

A SUPERIOR NATURAL LAW THEORY IN THE WORKS OF JOHANNES ALTHUSIUS

Alison Vaughan

Johannes Althusius's third edition of his *Politica*,¹ published in 1614, presents a systematization of communal associations in his structuring of a political society. Befitting a thinker living in the complicated politics of the Holy Roman Empire, his ideas—borrowing heavily from Aristotle's *Politics*,² and reflecting his Calvinist background—sought universal applicability both in Catholic and Protestant countries. Behavioral guidelines and the tenets of associational happiness cement both public and private life in his polity, and Althusius underpins these discussions with a theory of natural law. Readers encounter two versions of such a theory within Althusius's body of work containing slight yet significant variations. One is found in his *Politica* and the other in his *Theory of Justice*,³ published three years prior in 1607 as a juridical systemization seeking the same universal applicability.⁴ Though *Theory of Justice* seems to set forth a confusing mix of secular and religious sources of behavioral morals, this model presents a more philosophically sound system and compelling fit than the *Politica* version within Althusius's entire schema of thought.

Johannes Althusius (1557-1638) was a Calvinist political theorist trained in both civil and ecclesiastical law, born in Westphalia in modern northwestern Germany.

¹ *Politica methodical digesta atque exemplis sacris et profanis ilustra*, translated as "Politics Methodologically Set Forth With Sacred and Profane Examples," commonly referred to as *Politica*. This paper refers to the only completed English translation available, Frederick Carney's 1964 abridgement.

² Aristotle, *Politics: A New Translation*, trans. C.D.C. Reeve (Indianapolis: Hackett Publishing Company, Inc., 2017), 2-5.

Althusius adopts the Aristotelian idea of community arising by necessity in nature as the only mechanism by which an individual can satisfy his needs. The smallest division of such associations, namely, the conjugal relationship within the household, also forms the base of Althusius's schema. The bestial nature of man without community also appears within this text, as does the idea that subjugation and hierarchy within political orders of men is not only necessary, but natural, as it mirrors similar structures in the animal and natural world.

³ *Dicaeologicae Libri Tres...*, translated as "Three volumes of a Theory of Justice...", hereby referred to as *Theory of Justice*. Any information from this text referred to by this paper comes from the portion translated in *On Law and Power*.

⁴ See *On Law and Power's* "Althusius in Context: A Biographical and Historical Introduction" p. xxii-xxvi.

The widespread attention generated by the first edition of *Politica* facilitated his transition to serve as Syndic of Emden in East Friesland, a position he held until his death.⁵ His works fell out of academic interest until the 1800s with Otto Gierke's rediscovery of the material and placing of the works as seminal in the development of modern Western political thought,⁶ a position perhaps unjustly overshadowed by his contemporary, Hugo Grotius. However, a growing number of scholars has devoted considerable attention to Althusius's work in recent years,⁷ exploring its features of constitutionalism, jurisprudence, popular sovereignty,⁸ covenants, and integration of philosophy and political theory situated squarely in the transition from Medieval to Modern. Emerging from relative obscurity, he has been deemed the "father of modern federalism"⁹ for *Politica*'s striking fit within the canon of modern thought.^{10,11} Discovery of the impact and fundamentality of this author's scholarship only grows with time, and there is much to be gained from an investigation into the theory of natural law he employs in his body of work. His particular conception is made all the more curious for its strange philosophical inconsistencies, pitfalls, and unique use of the Decalogue.

The philosophical purpose, or even intentionality, of the core differences in Althusius's two models that this paper will discuss is not made explicitly clear by the author. Given his profound connection to modern political ideas, scholars will undoubtedly also examine, reference, and synthesize his philosophical material with an eye towards the development of the contemporary natural law canon. Recognizing that his principle works in fact contain two different theories must be stressed in such endeavors. As such, there is no single "Althusian Natural Law." While both *Politica* and *Theory of Justice* rely heavily on the Christian canon, the latter finds a core legal basis in Roman Law. Readers will find this more logically sound in its deriving personal duties than the technique of deriving double-sided duties employed in *Politica*, but this also represents an internal inconsistency: the use of positive law as the foundation in a natural law system.

This paper will guide the reader through a comprehensive understanding of Althusian terminology, the key philosophical components of his natural law theories,

⁵ For more information on his education and public service, see *Politica*'s "Translator's Introduction" p. xi-xii.

⁶ *Politica*, "Translator's Introduction" ix.

⁷ On Law and Power, "Series Introduction" xvi.

⁸ In discussing modern natural law, Sabine describes this element of Althusius's works as, comparative to contemporary texts, "The clearest statement of popular sovereignty that had so far appeared" (p. 418).

⁹ Brian Duignan, "Johannes Althusius: German Political Theorist," in *Encyclopedia Britannica*, last modified August 8, 2022, <https://www.britannica.com/biography/Johannes-Althusius>.

¹⁰ Althusius's political theory is described as the "first modern theory of federalism." His vanguard conception is based on a subsidiary notion of the power to rule where sovereignty originates in the smallest societal associations and expands outwards and upwards. The lowest layers can properly exist as independent units, but the larger are not valid in their own right. Each tier has its own purpose, integrity, and jurisprudence. This contrasts heavily with the conception of the absolute sovereignty of individual territories of the time and with the statism of later centuries.

¹¹ Malan, "Johannes Althusius's Grand Federalism, the Role of the Ephors and Post-Statist Constitutionalism," pp. 2-8, 24.

and finally, a discussion of the merits of each model weighed against one another. Before moving beyond the context of his life to these following steps, it is notable to mention his thorough use of Ramist logic in *Politica*, a method in which extensive proper categorization and subdivision of the topics under consideration are said to illuminate both study and clarification.¹² This method permeates the entirety of *Politica* with, as translator Frederick Carney states, “tiresome regularity throughout the whole volume.”¹³ The reader ought to keep in mind the implicit framework of subdivision and tiered classification in both of Althusius’s natural law theories.

Politica is primarily a political work, and the majority of prior attention paid to this text has been to its components under this umbrella, but this paper approaches its philosophical elements. Therefore, a summary of a few of *Politica*’s key methodological components will equip the reader with sufficient context to approach the complexities of the natural law theory that appears alongside discussions of associational order. First, the base unit of political society in *Politica* is not the individual of many contemporary accounts, but instead, the conjugal and kinship associations. Examples of these include the nuclear family and clans made up of the paterfamilias of each family, respectively. These marital and familial groupings come together to constitute “collegia”¹⁴ and then larger associations such as the city, province, and commonwealth. Regarding Althusius’s use of the Decalogue (Ten Commandments) of the Christian tradition, following Protestant convention, he designates the first table, or tablet, as commandments 1-4¹⁵ and the second table as 5-10 (see Appendix A, Figure 1).

We now begin examining the theory of natural law found in *Politica* with a definition of its central philosophical terms. Althusius’s distinction between what he calls common law (*lex communis*) and proper law (*lex propria*) illuminate his starting point. In contrast to the three categories most commonly used in this era—natural law, law of nations (*jus gentium*), and civil/positive law¹⁶—Althusius boxes law into only these two above categories. According to common law, natural law behavioral guidelines arise at a basic level from knowledge, notitia, and from inclination, inclinatio.¹⁷ Citing Romans 1:19,¹⁸ Althusius otherwise calls this law “conscience,” and says it is “naturally implanted by God in all men.”¹⁹ His citation of Romans 2:14²⁰ gives

¹² *Politica*, “Translator’s Introduction” xiii.

¹³ *Id.*, xv.

¹⁴ The paterfamilias of a family enters society to form these, e.g. guilds, corporations, voluntary associations

¹⁵ *Politica*, 141.

¹⁶ For more information on these three categories, see Witte, “A Demonstrative Theory of Natural Law.”

¹⁷ *Politica*, 139.

¹⁸ All biblical citations in this paper use the New International Version unless otherwise specified.

(19) “... since what may be known about God is plain to them, because God has made it plain to them. (20) For since the creation of the world God’s invisible qualities—his eternal power and divine nature—have been clearly seen, being understood from what has been made, so that people are without excuse.”

¹⁹ *Politica*, 139.

²⁰ (14) “Indeed, when Gentiles, who do not have the law, do by nature things required by the law, they are a law for themselves, even though they do not have the law. (15) They show that the requirements of the law are written

further depth to the concept he has in mind. By conscience, we are compelled to do what we understand to be just and to avoid the unjust. He does, however, limit the reach of this law, which is said to encompass “nothing more than the general theory and practice of love, both for God and for one’s neighbor.”²¹

Most importantly, when it becomes necessary to translate this natural law inclination into a legal system, common law is said to be unequally written on the hearts of everyone according to the design of God. Althusius continues to cite biblical sources as evidence, and from this we understand he has in mind the blindness and clouded hearts of the wicked and the influence of man’s sinful nature as deterrents for recognizing and adhering to conscience’s demands. Also, limits in individual capacity make the exercise of applying these general principles to particular situations difficult for some. Furthermore, even if this innate knowledge of just and unjust behavior is recognized, it is insufficient in compelling some to actually act on it.²² Here, we arrive at the need for Althusius’s second category of law: proper law.

Proper law is common law adapted to particularities: the place, time, circumstances, and people of a given polity.²³ This law serves to teach and compel the “symbiotes”²⁴ to follow the common law; the insufficient compulsion and specificity of common law is addressed here through the threat of punishment provided by a proper law system. To highlight the difference between the two, by common law, we understand that evil is to be punished, and by proper law, we determine what the punishment will be.²⁵ To be sufficiently distinct from common law as to constitute something new, proper law adds or subtracts from it, though it cannot ever be completely contrary to common law. It gains its legitimacy from its base in the common law inclinations.²⁶ Both of these types of law share a purpose of “justice and piety, or sanctity, and the same equity and common good in human society.”²⁷ Their common starting point is “the right and certain reason upon which both laws rely.”²⁸ Proper law is changeable, common law is not.²⁹ Proper laws are “fences,” as Althusius

on their hearts, their consciences also bearing witness, and their thoughts sometimes accusing them and at other times even defending them.”

²¹ *Politica*, 140.

²² *On Law and Power*, 11. *Politica*, 144.

²³ *Politica*, 144.

²⁴ This is Althusius’s term for the individual members of an associated body.

²⁵ For more information on the purpose and exercise of public punishment provided by law, see *Politica*, Ch. X-XVII “Secular Communication” p. 83.

²⁶ *Id.*, 144. One of Althusius’s tools for demonstrating this inclination-in-common is to cite in the original Latin *Politica* hundreds of sources of legal and historical texts with shared ideas and conclusions during each discussion, presumably to give credit to the idea that thinkers were all working with more or less the same conscience. In “A Demonstrative Theory of Natural Law,” Witte aptly terms this characteristic “intense eclecticism.”

²⁷ *Id.*, 145.

²⁸ *Ibid.*

The curious reader might wonder as to whether these terms will play a significant future role in *Politica*. They will not, right/proper reason make few and far between appearances in the *Politica* and are without definition or expansion, leading to the conclusion these function primarily as nods to the intellectual language of natural law discussions of the time more than as key components of his theory itself. Indeed, *Politica* deals with politics first and foremost.

²⁹ *Id.*, 145.

describes them, guiding us along the “appointed” way when we cannot divine the path completely for ourselves.³⁰ Therefore, the differences he saw between the legal systems of England, Germany, and France, for example, were to him differences in manifestations of proper law rather than in the basic human common law. Notably, Roman law is listed as proper law, though when interpreted and applied equitably in line with common law, it can be said to exude natural law.³¹

To understand the Decalogue’s central role in *Politica* and subsequent use in Althusius’s theories, we must establish why he deems it an appropriate source of natural law precepts. At a cursory glance, one might mistake it as the source of moral guidelines. However, Althusius importantly clarifies that the Decalogue is not natural law/common law in and of itself, but rather “agrees with and explains” the urges and inclinations experienced by every person.³² The “general theory and practice of love of God and one’s neighbor,” the natural law already written on our hearts, is merely expressed as a more concrete set of guidelines through these commandments. Though some deem this natural law purely theological, Althusius insists upon the importance of its inclusion within politics.³³ He concludes that piety and justice are necessary components of a well-ordered political society, and thus are essential to preserve when building a healthy life in common. In his eyes, the Decalogue is an instrument to help foster these qualities since it communicates how people ought to live and behave, infusing a “guiding light” into politics.³⁴ It only becomes theological when its commands are carried out with a heart toward pleasing God but can be secular and useful in its provisions for a just life.³⁵

With knowledge of these foundational pieces, we now approach the intriguing feature of Althusius’s body of works—the aforementioned natural law theory in *Politica* and the conflicting one in *Theory of Justice*. Both deal with duties owed by each person to various recipients. In *Politica*, which will be examined first, Althusius provides a “flat” interpretation of the Decalogue where duties to self and duties to others (subdivided into duties to one’s neighbor and duties to God) both arise from its ten precepts. The perfection, encapsulation, and furthest extension of these duties is the Golden Rule, or treating others as one would like to be treated (see Appendix A, Figure 2).

Politica’s introduction of duties to others appears in the discussion of duties that ought to be imparted to one’s neighbor. “The precepts of the Decalogue,” Althusius states, “are both affirmative and negative,”³⁶ so from each can be derived specific actions and inactions. He begins by determining what duties we owe to our neighbor, and from

³⁰ Id., 139.

³¹ Id., 148. Witte, “A Demonstrative Theory of Natural Law.”

³² *Politica*, 144.

³³ Such a categorical justification is all the more necessary given his adoption of the methods of Ramist logic.

³⁴ *Politica*, 11.

³⁵ Id., 147.

³⁶ Id., 80.

there we can also know what ought not to be done to our neighbor. These things owed, which are “his so that he rightly possesses them,”³⁷ are his life, the liberty and safety of his body, his dignity, reputation, good name, and honor, chastity of body, the right of family and citizenship,³⁸ and external goods. Althusius then explains how the second table of the Decalogue prescribes duties relating to safeguarding these very features.³⁹ Again, since not all men can divine and act on inclinations to owe such duties to others, “through the law comes knowledge of things to be done and to be omitted.”⁴⁰ Here, Althusius quotes from Romans 3:20.⁴¹ The second table thus teaches us of justice, of “the use of the body and of this life, and the rendering to each his due.”⁴²

Duties to others are broken down in *Politica* into “special” and “general” duties.⁴³ Special duties come from the fifth commandment and deal with what is owed by inferiors to superiors, namely, respect and obedience. Extrapolating from obedience to parental figures to obedience to all authority figures everywhere might seem too far a leap, but this aligns with Althusius’s treatment of the conjugal association as part of the “seedbed of all private and public associational life.”⁴⁴ Parental authority serves as a foundational model for larger scale political authority.

The rest of the commandments house general duties owed by each symbiote to everyone. This is the theory’s key feature. Althusius breaks each commandment down into both duties owed to others and corresponding duties owed to oneself. For example, regarding the sixth commandment, he interprets its instructions as “defending and preserving from all injury the lives of one’s neighbor and oneself,” and for the seventh, “guarding by thought, word, and deed one’s own chastity and that of the fellow symbiote, without any lewdness or fornication.”⁴⁵ When addressing this topic again in a later chapter, Althusius declares that within the sixth commandment, protection of one’s own life comes first and consists of “the defense, conservation, and propagation of oneself.”⁴⁶ In a political system, these duties serve to promote the utility and welfare of the associated body.⁴⁷

³⁷ Id., 80.

³⁸ Althusius distinguishes between citizens and “foreigners, outsiders, aliens, and strangers whose duty it is to mind their own business.” Id., 40.

³⁹ Nowhere else in *Politica* does Althusius argue that the specific duties owed to others come from ideas of objective possession of goods or qualities, so here, it can be interpreted he starts off going down this route most likely to highlight the Decalogue’s role as a device that coincides with the natural law inclinations of man.

⁴⁰ Id., 82.

⁴¹ “Therefore no one will be declared righteous in God’s sight by the works of the law; rather, through the law we become conscious of our sin.”

⁴² *Politica*, 75.

⁴³ Id., 52.

⁴⁴ Id., 31.

⁴⁵ *Politica*, 52. For full discussions of the positive and negative duties of each commandment of the second table, see Ch. VII-VIII “The Province” p. 52, Ch. X-XVII “Secular Communication” p. 81, and Ch. XXI-XXVII “Political Prudence in the Administration of the Commonwealth” p. 142-143.

⁴⁶ *Politica*, 142.

⁴⁷ Id., 75.

Fostering piety and justice is a consistent theme in the body of *Politica* with the former always tied to the first table of the Decalogue and the latter to the second table.⁴⁸ While duties to neighbors and the corresponding duties to self constitute justice, duties to God in commandments one through four are devices to promote piety and the glory of God.⁴⁹ These break down into private internal worship, private external worship, and public worship.⁵⁰ Notably, the second table is said to yield to the first as a higher law.⁵¹ Again, while some might deem the supposed virtue of these behaviors to be solely theological, Althusius claims they are necessary for any natural law, since, “if symbiosis is deprived of these qualities, it should not be called so much a political and human society as a beastly congregation of vice-ridden men.”⁵² He even goes as far as to say that religion is the fountain of all symbiotic happiness, since true piety is linked to belief in eternal salvation.⁵³

The final step in this system of ought and ought-not behaviors is the Golden Rule. Though less emphasis is given to this topic than to justice and piety, Althusius describes it as the summation of the principles of justice. While the Decalogue embodies common law inclinations, the Golden Rule must be of supernatural origin, for such a standard cannot be reasoned to or deduced from the natural world. Instead, its existence and binding moral authority arises from divine revelation through scripture. For this reason, Althusius places it in the third and final tier. To explain this concept, he cites Matthew 22:39,⁵⁴ 7:12,⁵⁵ Shabbat 31a,⁵⁶ and, interestingly, the Digest.⁵⁷ The Golden Rule seems to be the ultimate culmination and perfection of justice, and to that effect Althusius states, “Above all, we vouchsafe and do to our neighbor what we wish to be done to ourselves.”⁵⁸

When moving from *Politica*, a theory of a political system, to *Theory of Justice*, a comprehensive work on law and justice, one might expect a more in-depth discussion of this same natural law theory. Instead, one finds intriguing differences at the core

⁴⁸ Id., 12, 74.

⁴⁹ Id., 75

⁵⁰ Id., 52. For further discussion of affirmative and negative commands of each commandment of the first table, see Ch. XXI-XXVII “Political Prudence in the Administration of the Commonwealth” p. 141-142.

⁵¹ Id., 141.

⁵² Id., 147.

⁵³ Id., 161.

⁵⁴ (37) “Jesus replied: “Love the Lord your God with all your heart and with all your soul and with all your mind.’ (38) This is the first and greatest commandment. (39) And the second is like it: ‘Love your neighbor as yourself.’”

⁵⁵ “So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets.”

⁵⁶ (6) “That which is hateful to you do not do to another; that is the entire Torah and the rest is interpretation.”

⁵⁷ “Justice is a steady and enduring will to render unto everyone his right. (1) The basic principles of right are: to live honorably, not to harm any other person, to render to each his own. (2) Practical wisdom in matters of right is an awareness of God’s and men’s affairs, knowledge of justice and injustice.” D 1.2.

Althusius’s inclusion of Roman law on seemingly the same level of moral authority as general scriptural verses appears puzzling at first, but the reader might refer back to his strategy of citing ideas in common in legal systems and also the idea that proper law, when interpreted in line with common law, can be treated as a legitimate extension as such. This is not such a problematic use of Roman law as that in *Theory of Justice* since here, this citation is supplementary to biblical texts and does not function as the sole source of the most primal common law urges.

⁵⁸ *Politica*, 81. Althusius sums his entire system on id., 74 stating, “We should live temperately towards ourselves, justly towards others, and piously towards God.”

level meriting further exploration. Althusius breaks down natural law obligations in Book 1, Chapter 13 “On Common Law,” which can be understood as a system of three tiers (see Appendix A, Figure 3). First, there exists duties to oneself in the form of three impulses: self-defense, self-preservation, and self-promulgation. This initial tier can be understood as the most basic, and Althusius derives authority for his claims about the personal duty of self-defense from Roman law, citing the Institutes,⁵⁹ Codex,⁶⁰ and Digest.⁶¹ For legitimizing self-preservation, Althusius cites biblical sources. Though, when he pulls from the Christian canon in Ephesians and Colossians, the verses he cites either have little to do with self-preservation⁶² or merely speak of men nourishing their bodies, so what exactly he is referring to there is unclear.⁶³ While this implies, at the very least, the benefits of self-preservation, the only direct instructions for doing good to oneself come from citations of the apocryphal book of Sirach.⁶⁴ With respect to self-propagation, Althusius again refers to the Institutes, referencing a chapter on the Law of Nature being those urges that are shared between animals and humans, such as the desire to procreate.⁶⁵ These laws of nature are said here to be those “... which all nations observe alike, being established by a divine providence, and remain ever fixed and immutable.”⁶⁶ The basis of Althusius’s *Theory of Justice* natural law system, or that which constitutes this first tier, is partly these animalistic traits, the inclinations common to everyone by virtue of being a human. This mix of biblical and Roman behavioral guidelines also presents a less rationalist origin than the *notio* and *inclinatio* of common law.

The theory then expands outward to the second tier of duties to others, which breaks into duties to God and duties to our neighbor. The knowledge and worship of God (piety) is said to come from the first table of the Decalogue while protecting one’s

⁵⁹ “To kill wrongfully is to kill without any right; consequently, a person who kills a robber is not liable to this action, that is, if he could not otherwise avoid the danger with which he was threatened.” (3) “Nor is a person made liable by this law, who has killed by accident, provided there is not fault on his part, for this law punishes fault as well as wilful wrongdoing” For more examples, see the rest of Title III De Lege Aquilia. I 4.3.2-3.

⁶⁰ Althusius refers to part of a collection of imperial decrees expanding basic self defense to the integrity not just of one’s body, but also of one’s property, specifically through recompense for private property damages. C 3.35.

⁶¹ “You see, it emerges from this law (*jus gentium*) that whatever a person does for his bodily security he can be held to have done rightfully; and since nature has established among us a relationship of sorts, it follows that it is a grave wrong for one human being to encompass the life of another.” D 1.2.

⁶² See Colossians Ch. 2.

⁶³ Ephesians 5:29- “After all, no one ever hated their own body, but they feed and care for their body, just as Christ does the church—”

⁶⁴ Sirach 4:5-6 (Douay-Rheims 1899 American Edition)- “To whom will they be generous that are stingy with themselves and do not enjoy what is their own? (6) No one is meaner than the person who is mean to himself, this is how his wickedness repays him.”

This section also claims the associated citations will direct the reader to sources pertaining to protection of one’s property, but the only subjects in them remotely approaching such protection are warnings against coveting and adultery. (see Sirach 23:21, Sirach 30:26) One wonders why Roman law, if deferred to regarding other duties to self, is not also cited here given its abundance of instruction as regards property law.

⁶⁵ “The law of nature is that law which nature teaches to all animals. For this law does not belong exclusively to the human race, but belongs to all animals, whether of the air, the earth, or the sea. Hence comes that yoking together of male and female, which we term matrimony; hence the procreation and bringing up of children. We see, indeed, that all the other animals besides man are considered as having knowledge of this law.” I 1.2.

⁶⁶ *Ibid.*

neighbor (justice) comes from the second just as in *Politica*.⁶⁷ Finally, duties to others are said to ultimately teach us “whatever you wish to be done to you, you should also do to another,” or the Golden Rule. These outward tiers reflect an identical structure to that of *Politica*. It is in the first tier that the differences emerge.

Now able to weigh these two theories against one another, it becomes clear that the *Theory of Justice* model, though not without certain muddled elements, presents the more philosophically grounded theory. This is a result of the weakness of the argument of duties to self in *Politica*. For example, as regards the duty of “defense, protection, and conservation of one’s own life and that of the neighbor” within the sixth commandment, Althusius argues protection of one’s own life is primary,⁶⁸ but fails to provide solid ground for this claim. He even changes course in Ch. I, discussing the benefits of prioritizing others over oneself with references to 1 Corinthians 10:24⁶⁹ and Philippians 2:4.⁷⁰ In searching for some semblance of an explicitly stated right to self-defense in *Politica* like that provided by *Theory of Justice*, Althusius determines, “No one can renounce the right of defense against violence and injury.”⁷¹ He also names “defense of liberty and of one’s rights, and the repulsion of a launched attack” as a possible cause for a just war.⁷² However, in the same section he delineates “defense” as “either of your own nation or another,” so it is unclear whether this discussion is applicable to the personal level. Indeed, the defense of life, honor, reputation, and goods is entrusted to the Supreme Magistrate.⁷³ Following Althusius’s schema,⁷⁴ this implies that these rights of defense, in order to have been conceded to the magistrate, did at one time belong to the conceding unit, but as we have discussed above, the smallest unit of this system is the family and the collegia, not the individual. These statements offer no illustration of any individual right to protection, leaving the *Politica* theory without legs.

The only other mention of self-defense in *Politica* appears in Chapter XXXVIII “Tyranny and Its Remedies,” but readers will see this also is not an indication of this personal right in Althusius’s schema. He begins by asserting that the proper course of

⁶⁷ On Law and Power, 10.

⁶⁸ *Politica*, 142.

⁶⁹ “No one should seek their own good, but the good of others.”

⁷⁰ “... not looking to your own interests but each of you to the interests of the others.” Behavioral commands Althusius provides from scriptural passages in the New Testament would have likely been regarded by him as compulsory and legitimate given his Calvinist background. However, readers ought to keep in mind that within his system, only the Decalogue represents common law. The rest of Scripture can be understood as an expansion on these general principles.

⁷¹ *Politica*, 125.

⁷² *Politica*, 187.

⁷³ The administrator and steward of the rights of sovereignty in the association; the highest political figure. Id., 168, 178, 190.

⁷⁴ Power, authority, and sovereignty of leaders is theirs only by a concession on the part of the people, with whom the right to sovereignty ultimately and originally lies. In order for a leader to have possessed a certain right to an action, it must have at one time belonged to and been conceded by the people. Id., 72-73.

action when faced with a “tyrant by practice”⁷⁵ is to flee since individuals do not have the “right of the sword,”⁷⁶ e.g. David hiding from Saul in the mountains.⁷⁷ Notably, he follows that when “manifest force” is applied by the tyrant to individual symbiotes, “then in the case of the need to defend their lives resistance is permitted to them.”⁷⁸ However, this resistance is limited; these private people must await the commands of the ephors⁷⁹ before acting. Though natural law is said to be the giver of this right,⁸⁰ Althusius offers little grounding. In essence, self-defense is a highly qualified right, far from an automatic remedy, and included as more of an afterthought in a later chapter rather than as a core component of the natural law theory in *Politica*.⁸¹ Though both models argue the primacy of self-defense, it is only *Theory of Justice* that offers a clear source of the right from Roman law.

Another shortcoming of *Politica* is its difficulty grounding any duty to oneself at all. In this work, Althusius places corresponding duties to self alongside the duties a symbiote owes to others via each of the Ten Commandments. As efficient as it is to pull all of these prescriptions from a single source, readers must nevertheless ask themselves, can duties to self be said to clearly follow from a list of prescribed treatment of others? Perhaps it might be said that the fact these duties are owed by others to us implies we ourselves are worthy of the same treatment, and thus owe it to ourselves. However, the Decalogue ultimately says absolutely nothing in and of itself regarding what we self-reflexively owe. Therefore, as Althusius has elected to utilize the Decalogue as the clarification of natural law and his only source of behavioral guidelines in *Politica*, the choice of this particular device limits him and does not properly allow for the duties to self he prescribes to it. Though raising the ever-present question of whether Roman law is actually a legitimate source to back up claims of duties to self in *Theory of Justice*, the model manages to offer evidence for them.

For a final complication, the order of the first tier of duties is afforded no clear hierarchy in *Politica*. The first table (duties to God) is said to be primary to the second table (duties to others), but if duties to others are at the bottom, which is the utmost priority, self-defense or piety? If duties to self are slightly superior correlatives

⁷⁵ Tyranny performed by an accepted member of office in the associated body in which one “neglected the just rule of administration, acts contrary to the fundamentals and essence of human association, and destroys civil and social life.” For a discussion of special and general tyranny, see *Id.*, 192-193.

⁷⁶ *Lit.*, “usus et jus gladii.” Althusius appears to use this term to refer to violent force exercised by public authority.

⁷⁷ *Id.*, 196.

⁷⁸ *Ibid.*

⁷⁹ Public ministers of the associated body at the same level as the Supreme Magistrate, elected by the people, and designed to serve as a power check.

⁸⁰ *Politica*, 196.

⁸¹ George H. Sabine, *A History of Political Theory*, Third Edition. (New York: Holt, Rinehart and Winston, Inc., 1962), p. 382.

Additional evidence that Althusius is not arguing for an individual right of self-defense and, instead, is arguing for the right to collective resistance through the ephors can be found by examining contemporary texts based on the same Calvinist principles. In *Vindiciae contra tyrannos*, published forty years prior to Althusius’s *Politica* by Huguenots (French Calvinists in the 1500-1600s), a right to resistance is given to inferior magistrates as a counteraction against royal power. Notably, “Its rights were the rights of corporate bodies and not of individuals.”

of duties to others in the second table, duties to God could be interpreted to be above them. The careful reader again asks why. This also marks a stark contrast to the *Theory of Justice* model where duties to self exist in the first tier, followed by duties to others and to God, with no explicit priority given to one over the other. This second model makes more sense given duties to others— to neighbors and to God— come from the same source, so are indeed equal in priority. In essence, in *Theory of Justice*, we find a far more satisfying and cohesive breakdown of duties owed, beginning with the individual to himself and extending to others, both to God and to men, and finally reaching fully outward with the Golden Rule.

As another advantage of the *Theory of Justice* model, this theory situates itself cohesively within Althusius's Calvinist perspective. It begins with base urges and extends outward with each layer requiring more intervention on the part of the supernatural. For example, in tier 1, one does not need to be taught a duty of self-propagation common even to animals. Duties to self via a connection to the same urges experienced by animals lines up well as the most base form of what is innate to every person, or the *notio* and *inclinatio*. Specific treatments of others and acts of worship to God are based on inclinations but are given more specificity in tier 2. A final tier 3 standard of treating others as one might like to be treated is not found in the state of nature, and thus requires supernatural intervention and guidance. This natural law system justifies and upholds the necessity of Althusius's own religious beliefs. This model also fits well within the schema of other sections of *Politica* with the family as the natural unit and the need for authority. In such discussions, Althusius states that, since hierarchies of inferiors submitting to superiors exist in the animal world, subjugation is also natural in the political order. "Common law," he states, "indicates that in every association and type of symbiosis some persons are rulers (heads, overseers, prefects) or superiors, others are subjects or inferiors."⁸² If the legitimacy of authority mirrors those models found in nature, the same can also be said of law.

Though more cogent in its tiers and evidence, *Theory of Justice* is not without its own limitations as a natural law theory. There remains the problem of Roman law, a proper law system, appearing at the center of a theory whose second and third tiers are common law and the perfection/supernatural extension of common law. During the High Middle Ages, Roman law was seen by Althusius and his contemporaries as a sound and excellent legal system,⁸³ but an appeal to the Roman canon is lacking in explicitly evidenced legitimacy within the entire schema of Althusius's thought. Perhaps he would claim the Roman law he cites for duties to self is sufficiently in alignment with common law to be considered natural law. Even if this interpretation was indeed his intention, one questions its arbitrary nature and propensity for self-

⁸² *Politica*, 20.

⁸³ Witte, "A Demonstrative Theory of Natural Law."

selection bias. Especially with a system designed to be universally applicable like *Politica*'s, readers might consider that not every thinker mixing religion, philosophy, and politics has so agreed on the validity of a right to self-defense that its existence can be presumed a settled matter.⁸⁴

Worthy of mention is a problem pertaining to both theories– the practicality of the inclusion of the Golden Rule within a schema of natural law reasoning. Along with the *Politica* cited verses previously mentioned, In *Theory of Justice*, we can understand this rule to be Matthew 7:2-12,⁸⁵ 1 John 2:11,⁸⁶ and Romans 2:13⁸⁷ among others.⁸⁸ This rule is included more as an afterthought in discussions of duties to others, but jurisprudentially, such a component being ascribed to a natural law behavioral system has significant ramifications for a legal system. Are punishments to be meted out for people who do not love their neighbors as themselves? While vices such as selfishness are not strictly forbidden in the Decalogue, with the inclusion of the Golden Rule, this act and others like it fall into a prohibited category. Since Althusius is attempting in *Politica* to build a system of associations that would be compatible across time and place in the fragmented medieval Germany he occupied, no concrete fleshing-out is done to his proposed behavioral system, and the general is favored over particular application. The reader is left wondering whether it would be possible, or in any sense practical, to include the Golden Rule as anything more than a lofty ideal.

Althusius's cogent systematization of a polity theoretically applicable to all in *Politica* is made more effective by the underpinned idea of natural law arising from inclinations possessed by every human being. Though the two models of this theory in his works share the majority of their features, the *Theory of Justice* use of Roman law in justifying duties to self is far more coherent than attempting to derive both these and duties to others via only the Decalogue in *Politica*. The commandments of this artifact itself limit how far Althusius can take it, perhaps unsatisfactorily so that he simply had no choice but to rely on an overextension in *Politica*. Rising in attention and importance, Althusius's philosophical thought will likely be afforded much upcoming analysis. The existence of two distinct theories within his body of works and their philosophical merits and downfalls must be recognized, especially with an eye towards comparing his schema to his contemporaries and placing him within the development of the modern canon.

⁸⁴ Augustine, notably, denies such a right.

⁸⁵ "For in the same way you judge others, you will be judged, and with the measure you use, it will be measured to you... (12) So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets."

⁸⁶ "But anyone who hates a brother or sister is in the darkness and walks around in the darkness..."

⁸⁷ "For it is not those who hear the law who are righteous in God's sight, but it is those who obey the law who will be declared righteous."

⁸⁸ For a comprehensive list, see *On Law and Power* p. 16, n 59.

APPENDIX A - FIGURES

Figure 1. The Ten Commandments, Exodus Ch. 20 (NIV)

Table 1.

1. "You shall have no other gods before me."
2. "You shall not make for yourself an image in the form of anything in heaven above or on the earth beneath or in the waters below. You shall not bow down to worship them..."
3. "You shall not misuse the name of the LORD your God."
4. "Remember the Sabbath day by keeping it holy. Six days you shall labor and do all your work, but the seventh day is a sabbath to the Lord your God. On it you shall not do any work, neither you, nor your son or daughter, nor your male or female servant, nor your animals, nor any foreigner residing in your towns."

Table 2.

5. "Honor your father and mother..."
6. "You shall not murder."
7. "You shall not commit adultery."
8. "You shall not steal."
9. "You shall not give false testimony against your neighbor."
10. "You shall not covet your neighbor's house. You shall not covet your neighbor's wife, or his male or female servant, his ox or donkey, or anything that belongs to your neighbor."

Figure 2. The *Politica* Model

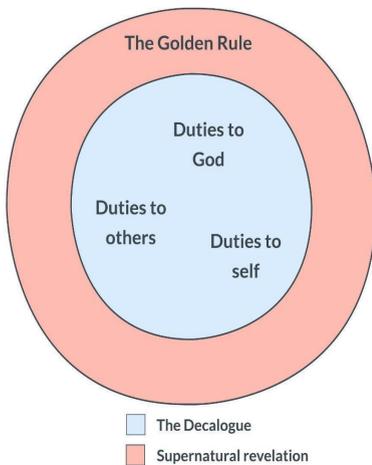
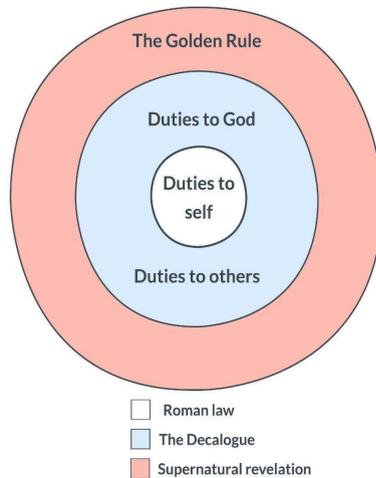


Figure 3. The *Theory of Justice* model



REFERENCES

- Althusius, Johannes. *On Law and Power*. Translated by Jeffery J. Veenstra. Grand Rapids: Acton Institute, 2013.
- Althusius, Johannes. *Politica*. Edited and translated by Frederick S. Carney. Indianapolis: Liberty Fund, 1995.
- “Annotated Justinian Code.” George W. Hopper Law Library. University of Wyoming. Accessed on December 23, 2023. <https://www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/books/book3/index.html>.
- Aristotle. *Politics: A New Translation*. Translated by C.D.C. Reeve. Indianapolis: Hackett Publishing Company, Inc., 2017.
- Bible Gateway. HarperCollins Christian Publishing. Accessed on December 23, 2022. <https://www.biblegateway.com/>.
- Duignan, Brian. “Johannes Althusius: German Political Theorist.” In *Encyclopedia Britannica*. Last modified August 8, 2022. <https://www.britannica.com/biography/Johannes-Althusius>.
- The Digest of Justinian: Volume 1. Translated and edited by Alan Watson. Philadelphia, Pennsylvania: University of Pennsylvania Press, 2009.
- Malan, Koos. “Johannes Althusius’s Grand Federalism, the Role of the Ephors and Post-Statist Constitutionalism.” *Potchefstroom Electronic Law Journal* 20, no. 1 (2017): 1–34. Accessed March 30, 2023. <https://doi.org/10.17159/1727-3781/2017/v20i0a1350>.
- Sabine, George H. *A History of Political Theory*, Third Edition. New York: Holt, Rinehart and Winston, Inc., 1962.
- The Institutes of Justinian. Translated by Thomas Collett Sanders. Westport, Connecticut: Greenwood Press, 1970.
- “Shabbat: Talmud: The William Davidson Edition.” Sefaria. Sefaria, 2021. <https://www.sefaria.org/Shabbat?tab=contents>.
- Witte, John Jr. “A Demonstrative Theory of Natural Law: Johannes Althusius and the Rise of Calvinist Jurisprudence.” *Ecclesiastical Law Journal* 11, no. 3 (September, 2009): 248–256. Accessed December 10, 2022. <https://doi.org/10.1017/S0956618X09990044>.