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Selections from
the *Dicaeologicae*

Johannes Althusius
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Introduction

Biographical Sketch

Johannes Althusius, whose surname appears variously as Althus, Althusen, or Althaus, was born in 1557 at Diedenshausen, a village in the countship of Witgenstein-Berleburg.¹ Very little is known for certain of his parents, his youth, or his early course of studies. He appeared at Cologne in 1581, where he apparently studied the writings of Aristotle. At some point prior to obtaining his doctorate, Althusius also studied law at Geneva with Denis Godefroy (1549–1622), the renowned legal scholar who published the first complete edition of Roman Civil Law in 1583.² He received his doctorate in both civil and canon law at Basel in 1586. Astonishingly, he published his first book *Jurisprudentiae Romanae*, which was a systematic treatise on Roman law based on the Godefroy edition, during the same year. While at Basel, he lived for a time in the home of Johannes Grynaeus (1540–1617), with whom he studied Reformed theology and thereafter maintained a lifelong correspondence.

In 1586, he accepted a call to teach in the newly founded law faculty in the Reformed Academy at Herborn. The Academy, which had been founded only two years earlier by Count John VI of Nassau-Dillenburg (1535–1606), became immediately successful and attracted an international student body. Its first rector was Caspar Olevianus (1536–1587), the coauthor with Zacharias

Ursinus (1534–1583) of the Heidelberg Catechism.³ As the first professor of law at Herborn Althusius began lecturing on Justinian’s *Institutes*, but his teaching interests soon shifted to the science of public law, or what is now political science. In 1589, he became a member of the count’s Chancery at Dillenburg and later became councilor to the count (1595).⁴ After studying theology for a time in Heidelberg,⁵ Althusius was made rector of the Academy in 1597. His second book, a volume on ethics titled *Civilis conversationis libri duo*, was published in 1601. The most notable achievement of his tenure at Herborn was the publication in 1603 of the *Politica methodice digesta & exemplis sacris & profanis illustrata*, a work that received immediate and widespread attention.

Even though Althusius had already begun to establish a scholarly reputation with his first and second books, it was the *Politica* that seems to have been instrumental in securing for him an attractive offer to become syndic of Emden in Friesland. Althusius assumed his duties in 1604 and led the city’s legal and political affairs without interruption until his death in 1638. During his lengthy term of service, he engaged in strategic diplomatic missions with the territorial authorities to assist Emden in achieving independent statehood, he also developed and maintained a municipal constitution, and kept up with his literary pursuits. He published two new and enlarged editions of the *Politica* (1610 and 1614), and also wrote the *Dicaeologicae* (1617), a work in which he systematized the entire body of existing law and coordinated it with Roman and Jewish civil law. In 1617, Althusius was elected elder of the church of Emden, and was highly esteemed by the Reformed clergy under the leadership of Menso Alting (1541–1612). “There is a sense in which [Althusius’] two functions of syndic and elder, coupled with capacities for leadership and hard work,” observes Carney, “enabled him to coordinate the civil and ecclesiastical jurisdictions of the city, and thus to exercise somewhat the same kind of influence in Emden as Calvin did in Geneva.”⁶

Johannes Althusius: Political Theorist, Jurist, Syndic of Emden

Until Otto von Gierke’s (1841–1921) rediscovery of Althusius in the 1880s, few political theorists and jurists, and even fewer theologians, had any substantive appreciation for Althusius’ contribution to either the Western political

canon or the Western legal tradition. One possible explanation for the rather slow reception of Althusius among twentieth-century scholars, at least until recently, is that prior to Frederick Carney's 1964 translation there had been no published translation of a substantial portion of the *Politica* in any vernacular language.⁷ This state of affairs has changed in the last few years. In 2003, an unabridged translation of the *Politica* into German was published,⁸ leaving the rest of Althusius' corpus untranslated from the Latin originals, the only exception being the selections from the *Dicaeologicae* that now appear in the *Journal of Markets and Morality* for the first time in English translation.⁹ Another factor contributing to his relative obscurity, however, is less benign: Althusius was the focus of a maelstrom of criticism from all sides by seventeenth-century polemicists, including Henning Arnisaeus (d. 1636) and Hugo Grotius (1583–1645). From the mid-seventeenth century onward, he was routinely attacked by Hermann Conring, Naamann Bensen, Peter Gartz, Johann Heinrich Boecler (1611–1672), and Ulrich Huber (1636–1694) who insisted that the *Politica* was “a book worthy of the flames,” “the most noxious fruit of Monarchomachism,” “the dogma of popular sovereignty a product of Presbyterian error,” and its author “the seditious architect of disorder.”¹⁰

It should hardly be surprising that the *Politica* would occasion such searing indictments for it vigorously defended the local autonomies of the old plural order of guilds, estates, and cities against the rise of territorial absolutism and those early apologists of the modern unitary nation state such as Jean Bodin (1520–1596) and Thomas Hobbes (1588–1679). Furthermore, in later editions of the *Politica*, Althusius urged readers to follow closely the logic of the arguments presented therein because they provided theoretical justification for the Dutch revolt from Spain. That much is clear from the dedication of the book (second and third editions) to the Estates of Frisia, which he praised for their role in resisting the king of Spain and in fearlessly proclaiming the right of sovereignty “to reside in the association of the multitude and the people of the individual provinces.”¹¹ Needless to say, the *Politica* was one of the most widely read and, by some, the most despised book of its day.

Besides the *Politica*, Althusius wrote a series of treatises in jurisprudence, of which two undertook a systematic treatment of civil law. The first of these appeared in 1586 at Basel under the title: *Jurisprudentiae Romanae libri duo ad leges methodi Rameae conformati et tabellis illustrati*. This book was widely used as a legal textbook and went through several editions. It was later

completely revised and published (at Herborn in 1617, and at Frankfurt in 1618 and 1649) as *Dicaeologicae libri tres, totum et universum jus, quo utimur, methodice complectentes, cum parallelis hujus et Judaici juris, tabulisque insertis atque Indice triplici*. The *Dicaeologicae* was an immense work (792 Latin folio pages) that sought to construct a single comprehensive juridical system by collating the Decalogue, Jewish law, Roman law, and various streams of European customary law. In the preface to the *Dicaeologicae*, Althusius explains that the *Jurisprudentiae* “has been praised and attacked at different times in different places contrary to my thoughts and anticipations.” In fact, “learned and eminent men have advised me a number of times to recall that treatise so that I might iron out and explain more fully what I expressed rather succinctly, briefly, and obscurely. Diligently have I obeyed my advisors and whatever leisure time I have had away from my duties and obligation to the state I devoted to this concern and pursuit. These earlier concerns have produced a work that is almost completely new and is, in fact, different in many ways from the previous one.”

The *Dicaeologicae* was Althusius’ principal juridical work and evidences the “method” of legal systematization initiated at Wittenberg by Johann Apel (1486–1536) and Konrad Lagus (ca. 1499–1546). The new legal science pioneered in the works of Apel, Lagus, Nicolas Vigelius (1529–1600), and other early and middle sixteenth-century German Protestant jurists was strongly influenced by the topical method of the Reformer Philip Melanchthon (1497–1560) and developed over the next two centuries by jurists throughout Europe, both Roman Catholic and Protestant. In Harold Berman’s estimation, Johannes Althusius and Nicolas Vigelius are “among the most prominent German legal ‘methodists’ of the latter part of the sixteenth century.”¹² The new legal science differed from the earlier legal sciences “in its use of topical method to analyze and synthesize law as a whole as well as to analyze and synthesize the various systems of law that prevailed in Europe—Roman, canon, royal, feudal, mercantile.”¹³ It was this legal science, above all, contend Berman and Reid, “that constituted the basis of the new European *jus commune* of the sixteenth to eighteenth centuries. The legal scholars who developed it formed a pan-European class of jurists, a *Juristenstand*, who wrote not only for their respective countrymen but also, and sometimes primarily, for each other.”¹⁴

Finally, for the sake of completeness in our survey of Althusius’ corpus, we should mention that he also wrote a system of practical ethics, which his cousin

Philipp Althusius published under the title: *Joh. Althusii V. Cl. Civilis conversationis libri duo, methodice digesti et exemplis sacris et profanis passim illustrati* at Hanau in 1601 (2d ed. 1611).¹⁵

The Modern, Interdisciplinary Renaissance in Althusius Studies

As mentioned above, the modern resurgence of interest in Althusius began with the nineteenth-century German jurist and historian Otto von Gierke.¹⁶ Gierke recovered Althusius from two centuries of relative obscurity and attributed to the *Politica* the distinction of making one of the pivotal contributions to Western political thought. He saw in Althusius a seminal thinker who was enabled by an exceptional education in law, theology, politics, and history to develop a political theory that served as a capstone of medieval social thought and a precursor to modern political ideas.¹⁷ The chief feature of this theory, Gierke thought, was its federalist structure, which he understood to result from an admixture of contractual and natural-law principles. Althusius' main contribution, in Gierke's words, was "to give logical unity to the federal ideas that simmered in the ecclesiastical and political circles in which he lived, and to construct an audacious system of thought in which they all found their place."¹⁸ Gierke believed, however, that he could discern deist and rationalist elements in Althusius' system that arose from his supposed sequestering of religious belief from political theory.¹⁹

The renewal of interest in Althusius was given further impetus by the work of Carl Joachim Friedrich,²⁰ who, as Carney states, "in 1932 not only republished the largest part of the 1614 edition of the *Politica* in its original language, but also provided for it an introduction that considerably advanced our knowledge of Althusius' life as well as his thought."²¹ Friedrich, contrary to Gierke, focused attention on the concept of the symbiotic association as the foundation of Althusius' political theory and on his religious beliefs as the interpretive key to understanding the concept of symbiosis. Nonetheless, like Gierke, Friedrich conceded that Althusius seemed to be drifting toward deism though, in his judgment, the move was attributable to "the rigid determinism of the dogma of predestination" as it came to expression in his new science of politics.²² Friedrich self-consciously read Althusius through the interpretive

lens provided by Max Weber, and so, concluded that Althusius' alleged biological naturalism (*symbiosis*) and determinism were rooted in his Calvinist concept of God,²³ that stressing the emotional bonds among persons living in groups led to his formulation of a theory of the corporate state (akin to the collectivist states of Italy and Russia in the 1930s),²⁴ and that utilitarianism had come to maturity in his version of secularized Calvinism.²⁵ Despite the evident differences in their appraisals of Althusius, Friedrich shared with Gierke a very high estimate of Althusius' importance, so much so, in fact, that Friedrich considered him to be "the most profound political thinker between Bodin and Hobbes."²⁶

In addition to Gierke and Friedrich, the two scholars most responsible for reestablishing Althusius' reputation after a three-hundred-year hiatus, there is a broad array of twentieth-century scholars from various disciplinary backgrounds who have devoted considerable attention to his thought. As might be expected, political theorists and historians have been in the vanguard of scholars assessing the importance of Althusius' contribution to the development of the Western political tradition. The older generation of political historians, such as A. J.²⁷ and R. W. Carlyle,²⁸ William Archibald Dunning,²⁹ and John Neville Figgis,³⁰ all acknowledge a debt of gratitude to Gierke for reviving interest in Althusius, on the one hand, and largely follow his lead in viewing Althusius as an early proponent of social contract as the foundation of an ordered and authoritative political society, on the other.³¹ A. P. d'Entrèves,³² in particular, subscribes to Friedrich's version of the Weber thesis—that Althusius' political theory was an attempt to develop the implications of a deterministic doctrine of predestination for the natural order—and, on that basis, concludes that Calvinist nominalism led inexorably to Hobbesian voluntarism.³³

By mid-century, scholars were already skeptical of Gierke's and Friedrich's assessments of the relationship of Althusius' religious beliefs to his political theory and sought to address a broader range of topics in Althusian scholarship. Pierre Mesnard³⁴ and Frederick Carney,³⁵ for example, provided extensive analyses of Althusius' constitutionalism, focusing on the institutional foundation of his political theory in the associations of civil society. Stanley Parry addressed the issue of the relationship of political norms to processes in Althusius. He suggested that Althusius' concern with symbiosis is actually a search to find a means for obtaining participation by the people in decisions that rulers conceive to be the demands of natural law.³⁶

In the 1950s and 1960s Ernst Reibstein,³⁷ Peter Joachen Winters,³⁸ Erik Wolf,³⁹ and Eckhard Feuerherdt⁴⁰ focused scholarly attention on the antecedents, application, and role of the natural-law tradition in Althusius' thought. Reibstein and Winters, in particular, disagreed over the extent to which Althusius worked within the natural-law tradition and the way he related it to the moral precepts of the Decalogue. Reibstein argued Althusius first became acquainted with the natural-law tradition of the Spanish school of Salamanca through Diego Covarruvias' and Fernando Vázquez's writings on Roman law jurisprudence. He contends Althusius' early conflict with the Herborn theological faculty already evidences his inclination toward a "natural-law interpretation of the Bible"⁴¹ by reducing the commands of the Decalogue to the precepts of natural law. Therefore, when Althusius appeals to profane examples in the *Politica* to illustrate his theory, Reibstein thinks he intentionally employs the humanistic natural-law methodology of the Spanish school with only minor modifications.

Winters responds to Reibstein with a Barthian-style argument claiming precisely the opposite. According to him, Althusius developed a "biblical or Christological interpretation of natural law"⁴² because, for Althusius, it was not possible to speak either of the Decalogue or the *lex naturalis* except through Christ, the One who is the very fulfillment of the moral law. For this reason, then, Winters insists Althusius does not appeal to an abstract ontology to ground his formulation of natural law but rather to God's sovereign will and the revelation of his justice ascertained through Scripture alone. Unfortunately, neither Reibstein nor Winters look to antecedents in the Reformed tradition (other than Calvin) to assist in tracing the development of Althusius' doctrine of natural law. More recently, however, several German scholars associated with the Johannes Althusius Gesellschaft have labored to fill in the historical gaps of our knowledge concerning the theological texts, traditions, and institutions that influenced Althusius' thought.⁴³

In the early 1970s, scholars began making a concerted effort to probe the theological (covenantal) and political (federalist) dimensions of Althusius' thought. Building on the work of P. S. Gerbrandy,⁴⁴ neo-Calvinist James Skillen⁴⁵ sought "to discover the place of Althusius in the development of Dutch Calvinist political thought" and, in so doing, challenged Gierke's and Friedrich's understanding of Althusius' religious beliefs and discerned the importance of the concept of symbiotic communities for later Dutch Calvinist

political thinkers. Skillen comments that neither Groen van Prinsterer nor Abraham Kuyper display “any direct knowledge of Althusius’ writings, yet the most important twentieth-century political thinker from those circles, Herman Dooyeweerd, recognizes in Althusius the kernel of truth that lies at the heart of his own covenantal political perspective.”⁴⁶ Dooyeweerd praises Althusius for being the first to take account of “internal structural principles in his theory of human symbiosis” but thinks this insight put him “in opposition to the entire medieval-Aristotelian tradition.”⁴⁷ Unfortunately, Skillen accepts Dooyeweerd’s judgment that Althusius developed his doctrine of symbiosis and understanding of common law (i.e., natural law) and proper law (i.e., positive or customary law) along non-Aristotelian, nonscholastic lines.

Skillen is concerned to rebut Friedrich’s claim that Althusius, as an Aristotelian, is merely using the concept of symbiosis to develop the Graeco-Roman tradition of state absolutism.⁴⁸ However, instead of acknowledging Althusius’ obvious debt to Aristotle and the ways in which Althusius’ thought is either continuous or discontinuous with Aristotle’s, Skillen juxtaposes Dooyeweerd’s antiecclesial, antischolastic mentality to Friedrich’s position as mutually exclusive alternatives. “If Friedrich is correct, then there is no conception in Althusius of an internal difference of nature, or independence, of the various human associations. If Dooyeweerd is correct, then we will discover in Althusius a definite limit to the state according to its peculiar nature—a limit which is determined, at least in part, by the peculiar natures (and laws) of other human association which will not permit the state to ‘devour’ the entire community.”⁴⁹ Thus, Skillen feels compelled to assent to Dooyeweerd’s viewpoint that Althusius had not yet fully separated himself from “the old Roman Catholic culture with its scholastic thinking” to discover “God’s order for the creation (including human social life) not the order which the church had sought to impose upon it.”⁵⁰ As a result of accepting Dooyeweerd’s analysis, Skillen does not appreciate fully the extent to which Althusius utilized the work of such Protestant Scholastic writers as Philip Melancthon, Heinrich Bullinger (1504–1575), John Calvin (1509–1564), Peter Martyr Vermigli (1499–1562), Jerome Zanchi (1516–1590), and Franciscus Junius (1545–1602),⁵¹ on the one hand, and the precise relationships Althusius establishes between the concepts of *jus commune*, *jus naturale*, *lex moralis*, *lex naturalis*, *lex communis*, *lex propria*, and *lex divina*, on the other.⁵²

Contemporary theologians and political theorists, such as J. Wayne Baker, Alain de Benoist, Daniel Elazar, Ken Endo, Thomas Hueglin, Fabrizio Lomanaco, Charles McCoy, and Patrick Riley, who are each interested in reinvigorating federalist political structures, have devoted extensive scholarly attention to Althusius' role as a codifier and theorist of European confederal political arrangements of the late sixteenth and early seventeenth centuries. While each of these scholars would add important qualifications to the following statement by Elazar, they would all agree that "the federal theology that [Reformed Protestantism] articulated . . . stimulated the renewed political application of the covenant idea, which was given expression first by political theologians and then by political philosophers such as Althusius and in the next century was secularized by Hobbes, Locke, and Spinoza."⁵³ Each of the aforementioned scholars has approached the matter of Althusius' contribution to the development of federalism from different but complementary perspectives.⁵⁴

J. Wayne Baker,⁵⁵ Fabrizio Lomonaco,⁵⁶ and Charles McCoy,⁵⁷ for example, focus on the relationship of Reformed covenantal theology to federal theories of government in the post-Reformation era of England, Germany, the Netherlands, Switzerland, and France. They are interested in showing that Althusius' federal political philosophy arose out of the political and theological climate of the time. According to Baker and McCoy, federal political models "were widely practiced, especially in areas influenced by the Reformed tradition coming from Zurich and Bullinger. Althusius could draw, therefore, on many actual examples of operating federal polities as well as scholarly treatises of the past and present on government."⁵⁸ Furthermore, McCoy insists that covenant is the root metaphor by means of which Althusius understands human society. In fact, he thinks the concept of covenant (*pactum*) is what ties together the various streams of Greek, Roman, biblical, and sixteenth-century polities from which Althusius draws.⁵⁹

During his lifetime, Jewish scholar Daniel Elazar was at the forefront of the twentieth-century interdisciplinary and ecumenical interest in assessing Althusius' contribution to the development of federalism. Throughout publications spanning more than three decades, Elazar argued that the arduous road to modern democracy began with the Protestant Reformation's revival of the biblical-covenantal tradition of politics.⁶⁰ In his introductory essay to Carney's translation of the *Politica*, Elazar contended that exponents of Reformed Protestantism developed a theology and politics that set the Western world on

the road to popular self-government, emphasizing liberty and equality: “Only at the end of the first century of the Reformation did a political philosopher emerge out of the Reformed tradition to build a systematic political philosophy out of the Reformed experience by synthesizing the political experience of the Holy Roman Empire with the political ideas of the covenant theology of Reformed Protestantism.”⁶¹ Elazar’s main concern with the *religious* foundation of federalism centers in its origin in the covenantal structure of the Old Testament. Indeed, the argument could be made that Elazar’s legacy consists of having shown how the covenantal basis of Judaism was reiterated in Reformed Protestantism and later expressed in the federalist principles of the American polity.⁶²

By focusing on the constitutional dimensions of Althusius’ federalism, contemporary political theorists and legal scholars such as Michael Behnen,⁶³ Alain de Benoist,⁶⁴ Ken Endo,⁶⁵ Thomas Hueglin,⁶⁶ Patrick Riley,⁶⁷ and Nicholas Aroney⁶⁸ have provided nuanced assessments of Althusius’ political theory as a form of medieval corporatism and modern constitutionalism, on the one hand, and argued that his doctrine of subsidiarity can be seen as more-or-less consonant with modern federal (territorial) and confederal (nonterritorial) polities, on the other. Hueglin, in particular, has been a vigorous proponent of the confederal tradition of political thought that Althusius represents. He writes:

The classical canon of political thought has remained committed to the idea of state power as an independent variable of societal organization. Given the pluralization of power among political, economic, and social actors in the modern polity, the continued adherence to that canon amounts to nothing less than “studying the wrong authors.” Althusius reminds us not only that there is an alternative tradition of political thought that emphasizes the horizontal over the vertical in political life. His conceptualization of politics also serves as a reminder that the sovereign territorial state is but an episode in the history of political civilization.⁶⁹

The research team of Jacques Delors, president of the European Commission during the long and difficult gestation period of the Maastricht Treaty in the European Union, thinks the modern beginning of subsidiarity as a guiding principle of power allocation in plural systems of governance is to be found in a 1571 resolution passed by the Synod of Emden to govern the relationship between parishes and general synods. The researchers attribute the genesis of

this political principle to Calvinist “federal theology, Emden and Althusius,”⁷⁰ which predates Pope Pius XI’s famous description of the doctrine of subsidiarity in the 1931 encyclical *Quadragesimo Anno* (nos. 79–80) by nearly three and one-half centuries.

The *Dicaeologicae*: Significance and Overview

As Althusius indicates in the preface to the *Dicaeologicae*, he was not satisfied with the synthesis of law set forth in the *Jurisprudentiae Romanae*. And thus, for the next several years he sought to perfect his system in an effort to make it maximally coherent and comprehensive. Already in the year 1591, recounts Gierke, “Althusius gave to Corvinus, his publisher in Herborn who desired a new edition, a brief outline of his revised system which was prefixed to the edition of 1592 and the later Herborn editions under the title of *Epitome et brevis ... Dicaeologicae Romanae*.”⁷¹ The expansion of this project into a full account of the whole body of law was not completed until the publication of *Dicaeologicae libri tres, totum et universum jus, quo utimur, methodice complectentes* in 1617 at Herborn.

Yet, in Gierke’s judgment, the material of the *Dicaeologicae* is systematized to the point of being contrived. “From the first principles down to the most minute details it is deduced with inexorable rigor, one might even say fanaticism,” he states disparagingly of Althusius’ use of Ramist logic. “At every point the successive division of concepts is worked out by the force of dialectic. Often indeed the required dichotomy can only be set up by recourse to somewhat arbitrary antitheses, such as ‘general’ and ‘special.’”⁷² While Gierke was critical in general of Ramist logic and scholastic method, Berman has a firmer and more subtle grasp of the philosophical, theological, and philological antecedents of the new legal science of the sixteenth and early seventeenth century. The *Jurisprudentiae Romanae* and the *Dicaeologicae*, which were republished many times in the seventeenth and eighteenth centuries, writes Berman, “were in the tradition of Lagus and Vigelius; like them, Althusius divided all law into public law and private law, subdivided private law into ownership and obligation, subdivided obligation into contract, tort, and unjust enrichment, and sought to deduce from general concepts and general principles the detailed rules applicable to individual transactions.”⁷³ The systematization of law that took place in the sixteenth century in work of Apel,

Lagus, Vigelius, and Althusius “remain to this day the basic ‘topics’ of Western legal science.”⁷⁴

Before concluding, I will provide a brief overview of the *Dicaeologicae*, in which I rely upon Gierke’s helpful schematic,⁷⁵ and will state in broad strokes the significance of the material that has been translated. Althusius divides the science of law into a general and a special part, which are distinguished as the *membra* and the *species* of jurisprudence. As elements (*membra*) of all legal relations, a distinction is drawn between the *negotium symbioticum*, that is, the activity of human life as leading to the establishment of rights, and the *jus*, or law (right). Althusius divides the general part (I.1–34) into two sections.

The first section concerns the *negotium symbioticum* and the *factum civile*, or the business of this world. Its elements (*membra*) are things and persons. Persons are considered only insofar as their qualities, conditions, and strivings involve legal differences; following the strictures of Ramist method Althusius will not attempt to analyze aspects of persons that come into play in other disciplines such as political science, ethics, theology, or history (c. 1, nos. 9–10). Next, he analyzes things, their partition into real and ideal parts and their division into individual and composite things, with further subdivisions (c. 1, nos. 11–44). Then, he treats the person as *homo juris communionem habens*, which is divided into two species, first individual persons and the influence of inherited and acquired status (c. 5–6), and second the natural and voluntary associations of persons (c. 7–8). After this comes a section on the theory of the human act whereby the person constitutes things as elements of social relations (c. 9–12). Last comes a consideration of the various species of *factum civile* (c. 12, nos. 12–17).

The second section treats *jus*, which is divided into the theory of *constitutio juris* (or objective law) and *species juris* (or subjective law). The establishment of law takes place through a rational deduction from the essential nature of *negotium*. Natural law (or common law as Althusius refers to it), which is a significant source of law in general, is set up by common right reason (*recta ratio communis*) in accordance with the general requirements of human society (c. 13). Positive law (or individual, principal law as Althusius refers to it) is derived from the *recta ratio specialis* according to the special requirements of local patterns or customs of life (c. 14). The latter, to be considered law at all, however, must conform to the first principles of natural law, but, at the same time, to remain positive law, it must differ from natural law in its ability

to adapt to new concrete circumstances. In chapters 13 and 14 respectively, which appear in the scholia translation, Althusius treats in some depth first what law is and what normative significance the law inscribed on the heart has for civil law (c. 13) and then discusses the various species of written and unwritten positive law (c. 14).

He next addresses *dominium* and *obligatio*, which as Gierke states, are in general distinguished as “real right” and “personal right.” Under *dominium* he treats various species of ownership, and extends his discussion to a possession of things (c. 18–21). But so-called real rights in the property of others can take various forms of servitude, which he analyzes in detail (c. 22–24); they can also be understood in terms of power relations, which he addresses in considerable depth (c. 25–33). It is important to be clear that Althusius classifies these issues under *dominium* because they partake of the nature of ownership. Under the general rubric of power (*potestas*), he treats various forms of liberty such as the subjective rights of reputation, dignity, chastity, and bodily integrity (c. 25–26). Under the topic of alien power, he analyzes private power (c. 27–31) and public power (c. 32–33). The final two chapters of the scholia translation, chapters 32 and 33 respectively, concern the general nature of public power in civil and ecclesiastical realms (c. 32) and significantly the limitations to public power and civil authority (c. 33). He concludes this section with a general treatment of the second species of subjective right: obligation (c. 34). This concludes Althusius’ discussion of the general part of all legal relations.

The special part, or Species Dicaeologicae, is divided into the Dicaeodotica and the Dicaeocritica. The Dicaeodotica concerns the distribution of rights among people, and is divided into the Dicaeodotica acquirens (acquisition) and amittens (obligation). The remaining sections of book 1 concern the topic of how rights are acquired. After stating general principles governing the acquisition of rights (c. 35), Althusius takes up the acquisition of ownership, where he also discusses the right of inheritance (c. 36–63). He next addresses various relationships of obligation through contracts or delicts. Following this, he then proceeds to give a full treatment of the creation and operation of contracts and their several species (c. 64–97). Book 1 ends with a treatment of delicts that is expanded into a complete system of criminal law (c. 98–146).

Book 2 of the *Dicaeologicae* is concerned with the loss of rights. It deals first with the extinction of rights in general (II.1–11), and is then followed by a discussion of the special modes in which ownership and possession can be

abrogated (c. 12–13). Next is a treatment of the modes by which obligations can be terminated, particularly with respect to their performance (c. 14–22). Finally, there is a brief discussion of the discharge of obligation with respect to delicts (c. 23).

The *Dicaeocritica* concerns the matter of rights in dispute and of their trial and adjudication. This is the subject of book 3, wherein Althusius provides a systematic treatment of the whole law of procedure, including the law of actions.

Given our debt to Gierke in general for reviving interest in Althusius and mine in particular for his schematic of the *Dicaeologicae*, it seems fitting to allow him a final opportunity to shed light on the significance of the syndic of Emden's whole body of law:

The reception of doctrines of public law in the system of civil law is not itself peculiar to Althusius. As the whole exegetic literature since the Gloss upon the *Corpus Iuris Civilis* had brought the study of questions of public law within the sphere of the civil law, this arrangement was preserved by the "methodists." Of these but few attempted to sunder public law from private law as a separate domain; on the contrary, this was regularly treated as coming within the bounds of private law and more especially the law of Persons. But as these "publicistic" admixtures had grown out of the external condition of the original texts, they remained all the more an incidental and occasional adjunct. On the other hand, Althusius, who in the *Jurisprudentia Romana* had done much like his predecessors, set to work in full earnest in the *Dicaeologica* to incorporate the whole body of public law into the Civilian system. Here indeed, as he asserted and maintained at all points the theories already developed in his *Politics*, he had no difficulty in distributing the relations of public law under the rubrics of private law. The result was a unified legal structure, erected wholly in the style of private law and yet covering the groundwork of public law, the like of which was hardly ever constructed before or since.⁷⁶

—Stephen J. Grabill

Notes

1. In the interest of brevity, I have largely followed the overview of Althusius' life found in Otto von Gierke's *The Development of Political Theory*, trans. Bernard Freyd (New York: Howard Fertig, 1966), 19–21 and in Frederick S. Carney, "Translator's Introduction," in *Politica: An Abridged Translation of Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, ed. and trans. Frederick S. Carney (Indianapolis, Ind.: Liberty Fund, 1995), xi–xii.
 A longer, fuller treatment of his life can be found in Carl Joachim Friedrich's introduction to the *Politica Methodice Digesta of Johannes Althusius (Althaus)* (Cambridge, Mass.: Harvard University Press, 1932; New York: Arno Press, 1979), xxiii–xli; Thomas O. Hueglin, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* (Waterloo, Ont.: Wilfrid Laurier University Press, 1999), 29–41; and Corrado Malandrino, "Il *Syndikat* di Johannes Althusius a Emden: La ricerca," *Pensiero Politico* 28, no. 3 (1995): 359–83. This article endeavors to correct some of the weaknesses in Heinz Werner Antholz's *Die politische Wirksamkeit des Johannes Althusius in Emden* (Aurich: Abhandlungen und Vorträge zur Geschichte Ostfrieslands, 1955), the only major work on the subject.
2. Carney, "Translator's Introduction," xi.
3. *Ibid.*
4. The internationally esteemed legal historian Harold Berman makes a fascinating point about the dramatic change that occurred in the political role of the jurist during the sixteenth century. "Together with these rather obvious links between the new legal science and the new political order in Protestant principalities, there existed a more subtle link: the exaltation of the political role of the legal scholar. In pre-Reformation Europe as well, legal scholars had played an important role as advisors to popes, emperors, and kings. They also had sometimes been asked by judges to decide cases. Never before, however, had legal scholars been recruited as councilors and judges so systematically and on such a large scale as in the sixteenth-century German Protestant principalities. This was due in part, of course, to purely political factors; but it was also due in part to the character of the new legal science, which was so intellectually complex and intricate as to require professorial expertise to articulate and elucidate it." Harold J. Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 2003), 128.
5. Althusius' time in Heidelberg reading and interacting with the Reformed faculty was formative on his intellectual development. According to Carney, "The churchly writings of John Calvin, Jerome Zanchius, Benedict Aretius, and Zachary

Ursinus are the major sources for Althusius' exposition of the ecclesiastical order in both the province and the commonwealth. Zanchius' extensive discussion of law in his *De redemptione* contributes more than anything else to Althusius' understanding of the relation of the Decalogue to natural law, and of both to the proper laws of various nations. Then there are special topics on which Althusius finds his theological colleagues to be helpful, such as Peter Martyr's discussion of war" (Carney, "Translator's Introduction," in *Politica*, xxvii). Zanchi taught at Heidelberg from the late 1560s to the mid-1570s, during which he published his massive treatise on law (*De redemptione*). For more on Zanchi's influence on Althusius, see Stephen J. Grabill, "Introduction to D. Hieronymous Zanchi's On the Law in General," *Journal of Markets and Morality* 6, no. 1 (Spring 2003): 309–16; and Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics* (Grand Rapids, Mich.: Eerdmans, 2006), 132–42.

6. Carney, "Translator's Introduction," in *Politica*, xii.
7. Johannes Althusius, *Politics*, trans. Frederick S. Carney (Boston: Beacon Press, 1964). Liberty Fund reprinted the earlier translation and added a lengthy introduction by Carney, a foreword by Daniel Elazar, a chapter on the literary sources Althusius refers to in the translation, a note on the Liberty Fund edition, a collation of this translation with the 1614 edition, and a register of Althusius' writings.
8. Johannes Althusius, *Politik*, ed. Dieter Wyduckel, trans. Heinrich Janssen (Berlin: Duncker and Humblot, 2003).
9. The selections were translated from the second edition, revised, of the *Dicaeologicae*, which was published in Frankfurt in 1649 by the Heirs of Christophorus Corvinus. This edition of the *Dicaeologicae* was reprinted by Scientia Verlag (Aalen) in 1967.
10. Gierke, *The Development of Political Theory*, 16–18.
11. Johannes Althusius, "Preface to the 1614 edition," in *Politica*, ed. and trans. Frederick S. Carney (Indianapolis, Ind.: Liberty Fund, 1995), 14.
12. Berman, *Law and Revolution, II*, 124.
13. Harold J. Berman and Charles J. Reid Jr., "Roman Law in Europe and the *Jus Commune*: A Historical Overview with Emphasis on the New Legal Science of the Sixteenth Century," *Syracuse Journal of International Law and Commerce* 20 (Spring 1994): 26.
14. Berman and Reid, "Roman Law in Europe and the *Jus Commune*," 26.
15. Gierke, *The Development of Political Theory*, 21–22.

16. Otto Friedrich von Gierke taught law at the universities of Berlin, Breslau, and Heidelberg throughout his long and distinguished career. His chief works were *Das deutsche Genossenschaftsrecht*, 4 vols. (Berlin: Weidmann, 1868–1913) of which *Natural Law and the Theory of Society, 1500–1800*, trans. Ernest Barker (Cambridge: Cambridge University Press, 1950) is a translation of five subsections of the fourth volume; *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien: zugleich ein Beitrag zur Geschichte der Rechtssystematik*, 5th ed. (Aalen: Scientia, 1958), which was translated into English as *The Development of Political Theory* but first appeared as the third volume in the series above; and *Deutsches privatrecht*, 3 vols. (Leipzig: Duncker and Humblot, 1895–1917).
17. Carney, “Translator’s Introduction,” in *Politica*, ix.
18. Gierke, *Natural Law and the Theory of Society*, 70.
19. According to Gierke, “Althusius ... deduces his system in a rational way from a purely secular concept of society; for him biblical texts are merely examples, and the events of sacred as well as profane history serve as illustrations of the results which have first been reached by rational inference.” Gierke, *The Development of Political Theory*, 70, cf. 75. Unfortunately, Brian Tierney continues to read Althusius in the same vein as Gierke, see Tierney’s *Religion, Law, and the Growth of Constitutional Thought, 1150–1650* (Cambridge: Cambridge University Press, 1982), 71–79.
20. Friedrich was a professor of government at Harvard for many years during which he devoted a considerable portion of his scholarly attention to the work of Johannes Althusius. His chief works were Friedrich, “Althusius, Johannes,” in *Encyclopaedia of the Social Sciences*, vol. 2 (New York: The Macmillan Company, 1937), 13–14; Friedrich, “Introduction,” in *Politica Methodice Digesta of Johannes Althusius*, xv–cxviii; Friedrich, *Johannes Althusius und sein Werk im Rahmen der Entwicklung der Theorie von der Politik* (Berlin: Duncker and Humblot, 1975); and Friedrich, “Preface,” in *The Politics of Johannes Althusius*, trans. Frederick S. Carney (London: Eyre and Spottiswoode, 1965), vii–xii.
21. Carney, “Translator’s Introduction,” in *Politica*, ix.
22. Thus, writes Friedrich, “I believe that in order to comprehend adequately the place of Althusius in the history of thought, one must realize that he, like Hobbes, is attempting to develop the implications for a science of politics of the rigid determinism that the dogma of predestination meant in the natural order. How near he came to the elimination of a personal God is shown by the strange and oft repeated

sentence: ‘*Quod Deus est in mundo, lex est in societate.*’ God is here already an impersonal, normative force.” Friedrich, “Introduction,” lxxviii.

23. Friedrich, “Introduction,” lxxiii.
24. *Ibid.*, lxxxviii, lxxxiv–xciv.
25. *Ibid.*, lxxviii–lxxix.
26. *Ibid.*, xv.
27. A. J. Carlyle, *Political Liberty: A History of the Conception in the Middle Ages and Modern Times* (Oxford: Oxford University Press, 1941; London: Frank Cass and Company, Ltd., 1963), 5157.
28. A. J. and R. W. Carlyle, *A History of Mediaeval Political Theory in the West*, 6 vols. (Edinburgh and London: William Blackwood and Sons, Ltd., 1936), 6:357–63, 371–72, 394–95, 405–13, 498–501.
29. William Archibald Dunning, *A History of Political Theories from Luther to Montesquieu* (New York: The Macmillan Company, 1916), 61–67.
30. John Neville Figgis, *Studies of Political Thought: From Gerson to Grotius, 1414–1625* (Cambridge: Cambridge University Press, 1907), 175–85. Cf. John Neville Figgis, *The Divine Right of Kings*, 2d ed. (Cambridge: Cambridge University Press, 1922), 106–36, 219–55.
31. Contemporary political historian Quentin Skinner also reiterates Gierke’s estimate of Althusius as “the pivotal figure in the evolution of modern constitutionalism” and “as the first political philosopher who shook off ‘the whole theocratic conception of the State’” (341n1). However, like Gierke’s failure to account for Althusius’ use of Ramist logic in organizing the subject matter of the *Politica*, Skinner mistakenly concludes: “Althusius [had] the ambition to emancipate the study of ‘politics’ from the confines of theology and jurisprudence ...” (342) and, thus, “... outlined the principles of a new, secularized political science in his treatise entitled *Politics Methodically Set Forth*” (350). Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge: Cambridge University Press, 1978), 2:341–50.
32. Alessandro Passerin d’Entrèves, “Giovanni Althusio e il problema metodologico nella storia della filosofia politica e giuridica,” *Rivista internazionale di filosofia del dritto* 14 (1934): 109–23.

33. D'Entrèves, "Giovanni Althusio," 115–16. For a response to this allegation and for a fuller treatment of the problem of so-called "Protestant voluntarism," see Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics*, 54–69.
34. Pierre Mesnard, *L'essor de la philosophie politique de XVIe siècle* (Paris: J. Vrin, 1951).
35. Frederick S. Carney, "Associational Thought in Early Calvinism," in *Voluntary Associations: A Study of Groups in Free Societies*, ed. D. B. Robertson (Richmond, Va.: John Knox Press, 1966), 39–53; and Carney, "The Associational Theory of Johannes Althusius: A Study in Calvinist Constitutionalism" (Ph.D. diss., University of Chicago, 1960).
36. Stanley Parry, "The Political Science of Johannes Althusius" (Ph.D. diss., Yale University, 1953), 60–80, 189–201.
37. Ernst Reibstein, *Johannes Althusius als Fortsetzer der Schule von Salamanca: Untersuchungen zur Ideengeschichte des Recht-Staates und zur altprotestantischen Naturrechtslehr* (Karlsruhe: C. F. Müller, 1955).
38. Peter Joachen Winters, *Die "Politica" des Johannes Althusius und ihre zeitgenössischen Quellen: Zur Grundlegung der politischen Wissenschaft im 16. und im beginnenden 17. Jahrhundert* (Freiburg: Rombach, 1963).
39. Erik Wolf, *Das Problem der Naturrechtslehre: Versuch einer Orientierung* (Karlsruhe: C. F. Müller, 1964); and Wolf, *Grosse Rechtsdenker der deutschen Geistesgeschichte*, 4th ed. (Tübingen: J. C. B. Mohr, 1963).
40. Eckhard Feuerherdt, *Gesellschaftsvertrag und Naturrecht in der Staatslehre des Johannes Althusius* (Köln: R. Pulm, 1962).
41. Reibstein, *Johannes Althusius als Fortsetzer der Schule von Salamanca*, 13. For more on this altercation, see Friedrich, "Introduction," xxvii–xxix.
42. Winters, *Die "Politica" des Johannes Althusius und ihre zeitgenössischen Quellen*, 150–51.
43. As a recent addendum to the Reibstein-Winters exchange, Heinrich Janssen has investigated the way in which the Bible functioned as the foundation of Althusius' political theory, particularly with respect to his understanding of law and the relationship between church and state. Beyond stating that Althusius did not develop "a detailed and elaborate natural theology," Janssen argues parallel to Reibstein that Althusius' doctrine of natural law follows in the scholastic line of Aquinas, Covarruvias, and Vásquez and not in the early Enlightenment line of Grotius and

Pufendorf (95, 97). Heinrich Janssen, *Die Bibel als Grundlage der politischen Theorie des Johannes Althusius* (Frankfurt am Main: Peter Lang, 1992), 95–99.

See also the work of Helmut Hollenstein, “Schule und Erziehung bei Althusius, Calvin und Comenius in ihrer Bedeutung für die Gemeinschaftsbildung,” in *Jurisprudenz, Politische Theorie und Politische Theologie: Beiträge des Herborner Symposions zum 400. Jahrestag der Politica des Johannes Althusius 1603–2003*, ed. Frederick S. Carney, Heinz Schilling, and Dieter Wyduckel (Berlin: Duncker and Humblot, 2003), 7–22; Heinz Schilling, “Johannes Althusius und die Konfessionalisierung der Aussenpolitik—oder: Warum gibt es in der *Politica* keine Theorie der internationalen Beziehungen?” in *Jurisprudenz, Politische Theorie und Politische Theologie*, 47–69; Christoph Strohm, “Althusius’ Rechtslehre im Kontext des reformierten Protestantismus,” in *Jurisprudenz, Politische Theorie und Politische Theologie*, 71–102; and Merio Scattola, “Johannes Althusius und das Naturrecht des 16. Jahrhunderts,” in *Jurisprudenz, Politische Theorie und Politische Theologie*, 371–96.

44. P. S. Gerbrandy, *National and International Stability: Althusius, Grotius, Van Vollenhoven* (Cambridge, Mass.: Harvard University Press, 1944).
45. James W. Skillen, “The Development of Calvinistic Political Theory in the Netherlands, with Special Reference to the Thought of Herman Dooyeweerd” (Ph.D. diss., Duke University, 1974), 191–217; Skillen, “The Political Theory of Johannes Althusius,” *Philosophia Reformata* 39 (1974): 170–90; and more recently, Skillen, “From Covenant of Grace to Equitable Public Pluralism: The Dutch Calvinist Contribution,” *Calvin Theological Journal* 31, no. 1 (April 1996): 72–77.
46. Skillen, “From Covenant of Grace to Equitable Public Pluralism,” 72.
47. Herman Dooyeweerd, *A New Critique of Theoretical Thought*, 4 vols., trans. David H. Freeman and H. de Jongste (Jordan Station, Ontario: Paideia Press, 1984), 3:662, 662–63; also see Dooyeweerd, *De Strijd om het Souvereiniteitsbegrip in de Moderne Rechts- en Staatsleer* (Amsterdam: H. J. Paris, 1950), 7–8.
48. Friedrich, “Introduction,” lii–liii.
49. Skillen, “The Development of Calvinistic Political Theory in the Netherlands,” 201, 198–201; and Skillen, “The Political Theory of Johannes Althusius,” 178, 177–79.
50. Skillen, “The Political Theory of Johannes Althusius,” 172. For criticism of Dooyeweerd’s understanding of the nature-grace motif in Thomas Aquinas, which undergirds his antipathy toward scholasticism in general, see Arvin Vos, *Aquinas*,

Calvin, and Contemporary Protestant Thought: A Critique of Protestant Views on the Thought of Thomas Aquinas (Washington, D.C. and Grand Rapids, Mich.: Christian University Press and Eerdmans, 1985), 128–33, 148–52.

51. Cf. Robert M. Kingdon, “Althusius’ Use of Calvinist Sources in His *Politica*,” *Rechtstheorie* 16 (1997): 19–28; and Andries Raath and Shaun de Freitas, “Theologico-Political Federalism: The Office of Magistracy and the Legacy of Heinrich Bullinger (1504–1575),” *Westminster Theological Journal* 63 (2001): 285–304; Robert V. Friedeburg, “From Collective Representation to the Right to Individual Defence: James Steuart’s *Ius Populi Vindicatum* and the Use of Johannes Althusius’ *Politica* in Restoration Scotland,” *History of European Ideas* 24, no. 1 (1998): 19–42; John Lewis Marshall, “Natural Law and the Covenant: The Place of Natural Law in the Covenantal Framework of Samuel Rutherford’s *Lex, Rex*” (Ph.D. diss., Westminster Theological Seminary, 1995); and Grabill, *Rediscovering the Natural Law in Reformed Theological Ethics*.
52. Neo-Calvinist Gordon Spykman likewise following Dooyeweerd falls prey to exactly the same appraisal of Althusius as Skillen does. Like Skillen, Spykman credits Althusius with providing “the systematic climax of Calvinist social thought coming up out of the sixteenth-century Reformation, and with formulating the first clear statement of that complementary principle which in later Calvinist tradition came to be known as sphere sovereignty and sphere universality” (107). However, he contends that it is possible to criticize Althusian social philosophy on a number of dubious points. First, “It betrays remnants of an earlier scholastic notion of a certain hierarchy among social institutions” (107). Second, “It seems that legal norms are derived in part from natural-law theories” (107). Third, “A notion of popular sovereignty is present which leans toward a social contract theory of political authority” (107). Yet, despite these so-called defects, Spykman thinks that Althusius’ contribution to a pluralist social philosophy is considerable. Gordon Spykman, “Pluralism: Our Last Best Hope?” *Christian Scholar’s Review* 10, no. 2 (1981): 99–115. See also Spykman’s *Reformational Theology: A New Paradigm for Doing Dogmatics* (Grand Rapids, Mich.: Eerdmans, 1992), 20–25.

In contrast to Skillen and Spykman, neo-Calvinist social philosopher Henk Woldring presents a more accurate appraisal of the broad parameters of Althusius’ social philosophy, specifically with respect to his doctrine of natural law. Unlike Skillen and Spykman, Woldring does not filter Althusius’ understanding of natural law through Dooyeweerd’s antischolastic interpretive lens. While Woldring fails to place Althusius’ doctrine of natural law in the context of his Reformed contemporaries, he does exhibit a rudimentary understanding of the way in which Althusius conceived “natural law as universal principles of law, such as justice,

- humanity, reasonableness, and fairness, created by God in human nature, which can be clarified by the moral law of the Ten Commandments and by brotherly love.” Henk E. S. Woldring, “Multiform Responsibility and the Revitalization of Civil Society,” in *Religion, Pluralism, and Public Life: Abraham Kuyper’s Legacy for the Twenty-First Century*, ed. Luis E. Lugo (Grand Rapids, Mich.: Eerdmans, 2000), 178; and Woldring, “The Constitutional State in the Political Philosophy of Johannes Althusius,” *European Journal of Law and Economics* 5 (1998): 127–28.
53. Daniel J. Elazar, *Covenant Tradition in Politics*, vol. 1, *Covenant and Polity in Biblical Israel: Biblical Foundations and Jewish Expressions* (New Brunswick, N.J.: Transaction Publishers, 1995), 26.
54. Incidentally, Eric Voegelin stands alone among twentieth-century political philosophers and intellectual historians with his unilaterally negative assessment of Althusius for his use of the Ramist method: “The use of the Ramist method will aid us in fixing the rank of Althusius’ work—which is still overrated as a consequence of Otto von Gierke’s monograph. The *Politica* is by far the most solid work of the Calvinist monarchomachic group; . . . it is the work of an experienced practical lawyer who could digest his rich knowledge, with the aid of his ‘method,’ into a well-ordered book; but it is definitely not the work of a great political thinker” (56). One suspects, however, that Voegelin’s criticism relates more to his displeasure with Althusius’ successful integration of Reformed ecclesiology with juridical structure than it does to Althusius’ clear repudiation of Jean Bodin’s integration of Roman Catholic ecclesiology (*plenitudo potestatis*) to the issue of sovereignty in the commonwealth. Voegelin’s criticism of Althusius also seems to summarize and restate Gierke’s earlier criticism (cf. Gierke, *The Development of Political Theory*, 22–23). Eric Voegelin, *The Collected Works of Eric Voegelin*, vol. 23, *History of Political Ideas*, vol. 5, *Religion and the Rise of Modernity*, ed. James L. Wisner (Columbia, Mo.: University of Missouri Press, 1998), 55–59.
55. J. Wayne Baker and Charles S. McCoy, *Fountainhead of Federalism: Heinrich Bullinger and the Covenantal Tradition* (Louisville, Ky.: Westminster/John Knox Press, 1991), chap. 2, “The Development of the Federal Theological Tradition, 29–44; chap. 3, “Federal Political Philosophy: Mornay and Althusius,” 45–62.
56. Fabrizio Lomonaco, “Huguenot Critical Theory and ‘Ius Maiestatis’ in Huber and Althusius,” in *New Essays on the Political Thought of the Huguenots of the Refuge*, ed. John Christian Laursen (Leiden: E. J. Brill, 1995), 171–92.
57. Charles McCoy, “The Centrality of Covenant in the Political Philosophy of Johannes Althusius,” in *Politische Theorie des Johannes Althusius*, ed. Karl-Wilhelm Dahm, Werner Krawietz, and Dieter Wyduckel (Berlin: Duncker and

- Humblot, 1988), 187–99; and McCoy, “Der Bund als Grundmetapher in der *Politica* des Johannes Althusius,” in *Gottes Zukunft—Zukunft der Welt* (München: Chr. Kaiser Verlag, 1986), 332–44.
58. Baker and McCoy, *Fountainhead of Federalism*, 50.
 59. According to McCoy, “In the hands of Althusius, immersed as he is in the federalism of Herborn, the covenant as fundamental political principle encompasses the contractualism of Roman law and the centrality of politics for human living found in the Aristotelian and natural-law traditions.” McCoy, “The Centrality of Covenant in the Political Philosophy of Johannes Althusius,” 190.
 60. In this respect, Daniel Elazar’s four-volume *Covenant Tradition in Politics* series is his crowning achievement. Elazar, *Covenant and Polity in Biblical Israel: Biblical Foundations and Jewish Expressions*, vol. 1 (New Brunswick, N.J.: Transaction Publishers, 1995); Elazar, *Covenant and Commonwealth: From Christian Separation Through the Protestant Reformation*, vol. 2 (New Brunswick, N.J.: Transaction Publishers, 1996); Elazar, *Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy*, vol. 3 (New Brunswick, N.J.: Transaction Publishers, 1998); and Elazar, *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy*, vol. 4 (New Brunswick, N.J.: Transaction Publishers, 1998).
 61. Daniel J. Elazar, “Althusius’ Grand Design for a Federal Commonwealth,” in *Politica: An Abridged Translation of Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples*, ed. and trans. Frederick S. Carney (Indianapolis, Ind.: Liberty Fund, 1995), xxxv. A little further down the page, Elazar summarizes Althusius’ principal contribution as follows: “Althusius’ *Politica* was the first book to present a comprehensive theory of federal republicanism rooted in a covenantal view of human society derived from, but not dependent on, a theological system. It presented a theory of polity-building based on the polity as a compound political association established by its citizens through their primary associations on the basis of consent rather than a reified state imposed by a ruler or an elite” (xxxv). Cf. Elazar, *Covenant and Polity in Biblical Israel*, vol. 1, 26; and Elazar, *Covenant and Civil Society*, vol. 4, 1–2, 20–21, 27–28.
 62. Thomas Hueglin, in contrast to Elazar, argues that while the American Federalists drew from the older European tradition of federalism, for example, in Montesquieu’s *The Spirit of Laws*—and, through Montesquieu’s use of historical examples there, Althusius’s theory of consociational federalism—“an argument can be made that the Federalists’ interpretation constituted a deliberate and radical break with [the older European] tradition” of federalism. Hueglin, “Federalism at

- the Crossroads: Old Meanings, New Significance,” *Canadian Journal of Political Science* 36, no. 2 (June 2003): 276, 275–94.
63. Michael Behnen, “Herrscherbild und Herrschaftstechnik in der ‘Politica’ des Johannes Althusius,” *Zeitschrift für historische Forschung* 11 (1984): 417–72.
 64. Alain de Benoist, “The First Federalist: Johannes Althusius,” *Krisis* 22 (March 1999): 2–34.
 65. Ken Endo, “The Principle of Subsidiarity: From Johannes Althusius to Jacques Delors,” *Hokkaido Law Review* 44, no. 6 (1994): 629–32, 553–652.
 66. Thomas Hueglin, “Taking Stock: Althusius After Four Hundred Years,” in *Jurisprudenz, Politische Theorie und Politische Theologie* (2003), 305–17; Hueglin, “Federalism at the Crossroads: Old Meanings, New Significance,” *Canadian Journal of Political Science* 36, no. 2 (June 2003): 275–94; Hueglin, “Covenant and Federalism in the Politics of Althusius,” in *The Covenant Connection: From Federal Theology to Modern Federalism*, ed. Daniel J. Elazar and John Kincaid (Lanham, Md.: Lexington Books, 2000), 31–54; Hueglin, *Early Modern Concepts for a Late Modern World*; Hueglin, “Have We Studied the Wrong Authors? On the Relevance of Johannes Althusius,” *Studies in Political Thought* 1, no. 1 (1992): 75–93; Hueglin, “Johannes Althusius: Medieval Constitutionalist or Modern Federalist?” *Publius: The Journal of Federalism* 9, no. 4 (Fall 1979): 9–41; and Hueglin, *Sozialer Föderalismus: Die politische Theorie des Johannes Althusius* (Berlin: Walter de Gruyter, 1991).
 67. Patrick Riley, “Three Seventeenth Century German Theorists of Federalism: Althusius, Hugo, and Leibniz,” *Publius: The Journal of Federalism* 6, no. 3 (Summer 1976): 7–41.
 68. Nicholas Aroney, “Formation, Representation and Amendment in Federal Constitutions,” *The American Journal of Comparative Law* 54 (Spring 2006): 277–336; and Aroney, “Althusius at the Antipodes: The *Politica* and Australian Federalism,” in *Jurisprudenz, Politische Theorie und Politische Theologie*, 529–46.
 69. Hueglin, “Have We Studied the Wrong Authors?” 89.
 70. Hueglin, *Early Modern Concepts for a Late Modern World*, 152. Cf. Endo, “The Principle of Subsidiarity,” 629–32. Recent publications sponsored by the Johannes Althusius Gesellschaft have investigated such topics as consensus and consociation in early modern federalism and the concept of subsidiarity in church, state, and society. The massive two-volume *Althusius-Bibliographie* appeared in 1973 as the first publication of the recently founded Johannes Althusius Gesellschaft,

now associated with the faculty of law at the Technical University of Dresden and renamed as the Society for Research on Early Modern Legal Theory and Constitutional History (<http://www.althusius.de>), and organizes all that was written by Althusius or about his life and work up to the date of its publication. The major publications of the Society from latest to earliest are as follows: Frederick S. Carney, Heinz Schilling, and Dieter Wyduckel, eds., *Jurisprudenz, politische Theorie und politische Theologie: Beiträge des Herborner Symposions zum 400. Jahrestag der Politica des Johannes Althusius 1603–2003* (Berlin: Duncker and Humblot, 2004); Emilio Bonfatti, Giuseppe Duso, and Merio Scattola, eds., *Politische Begriffe und historisches Umfeld in der Politica methodice digesta des Johannes Althusius* (Wiesbaden, 2002); Peter Blickle, Thomas Hüglin, and Dieter Wyduckel, eds., *Subsidiarität als rechtliches und politisches Ordnungsprinzip in Kirche, Staat und Gesellschaft: Genese, Geltungsgrundlagen und Perspektiven an der Schwelle des dritten Jahrtausends* (Berlin: Duncker and Humblot, 2002); Giuseppe Duso, Werner Krawietz, and Dieter Wyduckel, eds., *Konsens und Konsoziation in der Politischen Theorie des frühen Föderalismus* (Berlin: Duncker and Humblot, 1997); Karl-Wilhelm Dahm, Werner Krawietz, and Dieter Wyduckel, eds., *Politische Theorie des Johannes Althusius* (Berlin: Duncker and Humblot, 1988); and Dieter Wyduckel, *Althusius-Bibliographie: Bibliographie zur politischen Ideengeschichte und Staatslehre, zum Staatsrecht und zur Verfassungsgeschichte des 16. bis 18. Jahrhunderts*, 2 vols., ed. Hans Ulrich Scupin and Ulrich Scheuner (Berlin: Duncker and Humblot, 1973). For a review of this work, see Theo Veen, “Een Fundgrube voor de historische wetenschap: de *Althusius-Bibliografie*,” *Bijdragen en Mededelingen Betreffende de Geschiedenis der Nederlanden* 94, no. 1 (1979): 89–96.

71. Gierke, *The Development of Political Theory*, 54.
72. Ibid.
73. Berman, *Law and Revolution, II*, 125–26.
74. Ibid., 125. Berman’s assessment stands in stark contrast to Gierke’s, who writes: “And if on the whole this intricate and ingenious system gained no lasting success, it served at least, as its author hoped, to facilitate and clarify the study of law, and in fact several rearrangements first made by him became in course of time generally accepted.” Gierke, *The Development of Political Theory*, 55.
75. This overview of the *Dicaeologicae* is a summary of a longer, more detailed treatment by Gierke in *The Development of Political Theory*, 55–59.
76. Gierke, *The Development of Political Theory*, 57–58.

The Dicaeologicae

3 Books

Johannes Althusius

The Whole and Universal Law
Which We Observe—Including the System

With the parallels between it and Jewish law as well as tables; inserts; and a three-part index of authors, individual chapters, and terms and words that is very comprehensive and accurate.

A theoretical and practical work quite useful
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Second Revised Edition

Published in Frankfort by the Heirs of Christophorus Corvinus, 1649

Preface

To those highly distinguished; eminent in virtue, knowledge, and position; illustrious; and wise men, the lord consuls and senators of the illustrious city of Emden, those lords who most deserve my respect.

Greetings.

My highly distinguished, wise, illustrious, and experienced lords who deserve my respect, a few years ago I published my *Roman Jurisprudence*. This treatise has been praised and attacked at different times in different places contrary to my thoughts and anticipations. In addition, other learned and eminent men have advised me a number of times to recall that treatise so that I might iron out and explain more fully what I expressed rather succinctly, briefly, and obscurely. Diligently have I obeyed my advisors, and whatever leisure time I have had away from my duties and obligation to the state I devoted to this concern and pursuit. These earlier concerns have produced a work that is almost completely new and is, in fact, different in many ways from the previous one. I had intended to help those studying my *Jurisprudence* with the talent that God has given to me. If I have attained this goal, let me give thanks to God because it is he who gave me the strength. If not, at the very least, I have given others an opportunity to think more fully about these matters. I have referred to the subject matter of the *Jurisprudence* scattered into the books of Justinian's *Digest* to specific chapters and headings. What

has been blown and scattered by some from their proper abodes I have returned into their own proper places and put them in order. I have arranged all the topics according to my own judgment by their logical succession and explication so that by their sequence they may cast light on the following discussions, and later discussions may receive illumination from the earlier ones. Some topics used to wander and ramble and stray in grey areas where some place them under the headings of possession¹ or ownership,² others under agreements,³ while some assign them to the category of private wrongdoings,⁴ others require criminal trials,⁵ and still others to them their own separate category. In fact, some topics until now were banished, driven from the boundaries of the judicial realm as if they were exiles⁶ legally unworthy of juridical citizenship. To these, I have granted their possessions, which had been seized with injury, I have returned them to their own homes, and I have restored them to their own families. In all these instances, I have used the freedom of my own judgment, leaving the same freedom to others. It is to you, however, my exalted, most distinguished and revered lords, I believe, that I have justly written down these labors of mine. Indeed, they were born in your realm, and they rightly recognize you as patrons because God has gathered for you the keys of this city, which is the center of all of Frisia. In this way, my work may proclaim the kindness you have shown to me, your favor, and the goodwill with which you have attended me for the many years in which I have served your illustrious state. In addition, the material that is treated in this book is, for the most part, familiar to you and commonplace, and it seems to require such patrons as you, that is, just and active ones. You, yourselves, I say, are the ones who governed this most populous state during such difficult, dangerous, and disastrous times

¹ *Possessio*.

² *Dominium*.

³ *Conventio*.

⁴ *Delictum*.

⁵ *Iudicium*.

⁶ ἀπολιθε.

while you oversaw the Belgic Wars with great strength, courage, and outstanding prudence with God as your confidence and leader. Not only have you steered the Republic's fleet through such serious and dangerous gusts of storms, driven and beaten as it was by force of wind and flow of water to a safe port, but also, because of your exceptional and outstanding policies⁷ by which it is possible for certain cities to battle with empires, you have provided for it, enriched it, and protected it with God's blessing from the violence, attacks, and activities of our enemies, both foreign and domestic, as well as the many grumblers and complainers. Therefore, most distinguished, illustrious, and wise men, receive this gift as a testament of your kindness to me and my love for you and as a pledge⁸ for the duty by which I am bound to your state. May God protect the state in this uncertain region from rebellion, fear, and revolution, may he keep your church and all who profess Christ flourishing, and may he keep you safe as long as possible. May he rule with a spirit of wisdom and strength everywhere. May he advance and enrich his blessing in a greater and greater way.

Emden on the Kalends of March 1618

Most Favorably Yours,
Johannes Althusius

⁷ *Privilegium*.

⁸ *Pignus*.

On Common Law (Book 1, Chapter 13)

Up to this point, in the first section of the *Dicaeologicae*, I have discussed agreements;¹ in the next section, I will discuss law. (See above 1.4.)

1. What Law Is – In my opinion, law is this:^a Something that, after coming into being because of an action,^b in a human^c affair^d or because of some individual,^e for the necessity, benefit,^f and direction of this life is established.^g

2. Its Different Titles – For this reason, law publicly or privately is usefully called^h an establishment for the good of humanity;ⁱ a precept concerning an agreement between individuals;^j a regulation of just and unjust things; a regulation of the just and unjust; a governor, a leader of the good; an oral agreement of the state;^k a norm for behavior and a way of life;^l the distinguisher of the just and unjust;^m a bill of works, that is, things that must be done;ⁿ a statute; judgment; bill;^o and the rule of justice.^p

- a. It does have other various definitions among which are the following:
Digest, 1.1, De Iustitia et Iure, 11, 12. *Digest*, 1.6, De His Qui Sui vel Alieni Iuris sunt, 2. Jura, De Reg. Jur., 1. *Digest*, 1.7, De Adoptionibus et Emancipationibus et Aliis Modi Quibus Potestas Solvitur, 23. *The Institutes*, 1.15, De Legitima Patronorum Tutela, 3. *The Institutes*, 2.2, De Rebus Incorporalibus. *Digest*, 38.16, De Suis et Legitimis Heredibus, 4.

¹ *Negotium*.

- Digest*, 50.16, De Verborum Significatione, 25. *The Institutes*, 4.16, De Poena Temere Litigantium, 3. Cujac, De Just. et Iure, 1. Donelli, 1.0.3.
- b. *Digest*, 9.2., Ad Legem Aquiliam, 52.2. *Digest*, 48.8, Ad Legem Corneliam de Siccariis et Veneficis, 1.3. *Digest*, 43.24, Quod Vi aut Clam, 3. *Digest*, 27.6, Quod Falso Tutore Auctore Gestum Esse Dicatur, 9.1. *Digest*, 44.7, De Obligationibus et Actionibus, 52. *Digest*, De Adulter, 11.12. *Digest*, 4.5, De Capite Minutis, 10, 11. *Digest*, 1.5, De Statu Hominum, 16. *Digest*, 26.2, De Testamentaria Tutela, 30. *Digest*, 17.2, Pro Socio, 52. *Digest*, 5.1, De Iudiciis: Ubi Quisque Agere Vel Conveniri Debeat, 79.1. Ex. 18:15, 16ff.; 1 Cor. 6:2–6; Deut. 17–Num. 8.
- c. *The Institutes*, 1.3, De Iure Personarum, 5. *Digest*, 1.5, De Statu Hominum, 2. *Digest*, 41.3, De Usurpationibus et Usucapionibus, 28. Gen. 1:26, 28; Ps. 3.
- d. *The Institutes*, 1.2, De Iure Naturali, Gentium et Civili, 12.
- e. *Digest*, 1.5, De Statu Hominum, 1. *Digest*, 44.7, De Obligationibus et Actionibus, 3.
- f. 1 Cor. 6:3, 4; 7:30, 31, 39. *The Institutes*, 3.27, De Obligationibus quasi ex contractu, 1. *The Institutes*, 3.26, De Mandato, 10. *The Institutes*, 1.2, De Iure Naturali, Gentium et Civili, 2.
- g. Ex. 18:20ff.; Prov. 6:23.
- h. *Digest*, 1.1, De Iustitia et Iure, 1.4. *Digest*, 1.2, De Origine Iuris et Omnium Magistratum et Successione Prudentium, 2.1. *Digest*, 1.4, De Constitutionibus Principum, 2. *Digest*, 1.3, De Legibus Senatusque Consultis et Longa Consuetudine, 25. Ben Sirah 4:4ff.; Mic. 6:8; 1 Tim. 2:1–4; 1 Cor. 12:7ff.; Col. 1:10; Deut. 12:10.
- i. *Digest*, 1.5, De Statu Hominum, 2. *The Institutes*, 1.2, De Iure Naturali, Gentium et Civili, 12. *Digest*, 41.3, De Usurpationibus et Usucapionibus, 28.
- j. Ex. 18:16, 22, 26; 22:9; Deut. 17:8, 9ff.; 1 Thess. 4:6; Acts 19:38.
- k. *Digest*, 1.3, De Legibus Senatusque Consultis et Longa Consuetudine, 12. Ex. 18:16.
- l. Deut. 18:20ff.; Prov. 6:23.
- m. *The Institutes*, 1.1, De Iustitia et Iure, 1. D, d.t. 10. Heb. 5:14; Phil. 1:9, 10; 1 Cor. 12:9; 1 John 4:1.
- n. Rom. 3:27; Matt. 23:23; 11:42.
- o. Deut. 17:9ff.; Prov. 6:23; Ex. 18, 16, 20; 2 Chron. 19:8–11; Ps. 119.
- p. Rom. 9:31; 6:19; Matt. 6:33; Titus 2:12; James 1:20.

3. The Establishment and Types of Law – In the definition of law that I have provided, I have included its establishment and different forms. This is in agreement with Hilliger, 1.2 and 2.1 and Donelli, *Enucleat*, De Speciebus Juris, 18. 1.2.

4. The Reason for Law – Law is established when because of the nature and quality of an individual agreement, in accordance with right reason² (*Digest*, 1.1, De Iustitia et Iure, 9, where right reason is called conformity with nature)³ in accordance with human welfare⁴ and necessity (*Digest*, 7.1 De Usu Fructu et Quemadmodum quis utatur fruatur, 2, where welfare is called benefit,⁵ and *The Institutes*, 1.2, De Iure Naturali, Gentium, et Civili) something is conceived and implemented (*The Institutes*, 1.1, De Iustitia et Iure, 1.2. D.d.t.).

5. Law Arising from an Action – Therefore, it is said about law that an individual judgment must proceed from an action,^q and I, as I peruse this topic in Justinian's *Digest*, respond in accordance with the things that were said there.^r Also, I examined the kind of law that arises from an action;^s the intention behind the action;^t the case in which the law is settled;^u and the situation from which it is established,^v that is, what the action or agreement was when the circumstances and parties are well known.^w Thus, an action that is accompanied by no law is naked⁶ or bare.^{7/x} Today, legal experts call this law the essential point of litigation.⁸ As for which law is limited,^y what is applicable and what is subjected^z and what law is not under the authority of judges,^{aa} the *Digest* usually answers these questions for those who are interested.^{bb}

² *Recta ratio.*

³ *Naturalis ratio.*

⁴ *Utilitas.*

⁵ *Usus.*

⁶ *Nudum.*

⁷ *Merum.*

⁸ *Meritum causae.*

- q. *Digest*, 2.15, De Transactionibus, 15.1, creditor. *Digest*, 20.4, Qui Potior in Pignore vel hypothecae datae obligari non possunt, 4. 2 Sam. 12:1, 2ff.; 1 Kings 3:16, 17; 20:29–41; Num. 15:32ff.; Josh. 7:20–21ff.; Ex. 18:16–18; Num. 16; 27:2–4; Matt. 26:61ff.; 21:33–35, 40, 41; Est. 1:13, 14ff.; Acts 5:1, 2ff.; 1 Kings 20:39–42.
- r. *Digest*, 28.6, De Vulgari et Pupillari Substitutione, 49. *Digest*, 28.5, De Heredibus Instituendis, 69. Ant. Fab., Jurisprudence, 1.7.
- s. *Digest*, 33.2, De Usu et de usu fructu et reditu et habitatione et operas per legatum vel fideicommissum datis, 28. *Digest*, 26.2, De Testamentaria Tutela, 30. *Digest*, 20.5, De Distractione pignorum et hypothecarum, 7.2. *Digest*, [?], De Legat, 114. *Digest*, 40.2, De Manumissis Vindicta, 15. *Digest*, 20.4, Qui Potior in Pignore vel hypothecae datae obligari non possunt, 8. *Digest*, 35.2, Ad Legem Falcidiam, 80. De Rebus Creditis Si Certum Petetur et De Conditione, 41. *Digest*, 28.1, Qui Testamenta Facere Possunt et Quemadmodum Testamenta Fiant, 19. *Digest*, 38.6, De Mortis Causa Donationibus et Capionibus, 31. *Digest*, 2.8, Qui Satisdare Cogantur vel Iurato Promittant vel Suae Promissioni Committantur, 7.
- t. *Digest*, 44.3, De Diversis Temporalibus Praescriptionibus et De Accessionibus Possessionum, 5.1. *Digest*, 28.5, De Heredibus Instituendis, 35.
- u. *Digest*, 9.2, Ad Legem Aquiliam, 52.7.
- v. *Digest*, 48.8, Ad Legem Corneliam de Sicariis et Veneficis, 1.3.
- w. *Digest*, 48.19, De Poenis, 16. *Digest*, 44.3, De Diversis Temporalibus Praescriptionibus et De Accessionibus Possessionum, 3.2. *Digest*, 22.5, De Testibus, 3.2. *Digest*, 46.8, Ratam Rem Haberi et De Ratihabitione, 12.2. *Digest*, 9.2, Ad Legem Aquiliam, 51.2.
- x. *Digest*, 46.3, De Solutionibus et Liberationibus, 48.6. *Digest*, 41.1, De Adquirendo Rerum Dominio, 9.5. *Digest*, 45.1, De Verborum Obligationibus, 52.1.
- y. *Digest*, 22.6, De Iuris et Facti Ignorantia, 2. *Digest*, 1.3, De Legibus Senatusque Consultis et Longa Consuetudine, 9, 10ff.
- z. *Digest*, 22.6, De Iuris et Facti Ignorantia, 9.3. *Digest*, 1.2, De Origine Iuris et Omnium Magistratum et Successione Prudentium, 2.43. *Digest*, 37.1, De Bonorum Possessionibus, 10.
- aa. *Digest*, 50.1, Ad Municipalem et De Incolis, 1. *Digest*, 48.16, Ad Senatus Consultum Turpillianum et De Abolitionibus Criminum, 1. Deut. 17:7–10ff.
- bb. *Digest*, 5.1, De Iudiciis: Ubi Quisque Agere vel Conveniri Debeat, 79. *Digest*, 1.5, De Statu Hominum, 16. See below chapter 15.

Among the Jews, legal scholars and the lawgiver himself discuss law in the following places: Ex. 18:15ff.; Deut. 1:16, 17; 17:2–5ff.; 2 Chron. 19. See chapter 15 for a discussion about this text.

6. When Law Is Established – The establishment of law is twofold—natural or common law and civil or individual law (*The Institutes*, 1.1, De Iustitia et Iure, 1.2)—just as the welfare and necessity of human life that law protects is twofold: common to all or appropriate to individual places and people.

7. The Nature of Natural Law – A law is natural and common if common right reason produces it for the common necessity and welfare of human social life in general. Therefore, it is called natural law.

8. The Nature of Civil Law – A law is civil or individual if individual right reason introduces and establishes it because of the necessity and welfare of the social life of some specific place. Therefore, it is called individual law or the civil law of some place.

9. A Common Error – The types of law are incorrectly defined by common people as common law, natural law, the law of nations, and civil law. In fact, they are not types, that is, effects of law, but they are the efficient causes.⁹ According to Justinian, all law that has been compiled comes from these precepts of natural and right reason (*The Institutes*, 1.1, De Iustitia et Iure, in the same volume 1.2).

10. Necessity and the Common Good as Reasons for the Establishment of Law – These come from the reasoning of the welfare and necessity of human life (*The Institutes*, 1.2, De Iure Naturali, Gentium et Civili, 2), where he writes, “nations establish certain human laws for themselves by exigent interest and human necessity” (*Institutes*, 1.2.1), “each people establishes Law for themselves” (*Institutes* 1.2.11), “each state establishes its own laws for itself” (*Institutes*, 1.2.4–6, 9; *Digest*, 1.1, De Iustitia et Iure; *Digest*, 1.4, De Constitutionibus Principum, 64; *Digest*, 1.3, De Legibus Senatusque Consultis et Longa Consuetudine, 5, 16; *Digest*, 1.4, De Constitutionibus Principum, 2). Because of these efficient causes of nature, a community, or some specific place, law is called natural law, the law of nations, or civil law, that is, law common to all people¹⁰ or the law of an individual population¹¹ (*Digest*, 1.1,

⁹ *Causae efficientes*.

¹⁰ *Commune*.

¹¹ *Civile*.

De Iustitia et Iure, 6, 9, 11. *Institutes*, 1.2, De Iure Naturali, Gentium, et Civili, 1,2,3. *Digest*, 41.1, De Adquirendo Rerum Dominio, 1. *Digest*, 50.16, De Verborum Significatione, 195. *Digest*, 4.4, De Minoribus Viginti Quinque Annis, 16; de in integr. Rest. Minor, ult C. *Institutes*, 1.10, De Nuptiis, 7. *Institutes*, 2.11, De Militari Testamento, 1. *Digest*, 27.7, De Fideiussoribus et Nominatoribus et Heredibus Tutorum et Curatorum, 51. § pen. de fideiuss. l. ult. C. de in integr. restit. min. § 3. § fin. Instit. quib. non est permiss. test. cond. Also, Cujac. lib. 15. obs. c. 33). They also call it natural justice¹² or civil justice¹³ (l. 1. § 1. si quis test. lib. esse iuss. l.45. § qui cum ad L. Aquil. § retinenda. inst. de interdict. § ult. de superficieb. L. 39 de negot. gest l.1. de contrar. tut. act. l.31. deposit. See Connan. lib. 1. com. c. 3. c. 4). It is also called natural law¹⁴ or legal law¹⁵ (§ 14. sed cum ea. Inst. de hared. qua ab intestate. § 7. Inst. de usu and habitat. L. 77. de reg. iur. tit. Inst. de legit. agnat. tutel. tit. de legit. hared. L. 6. de pact).

11. Common Law – Therefore, common law is that which has been inscribed on human hearts by nature or by God from birth and that by which human beings are moved to do or avoid actions, whatever is sufficient for preserving the common good of human society, convicts wrongdoers of evil, or excuses the innocent (Rom. 1:19–21, 32; 2:15–17; 1 Cor. 5:1–3, 11:14).

12. The Knowledge of and Tendency Toward Natural Law in Human Beings – Thus, there is a knowledge and natural inclination for this law in the human heart. Because of it, a person knows what is just and is urged by the hidden impulse of nature to do what is just and to not do what is unjust (Rom. 2:15, 16; 7:15–18, 22, 23).

13. Different Terms for Natural Law – This law is designated with different names. Sometimes it is called natural law¹⁶ (tit. Inst. de iure natur. gent. et civ). Other times, it is called the law of nature¹⁷ (§ 1. Instit. de iure. nat. gent. l.

¹² *Aequitas Naturalis*.

¹³ *Aequitas Civilis*.

¹⁴ *Ius Naturale*.

¹⁵ *Ius Legitimum*.

¹⁶ *Ius Naturale*.

¹⁷ *Lex Naturalis seu naturae*.

penult. de iustit. and iure. § singulorum. § res vendita. Institut. de rer. divis. l.16. § naturales. de fideiuss. l.10. de oblig. and actio. l.95. § natura. de solus. l.126. § Chrysogonus. de verb. obligat. l.16. § 4. de minor. l.22. locat). It is also called natural reason¹⁸ (§ 1. Institut. de iur. natur. gent. l.9. l.1. § 3. l.6. l.11. de iust. and iur. ll. de acquir. rer. dom. l.1. de minor. l.7. § 1. de integr. restit. § 12. fera. Institut. de rer. divis. ll. l.2. l.14. l.15. l.16. de legib. 1 Cor. 11:13, 14; Rom. 2:16), the silent law,¹⁹ the law that nature provides to the human race (§ 11. singulorum. § 41. vendita. Institut. de rer. divis. l.1. de acquir. rer. dom. ius gentium. d. § 11. l.9. de iust. and iur. Donell. lib. 1. comm. c. 6.), the rule or law of God²⁰ (Rom. 1:32; 2; 7:22, 25), or the immutable law²¹ (Rom. 2:16, Esa. 49:15; Matt. 14:4; 7:9, § pen ubi Dd. Institut. de iur. nat. gent. et civili).

14. Where the Foundations of Law Lie – Moreover, God teaches and inscribes on human hearts general principles of fairness and justice and unfairness and injustice; he binds, urges, and incites all people to do or avoid these things; and he accuses those who fail in these things through their internal consciences and excuses those who do them (Rom. 2:15, 16; 7:15–18, 22, 23). Therefore, he urges people toward good and calls them back from evil. If someone follows his leading to good, that person is excused. Whoever does not, he accuses.

15. Duties Arising from Natural Law – The principles that I mentioned above, concern the two primary duties human beings have. The one involves our own selves; the other involves others.

With respect to our own selves, there are three main impulses: (1) self-defense, (2) self-preservation, and (3) self-propagation.

For discussions concerning self-defense, especially our defense against violence and injury, see *Digest*, 9.2, Ad Legem Aquilam, 4, 5; C. Unde Vi, 1; *Digest*, 1.1, De Iustitia et Iure, 1; Zoanett, De Defens. Triplici, part 1.

¹⁸ *Ratio Naturalis*.

¹⁹ *Lex Tacita*.

²⁰ *Lex Dei seu Ius Dei*.

²¹ *Ius Immutabile*.

As to the self-preservation and the protection of each individual's own property, see Eph. 5:29; Col. 2; Ben Sirah 14:4–10; 23:21; 30:26.

Self-propagation includes both the union of men and women (*Digest*, 1.1, De Iustitia et Iure, 1.3; *The Institutes*, 1.2, De Iure Naturali, Gentium, et Civili, 1.2) and the proper rearing of the children born to us (*Digest*, 25.3, De Agnoscendis et alendis liberis vel parentibus vel patronis vel liberties).

A duty shown to another looks to God or our neighbor.

It looks to God who teaches and inscribes this law especially as much as he teaches us and urges us to the knowledge and worship of him (Rom. 1:19–21; Zanchi De Lege Natura, 1.10), where he looks especially at the first tablet of the Decalogue (Matt. 22:36–40; Luke 10:27).

It looks to our neighbor as much as it teaches and excites us to the duties of protecting our neighbors and avoiding injury to them, an idea found in the second table of the Decalogue. See the Matthew and Luke passages above. Third, it teaches us that whatever you wish to be done to you, you should also do to another and the opposite (Matt. 7:2, 12; Luke 12:14; Lev. 19:18; Rom. 2:13, 21, 22; 1 John 2:11; tit. quod quisque juris in al. arg. Isa. 58:7; 1 John 3:15; 4:20, 21). This means to live righteously; to not hurt another, and to give to each person what is owed (*The Institutes*, de iust, et iure, 10, 1; Rom. 12:9, 17; 13:7, 8; 1 Tim. 2:2; Matt. 22:17, 21; Ex. 22:22–24; Mark 12:16, 17; 1 Thess. 4:12; 5:22).

16. The Degrees and Limits of Natural Knowledge and Tendencies –

Moreover, although those principles of nature are one and the same to all nations, still they differ in the level²² and means²³ of their inscribing and urging. In fact, these principles are inscribed on the hearts of all not equally; in some, they are inscribed more eloquently, abundantly, and effectively, while in others not eloquently but sparingly because of God's will for inscribing and teaching. Therefore, it is the case that although these principles have been written on everyone's heart, nevertheless the conclusions that are drawn from them are not equally held. Instead, some people understand how to infer more conclusions from them; others how to infer less. In addition, natural reason²⁴

²² *Gradus*.

²³ *Modus*.

²⁴ *Ratio Naturalis*.

often digresses both with respect to the understanding of the ideas of these shared principles²⁵ present in the mind since it does not understand them lucidly and clearly enough in each and every thing and with respect to the manipulation of the individual ideas, to the conclusions drawn from the common principles, and to the application to individual affairs when reason's ability and will is weak, since it differs and often disagrees with its own self (Rom. 7:15–23; 1 Cor. 2:10, 11ff.; Jer. 17; John 3; and Gen. 8).

17. The Degrees and Limits of Natural Knowledge and Tendencies –

The means and level of the urging and exciting to do these things that is taught by those principles also varies. In fact, many people very carelessly disdain those things that are known from natural law (Rom. 7:22, 23, 25ff.; Pss. 10:4; 36:2; Rom. 1:24, 28; 1 Tim. 4:2). Others are more effectively instigated to observe them as they concentrate upon the study of these principles. Clearly, in the hearts of the elect, this law of nature is always more eloquent and effective, just as God promised in Jeremiah 31.

18. The Distinctions Others Have Made Between Natural Law and the

Law of Nations – This common law²⁶ others divide into natural law and law of nations (Ulpian in l.1 de acquir. rer. dom. l.1. § 3. 4.1.6 de Iust et Iure. § 3. Instit. D.t. and tit. Instit. De iure nature.gent and civil). It is a little better in other places (Cujac. In l.1. § Huius. De just. and jure. and lib. 15. obs. c. 33). Others, in fact, call each by its correct title, natural (that is, per § 11. singulorum and seq. a § 41. vendita. Instit. de rer.divis. l.31. deposit. Donell. lib. 1. com. c. 6. Eguin. Baro. Instit. De iure nature. Gent. et civil. and Apostolus ad Rom. 1, 2 and 1 Cor. 11:14 and 5:1, 2). Natural law applies to human beings alone and that which is named law of nations often is called natural law by Justinian's *Digest* (that is, l.1 § ult. l. seq. l.9. de iust et iur. L. naturals 10. de obligat and action. l.65. § natura de solute. l.31. l.1. de acquir. Rer. Dom. l.84. § 1. de reg. iur. § 11 and seqq. § 20, § 29, § 40, § 41. Instit. De. Rer.divis. Anton. Faber iurisprud. Tit. 2. illat. 4 and princ. 2 and 4). What they call natural law is described as what simple intellectual reason without proof²⁷ teaches

²⁵ *Axiomatica.*

²⁶ *Ius Commune.*

²⁷ ἀναποδεικτως.

human beings as much as human beings and animals are rational (vide l. pen. § 1. de in ieg.res.l.l.de iust. and iur. § Inst de iur. Nat. gent. et civilis. Rom. 2:14, 15; 1 Cor. 5:1, 2; 11:14. Siracid.c.17.7and seqq. Ezech. 5:7) in order to live holy and blameless lives (vide 1 Tim. c. 22; Rom. 2; 1 Cor. 11:14; 5:1, 2; Tit. 2:12; Tob. 4). For this reason, it is called by some rational law²⁸ (Wesenb. In com. Inst. Tit. de iur. Nat. gent. et civili and in com. D. eod. Connan. lib. 1. com. c. 4. Vacon. A Vacun. lib. 1. declar c. 15. num. 3. vide Donell. Lib. T.com c.6.7 and Hotom. In § 4. Instit. D.t. Goveran. Varior. c. 20) or innate law (i.e., d.l.l de iust. et iure. §1. Instit. De iur. Nat. gent. et civ. 1 Cor. 11:14; 5:1, 2; Rom. 2). Although this very law does not arise exclusively for itself but is only a thought,²⁹ the knowledge of it, or rather the ability to understand this law, arises from nature. Thus, it is also called natural law (l. lex²⁴. de stat. hom. l.l. § ult. de furt. l. probum. de verb. fig. § quos. autem. Inst. de bon. possess. l.34. § 1.de contrah. empt. Cicer. lib 1. offic.) or it could be called natural justice (l.l. § 1 si is qui test. liber. ess. iuss. l.l. de minor. d. § 11. § 39. thesauros. § 40. per traditionem, Inst. de. rer. divis. l.31. depos.) because brute animals sometimes imitate this law and are said to have some appearances of it (tit. Inst. De iure nat. gent. et civili. l.l. de iust. et iure. Vide Connan. lib. 1 com. c. 6. Baron. In tit. Instit. De iur. Nature. Gent. Cujac in l.l. § huius de iust. et iure).

19. The Law of Nations – The law of nations in their opinion is whatever through demonstration, calm reasoning, or a discourse of the mind, a human being, who cultivates animal instinct, political society and the human good, enacts (§ 1. ibi quod naturalis ratio. Inst. De iure. Nat. gent. et civili. L.9. de iust. and iur). So that in this common human life we may live good, happy, and pleasant lives (l.9. § 21 .pen. de iust. and iur. § 2 inst. De iur. Nat. gent. et civili. l.25.l.13 de legib. 1 Cor. c. 6:3,4). It is in this spirit that the apostle commands us to be beneficial to other people (1 Thess. 4:11, 12; Rom. 12:8; Eph. 6:6; Eccl. 9:10).

²⁸ *Ius Rationis*.

²⁹ ἔννοια.

It teaches us to live well and have pleasant lives because it establishes what is beneficial³⁰ and necessary³¹ for human life (l.1. de cont. empt. l.1. de exerx. act. § 2. Inst. de iur. nat. gent et civili. l.51. § 2. ubi Gothofr. ad L. Aquil. l.5. de obl. and act. l.17. § 2. de instit. act. l.21. com. divid. l.1. § 1. de his qui effuder. § 10. item Inst, de mandate, l, 1 de begit. ges), and because it is adapted to human society (§ 2. Instit. de iure. nat. gent. See Don. lib. 1. com. c. 7 Pinell. in rub. c. de rescind. Vend. Par. 1. nu. 11 and ff.). Here, the reflection of law seen in animals is not visible (Arg. d. l.9. § 2 and d. § 2. l.25. l.13. de legib. 1 Cor. 6:3, 4).

20. Its Different Titles for the Law of Nations – This law of nations Justinian sometimes calls natural law, sometimes benefit³² (§ 10 ubi Cujac. Inst. De. Mand l.70 ad Treb. l.95 § 7 de sol. l.1 § 1.2 de his qui deiecer effsud. l.8. § 10 de minor l.32. § 2. de adq. poss. l.11. de prasc. verb. l.44. § Eum qui de usucap l.1. de in integ. rest. L. 1. § magistrum de exerc. Act. l.1. naut. Caup. stab. l.8. depos.), something received for the sake of utility (§ 1 inst. De oblig. qua quas. es. cont. l.5. de oblig. and act. l.1. de neg. gest.), better justice³³ (l.41 de iur. Dot. l.82 de solute. l.31 depos.), good justice (l. pen. De. Iust. and iur. l.66. de conduct. Indeb. l.6. § 2. de iur. dot. l.32. de reb. cred.), pure law of nations (d. l.31), contranatural or natural reason (l.4. de stat. hom § 1 Inst. De iure person. l.4. de iust. et iure. l.1 de adq. rer. dom.§ singulorum 11 Inst. De rer divis), or even law established out of fairness through convincing logic (l.3. l.1. l.7 § 6 l.9 § 3 de adquir. rer. dom § 25 § 39 § 40 per traditionem. Instit. De rer. Divis). Wesenbaum calls it the law of calm reasoning.³⁴

21. Examples – From this law, wars are conducted, the treatment of captives and the punishment of criminals are decided, most contracts are disputed, the distinctions of personal property, and judicial decisions are rendered, kingdoms and cities are established, and magistracies are enacted (l.5. de iust. et

³⁰ *Utilia.*

³¹ *Necessaria.*

³² *Utilitas.*

³³ *Aequius Melius.*

³⁴ *Ius Ratiocinationis.*

iture). In short, similar necessities and benefits are established for the continuation and conservation of human society (Vide Donell. lib. 1. com. cap. 7. Connan lib. 1. con. c. 1 and 2).

Thus, the large section in the *Digest* under the title, On Justice and Law and in the *Institutes*, On the Natural Law, the Law of Nations, and Civil Law.

On the Individual, Principal Law (Book 1, Chapter 14)

In the previous chapter, I discussed common law; this following chapter concerns individual law.

1. What Individual Law Is¹ – Individual law is law that, having arisen from common law because of the benefit,² necessity,³ or other circumstances of some particular state, is enacted by a magistrate. Or, it is law that, by the addition or subtraction of common law, a magistrate legally enacts and commands for the citizens of some particular location concerning future activities for the apparent benefit of the state (l.1. l.2 de constit. Princ. § lex. and ff. Inst, de iure nat. gent. et civil. l.6. de iust. et iure. l.23. l.16. l.25. de legib. Vide Johan. Rosin. lib. 8. antiquity. c. 2. 3 and lib. 6. c. 9. 10. 11. Menoch. lib. 2. arb. Cas. 185. Connan lib. 1. com. cap. 9).

Individual law has groups and types.

2. Groups of Individual Law – It includes two groups: those consistent with common law and those contradictory (Arg. l.6. de iust. et iure).

¹ *Jus Proprium.*

² *Utilitas.*

³ *Necessitas.*

3. Its Compatibility with Natural Law – It is consistent if it does not derive entirely from common law but arises reasonably by itself through the same logic of either law, from the embraced subject, the affair of each common law and the just goal of each (d. l.6. l.9. de iustit. et iure. l.2. ex quibus caus. maior. Calvin. lib. 4. Instit. c. 20. sect. 16. Iunius de politia: Mos. observat).

4. Its Compatibility with Natural Law – Because of this derivation of individual law from common law, individual law is accurately said to imitate common law (l.1. ibi naturalem aequitatem secutus de minorib. l.1. de part. l.1. de constit. pecun. l.7 de integr. rest § minorem.4. Inst. de adopt. Zanchius de legib. human. thes. 6. c. 10. de redempt. opera. Petr. Martyr. Gen. c. 2.2). Thus, common law is its guiding principle⁴ and pattern⁵ (Franc. Jun. de polit. Mos. Observ. Zanch. d. c. 10. thes. 1. de lege natura). Because of this, it is said to be unchangeable (§ pen. Inst. de iur. Nat. gent. et civil. l. pen de iust. et iure. Zanchius de locis).

5. Contradictions Between Them and Themselves – It is contradictory when in its accommodation to a particular circumstance individual law sometimes departs from common law, that is, something is added or subtracted from it (l.6. de iust. et iure. l.16. de legib). In other words, the difference occurs when some aspect of natural common law is not retained in every detail or when it does not remain in its general principles. Instead, while this law applies its nature and individual impact to specific situations and their circumstances, it is forced on some occasions to diverge quite a bit from common law in order to agree with the principle, embraced subject, and goal of common law (Jun. and Zanch d. locis. Dd. In l.6. de iust. et iure).

6. Contradictions Between Them and Themselves – Moreover, this individual law differs from common law, whenever common law is diminished or enhanced by it for two very important reasons. In both instances, there is some necessity for adding or detracting from common law (D.l.6 de iust. et iure. l.2. de const. princ. Calvin, lib. 4. Inst. c. 20 sect. 16).

7. Reasons for These Contradictions – One reason is the amount of information accessible to a lawgiver who, by his better and more convenient reason and method, applies common law to individual situations (l.26. l.27 and ff. de

⁴ *Regula.*

⁵ *Exemplum.*

legib. Franc. Jun. de polit. Mos. Observat). Or else it is the information accessible to someone who, by his degree of knowledge and understanding concerning the affairs and situations addressed, adds to or subtracts something from common law, as long as he returns or conforms this individual law with common law in agreement and consistency to its origin, subject, and goal (d. 1.6 and 7. de in integr. Rest. 1.1. ex quib. Caus. Major. 1.1. ad SC Macedon. 1.1. de donas. Inter vir. and uxor). Now, because logical reasoning is the mother of this statute⁶ and law and because this reasoning can grow in strength by its own offspring, therefore, changes necessarily occur (Jun and Zanch, d. loc).

8. Reasons for These Contradictions – The other reason is the condition, nature, and state of the affair or of those things that are under the control and authority of the lawmaker, from which the individual law arises, namely, what sort of individuals and situations are involved as well as what circumstances either precede or accompany them (1.16 de poen. § fin. Instit. de iure nat. gent). Because the condition and nature of all these things is various, diverse, inconsistent, and changeable, one cannot assert that the application⁷ of common law is one and the same in every matter and situation (1.11. 1.16 de poen. 1.8. de transact. 1.2.3.4. ubi pupil. Educar).

9. Why This Law Is Changeable – For these two reasons, individual law is changeable and inconsistent (§ Pen. Institut. De iur. Nat. gent. et civili. 1.26. and seqq. De legibus). It is also said to be different from and inconsistent with common law (1.16 de legib. § 2. Instit. De iure nat. gent. et civili. § Pan d. t.). In fact, this agreement and inconsistency with common law is necessary. For, if it ordained the same thing as common law, it could not establish a type of law different from common law. If it wholly and in every way enacts something contrary to common law, it would not be law, and it would make common, natural law changeable, which could not happen.

10. Examples of It – The prohibition of gifts between spouses provides one example of this individual law (tit. de donat. inter vir and uxor). So does the prohibition of granting a loan to a son still under parental authority⁸ (1.1. nad tit. tot ad SC. Macedon). In both of these cases, there is no prohibition in common law (l. in re. c. mandat). Thus, it is possible for something to arise

⁶ *Lex*.

⁷ *Dispositio*.

⁸ *Mutuam dare filiofam*.

from common law by reason of its origin, subject, and aim, which is said also to be in agreement with civil law⁹ (§ Inst. De tutel. § Pen. Inst. De Attil. Tut. Tit. Instit. De pat. Potest. § 4. Instit. De adopt).

11. Types of Individual Law – There are two types of individual law: written and unwritten (§ 3. Institut. de iur. nat. gent. et civil. l.32. l.33. de legib). Some try to show that the act of writing is not essential to the essence of law (ex l.6. de iustit. et iure. l.2. § ex his. de orig. iur. l.32. and seqq. de legibus. See also Connan. lib. 1. com. cap. 7. num. 5. Donell. Libr. 1. com. c. 13. Wesenb. in com. tit. de legib. Anton. Fab. Iurisprud. tit. 2. princip. 6).

12. What Written Law Is – Civil law is written because it is enacted and promulgated in writing (1. 10. 1. 36. ubi Bartol. de legib. l.8. c. d.t. Baro in § Lex Inst. de iust. et iur. Guid. Pap. Decis. 91. num. donell. libr. 1. com. cap. 3. Connan. d. loc. c. 8. and Deut. 31:25, 26; 17:19; Josh. 8:32; 2 Chron. 33:16; 34:8, 33; cap ult: 22, 23; 1 Esd. 1:1,2; 6:11; 7:13, 21; Est. 1:19; Ps. 149:9, 10 ubi Jun. per Deut. 12:32; 29; 4:6 seqq). In fact, whatever is not inscribed in everyone’s heart is written down so that people might be able to collect from the general principles of common law particular conclusions and laws for the nature and condition of the circumstances and their affairs and remember them.

13. When Does Its Effect Begin and Its Types - Written law receives its full strength from the time of its promulgation within two time periods (Novell. 66. vide Monoch. Libr. 2. arb. Cas. 185. Gabriel. Tit. De legib. Concl. 4. lib. 6. Duaren. Tit. De iustit. and iure c. 2. c. 4. Connan. Lib. 1. com.c. 9. num. 8), unless it includes in itself a previous obligation or has come into public knowledge before its promulgation, unless fraud comes together with knowledge of the law that is about to be promulgated with the injury of another; or unless it looks at previous events,¹⁰ or introduces exemptions,¹¹ or was enacted with an invalid provision¹² (Menoch. d. cas. 185. Gabriel. d. Conclus. 4 and 3).

Written law is principal or assessorial.¹³

⁹ *Ius Civilis*.

¹⁰ *Praeterita*.

¹¹ *Privilegium*.

¹² *Clausula Irritans*.

¹³ *Principale vel accessorium*.

14. Individual Principal Law and Its Names – Principal law is law that exists without assessor law because it is contradicted by assessor law, especially by praetorian law (§ 1. tit. Inst. de oblig. l.1. § Ult. l.3. § 12 de const. pecun. § sed ista. Inst. de action. l. scio. 14. de testib. l.20 § 7 qui test. Fac. Poss. l.27. de reg. iur. § 1. Inst. de perpet. and temp. act. l.1. de pact. Donell. In § sed ista. and in § actiones. num. 7. Instit. de act). Sometimes this law is called *εμφορκως* (l. 1. § fin. de supersic. l.1. § 5. quod fals. tut. l.1. quib. mod. ususfr. amitt. l.9. § 1. usufr. quemad. cav. § actiones 10. § sed ista. Instit. de act. l.27. de reg. iur. § 2. Instit. de bon. poss. l.8. de reb. eor. qui sub totel. l.1. de curat. fur. l.27 § 2. de pact. l.4. de compens. late. Brisson. lib. 9. de verb. sign. and lib. 3 de solute. Cujac. ad Paul. lib. 3. sent. tit. 6. § 17 and ad Ulpian tit. 26). It is understood differently that sometimes other laws arise from this law: (Tiraquell. in l. si unquam verb. revertatur 20 and seqq. c. de revoc. Donat), pure law¹⁴ (l. 4. § 27 ubi Cujac. de usucap. l.32 in fine. D. tit. l.16. de minor. l.36 de admin. Tut. Cujac libr. 8. obsc.c. 16), formal law¹⁵ (l.27. de reg. iur), law simply and completely¹⁶ (l.1. quib.mod.usufr. amitt. l.9. § 1 usufr. quem.cav. l.60. de fideiuss), rigid law¹⁷ (l. pen. 30. de constit. pecun. See Duar. in l.5. nu. 14 de in lit. iurand), and established law¹⁸ (l.27. de pact. l. Nesennius 34. de negot. gest. l. 6. de in integr. rest. l. adultery. Ad L. Iul. de adult. l. in heredem. de calum. l.48 in sine de iure. Fisci. Brisson. lib. 3. de solute. tit. 1 and lib. 9. de verb. signif. in voce. ius and Fab. l. iurispr. passim).

15. Types of Principal Law – Principal law has two parts: that is, law that is established by the whole population or by a portion of the population (l.2 § 10.11. § De origin. Iur. l.32. § 1 de legib.), and it is distributed in different places because it is enacted either by consent, as in the case of a statute¹⁹ or

¹⁴ *Ius Merum.*

¹⁵ *Ius Solemne.*

¹⁶ *Simpliciter & absolute ius.*

¹⁷ *Ius Strictum.*

¹⁸ *Ius Constitutum.*

¹⁹ *Lex.*

popular decree,²⁰ or by exigent circumstances, as in the case of a decision of the senate²¹ (l. pen. de legib. § Senatusconsultum. Inst. de iur. nat. gent. et civ. l. 2 de orig. iur. Cujac. libr. 14. obs. c. 16. Gell. lib. 10. cap. 10. Alexand. ab Alexand. lib. 6. gen. dier. c. 23).

16. What a Statute²² Is – A law established by the whole Roman people is a statute,²³ which the Roman people, when a senatorial magistrate made a formal request, just as in the case of a decision of the senate,²⁴ and after the votes of the people in their centuries had been counted, established in their popular assemblies (Johan. Rosin. In antiq Roman. lib. 8 cap. 2, 3, and lib. 6. c. 9, 10, 14. arg. § 4. Inst. De iure nature. Gent. et civili ubi Theophil. l.1. fam. Hercisc). In other authors, the term *statute*²⁵ is understood differently (tit. De legib. l.9. C de donat. Tit. de L. Commissor).

A law is enacted by a portion of the Roman population advised by necessity (l.2. § 10.11. de orig. iur. by many or by one, l.2. § 11. de orig. iur).

If it is established by many, it is a popular decree²⁶ or a decision of the senate.²⁷

17. What a Popular Decree²⁸ Is – A popular decree is a law that the plebian class²⁹ of the Roman people in their tribal assemblies established by their own vote when a plebian magistrate, such as the plebian tribune,³⁰ made a formal

²⁰ *Plebiscitum*.

²¹ *Senatusconsultum*.

²² *Lex*.

²³ *Lex*.

²⁴ *Senatusconsultum*.

²⁵ *Lex*.

²⁶ *Plebiscitum*.

²⁷ *Senatusconsultum*.

²⁸ *Plebiscitum*.

²⁹ *plebs*.

³⁰ *δημαρχον*.

request in the capacity of their leader (§ 4. Instit. de iure nat. gent. et civ. l.1 ad L. Aquil. l.2. § 8.9. de origin. iur. l.238. de verborum signif adde 1 Sam. 8; Judic. 11; John 9:15ff.; 2 Macchab 10:8). This law later obligated the whole population by the hortensian law (l. 2. § 8. de orig jur. Contius lib. 2. c. 18 subsecivar. Alex. Ab Alex. Lib. 15. c. 26) and was called a statute³¹ (l.1 ad l. Aquil. l.1. ad L. Falcid. D.l.2 § 8).

18. What a Decision of the Senate³² Is – A decision of the senate is a law that the senate ordered and established by its own vote through discussion or the decision of a majority (l. 9. de legib. § 5. Instit de iur, nat. gent. et civil l.2. ad SC. Vellej. Tit. Instit. De SC. Tertyl. Tit. De SC. Orphit. Tit. Ad SC Trebell. Rosin. Libr. 7 cap 7. antiq. Rom. Cujac. Lib. 14 observ. C. 16). Later, it included decisions made by the intervention of the emperor (l.1. de reb. Eor. Qui sub tutel. Duaren. De iust. et iur. cap. 3. Alex ab Alexand. Libr. 4. cap. 11. gen. dier. Gell. Libr. 4. cap. 7). The *Juris Civilis* declares that this law has established necessity (l. pen de legib. l.2. § 9. ubi Cujac. De origin. Iur).

19. Law Enacted by an Emperor³³ and Its Name – Principal and pure civil law established by one person (l.2. § 11. de orig. iur.) is that which an emperor when consulted by his administrators (l. 2. Instit. de his qui sunt sui, vel alien. Iur.), through the response of a letter, established and answered in writing or else signed on the memo of a supplicant (l. 1. de const. princ. l.3. § Divus. de sepul. Viol. l.13. de reb. Eor. l. ult. in fine. de office. procure. Casar. l.31. § 14. de recept. arb. l.5. de magist. conven. Est. 8:8ff.; Dan. 6:15). It also includes those letters that candidates of magistrates would read (l. 1. in fin. de. off. quest.); what the emperor ordered signed in his own name (l. rescriptum. de distract. pign. vid. epigraphen l.1. de office. pras. prator. Brisson. lib. 3. selector. c. 7); what he decreed, after recognizing a problem (l. pen de his qua in testam. del .d. l.31. § 14); anticipated in an edict (§ 6. Instit. de iur. nat. gent. et civil. ubi Theophil. tit. de constit. princip. Duaren lib. 2. disp. c. 19, Govean libr. 2. var. c. 30); or in a speech given in the senate about the law about to be enacted and in the recorded judgment of the senate (l.1. l.2. de seriis.l.2. de

³¹ *Lex*.

³² *Senatusconsultum*.

³³ *Princeps*.

serv. fugit. l. cum his de donat. inter vir and uxor. l.1. § 1 ne de stat. defunct. l.1. de reb. eor. qui sub. l. item veniunt. § prater. l. illud. l. si and rem. de petit. hered. l.1. c. d. t. l. s. de transact. l.2. c. de curat. Fur. l.9 ad SC. Tertyll. l.16. de sponsal. Brisson. lib. 1. c. 16 select). For this reason, it is called an imperial decision³⁴ published in legal inquiries (vid. l. ult. ad SC Trebell. epigraphen l.11. de iure. Patron. l.81. ubi Gothofred. ad SC. Trebell. Cujac. lib. 2. obs. C. 28), a mandate,³⁵ an imperial constitution³⁶ (tit. c. de mandate. princ. l.3. l.19. de office. prasid. § 6. Instit. de iur. nat. gent.), a rescript,³⁷ a decree,³⁸ an edict,³⁹ a constitution,⁴⁰ an imperial enactment⁴¹ (l. 11. de legib. tit. de constit. princ. l.33. de adm. tut. l.19. § pen. locat. l. pen. § 1. de iure patron. tit. c. de divers. rescript. and pragm. sanct. l.1. ex quib. caus. major. l. ult. c. de prox. sacri scrin), a religious rescript⁴² (l.1. Cod. de monopol.), an imperial declaration⁴³ (§ illud 11. Inst. de adopt. l. oen. c.de. haret. and Manich. l.11. c. de vect. and commiss.), a divine sanction⁴⁴ (l. ult. c. de. hared. and Manich.), a most holy constitution,⁴⁵ an order,⁴⁶ a most holy statute⁴⁷ (l.7. c. de pagan. l.5 § 5 de adm. tut. l. leges. c. de legib.), and others. A decision of the senate is a law that is

³⁴ *Sententia Imperialis.*

³⁵ *Mandatum.*

³⁶ *Placitum Principis.*

³⁷ *Rescriptum.*

³⁸ *Decretum.*

³⁹ *Edictum.*

⁴⁰ *Constitutio.*

⁴¹ *Sanctio Pragmatica Principis.*

⁴² *Sacrum Rescriptum.*

⁴³ *Oraculum Principis.*

⁴⁴ *Divina Sanctio.*

⁴⁵ *Sanctissima Constitutio.*

⁴⁶ *Iussio.*

⁴⁷ *Sacratissima Lex.*

established when the judgment and advice of the senate is employed (l.8. de transact. l. eleganter. § 1 de conduct. indeb).

Concerning this law, if any uncertainty arises, the emperor was called (l.97. de leg. 3. l. ult. De iur. fisc. l.16. de rit. nupt. l.20. § item. de petit. hered. l.1. l.2. de fer. Cujac. in l.s. de transact). Very often, that type of law is separated from the other types of civil law (l.4. § contra. de dol. mal and met. except. l.33. de cond. and demonst. Cujac. lib. 7. obs. c. 19). It has a similarity to a statute (§ 2. Inst. de bon. poss. l.8. de legib. § sed and quod. Inst. de iur. nat. gent. vid. l.8. c. de legib). A decree is properly said to be established when it is made under the limits of a person or other circumstances (Cujac. In parat. C. de divers. Rescript. and prag. Sanct). An edict is a law that has been established when these things are missing (l.8. de quastio. l.13. de iure fiscali. Theophil. in § sed and quod Instit. de iure nat. gent. et civili).

20. Suffrage and Duties of the Elders During the Time of the Jews –

Concerning the voting of elders in the time of the Jews, see 2 Sam. 5:3; Judic. 20; Luke 22:66; Num. 11:16; Deut. 21:2, 19, 20; 13:5; 1 Kings 7; 2 Chron. 1; Josh. 23; Matt. 15:2; 16:21; and 26:3, 47–57. For examples of imperial edicts, see Luke 2:1; Dan. 2:12; 3:5; 6:9, 26; Gen. 12:20; Ex. 1:15, 16; 1 Kings 12:26, 27, 28; 2 Chron. 15:17; and Esth. 1:19; 3:13, 15; 8:13. Wise elders even used to assist kings in lawmaking, 1 Chron. 13:1, 2; 38:1, 2; 2 Chron. 20:20; Num. 30:1; Deut. 5:29, 30; 39:1; 1 Chron. 28:1, 2; 2 Chron. 5:2, 3; Ps. 121; Esa. 3:15, 16; Josh. 9:15; Jer. 36:14ff.; 37:14ff.

For this section, see the following: *Digest*, de iust. et iur; de orig iur; de legib; de constit princ. And the Codex de divers rescript and pragm. Sanct. De legib, and de mandate. Princ.

On Public Power in General (Book 1, Chapter 32)

I have discussed private power and its domain. Now I will turn to public power, see above 27.4.

1. What Public Power Is – Public power is what has been granted to someone from the body of an association (Covarru. Pract. quaest. c. 1. n. 2. 3. 4. c. 4. 3. Vosquius illust. quast. lib. 1. c. 8. c. 18. c. 1. c. 2. Deut. 17:14ff., Judg. 8:2, 23; 9:6; 11:2, 10ff.; 1 Sam. 8:1; de constitute. princip l.2. § 33 de orig. iur.), together with a territory¹ for the purpose of caring and administering the business, affairs, and individuals of the associated body (Arg. 1.13. 1.19. 1.6. 1.9. 1.11. 1.12. de office. prasidis. Rom. 13:4ff.; Ex. 18:17, 22; Deut. 1:4, 12; Num. 11:17, 18. 1.2. § 33. de orig. jur. Novell. 60. cap. 2 and Novell. 85, *Polit.* cap. 18ff.).

2. What Its Territory Is – Territory, in general, is the place or all the plots of land² within a city's limits inside which this power and authority is exercised (l.239. § pupillus § territorium. de verb. sign. l.ult. de iursd). This is called a diocese or district. (Hieron. de monte. finium reg. c. 7. c. 12).

This public power is universal, noble, highest or limited, and specific.

¹ *Territorium.*

² *Universitas agrorum.*

3. Public Power in General – Highest or universal power is that which is granted to someone by a universal association^{3/a} with a territory belonging to a universal kingdom^b so that in accordance with the regulations⁴ of the Ten Commandments^c and the kingdom^d this person may administer the laws and affairs of the associated body for its own benefit^e and so that he may care for them and oversee their administration.^f

- a. Vasquius testifies that this power contains both the right to establish and govern⁵ a state (Vasquius 1.47). This is continued in Bart et al. in l. omnes de iustit. et iur. I have also discussed this idea in *Polit.* 9, 18. By the logic of ownership and dominium, this authority is in the hands of the state (Molynaus in consuetud. Parisiens tit. 1. § 1. glss. 7. n. 9. Peregrinus lib. 1. § hactenus. n. 71. 74. de iure fisci. Paurmeist. de iurisd. lib. 1. c. 1. num. 19 and 42. Vasquius lib. 1. in prafat. illust. Covarru. pract. quast. c. 4. See *Polit.* c. 19, where I discussed the idea).
- b. Concerning this universal territory, including other individual territories or regions under it; see Decian. consil. 123. n. 17 and seqq. vol. 3. Andr. Knichen de sublimi and regi. territoio, per tot. Zaf. consil. 16. n. 46. vol. 2. Matth. Stephani de iuris. lib. 2. part. 1. c. 7. num. 3. 4. 5.
- c. Deut. 17:20, 21; Josh. 1:8; 1 Sam. 10:25; 2 Kings 11:12; 23:2, 3; Dan. 6:9, 16; Est. 8:8, l. digna vox. C. de legib. Novell. 105. c. 2. l. filius 15 de cond. instit. See where I discussed the matter in *Polit.* c. 18. c. 21. c. 24.
- d. Deut. 17:15, 16. I also discussed it in *Polit.* c. 19.
- e. Ezek. 3:4; Jer. 22:3 and ff.; Pss. 82:1, 2, 3, 4 and 72:1, 2; and seqq. Novell. 85. I discussed this widely in *Polit.* c. 18. c. 19. c. 24. Therefore, a prince does not have absolute and complete power (Covarruv. lib. 3. var. resol. c. 6. n. 8. Pinell. in l.2. c. 2. rub. C. de rescind. vend. Vasq. lib. 1. illust. quast. cap. 26. num. 22. Pruckman de regalib. § soluta potestas. c. 3. Faber iurisprud. tit. 2. consut. 2. and illat. 2). I also discussed this widely in *Polit.* c. 18. 19. c. 24.
- f. I discussed this in *Polit.* c. 1. What it means to rule, to direct, to govern, or to command.

³ *Consociatio Universalis.*

⁴ *Leges.*

⁵ *Ius Constituendi atque Ordinandi.*

4. Its Various Titles – It is called the highest of things,⁶ holy empire,⁷ excellent law,^{8/g} majesty,^{9/h} absolute power,^{10/i} eminence,^{11/j} lordship over the populace,^{12/k} the highest empire,^{13/l} and the burden.^{14/m} In addition, subjects who submit to lesser magistrates and high magistrates who submit to guardians are also included.ⁿ In fact, the canon lawyer Julian wrote volumes concerning public power under the title, *On the Office of Quaestor*.

- g. Clapmar de arcan. Rerumpub. lib. 1. c. 10. Bornicius de majest. politica cap. 13.
- h. tit. ad L. Jul. majest. Widely about this vocabulary (Bornicius d. loc. c. 1. and plerique lexicographi).
- i. l. i. de const. princip. Luke 4:6; Joahn. 19:11; Rom. 53:1, 2, 3.
- j. 1 Tim. 2:2; Juda 1:8.
- k. Judic. 5:13; 8:22, 23 and 9:2; 15:11; 14:5; 1 Chron. 4:22; Pss. 105:20, 21; and 106:41; Esa. 3:13.
- l. d. l.1. l.2. § 14, 15, and seqq. de orig. iur. l 23. de iniur. l 7. § 1. de capt. and post lim. revers. Col. 1:16; 2:10; Eph. 5:21 and seqq.
- m. Ex. 18:18, 23; Deut. 1:12, 13; 1 Kings 9:19; Num. 11:16, 17, 18.
- n. Zoannet. de Imp. Roman. num. 178 and seqq. I also discussed this matter in *Politic.* c. 18.

⁶ *Summa Rerum*.

⁷ *Sacrum Imperium*.

⁸ *Ius Sublime*.

⁹ *Majestas*.

¹⁰ *Potestas Absolute*.

¹¹ *Eminentia*.

¹² *Dominatio in Populum*.

¹³ *Imperium Summum*.

¹⁴ *Onus*.

5. Laws and Affairs of a Kingdom – The laws and affairs of a kingdom, state, or universal association are those that are established as common to each and every one of its members for its benefit¹⁵ and out of necessity;¹⁶ for this reason, whatever things are by ownership part of the universal association, by administration controlled by the state body, and by duty under the highest magistrate (Covarru, Pract. Quast. 1.2–4; 4. 3; *Digest*, De Constit. Princ. 1; also discussed in *Politica* 19; Deut. 17:14–15ff.) are called royal things.¹⁷

This universal administration of the highest magistrate is under public business¹⁸ or public things.¹⁹

The general and universal administration of the public business of a state is either ecclesiastic or civil.

6. Which Ecclesiastic Administration Is – The ecclesiastic administration is that which manages ecclesiastic public business, namely, whatever pertains to the first tablet of the Decalogue: That is, the worship, the doctrine of the pure and orthodox faith and public profession is introduced and established, and the exercise and the freest enjoyment of it for anyone who wishes according to the command of the Word of God is allowed, defended, protected, and transmitted to later generations. I spoke in depth about this in chapters 9 and 28 of the *Politica*.

7. What Civil Administration Is – The civil or secular administration is that which manages public business, namely, whatever pertains to the enjoyment of this life (hence, secular) and to second tablet; this administration is overseen by a magistrate for the benefit of the subjects and the well-being of the state (Rom. 13; 1 Pet. 2; 1 Sam. 12:5, 6; chaps. 10ff. and 29ff. of *Politica*).

This civil administration looks partly to preserving the external conduct²⁰ in a common society and partly to the advantage of the life of the society.

¹⁵ *Usus*.

¹⁶ *Necessitas*.

¹⁷ *Regalia*.

¹⁸ *Negotia*.

¹⁹ *Res*.

²⁰ *Disciplina*.

8. The Subjects of Administration Concerning an External Discipline –

The following powers look to preserving external conduct:

1. The power to pass legislation
2. The power to punish
3. The power to maintain public safety
4. The power to declare and wage war and to establish peace

I have discussed these abundantly in the *Politica* and Rosenthal has as well in 1. 5 de feud. and in Dd. qua sunt regal.

9. The Subjects of the Administration Concerning the Common Good –

Administration pertaining to the common good of the society is that by which the social life of the citizens and members living in the state is promoted and protected. This administration consisted of the following:

1. The oversight of commerce
2. The oversight of coinage
3. The oversight of language
4. The distribution of duties and responsibilities²¹
5. The granting of exceptions and immunities²²
6. Agreements²³
7. Final appeals

In each of these things, it will not concern the custom, the constitution, or the empire²⁴ (see below, chapter 81; *Politica* and Dd in c. unico qua sunt regalia).

10. What the Administration of Public Things Is – The administration of public things is that by which the highest magistrate administers the thing pertaining to the state according to its well-being, just like a guardian or a caretaker to whom a magistrate is often compared (*Politica* 18 and 37).

²¹ *Munera et Officia.*

²² *Privilegium et Immunitas.*

²³ *Confederatio.*

²⁴ οὐ νομίαν οὐ ταξίαν οὐ τάρχειαν.

11. What the Good of the State Is – Things pertaining to a universal association or a state are possessions established for the enjoyment of them (Ezek. 45, 46; Choppinus 1.1 de doman regis; *Digest*, 3 ult. de iur. fisci.l. cum servus. § Constat. De legat. 1). If these possessions are immovable, they are called the patrimony of the crown, kingdom, or state (Choppinus. D. loco; also above chapters 21 and 29ff.).

12. The Types of This Good – Things of this sort include tribute,²⁵ contributions,²⁶ rent,²⁷ land-use taxes,²⁸ public possessions,²⁹ fines,³⁰ confiscated property,³¹ unclaimed inheritances,³² weapons,³³ public records,³⁴ the treasury,³⁵ fields,³⁶ estates,³⁷ revenues,³⁸ villages,³⁹ towns,⁴⁰ cities,⁴¹ regions,⁴² the

²⁵ *Tributa*.

²⁶ *Contributiones*.

²⁷ *Vectigalia*.

²⁸ *Stipendia*.

²⁹ *Bona Publica*.

³⁰ *Mulctae*.

³¹ *Bona Confiscata*.

³² *Caduca*.

³³ *Arma*.

³⁴ *Archivum*.

³⁵ *Bona Fiscalia*.

³⁶ *Agri*.

³⁷ *Praedia*.

³⁸ *Reditus*.

³⁹ *Pagi*.

⁴⁰ *Oppida*.

⁴¹ *Urbes*.

⁴² *Regiones*.

imperial court,⁴³ duke-ships,⁴⁴ marquis-ships,⁴⁵ episcopates,⁴⁶ baronies,⁴⁷ and castles⁴⁸ (Choppinus 1.2 and 5, de doman. reg). They also include royal roads,⁴⁹ public roads,⁵⁰ docks,⁵¹ defenses,⁵² and whatever other many things there are (*Politica* 17 and 37 and above chapter 21).

13. The Administration of These Things – The administration of public things may be for the benefit of the state when those things are employed and expended by the highest magistrate for the expense of its own duties and for the necessary and beneficial uses of the state.

14. The Purpose for Public Distribution and Expenditures – For this reason, the necessity of expending and spending public things is twofold: One, it provides support for the highest magistrate. Two, it maintains the administration of public business because it looks to the cost and expense by which the profits of the state are advanced and its losses and expenditures are diverted and impeded (*Politica* 27). If anything remains in the state's treasury, it must be stored and preserved for whatever future necessity may come (D. cap. 27).

15. Public Administration When It Looks at Private Affairs – There is also a type of public administration that looks to the affairs and the characters of private citizens and subjects by which the highest magistrate by his care, foresight, and governance maintains and defends the persons and goods of his subjects against violence and injury, and he guides and governs in order to

⁴³ *Commitatus*.

⁴⁴ *Ducatus*.

⁴⁵ *Marchionatus*.

⁴⁶ *Episcopatus*.

⁴⁷ *Baronatus*.

⁴⁸ *Castra*.

⁴⁹ *Viae Regiae*.

⁵⁰ *Publicae*.

⁵¹ *Portus Maris*.

⁵² *Propugnacula*.

direct the symbiotic political livelihood of the state by avoiding its harm and promoting its welfare.

16. What the Good of Subjects Is – The things and possessions of subjects are the following:

- Life and bodily safety,
- Reputation and good name,
- External moveable and immoveable goods.

Against these possessions, various plots are constructed and injuries are inflicted that the magistrate ought to avert in whatever way he can as if he were their guardian or defender. Especially, in fact, he will curb and remove those vagabonds,⁵³ sorcerers,⁵⁴ beggars,⁵⁵ thugs,⁵⁶ dice-players,⁵⁷ game-players,⁵⁸ actors,⁵⁹ mimes,⁶⁰ comedians,⁶¹ pimps,⁶² loan sharks,⁶³ hucksters,⁶⁴ and originators of other evils and harmful desires who swindle and rob the subjects in unlawful ways and who deprive them of their possessions and do damage to their reputation and good character. He will also remove bandits,⁶⁵

⁵³ *Errones.*

⁵⁴ *Magici.*

⁵⁵ *Agyrta.*

⁵⁶ *Fortiarii.*

⁵⁷ *Aleator.*

⁵⁸ *Lusor.*

⁵⁹ *Scenicos.*

⁶⁰ *Mimus.*

⁶¹ *Comoedus.*

⁶² *Lupanarius.*

⁶³ *Usurarius.*

⁶⁴ *Caupo.*

⁶⁵ *Latro.*

highwaymen,⁶⁶ muggers,⁶⁷ thieves,⁶⁸ and looters,⁶⁹ who harm the body, life, or possessions of the subjects. He will set up guardians for wasters and spend-thrifts. He will provide for future fires and floods. Finally, he will take care of and provide for whatever else magistrates do for the defense and protection of the possessions of their subjects (d. cap. 37).

17. In What Things the Public Concern of Persons and Subjects Is – He will have responsibility over the care of individuals so that they might be educated and instructed in public schools or offices for the well-being of the state and so that no one is unemployed,⁷⁰ so that the harmony of different segments of society and different members of the state is maintained, so that the administration of justice might be weighty and sincere, so that evil habits and extravagance might be removed and restrained, and so that committed crimes might be punished (l.13. de office. Praesid).

18. The Care of the Poor – Most importantly, he will have responsibility over the care of those who need pity, such as the blind, the mute, the deaf, the mad, the orphans, the old, the poor, the leprous, and the like for whose survival he will establish a yearly income, guest-hospitals, clinics, hospitals, orphanages, poor-hospitals, and nursing homes (*Politica* 37).

19. The Care of Good Supervision and Types of Public Power – Finally, he will make provisions so that his subjects are not burdened and impoverished by tyranny, excessive taxation and servitude (*Politica* 38).

Next, concerning the types of this public power, there are two: monarchy and polyarchy.

20. What Monarchic Power Is – Monarchy is power that is granted to one person. This power must be strengthened by the help of good citizens so that the state, divided by the authority of many, might not be torn to pieces. Finally, public assemblies must be strengthened in their authority so that a monarchy's legal power might not be transformed into a tyranny (Osor. De Reg. Instit. 8).

⁶⁶ *Grassator.*

⁶⁷ *Insidiator.*

⁶⁸ *Fur.*

⁶⁹ *Depopulator.*

⁷⁰ *Otiosus.*

Polyarchy is power by the change of authority among many people, similar to a shared law.⁷¹ In turn, its types are aristocracy and democracy.

21. What Aristocratic Power Is – Aristocracy is the highest public power, which is granted jointly and indivisibly to a few colleagues. So that an aristocracy might not degenerate to a monarchy or a democracy, it must be strengthened by special legislation.

22. What Democracy Is – Democracy is power that is granted to each individual person out of the population through exchange, turn, or succession, at certain times, chosen by a universal body of fellow citizens for a particular circumstance so that by assembly, company,⁷² or tribe, they might administer the state. So that this democracy might not degenerate into a monarchy or aristocracy, it must be strengthened by certain special legislation (*Politica* 39).

For more information about the material in this chapter, see Dd. in c. unic. quae sunt regal tit. de constit. princip. tit. ad L. Jul. majest. tit. de adminst. rer. Ad civit. pertin.

⁷¹ *Ius Communicata*.

⁷² *Centuriatim*.

On Limited Public Power (Book 1, Chapter 33)

I have already spoken about highest or universal public power. Now I will turn to limited or special public power.

1. What Limited Public Power Is – Limited, special, or inferior public power is that where power is legally rendered for a particular, limited, and restricted territory and is undertaken on behalf of the highest power that it recognizes as its superior and to whom it is held accountable of its administration (Geil. Lib. 1. observ. 17. Ferand Vasqui. Illust. Controv. lib. 1. cap. 8. Mynsing. Cent. 5 obs. 8).

This limited public power, in turn, is either provincial¹ or official.²

2. What Provincial Power Is – Provincial power is that which the governor³ of a province exercises in the territory of his own province with his own legal authority.

3. What a Province Is – A province⁴ is something that in the scope of its own territory contains many villages, towns, castles, or cities under the

¹ *Provincialis*.

² *Officialis*.

³ *Praeses*.

⁴ *Provincia*.

community and administration of one legal authority⁵ as united and closely allied. It is also called a region⁶ or a district⁷ (Hieronym. De monte, 3; De finib. Regun. Losaum de iure university. 1.2.7–8. 1.6. § Qui universas. i. congrui. 13. de office. Praesid). Today, any city having a distinct and separate government⁸ and territory is called a province (Bart. In l. unic. Num. 5. Cod. De metrop. Beryt. Li. 11. Marcus decis 366. num. 13.14. Vol. 1. Losa. De iure univ. part. 1. c. 2. Hieronm. De monte. De finib. Reg. c. 4. num. 7).

4. The Authority of a Provincial Governor in the Past and Present –

The governor of a province at one time would administer and rule one or more provinces (Tit. Cod. De rect. Provinc. And toto sere lib. 1. C). In addition, its power and office was temporary. However, at the time of Charlemagne, these governorships became perpetual and hereditary, and the jurisdiction of them became hereditary (Geil. 1.97; Boer, 202; Heig. 1.2. Choppin, 1, de domane. reg. tit. 6.18; Paurmeist. 2.10.7–8. de iuris; Matth. Stophani. 2.1.4.1–2ff.; Pet. Gregor. Syntagm. Iur. 6.9). Today, these governorships in the German states are of two types: Some are directly subject to the empire, like states are; others are indirectly (Paurmeist. d. loc; Andr. Knich. De iure Territorii. 4; Geil. 1.21).

5. What a Governor of Many Provinces Is Today –

A governor of many provinces is called a prince,⁹ a duke,¹⁰ a marquis,¹¹ or a landgrave¹² (Wesenbe. Consil 27.28; Disentit Paurm. 2.ult.18; De Iurisd. See also *Politica* 18; Rosenthal, de feud 2.2; Geil, de arrest. 6.9; Matth. Steph. 2.1.6; de iurisd; Heig. D. loc.; Pacian 2.35ff.; de probat. Borch. De feud, quae sunt regal).

6. What Power a Provincial Governor Has –

The governor of a province enjoys full jurisdiction and power within the territory of his own province in

⁵ *Ius*.

⁶ *Regio*.

⁷ *Districtus*.

⁸ *Regimen*.

⁹ *Princeps*.

¹⁰ *Dux*.

¹¹ *Marchio*.

¹² *Landgravius*.

which he also exercises what are called the *regalia*¹³ (Geil 1.6.19, de pac. Publica and 2.57.7–8; Wesenbec. Consil. 40.44 and 27.28; Donell. 17.22).

7. What Power Is Reserved for the Highest Magistrate – He enjoys this power with the exception of the following, which are reserved for the highest magistrate:

- Seniority, preeminence, and universal jurisdiction in each and every province of the kingdom (l deprecation, 9; ad l. rhod. de iact. l. bene a Zenone. Cod. de quad. prescript. Wesenbec consil 97).
- The promulgation of universal legislation effective through the entire kingdom and each individual province.
- The right to summon assemblies and councils.
- The right to declare war and peace.
- The right to found universal studies and academies.
- The right to create princes, dukes, marquis, counts, barons, nobles, notaries, and the right to deprive one of such a title.¹⁴
- The right to assign rent on public land.¹⁵
- The right to grant traditional annual market days.
- The right to set up a postal service.
- The right to grant citizenship.
- The right to legitimize and restore parentage.
- The right to restore reputation and honor.
- The right to grant the privilege of age.¹⁶
- The right to grant immunities and privileges.
- The right of public safety.
- The right to coin money.
- The right of final appeal and diverting court cases.
- The right to judge the disputes of dukes, counts, and other dignitaries.
- The right of universal ban and proscription.

¹³ *Regalia*.

¹⁴ *Regalia*.

¹⁵ *Vectigal*.

¹⁶ *Veniam Aetatis*, that is, Age of Majority.

Each and every one of these powers is reserved for the highest magistrate and cannot be shared or passed down to a provincial power. They cannot be usurped or exercised by them (Rosenthal 1, de feud conclus. 10 and 13.5; Covarruv. Pract. Quast. 4; Roland a Valle Consil. 1.138.2 and 1.141ff. and 1.2.; Bossius de prinipe 92ffl. Matth. Stephani, de iurudict. 2.1.2.1). To this list I add the right to inspect and to coerce, which the highest magistrate exercises over the governor of a province (Geil 1.17; Fern. Vasqui 1, illust. Controv. 8.17ff.; Boer. Decis. 304).

8. What Jurisdiction a Provincial Governor Has – The governor of this sort of province has the use-right¹⁷ of jurisdiction¹⁸ and command,¹⁹ their personal use²⁰ and full exercise,²¹ with a certain free administration (*Digest*, De Office. Praesid 11, 12, 13, 19, 6; De Office. Procons. 7–9; Solent. De Office. Procons. 6; Menoch. 1. 12. 8; *Digest*, Arb. Iudic and Quaest. 14 and 87; Gen. 41:40–41ff.; Deut. 1; Jer. 7:31; 31:5; 32:35; 1 Kings 9:22, 23; Ex. 18:21ff.). Although he cannot yield this use-right to another, and he cannot resign himself from it (*Digest*, De Office. Praesid.; De Office. Procurat. Casar. 1.), nevertheless, as long as the power to recall this right is maintained (*Digest*, De Office. Praefect. Praetor, 1; More De Iurisdic. 5), he can impose the exercise of this command onto another person (*Digest*, De offic. Eius Cui Est Mand. Iurisd. 1.1, 2, 3, 4). He does not, however, have lasting and full ownership of this jurisdiction; therefore, when the use-right of this power comes to an end, it is returned to the highest magistrate who gave it and is consolidated with his retained command (*Digest*, De Iurisdic. 6 and ff.; De Offic. Praefect. August. 1; De Offic. Eius Cui Est Mand. Iurisdic. Penult; Novell. 15). For this reason, it is often said that all jurisdictions flow from the highest magistrate and flow back to him.

¹⁷ *Ususfructus*.

¹⁸ *Iurisdictio*.

¹⁹ *Imperium*.

²⁰ *Usus*.

²¹ *Exercitium*.

9. What Limited Authority Is – The exercise of this power and command is appropriate when it is in accordance with the will²² and direction²³ of the highest magistrate (*Digest*, De Offic. Eius, 1, 2; Codex, Com., Penult and Ult; Vel Epist. Vicar. Rei Iud. Non Hab.7.57), when it falls within the mandate that has granted this power (*Digest*, De Iursidict., 6) and when the accountability of its administration to the highest magistrate is guaranteed (l. unic. Codex, ut om. Iudic. tam civil. quam criminal post depos. adminstr; Petrus Gregorius 47, 21, 3–5; Mynsing. 5.8).

10. What Official Power Is – Official public power is that which is granted to someone without territorial rights in order to perform those things that must be done for the accounting of public office (*Digest*, De Iursidict., 1, 2; De Offic. Eius Cui Est Mand. Iurisd., 1, ult.).

Official public power is twofold: True public power or public power with some limit.

11. What Official Public Power Is – True official public power is that which is granted by reason of a political office or magistracy with jurisdiction or its own command (*Digest*, More. De Iurisdic., 5; De Offic. Eius Cui Est Mandat. Iurisd., 1.3) in a foreign territory onto an individual and his cases and business (*Digest*, De Iurisdic. 1, 2, 3, 10, 11; Si Quis Ius Dic. Non Obtemp., 1; De Iudic. 58), and it is literally called a magistracy (*Institutes*, De Iur. Nat. Gen. and Civil.; Rom. 13:1; 1 Peter 2:13, 14; 2 Chron. 20:19).

12. What Authority and Its Types Is – Command²⁴ is the power to investigate,²⁵ enact,²⁶ order,²⁷ and punish²⁸ (*Digest*, De Iurisdic. 1–3); it is also called jurisdiction (*Digest*, De Iurisdic.; Matth. Stephani, De Iurisdic., 1.2).

²² *Voluntas.*

²³ *Praescriptum.*

²⁴ *Imperium.*

²⁵ *Cognoscendi.*

²⁶ *Statuendi.*

²⁷ *Iubendi.*

²⁸ *Puniendi.*

This command is either mixed or pure (*Digest*, De Iurisd. 3); each is called jurisdiction (*Digest*, De Iurisd., tit; De Offic. Eius, 1, ult; De Offic. Prasad, 3; De Extraord. Cognit, 1; Stephan. De Iuris, 1.6).

13. What Mixed Authority Is – Mixed command is the power a magistrate has to investigate concerning the action of some business and to institute policy according to its justice and merit according to the prescribed manner and justice of the magistracy that he has (*Digest*, In fin. De Posiul; De Minor. 16; Robert, 4.22; Corasius 22. 17. 15; Alciatus 2 8; Cujac., Ad Papin, 2).

14. Its Titles and Members – In other places it is called not pure command (*Digest*, De Offic. Eius Cui Est. Ult.) but power inborn,²⁹ innate,³⁰ or interwoven with the magistracy, or something similar (Cujac. In Papin, 1; *Digest*, De office. Eius Cui Est Mand. Iurisd.). For this reason, it began to be called mixed, namely, because it is not only bare and separate, as pure command is, but it is also mixed with or joined to a magistracy, office, or service by a public injunction (Cujac. D. Loc.; Donell., 17.8).

Mixed command has two parts, the power of inquiry and the power of enacting law.

15. What the Power of Judicial Examination Is – The power of inquiry³¹ is the judicial examination or investigation of someone's business (*Digest*, Notionem. Ubi Goedd. De Verb. Signific., 99; De Re Iud. 5). Even though judicial examination is often confused with jurisdiction (*Digest*, De Transact, 8; De Iurisdic., 11.2; De Praetor. Stipul., 5.1), this inquiry revolves most of all around the nature of an action so that it might learn its full information and instruction along with the attending circumstances from which law, the enactment of the action, may arise (*Digest*, De Iust. and Iur; Iudices, 9; Cod. De Iudic; John 7:51; Deut. 17). Therefore, there is a formal trial³² and a judicial representative³³ (Auth, Iubemus; Codex, De Iudic.; *Digest*, De Recept. Arbit,

²⁹ *Potestas Ingenita.*

³⁰ *Innata.*

³¹ *Potestas Cognoscendi.*

³² *Causae Cognitio.*

³³ *Causae Cognitor.*

3.1). Some call this simple jurisdiction³⁴ (Duaren, in tit. De Iurid; Per l. Si Idem De Iurisd; *Digest*, De Extr. Cognit., 1; Matth. Steph. De Iurisd. 1.5).

16. What the Power of Enacting Legislation Is – The power of enacting law³⁵ is that which determines a law and applies to an investigated action with the carrying out of a decreed law or with the power of execution (*Digest*, a Divo Pio, 15; De Re Iudic.; De Iurisdic., 2; De Officio Eius Cui Est Mand. Iurisdic., Ult.). A decreed law depends on a command; the execution of a decreed law is carried out through moderate coercion³⁶ (*Digest*, De Offic. Eius Cui Est Mand, ult.; Novell., 15.1, 2, 3, 6).

17. What an Order Is – An order,³⁷ therefore, arises from the power of enacting, ordering, and commanding (*Digest*, De Re Iud., Ult., 14; De Iurisdic., 4.1, 2, 3; *Institutes*, De Interdict.; Ne Quid in loc. Publ., Ult.; Donell. 17.8). Included with it is the right to prohibit³⁸ (*Digest*, De Aqua Quotid. and Ast., 1; De Re Iudic., 14; De rivis. 1).

18. Its Specific Title – In other places, it is listed, in kind, as jurisdiction, that is, as the right to settle, determine, and enact law (*Digest*, De Offic Eius Cui Est Mand., 1, ult; tit. Quod quisq. Iur. in al. Stat.; Si Quis Ius Dicent. Non obtemp., 1). Because of this, an edict of a praetor, in which he orders or prohibits, is often called jurisdiction (*Digest*, Iudicium. De Iudic., 58; Divus. De Sicar., 31; De Iurisd. 7; De in Ius Vocand., 11). Granted, order is said to pertain more to command (*Digest*, De Iurisd. 4).

19. The Authority to Defend Against Injury – The power to order and to prohibit includes also the right to defend oneself from violence and injury (*Digest*, Congruit. De Offic. Prasad., 13; Romans 13). It also includes the power to ordain and establish anything that pertains to the safety of the subjects (Argumn, Iudices, 9; Certi. Cod. De Iudic, 17).

³⁴ *Iurisdicatio Simplex.*

³⁵ *Statuendi Potestas.*

³⁶ *Coercitio Modica.*

³⁷ *Iussus.*

³⁸ *Prohibendi Ius.*

20. What Moderate Restraint Is – Moderate coercion comes from the power of establishing law and carrying out decrees, by applying force or assessing fines (*Digest*, De Iud., 2.Ult.; Si Quis in Ius vocat., 2; Cod., De Mod. Mult., 2, 3), or by announcing or inflicting any punishment not capital (*Digest*, De Iurisdict. Iussus non Obtemperanti, 12; Si Quis Ius Dicent. Non Obtemp, 1; De Offic Eius, cui est Mandat., Ult., 1, Ult.). This is called moderate coercion, with respect to pure command (d. l. ult.), or it is called greater command in the same jurisdiction with respect to an order (*Digest*, Iudicium. De Iudic., 58); by no means does the fact that it is greater command make it absolute command (*Digest* Ad Municip., 26; De Iurisdict., 4).

21. Arbitrary Moderate Restraint and the Types of Mixed Authority – Moderate coercion, which ought to be assessed in accordance with the logic of the circumstances, is left to the decision of a judge (*Digest*, Respicendum de Poen., 11; Duaren in l. more., de Iurisd; Clar. Quast., 8, Pract. Crim., fin., Marant., 4.1.82).

There are two types of mixed command: First, that for which jurisdiction is included; second, that for which jurisdiction is added (*Digest*, De Iurisd. 3; De Offic. Eius Cui Mand. Iurisd.; Menoch. 1, Arb. Iudic., 74, 20).

22. Under Whose Jurisdiction Mixed Authority Is – Mixed command to which jurisdiction has been included and intermixed by its own nature occurs when the right or use of command is exercised primarily in the situation (*Digest*, de Iurisdict, 3, 4; Magis Imperii ad Municip., 26). In other words, it is that command in which the power and authority of command stands out more than that of jurisdiction (Menoch., d. cas. 74, num. 20, 21). Matthew Stephani incorrectly rejects this type.

23. How Mixed Authority Includes Jurisdiction – Mixed command for which jurisdiction is added is the term for a command that is exercised not primarily for its own sake but in order to exhibit jurisdiction or because of an order (*Digest*, De Offic. Eius Cui Est Mandat., 1, ult; De Iurisdict., 2; Cod. Ubi and apud quem cogn., ult.). With this limitation, jurisdiction or order eludes some situations and lacks an outlet (*Digest*, De Offic. Eius, Ult; Si Quis Ius Dicent Non Obtemp; De Iurisdict., 2; Menoch d. Cas. 74. num. 20.21). Therefore, in this case, jurisdiction prevails, as Donellus has explained.

24. Sole Jurisdiction Never Exists – From these ideas, it is the case that jurisdiction is never alone, but either it is attached to command or is a part of it (*Digest*, De Iurisdict., 3;4; De Offic. Eius, 1; Fachin. 9.95). Because of this

inseparable association, it is rightly said that whatever things are attributed to jurisdiction are also rightly attributed to command (*Digest*, De Offic. Eius, 1.ult; 3; ult) so that command may be called jurisdiction and vice versa (*Digest*, Etsi. De office. Eius, 3; Cum Prator. De iudic. 12).

25. Why It Is Called Mixed Authority – Thus, from here it is also inferred why it is called mixed command, that is, because it is tied to jurisdiction (Cujac. 21.30; Duarenus 1.52; *Digest*, De Iurisdic., 3; Donellus 17.7, 8; Robert. 4.22; for opposing positions, see Anton. Faber 4.4; Zasius, De Iurisdic. 3). For examples of mixed command, see the following: Muscirdm De Iurisdic. 151; Longovall, De Iurisdic., 3; Zasiium, 3; Alciat 2.7; Pet. Gregor. 47.21.13, 14; Donell 17.8; Hotoman 7.16.

26. What Pure Authority Is – Pure command³⁹ is what is given not by the right of a magistrate but specifically by a law to someone at any time, even to a private citizen (*Digest*, De Origin. Iur, 2; Solet. De office. Procons., 6; De Offic Eius cui est Mand. Iurisd., 1.1; 5; Ad L. Cornel. De Sicar., 1; De Verbor. Signific., 131.ult; De Offic. Proconsul., 7), with the power of inflicting capital punishment or of punishing criminals capitally (*Digest*, de Iurisd. 3; De Offic. Prasad. Nemo, 3; 13; De Regul. 70; Actor. 26.10, 11, 12; Francisc. De Claper., De Iurisdic. 4). Otherwise, it is defined as the power of preventing crime (Codex, Qui Non Poss. Ad Libert. Perven., 1; Cujac. 1; Papin; *Digest*, De Offic. Eius Cui Est Mand., 1; Donell. 17.8; Hotoman 3.4). For some magistrates, with the rights of the appropriate magistrate, taxes are collected as pure command (*Digest*, De Offic. Eius, 1; De Offic. Prasad; De Offic. Procons., 5, 6; De Poen., 1.1; Donell. 8; Covarruv. 3; Menoch 1.54.9; 74.44, 45; Clae. 41.fin.4; Muscornus, De Iurisdic., 135; Walter 2.9; Pet. Gregor 47.21.20–21). These dissenters think that here the custom⁴⁰ of each place ought to be examined. Elsewhere, this is called punishment⁴¹ (*Digest*, De Offic. Eius Cui Est Mand., 1.pen.), or it is called a license for inflicting public discipline⁴² (*Digest*, De Offic. Praefect. Prator.).

³⁹ *Merum Imperium*.

⁴⁰ *Consuetudo*.

⁴¹ *Animadversio*.

⁴² *Licentia Disciplinae Publicae Emendandae*.

27. Today There Is No Pure Authority – Today, according to our customs, there is no example of pure command because by a silent right vengeance and the power to inflict capital punishment follow a magistrate, and a magistrate by law exercises power (Donell. 17.8; Francisc. De Claper. De iurisdic. 2.8; Cujac. D. loc.; Pet. Gregor). In this instance, a magistrate ought to look at the limits and purposes of each command, that is, how long it lasts; to what extent does it stretch; in what business does it apply; or does this command come from custom, a statute, or the concession of a superior (Pet. Gregor; Codex.de emancip. 1; Codex, Quand. Imp. Novell 1.15.2ff.; *Digest*, de offic. Eius, 1; Ad LJul. De Amb., 1).

28. Why It Is Called Pure – Moreover, this command is called pure because by itself it is untainted, naked, alone, and separated from jurisdiction (*Digest*, In Fin. De Jur, Dot.; De Donat., 27), or because it exists in coercion alone—properly called command and not in order or investigation—which is called jurisdiction; it is called pure because this command is separate from a magistracy or from that power that is granted by law to a magistrate to whom this pure command is not included or entangled by its nature. With respect to mixed command, this is called pure command (Donell., 17, 8; Duaren. De Iurisdic., 3; Vacon., A Vacun., 6.2.7). In fact, canon lawyers have called it sole⁴³ command (*Digest*, De Verb. Oblig., 5), and Greek authors termed pure command, single⁴⁴ command. Thus, there are the terms *pure rigidity*,⁴⁵ *pure condition*⁴⁶ (*Digest*, Cum Servus. De Cond. and Demonst.), *pure law of nations* (*Digest*, De Poss., 31), *pure judicial procedure*⁴⁷ (*Digest*, De Solut.; Stipulio De Verb. Obl., 5), and *pure punishment*⁴⁸ (*Digest*, Si Quis Ius Dic. Non Obtemp, 1; Acliat. In De Verb. Sign., 215). Therefore, legislation enacts law in pure command, not a magistrate as in mixed command (*Digest*, Ordine. Ad Munici., 15; Ad SC. Turpill., 1).

⁴³ *Solus*.

⁴⁴ *Movovç*.

⁴⁵ *Mera, Subtilitas*.

⁴⁶ *Mera Conditio*.

⁴⁷ *Merum Officium Iudicis*.

⁴⁸ *Mera Poena*.

29. The Different Terms for Pure Authority – This pure command is also called supreme power,⁴⁹ and punishment⁵⁰ (Codex, De Iurisd., 5; De Offic. Prasad., 13; De Offic., Ult.), the command of one who has greater power (l. si quod. de off. procons.), power through excellence (l.3. de iurisd.), the power of the sword and the right of the sword (l.6. de office. procons. l.6. § 8. de office. prasad.l.71. nemo. de reg. iur.), the fullest jurisdiction (l.7. si in § 2. de office. procons.), command (l.2. de in ius votand.). The symbol and sign of this command is the sword (Suet. In Vitell. c. 8. adde Josh. 5:13–14; Job 19; 1 Sam. 15:13; Ex. 18:4; 22:24; Deut. 13:15; 20:13, 16; 32:41, 42). In Rome, these symbols were the rods with the axes, as can be seen in Dionysius of Halicarnasus and Livy. Others call pure command high jurisdiction⁵¹ (Bartol. Alciat. Zas. and Ias. In l.3. de iurisd.). These authors think that it was called pure because it was removed from private use.

In addition, with regard to official public power, sometimes when it has been prescribed in a certain way, it is entrusted in particular certain circumstances without jurisdiction and coercion and without the power of prosecution⁵² to a private citizen by that someone who has the right to concede and entrust this power.

There are two types of this: substitution⁵³ and arbitration⁵⁴ (tit. C. de offic. eius qui vicem alter. gerit. tit. de offic. eius cui est mand. iurisd. tit. de recept. arb.).

30. Administrative Power – Substitution is when it is conceded from the specific and truly public power of an official to a private citizen (l. more 5. l.16 l.17 de iurisd. l.1 l.2 l.3. de offic. eius cui est mandate. iurisd. tit. C. de off. eius qui vicem alt gerit.), including those situations that do not require the knowledge of the transferring magistrate himself (l.2.C. de pedan. iudic.).

⁴⁹ *Summa Potestas.*

⁵⁰ *Animadversio.*

⁵¹ *Alta Iurisdiction.*

⁵² *Potestas Exsequendi.*

⁵³ *Vicaria.*

⁵⁴ *Compromissaria.*

31. Authorized, Foreign, and Delegated Power – It is also called transferred jurisdiction⁵⁵ (l.1. § 1. l.2. l.5. de off. eius cui est mand. iurisd. l.5. more. de iurisd.) or foreign jurisdiction⁵⁶ (d. l.1. § 1. l.3. etsi de off. eius cui est mand. iurisd.).

32. What an Ordinary Authorization Is – When it is given by a prince or the public provincial power, this power is called particular and ordinary jurisdiction, not foreign (l.ult. C. ubi senat. vel clariss. L.1. de const. pr. L.1. ad L. Iul. De amb. Novell. 15.c.3. Luke 10:16; 1 Pet. 2:14). Power that is regular, eternal, and universal (Paurmeist. Lib. 1. c. 10. n. 28. de iurisd.); has been allotted by a public authority to someone (d. c.10); or is given by the exercise of an ordinary right; or by which the totality of business is entrusted to someone (vide Menoch. Lib. 2. pras. 16. vide infra lib. 3. c. 4.), is also called delegated jurisdiction⁵⁷ (l.2. C. de dilat. l.5. cum auth. seq. l.16. C. de iudic.) or command separated from its magistrate and naked (l.5. l.15. ubi gl. Bart. and Duar. de re iudicat. l. a iudice 5. C. de iudic. l. cognitionum. de var. and extraord. cognit.). In fact, the person, to whom this jurisdiction is transferred, is called the procurator, vicarius, substitute, or mandatarius, or even the trustee of an entrusting magistrate (l. § 1. l.2. l.3. l.6. de off. eius cui est mand. iurisd. Duar. de iurisd. c. 7. c. 8. Donell. lib. 17. c. 8. comment.). Donnellus calls him a magistrate without command and power (l.32. nec. de iur.), who, by use and exercise is considered to have the place of a magistrate even though he is not so by office and power. Elsewhere he is called an appointed judge⁵⁸ (l.2.3.4.5. C. de pedan iud. l.ult.C. ubi and apud quos. l.4. prator. de tut. and curat. l.38. de poenis.) who oversees the prosecution of lesser things (l.2. l.ult. C. de peda. Iud. Novell. 82. ubi Cujac.) or a special judge (l.fin. de offic. prator. l.5. de offic. prasid.) or a delegated judge (tit. C. qui pro sua iurisd. iudic. dar. poss. tit. de offic. delgat. extr.).

33. The Force of Authorized Jurisdiction – The ability to transfer jurisdiction exists as long as the person who holds this ability has only the power to

⁵⁵ *Iurisdictio Mandata.*

⁵⁶ *Iurisdictio Aliena.*

⁵⁷ *Iurisdictio Delegata.*

⁵⁸ *Iudex Padeneus.*

investigate and make judgments (l.a Divo 15. ubi Duaren. de re iudic. l.properandum. § fin autem. C. de re iudic. Menoch. lib. 1. arbitr. iudic. quast. 74. num. 3. Donell. lib. 17. comm. cap. 6. a se ipso dissentiens lib.17. cap. 23), and not also the power to order and prosecute⁵⁹ (d.l. 15. a Divo Pio. d. l. properandum. § Fin. Autem. See Donell. d. loco. for a different opinion.). Therefore, he has sole power of investigation and judicial decision-making (l.5. ait. l.15 a Divo. de re iudic. l.99. notionem. de verb. sign. l. penult. l. de quare. de iudic. l.8. de transact. l. ult. C. ubi and apud quem in integr. restit. l. cognitionum. de var. and extraordin. cognition.).

34. This Cannot Be Authorized or Yielded – He cannot transfer or yield it to another person (l.6. § and quia. de iurisdic. tit. C. de offic. eius qui vic. arg. § penult. ult. Instit. de usufruct. l. nemo plus. de regulis iuris. Donellus d.c. 8. Menoch. Lib. 1. arb. Iud. quast. 54 and 74. num. 45ff.). This regulation is relaxed to the requirement that although he is unable to transfer it to another person, when an understanding of the case is required, he can (per l. solet. de offic. procons. Novell. 134. c. 1.2.3.4. Novell. 15 and 128. c. 19. c. 20. vide Menoch. Quast. 2. d. lib. 1. arbitr. iudic.).

35. Its Limit and Form – In the exercise and use of the concession of his jurisdiction, he follows the procedure prescribed to him and performs the duties of the one who is transferring it (l.16. l.17. de iurisdic.) and administers that person’s jurisdiction (l.1. § 1. de offic. eius cui est mandat.), while possessing no individual jurisdiction of his own (l.1. § 1. l.3. de offic. eius). He does this in such a way that the execution of his decisions pertain to the transferred jurisdiction only (Zas. late in l.5. de iurisd. Hart. ab Epping. lib. 2. obs. 15. l. 17. tit. 15. Marant. part. 4. dist. 5. Menoch. lib. 1. arb. quast. 54 and 74).

36. When It Is Called Revoked – This transferred jurisdiction, once the will of the one who transfers it has come to an end, is considered returned (vide Menoch. lib. 1. quast. 79. 68. Covarruv. variar. resolute. lib. 3. cap. 5). Once returned, this jurisdiction is called not private but cumulative (Myns. cent. 6. obs. 99. Menoch. lib. 2. pras. 18. num. 31.32. Paurmeist. lib. 1. c. 29. de iurisd.).

⁵⁹ *Iubendi and Exsequendi.*

37. It Is Not Possible That the Exercise of Authority Be Remitted or Abdicated – As for the naked use and exercise of command, a magistrate is able to yield and transfer it to another (l.pen. de offic.prasid. l.cui muneris. de mun. and honor. atq. l.16. solet. l.17. l.5. l.6. de iurisd. l.1. de offic. eius.), but he cannot renounce this command from himself (d.l.pen. de off. prasid.). This is because the command clings to the person and, therefore, cannot be fully yielded to another (d.l.pen.). He should not be quick to transfer his jurisdiction (l.2. C. de pedan. iudic.), and he will instead transfer from those things that by law he has as a magistrate, that is, those things that were obtained at one time by judicial decisions and lesser things (l.2. l.ult. C. de pedan. iudic.), not those things that by the law of the magistracy were entrusted to him in order to be settled by his office (Donellus late lib. 17. comm. cap. 22. argum. Novell. 60. § illud. Authent. ad hac. C. de iudic.). From those things that at one time these magistrates were able to transfer, Donellus thought were extraordinary procedures involving honoraria⁶⁰ (l.1. de extraord. cogn.). For more information about these, see the following: l. quod si. § ult. de minor. l.3. § 1. de lib. exhib. l.1. § 1. de rei vind. l. pecunia. § actionis. de verb. sign. l. solent de offic. procons. l.1 de offic. eius. l. nec quicquam. § ubi de offi. procons. l.2. C. de assessor. vide Menoch. lib. 1. quast. 2. arb. iudic.

38. What Cannot Be Authorized – However, it is not possible to transfer those things that do not pertain to one's own jurisdiction (tit. C. qui pro sua iurisd. iud. dar. poss. l.4. § ult. de off. procons.). Here, I include those things that they have not by the law of their own magistracies but specifically by a statute or institution (l.1. de off. eius cui est mand. l.cum hi 7. § sed nos. de transact. l. penult. l.12. § 1. l.80. de iudic. l.2. C. de pedan. iud. Novell. 15.).

39. When It Is Authorized Cumulatively or Individually – However, jurisdiction is transferred and yielded to another person cumulatively, not privately or totally when that person is not able to investigate and pronounce judgment alone but so that when he concedes this jurisdiction, he may retain the greater jurisdiction and be able to exercise it at the same time (Menoch. lib. 2. prassumpt. 18. and lib. 1. quast. 40. arb. iud. and quast.74. Myns. cent. 6. obs. 99. per l.1. C. de defens. civit. Novell.15.c.3.), that is, unless a statute itself confers jurisdiction or the form of the concession is private and total and

⁶⁰ *Extraordinaria Honoraria Cognitio.*

establishes distinct jurisdictions (Menoch. d.lib. 2. prasumpt. 18. and lib. 1. arbit. quast. 40. Covarr. pract. quast. c.1.c.2. late. Paurmeister. lib. 1. cap. 29. de iurisdic.). This differs among different time periods.

40. Paurmeister's Distinction – For, at one time, when jurisdiction was a part of state law⁶¹ and existed in the possession of the Roman state alone, its use was entrusted for a time both in ordinary and extraordinary circumstances to the magistrates alone. At that time, it was always possible for a higher magistrate who yields power to exercise this power along with the other magistrates because he still would retain it among all the temporal and entrusted magistracies who would exercise the entrusted jurisdiction not in their name but in the name of the one who yielded the power. This opinion is attributed to Bartolus. According to the state of these times, every jurisdiction, whether it has been yielded by emperors; princes;⁶² the leading citizens of the Empire, their inferiors, subjects, or individual people; or simply the entire population, are considered to have been granted not privately but consecutively. In other words, this jurisdiction should be understood to be imparted at all times in such a way that the person who yields the jurisdiction does not renounce his entire jurisdiction or, at least for legal pronouncements, there still exist the right to appeal to the higher authority or other legal possibilities so that, not only might the one who yields jurisdiction not be considered a private citizen by the highest law but also so that he might be able to work with those to whom the jurisdiction has been yielded by preparing the work for them, working together, or providing instruction (Menoch. lib. 2. pres. 17). As for use at this time, Paurmeister believes that there is a distinction between expressly yielded and tacitly yielded jurisdiction—universal, general, and individual entrusting, or exemption,⁶³ whether perpetual or called use-right⁶⁴—or allotment through the title of a fief, pledge, deed, lease.

In all transferred jurisdiction or in a certain type of jurisdiction when the magistrates have been appointed or delegated, the old law that I mentioned above still holds place. However, as long as those magistrates who by law

⁶¹ *Ius Publicum*.

⁶² *Principes*.

⁶³ *Privilegium*.

⁶⁴ *Ususfructus*.

maintain the jurisdiction whether it is their own by law or it has been acquired through agreement or exemption; whether they are princes, leading citizens, nobles, or citizens of the Empire; whether they are nobles and citizens among a subject people, some by the new constitution of the Empire of Camera (Constit. part. 2 tit. 1) and others by custom; or whether contrary to the logic introduced by the old law, we see that as for the first judicial proceedings, or higher magistrates do not work with their inferiors by preparing or anticipating the work for them and that jurisdiction returns to the higher magistrate not on its own but because of the action of claimants and inferior judges, excessive challenges, the denial or protraction of justice, or the commission or suspicion of injustice (Paurmeist. d. loc. per alleg. *ibid.*).

41. The Old Magistrates of the Romans – Long ago among the Romans, some magistracies were Roman, some were municipal,⁶⁵ some were provincial;⁶⁶ some were ordinary magistrates of various rank,⁶⁷ others were extraordinary.⁶⁸ Ordinary magistrates of higher rank were senators, consuls, plebian tribunes, censors, and urban prefects. Lesser ordinary magistrates were urban quaestors, aerarii,⁶⁹ plebian aediles, curulial aediles,⁷⁰ administrators,⁷¹ leaders of the different tribes, triumvirs, quatuorvirs, quinquevirs, decemvirs,⁷² and the like. Extraordinary magistracies of higher rank include the interrex, dictator, master of the horse, centumviri,⁷³ military tribunes, and the like. Lesser

⁶⁵ *Municipales.*

⁶⁶ *Provinciales.*

⁶⁷ *Ordinarii.*

⁶⁸ *Extraordinarii.*

⁶⁹ *Aerarii*, citizens excluded from the centuriate and tribal organization by the censors and subject to the payment of a special poll tax, that is, lowest class citizens.

⁷⁰ *Aediles curules.*

⁷¹ *Curatores.*

⁷² Members of boards comprised of three, four, five, or ten men.

⁷³ Member of a panel comprised of 105–80 jurors in trials concerning inheritances and property affairs of a higher value.

extraordinary magistracies were *duoviri* investigating high treason,⁷⁴ *quaestores* investigating parricide or other capital offences,⁷⁵ the prefect in charge of the grain supply, *quinqueviri* in charge of the banking,⁷⁶ *duoviri* in charge of the fleet,⁷⁷ the prefect of the fire brigade,⁷⁸ and the like. Provincial magistracies included governors⁷⁹ of provinces and administrators,⁸⁰ such as a praetor, *quaestor*, prefect, *juridicus*,⁸¹ *proconsul*, praetorian prefect, and the like (de quibus omnibus and singulis consulendus Johan. Rofinus lib. 7. antique. Roman. and Pravot. de magist. Roman. c. 4. and tit. 9. de Senator. tit. de officio consul. and seqq. Libri primi. D. and tit. C. de offic. Praefect. Prator. tit. C. de offic. prefect. Prator. Africa. Tit. seqq. usq. ad finem libri primi Codicis).

42. What Is the Power of Compromise – Compromise is the power that is granted to a private citizen by private citizens who have no public power for the purpose of investigating and rendering a decision for their own disputed situation without jurisdiction and without the previous decision of a public power (tot. tit. de recept. arb. Geil. lib. 1. obs. 40. per l. *privatorum*. C. de iurisd.). It is called arbitration⁸² because it does not happen against one's will but by the will, decision, and choice of both sides (l. 1. de recept. arb. l. 14. l. 18. de iurisd. Vide lib. 3. cap. 4).

For this section see D&C de iurisd., de offic. eius cui est mand. iurisd., si quis ius dicenti non obtemp., de offic. consul. and seqq. Usque ad finem. lib. 1 D & tit. C. de offic. praefect. Praetor. and seqq. Usque ad finem. lib. 1. C. tit. C. de offic. eius qui vices alter. Gerit. Tit. D. de recept. arbit. tit. C. de pedan. judic.

⁷⁴ *Duoviri perduellionis.*

⁷⁵ *Quaestores parricidii rerumve capitalium.*

⁷⁶ *Quinqueviri mensarii.*

⁷⁷ *Duoviri Navales.*

⁷⁸ *Praefectus Vigilum.*

⁷⁹ *Rectores Provinciarum.*

⁸⁰ *Praeses.*

⁸¹ High officials with judicial authority in provinces.

⁸² *Arbitraria.*