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## THE UNIVERSAL RULE OF NATURAL LAW AND WRITTEN CONSTITUTIONS IN THE THOUGHT OF JOHANNES ALTHUSIUS<sup>1</sup>

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### Abstract

*Calvinist jurist Johannes Althusius (1557-1638) developed what he called a “universal theory” of law and politics for war-torn Europe. He called for written constitutions that separated the executive, legislative, and judicial powers of cities, provinces, nations, and empires alike and that guaranteed the natural rights and liberties of all subjects. To be valid, he argued, these constitutions had to respect the universal natural law set out in Christian and classical, biblical and rational teachings of law, authority, and rights. To be effective, these constitutions had to recognize the symbiotic nature of human beings who are born with a dependence on God and neighbor, family and community, and who are by nature inclined to form covenantal*

<sup>1</sup> This chapter is drawn in part from my *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge University Press, 2007), ch 3 [hereafter RR], with permission of the publisher.

*associations to maintain liberty and community. Althusius left a comprehensive Christian theory of rule of law and political that anticipated many of the arguments of later Enlightenment theorists of social and government contracts.*

**Keywords:** Johannes Althusius; written constitutions; symbiosis; natural law; natural rights; separation of powers; covenant; contract.

## INTRODUCTION

In *The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought*, Harvard historian Eric Nelson sharply criticizes the ‘standard narrative’ of seventeenth-century political history. The standard narrative describes this as a century devoted to the separation of religion and politics and to the construction of a secular order built on ‘pagan classical’ learning, Machiavellian politics, and early Enlightenment liberalism. This is largely a ‘myth’, Nelson argues, propounded by post-modern secularists. The reality is that the seventeenth century saw ‘the full fervor of the Reformation unleashed’, and ‘political theology’ made very much part of ‘the mainstream of European intellectual life’. It was in this overtly religious milieu that the West built many of its cardinal institutions of confederation, human rights, constitutional order, popular sovereignty, democratic politics, and rule of law. Protestant theological jurisprudence, Catholic political theory and canon law, and Jewish biblical thought, says Nelson, were just as critical to the modern Western political project as the purportedly secular theories of Machiavelli or Hobbes.<sup>2</sup>

My interest has been to excavate some of the early modern Protestant foundations of modern law, politics, and society, and to show their enduring influence on

<sup>2</sup> (Harvard University Press, 2010), 2–3. For context, see Eric Gregory ‘The Jewish Roots of the Modern Republic’ (2012) 105 *Harvard Theological Review* 372–80 (2012).

the Western legal and political tradition.<sup>3</sup> In this chapter, I focus on the contributions of Calvinist jurist, Johannes Althusius (1557–1638), who served as professor and rector at the Herborn Academy, a new Calvinist college, from 1586 to 1604 before moving to Emden, an important seaport near the border of the Holy Roman Empire and the newly united Netherlands and a major Calvinist intellectual center. There he served as leader of church, state, and society for the rest of his life, while continuing to write voluminously.<sup>4</sup> He was legal counsel for the city (*Stadtsyndicus*) and was deeply involved in the city's multiple legal, commercial, and diplomatic negotiations.<sup>5</sup> He played a leading role in helping Emden wrest greater independence from the local territorial count and nobles, which gave him a small taste of international diplomacy, but nothing on the order of jurists like Hugo Grotius.

Althusius was ‘the clearest and most profound thinker which Calvinism has produced in the realm of political science and jurisprudence’.<sup>6</sup> Unlike other figures covered in this volume, and other Calvinists of his day, Althusius wrote little original about the moral character of the good ruler or the nature of international law, and he said almost nothing about China or Asia. What commends his work for this volume is that he wrote a great deal about a ‘universal law’ rooted in divine commandments and natural laws that were binding on rulers and subjects alike. This universal law, he further argued, was to be adapted and adopted in written constitutions forged for each political community, detailed and popularly ratified documents that separated and enumerated

<sup>3</sup> See J Witte *Law and Protestantism: The Legal Teachings of the Lutheran Reformation* (Cambridge University Press, 2002); J Witte *God's Joust, God's Justice: Law and Religion in the Western Tradition* (Wm. B. Eerdmans, 2006); J Witte *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (2<sup>nd</sup> edn, Westminster John Knox Press, 2011); J Witte and Joel A Nichols *Religion and the American Constitutional Experiment* (4<sup>th</sup> edn, Oxford University Press, 2016).

<sup>4</sup> See Erik Wolf *Grosse Rechtsdenker der deutschen Geistesgeschichte* (4<sup>th</sup> edn, Mohr, 1963) 177–219.

<sup>5</sup> See, eg, *Recess vnd Accord-buch, das ist, Zusammen Verfassung aller Ordnung[en], Decreten, Recessen, Accorden, und Verträgen, so zwischen ... Herrn Edtzarden vnd Herrn Johan ... Herrn vnd Graffen zu Ostfrieszlandt* (Emden Kallenbach, 1612, 1656).

<sup>6</sup> Carl J Friedrich ‘Introductory Remarks’ in Carl J Friedrich (ed) *Politica Methodice Digesta of Johannes Althusius (Althaus)* (Harvard University Press, 1932 [1614]) xviii.

the executive, legislative, and judicial powers of cities, provinces, nations, and empires alike and that guaranteed and enumerated the natural rights and liberties of all subjects. It was the universal law of God and nature together with the written constitutions of each community that constituted the 'rule of law' for Althusius.

These themes come through in many of his two dozen books,<sup>7</sup> but are especially prominent in his two most famous titles. His massive *Politics* of 1603 (revised in 1610 and 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>8</sup> His three-volume *Theory of Justice* (1617, 1618) laid the groundwork for a comprehensive theory of law and justice.<sup>9</sup> Althusius presented these two tracts as 'comprehensive,' 'total,' and 'universal' accounts of law and politics. Each tract drew on hundreds of scholarly sources—sundry ancient Greeks and Romans, various apostolic and patristic writers, numerous medieval theologians, philosophers, and civilians, a few canonists, various Protestant jurists, all manner of contemporary Catholic and Protestant political writers, especially from Salamanca, and several collections of civil, imperial, feudal, and urban law. There was good reason for this intense eclecticism. Althusius was writing for the ages, not just for his own age. By copiously combing and combining the insights of sundry Jewish, Greek, Roman, and Christian sources, he sought to create what he called 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.

<sup>7</sup> See Dieter Wyduckel 'Einleitung, Literaturverzeichnis' in *Johannes Althusius, Politik* Dieter Wyduckel (ed) Heinrich Janssen (tr) (Duncker & Humblot, 2003), vii-lxxxii.

<sup>8</sup> I have used the 1614 Friedrich edition and adapted the English translation: *Politica Johannes Althusius*, FS Carney (ed) (tr) (Liberty Fund, 1995) [hereafter Pol.] See further Johannes Althusius, *Civilis conversationis libri duo recogniti et aucti. Methodice digesti et exemplis sacris et profanis passim illustrati* (Hanau Hanoviae Antonius, 1601) [hereafter Civ. Conv.].

<sup>9</sup> Johannes Althusius, *Dicaeologicae libri tres, totum et universum Jus, quo utimur, methodice complectentes* (Apud Christophorum Corvinum, 1618) [hereafter Dic.].

Althusius built his system on two main foundations, which I take up in the next two sections: (1) a 'demonstrative theory' of universal natural law that focused on the concordance between Christian and classical, biblical and rational teachings of law, authority, and rights; and (2) 'a symbiotic theory of human nature' that focused on the natural and necessary attachments of the person to God, neighbor, and society, including especially the role of covenantal political associations in maintaining human liberty and community.<sup>10</sup>

### DEMONSTRATIVE THEORY OF NATURAL LAW

In working out his legal theory, Althusius sought to demonstrate the ultimate concordance between biblical and rational, Christian and classical teachings on the nature and purpose of law. Civil law and canon law jurists of his day typically 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>11</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*

<sup>10</sup> See Pol. Preface; Dic. I.25–26.

<sup>11</sup> Dic. 1.13.6, 10.

*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>12</sup>

Althusius's mature legal theory collapsed these sundry hierarchies of law into two main types: 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 the natural law. Their modern utility for any polity turned on their compliance with the fundamental law (*lex fundamentalis*) of the community.

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

<sup>12</sup> Pol. XXI.35–40; Pol. XXII.1–12. See also Pol., Preface (1603, 1610 and 1614 edn) for Althusius's discussion of the relationships among the disciplines of theology, law, ethics, and political science.

ailing. Self-preservation, self-protection, and self-perpetuation are 'natural inclinations' that the natural law teaches to persons and animals alike.<sup>13</sup>

The natural law also teaches persons higher ideas that appeal uniquely to human reason and conscience, Althusius argued. 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'. God 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>14</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, of the mind, of reason, or of right reason, the law inside people, the immutable law, the supreme law, the general law, the common law,

<sup>13</sup> Dic. I.13.10–18; Pol. I.32–39; Pol. IX.21; Pol. XVIII.22; Pol. XXI.16–19; Pol. XXXVIII.37.

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

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>15</sup>

Knowing the norms that the natural law teaches, applying them responsibly for the governance of self and others 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, he wrote, 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. How can we determine and distill those features of the natural law that should be part of a universal rule of law? 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>16</sup>

<sup>15</sup> Dic. 1.13.13–18; Dic. 1.14; Pol. XXI.1–20.

<sup>16</sup> Dic. 1.6.4–6, 26; Dic. 1.13.16–18; Pol. XXI.20–21; Pol. XXIII.1–20.



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, Jesus and St. Paul. 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 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 Jesus, 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 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>17</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

<sup>17</sup> Pol. VII.7–12; Pol. X.3–12; Pol. XVIII.32–44; Pol. XXI.22–29.

laws that are common, even universal, 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>18</sup>

These common laws (*iura commune*) or general 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*), others more properly call each of them forms of the [same]

<sup>18</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.

natural law. ... Christ himself often called natural law things that are usually called the law of nations.<sup>19</sup>

Althusius rested his case on the contents of the universal 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 commonwealth be without the communion and communication of things useful and necessary to human life?<sup>20</sup>

Every serious legal community thus has comparable positive laws dealing with spiritual matters, worship, holiness, blasphemy, rest days, family, household, property,

<sup>19</sup> Dic. I.13.11, 18–19.

<sup>20</sup> Pol., Preface (1610 and 1614 edn); Pol. XXI.29. See also 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.

crime, fidelity, contracts, evidence, and procedure that are reflected in the Ten Commandments.

But beyond the Decalogue, not all biblical law should be taken as natural law, Althusius insisted, nor considered mandatory or even useful for modern times. Many of the Mosaic laws 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 if they may have been authored by God, have no place in modern Christian or secular communities. At best, they serve 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 or she cannot simply 'impose these Jewish positive laws, which by their nature are changeable and obsolete'. That would be to 'destroy Christian liberty'.<sup>21</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, and the examples of their application by biblical kings and judges, 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 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

<sup>21</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.

the bald commandment, 'thou shalt not kill', which cannot 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>22</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>23</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 the classical Roman law distilled in the *Corpus Iuris Civilis* of Justinian. '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>24</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, said Althusius. 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

<sup>22</sup> Pol. XXI.33; Dic. 1.14.5; Dic. I.16.9–18.

<sup>23</sup> Pol. VIII.72–91; Pol. XXI.32–33; Dic. 1.14.20; Dic. I.15.18–21.

<sup>24</sup> Dic. 1.14.1–14; Pol. VIII.72–86; Pol. XXI.30–40; Pol. XXII.1–3, 10.

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 universal natural law in action.<sup>25</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 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. The more frequently he found a legal principle, precept, procedure, or practice repeated in diverse sources, the more readily he held this up as a feature of a universal rule of law. Althusius did not take the next step that other early modern figures like Grotius and Pufendorf took in arguing for international and inter-state laws, treaties, and conventions based on these universal legal principles. He was content to demonstrate which laws were 'universal rules' and left it others to work them into the machinery of international law and inter-state diplomacy.

### **A SYMBIOTIC THEORY OF SOCIETY AND POLITICS**

Althusius started his theory of society and politics, like his theory of law, with an account of the state of nature—now human nature, and more particularly the nature of persons as creatures and image bearers of God. God created humans as moral creatures, Althusius argued, with a natural law written on their hearts and consciences and 'an innate inclination', 'hidden impulse', and 'natural instinct' to be 'just and law abiding'. God created persons as natural rights holders, vested with a natural sovereignty rooted in the supernatural sovereignty of God, whose image each person

<sup>25</sup> Dic. I.14.16–20; Dic. I.15.1–21; Dic. I.16.8.

bears from birth. God created persons as resilient creatures, with a natural capacity to preserve, protect, and reproduce themselves. God created humans as 'virtuous' and 'rational creatures', who are called to pursue a 'holy, just, comfortable, and happy' life. God created persons as social creatures with a 'symbiotic impulse for community', 'an instinct to live together with others and to establish civil society'. God created persons as loving creatures, who naturally need to give and to receive love in order to be fully human and to abide fully by the most primal command of the natural law: to love God, neighbor, and self. And God created persons as 'language-bearers', as 'creatures of communication', equipped to learn, teach, and develop the complex norms, habits, and gestures of proper communication and interaction in the home, church, state, school, business, and other associations.<sup>26</sup> This was a far more complex anthropology than the bleak Hobbesian view of self-interested individuals driven by an ethic of self-preservation to dangerous and destructive behavior unless coerced into political and social conformity by an all-powerful sovereign.

Althusius distinguished three main types of associations that exist in most advanced civilizations: (1) private natural associations anchored in marriage and family ties; (2) private voluntary associations (*collegia*), such as corporations, guilds, businesses, charities, and more formed by related or unrelated parties; and (3) public or political associations—whether local (villages, towns, and cities), regional (duchies, provinces, and territories), or 'universal' (nations or empires). Each of these associations, he argued, is formed by a 'tacit or explicit' contract or covenant—a 'bond of association and common agreement' about the 'property, work, and rights in common' among the members of each association. By this 'bond', 'contract', or 'covenant', the members agree to 'communicate and share' a portion of their property, work, and rights with other members of that association, 'each fairly and properly according to his ability'. By so doing, each person's multiple and unique needs are met so far as possible in the context of creating a community and common life. Althusius called these voluntary social contracts the 'founding charters' or 'consensual

<sup>26</sup> Pol. I.1–35; Pol. XX.19–28; Dic. I.7; Civ. Conv. I.1, 7–11; Civ. Conv. II.2–6, 9–10.

constitutions' of the natural, voluntary, and political associations that together form a commonwealth.<sup>27</sup>

Each of these founding agreements, he continued, is governed by a 'general law of community, association, or symbiosis' (*lex communis, lex consociationis, lex symbiosis*).<sup>28</sup> This universal law of community teaches that in any such contractual association, some must be ruling authorities, others must be obedient subjects. The 'right to rule' (*ius majestatis*) is assigned according to natural and intellectual ability, the duty to obey is accepted in accordance with individual and social need. Structures of authority and obedience are 'unnatural', Althusius believed, but they are 'necessary' for personal flourishing and social order. 'By the natural law all men are equal and subject to the jurisdiction of no one, unless they subject themselves to another's authority by their own consent and voluntary act, and transfer to another their rights.' Most people agree, however, to transfer their rights and subject themselves to these 'unnatural' structures and strictures of authority, for they realize that without them even their most elementary associations will not long survive, and even their most basic rights will mean little.<sup>29</sup>

The general law of association, however, puts basic limits on the activities of every authority—whether in the home, church, state, or other association. Every authority must rule 'for the sake' of his or her subjects—for the purpose of allowing them to seek their ultimate end of attaining a 'holy, just, comfortable, and happy' life. Every authority must care for the soul and the body of his or her subjects. Every authority must ensure that the 'moral law' is applied 'equitably and justly' within that association, always striving to balance firmness and fairness, rule and right, justice and mercy in accordance with the teachings of 'natural equity' (*aequitas naturalis*). Every authority must develop a body of proper internal laws (*leges propriae*) of the association tailored to 'the nature, utility, condition, and other special circumstances' of the association and

<sup>27</sup> Pol. I.1–10, 19, 25, 27, 29–35; Pol. II.1–6; Dic. I.7, 90.

<sup>28</sup> Pol. XXI.19; Dic. 1.14.

<sup>29</sup> Pol. I.10–18; Pol. XVIII.18.



its members. Every authority must put into 'practice the common natural law' which governs all persons, and must 'indicate how individual members of that association are able to seek and attain the natural equity' to which they are entitled.<sup>30</sup> For Althusius, familial, private, and political associations alike were distinct spheres of law and love, justice and equity. Each association was grounded in the natural law and governed by the general law of associations. Each association, in turn, was a source of positive or proper law. Each made specific laws for the sake of achieving justice and equity for that association and protecting the rights and liberties of its members.

**Political Associations.** In his full social theory, Althusius analyzed the private natural and voluntary associations in great detail, but let's focus on the public political associations that are formed by covenants among these private (natural or voluntary) associations. The simplest such public political associations, and the earliest to develop, are hamlets and villages, then larger towns, counties, and cities. These small local associations eventually covenant together to form larger public associations—duchies, provinces, territories, or bishoprics. Not uncommonly, these intermediate public associations conjoin to form commonwealths, nations, or empires—'universal public associations', as Althusius called them.<sup>31</sup> While he did not call this 'inter-state' or 'international law' per se, these layers of 'political covenants' among independent sovereign political peers functioned in effect as international agreements.

While this political evolution from private to public political associations can be seen in the history of many peoples, for Althusius the 'earliest', 'best', 'wisest', and 'most perfect example' was recorded in the political history of biblical Israel.<sup>32</sup> The Israelite people moved from the marital household of Abraham and Sarah to the extended families of Isaac and Jacob, then to the twelve tribes founded by Jacob's twelve children, then to the towns and cities led by Joshua and the later Judges, and finally to a single nation of Israel ruled by kings. As Althusius read the Bible, each step in this

<sup>30</sup> Pol. I.3, 10–18; Pol. IX.1–8; Pol. XX.24–30; Dic. I.13.

<sup>31</sup> Pol. VI.1; Pol. XVIII; Pol. XXXVIII.84–86; Dic. I.32, 81.

<sup>32</sup> Pol. Preface (1610 and 1614 edns); Pol. XVIII.18–40; Pol. XIX.79; Pol. XXII.15–19.

political evolution of Israel was forged by a 'consensual covenant' between the rulers and the people, with God presiding as third party governor and guarantor. When the people and their families and tribes needed judges to govern their new cities, God commanded them: 'You shall establish judges and moderators in all your gates that the Lord gave you through your tribes, who shall judge the people with righteous judgment' (Deuteronomy 16:18). When the tribes later came together to form the nation of Israel, they entered into covenant with King David. The Bible recorded this critical final step of Israel's political evolution as follows:

Then all the tribes of Israel came to David at Hebron, and said, 'Behold, we are your flesh and bone. In times past, when Saul was king over us, it was you that led out and brought in Israel; and the Lord said to you, You shall be shepherd of my people Israel, and you shall be prince over Israel.' So all the elders of Israel came to the king at Hebron; and King David made a covenant with them at Hebron before the Lord, and they anointed David king over Israel. (II Samuel 5:1–3; Deut. 17:14–15)

These same political covenant ceremonies were repeated anew with King Solomon, King Rehoboam, and others (1 Kings 1:34–40, 12:1–20).

Althusius recited this biblical history and sundry other political histories to draw out lessons for the development of a just and stable legal and political order. One lesson was that both biblical and natural law condone the doctrine of popular sovereignty, which he defined as the natural right and power of the people to rule themselves or to elect representatives to rule on their behalf. 'God has formed in all peoples by the natural law itself the free power to constitute princes, kings, and magistrates for themselves', he wrote.

This means that, insofar as any commonwealth that is divinely instructed by the law of nature has civil power, it can transfer this power to another or others, who, under the title of kings, princes, consuls, or other magistrates, assume the direction of its common life.

This natural right to self-rule is so powerful and universal that even God Himself respected this right when the ancient Israelites insisted on its vindication. 'God marvelously governed this people for about four hundred years as if he himself were their king', wrote Althusius. And God had the perfect natural right, as the Creator of the law of nature, to rule the Israelites permanently as their king. But 'the people requested their own king. God was at first indignant and gave them Saul, whom God designated and immediately chose himself' and whom he crowned through the services of his prophet Samuel. But the people did not welcome Saul. They wanted another king, David, to serve in his stead. God yielded to their choice. 'By his word, he established the descendents of David in the control of the realm. But God performed these actions in such a way that the people were not excluded from giving their consent and approval.' While God helped to coronate these earthly kings to rule in his stead, 'the kings were considered to be chosen by the people as well, and to receive from them the right to rule as king (*ius regis*)' on behalf of the people.<sup>33</sup>

If even God yielded to the natural right of the people to select their own political rulers, then surely every earthly ruler must yield to this natural right as well. 'Rulers are made for the people, not people for the rulers', Althusius wrote. 'The people can exist without the ruler, but the ruler cannot exist without the people.' 'By nature and circumstance the people are prior to, and more important than, and superior to their rulers.' The people elect rulers for the sake of delegating to them the administration of laws that they cannot manage easily on their own. These rulers must act on the people's behalf, and with the interest of the people in mind. They can exercise no more authority over the people than the people can exercise over themselves, and no more authority than the people have explicitly delegated to these rulers. In particular, rulers may not trespass natural laws or natural rights any more than the people can. And they may never convert their political office into an instrument for 'their personal and private benefit rather than for the common utility and welfare.' As a precaution against such

<sup>33</sup> Pol. IX.3–4; Pol. XVIII.8, 18–20, 58–59; Pol. XIX.8–10, 15–18, 73; Dic. 1.32.15–19.

abuse, Althusius insisted that no atheist, heretic, or bastard, and nobody who was impious, impish, or immoral be allowed to serve in political office.<sup>34</sup>

A second lesson was that political associations, like natural and private associations, must be formed by voluntary covenants or contracts sworn by the people and their rulers before God. Althusius described these political covenants as mutual promises by the people and their rulers to uphold the laws of God and nature, the natural rights and liberties of the people, and the faith and order of the community. The rulers swear an oath of office before the people and before God to 'administer the realm or commonwealth according to laws prescribed by God, right reason, and the body of the commonwealth'. They swear to 'bear and represent the person of the entire realm, of all subjects thereof, and of God from whom all power derives'. They swear to maintain the soul and body, piety and justice, faith and order of the people and the community. The people, in turn, by 'common consent', promise to 'bind themselves to obey and comply with the supreme magistrate who administers the commonwealth according to prescribed laws' so long as those positive laws 'do not conflict with the law of God and the right of the realm'. They further promise to accord legitimate magistrates their 'trust, compliance, service, aid, and counsel,' to pray for the magistrates' survival, wisdom, flourishing, and happiness, to pay their taxes, to register their properties, to answer their conscriptions, and to oblige all other just laws and orders that cater to the peace, order, and happiness of the commonwealth.<sup>35</sup>

Althusius distinguished various types, phases, or dimensions of the political covenant. The first was the agreement among the people themselves who, directly or through their representatives, chose to form a political association regardless of its type of government. The second was between the rulers and the people, by which each side defined the forms and norms of government of the political association, and their respective duties and rights, powers and privileges therein. The third was between the ruler and God to maintain a godly commonwealth that served to the glory of God and

<sup>34</sup> See analysis in RR 169–76.

<sup>35</sup> Pol. VI.30–31; Pol. VII.4–12; Pol. XVIII.18; Pol. XIX.6–7, 14, 98; Pol. XX.1–2; Pol. XXVIII.30–32.

secured the blessings of liberty for the people and their associations. The fourth was between the chief magistrate and the lower magistrates, by which each side agreed to check and balance the other as a safeguard against tyranny. For Althusius all these agreements together served as the ‘fundamental law’, ‘founding constitution’, and ‘contractual mandate’ of the political community.<sup>36</sup>

Althusius regarded political covenants—at the urban, provincial, and national levels alike—as the best guarantee of the ‘ultimate rule of laws (*leges*) and rights (*iura*) in human society’. ‘Rule by law’ and ‘rules of law’ grounded in the law of nature and enumerated and bounded by the political covenant, he thought, provided the commonwealth with ‘a guiding light of civil life, a scale of justice, a preserver of liberty, a bulwark of public peace and discipline, a refuge for the weak, a bridle for the powerful, a norm and straightener of rulership’. For Althusius, these political covenants were not just mythical, metaphysical, or metaphorical constructs. They were to be written charters and constitutions, to which the rulers and the people solemnly swore their allegiance before God. They specified in detail the mutual rights and duties, powers and prerogatives of the rulers and the people, and the principles and procedures for the creation and enforcement of positive laws. ‘Written constitutions’, he wrote, provide the best ‘fences, walls, guards, or boundaries of our life, guiding us along the appointed way for achieving wisdom, happiness, and peace in human society.’<sup>37</sup>

These written constitutions must make clear that, at every level of government, the people remain sovereign and supreme; they retain their fundamental rights as persons and as members of private associations. Even the ‘right of national sovereignty’ belongs ultimately to the people as a whole, not to any person within it—especially not to any king or other supreme ruler who happens to occupy their political office. All the people who constitute the nation are literally, said Althusius, the ‘owners of the nation’s rights of sovereignty’. Through the creation of the national covenant, or constitution, the people as a whole may agree to delegate the administration of their power to a national

<sup>36</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>37</sup> *ibid.*

or royal office. Because of this delegation, 'the king represents the people, not the people the king'. The king must be responsible to the people, represented in their various associations.

The right of a king consists in the faithful and diligent care and administration of the commonwealth entrusted to him by the people.... The king holds, uses, and enjoys these riches ... as a usufructuary [a leaseholder]. When the king dies, or is denied the royal throne by legitimate means, these rights of the king return to the people, the owner [of these rights]. The people then reassign them as it thinks best for the good of the commonwealth. Therefore the right of the king is one thing, the right of the people another. The former is temporary and personal; the latter is permanent. The former is lesser, the latter greater. The former is a loan given by contract to the authorized king, the latter is an indivisible property [owned by the people].<sup>38</sup>

Not only do the people retain their fundamental sovereignty and rights; the lower political associations also retain their fundamental identity and sovereignty as parts of these broader political structures. Each local political association retains its own 'right of sovereignty' (*ius majestatis*), its own 'rights, privileges, benefits, and prerogatives' that the people have delegated to them. This is the political power to exercise personal and subject matter jurisdiction within that political association, to undertake legal actions on behalf of and for the sake of the members, to 'dispose, prescribe, ordain, administer everything necessary and useful' for the maintenance and flourishing of the political association and the people. Of course, a city's right of sovereignty is subject to that of the higher provinces and nation, just as a province's right of sovereignty is subject to the highest sovereignty of the nation. But these local political rights of sovereignty remain in place and must be respected so far as possible, Althusius argued. For the more local

<sup>38</sup> Pol. Preface; Pol. IX.4, 15–24; Pol. XVIII.102–4; Pol. XXIV.29–50; Pol. XXXVIII.31, 39–40.

the administration of authority, the more 'individualized the care that is given to the individuals and groups'. The agreement of a city to join a province, or of a city and province to join a larger national republic, does not end their political identity or sovereignty, but confirms it. It guarantees representation of their local interests in higher politics and assures them of protection and support in the event of attack or emergency. It further confirms that the higher political associations are created by and composed of these smaller associations, and ultimately dependent upon them for their survival. Lower political associations are the essential foundations of higher political associations, without which a province or nation-state would crumble.<sup>39</sup>

Althusius's insistence on preserving local political sovereignty, even while defending the rights and powers of a sovereign nation-state, was a critical argument in the defense of the Dutch confederacy of his day, and eventually in the development of the modern theory of political federalism. It also had strong implications for sorting out the complex political relationships of various polities in the Holy Roman Empire of his day, not least the city of Emden, and various inter-state and international relations, too. His views stood in marked contrast with the theories of royal absolutism and nationalist sovereignty propounded by Jean Bodin, James I, and others whom Althusius roundly dismissed as misguided. For Althusius, sovereignty was a universal blessing vested in all the people in their particular associations, not an indivisible prerogative vested exclusively in a hereditary monarch. Federalism was an essential guarantee of the sovereignty of the people, and the lower private and political associations that they inhabited, a buffer against the inevitable tendencies of higher magistrates toward political tyranny and nationalist absolutism.

Federalism was not the only such safeguard. Separation of powers served that function as well. Althusius called for a 'mixed government' that combined monarchical, aristocratic, and democratic elements but that separated executive, legislative, and judicial powers. Each power should enjoy a measure of control over and dependence on the other, said Althusius, and all powers are subordinate to the law of the state itself,

<sup>39</sup> Pol. VI.39–44; Pol. VIII.3, 40, 50–67; Pol. XVII.24–31; Dic. I.33.1–8, 24, 31–35.

particularly the fundamental law that brings these powers into being. All powers and authorities should exercise 'moderation' 'so that the right of each member of the commonwealth is conserved, and neither diminished nor increased to the detriment of another.' It is especially important to ensure 'that the power of the king is not so enhanced that the liberty of the people is suppressed'.<sup>40</sup> Althusius worked out in detail the layers of urban, provincial, and national offices that discharged these powers, and the particular procedures, purposes, and prerogatives that attached to each. He devoted a good deal of his *Politics* to this huge analytical task, focusing especially on the respective powers of the executive and legislative offices over religion and morality, rights and liberties, education and welfare, war and crime, property and contracts, taxation and commerce, money and titles, diplomacy and negotiation, and more.<sup>41</sup> His *Theory of Justice* added several long chapters on the judicial power and the rules of evidence and procedures, pleading and appeal, representation and advocacy that obtain therein.<sup>42</sup>

Checks and balances were yet another safeguard against political excesses at the local, provincial, and national levels. Particularly noteworthy were the heightened powers and roles that Althusius assigned to the 'ephors' in ensuring the separation and cooperation of powers and the effective and efficient administration of the republic. The ephors were no longer the vaguely defined 'inferior magistrates' and 'emergency officers' that John Calvin had introduced into Reformed political thought in his 1536 *Institutes of the Christian Religion*. Althusius's ephors were critical officers called to exercise a range of legislative and executive powers at the urban, provincial, and national levels of government. Reflecting some of the political complexities of the Holy Roman Empire in his day, Althusius distinguished among various types of ephors and the responsibilities of each. Some ephors were hereditary and permanent, some elected and temporary. Some were clerical appointees with assigned ecclesiastical roles, others lay delegates with assigned temporal roles. Some ephors had general power over the

<sup>40</sup> Pol. XXIX.2; Pol. XXXVIII.1–16; Dic. I.32.20–22.

<sup>41</sup> Pol. VII-XXXVII.

<sup>42</sup> Dic. I.33.7; Dic. I.81–82; Dic. III.1–5.



whole national realm, others had power only over local provinces and cities. The most important common task of all the ephors was to 'administer, govern, and conserve the body and rights' of the individual provinces and of the individual cities, guilds, estates, and private associations that constituted the provinces. Althusius thus called ephors the 'rectors, governors, directors, administrators, regents, pastors, leaders, deliverers, and fathers' of the realm. The ephors with national jurisdiction were also called to elect and constitute the nation's supreme magistrate. They were to advise the supreme magistrate and give their consent to all his general laws. They were to stand in for him if and as needed. They were to defend him when he was unjustly attacked. They were to contain and control him—'restraining and impeding his freedom in undertakings that are wicked and ruinous to the commonwealth, in containing him within the limits of his office, and finally in fully providing and caring for the commonwealth'. They were to resist and depose him if he became a tyrant.<sup>43</sup>

**Tyranny.** Althusius' detailed account of law, rights, society, and politics made the definition of tyranny rather straightforward to him. A tyrant, he said, is one who 'violates, changes, overthrows, or destroys' 'the fundamental law and rights' (*lex et jura fundamentalis*) of the commonwealth or 'the natural laws and rights' (*leges et iura naturali*) on which the fundamental laws and rights are based.<sup>44</sup> Althusius dutifully recited the shopworn arguments for resistance to tyranny that earlier Protestant and Catholic writers had offered. The Bible's calls to obey 'the powers ordained by God' always presuppose that these rulers are legitimate representatives of God. Tyrants who offend God and defy true religion are no longer God's agents, and must be removed both for God's sake and for the people's sake. Tyrants forfeit their political offices and become private persons against whom the natural rights of self-defense can apply. The people must always consent to their rulers, and they would not and could not consent to a tyrant. Tyrants are those who violate the people's ancient charters and privileges, which charters sometimes condition a ruler's legitimacy on compliance with its terms and stipulate a right to resist if those conditions are breached. No tyrant can be

<sup>43</sup> Pol. XVIII.2–9, 48–49, 63–91, 107–110.

<sup>44</sup> Pol. IX.21; Pol. XXXVIII.5–7, 37; Dic. I.113.1–3.

tolerated who threatens to smash the ship of state on the rocks. History is full of examples of courageous leaders who have stood up to tyrants. Althusius also recited the traditional rules and rationales for leaving the judgment and execution of resistance to designated ephors and other officers rather than to the crowd. Wild insurrection will ensue if private persons are left free to judge and resist tyrants on their own. We must leave these judgments to constitutional authorities who can judge both whether an official has become tyrannical and what remedies are apt for a ruler judged to be tyrannical—reprimand, restriction, removal, revolt, or regicide. All these and other arguments were well known in contemporary Protestant and Catholic circles, and Althusius peppered his account with citations to all manner of authorities in support.<sup>45</sup>

Althusius' more distinct contribution was to show that tyranny is in its essence a 'constitutional violation'—a violation of the political covenant by which the polity itself was constituted, a violation of the constitutional duties of the rulers and the fundamental rights of the people as set out in this political covenant, and even more fundamentally a violation of the natural law and natural rights that undergird and empower all constitutions and covenants. For Althusius, a tyrant was a magistrate who acted 'illegally and unnaturally' (*contra legem et naturam*) in breach of the contractual and covenantal duties that he or she swore to God and to the people. Tyranny existed wherever any 'egregious', 'chronic', 'persistent', 'pervasive', 'willful', 'intentional', and 'widespread' breach of a ruler's constitutional duties, abuse of constitutional powers, neglect of constitutional offices, usurpation of another's constitutional office, or violation of the people's constitutional rights. Of course, 'not every such misdeed by a magistrate deprives him of his scepter', Althusius cautioned. 'A marriage is not dissolved by a misdeed committed by one mate against another—unless it is a misdeed like adultery, which runs directly contrary to the very nature of marriage.' Likewise, a political association is not dissolved just by any official misstep. But dissolution may well occur when the magistrate's tyrannical conduct runs 'contrary to the fundamentals and essence of the human association,' 'begins to shake the foundation and loosen the

<sup>45</sup> Pol. VIII.91–92; Pol. XVIII.69–86; Pol. XIX.35–37; Pol. XX.12–21; Pol. XXXVIII.30, 36–40, 43–76; Dic. I.113.25.

bonds of the associated body of the commonwealth,' or 'destroys civil or political life ... and the most important goods of the commonwealth, such as its peace, order, virtue, law, and nobility.' 'Is there not equal reason for conceding divorce between a king and a commonwealth because of the intolerable and incurable cruelty of a king by which all honest cohabitation and association with him are destroyed?'<sup>46</sup>

With that formula in hand, Althusius worked through all the essential constitutional powers and duties that each executive, legislative, and judicial authority at each level of government had to discharge. He focused especially on government powers relating to peace and order, war and diplomacy, crime and delicts, taxation and commerce, property and money, banking and commerce, religion and morality, education and welfare. Egregious, chronic, persistent, pervasive, and intentional abuse, misuse, or neglect of these powers to the 'grave detriment' of the commonwealth were all potential cases of tyranny to Althusius. Such magisterial conduct must, at minimum, empower private subjects to engage in non-violent disobedience and public ephors to institute constitutional remedies.<sup>47</sup> In more serious cases, it allowed for sanctions, restrictions, or removal of the offending magistrates, even revolutionary revamping of the government as a whole.

Another egregious form of tyranny was the systematic 'violation or abridgement of the rights of the members of the community and their associations'. Althusius singled out for special emphasis governmental conduct that violated the people's natural rights—that 'impeded orthodox religious exercise', that abolished schools and education, that 'chronically neglected the sick, poor, and innocent,' or that 'consistently abused private individuals' in their lives and bodies, their lands and goods, their standing and reputations, their homes and relatives, their contracts and associations. All of these 'rights and duties given by God are older and more powerful' than any of those set out in the written constitution or political covenant. 'Even if they are not made explicit in the constitution', or given adequate procedural interpretation, these natural rights

<sup>46</sup> Dic. I.113.9–17; Pol. XVIII.105; Pol. XXXVIII.3–27.

<sup>47</sup> Pol. XXXVIII.10–28; Dic. I.36.38, Dic. I.113.17–21.

'must be understood to be in effect. God is superior to and master of both the rulers and the people', and the rights and duties set out in the natural law must take precedence over all others. Moreover, the political covenant 'between the people and their ruler does not create duties that are superior to those which exist between ... a wife and a husband, children and parents, master and servant, patron and client', and other such natural associations. With respect to these private associations, the law of the state serves only to 'deter and punish dishonest, immoral, or unholy people ... who subvert these existing structures of authority or [legitimate] holders of power within them'. When state authorities themselves subvert these social structures, resistance is both natural and necessary.<sup>48</sup>

Althusius also focused on violations of the procedural rights of the people. He listed violations of a number of important criminal procedural rights—false arrests, accusations, indictments, and sentences of innocent parties, false imprisonment or protracted pre-trial incarceration, torture, starvation, or enslavement of prisoners, use of anonymous indictments and untested evidence, denial of rights to defend oneself, to have counsel, to examine hostile witness, to introduce exculpatory evidence, or even to have one's day in court following prescribed procedures, imposition of extraordinary tribunals or ex post facto laws, use of biased, bribed, or incompetent judges, imposition of unjust, inequitable, or widely variant punishments, failure to grant appeals of motions, judgments, or sentences, excessive fines, cruel punishments, and more. Each of these abuses and violations of procedural rights should give individual victims constitutional redress, Althusius argued, and a persistent pattern of such abuses to several victims at once is prima facie evidence of judicial tyranny that requires a more systemic response.<sup>49</sup>

<sup>48</sup> Dic. I.113.8–9 12, 18; Pol. X.5–10; Pol. XXXVII.21–22, 33–34, 36.

<sup>49</sup> Dic. I.113.20–83; Pol. XXIX.47–60.

## SUMMARY AND CONCLUSIONS

Drawing on a vast array of biblical, classical, Catholic, and Protestant sources, Althusius systematized and greatly expanded many of the core political and legal teachings of the Calvinist tradition of which he was a leading member—that the republic is formed by a covenant between the rulers and the people before God, that the foundation of this covenant is the law of God and nature, that the Decalogue is the best expression of this higher law, that church and state are separate in form but conjoined in function, that families, churches, and states alike must protect the rights and liberties of the people, and that violations of these rights and liberties, or of the divine and natural laws that inform and empower them, are instances of tyranny that must trigger organized constitutional resistance.

Althusius added a number of other core ideas to this Calvinist inheritance. He developed a natural law theory that still treated the Decalogue as the best source and summary of natural law but layered its Commandments with all manner of new biblical, classical, and Christian teachings. He developed a theory of positive law that judged the validity and utility of any human law, including the positive laws of Moses and the canon laws of the church, against both the natural law of Scripture and tradition and the fundamental law of the state. He called for a detailed written constitution as the fundamental law of the community and called for perennial protection of 'the rule of law' and 'rule of rights' in every political community. He developed an expansive theory of popular sovereignty as an expression of the divine sovereignty that each person reflects as an image bearer of God. He developed a detailed and refined theory of natural rights—religious and social, public and private, substantive and procedural, contractual and proprietary. He demonstrated at great length how each of these rights was predicated on the Decalogue and other forms of natural law, and how each was to be protected by public, private, and criminal laws and procedures promulgated by the state. Particularly striking was his call for religious toleration and absolute liberty of conscience for all as a natural corollary and consequence of the Calvinist teaching of the absolute sovereignty of God whose relationship with his creatures could not be trespassed.

More striking still was Althusius's 'symbiotic theory' of human nature and 'covenantal theory' of society and politics. While acknowledging the traditional Calvinist teaching of the total depravity of persons, Althusius emphasized that God has created all persons as moral, loving, communicative, and social beings, whose lives are most

completely fulfilled through symbiotic relationships with others in which they can appropriately share their bodies and souls, their lives and spirits, their belongings and rights. Thus, while persons are born free, equal, and individual, they are by nature and necessity inclined to form associations—marriages and families, clubs and corporations, cities and provinces, nation-states and empires. Each of these associations, from the tiniest household to the vastest empire, is formed by a mutually consensual covenant or contract sworn by all members of that association before each other and God. Each association is a locus of authority and liberty that binds both rulers and subjects to the terms of their founding contract and to the commands of the foundational laws of God and nature. Each association confirms and protects the sovereignty and identity of its constituent members as well as their natural rights and liberties.

Althusius applied this Christian social contract theory most fully in his description of the state. Using the political history of ancient Israel as his best example, he showed historically and philosophically how nation-states develop gradually from families to tribes to cities to provinces to nations to empires. Each new layer of political sovereignty is formed by covenants sworn before God by representatives of the smaller units, and these covenants eventually become the written constitutions of the polity. The constitutions define and divide the executive, legislative, and judicial offices within that polity, and govern the relations of its rulers and subjects, clerics and magistrates, associations and individuals. They determine the relations between and among nations, provinces, and cities, and between and among private and public associations-- all of which Althusius called a form of 'federalism' (from '*foedus*,' the Latin term for covenant). The constitutions also make clear the political acts and omissions that constitute tyranny and the procedures and remedies available to those who are abused. Althusius produced the most comprehensive Calvinist legal and political theory of law, and many of his insights anticipated teachings that would become axiomatic for Western constitutionalism and human rights.