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“The Justice of My Cause Is Clear, but There’s Politics to Fear”: Political Trials in Theory and History

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PHILINTE: Then who will plead your case before the court?

ALCESTE: Reason and right and justice will plead for me.

PHILINTE: Oh, Lord. What judges do you plan to see?

ALCESTE: Why, none. The justice of my cause is clear.

PHILINTE: Of course, man; but there’s politics to fear.

Molière, *The Misanthrope*, Act 1, Scene 1

Reflecting, three years before her untimely death, on the gestation of her 1964 book *Legalism*, Judith Shklar recalled thinking “that it might be interesting to take a good look at political trials generally.”¹ In the five decades since that remarkable book’s first publication, especially in the quarter century since Shklar’s remark in 1989, a plethora of political trials have been staged. Especially in the context of transitions from authoritarian rule, this peculiar institution has been ascendant. Yet even in advanced industrialized democracies, political trials are a recurring feature of contention. In recent years, a host of actors – NGOs, governments, international organizations – have embraced trials ever more readily as useful instruments of politics.

The range of political trials is enormous, spanning the globe and much of human history. In addition to the cases analyzed in the individual chapters of the present volume, one might also think of trials as disparate as those of O. J. Simpson in Los Angeles, Saddam Hussein in Baghdad, or John Demjanjuk in Munich.² Nor are such political trials a particularly “Western” phenomenon,

¹ Judith N. Shklar, “A Life of Learning,” Charles Homer Haskins Lecture for 1989, American Council of Learned Societies, ACLS Occasional Paper No. 9, p. 14.

² See, for example, Janet Cotterill, *Language and Power in Court: A Linguistic Analysis of the O. J. Simpson Trial* (London: Palgrave, 2003); Michael A. Newton and Michael P. Scharf, *Enemy of the State: The Trial and Execution of Saddam Hussein* (New York: St. Martin’s Press, 2008); and Heinrich Wefing, *Der Fall Demjanjuk: Der letzte große NS-Prozess* (Munich: C. H. Beck, 2011).

as evinced by the Special Tribunal for Lebanon, established by the UN to investigate the assassination of Rafiq Hariri and others in Lebanon in 2005; the trial of Zulfikar Ali Bhutto in Pakistan in 1978; the proceedings before the Extraordinary Chambers in the Courts of Cambodia; or the Women's International War Crimes Tribunal held in Tokyo. Nor are political trials restricted to tribunals for murder and mass atrocities. For instance, various kinds of "free speech" trials would obviously fall into this category, whether for obscenity or libel.³ Political trials can involve a range of economic cases as well, for instance, the various U.S. Supreme Court cases dispossessing Native Americans of their land.⁴ If we believe the literary theorist Shoshana Felman, "the promised exercise of *legal* justice – of justice by trial and by law – has become civilization's most appropriate and most essential, most ultimately meaningful response to the violence that wounds it."⁵ Against the background of these developments, it is time to take *another* good look at political trials generally, thereby critically revisiting what Shklar taught us about them almost five decades ago.

In the wake of *Legalism*, the social theorist Jürgen Habermas famously claimed that modern societies are marked by ever-increasing levels of juridification.⁶ In his fairly abstract treatment, juridification means simply "the tendency toward an increase in formal (or positive, written) law," which manifests as both an "*expansion* of law" into new domains of social life and an "*increasing density* of law" in areas of traditional concern.⁷ Habermas has little to say, however, about the venues in which law is performed. This is unfortunate because, as the political scientist John Ferejohn reminds us,

Since World War II, there has been a profound shift in power away from legislatures and toward courts and other legal institutions around the world. This shift, which has been called "judicialization," has become more or less global in its reach, as evidenced by the fact that it is as marked in Europe, and especially recently in Eastern Europe, as it is in the United States.⁸

³ See, e.g., Chris Hilliard, "Is It a Book That You Would Even Wish Your Wife or Your Servants to Read?": Obscenity Law and the Politics of Reading in Modern England," *American Historical Review*, Vol. 118 (2013), pp. 653–678; or Richard J. Evans, *Lying about Hitler: History, Holocaust, and the David Irving Trial* (New York: Basic Books, 2001).

⁴ *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *U.S. v. Kagama*, 118 U.S. 375 (1886); or *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

⁵ Shoshana Felman, *The Juridical Unconscious: Trials and Traumas in the Twentieth Century* (Cambridge: Harvard University Press, 2002), p. 3.

⁶ Jürgen Habermas, *The Theory of Communicative Action*, vol. 2: *Lifeworld and System: A Critique of Functionalist Reason*, translated by Thomas McCarthy (Boston: Beacon Press, 1987), pp. 356–373.

⁷ Habermas, *The Theory of Communicative Action*, vol. 2, p. 357.

⁸ John Ferejohn, "Judicializing Politics, Politicizing Law," *Law and Contemporary Problems*, Vol. 65 (2002), p. 41. For an overview of the debate, see Ran Hirschl, "The Judicialization of Politics,"

Judicialization is a specific aspect of juridification, one that not only expands and deepens law but also increases the relative power of courts and trial attorneys at the expense of legislators and state regulators.

We believe that it is impossible to fully understand the diffusion of law in modern life unless one also understands how law operates at its key point of application: in the courtroom. Our concern here is with *judicialization* (as understood by Ferejohn) as a manifestation of a more general trend toward *juridification* (as theorized by Habermas). By examining a range of political trials, including several that might not at first glance seem to fit the paradigm as it is conventionally understood, we hope to illuminate select aspects of judicialization – the way it has operated on the ground and in lived experience, in both domestic and international trials.⁹

What Are Political Trials?

Although much has been written in the last decade on what Otto Kirchheimer long ago dubbed “political justice,” a deeper comprehension of political trials as one institution capable of delivering political justice remains elusive.¹⁰ We do not yet fully understand under what conditions trials become political, the social mechanisms by which this occurs, or with what effects. Much of the existing literature assumes “that we can recognize political trials when we see them.”¹¹ Scholars more inclined to conceptual reasoning have interpreted the term in many different ways, sometimes haphazardly. Ronald Christenson, in an important article published more than three decades ago, put his finger on the crux of the conceptual matter: “Are political trials better classified as law or politics? If they are totally political, why have a trial? Since the courts are part of the ‘system,’ are all trials, therefore political?”¹² In answer, we propose that

in Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington, eds., *The Oxford Handbook of Law and Politics* (Oxford: Oxford University Press, 2009), pp. 119–141.

⁹ For a review of scholarship addressing the determinants of judicialization, see Ran Hirschl, “The Judicialization of Mega-Politics and the Rise of Political Courts,” *Annual Review of Political Science*, Vol. 11 (2008), pp. 93–118.

¹⁰ Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton: Princeton University Press, 1962).

¹¹ The phrase is from Ronald Christenson, “A Political Theory of Political Trials,” *Journal of Criminal Law and Criminology*, Vol. 74 (1983), p. 548. Examples of empirically rich but conceptually underdeveloped scholarship include Fowler Harper and David Haber, “Lawyer Troubles in Political Trials,” *Yale Law Journal*, Vol. 60 (1951), pp. 1–56; Kermit L. Hall, “Political Power and Constitutional Legitimacy: The South Carolina Ku Klux Klan Trials, 1871–1872,” *Emory Law Journal*, Vol. 33 (1984), pp. 921–951; Anthony W. Pereira, “‘Persecution and Farce’: The Origins and Transformation of Brazil’s Political Trials, 1964–1979,” *Latin American Research Review*, Vol. 33 (1998), pp. 43–66; and Adele Lindenmeyr, “The First Soviet Political Trial: Countess Sofia Panina before the Petrograd Revolutionary Tribunal,” *Russian Review*, Vol. 60 (2001), pp. 505–525.

¹² Christenson, “A Political Theory of Political Trials,” pp. 547–548.

political trials are best thought of, first and foremost, as peculiar *legal institutions* that embody *political dynamics*. Before we further develop our own conceptualization of the term, it is worth pointing out what political trials are *not*. Here are a number of contending definitions, all of which we find wanting.

The most recent contribution to the study of political trials comes from Eric Posner. Posner, a prominent legal scholar who writes on both domestic and international law, defines a political trial as one

whose disposition – that is, usually, a finding of guilt or innocence, followed by punishment or acquittal, of an individual – depends on an evaluation of the defendant’s political attitudes and activities. In the typical political trial, a person is tried for engaging in political opposition or violating a law against political dissent, or for violating a broad and generally applicable law that is not usually enforced, enforced strictly, or enforced with a strict punishment, except against political opponents of the state or the government.¹³

The purpose of political trials in liberal democracies, according to Posner, is “to eliminate enemies of a system devoted to political tolerance. In a political trial, the normal constraints of liberal legalism yield, with judicial and public acquiescence, to the political imperative of self-preservation . . .”¹⁴ Although Posner captures a number of important attributes that we, too, consider important to a certain extent (e.g., the focus on enmity, which we develop below), his emphasis on criminal proceedings, on the one hand, and his preoccupation with the prosecution of political opponents, on the other, result in a conception of political trials that is too narrow to be useful for comparative historical analysis.

Posner’s definition problematically excludes varieties of trials that are political in less confrontational a fashion. By effectively equating *all* political trials with partisan trials, Posner leaves little room for adopting a broader understanding of the concept of the political in the empirical study of political trials. The bluntness of his conceptual approach is exemplified by Posner’s insistence that legal proceedings in the context of large-scale social change (what he calls “transitional trials”) are inherently political. That is a reasonable argument, but not a very helpful one because it begs the question of *how* exactly these trials are political, *when* they tend to become so, and with *what* consequences. The point is to account for variation, not sameness. Posner remains stuck in the conventional, reductionist mold of thinking about political trials.¹⁵

¹³ Eric A. Posner, “Political Trials in Domestic and International Law,” *Duke Law Journal*, Vol. 55 (2005), p. 76.

¹⁴ Posner, “Political Trials in Domestic and International Law,” p. 150.

¹⁵ Exemplary of this conventional mold is also Nathan Hakman, “Political Trials in the Legal Order: A Political Scientist’s Perspective,” *Journal of Public Law*, Vol. 2 (1972), pp. 73–126. Hakman, for one, uses the terms “ideological trials” and “political trials” synonymously.

For the last twenty years or so, Ronald Christenson has attempted to break this mold. Unlike Posner, he concedes that “[n]ot all political trials contrive to set up scapegoats.”¹⁶ Rather, says Christenson, “certain political trials are creative, placing before society basic dilemmas which are clarified through the trial. These trials become crystals for society.”¹⁷ This more inclusive conception of political trials, as we shall show in more detail below, is useful for refining Posner’s rudimentary account. Most important, Christenson counterbalances the extreme instrumentalism inherent in Posner’s conception of what political trials are. Among others things, he alerts us to the role of contingency in their creation and institutional development. By so doing, he opens the door for a consideration of the non-rationalist aspects of such trials, notably their performative dimensions. For, as he notes, “trials are not chess games which proceed according to exact rules, rigorous though the rules of evidence may be. Trials are, first and foremost, stories.”¹⁸ Or, as Felix Frankfurter, the former justice of the U.S. Supreme Court once put it, “We live by symbols.”¹⁹ It is for this reason that the humanities – in addition to law and the social sciences – also are essential for coming to grips with the multifaceted nature of political trials. That said, Christenson’s definition is incomplete as well. Christenson does not offer a usable concept that could form the basis for comparative historical work because, while he is quite right that political trials “are not incompatible with the rule of law,” he provides no analytical purchase for understanding the similarities *and* differences between political trials “within the rule of law” and those outside of it.²⁰

Definitional problems are not the only challenge for the study of political trials. Our lack of systematic knowledge about the phenomenon stems from the fact that the vast majority of accounts of political trials are *rhetorical* rather than empirical or *descriptive* rather than analytical. By this we mean that the bulk of the existing literature fails, first, to look past the derogatory connotation of the notion of the political trial. It is regularly deployed pejoratively to pour scorn on a given legal proceeding rather than being used to elucidate the interaction of law and politics in the courtroom. A case in point is Danilo Zolo’s recent treatise *Victors’ Justice*, in which the author proffers an unconvincing critique of international legal order that lumps together a whole series of political trials without regard for theoretical subtlety, empirical specificity, or historical context.²¹

Second, we fault the existing literature for mostly lacking in theoretical ambition.²² There exists little scholarship, for example, that inquires

¹⁶ Ron Christenson, “What Is a Political Trial?,” *Society*, Vol. 23 (1986), p. 26.

¹⁷ Christenson, “What Is a Political Trial?,” p. 26.

¹⁸ Christenson, “What Is a Political Trial?,” p. 26.

¹⁹ *Minersville School Dist. v. Gobitis*, 310 U.S. 586, 596 (1940).

²⁰ Christenson, “A Political Theory of Political Trials,” p. 554.

²¹ Danilo Zolo, *Victors’ Justice: From Nuremberg to Baghdad* (London: Verso, 2009).

²² Exceptions are two important, yet dated, studies, namely Hakman, “Political Trials in the Legal Order,” pp. 73–126; and Christenson, “A Political Theory of Political Trials,” pp. 547–577.

rigorously – and comparatively – into questions of, say, institutional choice and design, the economic determinants of trial justice, or the relevance of communicative action for making sense of political trials. The handful of studies that single out political trials for closer inspection tend to forego the kinds of deep interpretative readings that are analytically ambitious *as well as* empirically grounded. Exemplary of this failing is Sadakat Kadri, whose popular history *The Trial* is rich in detail but of limited value for understanding trials, political and otherwise.²³ Of similar quality is Christenson's snapshot collection of political trials from antiquity to the late twentieth century.²⁴ Keeping these hurried studies company on the book shelf are popular treatments like Geoffrey Robertson's *The Tyrannicide Brief*, a historical yet ultimately slight tale of the trial of Charles I in England.²⁵ Similarly, David P. Jordan's standard history *The King's Trial*, about the trial of Louis XVI, explicitly rejects attempts to link it to broader phenomena of political justice, insisting that it was both *sui generis* and unrelated to the Terror in France.²⁶ Such treatments make for fascinating reading and contribute substantially to our understanding of the specific trials in question. However, they do not provide much help in constructing a more general account of how political trials operate or how they vary across time and space.²⁷ They offer anecdotes aplenty, but contribute little to the theory and history of political trials.

Studies that transcend the prism of a single perspective, that reveal both the social and doctrinal complexity of courtroom drama, and that seek to integrate theoretical sophistication and historical analysis are far and few in between. Three notable exceptions are Leora Bilsky's *Transformative Justice*, a close reading of four prominent Israeli trials that cut to the heart of the country's project of state-making; Lawrence Douglas's *The Memory of Judgment*, a sophisticated reading of select Nazi trials; and Richard Ashby Wilson's *Writing History in International Criminal Tribunals*, an anthropological inquiry into the didactic function of international proceedings at the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR).²⁸ What all three studies have in common is

²³ Sadakat Kadri, *The Trial: A History from Socrates to O. J. Simpson* (London: Harper Perennial, 2006).

²⁴ Ron Christenson, ed., *Political Trials in History: From Antiquity to the Present* (New Brunswick: Transaction Publishers, 1991).

²⁵ Geoffrey Robertson, *The Tyrannicide Brief: The Story of the Man Who Sent Charles I to the Scaffold* (London: Vintage, 2006).

²⁶ David P. Jordan, *The King's Trial: Louis XVI vs. The French Revolution*, New edition (Berkeley: University of California Press, 2004), p. xix.

²⁷ Another recent example is John Laughland, *A History of Political Trials: From Charles I to Saddam Hussein* (New York: Peter Lang, 2008).

²⁸ Leora Bilsky, *Transformative Justice: Israeli Identity on Trial* (Ann Arbor: University of Michigan Press, 2004); Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2005); and Richard

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a multidisciplinary sensibility and a healthy skepticism for conventional wisdom.

These contributions notwithstanding, much remains to be done when it comes to the study of political trials. This volume seeks to advance the agenda. It showcases exciting, deeply interpretive scholarship that has been informed by a new framework for analysis. To help deepen explanation and understanding of the ever more salient phenomenon of political trials, our volume is located at the intersection of law and related disciplines. Together with our contributors, we strike up intellectual conversations based on a foundation of insights from a variety of fields. Only on such a basis will we be able to come to terms with the logic of political trials, then and now. The past in our collection is represented by political trials ranging from those of Socrates to the French revolutionary trials. The present is under investigation in chapters on the Camorra trials in Italy, the Microsoft antitrust case in the United States, and the Khodorkovsky trials in Russia. Wedged in between these studies of the distant past and the recent present, readers will find innovative renderings of such diverse legal events as the Eichmann trial in Jerusalem, the Rivonia trial in South Africa, and the Gang of Four trial in China, to name but a few. By juxtaposing conventional and unconventional empirical cases from familiar and unfamiliar cultures, we hope to diversify and complicate the study of political trials. For not only do we believe that the politicization of trials is increasingly insidious, we also maintain that the meaning of the political in the courtroom is culturally specific.

The remainder of this introduction is organized into two parts. The first part explores theoretical foundations. It breaks the phenomenon of political trials into its two constituent parts: the concept of the political and the concept of the trial. Before we reassemble these moving parts, we critically reflect on a host of literatures that shed light, in whole or in part, on the two constituent phenomena. As far as the concept of the political is concerned, several questions are addressed: What is the essence of politics in the courtroom? What are the means of politics there? What are its ends? How do we know a phenomenon is political in the context of adjudication? Who is involved in law's politics? When we turn to the concept of the trial, other questions are raised: What are the defining characteristics of trials? What distinguishes trials from other institutions for the resolution (or pursuit) of political conflict? What social significance do trials enjoy? On the basis of these theoretical foundations, the second part builds a framework for the analysis of political trials. In addition to formulating a systematized concept, we introduce a typology of political trials. We contend that this framework offers a foundation for the study of political trials that allows them to be approached comparatively and historically.

Ashby Wilson, *Writing History in International Criminal Trials* (Cambridge: Cambridge University Press, 2011).

THEORETICAL FOUNDATIONS

The chapters collected in this volume “relate the political content to the juridical form,” as Otto Kirchheimer once put it.²⁹ And yet we are not content to merely rehearse Kirchheimer’s perspective on political justice. In fact, ours is a deliberate attempt to overcome a series of considerable shortcomings that we have detected in his magnum opus. Such corrections are important seeing that conventional analyses of political trials owe, unwittingly or otherwise, a tremendous debt to the exiled German jurist.

The Concept of the Political

We begin our attempt at reframing the field of study by charting – and contrasting – three different legal studies movements that have contributed meaningfully, albeit in different ways and to different degrees, to illuminating the politics of adjudication since the mid-twentieth century. These loose movements are Historical Legal Studies (HLS), Critical Legal Studies (CLS), and Empirical Legal Studies (ELS). These schools of thought are of direct relevance for this volume’s subject matter despite the fact that their intellectual ambits all reach considerably beyond the phenomenon of political trials. By situating our project at the intersection of these important movements in legal studies, and by locating it in direct response to some of the perspectives that have emanated from them, we seek to reinvigorate the study of political trials for the twenty-first century.³⁰

Historical Legal Studies in the 1950s and 1960s

A series of lawyers and social scientists, most of them émigré scholars based in the United States, turned to the subject of political trials in the 1950s and 1960s. This analytical turn, which was part of a wider intellectual current that we refer to as Historical Legal Studies (HLS), was far from surprising. Some of them had closely studied the political trials of Weimar Germany and the early years of the Nazi dictatorship, as well as the various postwar attempts to bring to justice major and minor “war criminals” (as the defendants were invariably, if often inaccurately, called). This prior interest helped generate a stream of publications on political justice in all its forms. It is worth taking a closer look at how two of these historically minded scholars – Kirchheimer and Judith Shklar – dealt with the concept of the political when writing about the role of law in modern society.

²⁹ Kirchheimer, *Political Justice*, p. vii.

³⁰ For a more general discussion of the concept of the political in the twentieth century than can be provided here, see, most recently, Samuel Moyn, “Concepts of the Political in Twentieth-Century European Thought,” in Jens Meierhenrich and Oliver Simons, eds., *The Oxford Handbook of Carl Schmitt* (Oxford: Oxford University Press, 2016), pp. 291–311.

Kirchheimer, who after fleeing Nazi Germany revived his teaching career at Columbia University, related the essence of the political in the courtroom to the distribution of power in a given polity:

Court action is called upon to exert influence on the distribution of political power . . . [E]fforts to maintain the *status quo* may be essentially symbolic, or they may specifically hit at potential or full-grown existing adversaries. Sometimes it may be doubtful whether such court action really does consolidate the established structure; it may even weaken it. Yet that it is in both cases aimed at affecting power relations in one way or another denotes the essence of a political trial.³¹

In his early work, written in the Weimar Republic, Kirchheimer largely understood political justice in terms of class justice, and the power relations affected in the courtroom were invariably those between social classes. In his later work, Kirchheimer moved away from this earlier, relatively orthodox Marxist interpretation.³²

Kirchheimer had been a doctoral student of Carl Schmitt, the infamous constitutional scholar and law professor whose body of thought had a more than random structuring effect on the law of Weimar Germany as well as the Third Reich. It should come as no surprise, therefore, that for Kirchheimer “the function of courts in political life . . . in the simplest and crudest terms [was to] eliminate a political foe of the regime according to some prearranged rules.”³³ This of course draws on Schmitt’s famous assertion that the essence of politics is to distinguish friend from enemy. But for Kirchheimer, the more interesting question was why a regime would use the courts for such a process of elimination. After all, he recognized that “judicial inquest obtains neither the quickest nor by any means the most certain results.”³⁴ Both formal political processes (such as elections) and collective violence could achieve the same results more directly and easily. The value of judicial proceedings in eliminating political foes lay, according to Kirchheimer, not in their efficiency but in their legitimacy. They “authenticated” political actions. In so doing, they helped contain the potentially boundless number of enemies a regime might generate. “By agreeing to a yardstick, however nebulous or refined, to cut down the number of occasions for the elimination of actual or potential foes, those in power stand to gain as much as their subjects.”³⁵ Judicialized politics make the removal of political foes more acceptable to the polity at large, whether domestic or international.

Unlike authors of less sophisticated accounts, Kirchheimer is quite clear that political trials can be, and indeed are, characteristic of democratic polities as well as authoritarian ones. “Political trials,” he says, “are inescapable.”³⁶

³¹ Kirchheimer, *Political Justice*, p. 49.

³² William E. Scheuerman, *Between the Norm and the Exception: The Frankfurt School and the Rule of Law* (Cambridge: MIT Press, 1997).

³³ Kirchheimer, *Political Justice*, p. 6. ³⁴ Kirchheimer, *Political Justice*, p. 6.

³⁵ Kirchheimer, *Political Justice*, p. 6. ³⁶ Kirchheimer, *Political Justice*, p. 47.

However, Kirchheimer is equally clear that not all trials are political (as they were thought to be by many representatives of the Critical Legal Studies movement, of which more in a moment). There are important differences between political trials and ordinary criminal trials. Critiquing those who would deny the possibility of political justice under the rule of law, who maintain that the proper application of due process depoliticizes the proceedings, Kirchheimer argues that it is more the *objective* than the method of trials that makes them political. True, all trials deploy forensic procedures for determining the truth of a given event (or, perhaps, *a* truth) and conclude with sanctions or vindication for the defendant(s). Ordinary criminal trials can be quite interesting in their own right, can even “disclose or expose hidden aspects and dimensions of contemporary civilization,” but they are “cases rather than causes” and do not have the same kind of import as political trials. In a political proceeding, “the judicial machinery and its trial mechanics are set into motion to attain political objectives which transcend both the bystanders’ curiosity and the governmental custodian’s satisfaction in the vindication of the political order. Court action is called upon to exert influence on the distribution of political power.”³⁷

All trials, in other words, may be political in the generic sense that they uphold the state’s right to adjudicate and resolve social conflicts. But political trials are political in a further and much more precise sense, in that they affect the distribution of power specifically within its political framework. Kirchheimer acknowledges this to be a narrow reading of power, recognizing that civil trials between major corporations or many kinds of ordinary criminal trials can have “decidedly political effects.”³⁸ Yet this does not, according to Kirchheimer, make them political trials in the proper sense of the term, which deal only in the “direct involvement in the struggle for political power.”³⁹ Socioeconomic conflict or the maintenance of ordinary order does not, on Kirchheimer’s reading, directly implicate the distribution of power and trials concerned with such matters are therefore not to be considered political trials.

This implies a distinction between political and ordinary justice. While Kirchheimer is explicit that political trials need not entail any violations of due process nor devolve into show trials with foreordained outcomes, they are nonetheless clearly distinct from the ordinary workings of the courts. “The aim of political justice is to enlarge the area of political action by enlisting the services of courts in behalf of political goals. It is characterized by the submission to court scrutiny of group and individual action. Those instrumental in such submission seek to strengthen their own position and weaken that of their political foes.”⁴⁰

We certainly agree that trials of the sort described by Kirchheimer constitute political trials. We are less persuaded, however, by his exclusion of trials not

³⁷ Kirchheimer, *Political Justice*, p. 49.

³⁸ Kirchheimer, *Political Justice*, p. 50.

³⁹ Kirchheimer, *Political Justice*, p. 50.

⁴⁰ Kirchheimer, *Political Justice*, p. 419.