

Reader A

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It would be well if the introduction could indicate change and development historically as well as providing some sort of theoretical or systematic framework.

Some of the lengthy case studies should be put in an appendix (e.g., that on Kentucky, pp. 15-35 in Chap. 1).

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Kirchheimer, Politics and the Administration of Justice

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Reader B's Detailed Report

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 occurs also in other chapters. For example, how can the author exp the heading Tu Quoque (Chapter IV, pp. 56-59), referring to the (apoc last words of dying Caesar, would be accessible to, or descriptive for 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 epigrammatic 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

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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 recommend 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

ending commensurate to their difficulties. 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 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; apposite 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; here 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

▲ 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

O.K.
we disagree.
RMB

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 work would adorn the publication list of any University Press. This reviewer is far from undervaluing 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.

MR. Kirchheimer: I have cut this page to conceal the author's identity. M. Brakant. (There is no name in the report)



PRINCETON UNIVERSITY PRESS READER'S REPORT

Reader C

For the reader's information: Please be frank in your opinion. Your name will not be revealed to the author of this manuscript without your permission.

1. Is this manuscript a significant contribution to the field?
 - 1 (a) If so, to what extent is its contribution important and useful to other scholars? (Inaccessible source material, new interpretations, etc.) The study represents a most significant contribution in the area of the politics of jurisprudence - a field which has hardly found any scholarly treatment and is obviously open to most controversial analyses. The book is the more important as it combines the impressive scholarship of a first rate legal mind with a rare political acumen yet without a trace of simplifying naïveté.
 - 1 (b) To what extent will it be useful to interested readers outside the particular field of scholarship? (Scholars in other fields, general readers, etc.?) While the study is primarily meant for and useful for the scholars in the field certain parts like Chapters V and VII may find a wider interest especially among informed laymen interested in the field of public affairs and politics.
2. Is the scholarship sound? The manuscript undoubtedly represents sound scholarship and in its truly comparative approach contributes greatly to our knowledge. The extensive apparatus is of great help for the student in the field.
3. Is the content an effective unit? Does it make a well-rounded book? As it stands, the study is more a collection of essays (though closely related to each other) than a well-rounded book. However, its shortcomings could probably be overcome by a pointed introductory chapter, unifying the diverse strands of a common theme.
4. Does the manuscript have a readable style? A distinguished style? Are stylistic revisions called for? On the whole the manuscript is comprehensible. The author in fact has tried hard to shy away from esoteric lingo and most certainly has been more successful than many of his colleagues (and he himself in earlier writings). Some tightening up is still needed.

PLEASE WRITE ONLY ON ONE SIDE OF THE PAPER

5. If you were a publisher of scholarly books with a usually crowded schedule, would you consider this manuscript a worthy addition to your list? Is it something you would be proud to publish? The book represents with any doubt a valuable addition and deserves an early publication. It would enhance the fine list of the Princeton University Press. I could not think of any author who is equally familiar with continental institutions and addresses himself specifically to the study of political motivations and legal techniques.
6. Are there competing books in the field? The book is sui generis and therefore would not compete with other studies but stand on its own. Karl Loewenstein (Amherst) may come closest in erudition and approach.

7. My final reaction is that:

- () I would not recommend publication.
- () I would recommend publication provided the revisions suggested below are satisfactorily made.
- (X) I strongly recommend publication. I offer some suggestions for revision, but adoption of these should be left to the discretion of the author

Suggestions for revision: Whether or not the manuscript is publishable in its present form, you would help the author and the Press immensely by suggesting revisions. In the past we have found that suggestions from readers have been of inestimable value. Where possible, please be *specific*.

8. Could the manuscript be improved by cutting? Some cutting By expanding? could be done and would be helpful.

9. Other recommendations for revision (attach a separate sheet if necessary): The suggested introduction may highlight the underlying propositions of O. K.'s writings and indicate some unifying themes, such as the social bases of legal reality, the concern over totalitarian control, the increasing importance of administrative processes in the make-up of present-day politics. Such an addition may bring about a more comprehensive systematization of Kirchheimer's own thoughts - an attempt from which

10. Remarks: he may well have shied away out of modesty. The book could thus make a major contribution to a much neglected field of research.

Memorandum of Agreement

made at Princeton, New Jersey, this 11th day of June, 1960

B E T W E E N

Otto Kirchheimer

of New York, N. Y.

(hereinafter called the Proprietor and designated by the masculine singular pronoun)

A N D

PRINCETON UNIVERSITY PRESS, of Princeton, New Jersey (hereinafter called the Publishers)

relating to a work now entitled

POLITICS AND THE ADMINISTRATION OF JUSTICE

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INDEX

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(b) Dramatization, public reading, radio, television, and motion picture rights (sight and sound) or the right of reproduction by other mechanical devices—85% of the net amount actually received by the Publishers.

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14. If, after three years following the date of publication of the said work, the Publishers shall advise the Proprietor in writing to his last known address that they find it necessary to discontinue publication, or if the Publishers fail to keep the work in print and neglect to reprint it within six months of the Proprietor's written request that they do so, then the Proprietor shall have the right to terminate this agreement by written notice. Upon such notice of termination the Proprietor shall have the right at his option within 30 days of such notice to purchase at 25% of the actual cost (including composition) the type and/or plates of the work, should any exist, and to purchase at actual manufacturing cost any copies and/or sheets remaining in the Publishers' hands. If the Proprietor shall fail to exercise this option within 30 days, then the Publishers shall be free to destroy or dispose of the type and plates, if any, and to dispose of any copies and/or sheets in any way they see fit without payment of any royalty on such copies and/or sheets. Upon termination of the agreement, the Publishers agree to assign the copyright

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OF

AGREEMENT

Otto Kirchheimer

AND

PRINCETON UNIVERSITY PRESS

POLITICS AND THE ADMINISTRATION OF JUSTICE

of the said work to the Proprietor; thereupon all the then existing rights granted to the Publishers under this agreement shall revert to the Proprietor.

15. The Proprietor agrees to make the Publishers the first offer of publication of his next AUTHOR'S NEXT WORK agreement within 90 days of receipt of the completed manuscript, then the Proprietor shall be under no further obligation under this option, and shall be free to cause its publication elsewhere. The Proprietor is not obliged to accept the Publishers' offer under this option.

From funds made available by the Ford Foundation, the Publishers will apply \$2000 toward the cost of publication of the work.

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ADDITIONAL PROVISIONS

OPTION ON AUTHOR'S NEXT WORK

WITNESS TO PROPRIETOR'S SIGNATURE

WITNESS TO PUBLISHERS'S SIGNATURE

PRINCETON UNIVERSITY PRESS

by *Robert S. Boyer* (I.S.)

PROPRIETOR SIGN HERE (I.S.)

October 28, 1960

Miss Miriam Brokaw
Princeton University Press
Princeton, N.J.

Dear Miss Brokaw:

So far I have heard nothing from the German publisher although I wrote to them more than a month ago. May be they lost interest in the meantime, but I shall try to find out. There are two small other problems: would it be possible for you to let me have the copy of my ~~summary~~ conclusions (the last chapter) for a period of two weeks between December 28 and January 4. I shall have to give a speech on the subject and I don't have a complete and corrected copy left.

When I was in Cambridge recently I saw at the Busch-Reisinger Museum a copy of a drawing of George Grosz which would be a perfect illustration for the chapter of the role of the defendant. The administrator of the museum, Miss Manuel, is willing to have a photo made for about \$ 10.- the drawing appears in a German magazine of 1919 or 1920. I think it would enliven the text considerably and if you are willing to consider its insertion, I would ask her to go ahead and have a reproduction made on my expense.

Miss Todd is still working on the Quality of Merc chapter. I shall send you her version which is far superior to my own, the moment it has been retyped.

With many thanks - sincerely yours

