

*The First Federalist: Johannes Althusius*¹

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Johannes Althusius (1557-1638) has been called “the most profound political thinker between Bodin and Hobbes.”² By the 18th century, however, he rated only a few lines in Bayle’s historical dictionary: “Althusius, German jurisconsult, famous at the end of the 16th century. He wrote a book on politics. Several other jurisconsults opposed him, because he argued that the sovereignty of the state belonged to the people. . . . In the two previous editions, I failed to mention that he was a Protestant, that, after having been a law professor at Herborn, he became a public trustee in Bremen, and that the Jesuits, in response to the *Anti-Coton*,³ categorized him as a Protestant who spoke against royal power.”⁴ Edmond de Beauverger dedicated half a chapter to Althusius.⁵ Frédéric Atger and, later, Victor Delbos, discussed him very briefly.⁶ But the only substantial presentation of his ideas available in France is Pierre Mesnard’s work on 16th century

1. Originally published in *Krisis* 22 (March 1999), pp. 2-34. Translated by Julia Kostova.

2. Carl Joachim Friedrich, “Introductory Remarks,” in *Politica methodice digesta of Johannes Althusius (Althaus)* (New York: Arno Press, 1979), p. xv.

3. A pamphlet published in 1610 attacking Pierre Coton (1564-1626).

4. Pierre Bayle, *Dictionnaire historique et critique*, 2nd ed., Vol. 1 (Amsterdam: P. Brunel, 1734), p. 245.

5. Edmond de Beauverger, *Tableau historique des progrès de la philosophie politique* (Paris: Leiber et Commelin, 1858), pp. 64-81.

6. Frédéric Atger, *Essai sur l’histoire des doctrines de contrat social* (Nîmes: F. Alcan, 1906), pp. 121-126.

political philosophy.⁷ In most history textbooks published after 1945, Althusius' name is marked only by its absence.⁸

Along with the Monarchomachists to whom he was close,⁹ Althusius has been considered a subversive spirit since the early 17th century. This may help explain why he was forgotten until Otto von Gierke devoted a now famous book to him.¹⁰ Thereafter, his influence began to grow, first in Germany, then in Holland, England, and the US. In 1932, Friedrich reedited the Latin text of most of the 1614 edition of *Politica methodice digesta*, in the course of which he researched Althusius' life and thought more thoroughly than had Gierke. Since then, much has been written on Althusius by, among others, Frederick S. Carney, Heinz Werner Antholz, John Neville Figgis, Erik Wolf, Ernst Reibstein, Dieter Wyduckel, Peter Jochen Winters, *et. al.* An Althusius bibliography published in the 1970s contains over 16,000 references.¹¹ An international symposium on Althusius was held June 12-16, 1984, and a Johannes-Althusius Society was established during the 1980s at the University of Dresden.¹² Yet,

7. Pierre Mesnard, *L'essor de la philosophie politique au 16e siècle* (Paris: Boivin & Cie, 1936), pp. 567-616.

8. An exception is Jacques Dagory, *La politique d'Althusius* (Paris, 1963). Althusius is evoked equally by such authors as Pierre Jeannin, "Althusius," in Jean Touchard, ed., *Histoire des idées politiques*, Vol. 1 (Paris: PUF, 1959), pp. 293-298; Bernard Vuyenne, *Histoire de l'idée fédéraliste*, Vol. 1: *Les Sources* (Nice: Presses d'Europe, 1976), pp. 93-111; Chantal Millon-Delsol, *Le principe de subsidiarité* (Paris: PUF, 1993), pp. 14-16; and Jean-Louis Clergerie, *Le principe de subsidiarité* (Paris: Ellipses, 1997), pp. 20-31. Jean Rouvier describes Althusius as "raging," and says he was the author of a "huge pedantic old book" à la "hollandaise and German sauce" (sic). See *Les grandes idées politiques. Des origines à J.J. Rousseau* (Bordas: Librairie Plon, 1973), pp. 280-281.

9. Mesnard presents Althusius as "the last of the Monarchomachists" in *L'essor de la philosophie politique au 16e siècle*, *op. cit.*, p. 325.

10. Otto von Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien. Zugleich ein Beitrag zur Geschichte der Rechtssystematik* (Breslau: Koebner, 1880). Cf. also Otto von Gierke, *Political Theories of the Middle Ages* (Cambridge: Cambridge University Press, 1900). Gierke, a lawyer and legal historian (and, after 1871, a professor at the universities of Berlin, Breslau, and Heidelberg), was one of the main representatives of the Historical School of Law. Early in the 19th century, the Historical School championed the rediscovery of German law and medieval jurisdiction antedating Roman Law, which it considered to be one of the major sources of juridical principles adopted by the German Confederation. Gierke's works were involved in the secular quarrel between "Germanists" and "Romanists."

11. Dieter Wyduckel, Hans Ulrich Scupin, and Ulrich Scheuner, eds., *Althusius-Bibliographie. Bibliographie zur politischen Ideengeschichte und Staatslehre, zum Staatsrecht und zur Verfassungsgeschichte des 16. bis 18. Jahrhunderts*, Vol. 2 (Berlin: Duncker & Humblot, 1973).

12. Dieter Wyduckel is chairman of the Johannes Althusius Society (Juristische Fakultät, Technische Universität Dresden, Mommsenstrasse 13, D-01062 Dresden).

with the exception of abridged translations of *Politica methodice digesta* in English and Italian, a complete translation of Althusius' major work has not appeared in any modern language.

I

Johannes Althusius (Johann Althaus) was born in 1557 into a modest family in Diedenshausen, a Calvinist region in Westphalia. In 1581, he was helped by a local count to study law, theology, and philosophy, first in Cologne, where he became familiar with Aristotle's ideas, then in Paris and Basel, where he lived with his life-long friend Johann Grynaeus, studied history and theology, and met the Protestant Monarchomachist François Hotman. In 1586, he received his law degree with a thesis on *De arte jurisprudentiae Romanae methodice digestae libri*, which was published the same year under the title *Juris romani libri duo*, and reprinted several times thereafter. He then relocated to Geneva, where he completed his studies in law and logic under Denis Godefroy, the renowned specialist in Roman law. He also became acquainted with the ideas of Calvin, who had lived in Geneva from 1536 to 1538, and from 1541 until his death in 1564.

After finishing his studies, in October 1594 Althusius was invited to the Protestant Academy of Herborn (founded two years earlier by Count Jean de Nassau), and became a member of the law faculty. For the next 17 years he also taught philosophy and theology. In 1597, he was appointed president of the College of Herborn, and became a member of the Nassau county council. During this period, he lived in Steinfurt, in Siegen (where he married), and in Heidelberg. In 1599-1600, he became president of the College of Siegen, and in 1602 president of the College of Herford. He vigorously defended university freedoms against infringements by the nobility and the clergy. In 1601, he published a work on morality, *Civilis conversationis libri duo*, and two years later *Politica methodice digesta*, which received immediate attention, but also generated criticism from theologians and Jesuits.

In 1603, the citizens of Emden chose Althusius to be a municipal trustee (*Ratssyndikus*), which marked a decisive turning point in his life. Having adopted Calvinism, and having been cited as the first German town to do so, Emden played a very important historical role. After Jean Laski was invited in 1542 to reorganize its religious life, Emden became a sort of Geneva of the North. Its strategic position, on the border with the German Empire and the united provinces (which, in 1579, became an

independent state, but remained officially part of the Empire)¹³ allowed for some freedom. A Protestant synod gathered in Emden in 1571, around which the Dutch (*belgici*) churches reunited the communities of eastern Frise and the lower Rhine. Another general synod of Reformed Westphalian and Rhinean Churches met in 1610, affirming the organic union of northern Calvinism. When they invited Althusius to implement his ideas, Emden's citizens were afraid of losing their autonomy. At the time, the reputation of the author of *Politica methodica digesta* had been established, not the least because Pastor Menno Alting's son Johann, a member of the city council (the so-called Council of Forty), had been Althusius' student in Herborn.

On July 19, 1604, Althusius signed a favorable contract with Emden's city council, and moved to that city after having been appointed a member of the Council of Forty. He soon became an outstanding citizen and a representative of the Council before the local Diet and the imperial court. He also assisted the mayor and the delegated council, which gave him quasi-diplomatic status while functioning as a private attorney. In 1615, he was relieved from his position as a trustee by the Council of Forty. Two years later, he was elected an elder and became a member of the local Consistory. Simultaneously, he published several editions of *Politica methodice digesta*, and in 1617 edited an important treaty (*Dicaelogicæ*) in which he recorded and sought to unify all ancient and modern juridical codes known at the time.

A theoritician and a politician, Althusius actively participated in Emden's struggle against the Count of Frise, which allowed him to apply concretely his theories of autonomy and the freedom of "states." According to Gierke: "During the whole time of his mandate, he appeared to be the soul of town politics, fighting for the reformed faith, for franchises and municipal rights against suzerains and the nobility."¹⁴ Mesnard adds: "He was the arbiter of the situation. In all the important conflicts between the town and the Church, his opinion was predominant, and he played as important a moral role in the life of the Geneva of the North, as did Calvin and Bèze in Geneva."¹⁵ He died in Emden on August 12, 1638, at age 81.

13. On the history of the united provinces, see Albert Waddington, *La République des Provinces-Unies, la France et les Pays-Bas espagnols de 1630 à 1650*, 2 Vols. (Paris: G. Masson, 1895-97); and C. Wilson, *La République Hollandaise des Provinces-Unies* (Paris, 1978).

14. Gierke, *Johannes Althusius*. . . , *op. cit.*, p. 13.

15. Mesnard, *L'essor de la philosophie politique au 16e siècle*, *op. cit.*, p. 573.

II

Published in 1603, *Politica methodice digesta*¹⁶ is based on the systematic principles of Pierre de La Ramée,¹⁷ which Althusius learned in Herborn. According to these principles, a concept first must be defined, then the subject must be organized logically, and finally developed in successive dichotomies. Wanting to shatter the scholastic verbalism and turgid style of the humanists, whose erudition often

16. *Politica. Methodice digesta et exemplis sacris et profanis illustrata, cui in fine adjuncta est oratio panegyrica* (= "Politics: A Digest of its Methods, Illustrated with Sacred and Secular Examples . . ."). The book was published originally in four consecutive editions, which resulted in doubling its size. The first edition (469 pp.) was published by Christophorus Corvinus in Herborn in 1603. A revised edition (715 pp.), with a modified title (*Politica. Methodice digesta atque exemplis sacris et profanis illustrata*) was published by Johannes Janssonius in Arnhem in 1610, and another by Johannes Radaeus the same year. A third revised edition (968 pp.), published by Christophorus Corvinus, appeared in Herborn in 1614, and was reprinted by Johannes Janssonius in Arnhem in 1617. The fourth edition (1003 pp.), published by Johannes Georgius Müderspachus and Christophorus Corvinus, appeared in Herborn in 1625, and was then reprinted in 1654, i.e., 16 years after Althusius' death. Modern authors usually quote the 3rd edition, which is considered definitive. This edition was reprinted by "Harvard Political Classics" as *Politica methodice digesta of Johannes Althusius (Althaus)* (Cambridge: Harvard University Press, 1932); again, with a long introduction by Carl Joachim Friedrich, including the 1603 preface and 21 of Althusius' unedited letters (New York: Arno Press, 1979), and then in Germany (Aalen: Scientia, 1981). An abbreviated translation of this same 1614 edition was published as *The Politics of Johannes Althusius*, with the prefaces of the first and third editions, translation and presentation by Frederick S. Carney, preface by Carl Joachim Friedrich (London: Eyre & Spottiswoode); and again, with a preface by Daniel J. Elazar, *Politica. An Abridged Translation of "Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples"* (Indianapolis: Liberty Fund, 1995). There is one more partial translation of the 1614 edition in English by P. Stanley Parry, who wrote his doctoral thesis on Althusius in 1954, which was never published. Only the 1603 preface and short excerpts of the first edition are available in German. See Erik Wolf, *Grundbegriffe der Politik. Aus "Politica methodice digesta," 1603* (Frankfurt/M: Vittorio Klostermann 1943). At the initiative of the Johannes Althusius Society however, a full translation is being prepared. There is an abridged Italian translation as well: *Politica*, ed. by Demetrio Neri (Naples: Guida, 1981). Althusius' study of Roman jurisprudence, *Juris romani libri duo*, published initially in Basel in 1586, was reedited in 1588 with corrections and notes added (*Jurisprudentia omana, vel potius, uris romani ars*), in 1589 (*Jurisprudentiae romanae libri duo*), and consecutively in 1592, 1599, 1607 and 1623 as *Jurisprudentiae romanae methodice digestae libri duo*. The compilation of the laws of all countries, published by Althusius in 1617 in Herborn (*Dicælogicae. Libri tres. Totum et univrsum ius, quo utimur, methodice complectantes*) was edited in 1649 in Frankfurt/M, a modern revision of which has been published (Aalen: Scientia, 1967). Another book, *Civilis conversationis libri duo*, which appeared first in 1601 in Hanau, was reedited in 1611, and then in 1650 in Amsterdam under the title *Ethicus Althusianus. Hoc est libri duo de civili conversationes*. Other works by Althusius include: *Centuria conclusionum de pignoribus et hypothecis* (Herborn, 1591), *De injuriis et famosis libellis* (Basel, 1601), and *Tractatus de pænis, de rebus fungilibus ac de jure retentionis* (Kassel, 1611).

17. Pierre de La Ramée or Ramus (1515-1571), author of *Scholarum mathematicorum libri unus et triginta* (1569), was the first professor of mathematics at the Royal College of Paris (the future College of France). A convert to the reformed church, he was killed in the Saint Bartholomew's Massacre because of his hatred of the scholastic tradition.

concealed lack of depth, Althusius made politics the fundamental concept of his entire theoretical construction, and proceeded accordingly.¹⁸ Althusius defined politics as “the art of establishing, cultivating, and conserving among men the necessary, essential, and homogeneous conditions of social life.” Maintenance of social life, called “symbiosis,” is the object of political science or “symbiotics.”

Althusius attempts to demonstrate that, despite its intimate relation to theology, logic, morality, and jurisprudence, “symbiotics” should be viewed as an autonomous discipline. Because of Erasmus, Jean Bodin and his closest disciple, Gregory of Toulouse, Althusius bemoans the fact that this field has been invaded by philosophers, jurisconsults, and theologians, and pleads for a “new politics, free of any elements from other disciplines, but embracing them all.”¹⁹ Friedrich writes: “Althusius’ systematic rigor did not allow him to rest content with the then-prevailing notion of a law of nature as the foundation for the state. What should a theorist make of the Christian notion of natural law, which comprised the pure natural law of the primitive state of man, the relative natural law of the state of sin, the positive law with its atrocious injustices, and the theocratic power that can provide true grace?”²⁰ By evaluating what might be called the soul of a political community, and thus the source of all its constituent organizations, Althusius clarified the study of sovereignty (*majestas*) as perceived by jurists. According to him, the essence of politics is very specific, which allows it to be independent of law, philosophy, and even theology. Obviously, politics is decisive. But the object of politics is larger for Althusius than it was for his predecessors. In modern terms, his politics is derived from the concept of the social. It is a sort of sociology, even economy (in the Aristotelian sense of the term). Its objective is to study all groups, natural and social, from the standpoint of a general physiological community, allowing the possibility to identify the

18. La Ramée specifically distinguishes between a “law of justice” (*lex justitiae*), which allows the exclusion of any consideration not pertinent to the subject, a “law of truth” (*lex veritatis*), which aims to clarify universally necessary propositions, and a “law of wisdom” (*lex sapientiae*), according to which each proposition must be considered in terms of the general category to which it belongs.

19. Mesnard, *L'essor de la philosophie politique au 16e siècle*, *op. cit.*, p. 575.

20. Friedrich, “The Life and Environment of Johannes Althusius,” in Preface to *Politica Methodice Digesta of Johannes Althusius (Althaus)*, *op. cit.*, p. LXVI. On Friedrich’s classic study of totalitarian regimes (co-authored with Zbigniew Brzezinski), cf. Hans J. Lietzmann, “Carl Joachim Friedrich und Johannes Althusius,” in *Politikwissenschaft im “Zeitalter der Diktatur.” Die Entwicklung der Totalitarismustheorie Carl Joachim Friedrichs* (Opladen: Leske und Budrich, 1999), pp. 51-54.

primary properties and essential laws of its association. Its goal is the conservation of social life, which means that it is no longer only a result or a consequence of the state, but also concerns all groups participating in this social life.

Althusius rejects the idea that individuals are self-sufficient or have rights derived from an abstract nature. Following Aristotle, according to whom “the isolated individual cannot be self-sufficient,”²¹ he claims that being human is a function of belonging to one or more interdependent communities: “The longer an individual lives isolated, the more impossible it becomes for him to settle and live honestly And since the remedy seems to be in symbiotic life, he is driven and almost forced to embrace it. . . . If he wants to live in a simple manner, it is the latter [symbiotic life] that will require him to utilize all of his virtues, which remain inactive outside of this union.” For Althusius, “more than for Aristotle, man is a social animal, and the symbiotic life is for him so natural that without it he could not realize himself. . . . Thus, this is not free choice, but an *absolute necessity*, which pushes the individual toward the vital core that gives him more than social life: life *tout court*.”²²

Obviously, Althusius returned to ancient and medieval traditions, according to which man is a social being who derives his proper nature within an ordained world. A people is not simply a group of individuals, but a moral, juridical, and political person. Thus, Althusius strongly opposed nominalism, a precursor of liberalism, according to which there is nothing ontologically real outside the lone individual. He also opposed modern natural law, which insists (given the influence of Christianity and Stoicism) that the basic principles of society and state are deduced from properties inherent to a self-sufficient man, without any particular social or political bonds. Consequently, the state of nature is logically primary with respect to social or political life, and like its model, the individual, the political state is self-sufficient. Thus, social order relies on nothing more than the arbitrary postulate of the identity or convergence of particular “natural” interests.²³

Following Cicero, Althusius finds the source of all cooperation in

21. Aristotle, “Politics,” tr. by Benjamin Jowett, in *The Basic Works of Aristotle*, ed. with an introduction by Richard McKeon (New York: Random House, 1941), Bk I: Ch. 2, 1253a, p. 1130.

22. Menard, *L'essor de la philosophie politique au 16e siècle*, *op. cit.*, p. 579.

23. Cf. Louis Dumont, *Essais sur l'individualisme. Une perspective anthropologique sur l'idéologie moderne* (Paris: Edition de Seuil, 1983), pp. 80-85.

man's social nature and in his need for a broader life. For him, society is sociologically prior to its individual members. Thus, the fundamental notion to which he keeps returning is the "symbiotic community" (*consociato symbiotica*), i.e., an organic group composed of social beings. The principle of "symbiotic community" is the organic social union. No man can live isolated; everyone belongs to one or more of these organic unions, and this belonging defines each as "fellows" or "symbionts" (*symbiotici*), i.e., as participants in a common life. Society is composed of groups attached to one another. Each of these groups responds to needs that cannot be satisfied in its own immediate sphere, and does so in a manner that brings not only greater utility, but also growth, i.e., a higher quality of life. The symbiotic association does not respond to a collective desire or need; rather, it is defined by a particular quality of life, characterized by justice and pity, without which no individual or collective existence can be sustained.

A symbiotic relation is established between those who have the same needs, and who find themselves in neighborhoods of all sorts. This relation cannot be considered voluntary or the result of a rational choice. Rather, it constitutes a reality derived from the social character of human existence: the communion of symbionts, which is why Althusius employs such terms as *communio*, *consociato*, or even *mutua communicatio*. Communication (*communicatio*) refers to common collectivization, and to the mutual exercise of the "organic link of civil life" (which Durkheim would call "social density"). It is a progressive socialization of community elements, and is characterized by increasing participation in common life, as well as by exchange of goods and services, and by the collectivization of some of them. In this respect, Althusius distinguishes between the communication of goods (*communicatio rerum*), i.e., the gathering and allocating of common resources for the good of the state, the communication of functions (*communicatio operum*), i.e., the organization and allocation of work according to individual capacities, and the communication of law (*communicatio juris*), i.e., the establishment of statutes of common life and norms of cooperation. Communication is common to all associations, partly specific to each type of association, and partly specific to each association. Althusius emphasizes that communication clearly implies the necessary authority to apply it.

Given the principle of communication, society and state are constructed through a series of successive pacts, formulated by people whose social instincts, translating the divine will, pushes them into

association with other people like themselves. Althusius distinguishes between “social pacts,” which guarantee the autonomy of different communities, and “pacts of subjugation,” which aim at organizing them hierarchically. Social pacts are political contracts: “Here, the social contract does not mean anything, because society, understood in the sense of links and relationships exists by nature.”²⁴ Pacts of subjugation are conditional, and the dialectic between the two types of pacts prevents pacts of subjugation from being transformed from an inferior to a superior level: “Thus, interference is circumscribed by law, because it must remain partial. Each part forms with others a larger part through a contract that is discussed rigidly and assorted legally, simultaneously protecting its domain of strict economy. It participates actively in the new power created above it. It watches it attentively. If necessary, it deposes it. . . . It ensues from the very existence of the parts. Because they need to be integrated into more powerful communities in order to promote their well-being, they all lose, because a superior instance wants to absorb them.”²⁵

In medieval thought, the principle of totality, according to which the individual is finalized to everything social before being finalized to himself, far from denying autonomy, in fact constitutes it as a privileged framework. Society, said to be holistic or organic, was composed of groups, not individuals, and these groups could not develop fully without being autonomous. In this respect, Althusius’ originality consists in viewing society from below, in order to gradually reach the top. For him, society is constituted of associations and successive collectives, fitted together from the simplest to the more complex, the unity constituting what Gierke calls “the existential unity of a people.” The state is defined as a real organic community, formed by many symbiotic “consociations,” public or private, with two sets of agencies on each level, one representing the lower levels, which must retain as much power as possible, the other representing the higher levels, whose jurisdiction is limited by the lower levels. Thus, freedom within society does not emanate from the sovereignty of the higher levels, but from the autonomy of the lower levels. The articulation of and equilibrium between different levels is guaranteed by the principle of subsidiarity.

Althusius follows an order of growing complexity, whereby society is composed of different categories of symbiotic or organic communities. As

24. Millon-Delsol, *Le principe de subsidiarité*, *op.cit.*, p. 14.

25. *Ibid.*

Gierke writes: “For each mode of grouping, he first attempts to determine the sphere of communication, whose subject is always an ensemble of associations, then he studies the government of each of the groups through their representatives and their leader,”²⁶ with the objective of identifying at each level the most favorable conditions for the formation of a collective sentiment whose fervor would produce social harmony (*concordia*), together with a spiritual and affective unity in action (*mutua confaederatio*). According to Althusius, “the harmony raises even the weakest fortunes, the disharmony dissipates even the strongest” (II, 9).

A basic division allows Althusius to distinguish between natural communities, such as families and servants, and voluntary and spontaneous communities, such as colleagues or companies, which are formed and maintained by the consent of the symbionts. Yet, he emphasizes that there is always an element of will in natural associations, of which marriage — the conjugal community — is the prototype, and that there is also an element of necessity in voluntary associations. Marriage requires the lasting consent of spouses, while in general voluntary associations do not dissolve until other structures evolve that appear to be better suited to their needs. This equilibrium between will and need is one of the key features of Althusius’ associative theory. He attributes very important economic functions to families, in which he sees, not unreasonably, a basic reason for their existence. He also emphasizes the role of marriage in the formation of sociability, and the inclusion of a sentiment of sympathy that could be found later in other groups. Thereafter, he addresses collegial organizations (*collectio, conventus, collegium, consociatio collegarum*) that could also serve as guilds or corporations.

Collegial organizations are civil communities created for social, religious, educational, or commercial ends. Their members have common professions, interests, duties, activities, or tastes that are ordinarily the attributes of private cooperation. Secular collegial organizations are composed of magistrates, merchants, or peasants, whereas ecclesiastical collegial organizations are composed of jurists, professors, or religious people. Unlike families, these are not natural associations, but organizations that owe their existence to the voluntary association of their members, called “companions” or “associates.” Consequently: “It is wrong to have in mind an arbitrary formation. Any collegial organization corresponds to man’s natural needs, and, consequently, is contingent on recruitment and

26. Gierke, *Johannes Althusius . . .*, *op. cit.*, p. 21.

its modalities; basically, it is no less necessary than a natural community: in the domain of social realities, pure artificiality cannot exist.”²⁷

At the core of such associations, communication is both pliant and extensive. Thus, in law, communication turns the collegial organization into a moral individual capable of expressing the unitary will and of possessing a true corporate autonomy, i.e., the power of jurisdiction over its members by virtue of obligations assumed voluntarily. In deliberations, the majority principle rules, which is natural in an atmosphere of collective sympathy. This is why, as Althusius says, “this mutual and reciprocal benevolence, this affection and charity between each other, this concord by which a group reaches a unanimous opinion without dissension, either positive or negative, for the common good,” could be perfected (IV, 23). The members have a leader, whose main characteristic is to be superior to each and every individual member, while remaining subject to a collective collegial organization: “Superior to every member, he is inferior to the whole that he presides over, whose opinions are his obligation.” This last point is essential: it encapsulates Althusius’ entire theory on the subsidiarity of authority and sovereignty.

The first public communities, i.e., the first social and political groups formed by simple communities, appeared on the intermediate level. These public communities could be villages, parishes, towns, cities, or provinces. Althusius describes them as formed “by the coalescence, according to given laws, of several households or groups residing in the same country” (V, 8). Unlike in the case of private associations, one of their distinguishing characteristics was that their jurisdiction extended over a given territory. They were subject, however, to the same principles of communication and authority as private communities. Althusius breaks with the distinction between public and private, basic in Roman law, whereby contractual relations between individuals remain exclusively in the private sphere, while administrative and political relations belong exclusively to the public sphere. Althusius insists that all associations, whether public or private, have the same foundation in symbiotic life, the same source of legitimacy, and function according to the same rules.

Another important feature of public communities is civic autonomy (*politeuma, autarcheia*), which Althusius identifies as “the right of the members of public communities to possess and administer in common matters useful and necessary to their conservation and development” (V, 12).

27. Mesnard, *L'essor de la philosophie politique au 16e siècle, op. cit.*, p. 584.

Through this autonomy, members of public communities find themselves transformed into *citizens*. Althusius was one of the first to develop this idea into a comprehensive theory. Without regard to continuity, he describes the passage from household or village to citizen, from the social to the political: “The *political* plan is prepared over time by a regular social elaboration. The citizen is not one as an individual, but as a symbiont, having proved this in primary societies. The elements of civic organization are not individuals, but constituent communities; better yet, *one becomes a citizen not as a man, but as a member.*”²⁸ In Greek democracy, the individual did not have direct access to political life: he participated in public life as a member of a *genos*, of a family or a clan, and thus acquired the dignity of a citizen. Althusius retains this classical concept of citizenship and gives it a larger foundation.

As already seen, the rules governing public communities are the same as those prevailing in collegial organizations. The most important laws require the consent of the assembled citizens. Representation of the civic organization and ruling in its name is done by magistrates elected by the people, and can be revoked by them. This authority is higher than each citizen, but lower than that of the organization the citizens collectively constitute. Cities must be governed by a senate, led by an executive, who has authority over each association or citizen considered individually, but not over the unity of the organized community. Legal relations between civic associations and the magistrates are based on an oath of reciprocal loyalty and obedience to the laws of the city. Again on this level, the communication of law establishes and guarantees the autonomy of symbiotic communities. It also presupposes the communication of goods, which Althusius analyzes on the communal level, as well as in terms of the communication of functions. In terms of political life, this generates a division of labor based on general social solidarity, rather than on particular egoistic interests: “This is why a peasant requires the work of a locksmith; the worker, of an architect; the baker, of a shoemaker; the tailor, of a peasant” (VI, 32). The final objective is the expansion of sociality, which Althusius calls the communication of harmony (*communicatio concordiae*) or benevolence (*benevolentiae*). This is why he emphasizes that it stems from legal justice, i.e., from the equality that grants to everyone “the law, the freedom, and the honor due to his status” (VI, 47).

Althusius then turns his attention to the provinces, which are based

28. *Ibid.*, p. 586.

on a coalescence of primary groups, communities, and cities, and simultaneously constitute political, religious, economic, and social units. He emphasizes particularly the importance of their social constituents: the provincial members are not juxtaposed geographical entities, like religious and secular “states,” the former being organized in parishes and synods, the latter comprising knights, artisans, and peasants. The counts or heads of provinces enjoy sovereign power within their given domains. They administer public affairs, participate in the execution of laws, and, if necessary, invoke the authority of the state. As is well known, in 1512 the German Empire was divided into ten circles (Austria, Bavaria, Swabia, Franconia, Lower Rhine, Upper Rhine, Westphalia, Upper Saxony, Lower Saxony, and Burgundy), and there were frequent conflicts between the citizens and the empire’s ruling families of counts, dukes, barons, and princes. In terms of political organization, Althusius unambiguously sought to reclaim municipal and provincial freedoms.

Finally, Althusius comes to the question of the state, which he speaks of in terms of a set of synonyms (*regnum*, *major consociatio*, *consociatio symbiotica universalis*, *respublica*), and which he describes mostly as a federation of cities and provinces that can federate and confederate with other states: “The members of the kingdom or of this integral symbiotic community are not, in our opinion, the individuals, the families, or the collegial groups, as in the case of particular private and public communities, but cities, provinces, and regions whose coalescence creates a unity by mutual conjunction and communication” (IX, 5). As for the “integral symbiotic community” or the “universal major community,” which could be a kingdom (*regnum*) as well as a republic (*respublica*), the state is synonymous with the “right of majesty” (*jus majestatis*), i.e., sovereignty, which by nature does not recognize anything above itself, either a person or an association: “Majesty is the preeminent, supreme, and universal power to dispose over whatever is necessary for the spiritual and physical life of the members of the state or the republic” (IX, 26). But this sovereignty, which for Althusius is the “soul” of a political community (*spiritum vitae symbolicae inspirat*), and which he classifies as “necessary and homogeneous,” is not absolute. Existing only as a result of organic cooperation of provinces or federated regions, which preserve a large part of their autonomy, the state consecrates new state laws, which establish cooperation and unity among the federated parties according to the principle ruling on lower levels: the state is superior to every province individually, but not to the entity they constitute

collectively. Since subsidiarity is the rule within every province, the people's sovereignty obtains at a level higher than that of the state.

Althusius writes: "Contrary to the opinion common to jurisconsults, the right of majesty cannot be ceded, abandoned, or alienated by its proprietor. It is an indivisible, incommunicable, inalienable right, regardless of the length of its usurpation. It has been established by those who are part of the kingdom, by each of them. It originates from them; without them, it could neither be established nor be maintained." Thus, sovereignty can be defined as co-proprietorship by all the society members of the goods and the rights of the association. The sovereign is neither the proprietor nor the life-tenant, since sovereignty, in principle and in fact, belongs to the people represented by the collegial organization of the federated members. The sovereign is only the "dispenser, the administrator, or the proxy" of the laws of the association.²⁹

Althusius refuses to elaborate on the state without taking society into consideration. As a federation of autonomous regions and communities, the state resembles a pyramidal hierarchy, on top of which is the prince: "The social link between the members of this political body [the state] is the agreement and the sworn faith between parties, i.e., the tacit or expressed promise issuing from a communication of goods and services, of aid, of adherence to the common law required for the utility and needs of integral social life" (IX, 7). While, for Hobbes, the individual is entirely alienated in favor of the state, for Althusius, organic communities never lose their power. Thus, the autonomy of associations poses an "insurmountable barrier" (Gierke) to state power, preventing it from infringing on each social group's specific rights. The prince is the *summus magistratus*, i.e., the magistrate of highest rank, but eventually it is the people who retain inalienable "majesty," i.e., sovereignty.

In order to explain his system, Althusius distinguishes between two classes of sovereign magistrates: princes, the supreme magistrates, and the "ephors," whom he describes as "censors of the supreme magistrates," as "the best of the state or the kingdom," or as "the official executors of the pact between the supreme magistrate and the people," who constitute a counterweight to the prince's power. They are a collegial organization of the kingdom's officers, individually subject to the prince, but collectively above him: "Taken individually, each is

29. Preface to the 1603 edition, in Friedrich, *Politica Methodice Digesta of Johannes Althusius (Althaus)*, *op. cit.*, pp. 3-6.

nothing but an inferior magistrate, whereas united into a collegial entity they represent the people and speak on their behalf” (XVIII, 73). In describing their attributes, Althusius was obviously inspired by the role the seven prince-electors played in the German Empire. He says that the ephors are “those in whom the consent of the people constituted as a political body has confined the unity of the republic or the integral community, to represent it and to exercise the power of the people and their right to appoint the supreme magistrate to assist them and to oversee the community’s affairs. . . . finally, to see that no harm comes to it from private conspiracies or owing to the supreme magistrate’s failures or resignation.” (XVIII, 48).

The ephors intervene in emergency situations and exceptional circumstances, which Althusius perceives to be perfectly natural. In case of a vacancy, they propose a new supreme magistrate. They defend him when he fulfills his obligations correctly, they see that he does not exceed his power, and, if he becomes a tyrant, they depose him with the power of the people. In the event of a deposition, of a tyranny of the minority, they alone exercise public power. Given that the ephors are mainly responsible for the federated provinces, the integration of provincial life into national life is greatly facilitated. “Between the king and the ephors, there is ‘mutual censorship and supervision’,” (XVIII, 91), bringing double profit to the kingdom because, “on the one hand, this guarantees the stability of its fundamental constitution, and, on the other, this facilitates participation of the provinces in the life of the state.”³⁰

The prince retains executive power. Since the rights of majesty belong to the entire community and are represented by the ephors, he exercises his sovereign power through delegation, on the basis of a reciprocal pact, of which he is considered to be the proxy, and the community to be the authority. His investiture constitutes election, and his inauguration his charge. He is elected by the college of ephors. Relative to them, he is in the same position as the count is on the provincial level relative to the “state.” Throughout the ceremony of inauguration, he must subscribe to the “fundamental laws of the kingdom,” as well as to all stipulations that they deem necessary, and he must take an oath of obedience. Althusius emphasizes that there is no distinction between election, which comes from the people, and constitution, which comes from God. Thus, he recovers the idea of consent, which jurists had considered essential since the 12th

30. Mesnard, *L'essor de la philosophie politique au 16e siècle*, op. cit., p. 601.

century (“*vox populi, vox Dei*”). This presupposes that the prince’s sovereignty never absorbs the “immanent” juridical authority of the people. This is why the oath of obedience given to the citizens is always conditional: if the prince contravenes the duties he has assumed, this oath immediately lapses. Since citizens only cede part of their rights, as required by the communication of law, the right of resistance becomes an integral part of the juridico-political order, since it contributes to the support of the symbiotic community. “At the source of the supreme power, there is a bilateral contract. However, following the usual model of Althusius, this apparent reciprocity always gives superiority to the law of the group above its organization, to the state above its minister.”³¹ The principle of sovereignty is preserved, but is subordinated to associative consent.

Althusius adheres to the classic thesis of the Monarchomachists³² concerning the people’s sovereignty and its superiority *vis-à-vis* the prince. Monarchomachism considered Protestantism to be a support for the affirmation of the “superiority” of the community of believers over official authorities. Since sovereignty resides in the symbiotic body, the princes are no more than administrators. “They command in its name, and if they pretend to have a personal and absolute right, they are only impostors and tyrants, only simple private persons to whom obedience immediately ceases to be due.”³³

Althusius retained the distinction between the tyrant, usually considered to be the supreme magistrate (*tyrannus exercitio*), and one who was not (*tyrannus absque titulo*).³⁴ The latter, only an impostor, could be defeated and even killed by the people, whereas only the ephors could stand against the former, who gradually pursued his prerogatives to the point of tyranny. Althusius does not reproach the tyrant for violating

31. *Ibid.*, p. 602.

32. In the 16th century, Monarchomachists led the struggle against princely absolutism in the name of a right of opposition, which could go as far as regicide. According to them, a solemn pact must link the people and the prince, who could not govern without the consent of his subjects. The rupture of this pact justified the citizens’ revolt. The main representatives of this movement were Théodore de Bèze (1519-1605), François de Villiers Saint Paul, called Hotman or Hotemanus (1524-1590), author of *Franco-Gallia* (1573), and Philippe de Mornay, called Duplessis-Mornay (1549-1623). Cf. R. Treumann, *Die Monarchomachen. Eine Darstellung der revolutionären Staatslehren des XVI. Jahrhunderts* (Leipzig: Duncker & Humblot, 1895).

33. Mesnard, *L’essor de la philosophie politique au 16e siècle*, op. cit., p. 599.

34. This distinction was established by the Italian jurisconsult Bartolo de Sassoferrato (1314-1357), whose influence was strong in Germany, but not in Italy or France, where it was combated by the Historical School, represented most notably by Jacques Cujas.

the rights of individuals, since what this means cannot be established precisely according to any theory of individual rights, but rather for his being by nature incapable of achieving the goals for which the people naturally were associated or chose to become associated. In this respect, he goes even further than the Monarchomachists, since he does not exclude the right of resistance, even to the point of complete secession: in case of a long-lasting tyranny, members of the symbiotic community could regain their freedom and reconstitute the failed pact, based either on a new autonomy or on federation with other provinces or existing states.

III

Althusius' theory of sovereignty is interesting, because it is based on the extension of a medieval concept of sovereign authority, defined as a higher authority, but not yet as an absolute authority detached from all obligations. Medieval society was not familiar with the idea of unlimited sovereignty. This sovereignty was always dependent on the common good, and it was precisely this common good, rather than the state's power or grandeur, that constituted the goal of power. Up to the 13th century, the king, representing the common good of his subjects, was called *sub lege*: he shared legislative power with the major feudal lords, without whose consent he could not govern. Similarly, on all social levels a "chain of duties" (Augustin Thierry) was formed by interlocking hierarchies: one who was obliged to a suzerain had the respect of a vassal, and borders fluctuated according to multiple allegiances. However, after the 11th century, notably in Bologna, a new concept of sovereignty emerged: that of a public person or a political body in possession of an unlimited "supreme power." This was the result of combining the juridical theory of the Roman corporation and the theology predicated on the Paulinian notion of a "mystic body," which describes the universality of the community of believers as a unique entity.

Initially, this new concept inspired papal absolutism, which was constituted by the transference of the Roman theory of universal and absolute jurisdiction (*plenitudo potestatis*), of proper imperial authority, to the Roman pontificate. At the time of Innocent III and Innocent IV, the papacy, engaged in a battle against the empire, proclaimed the strict subordination of terrestrial sovereignty to its own spiritual sovereignty. This claim, which ended the old ecclesiastical doctrine whereby *imperium* and *sacerdotium* were considered to be different spheres instituted by God, reached one of its most extreme formulations in 1302

in Pope Boniface VIII's bull *Unam sanctam*. After the 13th century, this new concept of sovereignty became the major ideological reference of new territorial kingdoms, France in particular, which opposed the imperial idea that the king could not in any way consider himself superior to or refuse to obey any extraneous law.

The concept of "sovereignty" (a term originating in France in the 12th century, based on the Latin root *superanum*) allowed monarchs to declare their independence not only from the pope and the emperor, but also from the feudal lords. Basing themselves systematically on Roman law, the legists claimed that the sovereign, receiving his autonomy directly from God, was the sole master in his kingdom. Feudal legislative power lost its substance, while the king gradually became the only legislator. Finally, through the extension of royal administration, centralization of power, market formation, and the unification of law with the state and its identification with a precise territory, sovereignty became associated with the state, which gradually reduced local autonomy. As Charles Loyseau put it in 1609: "Sovereignty is inseparable from the state, because sovereignty is what brings the state into being; *in concreto*, state and sovereignty are synonymous."³⁵ The result was the era of "individual states," whose principle was ratified by the treaties of Münster and Osnabruck (1648). A modern kingdom has nothing in common with royalty in the Middle Ages, as Tocqueville observed, but has other prerogatives. State administration now extends to all all features of local power.³⁶

This absolute concept of sovereignty is what triumphed in Jean Bodin's *Six Books of the Commonweale*, first published in 1576, when Europe's stability was upset by religious wars. Bodin writes: "If there be two princes equall in power, one of them hath not the power to command the other. . . . The laws of the prince are not dependant because they are pure and frankly voluntary."³⁷

The Latin word Bodin uses to define sovereignty is *majestas*, and his book opens with the following words: "Commonweale is a lawfull

35. Charles Loyseau, *Traicté des seigneurvies* (Paris: chez Abell' Angelier, 1609), Ch. XIII.

36. Alexis de Tocqueville, *The Old Régime and the French Revolution*, tr. by Stuart Gilbert (Garden City, NY: Doubleday Anchor Books, 1955), Part II, Chapter 2.

37. Jean Bodin, *The Six Bookes of a Commonweale*, A facsimile reprint of the English translation of 1606, corrected and supplemented in the light of a new comparison with the French and Latin texts, edited with an introduction by Kenneth Douglas McRae (Cambridge: Harvard University Press, 1962), The Second Booke, Ch. II, pp. 197f.

government of many families, and of that which unto them in common belongeth, with a *puissant souverainie*.” Extending the thought of French legists, Jean Bodin’s political doctrine is founded on the concept of indivisible sovereignty and on legislative power as a dominant principle. Given the state’s centrality, it is the source of all other authority. Yet, Bodin recognizes the importance of intermediary bodies, of families and “partial” societies. But he claims that they should not infringe on the powers of the prince, who is sovereign by divine law and is the pinnacle of a society conceived as a pyramid. Thus, sovereignty is defined as the “absolute and perpetual power of a republic,” i.e., as unlimited power: having no rival in the political and social order; in reality, power is exercised by the prince, who is the sole interpreter of divine right and natural law. Of course, he must respect *jus gentium* and the constitutional laws of the monarchy, but he is not subject to any human law, since he is accountable only to God, whose political “image” he represents on earth. In this respect, Bodin writes: “For as the great sovraigne God, cannot make another God equall unto himselfe, considering that he is of infinit power and greatness, and that there cannot bee two infinit things, as is by naturall demonstrations manifest: so also may wee say, that the prince whom we have set down as the image of God, cannot make a subject equall unto himselfe.”³⁸

Because of Bodin’s definition of sovereignty, however, this limitation is purely theoretical. Freed from any human law, the sovereign can be only what he must be, since the power he enjoys excludes any individual or collective resistance. Thus, the law is nothing more than the prince’s orders, since he is “not subject to any law.” It is what pleases him: “to dispose of the goods and laws, and of all the state at his pleasure.”³⁹ Sovereignty becomes the power to make laws without anybody’s consent. It follows that the law does not need to be just in order to have the power of law. Thus, Bodin’s concept of sovereignty opened the way to juridical positivism, which diminishes the legitimacy of simple legality. At the same time, the monarch found himself “divorced from the people.” For Bodin, the sovereign is no longer part of the people. He is totally separate and rules society as God rules the cosmos. This division is not an existential condition, required by power, but an essential quality, which is part and parcel of the right to govern: the very essence of power resides in the sovereign’s persona. As Jacques

38. *Ibid.*, The First Booke, Ch. X, p. 155.

39. *Ibid.*, The First Booke, Ch. VIII, p. 88

Maritain put it: his independence and his power are not only supreme *with respect to* any other part of the political, as one among others; they are *absolutely* supreme, as if above all in question.⁴⁰

Whereas, in medieval times, law was thought to stem from the very core of society, expressing the juridical reality of social roots in accord with a historical and ontological plan, for Bodin, law originates exclusively from the state. The latter becomes a monad, which finds within itself the reason for its existence, its liberty, and its ability to organize the social body. The state is a particular reality, which knows only a particular order, valid for all the inhabitants of a particular territory. Instead of issuing from the social order, the state constitutes it. It is an exclusive representation of the totality of the common life of a centralized and reified state, which is identified with the prince's persona: as Louis XIV would say, the French nation resides "entirely in the persona of the king."

As a "total" concept, Bodin's sovereignty not only provided the foundation for absolute monarchy: its essential traits were rediscovered in Jacobin nationalism, and modernity could not make it less abstract or impersonal. With Jacobinism, sovereignty was severed from natural law, and no longer was embodied in the king. Rather, it was transferred to the nation, i.e., a new embodiment of the "state persona." According to the 1791 constitution: "Since the nation exists, it is naturally sovereign." It is the same unlimited sovereignty, conferring the same despotic right to the power holders. As Tocqueville put it, the French Revolution created a multitude of secondary entities, but did not develop the main things that existed before it." In this respect, the way the modern nation-state has preserved Bodin's definition of sovereignty, while merely changing its bearer, is particularly revealing. As François Alexandrou notes: "Far from opposing the 1789 revolutionaries, the administrative centralization and standardization needed to create a large unitary state with higher power expressed their egalitarian ambitions and proved to be the state's theoretical expression."⁴¹ Antoine Winckler adds: "The stage was set for centuries to come: monopoly of law, transparency of the social space to political power, total centralization of the exercise of power. . . . The sovereign sun suffers neither from local power, nor from sharing law with neighboring territorial regimes, nor from autonomous and spontaneous social organizations; and whether this sun becomes an

40. *L'Europe et l'idée fédérale* (Mame, 1993), p. 111.

41. Françoise Alexandrou, "Sovereignty," in Denis de Rougement and François Saint-Ouen, eds., *Dictionnaire international du fédéralisme* (Brussels: Bruylant, 1994), p. 149.

absolute monarchy or a democratic republic changes nothing of this monistic concept of sovereignty and its central place in political theory.”⁴² One absolutism succeeded another.

Althusius’ concept of sovereignty is the opposite of Bodin’s.⁴³ In his system, the state is under the law, which emanates from the social dimension, which is why a sovereign or a magistrate cannot have absolute sovereignty. Thus, Althusius attributes to popular sovereignty all the qualities that Bodin used to attack in the Monarchomachists. “According to him, the principles of immorality, indivisibility, and cooperative obligation expressed in the concept of *universitas* reside inalienably in the community of the corporate people.”⁴⁴ In the first edition of his book, Althusius wrote: “I gave politics the rights of majesty. But I attributed them to the kingdom, i.e., to the republic or the people. I know that, in the common opinion of scholars, these rights must be given to the prince or to the supreme magistrate. Bodin proclaims that they cannot be given to the kingdom or to the people without destroying them, by the mere fact that they are being communicated to the subjects or to the people. These rights are proper and essential to the persona of the prince and supreme magistrate; to the extent that they can neither exist nor reside outside it or in any other personae, they are part of it. I pay no heed to Bodin’s outcries, nor to voices that do not agree with mine, because my opinions seem to me to be consistent with reason.”

Attacking those who appealed to dictatorial Roman law to justify absolutism, claiming that originally the dictator was accountable to the National Assembly, Althusius argued that Bodin’s fundamental laws do not mean anything unless these laws emanate from the entire community. Like Bodin, Althusius developed the idea of a global society distinct from the state, since it is the state that forms the associated associations (*consociatio consociationum*), but their views

42. Antoine Winckler, “Description d’une crise ou crise d’une description?” in *Le Débat* (November-December, 1995), p. 66.

43. Althusius’ main adversary, however, was not Bodin, but the absolutist Guillaume Barclay, author of a violent attack on the Monarchomachists, *De regno et regalie potestae* (1600). Althusius’ work, like Bodin’s, provoked many comments in Germany. His most violent critic was Henning Arnisaeus, who denounced Althusius in *De auctoritate principum in populum semper involabili* (1611). Bartholomaeus Keckermann put forth an intermediary position between Althusius and Arnisaeus in his *Systema doctrinae politicae* (1607), and by Christoph Besold in *Politicorum libri duo* (1618).

44. J. H. M. Salmon, “L’héritage de Bodin: la réception de ses idées politiques en Angleterre et en Allemagne au XVII^e siècle,” in Yves Charles Zarka, ed., *Jean Bodin. Nature, histoire, droit et politique* (Paris: PUF, 1996), p. 183.

differ radically with respect to the definition of this state. While, for Bodin, the state is a personal attribute of the sovereign, with which he is identified and by means of which he expresses himself, for Althusius it is the “integral community,” i.e., the sovereign people. “It is to this symbiotic community that this right [sovereignty] belongs: the people are its proprietor, the king merely its administrator. If the body of the state had the power to delegate the rights of majesty, it would not have the authority to divide those rights, even less to alienate them: it would be political suicide, which, besides destroying sovereignty, would also destroy the state. Therefore, there is no *personal* absolute power in a community.”⁴⁵

Althusius also disagrees with Bodin concerning the best form of government. While Bodin does not consider a mixed government, but rather speaks of the division of the state into factions, Althusius prefers a system of government “that combines the qualities of monarchy, aristocracy, and democracy.” This option, however, does not play an important role in his political theory. In fact, he considered the distinction that Bodin makes between the state and the form of government or method of administration to be useless. Rejecting only anarchy and absolute monarchy, which in his mind were complementary, he considered all states to be popular and democratic, independent of their form of government, as long as the people retain sovereignty, which does not preclude states from also retaining a strong monarchical element.

For Althusius, differences of government are simply different modes of administration: if the supreme magistrate is a physical person, then the government is a monarchy, if the government is represented by a moral person, then it is a polyarchy, more or less democratic or aristocratic according to the extent to which the collegial body retains supreme autonomy. Althusius is careful to distinguish clearly among these different formulas, because he is aware of their advantages. His system could also be characterized as a “demo-aristocracy,” founded at once on the autonomy of communities, the authority of the head and the popular sovereignty of the base, the unity of the social body and the free consent of its members. Taking into consideration the influence that his ideas had in northern Germany in the 17th century, in particular in the Hanseatic villages, it is not surprising that, in the context of the constitutional

45. Mesnard, *L'essor de la philosophie au 16e siècle*, op. cit., pp. 595-596.

debate in the 16th century, the corporations of Lubeck openly spoke of an aristocratic-democratic mixed republic.⁴⁶

IV

Written in an unpolished style, with numerous repetitions and redundancies, *Politica methodice digesta* is an erudite work. In addition to classical authors, Althusius cites more than 150 works written in his own time.⁴⁷ These citations provide a precise idea of who influenced him the most, particularly the schools of Salamanca and Coimbra, which he knew from the works of the Jesuit Francisco Suarez (1548-1617). Althusius obviously draws inspiration from Calvin when he claims that each association must fulfill the functions assigned to it according to its abilities. However, he is totally opposed to the idea of natural law, which he considered unable to account for the organically structured character of human societies. This is even more evident when he presents his idea of the relation between politics and theology.

Far from preaching like Calvin or drawing on the Bible, which he quotes abundantly to illustrate the essential principles of his doctrine, he denies the dependence of science on theology, denounces all clerical censorship of his works, and defends the need to subordinate religious affairs to public control. Although the clergy “recognizes God sincerely and honors Him in private and in public throughout the whole state” (XXVIII, 15), it should be confined to the exercise of its ministry, and its power should not exceed censures and admonitions. Charity, which for Althusius is one of the postulates of social life, is a cut below the political. He is not far from launching the Lutheran idea of a state church subject to secular authority. The Biblical references throughout his text need not create an illusion. As Friedrich notes, “Whatever he has that is theological and Calvinistic, is superficial ornament, designed to legalize as Christian and protestant afterwards what he has arrived at by rational deductions. It

46. Helmut G. Koenigsberger and Elisabeth Müller-Luckner, *Republiken und Republikanismus im Europa der frühen Neuzeit* (Munich: R. Oldenbourg, 1988), pp. 118-119.

47. Althusius cites Aristotle, Cicero, Calvin, and Jean Bodin, as well as Spanish Catholic theologians such as Fernando Vázquez, Diego Covarruvias, and Juan de Mariana, or Protestant theologians such as Junius Brutius, George Buchanan, and Lambert Daneau, but he also refers to Petrus Gregorius, Bartolo de Sassoferrato, Giovanni Botero, Justus Lipsius, Innocent Gentillet, Paul Castro, Francis Hotman, Charles Dumoulin, Theodor Zwinger, Jean Sleidan *et al.* Thomas Aquinas and Marsilius of Padua are cited only occasionally. Dante Alighieri, John Wycliff, Henry Bracton, and William of Occam are not mentioned. Machiavelli’s most cited work is not *The Prince*, but *Discourses*.

would be possible to eliminate the theological ideas and references and yet the system would remain.”⁴⁸

Gierke demonstrates the profound affinities between Althusius’ political doctrine and traditional German law, full of provincial freedoms and privileges. In fact, it was with reference to old Germanic law predating the system of Roman law, which he studied in detail, that Althusius analyzed the freedoms that communities would enjoy. In his model, it is the medieval German corporations, above all the cooperative associations (*Genossenschaften*) predating the appearance of corporations, that were based on principles of commonality and indivisible property. What links them with members of a cooperative association is the common enjoyment of a law or a good.⁴⁹ Thus, the cooperative association constitutes a moral person, who responds directly to the will of its members, rather than an intervention, as in Roman law, which is subject to the bias of a plenipotentiary or a representative. Until the end of the Middle Ages, when its principles were transposed partially to corporations and guilds of artisans, the cooperative association played an essential role in the life of Germanic peoples. It gradually disappeared under the influence of the monarchical absolutism of a prince, and above all Roman law, which considers fictitious the juridical or moral personality of social units and associations.⁵⁰

For Althusius, the people constitutes a cooperative association, whose members retain sovereignty in common. “Althusius’ concept is explained precisely in the concept of common hands. It bases democracy on the model of moral personality and co-proprietorship of Germanic companies, just as the theoreticians of absolute monarchy based personal sovereignty on the model of physical personality and private property, taken directly from Roman law.”⁵¹ However, Althusius’ theory is also influenced by the German Empire’s principles and electoral customs. For instance, the college of ephors corresponds closely to the electoral Diet, where seven prince-electors were employed in discovering the will of the Empire, although this is also reminiscent

48. Friedrich, “Introductory Remarks,” in *Politica methodice digesta of Joannes Althusius (Althaus)*, *op. cit.*, p. XVIII.

49. The term *Genossenschaft*, derived from the Middle High-German word *genoz* (cf. the Dutch word *genoot*, or the old English word *geneat*) is semantically linked to the verb *geniessen*, meaning “to enjoy.”

50. The principal reference work on *Genossenschaften* remains Otto von Gierke’s monumental *Das deutsche Genossenschaften*, 4 Vols. (Berlin: Weidmann, 1898-1913).

51. Mesnard, *L’essor de la philosophie politique au 16e siècle*, *op. cit.*, p. 612.

of ancient assemblies of heads of families and clans. The election of the sovereign by the college of ephors and the conditional character of solemn obedience by the subjects evoke the elective monarchy of ancient Germans.

Bodin defined the “German Empire” as an “aristocratic principality where the emperor is the head and premier: the power and majesty of the empire belong to the states” (II, V). For him, this meant that the empire was not a state. In fact, power in the German Empire was divided between the emperor and the “states,” i.e., the cities and princes represented in the Reichstag. The empire is presented as an association of federated powers, based on a contract between the states and the emperor: the emperor had authority over each state taken individually, but not absolute sovereignty over the unity that they constituted collectively. “The imperial constitution is based on a spontaneous and pluralistic concept of law deriving from the territorial diversity at its base and from a unitary theory of Christianity founded on a common model — Roman law — and on a unique point of reference — a quasi-“notional” emperor. This vision of political space would be employed later by such conciliatory theoreticians as Nicholas of Cusa or Gerson, who defined Christianity (as it was in the Church or in imperial Europe) as the concordance of local associations, as a federation of corporations. Inside these corporations, on each level the rule of consent was fundamental. They referred to the proverb of the glossarists: “What concerns all must be approved by all,” and applied the rule of vote on each level, if not to the majority, at least to “the best and most sane part” of the people, guaranteed by publicity and freedom of speech. Finally, the tradition of conciliarists mentions the idea that each level of association had its own dignity, independent and not derived from the one above, since this was the expression of the consent of local or special ‘education’.”⁵² This construction reactivates the central role of autonomy as “law without the state.”⁵³ The empire constitutes a world of entangled autonomies. “Autonomy” is frequently called *perfectio*, which conveys the meaning.

52. Winckler, “Description d’une crise ou crise d’une description?” *op. cit.*, p. 63.

53. On the notion of autonomy as “law without state,” see Paolo Grossi, “Ein Recht ohne Staat. Der Autonomiebegriff als Grundlage der mittelalterlichen Rechtsverfassung,” in Rudolf Morsey, Helmut Quaritsch, and Heinrich Siedentopf, eds., *Staat, Politik, Verwaltung in Europa* (Berlin: Duncker & Humblot, 1997), pp. 19-29. Also, by the same author, *L’ordine giuridico medievale* (Bari: Laretza, 1995).

V

At first glance, there seem to be some affinities between Althusius' theory and the liberal doctrine that begins with a critique of absolutism and the rejection of the welfare state, which helps explain why some liberal authors have tried to appropriate his work.⁵⁴ But liberals do not retain the principle of subsidiarity or of substitution, but only the negative notion of non-interference. They reject holistic anthropology, which is fundamental for Althusius, because it challenges state interference not in the name of the groups' autonomy, but of laws inherent in the individual's "nature." Also, like Althusius, and following Locke and Hobbes, if they support delegation they see it as emanating from isolated individuals who choose to enter society to maximize their best interests by voluntarily transferring to the sovereign (conditionally or definitely) the absolute right that their "nature" has given them.

But Althusius rejects the idea of isolated individuals, and contextualizes himself within a clearly organic perspective: the pact between the people and the prince is based on the concrete existence of communities. Liberals also acknowledge the existence of communities, but on the condition that they are the result of the voluntary association of their members. In their view, communities are not the basis of society, which is merely a collection of ontologically isolated individuals: only the individual is the subject of law. At best, collectives and intermediary groups, which Hayek characterizes as "archaic" relics of "tribal society,"⁵⁵ have derived rights, while the state's goal is to guarantee individual objectives, expressed essentially in terms of interests. For Althusius, however, the "social pact" is not the result of individual egoism and its tendency to make contracts on the basis of personal interest, but rather the result of the natural disposition of people to reciprocal sympathy based on shared values. In this sense, his doctrine is incompatible with methodological individualism.⁵⁶

Much more interesting is the comparison between Althusius' and Rousseau's ideas. Although Rousseau does not quote Althusius directly, Gierke claims that Rousseau read and used Althusius' *Politica methodice*

54. See Elazar, *Politica. An Abridged Translation of "Politics Methodically Set Forth and Illustrated with Sacred and Profane Examples," op. cit.*, pp. XXV-XLVI.

55. Friedrich Hayek, *Droit, législation et liberté* (Paris: PUF, 1973), Vol. 2, pp. 168-178.

56. Giuseppe Gangemi, "La riflessione sul federalismo come strumento di fondazione di una cultura politica," in *Iter*, No. 8, 1995, pp. 121-139.

digesta in order to write *The Social Contract*.⁵⁷ In fact, Rousseau's doctrine has many affinities with Althusius' thinking. Like Althusius, Rousseau distinguishes between the people, who are the holders of sovereignty, and the prince, who controls society according to the will of the people. Also like Althusius, Rousseau emphasizes that those who govern are subordinate to the people, whom they only represent, and he believes that popular sovereignty is an inalienable right that can be delegated, but which the people always retain and of which they cannot be deprived, even with their own consent.⁵⁸ Althusius wrote: "I support the idea that, in order to be legitimate, property and the usufruct of these rights of majesty must return to the kingdom or to the entire people, to the point where the people, should they want to do so, cannot renounce those rights, transfer them to someone else, or somehow alienate them, just as one cannot transmit one's life to another."⁵⁹

The analogy of these formulas is immediately apparent. Like Althusius, Rousseau claims that the prince, who gives away his power, becomes a "simple individual" who no longer needs to obey anybody. Derathé concludes that "Althusius attributes to the subjects of a state the right to resist magistrates who want to exercise supreme power, just as Rousseau claims that the people have a duty to refuse to obey a government that usurps sovereignty and degenerates into tyranny. Both thinkers have the same dread of tyranny, and claim, with equal conviction, that the people have not only the right, but the duty to resist oppression."⁶⁰ Like Althusius, Rousseau believes that popular sovereignty cannot be taken away without destroying political society: depriving the people of its inalienable rights means destroying the state. According to Althusius, as long as "the rights of majesty, inherent in the people as a whole [remain untouched], the republic lives, but when these

57. Gierke quotes Rousseau's *Lettres écrites de la montagne*, in which Althusius' name is mentioned explicitly. Althusius' influence on Rousseau has also been noted by Kurt Schilling, *Histoire des idées sociales. Individu, communauté, société* (Paris: Payot, 1962), p. 184. Cf. also Frédéric Atger, *Essai sur l'histoire des doctrines de contrat social*, *op. cit.*; and J. W. Gough, *The Social Contract* (Oxford: Oxford University Press, 1957).

58. "He who drafts laws, therefore, does not or should not have any legislative right. And the people itself cannot, even if it wanted to, divest itself of this incommunicable right." See Jean-Jacques Rousseau, *On the Social Contract*, ed. by Roger G. Masters, tr. by Judith R. Masters (New York: St. Martins Press, 1978), Bk. II, Ch. vii, p. 69.

59. Althusius, preface to the 1603 edition of *Politica*, in Friedrich's edition of *Politica methodice digesta of Joannes Althusius (Althaus)*, *op. cit.*, pp. 3-6.

60. Robert Darathé, *Jean-Jacques Rousseau et la science politique de son temps* (Paris: J. Vrin, 1988), p. 96.

rights are taken away it dies, it perishes, and does not deserve to be called a republic.” Rousseau states the same thing: “when the prince no longer administers the State in accordance with the laws and usurps sovereign power,” the social pact is dissolved, “the state shrinks,”⁶¹ and the citizens cease to form a people, but constitute only an “aggregation” of “scattered men.”⁶² In both cases, the result is anarchy: “When the State dissolves, the abuse of the government of any type whatsoever takes the general name *anarchy*.”⁶³ Darathé also writes: “Althusius formulated the key idea of the *Social Contract* a century and a half before Rousseau. He makes sovereignty an inalienable right that cannot be transferred from the people to the monarch under any pact of submission. Rousseau took this principle, which Althusius opposed to Bodin, as his own — it is hard to believe that he did not borrow it — in order to oppose Pufendorf and the absolutists of his time.”⁶⁴

But Rousseau and Althusius are far apart on other issues. The major difference between them is that, for Rousseau, the social contract is essentially one between individuals, as in liberal doctrine, whereas, for Althusius, the social pact is the progressive organization of organic communities of various sizes, in the formation of which individuals have no part: if they enter into a contract, they do so as members of an already existing community, which does not abandon its rights in favor of the larger community. Thus, this is not a voluntary coordination, which transforms individuals into citizens, but rather a slow elaboration beginning with primary communities. Althusius does not need the fiction of a state of nature distinct from the social state in order to establish his system. For him, the pact is not a unitary fact established once and for all, but an idea present on all levels that originates from man’s social nature, although Althusius’ system is not characterized so much by a hierarchy of social contracts as by a unity of political contracts. By contrast, Rousseau attempts to construct a polity that has a holistic appearance from individualist premises. For him, the state does not result from a union of subordinated communities, but from the “general will” expressed by the unity of citizens. That is why he locates sovereignty not in the people, but in the “nation,” whose expression is the “general will.” This is also why he does not subscribe to the principle of subsidiarity.

61. Rousseau, *On the Social Contract*, *op. cit.*, Bk. III, Ch. x, p. 97.

62. *Ibid.*, Bk. I, Ch. v, p. 52.

63. *Ibid.*, Bk. III, Ch. x, p. 98.

64. Darathé, *Jean-Jacques Rousseau . . .*, *op. cit.*, p. 96.

While, for Althusius, the “general will” never destroys the rights of the contracting parties, and the equity (*aequabilitas*) is never synonymous with equality (*aequalitas*), Rousseau writes that “in order to clearly see the statement of the general will, there is no partial society in the state.” He recommends that those “partial societies” be subdued, or, if they cannot be overcome, that their number be multiplied in order to diminish their power, with the further objective of reducing inequality.⁶⁵ Rousseau here follows Hobbes, for whom intermediary structures between the state and the individual are subdued in principle, since for him the state is formed immediately. For Hobbes, the state is subject to the will of contracting individuals, together with the absolute submission of all individual wills. Therefore, from a global perspective, it is identical to a civil society. Since, during the French Revolution (in August 1791), the National Assembly abolished the right of coalition (this had been attempted under Louis XVI) with the pretext that “an absolutely free state should not tolerate any corporation within it,” this decision conformed perfectly to Rousseau’s views, but was totally opposed to Althusius’ thinking.

Maritain said that “Rousseau’s state is nothing more than Hobbes’ Leviathan, crowned with the general will.”⁶⁶ Rousseau, however, tried to reconcile Althusius and Bodin. He is more attached to the former with his concept of popular sovereignty, but he takes from the latter the idea of unlimited sovereignty and the unity of public power in the same territory. Thus, the type of sovereignty that he attributes to the people differs from that of Althusius, for whom the people are sovereign and not hostage to a sovereignty above and beyond themselves. By definition, the people’s sovereignty is exercised with strict respect for autonomy, which exists on all levels, whereas, for Rousseau, the people are invested with a type of absolute sovereignty previously possessed by the prince, making it incompatible with the autonomy of any particular group.

William H. Riley saw in Althusius a late representative of the medieval vision of society. Gierke described him as a theoretician who sought to adapt certain principles of feudal political life to post-medieval society. Recently, he has been seen as a precursor of contemporary

65. Althusius writes: “The harmony is encouraged and protected by equity, whereas law, honor, and freedom are given to each citizen according to the order and distinction of his value and status Opposed to this equity . . . is equality, whereby individual citizens are positioned in all fields.”

66. Maritain, *L’Europe et l’idée fédérale*, *op. cit.*, p. 120.

federalism. The contradiction between these different views disappears if one regards federalism as a modality of renewal, as a new form of certain principles characteristic of the feudal era. Elazar makes the comparison by sharply distinguishing between a “modern federalism,” founded above all on individual rights, and a “post-modern federalism,” based on the real and legitimate existence of groups and communities, to which juridical and political rights must be attributed in the public sphere.⁶⁷ Thomas Hueglin and Bernard Voyerne see in Althusius a figure historically located between the medieval era and modern times, who discovered most of the key elements of federalist doctrine: the state conceived as a “coalescence” of provinces and regions; rejection of the idea of absolute sovereignty in favor of the shared sovereignty of constituent powers; and definition of global society as a unity of reciprocal relations between groups.

By transforming the medieval notion of organized hierarchical bodies into a real “modern” constitutional hierarchy, Althusius both prefigured the federalist concept of representation and argued that individuals belong to the “symbiotic” state only through the meditation of associations and communities: families, cities, corporations, provinces, etc. Since, for Althusius, all forms of community are part of the same genre, and obey the same laws, according to the principle of increasing complexity, the freedom of territorial collectives is not included in his antinomic model of shared sovereignty. Instead of being “dualist,” i.e., shared between an almighty sovereign and a “civil society” deprived of all capacity for autonomy, society is defined as a political continuum of law-making organizations, without regard to continuity. The existence of concurrent sources of law-making is considered to be a better guarantee of freedom. Finally, Althusius explores the modern distinction between “federation” (*Bundestaat*, which he calls *fœderatio plena*), and “confederation” (*Staatenbund*, or *fœderatio non plena*). For this reason, Voyerne considers Althusius to be “the first federalist theoretician,” and adds that his federalism “in many respects is already integral federalism.”⁶⁸

By posing the question of shared jurisdictions, and by arguing that on all levels of public life the state should take care only of tasks that

67. Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa: University of Alabama, 1987). See also Daniel J. Elazar, ed., *Federalism as Grand Design. Political Philosophers and the Federal Principle* (Lanham: University Press of America, 1987).

68. Voyerne, *Histoire de l'idée fédéraliste*, *op. cit.*

lower levels cannot accomplish, Althusius established himself as the first post-medieval defender of the principle of subsidiary authority. The word “subsidiarity,” which Althusius used often, is derived from the Latin *subsidium*, which was used to refer to troops or reserves called up to reinforce regular armies when needed. Politically, the principle of subsidiarity signifies that higher levels must always be limited in the sense that they do not intervene unless and until a lower level is unable to carry out a required task. This is a principle of equilibrium and regulation that aims to keep initiatives at the lower level, and to protect them from being subsumed by those above. As such, it is present in all federalist constructions, as well as in most forms of indirect or direct democracy. Based on the idea that “in a political society everything should be done so as not to prevent anyone from doing what they can or want to accomplish,” this principle implies that a person is responsible for his acts, that individuals are defined as social beings whose natural egoism is also accompanied by a natural need for solidarity and sociability, that society is an organic entity, that social relations are founded on mutual benefits and reciprocity, that a right is a relation of equity in respect to a concrete situation, and, finally, that social relations are based on the primacy of the common good over particular interests.⁶⁹

Such a principle is already present in Aristotle, notably in *Nicomachean Ethics*. With respect to his theory of the common good, which defines society not only as a juxtaposition of isolated individuals, but also as an organic whole, where all members demonstrate solidarity, Thomas Aquinas writes: “It is evident that all those who form a society are various parts of that society with respect to the whole.”⁷⁰ He concluded that the state’s omnipotence must be limited by multiple “communities” in society, and that the tasks of the latter should not be assumed by the former. Thereafter, the church’s social doctrine

69. On the principle of subsidiarity, see Chantal Millon-Delsol, *Le principe de subsidiarité*, *op. cit.*; Marie Cornu, *Compétences culturelles en Europe et principe de subsidiarité* (Brussels: Bruylant, 1994); Frédéric Baudin-Cullière, *Principe de subsidiarité et administration locale* (Paris: Librairie Générale de droit et de jurisprudence, 1995); Claude du Grandrut, *La citoyenneté européenne, une application du principe de subsidiarité* (Paris: Librairie Générale de droit et de jurisprudence, 1997); René Lourau, *Le principe de la subsidiarité contre l’Europe* (Paris: PUF, 1997); Jean-Louis Clergerie, *Le principe de subsidiarité*, *op. cit.* The principle of subsidiarity is explicitly cited in the Maastricht Treaty (February 7, 1992), which states that the European Union was not allowed to intervene, unless it can do so more effectively than its member states or regions. This principle, however, has not been applied.

70. Thomas Aquinas, *Summa Theologica*, IIa-Iae, q. 58, a.5.

reaffirmed the validity of the principle of subsidiarity on many occasions, most notably in the encyclical *Rerum novarum* (1891).⁷¹ The 1931 encyclical letter *Quadragesimo anno* says: “Just as it is wrong to withdraw from the individual and commit to the community at large what private enterprise and industry can accomplish, so, too, it is an injustice, a grave evil and a disturbance of right order for a larger and higher organization to arrogate to itself functions which can be performed efficiently by smaller and lower bodies.”⁷²

The principle of subsidiarity also can be found among 19th century authors as different as Tocqueville and Proudhon. Tocqueville stressed that democracy is constantly threatened by state centralization, which deprives intermediaries of their autonomy by reducing their jurisdiction. He lectures about decentralization and the revitalization of provincial and regional institutions as means for achieving “political life in every part of the territory, in order to multiply infinitely the opportunities of citizens to act collectively, and to make them feel mutually dependent on a daily basis.” Rejecting capitalism as well as “dogmatic communism” in favor of mutualist socialism, Proudhon also preaches about the formation of all sorts of autonomous communities, with the state interfering only when these communities cannot achieve their goals. Presenting Europe as “a federation of states, whose interests promote solidarity,”⁷³ he divides France into twelve autonomous “regencies,” with legislative and executive powers deriving from the people, and names Paris as the “federal capital.” Contrary to Hobbes’ and Rousseau’s systems, his federative-associationist

71. *Encyclical Letter of His Holiness Pope Leo XIII on the Condition of the Working Classes* (Boston: St. Paul Editions, 1942).

72. Pope Pius XI, *Encyclical Letter on Social Reconstruction* (Boston: Daughters of St. Paul, nd), p. 40. One can find analogous claims in *Mater et registra* (1961) and *Pacem in terris* (1963). Cf. *La subsidiarité, de la théorie à la pratique. Actes du XIIIe colloque national de la Confédération des juristes catholiques de France, Paris 20-21 novembre 1993* (Téqui, 1995). It should be pointed out that the principle of subsidiarity can be deployed within very different perspectives: to protect individuals or groups against the state, to defend local churches against the universal Church, to defend the prerogatives of this same universal Church against public power, to give priority to parents over civil society for what concerns education, to defend private initiative against public powers, etc. Thus, it is on the basis of this principle that, beginning with the Council of Trent, the papacy, forced to renounce the absolutism of which Innocent III was the main theoretician, sought to redistribute prerogatives between the authority of Rome and royal power. In fact, the principle of subsidiarity cannot be understood other than as closely related to the principle of solidarity, because subsidiarity pushed too far could be seen as unfavorable toward the exigencies of solidarity.

73. Alexis de Tocqueville, *Philosophie du progrès*, letter 1 (1853).

model, whose major goal is resolution of the antinomy of freedom and authority, is based on a contract whereby each party preserves or gains more freedoms and rights than it alienates, and whose contracting parties, as with Althusius, are not individuals, but organized entities: “family heads, communities, cantons, provinces, or states.”⁷⁴

VI

Althusius’ work was rediscovered in Germany toward the end of the 19th century by thinkers seeking German unity. Thus, Martin Buber focused attention on Althusius, and largely based his own doctrine on *Politica methodice digesta*.⁷⁵ Althusius’ ideas also can be approached from the standpoint of the Austrian social-democrat Otto Bauer who, at the outset of the 20th century, proposed to reorganize Austria as a federal state uniting autonomous regions.⁷⁶

Beyond its meticulous references, *Politica methodice digesta* remains one of the richest educational works. In fact, the debate between Bodin and Althusius has never ended, and today it is more relevant than ever. This is the eternal debate between the nation-state and imperial Europe, between national Jacobinism and decentralizing federalism, between “republicans” and “democrats.”⁷⁷ On the one hand, there is “a total sovereignty that is the only space for expression of the general will, an empty space between citizen-subjects and a sovereign-prince,” a “civil society” defined only by its opposition to a political prince, an absolute monarchy of law and legitimacy whose magistrates are its instruments;⁷⁸ on the other hand, there is “a permanent conditional sovereignty based on consensual origins, a continuity

74. Pierre Proudhon, *La guerre et la paix* (1861), book IV, chapter 10.

75. Cf. specifically, Martin Buber, *Utopie et Socialisme* (Paris: Aubier Montagne, 1997). In this book, where he examines the works of Proudhon, Marx, Kropotkin, Landauer, et al., Buber argues that he finds in Althusius the sharpest expression of a post-medieval reflection of the autonomous right of political association, pp. 247-248.

76. Otto Bauer, *Die Nationalitätenfrage und die Sozialdemokratie* (Vienna: Volksbuchhandlung, 1907). Cf. also Andrea Chiti-Batelli, *La social-démocratie de l’empire autrichien “fin de siècle,” source peu connue du régionalisme fédéraliste* (Nice: Presses d’Europe, 1995), pp. 9-12.

77. Cf. Günther Ammon, Matthias Fischer, Thorsten Hickmann and Klaus Stemmermann, eds., *Föderalismus und Zentralismus. Europas Zukunft zwischen dem deutschen und dem französischen Modell* (Baden-Baden: Nomos, 1996). The authors emphasize that “the opposition between the two ways of thinking, sometimes visible, sometimes not, is one of the major defects in the European structure, where the danger of division is the major flaw” (p. 189). Cf. also Louis Dumont, *L’idéologie allemande. France-Allemagne et retour. “Homo aequalis” 2* (Paris: Gallimard, 1991).

78. Winckler, “Description d’une crise ou crise d’une description?” *op. cit.*, pp. 63-64.

that does not resolve the distinction between associations of a lower (local) and a higher (universal) level, autonomous dignity of magistrates having “full jurisdiction” with respect to the principle of federation, a plurality of local laws, tempered by a common juridical reference.” Althusius certainly merits recognition today.⁷⁹

79. Some of the works devoted to Althusius should be mentioned: Wilfried Buchholz, *Rousseau und Althusius* (Breslau, 1922); Francesco Ercole, *Da Bartolo all'Althusio. Saggi sulla storia del pensiero pubblicistici del Rinascimento italiano* (Florence: Vallecchi, 1932); Joseph Bischof, *Die Volkssouveränitätslehre bei Johannes Althusius und Franz Suarez* (Vienna, 1944); Peter Sjerds Gerbrandy, *National and International Stability. Althusius, Grotius, van Vollenhoven* (London: Oxford University Press, 1944); Stanley Parry, *The Politics of Johannes Althusius* (Yale: Yale University Press, 1944); Heinz Werner Antholz, *Die politische Wirksamkeit des Johannes Althusius in Emden* (Leer: H. Möckel, 1954); Ernst Reibstein, *Johannes Althusius als Fortsetzer der Schule von Salamanca. Untersuchungen zur Ideengeschichte des Rechtsstaates und zur alprotestantischen Naturrechtslehre* (Aalen: Scientia, 1955); Julius von Gierke, *Neues über Johannes Althusius* (Berlin: C. Heymann, 1957); Frederick S. Carney, *The Associational Theory of Johannes Althusius* (Chicago: University of Chicago, 1960); Peter Jochen Winters, *Die "Politik" des Johannes Althusius und ihre zeitgenössischen Quellen. Zur Grundlegung der politischen Wissenschaft im 16. und im beginnenden 17. Jahrhundert* (Freiburg i. Br.: Rombach, 1963); Hans Thieme, *Die Basler Doktorthesen des Johannes Althusius*, s.l. 1964; Carl Joachim Friedrich, *Johannes Althusius und sein Werk im Rahmen der Entwicklung der Theorie von Politik* (Berlin: Duncker und Humblot, 1975); Karl-Wilhelm Dahm, Werner Kravietz, and Dieter Wyduckel, *Politische Theorie des Johannes Althusius* (Berlin: Duncker und Humblot, 1988); Thomas O. Hueglin, *Sozietales Föderalismus. Die politische Theorie des Johannes Althusius* (Berlin: Walter de Gruyter, 1991); Won-hong Cho, [Theory of State and Law in Johannes Althusius] in Korean (Seoul: National University of Seoul, 1992); Dieter Wyduckel, *Johannes Althusius. Wegbereiter moderner Rechts- und Staatslehre* (Darmstadt: Wissenschaftliche Buchgesellschaft). Cf. also, Carl Joachim Friedrich, “Johannes Althusius,” in *Encyclopedia of the Social Sciences*, e. by Edwin R. A. Seligman and Alvin Johnson, Vol. 2 (New York: The MacMillan Company, 1930), pp. 13-14; A.P. d'Entrèves, “Giovanni Althusio e il problema metodologico nella storia della filosofia politica e giuridica,” in *Rivista internazionale di filosofia del diritto* (1934); Hans Ulrich Scupin, “Die Souveränität der Reichsstände und die Lehren des Althusius,” in *Westfalen* (1962), pp. 186-196; Hans Ulrich Scupin, “Der Begriff der Souveränität bei Johannes Althusius und bei Jean Bodin,” in *Der Staat* (1965), pp. 1-26; Hans Ulrich Scupin, “Demokratische Elemente in Theorie und Praxis des Johannes Althusius,” in A. M. C. H. Reigersman-Van der Eerden and G. Zoon, eds., *A Desirable World: Essays in Honor of Professor Bart Landheer* (The Hague: Martinus Nijhoff, 1974); Patrick Riley, “Three Seventeenth-Century German Theorists of Federalism. Althusius, Hugo, and Leibnitz,” in *Publius*, No. 3, 1976, pp. 7-41; Hans Ulrich Scupin, “Untrennbarkeit von Staat und Gesellschaft in der Frühneuzeit. Althusius und Bodin,” in Friedrich Kaulbach and Werner Krawietz, *Recht und Gesellschaft. Festschrift für Helmut Schelsky zum 65. Geburtstag* (Berlin: Duncker & Humblot, 1978); Thomas O. Hueglin, “Johannes Althusius: Medieval Constitutionalist or Modern Federalist?,” in *Publius*, No. 4, 1979, pp. 9-41; Hendrick Jan van Eikema Hommes, “Die Bedeutung der Staats- und Gesellschaftslehre des Johannes Althusius für unsere Zeit,” in Norbert Achterberg, Werner Krawietz, and Dieter Wyduckel, *Recht und Staat in sozialen Wandel. Festschrift für Hans Ulrich Scupin zum 80. Geburtstag* (Berlin, 1983); Michael Behnen, “Herrscherbild und Herrschaftstechnik in der ‘Politica’ des Johannes Althusius,” in *Zeitschrift für historische Forschung* (1984), pp. 417-471; Dieter Wyduckel, “Johannes Althusius,” in Hans-Gert Roloff, *Die deutsche Literatur. Biographisches und bibliographisches Lexicon*, Vol. 1 (Bern/Las Vegas: P. Lang, 1991); Thomas O'Hueglin, “How We Studied the Wrong Authors? On the Relevance of Johannes Althusius,” in *Studies in Political Thought* (Winter 1991-1992), pp. 75-93.