

Please Pass the Guilt

THE POLITICAL CRIMINAL: The Problem of Morality and Crime. By Stephen Schafer. The Free Press. 178 pp. \$7.95

By RONALD GOLDFARB

SIR HENRY MAINE said that the first law was criminal law, doubtless because no other area of the law involves such fundamental notions of ethics, morality and social policy. Periodically, the American public becomes obsessed with certain crime problems; at various times our attentions have focused on such specific subjects as white-collar crime, crime in the streets; war crimes. The most recent chapter of this ever-continuing concern, has centered on political crime. The term and its meaning, however, have received scant study. Like pornography and modern art, it may well be one of those things that everyone knows when they see it but cannot describe.

The term political trial has been bandied about loosely as a pejorative slogan, but there exists only an indefinite and highly personal understanding about what those words really mean. By describing a case as a political trial, the general public seems to mean those regular but infrequent, extraordinary cases which, because of the special people and circumstances involved, seem to take on proportions greater than life. These cases, usually pregnant with emotional and symbolic issues, are only sometimes decisive of them. Their inherently fascinating characters and events generate wide and intensive press coverage; the parties become household names, the issues (often collateral issues raised by the handling of the case become more important than those inherent in the basic dispute itself) are widely discussed.

The trials usually involve deep ideological disputes, frequently pitting powers of the state against the unpopular words or deeds of charismatic and vocal defendants. Parochial and subsidiary issues may eclipse the truth about the facts in dispute; the pursuit of justice is confused, sometimes waylaid by engaging and volatile skirmishes along the way.

In this book, *The Political Criminal*, Stephen Schafer has written a very important, very timely study of this subject. Professor Schafer, who was educated and taught in Hungary, is now at Northeast-

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ern University. He presents here a deep and rich jurisprudential analysis of the nature of political crimes. It is a scholarly analysis of an historical subject, dealing with fundamental questions about the legal system. Yet, it turns out to be a book of very current and timely application.

Schafer points out that while the subject is one of historic concern, "In our time the complaint that politics is being criminalized might be coupled with the complaint that criminality is being politicized." He uses fascinating examples and scores of excerpts from the richest mines of law and jurisprudence to examine the increasing phenomenon of the powerless attacking the legal system (establishment) by outlawed acts which they claim are necessary means for reform. Depending on the view of the observer, these acts are anarchic and condemnable, or prophetic and condonable.

Civil rights activists broke existing laws to make brave and moral statements. Older German citizens wrestled with their personal responsibilities to violate Nazi statutes. Irish and Arab terrorists nowadays probably view themselves as saviors. We all love Robin Hood. Cinque seemed to be saying, wait till a better day and you'll see that I'm a hero, too. When law violators act from irresponsibility, passion, intention, another set of values, how should society react? What is ordered justice in these circumstances?

The rueful reality forced by the outsider-activist is, in Schafer's words, "the ruthless fact that the social-political power has the monopolized authority to define justice." This fact leads to class warfare in which the political crime is one weapon. The same fact also can lead to governmental abuse, which raises questions so relevant to today's Washington drama. The late Edmond Cahn argued in *The Predicament of Democratic Man* that crime by government officials is the most serious variety of crime because it abuses sovereign power and offends the public body. Yet, judges still give thieves long sentences and presidential assistants short ones.

In this book, Stephen Schafer deals with all these issues, and more. It is slow and difficult reading, a book which I expect to read again and resort to often; it is a contribution. We would all do well to read *The Political Criminal*, especially lawyers and government careerists. Most especially I would recommend this book to those educated professionals and former government officials who, as a result of the Watergate phenomenon, will be spending some time in prison during the next few years. When they pack their tooth brushes and drop into the correctional time machine, they also ought to include in their kits a copy of Professor Schafer's very profound book. □

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