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## **A Demonstrative Theory of Natural Law: Johannes Althusius and the Rise of Calvinist Jurisprudence**

John Witte, Jr.

### **Abstract**

*Early modern Calvinists produced a rich tradition of natural law and natural rights thought that shaped the law and politics of Protestant lands. The German-born Calvinist jurist Johannes Althusius produced one of the most original Calvinist natural law theories at the turn of the seventeenth century. Althusius argued for the natural qualities of a number of basic legal norms and practices by demonstrating their near universal embrace by classical and biblical, Catholic and Protestant, theological and legal communities alike. On this foundation, he developed a complex theory of public, private, penal and procedural rights and duties for his day, to be embraced by everyone, particularly by those who were slaughtering each other in religious wars, persecutions and inquisitions. Althusius' theory of natural law and natural rights was Calvinist in inspiration but universal in aspiration, and it anticipated the political formulations of a number of later Western writers, including Locke, Rousseau and Madison.*

**Keywords:** Johannes Althusius, John Calvin, Calvinism, natural law, natural rights, symbiosis, Decalogue, universal law, ius naturale, ius gentium, Bible

### **Introduction**

“You should read Johannes Althusius!” This was the shining avuncular gem tucked into a letter that Max Stackhouse sent to me on January 19, 1983. I was a first-year law student at the time, just finished with my first semester exams. Worn out by half a year of reading torts, contracts, criminal law, and the like, I was eager to read something on “the weightier matters of the law.” Going back to the Dutch masters of my youth – Abraham Kuyper, Herman Bavinck, and Herman Dooyeweerd – did not appeal for some reason. I craved something of equal weight but of different flavor. I wrote all this to Max, whom I had been privileged to meet for the first time earlier that year. He wrote back almost by return mail -- punctuality being one of his many other generous

habits, besides sagacity. “Althusius is German, not Dutch,” Max noted, almost with apology. “And you will see something different, sometimes even dangerous, in him. But he’s Reformed, rigorous, and reaches very widely in his thought. Althusius may teach you how to fit law into a bigger theological conversation.”

Max Stackhouse was sure right about Althusius! Between spring semester classes and research assistant work, I sat in the bowels of Widener Library and began to read Althusius’s books. I then came across frayed copies of several of his old writings in a used bookshop. The shopkeeper had no idea who Althusius was, so he sold me these incunabula for a song. I have dabbled in them ever since, and lightly sprinkled some of their insights into my own scholarship. But, after graduating from law school, I never took the time to read Althusius systematically. This past year, I decided to blow the dust off those bookshop steals and give them a closer read. I wish I had not waited so long. For here was a sophisticated Calvinist thinker, who had set out to write nothing less than a universal Christian theory of law, politics, and society, designed to bring order and peace to his war-racked world of the early seventeenth century.

In a longer study, I have laid out Althusius’ theory in full and tried to draw out some of its implications for the war-racked world of our day.<sup>1</sup> In this little essay, I would like to focus on one aspect of Althusius’ thought, the account of natural law on which he built much of his complex system of law, politics, and society. As Max warned, Althusius’s natural law ideas are “different,” “even dangerous” -- particularly for those weaned on the belief that natural law ideas are either a medieval Catholic hangover or a new Enlightenment intoxicant which clear-eyed Calvinists should studiously avoid. Indeed, natural law is a subject that sits somewhat uncomfortably with some of Max’s theology as well – as Don Browning’s chapter herein documents exquisitely.<sup>2</sup> But, at least for peculiar souls like me, interested in retrieving the riches of traditional Protestant (and broader Christian) teachings on law and reconstructing them for use by churches and states in our day, the kinds of ideas and methods developed by Althusius are of enduring significance. Despite my flirtation with a suspect doctrine, I hope Max will accept this little essay, offered in admiration for his Christian leadership and in appreciation for his sage counsel over the years.

### **The Life and Work of Johannes Althusius**

Johannes Althusius has been called “the clearest and most profound thinker which Calvinism has produced in the realm of political science and jurisprudence.”<sup>3</sup>

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<sup>1</sup> See my *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge, 2007), chap. 3.

<sup>2</sup> See herein Don S. Browning, “Covenant and Natural Law: Guiding Globalization’s Impact on Families.”

<sup>3</sup> Carl J. Friedrich, “Introductory Remarks,” to Johannes Althusius, *Politica methodice digesta atque exemplis sacris & profanis illustrata*, 3d ed. (Herborn, 1614), reprinted as *Politica Methodice Digesta of Johannes Althusius (Althaus)*, ed. Carl J. Friedrich (Cambridge, Mass., 1932), xviii. For Althusius’s writings and reputation, see *Althusius-Bibliographie. Bibliographie zur politischen Ideengeschichte und Staatslehre, zum Staatsrecht und zur Verfassungsgeschichte des 16. bis 18. Jahrhundert*, ed. Hans

Born in a tiny German town in Wittgenstein-Berleburg in 1557, he studied law, theology, philosophy, and the classics at the universities of Cologne, Geneva, Heidelberg, and Basel, working intermittently with such Calvinist worthies as François Hotman and Denis Godefroy. He took his doctorate in canon law and civil law (*doctor juris utriusque*) from the University of Basel. His first appointment came in 1586 as lecturer in Roman law and philosophy at the Herborn Academy, a new Calvinist college that was attracting faculty and students from throughout Europe. Among his new Herborn colleagues was Caspar Olevianus, coauthor of the Heidelberg Catechism (1568), a Calvinist creedal landmark. In 1594, Althusius was promoted to professor of law at Herborn, and served twice as rector of the Academy in 1597 and 1602. His later years there, however, were marked by repeated internal controversy. Particularly notable for our purposes was Althusius's debate with his colleagues about the modern uses of biblical law.

In 1604, Althusius moved to Emden, an important seaport city in eastern Frisia, near the border of the Holy Roman Empire and the newly united Netherlands. Emden was a major center for Calvinist refugees from throughout Europe, and an emerging intellectual and missionary center for the spread of Calvinism. Althusius was appointed as legal counsel for the city (*Stadtsyndicus*) and became deeply involved in the city's multiple legal, commercial, and diplomatic negotiations. He played a leading role in helping Emden wrest greater independence from the local territorial count and nobles, an accomplishment that made him something of a local hero. Though he continued to give lectures, he did not hold a formal university position thereafter and turned down attractive professorships in Leiden and Frankener. Althusius was also elected as an elder of the Reformed church of Emden in 1617, and served for years on the Emden Consistory, hearing cases on spiritual, moral, and family questions much like John Calvin had done a half century before on the Genevan Consistory.

While these local achievements in church and state were notable in their day, Althusius's more enduring contributions came through his writings. Though he left a score of books, it was especially his trilogy of works on ethics, politics, and law that made signature contributions. His two-volume *Civil Interactions* of 1601 (expanded in 1611), worked out a system of "ethical habits and techniques" of "speaking and listening," "proclamation and silence," to guide rhetoric, dialogue, and persuasion in

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Ulrich Scupin et al. (Berlin, 1973), updated in Dieter Wyduckel, "Einleitung, Literatruverzeichnis," in Johannes Althusius, *Politik*, trans. Heinrich Janssen, ed. Dieter Wyduckel (Berlin, 2003), vii-lxxxii. Among numerous studies, see Friedrich, "Introductory Remarks," supra, xv-xcix; Thomas O. Hueglin, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (Waterloo, Ontario, 1999); Otto von Guericke, *The Development of Political Theory*, trans. Bernard Freyd (New York, 1966); Karl-Wilhelm Dahm, Werner Krawietz and Dieter Wyduckel, eds., *Politische Theorie des Johannes Althusius* (Berlin, 1988); Frederick S. Carney, Heinz Schilling and Dieter Wyduckel, eds., *Jurisprudenz, Politische Theorie und Politische Theologie* (Berlin, 2004); Heinz Anholz, *Die politische Wirksamkeit des Johannes Althusius in Emden* (Aurich, 1955); Erik Wolf, *Grosse Rechtsdenker der deutschen Geistesgeschichte*, 4<sup>th</sup> ed. (Tübingen, 1963), 177-219; Christoph Strohm, "Recht und Jurisprudenz im reformierten Protestantismus 1550-1650," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte (Kanonisches Abteilung)* 123 (2006): 453-493.

various social institutions, most notably in the church and the state.<sup>4</sup> His massive *Politics* of 1603 (revised in 1610 and again in 1614), set forth a comprehensive theory of social, political, and legal order and activity, and the forms and norms of sovereignty, authority, and liberty that obtain within each sphere.<sup>5</sup> His three-volume *Theory of Justice* (1617) laid the groundwork for a comprehensive theory of law and justice, with attention to the rights and liberties of private persons and the various private and public associations that they formed.<sup>6</sup>

Althusius presented these three big tracts as “comprehensive,” “total,” and “universal” accounts of the disciplines of ethics, politics, and law respectively. Each tract was amply illustrated by “sacred and profane examples.” Each tract used the dialectical method of the French Calvinist logician Peter Ramus, by which Althusius defined the first principles of these three disciplines, and then divided their constituent precepts and practices into a series of ever more particular binary opposites. Each tract drew on hundreds of scholarly sources – sundry ancient Greeks and Romans, all biblical and apocryphal books, various apostolic and patristic writers, numerous medieval theologians, philosophers, and civilians, a few canonists and rabbis, various Protestant jurists, all manner of contemporary Catholic and Protestant political writers, and several collections of civil, imperial, feudal, and urban law, ancient and modern. Using this vast library, Althusius’s ambition was to explore deeply the foundations and fundamentals of law, politics, and society, and to bring the insights of the entire Western tradition into a “total” and “universal” theory that would appeal not only to fellow Calvinists and countrymen but to anyone in his world of Christendom who was serious about faith and order, authority and liberty.

### **Natural Law, Common Law, and Positive Law**

Natural law was one of the foundations of Althusius’s impressive new system. (Complex theories of natural rights, human nature, social contract, divine covenant, and political federalism were amongst the other foundations. Each of these theories would engage Max Stackhouse’s imagination as well, but each would require its own separate chapter, and so they must left aside.) Particularly in later editions of his *Politics* and in his *Theory of Justice*, Althusius set out a “demonstrative theory” of natural law -- a

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<sup>4</sup> Johannes Althusius, *Civilis conversationis libri duo recogniti et aucti. Methodice digesti et exemplis sacris et profanis passim illustrati* (Hannover, 1601, 1611).

<sup>5</sup> Johannes Althusius, *Politica methodice digesta atque exemplis sacris & profanis illustrata*, 3d ed. (Herborn, 1614), reprinted as *Politica Methodice Digesta*, ed. Carl J. Friedrich. See abridged English translation, *Politica Johannes Althusius*, ed. and trans. F.S. Carney (Indianapolis, 1995); abridged German text of the 1614 edition in Althusius, *Politik*, ed. Dieter Wyduckel; and the Latin and English version of the preface to the 1610 edition in John Christian Laursen, ed., *New Essays on the Political Thought of the Huguenots of the Refuge* (Leiden, 1995), 193-201. I have used the 1614 Friedrich edition unless otherwise noted, and adapted the English translation by F.S. Carney in *Politica* [hereafter Pol.]

<sup>6</sup> Johannes Althusius, *Dicaeologicae libri tres, totum et universum Jus, quo utimur, methodice complectentes* (Herborn, 1617; Frankfurt 1618); I have used the 1618 edition throughout [hereafter Dic.].

theory designed to “demonstrate” the ultimate concordance between biblical and rational, Christian and classical teachings on the nature and purpose of law.<sup>7</sup>

Althusius effectively merged the hierarchies of law developed by fellow jurists and theologians of his day, both Catholic and Protestant. Civil law and canon law jurists generally distinguished three main types of law: (1) the natural law or law of nature (*ius naturale, lex naturae*), the set of immutable principles of reason and conscience that are supreme in authority and divinity; (2) the law of nations or common law (*ius gentium, ius commune, lex communis*), the legal principles and procedures that are common to multiple political communities and often the basis for treaties and other diplomatic conventions; and (3) the civil law or positive law (*ius civile, ius positivum*), the statutes, customs, and cases of various states, churches, fiefdoms, manors, and other local political communities.<sup>8</sup> Theologians and moralists, in turn, generally distinguished three main types of biblical law: (1) moral law (*lex moralis*), the enduring moral teachings of the Decalogue and the New Testament; (2) juridical or forensic law (*lex juridicales, ius forensi*), the rules and procedures by which ancient Israelites and apostolic Christians governed their religious and civil communities; and (3) ceremonial law (*lex ceremonialis*), the Mosaic laws of personal diet, ritual sacrifice, priestly life, and the like that governed the religious life of the ancient Israelites. Some theologians saw parallels between these three ancient types of biblical law and the three layers of modern Catholic and Protestant church law that governed, respectively, the essentials of doctrine and morality, the commonplaces of ecclesiastical polity and property, and the discretionary aspects (the *adiaphora*) of local church life.<sup>9</sup>

In his early writings, Althusius repeated these traditional hierarchies of law. In his later writings, however, most fully in his 1617 *Theory of Justice*, he collapsed these traditional legal terms and hierarchies into two main types of law: natural laws and positive laws. And he subsumed most of the other traditional types of law within these two categories. He treated the moral laws of the Bible and the common laws of nations as two visible forms of the same invisible natural law hidden within each person’s reason and conscience. And, he regarded the laws of ancient Israelites and of modern churches as two types of positive law that stood alongside the positive laws of historical and modern states. The modern validity of all these positive laws turned on their concordance with natural law. Their modern utility for the state turned on their

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<sup>7</sup> I take this phrase from the Danish Protestant jurist and theologian, Nicolaus Hemming, whose work straddled the Lutheran and Calvinist worlds of law. Writing in the later sixteenth century, Hemming developed what he called a “demonstrative method of natural law,” which aimed to demonstrate the natural universality and superiority of the Decalogue as a source and summary of natural law. He adduced hundreds of ancient Greek and Roman passages that he saw to be consistent with conventional Protestant interpretations of the Ten Commandments and its biblical echoes. See Nicolaus Hemming, *De lege naturae apodicta methodus* (Wittenberg, 1563), and further analysis in my *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge, 2002), 139ff.

<sup>8</sup> Dic. 1.13.6, 10.

<sup>9</sup> Pol. XXI.35-40; Pol. XXII.1-12; Pol., Preface (1603, 1610, and 1614 eds.).

compliance with the fundamental law (*lex fundamentalis*) of the community, which ideally would be articulated by a written constitution.<sup>10</sup>

Natural law is “the will of God for men,” Althusius argued. God has “written this natural law” on the hearts, souls, minds, and consciences of all persons, as Romans 2:15 and sundry other biblical and classical sources make clear. Everyone, by his or her very nature, thus has the “ideas (*notitiae*) and inclinations (*inclinaciones*) of this natural law” born within them. Some of these “natural inclinations” are common to humans and animals. Like animals, humans by nature are inclined to “preserve their lives and to procure the necessities to remain alive.” They are inclined to defend themselves against force and *force majeure*. They are inclined to ally themselves with others and to rally around natural leaders to aid them in their self-defense. They are inclined to “procreate by the union of male and female and to educate their natural-born children.” They are inclined to care for themselves and for their loved ones when they are sick, hurt, or ailing. Self-preservation, self-protection, and self-perpetuation are “natural inclinations” that the natural law teaches to persons and animals alike.<sup>11</sup>

The natural law also teaches persons higher ideas that appeal uniquely to human reason and conscience. By them, “a man understands what justice is, and is impelled by this hidden natural instinct to do what is just and to avoid what is unjust.” Through the natural law, God commands all persons to “live a life that is at once pious and holy, just and proper.” He teaches them the natural “duties of love that are to be performed toward God and one’s neighbor.” He sets out the basic “rules of living, obeying, and administering” that must govern all persons and associations. He sets forth “general principles of goodness and equity, evil and sinfulness” that every man must know in order to live with himself and with others. He teaches the “actions and omissions that are appropriate to maintaining the public good of human society” as well as the private good of households and families. By the natural law, Althusius wrote in final summary of his position, God “teaches and writes on human hearts the general principles of goodness, equity, evil, and sin, and He instructs, induces, and incites all persons to do good and avoid evil. He likewise condemns the conscience of those who ignore these things and excuses those who do them. He thereby directs them to goodness and dissuades them from evil. If they follow the path of goodness, he excuses them. If they do not, he condemns them.”<sup>12</sup>

This natural law has had many names in the classical and Christian traditions, Althusius recognized – Godly law, divine law, moral law, natural law, natural justice, natural equity, the law of conscience, the law of the mind, the law of reason or right reason, the law inside people, the immutable law, the supreme law, the general law, the

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<sup>10</sup> Pol. X.4; Pol. XIX.6, 15, 23, 29, 49; Pol. XX.18; Pol. XXVIII.30-32; Dic. I.13.3, 6-8.

<sup>11</sup> Dic. I.13.10-18; Pol. I.32-39; Pol. IX.21; Pol. XVIII.22; Pol. XXI.16-19; Pol. XXXVIII.37.

<sup>12</sup> Dic. I.13.1, 14-15; Pol. XXX.16, 19-20.

common law, and others. Parsing the names for the natural law was not so important to Althusius. He regarded them mostly as synonyms and used them interchangeably.<sup>13</sup>

Knowing the norms that the natural law teaches was the more important and the more difficult task. Althusius knew the traditional formula taught by the medieval scholastics and by the neo-scholastics of his day: that the natural law gives all persons an innate or natural knowledge of good and evil (called *synderesis*), that by exercising their reason persons can come to understand the norms of this natural law, and that by exercising their conscience they can learn to apply these norms equitably to concrete circumstances. But Althusius also recognized that, throughout history, persons and peoples have reached different formulations and applications of the natural law. Even in avowed Christian societies today, persons have “different degrees of this [natural] knowledge and inclination. This law is not evidently inscribed equally on the hearts of all. The knowledge of it is communicated more abundantly to some and more sparingly to others, according to the will and judgment of God.” So, given this reality, how can we really know “the nature of the norms of the law that are implanted in us by nature?” How can we be absolutely certain that we as individuals, or as the leaders of our communities, have “a true perception” of the contents of the natural law? How can we even know which person’s or community’s formulations of the natural law are better than another’s. Persons are fallible creatures who perceive natural law only “indirectly,” “circumstantially,” “through a glass darkly,” through “flickering shadows” emitting from distant caves of light. Communities have widely variant “customs, natures, attitudes, and viewpoints” that are affected by the “age, condition, circumstances, and education” of their members. There is no universal code of written natural law to consult. So, how can we be sure of the natural law’s norms and contents?<sup>14</sup>

We can know the norms of the natural law if we study both Scripture and tradition, revelation and reason very carefully, Althusius argued. We know that God has given a fuller revelation of his law in the Bible, particularly in the Ten Commandments and in the moral teachings of Moses and the Prophets, Christ and the Apostles. This cannot be a new form of natural law, for God would not and could not contradict the natural law that he already revealed to all of us in and through our human nature. Biblical moral law is rather a more perfect conformation and elaboration of the natural law ideas and inclinations that are already inscribed on the hearts and minds of everyone, believers and non-believers alike. Through Moses, God rewrote on stone what was already written on our hearts. Through Christ, God rewrote this law anew by fulfilling its commandments and promises and by teaching his followers how to discern its “weightier matters.” To be sure, Althusius acknowledged, biblical moral law has clearer precepts and higher purposes than any other form of natural law. It provides a more certain knowledge of the will of God for our lives. It sets out a pathway to salvation for those who can abide by its letter and a pathway to sanctification for those

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<sup>13</sup> Dic. 1.13.13-18; Dic. I.14; Pol. XXI.1-20.

<sup>14</sup> Dic. I.6.4-6, 26; Dic. I.13.16-18; Pol. XXI.20-21; Pol. XXIII.1-20.

who can live by its spirit. But the Bible's moral law only rewrites more copiously the natural law that is already written cryptically on the hearts of everyone.<sup>15</sup>

While God and Scripture have rewritten the natural law for believers to discern, reason and experience have rewritten this natural law for non-believers to discover. In every major civilization, Althusius argued, enlightened leaders and magistrates have emerged who have used their natural reason to translate the general principles of natural law in their minds into specific positive or proper laws (*leges positivum, leges propriae*) for their communities. These enlightened leaders have inevitably tailored these positive laws to "the customs, nature, needs, attitudes, conditions, and other special circumstances" of the people ruling and being ruled. This has produced widely variant positive laws over time and across cultures, particularly when these local laws are viewed in their details. But these enlightened leaders have also inevitably positioned these laws to reflect some of the natural light within their hearts, and have maintained these laws because they have proved to be both right and useful. This has produced laws that are common to many peoples and polities, even those that have had no interaction with each other. Every major civilization, said Althusius, has developed comparable sets of law to govern religious worship and observance, to honor marriage and the family, to obey authorities and to respect traditions, to protect human lives, properties, and reputations, to care for relatives, widows, orphans, and the poor, to speak respectfully to others, to testify truthfully, to honor promises, contracts, and agreements, to vindicate wrongs and to punish wrongdoers, to fight wars and repel attacks, to give to each and everyone what is due. These common laws, independently developed by different peoples and polities over time and across cultures, must be regarded as "visible expressions of the same invisible natural law" within all persons, Althusius argued. They must be taken as reflections of "the natural and divine immutable equity that is mixed into them," as indications "of the common practice of natural law."<sup>16</sup>

These common laws (*iura commune*) or laws of nations (*iura gentium*) – gathered from the commonplaces of sundry positive laws and the common practices of sundry legal communities -- stand alongside biblical moral laws as a second form and forum of natural law. Indeed, at a certain level of abstraction, the moral laws of the Bible and common laws of the nations converge, even though they have very different origins, ends, and languages. "A law is both natural and common," Althusius wrote, "if the common use of right reason produces it for the necessity and utility of human social life. It, too, can then be called natural law." "While some distinguish among common law (*ius commune*), natural law (*ius naturale*), and the law of nations (*ius gentium*),

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<sup>15</sup> Pol. VII.7-12; Pol. X.3-12; Pol. XVIII.32-44; Pol. XXI.22-29.

<sup>16</sup> Dic. 1.13.4-18; Dic. 1.14.1-14; Dic. I.35.22-23; Pol. VII.7-12; Pol. IX.20-21; Pol. X.3-12; Pol. XVIII.32-44; Pol. XXI.22-29; Pol. XXII passim.

others more properly call each of them forms of the [same] natural law.... Christ himself often called natural law things that are usually called the law of nations.”<sup>17</sup>

This belief in the ultimate concordance, if not confluence, of biblical law, natural law, and common law helps to explain Althusius’s somewhat baffling style of argumentation in his *Politics* and *Theory of Justice*. In both tracts, Althusius piled citation upon citation, from all manner of seemingly unrelated sources, in demonstration of each simple assertion about what the natural law contained and commanded. Some of this no doubt was the pedantic puffery of a legal humanist – the flashy displays of unnecessary erudition that still mark some law review articles today. But, for Althusius, all this dense citation to sundry sources evidently had a larger purpose. He seemed convinced that the more frequently a legal teaching and practice appeared in diverse legal, theological, and philosophical texts, the more readily it could be taken as proof of the content of the natural law. If the ancient Israelites directed from Sinai and the ancient Greeks and Romans directed from Olympus independently embraced the same legal teaching, that had to speak volumes about the natural foundations and qualities of this teaching. If Aristotle and Moses, Cicero and Christ, Plato and Paul all concurred on a given principle of right living and proper ruling, that had to give this principle a special priority in discerning the content of natural law. And, if modern-day Catholics and Protestants, who have been slaughtering and slandering each other with a vengeance, still come to the same conclusions about the cogency and utility of these classical and Christian legal teachings, that had to commend these teachings even more strongly as natural universals. Althusius thus scoured the sources for any and every proof text that he could find to support each step of his argument. This made his writing more of a legal brief than a philosophical argument, more of an historical demonstration of natural law precepts in action than a logical deduction from *a priori* first principles.<sup>18</sup>

Althusius rested his case on the contents of the natural law most firmly on the confluence between the Commandments of the Decalogue and the moral teachings of sundry classical traditions. For him, the Decalogue was the clearest and most comprehensive confirmation and codification of the natural law, of every person’s inner natural inclinations to piety and justice, to faith and order, to love of God and love of neighbor. As such, “the Decalogue has been prescribed for all people to the extent that it agrees with and explains the common law of nature for all peoples.” “The precepts of the Decalogue ... infuse a vital spirit into the association and symbiotic life that we teach.” “They carry a torch to guide the kind of social life that we desire; they prescribe and constitute a way, rule, guiding star, and boundary for human society. If anyone would take them out of politics, he would destroy it; indeed, he would destroy all symbiosis and social life among men. For what would human life be without the piety of the First Table and the justice of the Second [Table of the Decalogue]? What would a

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<sup>17</sup> Dic. I.13.11, 18-19.

<sup>18</sup> Dic. 1.14.1-14; Pol. XXI.30-40; Pol. XXII.1-3, 10.

commonwealth be without the communion and communication of things useful and necessary to human life?”<sup>19</sup>

Several times Althusius worked through each of the Commandments to show their enduring natural law teachings. His formulation in the 1614 *Politics* reads thus:

The first commandment of the first table is about truly cherishing and choosing God through the knowledge of him handed down in his word, and through unity with him accompanied by a disposition of trust, love, and fear.... The second commandment is about maintaining in spirit and in truth a genuine worship of God through prayers and the use of the means of grace.... The third commandment is about rendering glory to God in all things through the proper use of the names of God, oaths of allegiance to him, respect for what has been created by the Word of God and intercessory prayers.... The fourth commandment is about sanctifying the Sabbath in holy services through hearing, reading, and meditating upon the Word of God.... The fifth commandment is about those things that inferiors are expected to perform toward superiors and vice versa.... The sixth [commandment] requires the defense, protection, and conservation of one's own life and that of one's neighbor. The conservation of one's own life comes first, and consists in defense, conservation, and propagation of oneself.... Conservation of the neighbor's life is his protection through friendship and other duties of charity, such as provision for food, clothes, anything he else needs to be sustained.... The seventh commandment concerns the conservation of one's own mind and body and that of one's neighbor through sobriety, good manners, modesty, discretion, and any other appropriate means.... The eighth commandment concerns the defense and conservation of one's goods and those of one's neighbor, and their proper employment in commerce, contracts, and one's vocation.... The ninth commandment concerns the defense and conservation of the good name and reputation of oneself and one's neighbor through honest testimony, just report, and good deeds.... The tenth commandment concerns concupiscence, and exerts influence on each of the precepts

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<sup>19</sup> Pol., Preface (1610 and 1614 eds.); Pol. XXI.29. See further sustained discussions of the Decalogue in Pol. VII.7-12; Pol. X.3-12; Pol. XVIII.32-44; Pol. XXI.22-29, 41; Dic. I.13.10-18; Dic. 1.14.1-3; and further brief references in Pol. XVIII.66; Pol. XIX.14, 31, 59, 69; Pol. XXVII.18; Pol. XXIX.1; Pol. XXVIII.32, 38, 77, 100.

of the second table. [As Cicero wrote:]: “We are taught by the authority and bidding of laws to control our passions, to bridle our every lust, to defend what is ours, and to keep our minds, eyes, and hands from whatever belongs to another.”<sup>20</sup>

These moral teachings of the Decalogue are echoed and elaborated elsewhere in the Bible, said Althusius – particularly in the Gospel’s repeated explications of the spirit of the Decalogue, and in the many moral lessons set out by the Old Testament prophets and New Testament apostles. These enduring moral laws of the Bible must lie at the foundation of the positive law of any modern Christian polity.

But not all biblical law should be taken as natural law, nor considered mandatory or even useful for our day. Many of the Mosaic laws recorded in the Pentateuch are simply the positive laws of the ancient Jewish people. Many of the legal actions and admonitions of the patriarchs, judges, and kings of ancient Israel are simply evidence of one positive law system in action. Particularly the Mosaic “ceremonial” laws and customs respecting diet, dress, sacrifice, ritual, levitical life, temple rules, and more, even though authored by God, were specific to the time and place of this ancient wandering tribal people.<sup>21</sup> Christ explicitly rejected the letter of this Mosaic ceremonial law in favor of its general moral spirit. Remember his statement about the complex laws of the Sabbath: “The Sabbath was made for man, not man for the Sabbath” (Mark 2:23-28; Luke 6:1-5). Mosaic ceremonial laws, let alone the later rabbinic accretions upon them, have no place in modern communities -- save as an illustration of how one legally sophisticated ancient community exercised its natural inclinations and obligations to religious worship and ritual life. While a modern day Christian magistrate would do well to develop a comparable set of ceremonial laws tailored to the needs of the local community, and perhaps even emulate some of the ancient biblical prototypes, he cannot simply “impose these Jewish positive laws, which by their nature are changeable and obsolete.” That would be to “destroy the Christian liberty” that Christ gave us and to “entangle himself and others in a yoke of slavery.”<sup>22</sup>

More useful in our day, for Christian and non-Christian polities alike, are the “juridical laws” of Moses. These are the many detailed laws and procedures set out in the Bible to govern crime and tort, marriage and family, property and commerce, procedure and evidence, and more. These provisions are more useful and probative because they give more specific content, context, and coherence to the Decalogue and other statements of natural law. “[T]he moral commandments of the Decalogue are general,” Althusius wrote. “They have no certain, special, and fixed punishment attached to them,” let alone procedural mechanisms for how they should be justly and equitably interpreted and applied. The juridical law of Moses “makes more specific

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<sup>20</sup> Pol. XXI.25-27, quoting in part from Cicero, *The Orator*, I.43.

<sup>21</sup> See his proto-Montesquieuan insights into the effects of geography on politics in Pol. XXIII.1-14.

<sup>22</sup> Pol. XXI.33-40; Pol XXII.3-4; Dic. I.14.5-11; Dic. I.16.9-10; Dic. I.101.43; Dic. 115.1-36.

determinations, which it relates to the circumstances of the act.” So, while the natural law commands “that evildoers ought to be punished,” it “proposes nothing concerning the punishment,” save the bald commandment, “thou shalt not kill,” which does not seem to be just in all circumstances. The juridical law “works out specifically that adulterers, murderers, and the like are to be punished by death, unless the punishment should be mitigated on account of other circumstances. The Mosaic law has various punishments for these crimes,” and prescribes a number of useful procedures to weigh the evidence of the crime and to determine a just punishment.<sup>23</sup> Similarly, the Mosaic juridical law offers a number of useful legal rules and procedures for the acquisition, use, and maintenance of public and private property, for the litigation and settlement of private disputes, and for the proper interactions between husband and wife, parent and child, master and servant, creditor and debtor, seller and buyer. None of these juridical positive laws of Moses should be considered binding upon modern day Christians just because they happen to be in the Bible. But insofar as they are parts and products of the natural law, these juridical laws are edifying for our day, and can be appropriated as apt in the construction of modern positive laws.<sup>24</sup>

What underscored the natural validity and modern utility of the juridical laws of Moses was that they often had parallels in other legal systems, most notably in classical Roman law. “Virtually all Europeans still use” the classical Roman law, wrote Althusius, because its detailed laws have also proved to be “both right and useful.”<sup>25</sup> To be sure, some ancient Roman law provisions betrayed the natural law more than illustrated it. Think of the many old laws celebrating the pagan imperial cult, the domestic laws that permitted infanticide, concubinage, and prostitution, the commercial laws that countenanced exploitation of orphans, captives, and slaves, and others. Such laws that openly contradict the Decalogue and other natural law principles cannot be viewed as binding on anyone – as the early apostles and Church Fathers already made clear in their call for legal reforms of Roman society. But the classical Roman law texts also hold numerous more enlightened legal teachings, many parallel to those in Mosaic juridical law, that are “consistent with the natural law and that cater to public utility and the common good.” Some of these Roman laws have also been adopted and adapted into the canon laws of the medieval Church and the civil laws of early modern European nations. When these ancient Roman law texts and their later legal adaptations are interpreted and applied “naturally, equitably, and justly,” they, too, can be taken as reflections and illustrations of the natural law in action.<sup>26</sup>

This was the method that Althusius used to work out an elaborate system of public, private, criminal, and procedural law for his day. He started with the natural law principles of Scripture and tradition. He then cited the elaboration of these principles in

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<sup>23</sup> Pol. XXI.33; Dic. 1.14.5; Dic. I.16.9-18.

<sup>24</sup> Pol. VIII.72-91; Pol. XXI.32-33; Dic. 1.14.20; Dic. I.15.18-21.

<sup>25</sup> Dic. 1.14.1-14; Pol. VIII.72-86; Pol. XXI.30-40; Pol. XXII.1-3, 10.

<sup>26</sup> Dic. I.14.16-20; Dic. I.15.1-21; Dic. I.16.8.

the precepts and procedures of various legal systems with an eye to discovering and demonstrating what they held in common. He combed very carefully through biblical law and classical Roman law. He rummaged more freely and selectively through medieval and early modern civil law, canon law, feudal law, manorial law, and urban law. Althusius's method was not always so neat or cogent. Sometimes he repeated his discussion of the same natural law principle or precept in different chapters and books, with each discussion somewhat different from the last. Sometimes, he just dumped into one long string citation all kinds of passages whose intersection with each other, let alone integration with the natural law principle in question, was not obvious. Sometimes he would pluck out one ancient passage as normative, even when many other passages in the same source qualified or contradicted the one he singled out. Sometimes he would just arbitrarily pick a provision from Mosaic, civil, or canon law and declare it to be a provision of the common law of nations, without showing its analogues in other legal systems. There was more *a priori* reasoning at work in Althusius's theory than he let on. But, these caveats aside, his demonstrative method of argument produced an astonishingly comprehensive and complex jurisprudence.

Althusius used this demonstrative method to work out a detailed account of all manner of legal subjects -- conscience and commandment, contracts and covenants, procedure and evidence, advocacy and appeal, marriage and family, corporations and associations, business and commerce, torts and crimes, property and poverty, rights and liberties, privileges and immunities, federalism and constitutionalism, and more. Particularly, some of his insights into business and commerce, covenants and associations, and federalism and universality are strikingly prescient of insights that Max Stackhouse has so ably championed over the past four decades.<sup>27</sup> Inevitably, Althusius's "universal theory of law" was a creature of his time, and his legal ken was conditioned by the legal sources at his disposal. But, it's remarkable to me how fresh and vital his legal insights remain for our day. And, it's tempting to try out Althusius's "demonstrative theory" with a wider set of legal texts before us -- not just texts from the classical, Jewish, and Christian West, but legal texts from all the axial religions around the world, including Islam, Hinduism, Buddhism, Confucianism, and more. Max has experimented a bit with such a method in his great books on *Creeds, Society, and Human Rights* and *Covenant and Commitments: Faith, Family, and Economic Life*. Others have done so as well, including contributors to this Festschrift like Don Browning. This "demonstrative method" might well show the world today that, despite our bitter culture wars and bloody military battles, there is great deal more confluence than conflict in our fundamental legal teachings and practices. Indeed, developing a new world concordance of discordant canons might well hold far greater promise for peace and order than negotiating yet another transient treaty or temporary truce.

It will doubtless take a few more letters back and forth to work out whether my old friend and generous mentor, Max Stackhouse, will accept altogether the "different

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<sup>27</sup> [check with Deirdre whether Max ever cites Althusius, and add cites where he does]

and “even dangerous” theory of natural law on which Althusius built his “demonstrative method.” I suspect that talk of “covenant theology,” “biblical hermeneutics,” and “created order” will figure prominently in those exchanges. But I have now doubt that, whatever reservations he retains, Max will applaud Althusius’s ambition to develop an authentic universal Christian jurisprudence for his day. And I have no doubt that Max will say again to the next young legal Turk who comes to him for advice: “You should read Johannes Althusius!”