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Abstract

Natural law and natural rights are contested categories among many modern Protestants. But they were common legal and theological topics for their sixteenth-century forebearers. These early modern Protestant reformers did echo classical and scholastic teachings, and their lists of natural law principles and natural rights precepts overlapped with Catholic, humanist, and republican formulations in their day. But the reformers also grounded their teachings in distinct accounts of the created natural order, human nature, the Ten Commandments, law and Gospel, divine sovereignty and natural order in the two kingdoms, which gave their views a unique accent. This chapter samples the natural law and natural rights teachings of Martin Luther, Philip Melanchthon, the Magdeburg Confession, John Calvin, Christopher Goodman, and Johannes Althusius. They illustrate the hundreds of other Protestant sources, not only by Lutherans and Calvinists but also by Anabaptists and Anglicans of various denominations. These teachings were among the driving forces of early modern Western democratic revolutionaries on both sides of the Atlantic. They were also influential in the modern international declarations of rights in the aftermath of world wars, in the church-led civil rights movement in the United States, and in various liberation movements against colonial and authoritarian rule in the Global South.

Keywords: Natural law, natural rights, the Decalogue, the Bible, Martin Luther, Philip Melanchthon, the Magdeburg Confession, John Calvin, Christopher Goodman, and Johannes Althusius

Chapter 16

Natural Law and Natural Rights in the Early Protestant Tradition

John Witte, Jr.

1. Introduction

Ever since Karl Barth issued his famous “Nein!” to natural theology in 1934,¹ many Protestants have viewed natural law and natural rights with suspicion, if not derision.

¹ Emil Brunner and Karl Barth, *Natural Theology: Comprising “Nature and Grace” by Emil Brunner and the Reply “No” by Karl Barth*, trans. Peter Fränkel, repr. ed. (Eugene, OR: Wipf and Stock Publishers, 2002).

Some view natural law and natural rights as parts and products of Catholic moral theories that Protestants have always purportedly rejected because of their dependence on pagan learning and their deprecation of cruciform ethics. Some view human rights as a dangerous invention of the Enlightenment, predicated on a celebration of reason over revelation, of greed over charity, of nature over Scripture, of the individual over the community, of the pretended sovereignty of humanity over the absolute sovereignty of God. Several critics view the occasional references to natural law and natural rights among some early Protestant reformers as a scholastic hangover that a clearer-eyed reading of Scripture by later Protestants happily expunged from the tradition. Others see the devolution of modern human rights into endless lists of personal whims and special interests as ample proof of the dangers of separating law from religion, reason from revelation, rights from duties.²

Whatever the theoretical merits of these modern Protestant criticisms, the historical narratives sometimes adduced to support this critique cannot be sustained. Early modern Protestant theologians and jurists on both sides of the Atlantic, in fact, expounded theories of natural law and natural rights with considerable alacrity. Some early Protestants did echo conventional classical and medieval teachings with only modest reforms. But a number of their followers made striking innovations to the tradition of natural law and rights, reflecting in part the new Protestant teachings on *sola Scriptura*, total depravity, divine sovereignty, and the Decalogue. And this theological and jurisprudential work soon led to political platforms, constitutional reforms, and revolutionary manifestoes that helped catalyse the early modern democratic revolutions in France, the Netherlands, Scotland, England, and America. It is no small anecdote that by 1650 Protestant natural lawyers on both sides of the Atlantic had already defined, defended, and died for every one of the rights that would appear 150 years later in the United States Bill of Rights of 1791 and contemporaneous state constitutions.

This chapter samples these early Protestant teachings on natural law and natural rights – with brief case studies of Evangelical reformers Martin Luther and Philip Melancthon and the authors of the Magdeburg Confession as well as Reformed scholars John Calvin, Christopher Goodman, and Johannes Althusius. The Conclusion reflects briefly on the ongoing Protestant tradition of natural law and natural rights.

2. Lutheran Teachings

2.1 Luther

The theological reforms introduced by Martin Luther (1483-1546) after 1517 sparked a series of Protestant Reformations of church, state, and society throughout much of northern Europe. The Lutheran or Evangelical wing of the Reformation spread over much of Germany and Scandinavia, led by hundreds of theologians and jurists and their political patrons. Luther's writings, however, and those of his Wittenberg protégé Philip Melancthon remained at the heart of Lutheranism for the next centuries.³

² See detailed sources and analysis in Stephen J. Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (Grand Rapids, MI: Eerdmans, 2006), 1-53; John Witte, Jr., *Church, State, and Freedom: Protestant Teachings for a Pluralistic Society* (Cambridge: Cambridge University Press, 2020) [hereafter CSF].

³ See detailed sources for this section in John Witte, Jr., *Law and Protestantism: The Legal Teachings of the Lutheran*

Luther grounded his teachings on natural law in his complex two-kingdoms framework. God has ordained two kingdoms or realms in which humanity is destined to live, Luther argued, the earthly kingdom and the heavenly kingdom. The earthly kingdom is the realm of creation, of natural and civil life, where a person operates primarily by reason and law. The heavenly kingdom is the realm of redemption, of spiritual and eternal life, where a person operates primarily by faith and love. These two kingdoms embrace parallel heavenly and earthly, spiritual and temporal forms of righteousness and justice, government and order, truth and knowledge. These two kingdoms interact and depend upon each other in a variety of ways, not least through biblical revelation and through the faithful exercise of Christian vocations in the earthly kingdom. But these two kingdoms ultimately remain distinct. The earthly kingdom is distorted by sin and governed by the Law. The heavenly kingdom is renewed by grace and guided by the Gospel. A Christian is a citizen of both kingdoms at once and invariably comes under the distinct government of each. As a heavenly citizen, the Christian remains free in his or her conscience, called to live fully by the light of the Word of God. But as an earthly citizen, the Christian is bound by law, and called to obey the natural orders and offices that God has ordained and maintained for the governance of this earthly kingdom.⁴

These earthly authorities, Luther argued, operate first and foremost by the law of nature – the set of norms ordained by God in the creation, written on each human heart, and rewritten in the Bible. Luther called this variously the ‘law of nature’, ‘natural law’, ‘divine law’, ‘Godly law’, ‘the law of the heart’, ‘the teachings of conscience’, ‘the inner law’, and other terms which he left mostly scattered.⁵ His main point was that the natural law continued to operate in the earthly kingdom after the fall into sin, and provides a foundation for positive law and public morality in earthly life.

The natural law, said Luther, defined the basic duties that a person owed to God, neighbor, and self. The clearest expression of these duties was the Ten Commandments, which God gave to Moses on two tables. The First Table set out basic duties to honour the Creator God, to respect God’s name, to observe the Sabbath, to avoid idolatry and blasphemy. The Second Table set out basic duties to respect one’s neighbor – to honour authorities, and not to kill, commit adultery, steal, bear false witness, or covet. Luther believed this to be a universal statement of natural law, binding on everyone. ‘The Decalogue is not the law of Moses ... but the Decalogue of the whole world, inscribed and engraved in the minds of all men from the foundation of the world.’ ‘[W]hoever knows the Ten Commandments perfectly must know all the Scriptures, so that, in all affairs and cases, he can advise, help, comfort, judge, and decide both spiritual and temporal matters, and is qualified to sit in judgment upon all doctrines, estates, spirits, laws, and

Reformation (Cambridge: Cambridge University Press, 2002) [hereafter LP] and more recently Martin Heckel, *Martin Luthers Reformation und das Recht* (Tübingen: Möhr Siebeck, 2016).

⁴ LP 87-118. See also Philip Melancthon, *Melancthon on Christian Doctrine: Loci Communes 1555*, trans. and ed. Clyde L. Manschreck (Oxford: Oxford University Press, 1965), 39-44, 274-9, 323-44 [hereafter LC (1555)].

⁵ See sample quotes in Hermann W. Beyer, *Luther und das Recht*, repr. ed. (Paderborn: Salzwasser-Verlag GmbH, 2013) with analysis in Johannes Heckel, *Lex Charitatis: A Juristic Disquisition on Law in the Theology of Martin Luther*, trans. and ed. Gottfried G. Krodel (Grand Rapids, MI: Wm. B. Eerdmans, 2010); Antti Raunio, ‘Divine and Natural Law in Luther and Melancthon’, in Virpi Mäkinen (ed.), *The Lutheran Reformation and the Law* (Leiden: Brill, 2006), 21-62.

whatever else is in the world.⁶

Knowledge of this natural law comes not only through the Bible, but also through natural reason, Luther continued. Since the law is written on every human heart, every rational person ‘feels’ and ‘knows’ the law of God, even if only obliquely. The basic teaching of the natural law ‘lives and shines in all human reason, and if people would only pay attention to it, what need would they have of books, teachers, or of law? For they carry with them in the recesses of the heart a living book which would tell them more than enough about what they ought to do, judge, accept, and reject.’⁷

But sinful persons do not always, of their own accord, abide by the natural law. Thus, God has called on the natural authorities of the earthly kingdom to elaborate its basic requirements. Parents must teach it to their children and dependents. Preachers must preach it their congregants and catechumens. And magistrates must elaborate and enforce it through their positive laws. ‘Natural law is a practical first principle in the realm of public morality’, Luther wrote in elaborating his political theory; ‘it forbids evil and commands good. Positive law is a decision that takes local conditions into account’, and ‘credibly’ elaborates the general principles of the natural law into specific precepts to fit these local conditions. ‘The basis of natural law is God, who has created this light, but the basis of positive law is the earthly authority’, the magistrate, who represents God in this earthly kingdom.⁸ The magistrate must promulgate and enforce these positive laws by combining faith, reason, and tradition. He must pray to God earnestly for wisdom and instruction. He must maintain ‘an untrammelled reason’ in judging the needs of his people and the advice of his counsellors. He must consider the wisdom of the legal tradition – particularly that of Roman law, which Luther called a form of ‘heathen wisdom’.⁹

2.2 Melanchthon

Leading Wittenberg theologian and moralist Philip Melanchthon (1497-1560) repeated and endorsed many of Luther’s teachings. But already in his early writings, Melanchthon was more explicit than Luther in expounding the content of natural law. Drawing on the Bible and various classical and post-biblical sources, Melanchthon ultimately identified ten common principles of natural law: (1) to worship God and to honour God’s law; (2) to protect life; (3) to testify truthfully; (4) to marry and raise children; (5) to care for one’s relatives; (6) to harm no one in their person, property, or reputation; (7) to obey all those in authority; (8) to distribute and exchange property on fair terms; (9) to honour one’s contracts and promises; and (10) to oppose injustice.¹⁰

Melanchthon also went well beyond Luther in grounding this natural law philosophically. Starting with the two-kingdoms theory, he taught that God has implanted in all persons

⁶ See esp. Jaroslav Pelikan et al., eds., *Luther’s Works*, 55 vols. (Philadelphia, PA: Muhlenberg Press, 1955–68), 44:15-114 [hereafter LW]; *D. Martin Luthers Werke: Kritische Gesamtausgabe*, repr. ed., 78 vols. (Weimar: H. Böhlhaus Nachfolger, 1883–1987), 39/1:478 [hereafter WA]; *Triglott Concordia: The Symbolic Books of the Ev. Lutheran Church German-Latin-English* (St. Louis, MO: Concordia Press, 1921), 573, 581-67 [hereafter TC].

⁷ WA 17/2:102.

⁸ *Ibid.* 51:211; *D. Martin Luthers Werke: Tischreden*, 6 vols. (Weimar: H. Böhlhaus Nachfolger, 1912–), vol. 3, No. 3911.

⁹ LW 45:120-126; WA 51:242. See also WA 12:243; WA 14:591, 714; WA 16:537; WA 30/2:557; WA 51:241.

¹⁰ G. Bretschneider, ed., *Melanchthons Werke*, 28 vols. in *Corpus Reformatorum* (Brunswick: Brunsvigae Schwetschke, 1864), 21:25-27; 119-20 [hereafter CR].

certain ‘inborn elements of knowledge’ (*notitiae nobiscum nascentes*). These *notitiae* or elements were forms of ‘natural light’, ‘rays of divine wisdom poured into us’, without which we could not find our way in the earthly kingdom. They included various ‘theoretical principles’ of logic, dialectics, geometry, arithmetic, physics, and other sciences – that two plus two equals four, that an object thrown into the air will eventually come down, that the whole is bigger than any one of its parts, and the like. They also included ‘practical principles’ (*principia practica*) of ethics, politics, and law – that ‘men were born for civil society’, that offences which harm society should be punished, that ‘promises should be kept’, and many others. ‘All these natural elements of knowledge’, Melanchthon believed, ‘are congruent with the eternal and unchanging norm of the divine mind that God has planted in us’. They provide the starting point for earthly life and learning.¹¹

Melanchthon eventually included his ten principles of natural law among these ‘natural elements of knowledge concerning morals.’ Human reason cannot prove the existence of these natural law principles, he insisted.¹² They are facts and facets of human nature, forms of innate knowledge that are in the mind of God and were ‘placed in our mind’ when God created us ‘in his image’. Moreover, these natural law principles cannot be fully understood using reason alone. ‘Our nature is corrupted by original sin’, Melanchthon wrote, sounding the familiar Protestant doctrine of total depravity. ‘Thus the law of nature is greatly obscured.’ The best way for a Christian to understand the natural law, therefore, was to turn to the Bible, including the Torah, the Beatitudes, the moral codes of Jesus and St. Paul. The best single summary, however, was the Ten Commandments which Luther had also held up. In a Christian society, parents, pastors, and political officials alike would do well to start with this natural law formulation.¹³

Melanchthon took this image directly into his account of state positive laws. ‘When you think about *Obrigkeit*, about princes or lords’, he wrote, ‘picture in your mind a man holding in one hand the tables of the Ten Commandments and holding in the other a sword. Those Ten Commandments are above all the works which he must protect and maintain’, using the sword if necessary. Those Ten Commandments are ‘also the source from which all teaching and well-written laws flow and by which all statutes should be guided.’¹⁴

As custodians of the First Table of these Ten Commandments or Decalogue, Melanchthon wrote, magistrates must pass laws against idolatry, blasphemy, and violations of the Sabbath – offences that the First Table prohibits on its face. Magistrates must also pass laws to ‘establish pure doctrine’ and right liturgy, ‘to prohibit all wrong doctrine’, ‘to punish the obstinate’, and to root out the heathen and the heterodox. ‘[W]orldly princes and rulers who have abolished idolatry and false doctrine in their territories and have established the pure doctrine of the Gospel and the right worship of God have acted rightly’, Melanchthon argued. ‘All rulers are obliged to do this.’¹⁵

Melanchthon’s endorsement of state establishments of Christianity by positive law was a marked departure from Luther’s original teaching. In 1523, for example, Luther had

¹¹ CR 11:918-919; CR 13:150, 647-54; 16:228; 20:695-99; 21:117, 398-400, 711-13.

¹² CR 21:399-400; see also CR.

¹³ Robert Stupperich, ed., *Melanchthons Werke in Auswahl*, 6 vols. (Gütersloh, 1951), 3:208, 4:146; [hereafter MW]; CR 13:547-55; 21:116-17; 21:392-402; 22:201-02, 256-57.

¹⁴ CR 22:615.

¹⁵ CR 16:87-88; 22:615-617.

written: 'Earthly government has laws that extend no further than to life, property, and other external things on earth. For God cannot and will not allow anyone but himself alone to rule over the soul. Thus when the earthly power presumes to prescribe laws to souls, it encroaches upon God and his government and only seduces and corrupts souls.'¹⁶ Luther eventually softened this stance, particularly in his late-life railings against Jews, Antinomians, and Anabaptists.¹⁷ But he remained firmly opposed to the magistrate defining by positive law what Christian doctrines and liturgies were orthodox, what heterodox.

Melanchthon had held similar views in the 1520s and 1530s. But he eventually retreated from this position, despite Luther's objections, in response to two decades of intense religious rivalries between and among Catholics and Protestants in Germany. He had become increasingly dismayed at the fracturing of German society and the perennial outbreaks of violent antinomianism and spiritual radicalism. He had become especially incensed at the 'great many frantic and bewildered souls' who were blaspheming God and His law with their 'monstrous absurdities' and 'diabolical rages'. To allow such blasphemy and chaos to continue without rejoinder, Melanchthon believed, was ultimately to betray God and to belie the essence of the political office. After all, he reasoned, 'earthly authority is obliged to maintain external discipline according to *all* the commandments. External idolatry, blasphemy, false oaths, untrue doctrine, and heresy are contrary to the First Table [of the Decalogue]. For this reason, earthly authority is obliged to prohibit, abolish, and punish these depravities [and] to accept the Holy Gospel, to believe, confess, and direct others to true divine service.' The political office 'before all else should serve God, and should regulate and direct everything to the glory of God.'¹⁸

With this teaching, Melanchthon helped to lay the theoretical basis for the welter of new religious establishment laws that were promulgated in Lutheran cities and territories, many of which contained comprehensive compendia of orthodox Lutheran confessions and doctrines, songs and prayers, and liturgies and rites. The principle of *cuius regio eius religio* ('whosever region, his religion') set forth in the Religious Peace of Augsburg (1555) and expanded in the Peace of Westphalia (1648), rested ultimately on Melanchthon's theory that the magistrate's positive law was to use the First Table of the Decalogue to establish for his people proper Christian doctrine, liturgy, and spiritual morality.

As custodians of the Second Table of the Decalogue, Melanchthon argued, magistrates are called to govern 'the multiple relationships by which God has bound men together.'¹⁹ Melanchthon listed a whole series of positive laws that properly belong under each of the Commandments of the Second Table. On the basis of the Fourth Commandment ('Honour thy father and mother'), magistrates are obligated to prohibit and punish disobedience, disrespect, or disdain of authorities such as parents, political rulers, teachers, employers, masters, and others. On the basis of the Fifth Commandment ('Thou shalt not kill'), they are to punish unlawful killing, violence, assault, battery, wrath, hatred, merciliness, and other offences against neighbors. On the basis of the Sixth Commandment ('Thou shalt not commit adultery'), they are to prohibit adultery,

¹⁶ WA 11:262.

¹⁷ LW 47:99-119, 121-306.

¹⁸ LC (1555), 324, 335-336 (rendering '*weltliche*' as 'earthly' not 'worldly'); CR 11:918.

¹⁹ CR 22:610.

fornication, unchastity, incontinence, prostitution, pornography, obscenity, and other sexual offences. On the basis of the Seventh Commandment ('Thou shalt not steal'), they are to outlaw theft, burglary, embezzlement, and similar offences against another's property, as well as waste or noxious use or sumptuous use of one's own property. On the basis of the Eighth Commandment ('Thou shalt not bear false witness'), they are to punish all forms of perjury, dishonesty, fraud, defamation, and other violations of a person's reputation or status in the community. Finally, on the basis of the Ninth and Tenth Commandments ('Thou shalt not covet'), they are to punish all attempts to perform these or other offensive acts against another's person, property, reputation, or relationships.²⁰

Many of these aspects of social intercourse had traditionally been governed by the medieval Catholic Church's canon law and organised in part by the seven sacraments. The sacrament of marriage, for example, supported the positive law of sex, marriage, and family life. The sacrament of penance supported the canon law of crimes against the persons, properties, and reputations of others. The sacraments of baptism and confirmation undergirded a constitutional law of natural rights and duties of Christian believers. The sacrament of holy orders supported the law of the clergy. The sacrament of extreme unction supported the positive laws of burial, inheritance, foundations, and trusts. Melancthon used the Ten Commandments, instead of the seven sacraments, to organise the various systems of positive law. And he looked to the state, instead of the church, to promulgate and enforce these positive laws on the basis of the Ten Commandments and other sources of natural law and morality. This teaching would become axiomatic in Lutheran lands, and hundreds of German and Nordic jurists built their legal systems on these basic natural law teachings.

2.3 Magdeburg Confession

Early modern Lutherans did not develop an elaborate theory of natural rights, but they did make some notable contributions. In defending his Reformation, Luther had called for 'freedom of a Christian' from oppressive papal rule, and this famous early statement fueled later religious freedom arguments against abusive church or state authorities. Lutheran jurists and moralists also repeated traditional canon law and civil law teachings on the rights (*iura*) and liberties (*libertates*) that were part of the public, private, procedural and penal laws of the day.

The strongest early Lutheran statements on natural rights came in the Magdeburg Confession (1550).²¹ The leaders of the small Saxon city of Magdeburg had drafted this Confession in response to the order of the Holy Roman Emperor to impose uniform Catholic doctrines and liturgies in the Empire, and to stamp out the 'raging Lutheran heresy' that was causing such 'discord', 'dissension', 'calamity and destruction'.²² The Emperor aimed to put an end to this once and for all. Those Lutheran polities that

²⁰ LC (1555), 97ff.; CR 21:294ff., 387ff; CR 22:256ff.; CR 16:70ff.

²¹ *Confessio et apologia pastorum & reliquorum ministrorum Ecclesiae Magdeburgensis* (Magdeburg, 1550) [hereafter MC]. See further analysis in David M. Whitford, *Tyranny and Resistance: The Magdeburg Confession and the Lutheran Tradition* (St. Louis, MO: Concordia Publishing, 2001).

²² Preamble to 'The Interim, or Declaration of Religion of His Imperial Majesty Charles V', in *Tracts and Treaties in Defense of the Reformed Faith*, trans. Henry Beveridge, ed. T.F. Torrance, 3 vols. (Grand Rapids, MI: Eerdmans, 1958), 3:190-239, at 190-4.

persisted in their heresy would face military conquest and destruction. Several Lutheran polities and leaders had already capitulated. The city of Magdeburg would not. Imperial forces put the city under siege. The Magdeburg leadership stood firm, and issued the Confession in defense of their actions. It's opening lines read:²³

If the high authority does not refrain from unjustly and forcibly persecuting not only the lives of their subjects but even more their rights under divine and natural law, and if the high authority does not desist from eradicating true doctrine and true worship of God, then the lower magistracy is required by God's divine command to attempt, together with their subjects, to stand up to such superiors as far as possible [and] to protect themselves and their people against this.

The right to resist tyranny lies first and foremost with lower magistrates, the Confession argued. If the higher magistrate commits only a minor or personal offence, lower magistrates should admonish him quietly and gently, following biblical examples. But if he unjustly endangers 'life and limb', 'wife and child', and the 'local liberties of the people', the lower magistrates 'may make use of their rights to defend themselves' and their subjects. Even worse, if the higher magistrate commits a premeditated attack on 'the highest and most essential rights of the people' – indeed, if he attacks 'our Lord himself, the author of these rights' – then even the most 'insignificant and weakest regents' must rise up against him. For we must 'obey God rather than men' (Acts 5:29).²⁴

The Confession did not define the 'local liberties of the people', or 'the highest and most essential rights of the people' that could trigger escalating resistance and revolt. The authors hinted broadly that the threatened establishment of 'unnatural' and 'unbiblical' Catholic family laws might be such an example. They stated more plainly that their 'procedural rights' had been abridged: 'Divine, natural, and secular laws' alike recognize that criminals have a right to a public hearing and their day in court. But we have been 'accused only on hearsay evidence', and have not had a chance to 'face our accusers'. Just because other Lutheran towns have capitulated, does not mean we should lose 'our rights by default'. 'Our case must be judged in accordance with proper justice.'²⁵

But the Confession's main concern was that the emperor was violating the people's 'essential rights' of religion, and those violations certainly merited a more forceful response. We 'seek nothing else but the freedom to remain and be left in the true recognized religion of the holy and only redeeming Gospel.' We act peaceably. We educate our children to be good and useful citizens. We pray daily for our rulers. We pay our taxes and tributes. We register our properties. We 'desire no one's land and people and covet no one's worth and goods.' 'Your Imperial Majesty allows both Jews and heathens to follow their religion, and do not force them from their religions to the Papacy.' But 'we are not even allowed to have the same freedom of religion that is granted to non-Christians.' Instead, the Emperor seeks 'to reintroduce the Pope's idolatry, to suppress or exterminate the pure doctrine of the Holy Gospel ... in violation not only of divine law but also of written civil law.' Against such oppression, the people must exercise their

²³ MC, A1v.

²⁴ *Ibid.*, J4r-k1r, K2R-L1r, M1r-M2r, P2r-P3r.

²⁵ *Ibid.*, H2r, K4r.

‘universal’ and ‘natural’ ‘law of legitimate self-defense.’²⁶

The Magdeburg Confession was the strongest Lutheran statement of the day on resistance to political tyranny based on systematic violations of the people’s natural rights. This document helped turn popular opinion against the Emperor and led to the gradual collapse of other imperial military campaigns against the Lutherans. Ultimately the Emperor was forced to accept the Peace of Augsburg (1555) that allowed each polity to establish either Catholicism or Lutheranism, giving dissenters the right to immigrate peaceably.

3. Calvinist Teachings

3.1 Calvin

The Reformed or Calvinist tradition also forged its natural rights theories in the fires of religious persecution and framed them in Protestant natural law terms.²⁷ Genevan reformer John Calvin (1509-1564) was exiled from his Catholic French homeland on account of his new Protestant beliefs. He thus opened his first major work, the *Institutes of the Christian Religion* (1536) with a Dedication to French King Francis I, ‘boldly groan[ing] for freedom’ from ‘overbearing tyranny’ and abuses that defied widely-recognized rights and freedoms of the day. Calvin protested the widespread and unchecked instances of ‘perjury’, ‘lying slanders’ ‘wicked accusations’, and the ‘fury of evil men’ that conspired to incite ‘public hatred’ and ‘open violence’ against believers. He protested that ‘the case’ of the Protestants ‘has been handled with no order of law and with violent heat rather than judicial gravity.’ He protested various forms of false imprisonment and abuses of prisoners. ‘Some of us are shackled with irons, some beaten with rods, some led about as laughing stocks, some proscribed, some most savagely tortured, some forced to flee.’ He protested the many procedural inequities. Protestants are ‘fraudulently and undeservedly charged with treason and villainy.’ They are convicted for capital offences, ‘without confession or sure testimony.’ ‘[B]loody sentences are meted out against this doctrine without a hearing.’ He protested the bias of judges and the partiality of judicial proceedings. ‘Those who sit in judgment ... pronounce as sentences the prejudices which they have brought from home.’ He protested the intrusions on the church’s freedoms of assembly and speech. ‘The poor little church has either been wasted with cruel slaughter or banished into exile, or so overwhelmed by threats and fears that it dare not even open its mouth.’ All these offences stood diametrically opposed to basic political freedoms recognized at the time both in the Empire and in France.²⁸

In this same 1536 edition of the *Institutes*, Calvin called for the freedom not just of Protestants, but of all peaceable believers, including Catholics, Jews, and Muslims. He denounced the forced baptisms, inquisitions, crusades, and other forms of religious persecution practiced by the medieval church and state.²⁹

²⁶ *Ibid.*, H4r-J2r, K1r, N.

²⁷ See detailed references in John Witte, Jr., *The Reformation of Rights: Law, Religion, and Human Rights in Early Modern Calvinism* (Cambridge: Cambridge University Press, 2007) [hereafter RR].

²⁸ John Calvin, *Institution of the Christian Religion*, trans. Ford Lewis Battles (Atlanta, GA: Westminster Press, 1975), Dedication [hereafter Inst. (1536)].

²⁹ *Ibid.*, 2.28.

We ought to strive by whatever means we can, whether by exhortation and teaching or by mercy and gentleness, or by our own prayers to God, that they may turn to a more virtuous life and may return to the society and unity of the church. And not only are excommunicants to be so treated, but also Turks and Saracens, and other enemies of religion. Far be it from us to approve those methods by which many until now have tried to force them to our faith, when they forbid them the use of fire and water and the common elements, when they deny them to all offices of humanity, when they pursue them with sword and arms.

While Calvin hardened in his opposition to Christian heretics – just ask Michael Servetus – he continued to press his general case for freedom over the next quarter century. ‘There is nothing more desirable than liberty’, he wrote. Liberty is ‘an inestimable good’, ‘a singular benefit and treasure that cannot be prized enough’, something worth ‘more than half of life’. ‘How great a benefit liberty is, when God has bestowed it on someone.’ Calvin emphasised the importance of political suffrage and the franchise in the political community. The ‘right to vote’, he once said, is the ‘best way to preserve liberty.’ ‘Let those whom God has given liberty and the franchise use it.’ ‘The reason why tyrannies have come into the world, why people everywhere have lost their liberty ... is that people who had elections abused the privilege.’ ‘There is no kind of government more salutary than one in which liberty is properly exercised with becoming moderation and properly constituted on a durable basis.’³⁰

Drawing on his legal training, Calvin also discussed the subjective rights (*iura, droits*) of individuals alongside their liberties (*libertates, libertés*). Sometimes he used general phrases like ‘the common rights of mankind’ (*iura commune hominum*), the ‘natural rights’ (*iura naturali*) of persons, the ‘rights of a common nature’ (*communis naturae iura*), and ‘the equal rights and liberties’ (*pari iura et libertates*) of all.³¹ Usually he referenced more specific subjective rights. He spoke, for example, about the ‘rights of Christian liberty’, the ‘rights of citizenship’ in the kingdom of God, the ‘right of adoption’ that Christians enjoy as new sons and daughters of God and brothers and sisters in Christ. He referenced the right ‘to inhabit’, ‘to dwell in’, and ‘to claim the territory’ that Yahweh gave to the chosen people of Israel. He mentioned ‘Paul’s rights of Roman citizenship’. He spoke frequently, as a student of Roman law would, about property rights: the right to land and other property, ‘the right to enjoy and use what one possesses’, the right ‘to recover’ and ‘to have restored’ lost or stolen property; the right to compensation for work; the right to sell, bequeath, and inherit property, particularly in accordance with the ‘natural rights of primogeniture’. He spoke of the right to bury one’s parents and other relatives. He also spoke frequently of the marital rights of husband and wife, and the ‘sacred’, ‘natural’, and ‘common’ rights of parents over their children – in particular, the right and authority of a father to ‘name his child’, ‘to raise the child’, and to set the child up in marriage. He spoke in passing about the ‘sacred right of hospitality’ of the sojourner, the ‘right of asylum’ or

³⁰ John Calvin, *Institutes of the Christian Religion*, ed. John T. McNeill, trans. Ford Lewis Battles (Philadelphia, PA: Westminster Press, 1960), 3.19.1–8, 14 [hereafter *Institutes* (1559)]; *Serm.*, Gen. 39:11; *Serm.*, 1 Sam. 8, 17; *Comm.*, Harm. Law Deut. 15:1–11; 17:14–18; 24:7; *Serm.*, Deut. 16:18–19; 18:14–18 collected in *Ioannis Calvini opera quae supersunt omnia*, ed. G. Baum *et al.*, 59 vols. (Brunswick: Schwetzkke, 1863-1900) [hereafter CO].

³¹ *Comm.*, Gen. 4:13; *Comm.*, Harm. Law Num. 3:5–10, 18–22; Deut. 5:19; *Comm.*, Ps. 7:6–8; *Lect.*, Jer. 22:1–3; 22:13–14; *Lect.*, Ezek. 8:17; *Comm.*, 1 Cor. 7:37.

of sanctuary for those in flight, the ‘right of redemption’ for slaves, and the natural rights and ‘just rights’ of the poor, needy, orphans, and widows.³²

But Calvinist rights talk was always coupled with duties talk. The whole point of having rights and liberties, Calvin insisted, was to enable a person to discharge the duties and responsibilities of the faith. ‘We obtain liberty in order that we may more promptly and more readily obey God in all things’ spiritual and temporal, he wrote.³³ Freedoms and commandments, rights and duties remained together in Calvin’s formulation, balancing and bolstering each other. Subjective rights claims were grounded in an objective right order.

Calvin spent a great deal of time defining this right order. Sometimes he described it as a ‘natural order’, an ‘order of nature’, or an ‘order of creation’. Sometimes he used more anthropological language: our ‘human conscience’, ‘natural conscience’, ‘inner voice’, ‘natural inclination’ or ‘sense of right and wrong’. More often, he described this order as a divine, spiritual, moral, or natural law. What this untidy gaggle of terms basically described was the set of norms that undergird and legitimise the positive laws of human authorities. God has written this natural law on the hearts and consciences of all persons, rewritten it in the pages of scripture, and summarised it in the Decalogue.³⁴

Like Luther and Melancthon, Calvin often used the Decalogue as a crisp summary of the natural law, as well as a template of the natural rights and duties of each person towards God. The First Table’s ‘religious rights’ to worship, keep the Sabbath, honour God, and avoid false swearing are ‘inherent human rights’, said Calvin, ‘part of our human nature’, which church, state, and neighbor alike must respect. Such religious rights and duties are also extensions of God’s divine rights: the ‘eternal right of God himself, to be properly worshipped and glorified’, as Calvin put it.³⁵ Similarly, Calvin hinted, each person’s natural duties toward a neighbor in the Second Table can be cast as a neighbor’s natural rights to have those duties discharged. One person’s duties not to kill, to commit adultery, to steal, to bear false witness, or to covet thus give rise to another person’s rights to life, property, fidelity, reputation, and domestic privacy. Calvin adumbrated these Decalogue-based correlatives of rights and duties.³⁶ His followers, beginning with his Genevan successor Theodore Beza (1519-1605) and the exiled Cambridge don Christopher Goodman (1520-1603) elaborated these teachings into a theory of ‘inherent’ or ‘inalienable’ natural rights.

3.2 Goodman

Christopher Goodman’s 1558 tract, *How Superior Powers Ought to be Obeyd* argued that magistrates must strike a mean between granting their subjects ‘too much liberty’ and ‘too little liberty’. Granting too much liberty, he argued, will lead the people to contempt, sedition, ‘dissoluteness’, ‘carnal liberty’, rioting, tumult, and ‘contempt’ for law and order ‘whether divine or human’. But giving them too little liberty will do exactly the same. ‘[T]he

³² See detailed sources in RR, 57–58.

³³ *Comm.* 1 Peter 2:16; *Institutes* (1559), 3.17.1–2; 3.19.14–16; 4.10.5.

³⁴ *Institutes* (1559), 2.7.1; 2.8.1; 4.20.15; CO 24:262-724; CO 26:236-432. See I. John Hesselink, *Calvin's Concept of the Law* (Allison Park, PA: Pickwick Publications, 1992), 18-24, 51-85; John T. McNeill, ‘Natural Law and the Teaching of the Reformers’ (1946) 26 *Journal of Religion* 168.

³⁵ Lect. Dan. 6:22; Sermon. 2 Sam. 1:1-4.

³⁶ Sources in RR, 121–41.

people ought not suffer all power and liberty to be taken from them, and thereby to become brute beasts without judgment and reason, thinking all things lawful, which their rulers do without exception, command them, be they never so far from reason or godliness.' God will 'not suffer' that 'the rights and liberties that he has given to all his people ... be taken from them.'³⁷

What are these God-given 'rights and liberties' that cannot be 'taken from them' – literally that cannot be 'alienated'? They are the 'inalienable' rights set out in the Bible, particularly in the Ten Commandments, Goodman answered:³⁸

[I]t is an easy matter for all manner of subjects to know what liberty belongs unto them by the word of God, which they may lawfully claim as their own possession, are likewise bound at all times to practice: wherein also appears what things are prohibited unto them, which they may in no case exercise.... [T]here may be nothing lawful for you by any commandment of man, which your Lord God in any case forbids: and nothing unlawful or forbidden to you which he commands, whether it appertains to the first table or the second [table of the Decalogue]. Which rule if ye observe, you may be assured to please God: like as by doing the contrary you shall purchase his heavy wrath and indignation.

This was Goodman's rights formula: The rights and liberties that God gives to each person as his or her 'inalienable' 'possession' are set out in the Decalogue. Nothing that God requires in the Decalogue may the magistrate forbid. Nothing that God forbids in the Decalogue may the magistrate require. A person thus has the inalienable right to 'observe the Sabbath Day and keep it holy' and 'to labor six days and to rest on the Sabbath.' A person has the inalienable right to 'honour [his or her] father and mother so that [their] days may be long in the land which the Lord your God has given [them].' A person has the inalienable right to proper religious worship and speech – to be free from laws commanding him to worship false gods, to maintain graven images, to swear false oaths, or otherwise take the name of God in vain. A person has the inalienable right to life (freedom from killing), to property (freedom from stealing), to marital integrity (freedom from adultery), and to reputation and fair process (freedom from false testimony). A person has the right to be free from having his family, household, and possessions subject to the covetous privations of neighbors. If the magistrate requires or condones conduct contrary to this formula, the magistrate is violating each subject's rights and liberties. To do so is to practice tyranny and to invite resistance for God's sake.

3.3 Althusius

This became a common formulation of natural rights and duties for Calvinists thereafter. German-born Calvinist jurist Johannes Althusius (1557–1638), for example developed an elaborate system of 'natural rights and liberties' (*iura et libertates naturali*) for the war-torn Netherlands and Holy Roman Empire of his day. Natural rights, he said, were either affirmative or negative claims that a party could make on the basis of natural law – 'the right, freedom, or power to act by and for oneself' and to be free from or to forgo acting,

³⁷ Christopher Goodman, *How Superior Powers Ought to be Obeyd* [1558], facs. ed., ed. Charles H. McIlwain (New York, NY: Columbia University Press, 1931), 147-54 (spelling modernised).

³⁸ *Ibid.*, 160-1.

or more simply the ‘rights to freedoms’ of various sorts. Again, using the natural law distillation in the Decalogue, Althusius distinguished two main classes of natural rights: (1) ‘religious rights and liberties’ and (2) ‘social rights and liberties’. Althusius called both classes of rights ‘fundamental rights’ – indispensable to the survival of a person and polity and foundational to any more specific rights formulations by positive laws, whether set out in statutes or in written constitutions.³⁹

Althusius enumerated briefly the natural religious rights that were anchored in the First Table. ‘[E]ach and everyone in the whole realm should worship freely and fully without any fear or peril’, he wrote. A person has the right to discharge the duties of his or her faith, and must be free from any coercion to worship false gods, to maintain graven images, to swear false oaths, or to take the name of God in vain. A person must be free to ‘enjoy’ and ‘to observe the Sabbath Day’, and ‘to labor six days and to rest on the seventh’. If state authorities violate these natural rights of religion, they are engaging in tyranny and should be resisted. If other persons or associations (including the church) violate these rights, they are engaging in crime and should be prosecuted.⁴⁰

Althusius defended the absolute liberty of conscience (*libertas conscientiae*) but insisted on a qualified right of religious exercise (*ius religionis exercitium*).⁴¹ Althusius saw absolute liberty of conscience as the natural corollary to the absolute sovereignty of God, a doctrinal staple of Calvinism. Sovereignty is a legal term, said Althusius, a power to command and control. Through the opening words of the Decalogue, ‘I am the Lord, thy God’, the Bible makes clear that ‘God alone can command the conscience.’ God alone can bring a person ‘out of the house of sinful bondage’ and into the “‘promised land’ – whether in this life or in the next. God alone can change the hearts and charge the souls of men and women. No person or authority may thus require a person ‘to believe against his will. Faith must be persuaded, not commanded; it must be taught, not ordered.’ To invade the sanctuary of conscience is to impugn the sovereignty of God; ‘to impose a penalty on the thoughts of men’ is to obstruct the work of the Holy Spirit. ‘The natural law imparts to all men a freedom of the soul or mind (*libertas animi*)’, Althusius wrote. ‘The exercise of this right cannot be hindered by a command or order, by fear or compulsion.’⁴²

While everyone must enjoy absolute freedom of conscience, lest the sovereignty of God be invaded, no one can enjoy absolute ‘freedom of religious exercise’, lest the integrity of society be imperiled. The ideal is that all will see the same divine light and come to the ‘one true orthodox Christian religion’ – by which Althusius meant Calvinism. But, given human sinfulness, no such religious uniformity has ever existed in history, and no such uniformity obtains in any nation today. Individual households and congregations, sometimes even small villages and towns, may practice a uniform faith, but this uniformity rarely exists beyond the local level, Althusius said pragmatically. At the provincial, national, and imperial levels, religious pluralism is inevitable, and the magistrate must

³⁹ Johannes Althusius, *Dicaeologicae libri tres, totum et universum Jus, quo utimur, methodice complectentes* (Frankfurt, 1618), I.25.1–8 [hereafter Dic.]; Johannes Althusius, *Politica Methodice Digesta*, ed. Carl J. Friedrich (Cambridge, MA: Harvard University Press, 1932), with abridged English translation, *Politica Johannes Althusius*, ed. and trans. F.S. Carney (Indianapolis, IN: Liberty Fund, 1995), XXI.22–24 [hereafter Pol.]

⁴⁰ Pol. XX.12–13, 20–22; Pol. XXXVII.21–22, 33–34, 36; Pol. XXVIII.14, 53–66; Pol. XXXVIII.10–14, 77–78; Dic. 1.101.32–33, 42–43; Dic. 1.113.8–9, 12; 1.115.10–36.

⁴¹ Dic. I.25.8; Pol. XXVIII.62.

⁴² Pol. VII.4-7; Pol. XI.33–45; Pol. XXVIII.14, 37–73, 62–66; Dic. I.25.8–10.

tolerate all forms of faiths whose presence does not offend God, threaten the integrity of the true church, or endanger the common good of society as whole.⁴³

Judged by the standards of our day, Althusius's theory of religious rights and liberties was decidedly churlish, despite his promising opening admonition that 'each and everyone in the whole realm should worship freely and fully without any fear or peril.' Elsewhere he qualified this statement. He tolerated Protestants of various sorts but thought only 'orthodox Calvinists' should receive support from the government. He tolerated Jews and Catholics but only so far as they stayed to themselves, had no public sanctuaries for worship, and received no state support. He tolerated peaceable heretics and nonbelievers in the community, but only so long as they remained unorganised and unpublished.

Judged by the standards of his own day, however, Althusius's theory was more generous. His was a day when most states gave little place to religious dissenters and had little pause about slaughtering or banishing the religiously wayward or impure. Spain was establishing the Catholic decrees of the Council of Trent on all parties by the point of the sword and the terrors of the Inquisition. The Peace of Augsburg (1555) empowered magistrates to establish either Catholicism or Lutheranism in the Holy Roman Empire, with religious dissenters granted only the rights to leave peaceably – and quickly at that. The Edict of Nantes (1598) reestablished Catholicism in France and granted toleration only to Calvinists, but these restricted rights were melting away by the time Althusius was writing, on their way to being violently rejected by the Edict of Fontainebleau (1685). England's Parliament issued a whole series of severely repressive acts against 'papists', 'sectaries', and others who dissented from the Church of England, and these laws triggered bitter persecutions of non-Anglicans from the 1580s to the 1630s. The Netherlands, by comparison, was something of a haven for religious dissenters, and Althusius defended its policies more progressively than did many others. John Locke's *Letter on Toleration*, for example, published three generations later, in 1689, granted no toleration to Catholics, Muslims, and other believers 'who deliver themselves up to the service and protection of another prince', and no toleration to those 'who deny the being of a God' for 'promises, covenants, and oaths which are the bonds of human society, can have no hold upon an atheist.'⁴⁴

Using the commandments of the Second Table of the Decalogue, Althusius set out five clusters of natural social rights and five corresponding duties that other persons and groups, including the church and state, owed to the rights holder. First, everyone has the right to 'natural life' and 'bodily liberty and protection'. This Althusius called 'the most important' and basic right of the person. He included within it the freedom to nourish, protect, and care for one's own life and limb, the right to carry arms for protection, the right to proportionate defense of oneself and one's possessions that are needed for life, freedom from murder, assault, and personal injury, and freedom from unjust punishment, imprisonment, repression, or detainment. The commandment 'thou shalt not kill' imposes the corresponding duties on everyone not to 'hurt, strike, or treat his body in any inhumane way', or to 'diminish or take away the use of his body'. Among family members, this commandment imposes on each the duty to protect and care for their parents, siblings, and children, as well as their kin if they are able. Second, everyone has the 'right to purity

⁴³ Pol. XI.33–45; Pol. XXVIII.60–66.

⁴⁴ *The Works of John Locke*, 12th ed., 9 vols. (London, 1824), 5:47.

and chastity' (*ius castitus et pudicitia*) – the right to keep oneself holy, chaste, and pure in mind and body, and to restrict and resist the actions of others who threaten or violate this right. The commandments against adultery and coveting one's neighbor's possessions impose the corresponding duties on all to desist from fornication and lust, and to deal with the neighbor 'free from the passion of our concupiscence and perverse desire.' Third, everyone has the 'right to property' (*ius dominium*), to the 'fruit of his labors', and 'to goods that he uses and enjoys'. The commandment against stealing requires others to respect and conserve a neighbor's 'title, possession, and use' of his or her property and not to injure, diminish, or remove these property interests. Fourth, everyone has the right to a good reputation – the right to enjoy the 'honour', 'good name', 'standing, excellence, dignity, fame, authority, esteem, and prominence' that become his or her status and station in society as accorded by nature, custom, law, and circumstance. The commandment 'thou shalt not bear false witness' imposes the corresponding duty on everyone to protect the reputation and good name of their neighbors and desist from insults, lies, defamation, and slander. Fifth, everyone has the 'right to a family' (*ius familiae*) – the right to marry, to procreate, nurture, and educate their children, and to have their marriage, family, and household respected and protected. The commandments about honouring parents, not committing adultery, and not coveting a neighbor's wife, in turn, impose on everyone else the duty to respect the 'honor, authority, dignity, and preeminence, and indeed the right of the family.'⁴⁵

These five basic natural rights of social life undergirded various public, private, and procedural rights that were to be 'constituted' and supported by the positive law of the state. Althusius touched briefly on public rights of domicile, voting, representation, and fair treatment. Each person who is born in a city or properly immigrates to it, he wrote, has the 'rights and powers of dwelling in the city, of setting up a residence and household, of transferring one's family and possessions thereto, of having a workshop in the same place, of being a member of the private association that fits their vocation and profession, and of engaging in commercial activity.' Each person also has 'the power of using and enjoying all rights, advantages, and benefits that the whole city has established for all citizens, and approved by common consent.' The most important of these is the 'right to vote in the common business and actions of managing and administering the city, and the form and manner by which the city is ruled and governed according to laws it approves and a magistrate that it constitutes with the consent of the citizens.' Each person also has the right to have his or her interests represented in and by the government. And each person has a general right to 'fair treatment' by the authorities: 'Peace is cultivated and fairness is protected when right, liberty, and honor are extended to each citizen according to the order and distinction of his worth or status.'⁴⁶ 'Fairness' (*aequabilitas*) for all citizens, however, is not the same as 'equality' (*aequalitas*) of all citizens. To 'level all individual citizens' without regard for their abilities, achievements, offices, or obligations not only is 'unfair' and 'unjust' but will only bring manifest 'disorder'.⁴⁷

Althusius was more expansive in his discussion of private rights. Private rights were an essential 'possession' and 'protection' of the individual, he argued, and it was vital that

⁴⁵ Dic. I.25–26; Dic. I.117–22; Pol. X.5–7.

⁴⁶ Pol. VI.43–44; Pol. IX.5–9; Dic. I.81.8–15.

⁴⁷ Pol. VI.47; Dic. 26.10–19, 33; Dic. 1.81.7–18.

the state's private laws protect these private rights in detail. At its most elementary level, Althusius argued, all private law can be reduced to three basic loci: (1) property or things – whether universal or particular, real or personal, corporal or incorporeal, movable or immovable; (2) persons – whether single or in natural, voluntary, or contractual groups, whether acting on their own or on behalf of their group or office; and (3) the acts that persons commit, perform, or forgo – voluntarily or involuntarily, intentionally or unintentionally – respecting things, persons, or various combinations of things and persons. Private rights fall into two main classes that straddle these three loci of private law. These rights are rooted in either (1) property or things (*dominium*), or (2) voluntary or involuntary obligations (*obligatio*). The law of private rights concerns (1) how these rights of property and obligation are acquired, distributed, or alienated, and (2) how they can be met, discharged, or vindicated by proper legal actions or procedures.⁴⁸

Althusius's intricate and lengthy discussion of the rights rooted in property reflected Roman and civil law lore. He differentiated the rights of title and possession, acquisition and use, alienation and devise, and the like that attach to various real and personal, tangible and intangible property interests. Each of these property interests, he showed, can be acquired temporarily or permanently, in whole or in part, and by various legitimate means: by tradition and custom, by contract or gift, by occupation and use, by purchase or loan, by testate or intestate succession, each of which has a whole complex set of rules governing them. He then showed how each of these property interests creates various powers and liberties that are vested in individual persons or in voluntary groups of persons – those bound by marriages, families, partnerships, corporations, churches, schools, guilds, and more.⁴⁹

Private rights are grounded not only in property but also in obligations between and among persons (*obligationes*). Althusius differentiated between natural and contractual obligations. Natural obligations are generally those based on 'natural associations' that are chosen for us more by nature or by circumstance than by contract or consent – such as between parent and child, brother and sister, neighbor and neighbor, and the like. These natural associations create mutual rights and duties of care, support, loyalty, and others in faithful discharge and adherence to the essential tasks and dispositions for that natural relationship.⁵⁰ For example, parents have the natural obligation to nurture and educate their children and the right to preclude others from violating their children or interfering in their child-rearing without cause. Husband and wife, in turn, have a right to their spouse's performance of these child-rearing duties.⁵¹

Contractual obligations are those that a person voluntarily promises or undertakes to discharge, which, in turn, trigger rights of reliance or expectation in obligees and beneficiaries of those contractual promises. Althusius distinguished all manner of contracts – private and public, written and oral, nominate and innominate, mediated and unmediated, bilateral and multilateral, present and future, gratuitous or commercial, guaranteed and contingent, and others which parties enter into for all manner of personal, commercial, banking, labor, service, and other reasons. Althusius championed 'freedom

⁴⁸ See the detailed table at the head of Book I in Dic.

⁴⁹ Dic. I.18–24, 27–33, 36–63, 78–81, 130; Dic. II.12–23.

⁵⁰ Dic. I.81.4, 7, 18.

⁵¹ Dic. I.5, 7, 9–10, 13, 25, 28–30, 80; III.9.38–44; Pol. III.37–41.

of contract', which he called a 'founding principle of the commonwealth', and he dwelt at length on the requirements of consent, capacity, and competence that make this freedom of contract real. Once a fit and competent party fully and freely consents to a contract, he argued, this triggers a right in others to have those contractual duties discharged.⁵²

4. Summary and Conclusions

Natural law and natural rights, then, were common topics for early modern Protestant theologians, jurists, and moralists. These early reformers did echo classical and scholastic teachings, and their lists of natural law principles and natural rights precepts overlapped with Catholic, humanist, and early liberal formulations in their day. But the reformers also grounded their teachings in distinct accounts of the created order, human nature, the Ten Commandments, law and Gospel, divine sovereignty and natural order in the two kingdoms, which gave their views a unique accent.

The teachings of Luther, Melancthon, Magdeburg, Calvin, Goodman, and Althusius touched on here had parallels in hundreds of other Protestant sources, not only by Lutherans and Calvinists but also by Anabaptists and Anglicans of various denominations. These teachings were among the driving forces of early modern Western democratic revolutionaries on both sides of the Atlantic. They were also influential in the modern international declarations of rights in the aftermath of world wars, in the Civil Rights Movement in the United States, and in various liberation movements against colonial and fascist rule in the Global South. While modern Protestant critics of natural law and natural rights remain influential, a growing number of Protestant writers have retrieved and reconstructed these traditional teachings and movements, and are now developing a new Protestant history, theology, ethics, and jurisprudence of natural law and human rights.⁵³

⁵² Dic I.64–97; Dic. II.11–22.

⁵³ See, e.g., Wolfgang Huber, *Gerechtigkeit und Recht: Grundlinien christlicher Rechtsethik*, 3d ed. (Gütersloh: Gütersloher Verlaghaus, 2006); Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton, NJ: Princeton University Press, 2008); David Little, *Essays on Religion and Human Rights: Ground to Stand On* (Cambridge: Cambridge University Press, 2015); David Van Druenen, *The Two Kingdoms and Natural Law: A Study in the Development of Reformed Social Thought* (Grand Rapids, MI: Eerdmans, 2009) and further sources in RR, LP, and CSF.