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Book Review

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Pleading—Proof
 Minimization—Mitigation
 Instructions to Juries
 Verdicts and Judgments and
 Litigation Expense

Each chapter is prefaced by brief text matter setting forth the general principles of law with respect to the topic included therein, followed by a select list of cases and ending with annotations of authorities on the respective topics covered.

PART 2, SPECIFIC TORTS, is devoted to the coverage of various tort actions, such as Trespass on Realty, and on Chattels, Assault and Battery, Personal Injuries and Wrongful Death, Family Injuries, Nuisances, Fraud, Defamation, Interference and Privacy. An abundance of cases on all of these topics is set forth, with adequate text matter and annotations of authorities.

PART 3, SPECIFIC CONTRACTS, follows the same general outline as the first two parts, but deals specifically with Sales Contracts, Money Payment Contracts, Leases, Liquidated Damages and Eminent Domain.

AWARDS IN INJURY AND DEATH CASES. There are two chapters in the book devoted to the size or amount of verdicts or awards which have been sustained for specified bodily injuries and in death cases. This should be valuable information for lawyers who are not specialists in personal injury litigation, but who have occasion from time to time to negotiate settlements, or to prosecute or defend such claims. The information here contained should be especially beneficial in evaluating the monetary worth of the claims.

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*Reviewed by Rudolf H. Heimanson**

POLITICAL JUSTICE; THE USE OF LEGAL PROCEDURE FOR POLITICAL ENDS, by Otto Kirchheimer. Published by Princeton University Press. 452 pp. (1961).

The concept of political justice suggests a linking of law and politics which arouses understandable mistrust. Still, we should remember that legal and political science are distinctly related. Law making is the expression of the sovereign will; under popular government it is beholden to the public interest, in an autocracy it becomes a tool of oppression. In either case it reflects

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the political climate of the state, and justice, as the law's final consummation, cannot be totally separated from political thought. One may go a step further and admit that, in essence, justice is political, because it upholds the state. *Justitia fundamentum regnorum* is a slogan found over many a court house.

Professor Kirchheimer is fully aware of both the positive and negative meaning of political justice. "Ideally," he states, "justice is the search for an order in which all members will communicate and interact with the body politic." In practice, each political regime has to deal with its foes. Here is one of the most sensitive aspects of political justice. Where does freedom to disagree end, and treason begin? Each state has the right and the duty to protect itself, through the courts, from overthrow, but to suppress legitimate demands means political justice at its worst. This problem—often growing into a veritable dilemma—has plagued this country and almost every nation on earth. In fact, Professor Kirchheimer's study is a world wide survey and considers the United States only proportionally. Offenses against the security of this country have, luckily, not been numerous but they have occurred, as evidenced by the Rosenberg and the Smith Act trials. In this connection the author reminds us that the Anglo-American adversary system facilitates political propaganda in the court room. This very same system, however, has a potential weakness which the author realizes, but does not sufficiently exploit. It stems from the precarious status of the attorney at court. In contrast to his European confrere, who is practically immune from contempt proceedings, the American lawyer during a trial may be silenced, subjected to a fine, jailed, or even threatened with disbarment. Awareness of these risks can, conceivably, cramp his defensive style. Also—and the author is more emphatic on this point—the unpopularity of a political defense may easily spill over onto the defender himself.

Political trials are much more common in autocracies where every divergence from the official line is a sacrilege. But under any system the powers of the law can be deployed for partisan purposes. If a law is enacted in support of a partisan program, it becomes decidedly "political." Is the enforcement of a political law an act of "political justice," or does political justice start when the courts themselves inject the political element? Professor Kirchheimer finds political justice exclusively in the field of *judicial* behavior, representing the general view that justice is merely the application of a law, and a sequel to law making.

Something may be said, though, for the thesis that a continuity should exist between the making and the enforcement of a law and that justice, in a broader sense, begins with legislation. Consistent with his own outlook, Professor Kirchheimer does not count the Scopes trial among the instances of political justice, for the *law*, not its application, was political.

The omission of the Sacco-Vanzetti case surprises us more. Regardless of individual opinions, the case had been charged with political emotions and did provide a link between justice and politics. To make up for it, the author demonstrates the Caillaux trial in France, where the government had a troublesome opponent prosecuted under trumped up charges, and the lesser known Ebert trial where the first president of the Weimar Republic sought and was denied vindication from slanderous allegations. The juxtaposition of these two cases shows how political justice moves in different directions; in the French trial the courts were misused by the government; in the German case, the courts, rightly invoked by a high official against private detractors, failed to protect him. The author correctly points out that the Weimar Republic offers a grim and striking object lesson of political justice at its worst, of judges who, through peculiar interpretations of the law, countenanced subversion.

Perverved justice, while a by-product of tyrannical government, is not its exclusive monopoly. We may take comfort in the fact that the politically conditioned selection of our judges has not seriously entangled us with political justice. Comparing the relative merits of the elective and the appointive method, the author does not out of hand reject the elective system. Political considerations, he avers, extend to appointments and promotions too; also, under a bureaucratic set up, the office holder, assured of his life tenure and sheltering behind a "higher-up," may not develop a keen sense of individual responsibility.

As the opposite and brighter side of political justice, Professor Kirchheimer introduces the topic of "political asylum." Predominantly a feature of international law, it operates inside the United States too. It provides another example of justice, glancing at politics, but humanitarian rather than political considerations decide. The government which refuses to extradite a political offender does not necessarily share his political beliefs, but respects their sincerity. The pattern of political asylum, and the character of its beneficiaries, have remarkably changed during the last hundred years. Incidentally, so has the attitude of

many once hospitable countries. Professor Kirchheimer shows how the active political refugee of yesterday has been joined by the masses of passive, basically non-political victims of modern oppression. He makes a fine distinction between people who flee from immediate judicial prosecution, and those who want to leave an uncongenial political atmosphere. Both groups, however, still classify as "political." The author might have distinguished them more sharply from a third category from people *persecuted but not prosecuted*.

One may not quite go along with the author's version that asylum is a "modification" of political justice. It is more than that; it turns its malice into benevolence. But another angle is visible too. Political asylum may become an extension of sinister political justice. Foreign governments have been known to aid common criminals, simply because they were at odds with the fugitive's home authorities.

Political justice is a widely diversified subject, and the author has quite masterfully charted the course of its fluctuations. It is true that he has not answered every question—what author does? But he has treated his theme extensively and profoundly. His book covers a generous expanse of legal, historical, diplomatic and sociological problems, far more than the title leads us to presume. It shows careful preparation, scholastic knowledge and a deep concern for the cause of true justice.