

CONTENTS

Preface	vii
I. Introduction	3
PART ONE	
<i>Political Justice: Cases, Causes, Methods</i>	
II. Changes in the Structure of State Protection	25
1. The Early Setting	26
2. The Era of Constitutionalism	30
3. State Protection in Contemporary Society	36
III. The Political Trial	46
1. The Political and the Criminal Trial	47
2. The Homicide Trial as Political Weapon	53
3. Case Studies in the Meaning of Treason	62
A. Opposition as Treason: l'Affaire Caillaux	63
B. The Libel Suit of the President	76
4. Enlarging the Area of Prohibited Activity	84
A. The Limits of Fact-Finding	85
B. The Definition of an Independent Political Operator	89
5. Trial Practice Beyond the Constitutional Pale	95
6. Trial as a Political Technique	110
IV. Legal Repression of Political Organizations	119
1. Repression by Minority Fiat: Benefits and Limitations of Legality	121
2. Nineteenth Century Record of Repression	125
3. Criteria for Repression of Hostile Groups under Majority Rule	132
A. The Anticipation of "Remote Consequences"	138
B. The Role of the Party Doctrine	143
C. The Weight of Specific Acts	147

CONTENTS

D. Tactical Motivations in Suppressing Marginal Hostile Groups	150
4. Variations in Attitudes toward an Opposition of Principle	159
A. Political and Administrative Discrimination within the Constitutional Framework	161
B. The Policy of Equal Treatment	167
C. Equal Treatment and the Future of Democratic Institutions	170

PART TWO

The Judge, the Defendant, and the State

V. Conditions of Judicial Action	175
1. The Job	175
2. Patterns of Prosecution	188
3. The Meaning of Impartiality	204
4. The Impact of the Jury	219
VI. The Defendant, His Lawyer, and the Court	225
1. The Goals of the Founders	225
2. In Quest of Group Identification	229
3. The Informer: Enemy from Within	234
4. The Hostile Island: Aspects of Nonconformity	237
5. Stages of Identification of Client and Lawyer	242
6. Types of Political Lawyers	246
7. The Political Lawyer and the Court	252
8. Internationalization of the Political Trial	256
VII. "Democratic Centralism" and Political Integration of the Judiciary	259
1. The Stray Dog and the Political Watchman	261
2. Aspects of Judicial Organization	263
3. The Informal Structure of Authority	269
4. The Judge and the Other Organs of State	274
5. The Judge and the Community	281

CONTENTS

6. "Socialist Legality": Doctrinal Gyration	285
7. The Nature of Law and the Judicial Function	297
8. Law under the Swastika in Retrospect	299
VIII. Trial by Fiat of the Successor Regime	304
Introduction: Special Political Jurisdictions	304
1. The Quest for a Yardstick	308
2. <i>L'État Criminel</i> and Individual Responsibility	319
3. Nuremberg: The Prerequisites of a Trial	323
A. The Nature of the Charges	323
B. Four Rejoinders	327
I. The Sanction of the Legal Order	327
II. Binding Orders and Necessity	329
III. The Prejudicial Court	332
IV. <i>Tu quoque</i>	336
C. The Quality of a Court	338
4. Trial Technique: Eternal Quest for Improvement	341

PART THREE

Political Justice Modified: Asylum and Clemency

IX. Asylum	351
1. Mass Influx of Fugitives	351
2. A Noble Service or a Troublesome Burden?	356
3. The Menace of Informal Extradition	365
4. Political and Diplomatic Protection	369
5. The Changing Scope of Nonextraditable Offenses	374
6. The Asylum Principle Restated	383
X. The Quality of Mercy	389
1. The Role of Clemency in the Apparatus of Justice	389
2. Types of Political Amnesty	404
3. A Contemporary Amnesty Record	411

CONTENTS

XI. Summing Up	419
1. The Strategy of Political Justice: "Necessity, Choice, and Convenience"	419
2. Planned Justice and Judicial Space	423
3. The Political Trial as Detour: In Quest of Justice	429
Appendix A. The Roman Empire and the Christians	433
Appendix B. Guillaume du Vair: The Case of the Successful Loyalty Shift	434
Index	437