Yale Law Journal

Volume 42
Issue 3 *Yale Law Journal*

Article 7

1933

BOOK REVIEWS

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Recommended Citation
BOOK REVIEWS, 42 YALE L.J. (1933).
Available at: https://digitalcommons.law.yale.edu/ylj/vol42/iss3/7

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Book Reviews

THE TRIAL OF JEANNE D'ARC. Translated into English from the Original Latin and French Documents by W. P. Barrett. New York: Gotham House, Inc. 1932. pp. xiii, 544.

THE year 1932 might be rather late for a procedural discussion of a trial occurring in 1431 were it not for the fact that the trial of Jeanne D'Arc offers us a mirror in which we may see our own judicial process. Here we have a case in which the judges took great pride because it represented in their eyes the fairest and most dignified judicial process which their ingenuity and dialectic could devise, and because, in spite of the obvious guilt of the defendant, no step had been neglected or slurred over. Yet during the years which follow, we find this same record condemned as an outstanding example of hypocrisy by a partisan court.

The translation shows the error of such a judgment. It can only be made by ignoring the substantive law and its penalties by which the Court felt itself bound. Of course we may criticize the law of heresy as outrageous, and a commentary on the intolerance of medieval government. Naturally in our more enlightened age we consider prosecutions for heresy as examples of bigotry, and very much different in character from refusing citizenship to a minister of the gospel who refused to fight in a hypothetical future war, or from sentencing a Boston bookseller for disposing of one of the works of D. H. Lawrence, or from punishing a man named Gitlow for making anarchistic addresses. Such distinctions have their unquestioned merit and are so well settled that they need not be argued here. We only wish to point out that they are irrelevant to a criticism of the judicial process itself. A fair criticism of the trial of Jeanne D'Arc must proceed on the assumption that the medieval court was inevitably caught in the prevailing phobias of its era. As commentators on the judicial process of this medieval Court, we must therefore refrain from blaming it for the governmental philosophy of the middle ages.

Judged by this standard, the record of the trial of Jeanne D'Arc shows all the restraint, and all the judicial attitude, of the best conducted trials of our own day. It is a record of which a modern prosecutor might well be proud. The conventional requirements of due process familiar to us are all present: Though under different names, we find a preliminary hearing; an indictment which discloses to the accused the nature of her offense in elaborate detail; a trial in which the evidence is fully disclosed and opportunity is given to the accused to meet all relevant issues; an appellate review of both the law and the evidence; and a permanent written transcript of the entire proceedings.

We find missing only one of the modern requirements of a fair trial, the representation of the accused by counsel. Nevertheless, if we let the record speak for itself we find a certain fairness in the questions asked and full opportunity for the defendant to deliberate on her answers. In fact the absence of counsel seems to impel the court to be less brutal in its questioning than is now permitted under cross examination. Jeanne avails herself very well of her opportunities. Her answers show astuteness and legal skill. Her

great fault lies in the fact that she has the courage of her convictions, and those convictions are that she is in closer contact with the Deity through her voices than even the Lords of the Church themselves. She is setting her conscience as represented by her voices against the fundamental theories of ecclesiastical government, and such presumption will seldom be permitted in any organized society properly mindful of the prestige of its institutions.

The deliberations of the University of Paris, whose entire faculties were requested to review the proceedings, proceed with inevitable logic. The faculty of Theology is very skeptical about Jeanne's "voices," stating that they are either lies, or else that they proceed from the diabolical spirits Belial, Satan, and Behomoth, with which terms the ancients described what we now call Bolshevism. The faculty of degrees points out truthfully enough that if this woman was sane (and there is no reason to believe that she was insane even according to our modern right and wrong test), she has separated herself from obedience to the Church militant. Inasmuch as the Church militant is unfamiliar to some, it may be helpful to point out that Jeanne's attitude was much the same as that of the late socialist Eugene Debs who was sentenced for separating himself in obedience from the government. The chief difference between them was that Jeanne believed in killing people to further her peculiar ideas and Debs did not.

The technical difficulties as to jurisdiction are handled with dialectical skill by the very simple procedural device of having the Chapter of the Cathedral of Rouen cede territory for the purpose of trial to the Bishop who convened the court. Thus the principle of territorial jurisdiction is followed without any of the complicated theories which today give us so much difficulty in determining the place of trial.

The method of appeal is admirable in its simplicity as well as dignified in its procedural form. It appears to be discretionary, just as certiorari is discretionary in the United States Supreme Court today. Yet it is entirely free from procedural traps because the Court itself takes the trouble of getting up its own Appellate Record. No judicial doctrine prevents the appellate court from reviewing all the facts as it did in the Sacco-Vanzetti case. No philosophy concerning the nature of proceedings in error hinders the court from going into the merits.

As the trial proceeds the writer detects an interesting change of attitude on the part of the judges because of the orderly and rational procedure which they have adopted. At first we suspect that for reasons which might well be described by the invidious word "political," these judges would have been delighted to convict Jeanne. Natural human emotions of sympathy are submerged in the desire to get rid of her. But as the trial progresses, the court becomes more and more sympathetic with the heroine; and as it becomes more and more evident that respect for the law compels them to convict no matter how they feel, it becomes no longer necessary for the court to suppress its feelings of regret. The court becomes more paternal in its attitude. When the question of torture is raised, "to restore her to the way of knowledge and truth," these judges, accustomed as they were to such methods of salvation, decide after a long conference (with some dissenting votes) that torture is unnecessary. And at the end we believe that final sentence was imposed with real regret, because of judicial necessity, rather than celebrated as a political victory.

Had the "substantive law" of heresy been the other way this dignified and logical process adopted might even have compelled acquittal, in spite of the motives which inspired the prosecution. For the ritual which we today term

"due process" is powerful in its emotional effect on a court which follows it. A "political" conviction is generally obtained by using a form of procedure by which the court escapes looking at the facts. On the other hand in trials where the law itself makes conviction inevitable, courts may more willingly give the accused the advantage of every protection because of the fact that it can do him no good. To a certain extent it may be said that judicial protection of accused persons by way of preliminary hearing, orderly taking of testimony, and appeal has crept into the law, not to free innocent persons but to make judges feel that in the trial of the unquestionably guilty there has been offered every fair means of defense. In such cases even new safeguards may be afforded in order to give the judges the comforting feeling that not they, but the law is punishing the defendant. Nor is this to be condemned as hypocrisy because the emotional effect of safeguards thus invented may have a powerful restraining influence in later and less obvious cases.

Of such character was the appeal to the University of Paris in this case. The appellate courts did not try to escape the consideration of evidence by relying on presumptions in favor of the Court below as the California Court was compelled to do in the Mooney case. It could and did consider and review all of the facts.

Yet of this trial it has been said that "rarely has injustice taken the light of justice to this degree." There is a very subtle fallacy behind this judgment of the judicial process. It assumes that these judges did not believe in the law which they were enforcing and that the formulations of the doctrines of heresy which they invoked were not among the compelling forces behind the decision. Such a judgment forgets the impelling force of dignified and rational procedure upon the judges who invent it.

The trial may be compared with that of Eugene Debs and Benjamin Gitlow in our own day. Debs made speeches inconsistent with the purposes of a militant government in time of war. Gitlow made them in time of peace. Both had fair trials and full appellate court consideration. Both convictions were sustained with judicial regret,—the one on the theory that war could not be carried on if Debs were allowed to talk, the other on the theory that peace could not be secure if persons like Gitlow were allowed to talk. The prosecuting attorney might have ignored either or both of these men without serious consequences. It is doubtful if even Debs could have stopped the war, and it is not at all clear that even Gitlow's sentence postponed the depression. Yet once these cases were in Court, the conviction of these men could confidently be predicted in any country which adopts the prejudices of western civilization. No judicial machine is likely to question the underlying assumptions of the government which it supports however regrettable those assumptions may be.

Courts, in the long run, can probably be true to their judicial character only if they frankly expose on their records for the judgment of the future all the relevant facts of the cases which they decide. Only in this way can the assumptions on which the decisions were based be examined. The fact that Jeanne D'Arc was rehabilitated on the trial record itself is the best evidence of the character of the proceedings. A fair trial can never insure a fair result, but it can at least afford an opportunity for consideration of all the circumstances. This is the most important contribution which procedure can make to our judicial process. Where a court allows this, we may well forgive unfortunate results caused by human prejudices. Where a court denies it, seeking safety in presumptions and ancient doctrine, leaving to outsiders the burden of disclosing all the facts on which it should have acted, thus making such outsiders who

desire to complete the record appear as attacking the Court itself, and through it, the state, then only is the rather splendid ideal of a fair trial in danger.

Yale School of Law. THURMAN W. ARNOLD.

CRIMINOLOGY. By Robert H. Gault. Boston: D. C. Heath & Co. 1932. pp. ix, 461. $3.48.

CRIME is a vulgar subject. It is not strange, therefore, that the literature of criminology has been a mixture of political platitudes, pious wishes, and magical formulas, with only here and there a lonely symptom of fact-mindedness. Dr. Gault's book is a noteworthy event in such a field. Since the 18th century there have been efforts to conceive of the criminal as belonging to the world of natural phenomena and since that time there have been sporadic efforts to study crimes and criminals in a scientific spirit. Efforts to bring together facts in this field have not been very gratifying, however, until the appearance of the volume before us.

In his opening chapter the author introduces the criminal by means of some well-chosen case-history material. The point at which he drives is the absence in the criminal personality of any outstanding psychological eccentricity by means of which such a character can be recognized. ". . . It is impossible to bring forward any one person (or even a half dozen) and to introduce him as a criminal with any reasonable expectation that after seeing him and talking with him the observer would next day recognize another criminal if he should chance to meet him and talk with him." Gault has no intention of making a mystery of criminality. He simply feels that the traits subsumed under this title can be understood only as a result of an exhaustive survey of all of those variables—social, physical, psychological—which play a part in shaping human nature.

In preparation for his own careful examination of the factual evidence, the author devotes three chapters to those psychological concepts most pertinent to the present book. This material is well presented and it will be of the utmost importance for all readers not intimately in touch with current developments in psychology.

Ten chapters, all replete with the latest and most authentic data, make up the actual survey of the possible causes of criminality. The ground covered is as follows: criminal physical anthropology, intelligence of criminals, dissociation and allied phenomena, psychopathic personality, epilepsy, race and sex, age and physical health, attitudes, from the gang to organized crime, and heredity in relation to criminality.

As we have indicated, there has in the past been a strong tendency to find the cause of crime in some one physical or psychological aberration. Since such demonstrations have all been faulty, there has been a counter tendency to point out and often to prove that head measurements or ancestors are not sure signs of criminality. Now Gault is plainly more sympathetic with the second, or critical, attitude than he is with the first. This leads him in many chapters to produce an impression somewhat more negative than the results actually demand. He seems to consider it more significant that low intelligence and mental disease are only *infrequently* associated with criminality than that they may at times and in particular individuals be essential factors in criminality. There is no question of truth involved here. It is simply a matter of what existing false impressions should be removed from the average reader of such

a book as this. If the reader is one who has already decided that criminality must be simple in origin, perhaps it is well to guard him against laying it, specifically to faulty intellect, inheritance, or mental balance.

When Gault comes to the rôle of socially determined attitudes, however, his exposition runs over into the major key. Although criminality has no single cause, it does have a major cause: "The people who develop unfavorable attitudes such as anti-social grudges and grouches cannot be put to one side as feeble-minded, insane, psychopathic, or epileptic without more ado. Just such developments as these are common to all. Disappointments accumulate and become a great burden. We think about them and talk of them. We contrast our lot with that of others, and are faced with the practical impossibility of improving the situation. The unfavorable attitude ensues and with it a constant strain because the discrepancy between one's own condition and that of others is too great to overcome. Then violence may follow as, in a sense, a final protest. . . . Thus the mechanism, if we may so describe it, is similar to . . . the *psychopathic personality*. . . . But here we have been interested in personality developments such as, in our opinion, occur in perfectly normal persons and that may prepare the way for criminal action. And such strains and stresses as we have referred to are the greatest single factors in the sequence of causes of delinquency and crime."

In coming to this conclusion Gault is entering good company. The majority of trained psychologists and sociologists and a goodly number of the more restrained members of the psychiatric fraternity are undoubtedly of the same opinion. If this view be valid, it means that, though criminality is often incurable in the individual whose environmental bad luck has lasted too long, criminality is curable or at least alleviable so far as it is a disease of the larger social body.

The later chapters deal with the treatment and detection of the criminal. They are on the same high scientific level as the earlier chapters on criminality.

The present book will fill an important need of lawyers and public officials who desire to familiarize themselves not only with the conclusions of scientific men upon this important social problem but also with the types of facts and data upon which such conclusions are based.

Yale University. EDWARD S. ROBINSON.

THE MODERN CORPORATION AND PRIVATE PROPERTY. By Adolph A. Berle, Jr. and Gardiner C. Means. Chicago: Commerce Clearing House, Inc. 1932. pp. xiii, 396. $4.50.

A SERIES of books in recent years has discerned the widening gap between the legal theory of the corporation and its use or abuse in business practice. First, Carver [1] called attention to the increasing distribution of corporate securities. Then Ripley [2] discovered with some surprise the disfranchisement of the stockholder, which had gone along with the growing of the stockholder class and which was beginning to find definite expression on paper in the creation of types of stock with limited or vanishing voting power. Following that, Wormser [3]

1. CARVER, THE PRESENT ECONOMIC REVOLUTION IN THE UNITED STATES (1925).
2. RIPLEY, MAIN STREET AND WALL STREET (1927).
3. WORMSER, FRANKENSTEIN, INCORPORATED (1931).

saw in the corporation a creature of man which seemed destined to become the master of its own creator. A climax to the series is now reached in the Berle and Means study of the separation of ownership from control and its consequences in modern society.

This book differs from its predecessors in that it refrains objectively from concluding that the corporate form or any other legal machinery is the "cause" of the "evil"—the disfranchisement of owners. In fact, it leaves us with the impression that the movement for the isolation of control is a socio-economic development for which the law has furnished a convenient framework, the corporation, but by no means the impetus. Had there been no corporate form at hand, control might very well have been separated from other phases of ownership by means of elaborate contracts, or trusteeship, or possibly half a dozen other legal devices. The fact that the corporation is the particular device most generally used has not been without its influence, as the authors very clearly perceive; but it has been an influence that has affected the rate of speed, or at most changed the momentary direction of experimentation. It has not deflected the general course of the development. Control can be separated from ownership. It has been so separated, for a vast portion of the wealth utilized in modern industry. And the separation is going on apace, unaffected apparently even by the depression.

It will be noticed that what the authors speak of as isolated from ownership is *control* and not merely management. Management has been separated from ownership from time immemorial. The wealthy man of the ancient or of the mediaeval world found no difficulty in hiring a manager for his estate; but the manager did not exercise control in the sense in which these authors find control to be crucial. Their definition and analysis of control are a major contribution to this whole study. It is not merely majority voting power; it is perhaps in the final analysis not even legal voting power where securities are so widely scattered that no group holds more than a small fraction of the total voting power. It is quite possible, even likely, that with proxy machinery developed as it is and with the attitude and understanding of stockholders such as they are, a small group at the center of affairs exerts actual control. To reduce such propositions to a basis on which they can be tested by statistical data was no small part of the task of the authors, and although in this they have been pioneers their achievement is substantial. A few of their outstanding conclusions might be listed:

(1) There has been an increase in the number of American stockholders in the first third of the twentieth century from 4,400,000 to 24,000,000.

(2) About half the savings of the community has recently been poured into small investments. Perhaps two-thirds of the industrial wealth of the country has gradually passed from individual ownership to ownership by the large and publicly financed corporations.

(3) Two hundred of the largest non-banking corporations control half the total assets of all non-banking corporations reported as paying federal income taxes. Three hundred thousand smaller corporations represent the other half. The larger corporations are growing two or three times as fast as the smaller ones. Three-fourths of these larger corporations are subject to control effectively divorced from ownership.

These are propositions the truth of which has long been suspected, but the peculiar service of our authors has been to find ways and means of bringing them within the realm of mathematical demonstrability.

In one other respect is the book notable, namely, as a successful experiment in the crossing of fields of specialization. It is the work of a lawyer and an

economist so thoroughly merged that it would frequently take the skill of a Higher Critic to separate their contributions. In general, the hand of the economist predominates in Book I, with its elaborate tables which measure the growing divergence between ownership and control. Book II is more lawyer-like in its study of the legal devices by which this separation has been effected and the resulting legal and factual positions of the various groups, particularly the stockholder. Here Mr. Berle touches again on his theory that corporate powers are essentially powers in trust.[4] Set in the framework of a study of the emergence of a "control" group whose interests are different from and may even be diametrically opposed to those of owners, this theory gains much in plausibility. Book III—on stock markets—takes us through a field in which neither the lawyer nor the economist has as yet marked out the roads, for nowhere is the corporate revolution so destructive of old concepts (though the old concepts are still enthroned) as in the open market for securities. Book IV is a very short but very clear call for a reorientation of enterprise. The traditional logic of property would give profits to the owners. The traditional logic of profits would give the owners but the wages of ownership, and profits would go to the service of control. A new synthesis is necessary. One is modestly put forward as a third possibility: that the community is in a position to coerce the modern corporation into serving not only the owners or "the control," but all society. "It is conceivable," say the authors, looking into the future, "indeed it seems almost essential if the corporate system is to survive, that the 'control' of the great corporations should develop into a purely neutral technocracy, balancing a variety of claims by various groups in the community and assigning to each a portion of the income stream on the basis of public policy rather than private cupidity." In this conclusion, if the posing of a problem can be called a conclusion, neither the lawyer nor the economist can be heard separately. They have coöperated admirably.

Harvard Graduate School of Business Administration.

NATHAN ISAACS.*

SELECT CASES ON THE LAW OF EVIDENCE. Third edition. By John Henry Wigmore. Boston: Little, Brown & Co. 1932. pp. xli, 1419.

DEAN WIGMORE published the first[1] edition of this collection in 1906. A second edition, in which the material was revised and considerably expanded, appeared in 1913. In the period of nearly twenty years since that revision, the law of evidence has been steadily developing. Attempts to enforce prohibition laws have given rise to a multitude of problems under that perplexing topic, "Illegal Search and Seizure", with variant results in State and Federal Courts.

In many branches of the law of evidence, the decisions of the courts have reflected to a marked degree the influence of Dean Wigmore's great text.

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4. *Cf.* 5 HARV. BUSINESS REV. 424 (1926).

* The reviewer has not felt that the adoption of this book into a series of which he is an editor would render his testimony incompetent, but he is willing to allow his unconcealed interest to bear on the question of creditability.

1. See Book Review (1906) 5 MICH. L. REV. 157.

Where formerly opinions were clogged with summaries and reviews of endless lists of cases, we find the courts settling the problem in hand by a quotation from this distinguished author. Because of Dean Wigmore's universally acknowledged position as the authority in this field, a new edition of his case-book is a matter of the greatest interest to every teacher of evidence.

Although the arrangement and classification substantially follows the second edition, the revision of the material has been thorough. In the selection of new cases the author has displayed his rare skill and judgment. Some familiar cases have disappeared, but their places have been taken by a surprising number of very recent decisions admirably chosen for their capacity to stimulate thought and discussion.

The present writer has been somewhat puzzled by the author's division of evidential material into three classes for the purposes of the excluding or eliminative rules. The author states in an introductory note (p. 15):

"*Kinds of Evidence.* In taking up the Eliminative Rules, it is necessary to distinguish between the three kinds of evidential materials: Circumstantial Evidence, Testimonial Evidence, and Autoptic Proference. The difference of the materials gives rise to entirely different rules."

"*Autoptic Proference.* This occurs when the tribunal observes the thing with its own senses. . . ."

"*Testimonial Evidence.* This includes all assertions made by a human being, as a source of the tribunal's belief in the fact asserted. . . ."

"*Circumstantial Evidence.* This comprises all evidence not testimonial. . . ."

Undoubtedly the rules differ as we deal either with physical objects presented to the senses of the tribunal or with human assertions; and also according to the intervening steps in reasoning or inference between the thing or assertion and the ultimate proposition to be established. A thing may be offered to establish the ultimate proposition directly, and so may a human assertion. On the other hand, either may be used to establish an intermediate proposition, to serve as a basis for a further inference.

In all cases the evidence seems to consist of either a human assertion of a fact (proposition) or of some thing (fact) perceived by the tribunal. If the fact asserted or perceived is not the ultimate matter to be established, a process of inference or reasoning must intervene. It would seem, therefore, that evidence (evidential material) should be divided into two classes only: Testimonial (human assertions) and Non-Testimonial (Autoptic Proference), and that each class might be subdivided into Circumstantial and Non-Circumstantial according to its bearing on the ultimate probandum. The circumstantial process, reasoning from an intermediate probandum to an ultimate probandum, seems to be precisely the same, whether the intermediate probandum was proved by the statements of a witness, describing, for example, a blood stained garment, or by the production of the garment itself for the inspection of the tribunal.

The author's arrangement in separating closely related topics does not seem to be the most desirable from the standpoint of either the teacher or the student. For example, the competency and qualifications of expert witnesses is separated from the opinion rule by a group of cases dealing with the examination of witnesses. Then too, the author does not consider admissions as hearsay receivable under an exception to the hearsay rule, but rather as a class of circumstantial evidence because of the inconsistency between the party's statements and his claim or defense, and accordingly this group of cases is separated by several hundred pages from the cases dealing with the hearsay rule and its exceptions.

Whether admissions should be classed as hearsay is a debatable question, and a strong case has been made for the hearsay view.[2] Clearly admissions and hearsay have many characteristics in common. Admissions may be, and commonly are, used directly to prove the truth of the proposition admitted, and that is precisely the ordinary use of hearsay. There is a rather striking similarity between a receipted bill from the adverse party, and a receipted bill from a third person since deceased, when each is used to prove the payment of money. If a student is to form any independent judgment on such a matter all of the materials ought to be before him.

Aside from objections to the arrangement of the materials, it seems to the writer that one or two rather important topics have not been adequately treated. The author deals with former testimony, not as an exception to the hearsay rule, but as satisfying the rule, and apparently for that reason omits several rather inportant technical limitations on the use of former testimony. On the topic of waiver of the privilege against self-incrimination, the case of *Fitzpatrick v. United States*, involving the cross-examination of a defendant, hardly furnishes sufficient material for a discussion of the various phases of the doctrine of waiver. It would have been better if the author had retained the case of *Regina v. Garbett* which appeared in the former edition.

Under the head of "To Whom Evidence is to be Presented", the author has reprinted one case, *Bartlett v. Smith*, dealing with the function of the judge in determining questions of fact upon which the admissibility of the evidence depends. This is a rather summary treatment of a topic which has proved confusing enough to the courts, as illustrated by the discussion in such cases as *Coughlan v. White*[3] and *Gila Valley, Globe & Northern Ry. v. Hall*.[4] Professor Maguire's edition of Thayer's Cases on Evidence reprints five cases with a number of summarized cases as problems. If the author found it necessary to economize in space, he might have omitted such a case as *Hutchison v. Bawker*,[5] dealing with the function of the judge in construing writings, which has a rather remote bearing on the law of evidence and cannot be treated adequately in a course primarily concerned with other matters. The late Professor Thayer devoted a great deal of space to such matters, but there was at that time no general course in procedure.

Although there may be teachers who will find this collection unsuited for their students, at least they can profit from a careful examination of it.

University of Chicago
Law School.
E. W. HINTON.

POLITICA METHODICA DIGESTA OF JOHANNES ALTHUSIUS. Edited by Carl Joachim Friedrich. Cambridge: Harvard University Press. 1932. $6.

ALTHUSIUS' book on politics, though written in Latin, is the most original and important contribution of German scholarship to that vast European philosophical and legal literature on the state and law that is focused in Grotius, Spinoza and Hobbes. That age is in political science and jurisprudence the period which

2. See Morgan, *Admissions as an Exception to the Hearsay Rule* (1921) 30 YALE L. J. 355.
3. 236 Mass. 165, 128 N. E. 33 (1920).
4. 232 U. S. 94 (1914).
5. 5 M. & W. 535 (1839).

ripened the rich harvest of fruits produced in European history by the deep spiritual and intellectual movements of the Reformation. The work of Althusius, that worthy Calvinist scholar of the good Frisian town of Emden, was highly acknowledged and fiercely attacked by the learned brotherhood during the author's life and later, until deep into the eighteenth century. Thereupon it fell into such oblivion that it had to be discovered again. Fifty years ago Otto Gierke, the greatest master of the germanistic branch in modern science of German law and its history, brought Althusius to light again in a book that is a masterpiece of modern historical jurisprudence. Althusius' "Politics" had become one of the rarities of libraries, and only a few copies were to be found in some of the greatest libraries, one of them in the Congressional library. The book had never been translated into one of the living languages. Thus it was one of the happy thoughts of the Department of Government of Harvard University to publish the book in the series of Harvard political classics. Professor Friedrich's enthusiastic and painstaking editorial labors have added to the old text copious notes of high scholarly quality. He introduces the book with a biography of its author, based on very interesting documents which he found in local archives. In an especially valuable chapter he shows the literary background of Althusius' work and concludes the introduction with an elaborate essay on the fundamental concept of the book.

This essay answers fully the question which might be raised, why this work written in the beginning of the seventeenth century is yet important for modern political science. Professor Friedrich shows that Althusius presented to his time a truly original and new way of explaining the phenomenon of the state as the dominating problem of civilization. A modern political scientist would be ready to name this book as the first attempt to write a sociology of the state. Althusius starts from the observation that the state is a mere product of nature, an achievement of the human life and race. He sees above all in the state the "consociation" of the chief "symbiotic" local unities of men and women in their regular order of life. Law should be understood and studied as the unavoidable requirement of maintaining social life in all its degrees, from the simple family group and small village to the complex entity of the people forming and representing the nation, the state. It is a method of outspoken and pure realism that Althusius employs. Such a method, unclouded or weakened by the well-known terminology of the "nature" theorists, is applied in drawing certain conclusions and building up his system. By emphasizing this "sociological" method Professor Friedrich stresses particularly his aim to show the original character of the Calvinist thinker and does not contradict Gierke's exposition of Althusius' work. Gierke, however, considered Althusius' great influence on the later stages of development of the law of nature theories and rationalism as philosophies of the eighteenth century state.

The editor's exposition of the real essence of the notion of the state and its organization shows that Althusius conceived it in all its parts and functions as a corporate phenomenon, created by the natural striving of men to attain the aims of life through voluntary association and not by force or by "subjection" under the will of one or several rulers. The "majesty" of the state lies for Althusius unconditionally in the people itself, whose constituent power he was first among the philosophers of his age to acknowledge, taking a position quite different from the "nature" theorists in general. Professor Friedrich hints that Althusius' "sociological" concept of the state comes very near to those two new concepts realized in our day by Russia and Italy; for the fascist system is a hierarchy of corporations, and the Russian, a hierarchy of soviets, or "councils" of