.

I am sending you, under separate cover, two articles of mine in which you might be interested. The one on EDC will arouse little enthusiasm in Bonn or the Department of State.

For the time being I have no European plans this summer. We are going to our place in Vermont. I am more tired this year than usually and very anxious to get some rest.

If you wish to do something for me mention my name to the Rand people, provided there is a research objective in which I could be interested, not necessarily and even not preferably Germany. I have a sabbatical coming in 1956/57 and I am trying to make some plans in advance. A short time research project would be welcome.

With all good wishes,

Sincerely yours,

*Karl Loewenstein*  
Karl Loewenstein

UPPER GOOSE CITY  
EAST DOVER, VT.  
TEL. WILLIAMSVILLE, VT. 22-21

July 30, 1959

Dear Kirchheimer,

I am inexcusably late in thanking you for having sent me the copies of your review of my book and also to express my deep satisfaction with the intelligent and generous way you reviewed it. I do hope that I shall have an opportunity to talk with you about it and related problems. Since proofs of a book on Constitutional Law printed at this time in Germany prevented me from going to Europe - I wanted to have a look on France - I am planning to attend the Washington meeting of the American Political Science Association, mainly for the reason of seeing you and others on this occasion. Otherwise I am deeply averse to the entire business of conventions which is part and parcel of the Wissenschaftsbetrieb in this country.

Concerning my book: What I tried to do, and seemingly for the first time, is to develop organic laws for comparative government, organic in the sense that they are not carried into the material from outside but revolved from the material proper. I believe that my categories of inter- and inter organ controls are unsailable, equally so that of horizontal controls while that of vertical controls requires refinement. This new approach simply could not be done without a good deal of definitions, but any book dealt with more geometrico requires this kind of definitions, it is unavoidable.



I also believe that my categories of constitutions and of the patterns of government will stand for as long as constitutional government is being practiced (which may not be forever, incidentally).

The book had no success in this country, because the younger generation of comparative governmentalists just does not know enough and has no training in categorical thinking. I have become very amerikamüde in terms of scientific endeavor and I do hope that the German edition- or version- of my book that has just been published by Mohr under the title Verfassungslehre will have a more intelligent reception. You will have similar experiences with your Justiz and Politik which I do hope has progressed sufficiently to be read soon.

I am spending a quiet and almost dreamlike summer at our place in Vermont, and if your summer vacation would bring you to our neighborhood we would be delighted to have you and your wife as our guests.

With renewed thanks and best regards

Sincerely yours,

Karl Loewenstein

*Karl Loewenstein*

*with*

*Karl*  
*56*  
*26*  
*42*

AMHERST COLLEGE  
*Amherst, Massachusetts*  
Department of Political Science

October 15, 1958  
43 Sunset Avenue

Professor Otto Kirchheimer  
2801 Beechbank Road  
Silver Spring, Maryland

Dear Kirchheimer:

Many thanks for your willingness to review my book. That the American Journal of Comparative Law had given it to Spanner I had not known when I wrote you. Perhaps you will find an opportunity for reviewing it somewhere else—for example in the Yale Law Journal or the Columbia Law Review, which are both receptive—or somewhere else. A review in the German Archiv unfortunately is no longer available since Franenkel had been asked to do it. I put great store by a review from your pen because you (and only two or three others) really understand what I try to accomplish; that is, to derive certain definite rules from the material of government itself, instead of carrying yardsticks into it from the outside.

My paper on the Legal Status of Political Parties has been mimeographed in Brussels and in case the package from Brussels ever arrives I shall send you a copy.

I am much interested in what you are doing and would like to see you soon for a long talk. I am coming to New York very rarely since I am teaching now in addition to Amherst, also at Yale Law School.

With best regards,

Sincerely yours,



Karl Loewenstein

KL:en

April 11, 1959.

Dear Professor Loewenstein:

Thanks for your note of April 2nd.

I apologize for not having come to see you when I was at Moun Holyoke last Thursday. I surely would have done so if I had not had to fly back to Washington immediately on Friday morning for a chance to get hold of Brenner, the German Mteal Workers boss. But I do hope you will come to Washington at convention time and let us enjoy the pleasure of your company at my house then.

I am looking forward to reading your article in the Journal of Politics. I dont think our viewpoints differ too much. The Constitution is surely wrotten but one of my main purposes was to show that it is a the culmination of the reign of the administrative bureacracy - incidentally I found Friedrich's piece in the Harvard Law review even worse than usual.

I delivered my review of your book 6 weeks ago but the lady who handles the editing of Social Research is a strong-willed individual and not open to persuasion about timeliness of contributions.

Hoping to see you soon  
Sincerely yours

P.S. I hope you got my piece in the Yale Law Journal. Unfortunately it is full of misprints

February 4, 1962.

Dear Professor Loewenstein:

Thank you very much for sending me  
Beitraege zur Staatssoziologie. Ich finde es sehr schoen  
dass der deutsche Leser nunmehr die Gelegenheit hat  
einige Ihrer Hauptaufsaetze leichter zugaengig zu haben.  
Ich habe arin auch mit grossem Interesse einige Stuecke  
gelesen die ich bisher nicht kannte, besonders den Aufsatz  
ueber Augustus und die Auseinandersetzung mit dem Max Weber  
Buch. Ich habe den Herausgeber der American Pol. Science  
Review gebeten mir fuer eine Anzeige des Buches Raum zu  
geben und hoffe dass er meiner Bitte entsprechen wird.

Sie werden bei der Durchsicht meines Political  
Justice Buches leider finden dass da ungeheuer viele Druck und  
Fluechtigkeitsfehler vorkommen. Einige besonders dicke gehen  
zu Lasten der Princeton Press aber fuer die anderen, fuerchte  
ich, muss ich selbst verantwortlich zeichnen.

Ich hoffe sehr doch bald einmal wieder Gelegenheit  
zu haben Sie ehtweder hier in Washington oder in New York  
begruessen zu duerfen.

Mit nochmaligem Dank und besten Wuenschen

Ihr

This space is also for correspondence.

ここにも通信文を記載することができます

Karl Loewenstein  
61 Nakakawaracho  
Shimogamo  
Kyoto, Japan



Professor Otto Kirchheimer  
2801 Birchbank  
Silver Springs, Maryland

USA

PAR AVION  
航空

この郵便物には何物も封入又は添附できません  
Nothing may be contained in or attached to this letter.

折込線

折込線

ここにも通信文を記載することができます

This space is also for correspondence.

Karl Loewenstein  
61 Nakakawaracho  
Shimogamo  
Kyoto, Japan

Kyoto, March 28, 1962

Professor Otto Kirchheimer  
2801 Beachbank  
Silver Springs, Maryland

Dear Kirchheimer:

I am gratified by your friendly reaction to my Beiträge zur Staatssoziologie and your willingness to review the book for the Political Science Review. I hope you will have luck with them. I am not persona grata with the management Under Mansfield's leadership the standards have visibly deteriorated and the Cliquenwirtschaft has taken the place of objective evaluation of contributions submitted. I have not published anything in the Review for many years.

The Augustus article appears to me one of the best things I did and practically every sentence is an answer to one of the countless controversies of an immense literature on his personality and regime. I feel that monocratic government which need not to be absolutist can be properly understood only in the light of our own contemporary experience. I wrote to Mohr in Tübingen, they should ask you for reviewing the book in the Juristenzeitung or the Archiv, this would involve not much more work for you. How is your work at Columbia going? I am reading now at leisure your powerful Political Justice which seems to me one of the most important books on law and political science of the last decade. I only wish it were more readable and a bit more schlackenfrei.

My stay in Japan, instead of the expected paid vacation, turns out to be a busman's holiday because the Japanese government retained me as a consultant in connection with the current revision of the constitution, that is a study whether it should be revised.

We are planning to return to the States via India and Europe and do not expect to be back before next fall. I shall always be glad to hear from you.

Sincerely yours,

Karl Loewenstein

*Karl Loewenstein*

Nov. 30, 1962.

Professor Karl Loewenstein  
43 Sunset Avenue  
Amherst, Mass.

Dear Professor Loewenstein:

Many thanks for your very kind letter. You surmised rightly - we are still living at the same place. I am very glad that you were satisfied with review of the Staatssoziologie. I often wonder whether it would be possible to develop a coherent theory from all the factual material now at our disposal. The trouble with you and me is that we would want this theory to have meaningful content rather than to stick to vacuous Selbstverstaendlichkeiten and terminological generalities a la Almond.

I fully agree with you about the importance of the Spiegel affair. Unfortunately I have not seen your Eingesandt to the FHZ but you are quite right it is Bullerjahn and Ossietzky all over again, only Strauss lies now instead of Gessler. If the Bundesverfassungsgericht does not end the whole Spuk by declaring a Landesverratsinterpretation which takes in critique involving no communication with foreign power incompatible with the constitution the Bonn establishment will have no future as a constitutional state.

I am glad about your Hinweis about Japan. This Columbia job unfortunately involves so much work that I can't think of anything else now. I am very grateful for your and your wife's kind invitation to come up and stay with you. May I take you up on this during the second term. I shall be teaching a seminar replacing Almond at Yale during the second term and I should like to try and arrange for a trip to Amherst then. Will you be around at the beginning of spring? I have seen Rosser's review of my book, but for good measure they have a very nasty one in the official British pol. science periodical.

With kind regards and many thanks -

AMHERST COLLEGE

Amherst, Massachusetts

DEPARTMENT OF POLITICAL SCIENCE

43 Sunset Avenue  
February 23, 1964

Dear Kirchheimer:

I have no copy of the Verfassungsänderung left, but ordered one to be sent to you directly by the publisher.

I did not see the review you mentioned but I had many which were quite satisfactory. We would like to have you here as our guest, perhaps as you write towards the end of the term. I am teaching a full-sized job this term at Yale and commuting under the precarious circumstances of the railways is a job of some sort.

I am sending you a piece on Baker v Carr that was published in the Festschrift for Ernst Fraenkel.

We have no summer plans except going as long as possible to our place in Vermont. I am in the middle of a terrible Wälzer, 16 chapters of 24 are done (in a fashion). This has to be finished before we go abroad, possibly next fall to Greece and Israel.

We do hope to see you in the near future. Phone is Amherst, Alpine, 6-6323.

Warmest regards

Yours,

Karl Loewenstein

*Karl L.*



March 22, 1964

Dear Professor Loewenstein:

Thank you very much for your reprint from the Fraenkel Festgabe. The decision is as interesting theoretically as it is full of political consequences still to be determined.

Incidentally Fraenkel told me that you will go to Europe. Will you be gone by end of June? Because I vaguely had planned to come up through the Connecticut valley around that time on a Canada trip.

Thanks also for the announced sending of your Verfassungsaenderung-Buechlein.

Best regards - as ever -

43 SUNSET AVENUE  
AMHERST, MASSACHUSETTS

November 15, 1962

Professor Otto Kirchheimer  
2801 Beechbank  
Silver Springs, Maryland

Dear Kirchheimer:

I do not know whether you are still living in the woods behind Washington, but I trust the mailman will find you. Upon my return after fourteen months absence I read your review of my Beiträge. The usual formula applied in such cases is to thank you for your kind and benevolent appraisal, but my gratitude goes beyond this. Coming from you whom I consider "benbürtig" in the field and even often admire as superior or it has given me deep satisfaction and as usual set me thinking. When the volume was first under discussion with Mohr in Tübingen I was not sure whether the membra disjecta would add up to a unified whole, but to my surprise they did, and what has emerged is the concrete outline of a sociology of the state, based on an entirely empirical method which evolved without any awareness of methodology. My regret is that circumstances prevented me from passing on my approach to the younger generation through a "school" but in retrospect it had the definite advantage that an Einzelgänger need not dissipate his labor. What you surmise about my being a crypto-relativist hits of course the bull's eye. We are confronted with a new world which I have difficulty to grasp, that is that what we once believed to be the inevitable fate of the world to become constitutional democracy

is about to turn out to be a mere interlude, or, perhaps  
of permanence only among prosperous nations. I found  
that there is still some hope for Japan to preserve  
her present attachment to democratic processes in  
which the young people ardently believe, but I found  
India a visibly disintegrating country, almost  
beyond redemption. Germany? The Spiegel affair  
is much more important than the Cuban theater. What  
is happening there is a close repetition of Weimar  
see Bullerjahn und Ossietzky and the entire issues  
of the "Justiz". I had a letter to the editor in  
the FAZ which seems to have caused a great deal  
of discussion, among them an answer of Gertrude Ritter  
which could easily have been written in 1927.  
I found the stay in Japan most interesting and  
fruitful and if you would ever consider a year or  
a term abroad apply for a Fulbright (these expire  
1984). You will find it most rearding. I was active  
as a consultant of the Japanese Government for  
comparative constitutional law in connection with  
the current discussion of the revision of the  
McArthur constitution which gave me many valuable  
insights. Now I am back as an emeritus in three  
institutions and glad to be left with my work, at  
least for the time being.

You certainly have seen the excellent review of Grossel  
of your book in the Revue Française.

I wish we could have a good talk about many things.  
I am completely out of step with what the young  
people are doing, after the quantifying fad has faded  
they are now model building whatever that means and  
decision making analysts as if the art of politics  
could be rationalized.

Perhaps you find it possible to come to Amherst for  
a week and we would be delighted to put you and your  
family in our house and provide a good bottle  
With best regards always yours

Karl Loewenstein  
*Kate Bresciani*

Nov. 19, 1964.

Dear Professor Loewenstein:

Many thanks for the big opus from the Jahrbuch. This is an excellent survey of material which is not easily found so ~~xxx~~ handily put together, elsewhere.

As to footnote 169: I think I mentioned in the article myself the diversified facets of Frankfurter's opinions.

Your little British book must be out in Germany by now, as I have seen a very decent review of it in the Times Literary Supplement early November.

Any chance to see you here in Washington in the near future? What are your plans for next year?

With many regards to Mrs. Loewenstein and yourself,

43 SUNSET AVENUE

AMHERST, MASS.

February 1, 1965

Dear Kirchheimer:

Many thanks for your collected essays among which were at least two I had not known before, and all of the same quality we are accustomed in your work.

We are going to Greece and neighboring places in March for several months.

Warmest regards

Sincerely yours

Karl Loewenstein

*Karl L.*

April 13, 1962.

Dear Professor Loewenstein:

Thank you for your letter of March 28. I will gladly write a German review if the Tuebingen people should ask me. I shall be very interested to see what you have to say about the Japanese constitution.

By the way, I would be very much obliged if you could let me have a copy of your study on Verfassungsaenderungen which I saw announced and of the forthcoming article in the Archiv fuer Oeffentliches Recht. As you know, I have been collecting all your items and I would not want to miss these. Y

You are quite right about Political Justice. Technically it is abominably done. The editor which the Princeton Press gave me was no good and I did not have the courage to tell them so. They fired her just four weeks before the book went into print when I was in Germany, which means nobody looked for Druckfehler and similar things and unfortunately it shows up. I hope the German translation, if Harland ever gets to translate it, will be better.

I am still in the blues, because I have just ausgeschlagen eine Berufung to Frankfurt, but I have neither your nor Friedrich's energy and could not see my way to do for 4 or 5 years the Columbia job and Frankfurt at the same time.

I am looking forward to seeing you in the fall after your return. I shall be attending a conference in Bellagio in August or September but I shall be back at Columbia for the fall term.

Sincerely yours,

Dear Professor Loewenstein:

Let me first thank you for<sup>a</sup> delightful visit and your excellent hospitality. I only regret that Mrs. Loewenstein had so much trouble with us. After your place any other Vermont house and grounds look pitiful.

I return herewith the Max Weber mes which I have studied with great attention and admiration. I have very little to say. You will find some question marks and a short note for instance on p. 11. Are your strictures on p.28 against proportional representation fully justified? What about the Swedish, Norwegian and Swiss experience? On page 38 I miss a word on the limits of Verfassungsgerichtsbarkeit.

p.41 - I do not share your emphasis on Kriegsschädigung. Have you ever looked on Etienne Mentoux the Carthaginian Peace?

p.43 Does the German politician want power or a pension as minister?

I don't want to enter a discussion about your last pages in re charisma but would like to draw your attention to the first part of the very interesting article of W.G. Runziman Charismatic Legitimacy and One Party Rule in Ghana in the European Journal of Sociology 1963 p.148

I have not yet had time to read the proof of the British book. May I keep it a little longer?

With many thanks and best regards -

At second though in rereading the extraordinarily dense mes I think pp<sup>15</sup> and 54 both dealing with Konstruktion des Weimarer Reichs praesidenten need some clarification. The sentence in p15 last paragraph über die groteske Unlogik der Verkopplung remains unclear to me. Should the Reichspräsident not have had the right to dismiss? p 54 last sentence on Konkurrenz zwischen parlamentarischer und plebiszitaerer Regierungsauslese. Should there not be a par on whether the cumulation as it entered via Max Weber the Weimarer Verfassung is at all possible?

*COOPER*

Otto Kirchheimer: Politics and the Administration of Justice

I

(1) The manuscript under review defies classification in terms of a specific field of the social sciences. Straddling several of them its main substance is drawn from criminal law and procedure, constitutional law, social psychology and what is understood, in general terms, as "politics". This reviewer would characterize it as a contribution to the sociology of law and the legal process. Both the choice of the subject as such and the documentation applied to it are definitely outside the ordinary and the commonplace. It is the product of a mature, original and constructive mind.

(2) The general and the special knowledge of facts, sources and literature the author supplies are impressive, and, in places, even outstanding. The combination of experience in criminal as well as constitutional law is put to the best use. The author is particularly at home in the German legal civilization, not unnatural considering his educational background, but equally so in France from whose environment he draws many of his most telling illustrations, to a somewhat lesser degree also in England, Italy, and the United States. His scholarship is frequently slanted towards the ironical is impeccable.

(3) An unbiased evaluation of his manuscript is obviated by a number of peculiarities which, in the case of a less well-intentioned reader, may well grow into serious irritants apt to affect his judgment. The captions of the various chapters and their subheadings, by virtue of an attempted journalistic flashiness, are often more obscuring than revealing; occasionally they are



outright misleading. This pertains primarily to chapters I, II, and VII, but occurs also in other chapters. For example, how can the author expect that the heading Tu Quoque (Chapter IV, pp. 56-59), referring to the (apocryphal) last words of dying Caesar, would be accessible to, or descriptive for, the average reader. Even if they were more felicitous, journalistic exploits of this nature have no place in a scholarly work. Other recurrent flaws are colloquialisms; repetition of cliches; terms borrowed from German; no proof-reading has been done; gaps exist in quotations in the footnotes, etc.

While there are stretches of brilliant writing often of an epigrammatical incisiveness other sections are richly interspersed with turgid Teutonisms. Throughout the style taxes the reader to the limit. It should also be noted that the two sections (Chapters V and VII) that have been published in law journals do not harmonize with the author's personalized writing; the Law Review boys dehydrated them to that point of factuality they believe alone fitting for their publications. Harmonizations of these two layers of production may seem no mean task.

## II

The author's thesis or theme (as understood by this reviewer) stated in the briefest possible terms, is this: The legal and, in particular, the judicial processes are habitually and even congenitally abused by the Powers That Be for the maintenance of the existing power configuration against real or purported enemies. In political matters objective dispensation of justice does not exist and, possibly, cannot exist because it is constantly exposed to the perversion on the part of the powerholders. The perennial misuse of the

judicial processes against detractors and dissenters of the existing order appear as a kind of immutable law in the dynamics of power. In former less agitated periods political justice was intended for the repression of the isolated rebel against the legitimate order. In our time of the conflicting ideologies operating on the mass basis political justice has gained a cardinal importance. In the ideological contest non-conformism has become a perpetual incident of every governmental structure and, in view of the technological devices of our mass society, presents a much greater danger to the existing power configuration than ever before because the non-conformist rather than being an individual criminal is a person justifying his actions on ideological grounds. Political trials of our time, therefore, are at the same time more crucial and more "non-objective" than ever before.

If this is the general thesis of the book it would constitute a very substantial enrichment of our knowledge of certain aspects of the contemporary power process and contribute its full measure to the clarification of our insight into the application of seemingly or allegedly neutral institutions for the purposes of real or pretended legality.

### III

(1) Being familiar with the author's work and having acquired a genuine respect for his scholarship and inventiveness it is with considerable regret that this reviewer cannot <sup>recommend</sup> publication of the manuscript in its present form. The main reason for the negative verdict is that the study lacks focus and organization. The reader is confronted with several studies all of them of a high caliber without doubt - that have not been integrated into a comprehensible frame of reference. Even the finest specimens of precious stones need a

setting commensurate to their brilliance. To change the metaphor, these individual studies are variations on a theme, but the theme is never spelled out or systematically evolved. The enterprise lacks coherence and logic of structure. Almost without any general introduction setting down plan and purpose of the book the reader is plunged into a mass of case material possibly destined to illustrate the constructive scheme the author must have had in mind, but nowhere is it stated in systematical terms or analytical categories. Evidently the author himself has felt the need for a general introduction to his material as evidenced by his remarks addressed to the Readers (reported in your letter of April 22, 1960).

(2) To support the adverse opinion a summarizing compte rendu of the various chapters (as this reviewer has understood them) may seem in order.

Chapter I on whose tenor obviously the entire study will depend, does not present a coherent thesis. Without the benefit of an exposition of what political justice is within the context of the political dynamism it confronts the reader with various seemingly disconnected case studies of the practice of political justice. The characterizations as "old style" or "new style" are too vague to replace a systematical categorization of issues and concepts. It seems imperative that the study start out with the discussion ~~that~~ -possibly historically substructured- that every political regime whatever legitimacy or legality it may possess in the minds of the subjects or citizens, is bound to apply the judicial apparatus, instead of brute force, to guarantee and stabilize its existence and ordering. This would require a systematical presentation of the legislation for the defense of the state from which, at the same time, the concepts of "loyalty" and "subversion" may be derived. In its present

shape the chapter falls short of the basic requirement of telling the reader which concepts control, and link together, the individual case studies or separate facets of political justice to follow. This may be the place for the basic distinction between acts of isolated and occasional dissidents of former periods and the attempts at subversion on the part of large-scale collective groups as of today.

Chapter II deals with specific instances of repression (judicial or otherwise) against collective entities, illustrating the situation with the examples of South Africa (which, however, may hardly be "political" justice); Bismark's anti-Socialist policies; the anti-Communist repression in U. S. A., Bonn, Germany, Australia, the unavailing efforts of the bourgeois governments in Italy and France to neutralize the Communist opposition. While not confined to the judicial processes proper the chapter appears coherent and structurally convincing, provided the inarticulate premise of the distinction between individual acts of rebellion and mass action is understood.

To Chapter III the reviewer would attach the general caption "On the psychology of the political trial". It deals with the position and attitude of the judge, the prosecution, the witness. It contains some of the most penetrating and original sections of the entire manuscript though the discussion is occasionally too elaborate. This chapter should be followed immediately by Chapter VI dealing with the attitude of the defendant caught in the meshes of political justice. The two chapters belong substantially together, their separation distorts the logical structure of the entire study.

Chapters IV and VII deal with special facets of political justice, namely the retribution meted out by successor governments against their predecessors,

and the escape from political justice by seeking asylum. As to Chapter IV: It is a seemingly perennial problem in the changing dynamics of the power process. In the reviewer's opinion this is one of the most valuable parts of the manuscript. No similar study has been published in English while a number of books have appeared in Europe. In contrast to other sections this part stands in need of implementation by both factual legislative and, possibly, statistical judicial material. It may also be improved by additional historical material, for example, the vendetta of the thirty tyrants in Athens and the vengeance wrought against them upon their overthrow; the trials before the Roman Senate for laesae majestatis; opposite trials in Florence and (at least one) in Venice; and most important of all, the impeachment and other state trials of the Puritan revolution. Also the case of Marshall Ney may be called to the author's attention. In this context the Nuremberg trials find their logical place; there the author's scholarly virtues are demonstrated at their best. It is also suggested that at this point the de-nazification legislation in which the author is an expert, be given the proper attention. On the other hand, the appendix dealing with Guillaume du Vair does not make much sense and should be relegated to a footnote. ~~On the other hand~~ Chapter VIII on asylum has little logical connection with the preceding parts; no bridge has been constructed to lead the reader to this discussion which is political justice in the negative sense only that the incriminated person either finds refuge abroad and escapes from it to the tender ministrations of his enemies, or is extradited. But since this may seem to the author an important subject it may well be ~~accommodated at this juncture.~~

Chapter VII, entitled "The quality of mercy" - an excellent caption-

has its logical place at the end of the study. Seemingly written in haste and factually and methodically not fully at par with the other sections it may require a more precise focus and expansion of substance.

The final section entitled "Summing up" unfortunately contains material that should have been included in the non-existing introduction. This reviewer feels that the author has not done full justice to his work in his general conclusions.

#### IV

~~A.~~ This reviewer believes that the study could be improved by the following suggestions:

A. 1. A general introduction should be added dealing with the crime against the state and the corresponding legislation for the defense of the state, setting down the categories of political justice with particular emphasis on the historical dichotomy of the administration of political justice directed against individual acts of non-conformism and the present-day situation of collective mass action.

The success of the entire book will depend on the general introduction.

2. Chapter I/ should be recast to serve as illustrative material of the general categorization and systematization in the introduction, followed by Chapter II. The introduction plus Chapters I and II would constitute a coherent Part One, possibly entitled "Typology of Political Justice".

3. Chapters III and VI, possibly entitled "On the psychology (or sociology) of the factors implied in political justice" belong together and would constitute Part Two.

4. Part Three should include the present chapters IV, V and VII provided the introduction will enlighten the reader how these large-scale case studies fit into the general context.

5. Chapter VIII finally and the General Conclusions form the logical tailend of the study.

B. Additional substantive suggestions the reviewer would venture are the following:

1. A considerable number of the case studies are too long, such as the Kentucky case (which is probably not a good choice) (18 pages) the Agartz case (12 pages) and the John case.

2. Other parts should be drastically cut, among them the study on Eastern German legality. The general reader may not have the same interest in socialist legality as has the law review client.

3. Contrariwise, the sections on the collaborationists and also the chapter on amnesty requires expansion, particularly by factual legislative material.

4. It is surprising that the most celebrated of all modern political trials, that against Dreyfus, is omitted. The author may have felt that it is too familiar to warrant extensive discussion. The average reader will miss it.

5. As mentioned above the entire problem would gain in perspective by the addition of more historical material.

C. Finally, there are some other thoughts the author and publisher may find of some value:

1. The deficiencies of style and presentation are such as not easily to be dealt with by the customary editorial efforts. The author may find it to his advantage to enlist the assistance of a third person who knows nothing about the subject matter but may help to present it in a more readable fashion without

destroying the author's often brilliant formulations.

2. Having delivered himself of a study of such magnitude the author may find it to his profit to lay the entire study for some time on ice to gain the proper distance as to structure and focus. The material does not become obsolete and a certain period of over-all reflection may be beneficial.

V

Severe as the foregoing strictures may appear they should not be misunderstood or misconstrued. The manuscript has all the earmarks of becoming, in a properly revised form, one of the major books on the science of politics of this decade. It may vastly contribute to a better understanding of an ubiquitous political phenomenon which, fortunately, has rarely arisen in this country, for example, the Federalist battle against Jefferson's Republicans; the reaction of the Republicans after coming to power; the impeachment of Samuel Chase; the Reconstruction period; and, last but not least, McCarthyism. No responsible publishing house should allow an enterprise of this eminence to slip through its hands. If properly organized and -partly- rewritten the book would adorn the publication list of any University Press. This reviewer is far from minimizing the importance and value of this work or the qualifications of its author. But to publish it in its present, partly organizationally defective, partly overbalanced, form would be a disservice to a distinguished author.

Karl Loewenstein

Amherst, Massachusetts

May 7, 1960