

The Relationship between Politics and Law

The function of *jus symbioticum* in *Politica methodice digesta* of Johannes Althusius

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I. The purpose of politics and its distinction from law

The aim of this work is to clarify how the relationship between politics and law is conceived in Johannes Althusius' greatest work, *Politica methodice digesta*, where the author sets out his "ascending theory of the birth of the State". The intention is thus to clarify what function the law, specifically defined *jus symbioticum* – from the attribute συμβιωτική proper to the *ars politica* – takes on in the various kinds of association that Althusius identified, the political nature of which he emphatically reaffirmed.

Moving from the acknowledgment of the naturalness of human sociality, Althusius describes the spontaneous and gradual process of aggregation, which, beginning with the family and the corporation (*consociationes symbioticae privatae*), leads to the *Respublica* (*consociatio symbiotica publica major*), via the *universitas* and the province (*consociationes symbioticae publicae minores*).

In this way, a model of State construction is represented that is characterized by the presence of increasingly complex associative groups, all of which, however – including the most elementary union, namely the family – are considered to be, indeed, the primary topic of study in politics, whose scientific autonomy it is Althusius' desire to defend.

To this end, starting from the Preface to the first edition of the *Politica* of 1603, he declares his wish "to review in suitable order the political precepts, which have been treated differently in the various works, and to verify in the facts whether the methodical principle of teaching can be observed therein, according to the prescription of scholars of logic". More precisely, the method to which Althusius refers is that developed by French Huguenot logician and rhetorician Peter Ramus, a firm believer in the need for a clear definition of the area of competence of individual subjects on the basis of their specific object of investigation. In line with the teachings of Ramus, Althusius is concerned to clarify what the relationship between politics and law should be, drawing the problem of the link between these two disciplines into the broader epistemological question of protecting the autonomy of the different areas of knowledge. This is a matter of particular relevance for subjects considered to be 'related' (*parentes artes*) due to the proximity of their areas of interest, but which, precisely for this reason, often end up by erroneously encroaching upon each other. An example of this is precisely politics and law, whose degree of kinship is, for the author, even greater than that between ethics and theology, or between physics and medicine: "ubi Politicus [desinit], ibi Jurisconsultus [incipit]". In this case, therefore, it will only be with the help of prudence and a percep-

tive and acute capacity of judgement that similar concepts can be discerned, always taking care to be guided by the purpose and the true and genuine form of each discipline.

On the basis of these premises, Althusius configures his speculation with the aim, first of all, of purging the field of investigation regarding politics of all extraneous elements, and then organizing his arguments in the most appropriate order. Indeed, he shares with Ramus the idea that the method coincides with the correct arrangement of many different notions, “linked to a single and specific end, made mutually coherent and connected as though by a stable chain”. The *methodus* is expressed, therefore, in the

“establishment of a hierarchical connection of assertions [ordered] according to their decreasing degree of generality, from the general to the increasingly particular, so as to become a full, condensed ‘via ad scientiam’”.

Conceived as a technique for organizing principles of knowledge in descending order of generality, the Ramist method must, moreover, respond to criteria of clarity (*perspicuitas*), concision (*brevis et compendiaris via*) and uniqueness (*de unica methodo*). Only in this way would it be able to guarantee to all knowledge the perspicuity and immediacy necessary to favour its transmission and actual use, responding to the practical demands that would become increasingly pressing throughout the 16th and 17th centuries; instances, that had led to a “methodical approach to knowledge, the ultimate goal of which [was] an opening in practice or its immediately practical use (*usus utilitas*)”. In line with Ramist methodology, Althusius therefore envisages proceeding from the clearest and most general notions, moving down to the more specific, concluding with examples taken from sacred and profane history. In this way, he hopes that “by applying [the Ramus method], political ‘art’ will become a ‘science’”, following the French rhetorician in his redefinition of the epistemological status of the various disciplines, in order to better clarify the relationship between the various levels of knowledge.

Althusius therefore uses the term *ars* or *scientia* indifferently when referring to politics in his *opus magnum*. In fact, although the first chapter of his greatest work opens with the definition of politics as the art of uniting men through life in society, which is “therefore called symbiotic”, there are various parts of the text in which it is referred to as a science. He, like Ramus, would therefore appear to have moved beyond the distinction between *scientiae* and *artes* sustained by the peripatetic tradition dominant in the Middle Ages, which, recalling Aristotle’s view, attributed to the sciences alone the characteristic of universality, as they proceeded according to certain deductions following necessary premises, while relegating the latter to the sphere of mere probability, since they concerned contingent subjects. Althusius, on the other hand, borrows from Ramus a new concept of ‘scientificity’, open to welcoming all disciplines, which, precisely through this method, regain equal epistemological dignity. So much so that, for the French rhetorician, certainty could also be achieved in the arts, as long as the organization of the precepts complied with the ‘three laws’ proper to the *methodus doctrinae* that he himself had identified, demanding the universal validity of propositions (*lex veritatis*), their disciplinary homogeneity (*lex iustitiae*), and the correct deduction of terms (*lex sapientiae*).

It is, therefore, in accordance with the law of the *lex iustitiae*, which calls for a clear and precise definition of the object of study and the boundaries of the individual subjects addressed, that Althusius wishes, first of all, to specify in detail what the politician should do, although he is immediately aware of the difficulties that such an intention entails, given the close proximity between politics and law, both of which are devoted

to the observation of life in society. But the goals of the two disciplines are different: while the jurist observes human relationships in order to be able to identify the most suitable laws to regulate them, basing judgment, then, on the merits of the laws themselves, the politician, instead, identifies the means able to guarantee the well-being of the community and translates them into practice. In his attempt to separate the juridical elements from political science, the author is, however, aware that he could easily trespass beyond interdisciplinary limits, “*adferentes ex cognatis artibus ad fine quod est, pro homogeneo*”. Even if similar content were to be taken from related disciplines, then, it will be done in accordance with the criterion of homogeneity prescribed by Ramus’ law of justice, whereby all the arguments of interest of a certain discipline must be *ejusdem generis*, namely of the same nature.

In the specific case of politics, its very purpose will indicate how much one may proceed in this science. Thus, as politics aims to institute and preserve life in society through appropriate and useful means, any precept that does not contribute to this goal should be rejected as heterogeneous (*heterogeneum*). The politician, in effect, teaches what the principles of sovereignty are, investigating what is essential for the constitution of a State, how to establish it, and what form of government is most suitable and most lasting. Moreover, in the Preface to the second edition of *Politica*, published in 1610, Althusius significantly specifies that even the precepts of the Decalogue, infusing the vital spirit of human society, can in no way be removed from politics itself without risking the destruction of all forms of social life. Nevertheless, the autonomy of this science with respect to theology, whose aim is not the preservation of the community, but eternal salvation, remains intact.

The goal of jurisprudence, which, as we have seen, is allegedly to deduce the law from facts in order to draw conclusions and make judgments, is once again different. The different perspective from which the two doctrines approach the reality of human relations becomes evident, for example, with regard to the principles of sovereignty (*capita majestatis*): the politician defines their content, while it is up to the jurist to carefully evaluate which rights derive from these principles and from the contract stipulated between the people and the sovereign. “*Ille [politicus] de facto, hic [jurisconsultus] de jure illius.*” It must be concluded, therefore, that with regard to their practical application the two disciplines go hand in hand. Conversely, Althusius himself argues that in practice, all the arts are actually interlinked, also adhering to Ramus’ doctrine, according to which disciplines must always have an immediate and practical use.

More specifically, in the symbiotic construction of the State illustrated by Althusius, the law, conceived precisely as *jus symbioticum*, finds its place within politics, as it is indispensable for the constitution and preservation of the peaceful coexistence of men in social unions, where there is a fundamental obligation of mutual participation in the well-being of the society.

II. The function of symbiotic law in Althusian *consociationes*

On this basis, and in order to further clarify the relationship between politics and law in Althusius, it is now necessary to focus on the three interdependent concepts of symbiosis, *communicatio mutua*, and covenant in his thought.

In this regard, it should first of all be noted that the function of symbiotic law within the different *consociationes* is only clarified in connection with the fundamental duty of

communicatio mutua. The latter, constituting one of the cardinal principles of political Calvinism, leads us to place the *Politica methodice digesta* in the context of the so-called ‘Second Reformation’. Only in this way is it possible to fully grasp the meaning of Althusian politics, starting from its attribute: ‘symbiotic’.

For Althusius, politics is symbiotic precisely because its specific object is not just some vague kind of human consortium, but a symbiosis, or rather that particular form of association through which, by means of an explicit or implicit pact, individuals commit themselves to mutual participation (*communicatio mutua*) in what is useful and necessary to the practice and consortium of social life, with the aim of leading a “holy, just, advantageous and happy” existence. It is precisely the adjective ‘holy’, “denoting in Calvinist prose the elect and their community”, that reveals the great influence that reformed morality had on Althusius’ political and social project, without, however, this affecting “the autonomy [of politics] as an art of government [and] (...) the science of living in society”. For Althusius, the ‘holiness’ of the symbiotics, members of the different forms of political consociation, springs from their commitment to bind each other through a pact to pool what is useful for life in society. In so doing, they obey the divine will for peace and concord among men, which can be deduced from the sacred texts and is confirmed by the laws of the Second Table of the Decalogue, namely from the last seven Commandments, which advocate charity towards one’s fellow human beings. Contrary to the claims of modern natural law theorists, the *pactum*, present at every level of the symbiotic *consociatio*, does not therefore have a constitutive function in human association, which, on the other hand, springs from the natural human sociality. Rather, the symbiotics need the covenant to sanction the assumption of the duty of *communicatio mutua*. In this particular conception of the pact, as developed by Althusius, one must read the influence of federal theology, that is, the central current of political Calvinism, which is characterized by the transposition of the idea of the biblical covenant between God and man from a purely theo-normative dimension to that of the field of politics. The pact comes into play to regulate social relations and the life in common of symbiotics through the voluntary assumption of mutual obligations based on the model of reciprocal agreement stipulated by the Lord with Abraham and his successors, later confirmed by the advent of Christ: God manifests Himself as the supreme good and offers Himself as protector, while men commit themselves to fulfilling His will.

In the same way, for Althusius, from the dimension of the covenant flows a duty of reciprocity among symbiotics, specified in the *communicatio mutua* of what the community needs. In Althusian doctrine, therefore, the will of the members of the various *consociationes* is not at its foundation, but serves as an instrument for the assumption of responsibility, firstly towards God and then towards the symbiotic community. Consequently, Althusius believes that the precepts relating to the commonality of goods, services and the law, shared for the benefit of the community through the participation of each person in such a commonality according to his own possibilities, are the object of politics. It is, therefore, from voluntary submission to the mutual obligation to share that the ‘holiness’ of the symbiotics stems, in which their common vocation to the good, namely obedience to the Lord, is expressed. This vocation can, therefore, only be realized through active and constant participation in the health of the community. It should not, in fact, be forgotten that

“the term ‘holy’, in its reformed meaning, goes beyond any reference to religious or moral qualities possessed through valiant effort (as in the Catholic meaning), but denotes one who receives a mandate from God and is militantly committed to the realization of the kingdom of God on earth”.

Furthermore, the symbiotic's duty of *communicatio mutua* is reflected precisely in his/her imperfect nature, incapable of satisfying all his or her needs autonomously and therefore apt to seek out fellow human beings in order to be close to them in peaceful coexistence, within which each one can make a precious contribution, thanks to the different and complementary attributes that the Lord gives to human beings. Indeed, Althusius emphasizes that "God the Most Excellent distributed His gifts in various ways among men" since "He wished that each one should need the work and help of the other, so as to bind all individuals in friendship". Thus, Althusius finds the reasons for human diversity to be of a theological-moral nature, on the basis of which – as will be seen – he also admits the existence of natural relationships of command and submission in all forms of association. In his words, "it is innate in the most powerful and in the most experienced to dominate and command over the weakest, just as it seems innate in the inferior to obey". He thus outlines a social horizon in which each one needs the experience and services of others, and no one lives for himself alone.

Reciprocity, then, becomes an essential criterion for the survival of the societal bond, the importance of which Althusius underlines precisely by resorting to the concept of *jus symbioticum*, which he defines more specifically as the "law of association and symbiosis", consisting, "in essence, in self-sufficiency (ἀνταρχεία), good governance (εὐνομία) and good order (εὐταξία)". Consequently, the *jus symbioticum* prescribes, on the one hand, the methods and modalities for creating the *communicatio mutua* of goods and services among symbiotics, and on the other, it is functional to the direction and governance of life in society. From this point of view, in the opinion of Althusius, it can be common to all the *consociationes* or specific to each one.

According to the *jus communis*, given the natural diversity of men, in every kind of symbiosis there are relations of command and subjection, without which the order of creation would be subverted and chaos would reign. In this regard, Althusius specifies that the acts of government by superiors must always be directed to the care of the soul and body of the inferior.

On the other hand, the symbiotic right appropriate to each form of association regulates the behaviour of its members depending on their particular needs:

"Sometimes participation is greater and broader, and sometimes smaller and more restricted, depending on what the nature of each form of association seems to require or according to what is agreed and established between symbiotics."

In private unions – i.e. the family and the corporation – the *jus symbioticum* "is the law that every private symbiotic has the duty to fulfil towards the other within the association itself; it varies and diversifies according to the nature of each symbiotic union". In the case of the *consociatio domestica*, it is distinguished by the lower intensity of communion envisaged by the *jus symbioticum*, since "talis consociatio, prout est minor publica universali, ita quoque minore communicatione, subsidiis et adminiculis indigent". The method by which the law common to all associations is shared is "given by order and balance (συμμετρία), thanks to which the actions of joined or associated men are regulated and directed by those who preside, according to their condition". This becomes possible through the consent of the parties, which ensures that the soul and heart of the united symbiotics always tend towards the benefit of all. But the interest of individuals can be subordinated to that of the group through consent, solely because by virtue of the *jus symbioticum* the association can be deemed a person.

When we pass, then, to public associations, it becomes even more evident that it is precisely the presence of a shared law that determines their symbiotic character. "Men aggregated without the *jus symbioticum* are a mass, a group, a multitude, an aggregate,

a population, a people.” However, the more this multitude extends, the more it will need “subsidies, supports and means to maintain material and spiritual self-sufficiency”; subsidies, for which a wide communication of things, services, order and discipline will be necessary. It will not then be possible to do avoid adopting the *jus symbioticum*. In fact, “the law (*jus*) and the power to share and participate in useful and necessary resources, which are collected by the associated members for the existence of the established body” is precisely the public symbiotic law, also called *politeuma*. In using this term of Greek origin, Althusius emphasizes the importance assumed by the *jus symbioticum* in public associations, which find their definition precisely in the presence of a law common to their members. In fact, he argues that “a public association [is] one that gives rise to the joining of several private associations in order to constitute a *politeuma*”.

The latter, establishing itself therefore as the goal of the *consociatio publica*, testifies to how, in leaving the private sphere, the exchange between mutual needs that is already present to a lesser extent in the family and in the corporation, expands and strengthens. In other words, the duty of *communicatio mutua*, from which the strong moral connotation of symbiotic association derives, becomes all the more intense as we move up from the lower unions towards the *Respublica*. Moreover, in Althusius’ symbiotic conception of politics, whose theological premise is the believers’ duty of obedience to God, it is precisely the great importance attributed to the duties rather than the rights of associates in the private associative sphere that allows a natural transition to the public dimension. In Althusius, in fact, there is no provision for a pact able to constitute a political society, to which the protection of individual rights arising in a hypothetical state of nature is transferred, as happens in modern natural law and, in particular, in authors such as John Locke. It has been observed, however, that the Althusian *pactum* is placed at the starting point of every form of *consociatio symbiotica*, so that its members are mutually bound to that *communicatio mutua* of goods, services and the law, that is then governed by the *jus symbioticum*. In this way, the political sphere may be conceived as a still natural dimension of human relations, which in the context of symbiosis are always constructed in terms of duty. The latter, in fact, “directly calls into question the moral subject, who must respect it and thus implement its contents”, while the law does so only indirectly. In fact, if

“the affirmation of the law (understood subjectively, in opposition to duty) requires a constitutiveness that substantiates and, at the same time, theoretically and universally justifies the demand for it”,

on the other hand

“the concept of duty always implies, by its nature, an otherness, since it is directed towards something or someone: it is an instrument that always establishes, by negative means, a relativization or relationality of the obligating bond”.

Along the same lines, it is understandable why, in Althusius, associates constantly relate to one another according to a relationship based on a reciprocal sense of duty. This happens in the private as well as in the public sphere, where the only thing that changes is the nature of the members of the union, who are no longer individuals (as in the family and the corporation), but the inferior associations. The symbiotic bond, on the other hand, remains more or less equal, rooted, as it is, in the duty of mutual communication, directed towards common well-being.

It should be emphasized here then that this conception of politics – in which the obligation of *communicatio mutua*, and with it the *jus symbioticum*, ultimately appealing to the divine will, implying the responsibility of all towards all – is rooted, in essence, in a moral vision of this science, characterized by the very study of the particular form of association – symbiosis – whose subjects consciously assume a mutual duty of communication. The moral foundation of politics, however, certainly cannot be deduced from the observation of human nature, which Althusius, following negative Calvinist anthropology, believed was irreparably corrupted by original sin. The moral framework of Althusian theory originates, rather, from a principle that transcends men and the world, namely God's will, taken from the Holy Scriptures. The duty of communication, therefore, while drawing its necessity from the diversity and imperfection of men, derives its own *vis obligandi* from a voluntary assumption of responsibility on the part of individuals who commit themselves to obedience to God through a pact.

The Althusian *pactum*, therefore, constitutes the fundamental theoretical postulation for the symbiotic representation of politics, allowing it to refer to a specific moral content, namely the divine will, and the construction of political organization in terms of the mutual fulfilment of symbiotic duties. On the other hand, it is clear that Althusius does not aspire to a rational foundation for the political sphere, based on the analysis of human nature – as modern natural law does – but rather, through theological concepts (above all the covenant and *communicatio*), he reconstructs the political reality which, in his view, comes closest to the will of God.

What has been said so far, therefore, leads to the conclusion that, for Althusius, the concept of *jus symbioticum*, recalling the communicative dynamic stemming from the divine covenant and the covenant among associates, fulfils a double function. On the one hand, it serves to structure the political body in constitutional terms, founding society from the bottom up, with the social bond increasing in intensity and with it the consequent reciprocal obligation between symbiotics. On the other, it is useful to reaffirm the ethical content of symbiosis, distinguishing it from merely human groupings not seeking 'holiness'. Thus, it is emphasized the deontological presupposition whereby the relations between associates are always defined in terms of reciprocal duty.

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