Hugo Grotius and the Scholastic Tradition

Hugo Grotius y la tradición escolástica

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Abstract: Grotius' interpretation of natural law as well as of human sociability places him in the long Aristotelian tradition. Grotius persistently discusses with the Scholastic thinkers, who had invoked since the Middle Ages the 'hypothesis of the non-existent God' and contractual logic to explain and illustrate both the validity of natural law and the relationship binding the ruler and the ruled together. Emphasizing the scholastic roots of Grotius' philosophy, this paper sets out to examine both problems, i.e., the question of sociability and social contract and the nature and use of the 'etiamsi daremus' hypothesis.

Keywords: Hugo Grotius, scholasticism, Spanish scholasticism, 'etiamsi daremus' hypothesis, Francisco Suárez.

***Resumen**: Con su lectura del derecho natural, así como con su interpretación de la sociabilidad humana, Grotius no hace más que insertarse en la larga tradición aristotélica y entablar un diálogo, diría, persistente con los pensadores de la escolástica, quienes, ya desde el Medievo, usaron la 'hipótesis del Dios inexistente' y la lógica contractual para explicar y referirse tanto a la validez de la ley natural como a la naturaleza de la relación que vincula al gobernante y a los gobernados. Ahora bien, enfatizando las raíces escolásticas de la filosofía de Grotius, este trabajo se propone examinar ambos problemas, i.e., la cuestión de la sociabilidad y el pacto social y el problema de la naturaleza y uso de la hipótesis 'etiamsi daremus'.*

***Palabras clave**: Hugo Grotius, escolástica, escolástica española, hipótesis 'etiamsi daremus', Francisco Suárez.*

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I. Introduction

The history of ideas has been somewhat ambivalent with Hugo Grotius.[1] The once-acclaimed father of modern natural law is today presented either as an anti-scholastic thinker[2] —i.e., as a writer rather interested in training thinkers than believers—,[3] or as a paltry repeater of scholastic doctrines.[4] Höffner, who belongs to the critics of the second group, goes so far as to assert that Grotius' glory is due to the neglect of the scholastics,[5] to which others add that Grotius' reception of scholasticism is deficient for its eclectic unoriginality and for the many confusions and contradictions in which he incurs, proof of his lack of philosophical competence.[6]

It does not seem that Grotius' ethics —or anyone else's for that matter— can be explained by recourse to either of these two rival interpretations. First, Grotius himself adopts scholasticism as his method. Second, scholastic theology is only one of the various sources that give life to his moral theory, which carefully synthetizes scholasticism, humanism, Aristotelian philosophy, Stoicism, the *ius commune* tradition and Erasmus' thought. In any case, Grotius certainly maintains a persistent dialogue with the scholastics, both to distance himself from them and to accept some of their claims.

When Grotius discusses with the scholastics, he predominantly refers to St. Thomas, Francisco de Vitoria, Francisco Suárez, and Fernando Vázquez —he even calls the last 'the pride of Spain.'[7] Thus, it is said that Grotius 'drinks from the scholastic wisdom,'[8] which inspired his view on God as the

[1] T. Santiago, "Grotius and the Role of οἰκείωσις in his Doctrine of a Just War", 141–65; J. Basombrío, "La causalidad de la naturaleza en el descubrimiento del bien moral en Hugo Grocio", 373–83.

[2] J. Barbeyrac, *An Historical and Critical Account of the Science of Morality*, ss. 28–9.

[3] Th. Vormbaum, *Einführung in die modern Strafrechtsgeschichte*, 25–6.

[4] D. Recknagel, "Das Notrecht in der grotianischen Naturrechtstheorie und seine spätscholastischen Quellen", 198–225.

[5] J. Höffner, "Kolonialismus und Evangelium. Spanische Kolonialethik im Goldenen Zeitalter", 402–4.

[6] G. Parker, *Europe in Crisis 1598-1648*, 245–6; F. Carpintero, *Una introducción a la ciencia jurídica*, 56; G. Fassò, *Storia della filosofia del diritto: L'età moderna*, 71–84; J. Hirschberger, *Geschichte der Philosophie: Neuzeit und Gegenwart*, 61–6; J. Finnis, *Natural Law and Natural Rights*, 44; H. Rommen, *The Natural Law*, 62.

[7] Hugo Grotius, *Mare liberum*, c. 7.

[8] W. van der Vlugt, "L'œuvre de Grotius et son influence sur le développement du droit international", 395–595.

supreme legislator, his strict —and 'naturalist'— understanding of natural law, and his doctrine of the freedom of the seas. Now, Grotius relationship with the scholastics is explained in terms of dependency and of coincidence: he receives and assimilates the classical tradition of natural law through scholasticism, yet Grotius addresses many topics not to develop scholastic theories, but because they were problems of the time in which both Grotius and the late-scholastics lived.

Since Grotius has been depicted as the 'persecutor of the scholastics' for centuries, at least since Thomasius,[9] this paper concentrates on the continuity betwixt Grotius and scholasticism[10]. To this end, and since the same inclination to social life founds the association contract and the law of nature, I address first the question of natural sociability and its relation to the social contract, and then I examine the Grotian 'etiamsi daremus' theory of natural law.

II. Natural Sociability and Social Pact

Grotius is not anti-scholastic; he even heaps praise on the thinkers of this tradition. He states about them that, "when they agree on some point that [pertains to or] concerns morals, they hardly err."[11] Moreover, he praises their way of arguing, for, he says, "they argue with reasons and not with insults."[12] Over and above showing respect for the scholastic theologians and recommending their writings, he formulates his theory of society in a permanent exchange with Vitoria, Covarrubias, Vázquez, Suárez, among others.[13]

[9] Thomasius, *Paulo plenior historia juris naturalis*, l. 5, § 14.

[10] This paper agrees with Muller's research, who, by means of the detailed, weighted and unprejudiced study of sources, clarifies the connection between Calvinism and Scholasticism. Vid. R. Muller, *The Unaccommodated Calvin. Studies in the Foundation of a Theological Tradition*, 39–61.

[11] Hugo Grotius, *De iure belli ac pacis*, Prolegomena, § 52.

[12] *De iure belli ac pacis*, Prolegomena, § 52.

[13] ne link through which scholastic philosophy of law was transmitted to authors like Grotius. Vid. F. Copleston, *A History of Philosophy: Late Medieval and Renaissance Philosophy*, 334.

Along the lines of Vitoria, Soto, Suárez, etc.,[14] Grotius explains that authorities exist by 'disposition of nature.'[15] Furthermore, he affirms that men, unlike animals, do not only seek their own advantage or self-preservation.[16] Grotius thinks that men relate to each other moved by a certain natural friendship that leads them to place the good of others above their own.[17] Men, therefore, are not wolves for other men, because they do not seek, as Lachance believes,[18] to amorally tear each other to pieces, nor do they aspire to live hunting each other according to the so-called law of the strongest.[19]

This criticism of amoralism confronts Grotius with the political ideas of Carneades and some thinkers like Machiavelli, Schröder remarks (although "Without citing him by name"),[20] for whom men are driven by nature to selfishness and violence.[21] Grotius, at the other extreme, postulates that there is a kind of innate and disinterested desire for society, which enables men to peacefully live together, which directs them to participate in an orderly way in the common life and which is the measure or rule of the true good.[22] Whatever harmonizes with this desire, as well as with the nature of man, is just. On the contrary, whatever opposes this desire is unjust.[23]

For Grotius, the struggle against skepticism takes priority.[24] Like so many humanists, he ponders on the possibility of certain political knowledge or whether, on the contrary, we are abandoned to the uncertainty stemming from the diversity of ethical opinions and the belief that everything is by convention.[25] Grotius, who, like the scholastics, trusts in intelligence (which is a seal of the divine light in us[26]), believes that it is possible to over-

[14] Francisco de Vitoria, *De potestate civili*, f. 32r; Domingo de Soto, *De iustitia et iure*, l. 1, q. 2, a. 1; Francisco Suárez, *Tractatus de legibus ac Deo legislatore*, l. 3, c. 2, n. 4.

[15] Hugo Grotius, *De iure prædæ*, c. 2.

[16] *De iure belli ac pacis*, Prolegomena, § 6.

[17] *De iure prædæ*, c. 2.

[18] L. Lachance, *Le droit et les droits de l'homme*, 64.

[19] M. Nussbaum, *The Cosmopolitan Tradition*, 110.

[20] P. Schröder, "Trust (*fides*)", 120.

[21] Vid. *Le savoir grec. Dictionnaire critique*, s.v. 'Académie'.

[22] *De iure belli ac pacis*, Prolegomena, §§ 5-6.

[23] E. Bodenheimer, *Jurisprudence. The Philosophy and Method of the Law*, 35.

[24] J. Schneewind, *The Invention of Autonomy. A History of Modern Moral Philosophy*, 71.

[25] M. Rodríguez-Puerto, *La modernidad discutida*, 421–2.

[26] "Doubtless, this rational faculty has been greatly obscured by our vices; yet rays of the divine light are still [in us], which emerge above all in the mutual agreement of men" (*De iure prædæ*, c. 2).

come skepticism and amorality. Thus, starting from the idea that nature is the measure of the political good, he tries to show that it is possible to overcome the crisis of distrust in human values which, in his opinion, afflicted Europe at that time; because of this crisis, justice had become pure folly.[27] Grotius, moreover, confronts skepticism more vehemently than the scholastics because, among other reasons, he considers particularly urgent to convince men of the existence of moral values common to all, and because, after taking up the ideas of the ancient thinkers, he emulates Lactantius' criticism to Carneades.[28]

Grotius accordingly explains that necessity alone does not induce men to unite with others.[29] In his opinion, even if we human beings needed nothing, still nature would incline us to common life.[30] He postulates that "the [skeptical] opinion according to which friendship arises from necessity alone is false and rejected by all sane philosophers."[31] In his opinion, men treat each other as friends under the rule of honesty, want the good of others, and live the law of charity. Honesty, likewise, teaches men that nothing human is alien to them.[32]

Life in society is a good in itself. The conditions that make it possible are greater and more demanding than those that serve strictly particular ends. Only if these conditions are met will individuals form a community. Among these conditions are public safety, respect for property, observance of good faith, honest treatment, and an adequate system of rewards and punishments.[33] Furthermore, he remarks, the rational consideration of the tendency to preservation demonstrates the worth of certain norms that guarantee social life[34] —which is fundamental, since peaceful life in accordance with reason is the source of law.[35]

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[27] *De iure belli ac pacis*, Prolegomena, § 18.
[28] T. Irwin, *The Development of Ethics. From Suarez to Rousseau*, 94.
[29] *De iure belli ac pacis*, Prolegomena, § 5.
[30] *De iure belli ac pacis*, Prolegomena, § 16.
[31] *De iure belli ac pacis*, l. 2, c. 1, § 9.3.
[32] *De iure belli ac pacis*, l. 1, c. 5, § 2.2.
[33] G. Sabine & Th. Thorson, *A History of Political Theory*, 392-393.
[34] D. Doyle, "*Iustitia et ius naturale* en *De iure belli ac pacis*. Observaciones en torno a la distinción grociana entre justicia expletiva y justicia atributiva", 335–62.
[35] *De iure belli ac pacis*, Prolegomena, § 8.

As a good Aristotelian,[36] Grotius understands that reason enables us to seek not only what is useful, but also what is right. Now, by pursuing the right end, one can transcend the dependence on the present good. Moreover, by doing what is right, one can grasp that there is a good standing above one's own, or, better, that one's own welfare depends on giving priority to the good of all.[37]

The inclination to social life constitutes a central theme in Grotius' theory.[38] This inclination expresses itself in various ways, but above all in the universal concord which unites men.[39] This inclination is not selfish, counter to Hobbes, nor is it ordered to the advantage of the strongest. It is a healthy inclination, which, despite the mark of sin, can uphold common life.

The inclination to social life leads people to unite through a pact. Human beings, who experience a certain inclination to live with their fellows, unite peacefully in a community of life,[40] a kind of mystical body that ensures everyone's participation in the public good and allows people to legitimately enjoy their rights.[41]

Suárez, as well as Grotius, completes the Aristotelian doctrine of natural sociability with the social contract postulate, whereas most modern contractualists posit the social pact as an alternative and not as a complement to the Aristotelian-Scholastic theory of natural sociability. In *Quæstiones de iustitia et iure*, Suárez maintains that a certain relation of obligations called 'contract of association' subsists between the citizens and the prince.[42] The pact thesis, in any case, does not contradict the theory of natural sociability. The natural tendency to associate is actualized or put into practice through the pact. Something similar happens with the virtues: just as there is a natural inclination to social life, so there is a natural aptitude to develop virtues. However, just as the virtues are acquired freely and with effort, so

[36] Not all scholars of the history of ideas consider Grotius an Aristotelian. Straumann, Schneewind, Pagden, etc., think that the political theory of the Dutchman has nothing to do with Aristotle's philosophy. Vid. J. Schneewind, *The Invention of Autonomy*, 66–81; B. Straumann, *Roman Law in the State of Nature. The Classical Foundations of Hugo Grotius' Natural Law*, 25ss.; A. Pagden, *The Enlightenment and Why it Still Matters*, 57–8.

[37] J. Basombrío, "La causalidad de la naturaleza...", 377.

[38] L. Winkel, "Les origines antiques de l'appetitus societatis de Grotius", 393–403.

[39] *De iure prædæ*, c. 2.

[40] *De iure belli ac pacis*, Prolegomena, § 6.

[41] *De iure belli ac pacis*, l. 1, c. 1, § 14.2.

[42] Francisco Suárez, *Quæstiones de iustitia et iure*, f. 38r.

cities are instituted by human industry[43] —indeed, the first person to institute the polis was the cause of the greatest goods.[44]

The social contract transfers the power from the people to the ruler. The transferal takes place where a community has been formed, for which an authority to dictate laws and enforce them is required. Accordingly, the authority fulfills an 'office,' as Oñate says;[45] he must answer for what he does and omits, as Guevara observes;[46] and bears the responsibility to protect the people and their rights, not of the individuals in isolation, but as members of the whole.[47] Hevia Bolaño and Murillo Velarde, two of the most important jurists of the scholastic tradition, insist that the exercise of a certain service or ministry, within the limits of the power that has been delegated and respecting the law and good customs, concerns all positions of authority.[48]

Notably, medieval theologians explained the nature of baptism and marriage with the notion of 'contract.' The Christian's relationship with the Church, and even the Christian's relationship with God, was also conceived under contractual logic, yet not in the sense of a contract as a business that pursues only the own interest, but according to the Aristotelian and Roman-legal understanding of the contract as a relationship of obligations. The relationship of God with his people also follows the contractual logic, Grotius remarks,[49] who adds that the success of any community depends on the practice of fidelity, and that, in the formation of the human republic, as in many other things, human wit imitates nature; nature, so to speak, "has signed the conservation of the universe by means of a certain convention binding for all of its parts."[50]

Men unite in civil society not under a divine commandment but by their sheer will —albeit with God's approval.[51] Once the republic was formed, they handed over the care of sovereignty to the ruler, a third party who was

[43] Aquinas, *Sententia libri Politicorum*, l. 1, lect. 1, n. 40.
[44] Aristotle, *Politica*, A 2, 1253a30-31.
[45] Pedro de Oñate, *De contractibus lucrativis*, d. 46, s. 2, § 25.
[46] Juan de Guevara, *De fide, spe et charitate*, q. 33, a. 8.
[47] Pedro de Oñate, *De contractibus lucrativis*, d. 46, s. 2, §§ 25-32.
[48] Pedro Murillo Velarde, *Cursus juris canonici*, l. 1, tit. 6; Juan de Hevia Bolaño, *Curia philipica*, Elección de oficios, § 10.
[49] *De iure belli ac pacis*, l. 1, c. 1, § 16.2.
[50] *De iure prædæ*, c. 2.
[51] *De iure belli ac pacis*, l. 1, c. 4, § 7.3.

to fulfill a special mandate.[52] Grotius, at this point, takes up the ancient scholastic conception of the exercise of power as a function in which one acts on behalf of and in favor of others. As for any function, there are certain things that agree with it and others that, plainly and simply, contravene it. An example of events that contradict the mandate given to authority by the people is to govern for the own sake of the rulers, which could even lead to the expulsion of the ruler according to the principles of scholastic practical philosophy. Contracts, finally, express conditions and can be modified. Consequently, the social contract is the instrument by means of which someone has been chosen to exercise power, but under the condition that he or she assumes responsibility for the republic and the administration of justice. Obviously, the ruler's power is limited by the conditions defined in the contract for the transferal of power. The observance of the conditions and contractual clauses, as well as the respect for the liberties of the citizens, legitimize the office of the authority.[53]

III. Natural Law and the *etiamsi daremus* Hypothesis

According to Grotius, the skeptical conception of self-interest is the underside of the thesis that reduces law to convention.[54] This 'ancient and pernicious'[55] thesis not only denies the existence of values common to all men and independent of religion, but it also renders impossible to raise even the question of the normative character of nature.[56]

Against skeptical relativism, Grotius affirms, first, that there is a nature which is the basis of moral order, and, second, that this nature is the principle which originates justice and the desire for society which unites men.[57] Thus, he defends a naturalist understanding of ethics,[58] according to which the moral good is that which conforms to the natural order of things.[59] He believes, like the scholastics, that there is a natural rectitude that precedes

[52] *De iure prædæ*, c. 2.
[53] W. Decock, "Francisco Suárez y las bases morales del derecho privado europeo", 140–4.
[54] *De iure belli ac pacis*, Prolegomena, § 5.
[55] *Mare liberum*, Præfatio.
[56] *De iure belli ac pacis*, Prolegomena, § 16.
[57] *De iure belli ac pacis*, Prolegomena, § 16.
[58] T. Irwin, *The Development...*, 98-99.
[59] *De iure belli ac pacis*, Prolegomena, §§ 15-16.

the divine will, which, in some way, is controlled or limited by the order of nature.[60] Hence, Grotius remarks, even God cannot change natural laws, whose omnipotence does not control some things.[61]

In this context, Grotius defines natural law as the order of justice that 'springs from the nature of man.'[62] It is a divine right (or of divine origin),[63] which God himself has impressed upon our minds,[64] and which does not change between Christians and non-Christians.[65] It is, likewise, a manifestation of the normative order of practical reason, an order that is expressed in the judgment of conscience by which we differentiate the honest from the dishonest.[66] This being so, to act according to natural reason pertains to man by nature.[67]

Commensurate to this order, which precedes God's will, divine command and prohibition follow the objective qualifications of the morality of acts.[68] No will, not even the divine will, can render good what is evil in itself, any more than nobody can change the result of mathematical operations.[69] Now, in comparing moral truths with the truths of mathematics, Grotius is not defending a deductivist rationalism. As Sabine notes, the analogy only emphasizes that the natural just is not arbitrary.[70]

What does depend on free will, *i.e.*, what is, in a certain sense, arbitrary, is what belongs to the just by convention. Grotius, who in this point too is an Aristotelian, distinguishes what is proper to the natural moral law from what becomes obligatory by the authority of the ruler alone.[71] André-Vincent, harshly criticizing Grotius, argues that the Dutch jurist breaks with the bond that, at least since Aristotle, has held legal law and natural law together.[72] André-Vincent goes a step further and postulates that, in Gro-

60 T. Irwin, *The Development...*, 98.
61 *De iure belli ac pacis*, l. 1, c. 1, § 10.5.
62 *De iure belli ac pacis*, Prolegomena, § 16.
63 *De iure belli ac pacis*, l. 1, c. 1, § 15.1.
64 Hugo Grotius, *De veritate religionis christianæ*, l. 6, s. 2; *De iure prædæ*, c. 2.
65 *De iure belli ac pacis*, l. 1, c. 1, § 16.6.
66 *De iure belli ac pacis*, l. 1, c. 1, § 10.1.
67 *De iure belli ac pacis*, l. 1, c. 1, § 10.5.
68 *De iure belli ac pacis*, l. 1, c. 1, § 10.1.
69 *De iure belli ac pacis*, l. 1, c. 1, § 10.5.
70 G. Sabine & Th. Thorson, *A History of Political Theory*, 394.
71 *De iure belli ac pacis*, l. 1, c. 1, § 9.2; l. 1, c. 1, § 14.1.
72 Ph. André-Vincent, "La notion moderne de droit naturel et le volontarisme (de Vitoria et Suarez à Rousseau)", 237–59.

tius, human law loses its binding force.[73] Grotius, however, argues in the opposite direction. Just as for Aristotle, he understands the pair legal just/natural just not in terms of opposition, but of complementarity: the legal just fills with normative content the gaps left out by the natural just. Natural justice clearly does not solve every social problem. First of all, it does not solve the problem of which system of government is to be preferred in a given context (our preferences regarding the system of government varies with time, geography, culture, etc.).[74] Furthermore, the just by nature does not command every useful action for human life. It only commands what is fundamental, *i.e.* that which, taken universally, suits rational nature. In this sense, there is a whole area of legality that is proper and exclusive to what is just by convention.[75]

In his exposition of natural law, Grotius undoubtedly follows the jurist-theologians of Salamanca, *viz*., Vitoria, Soto, Suárez, but not Vázquez de Menchaca, whose concept of natural law is even contrary to that of traditional scholasticism.[76] Like Soto,[77] Grotius assumes the existence of a certain legality independent of opinion, whose rules are sufficiently valid because of their rationality.[78] These principles are binding due to their internal consistency and intrinsic reasonableness, that is, they are binding regardless of whether God exists.[79] This argument was common among the scholastics since the mid-fourteenth century, who reasoned in this way to account for the independence of natural law with respect to divine commandments.[80] Therefore, Welzel rightly points out that the 'etiamsi daremus' hypothesis, a simple working tool, rather brings Grotius closer to

[73] Ph. André-Vincent, "La notion moderne...", 237-259.

[74] *De iure belli ac pacis*, l. 1, c. 3, § 8.2.

[75] *De iure prædæ*, c. 2; *De iure belli ac pacis*, Prolegomena, §§ 16-17; l. 1, c. 1, § 14.1.

[76] "Lacking in philosophical caliber, Vázquez de Menchaca draws up no coherent and complete theory of natural law". Vid. J. Hervada, *Historia de la ciencia del derecho natural*, 247.

[77] Domingo de Soto, *De justitia*, q. 57, a. 2, f. 4v.

[78] *De iure belli ac pacis*, l. 1, c. 1, § 10.5.

[79] *De iure belli ac pacis*, Prolegomena, § 11.

[80] F. Carpintero, "*Etiamsi Deus non daretur*. Nominalismo medieval y secularización moderna", 163–202; J. Finnis, *Natural Law and Natural Rights*, 43; J. Schmutz, "Was Duns Scotus a Voluntarist? Juan Caramuel Lobkowitz against the Bratislava Franciscans", 152.

scholastic theology[81] (by invoking this hypothesis, Grotius is described as "completely dependent on the scholastic tradition"[82]).

Within scholasticism, the so-called 'hypothesis of the silent God' had been formulated by Vitoria, Soto, Medina, Vázquez, Suárez, Belarmino, Pontius, etc., to maintain that the non-existence of God does not modify our duty to comply with our own business.[83] Vitoria, as well as Grotius, remarks that "God cannot make that two plus two does not equal four,"[84] and observes that "there are things that God cannot do, such as swear falsely, break his promises and other similar things."[85] Thus, for example, the mere contradiction with the natural order renders lying evil. This is the reasoning of Soto, for whom "if, supposing the impossible, there were no God or other superior, the mere perversion of the order of reason would be the cause... for murder and theft, and other similar things, to be moral evils."[86]

Pontius, in almost the same terms as Vázquez, but arguing from a Scotist framework, opposes the Ockhamist reading of natural law, affirming that there are many practical truths whose reasonableness does not depend on the will of God.[87] Thus, there are some actions that, apart from God's will, are necessarily bad from a moral perspective, because, Pontius adds, something can be bad not only because it contradicts the divine will, but also because of other reasons.[88] In Pontius, Schmutz comments, the notion of sin does not depend on God's prohibition of a conduct. Consequently, one must admit a whole field of objective propositions that express the convenience or inconvenience of human acts with rational nature, independent of whether there is a command or prohibition on the part of God.[89]

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[81] Likewise, it has been written that "The truth, now clearly demonstrated, is that the 'etiamsi daremus' hypothesis belongs to a genuinely scholastic tradition". Vid. P. Suñer, "Teocentrismo de la ley natural", in F. Suárez, *De lege naturali*, xl-xli.

[82] H. Welzel, *Naturrecht und materiale Gerechtigkeit*, 130.

[83] Francisco de Vitoria, *De actibus humanis*, q. 18, a. 5; Bartolomé de Medina, *Expositio in primam secundæ angelici doctoris d. Thomæ* q. 19, a. 4; Francisco Suárez, *De actibus humanis (1581)*, ff. 96-98.

[84] *De iure belli ac pacis*, l. 1, c. 1, § 10.5.

[85] Francisco de Vitoria, *De eo ad quod tenetur veniens ad usum rationis*, f. 91r.

[86] Domingo de Soto, *De iustitia et iure*, l. 1, q. 4, a. 2.

[87] Johannes Pontius, *Commentarii theologici quibus Joannis Duns Scoti quæstiones in libros sententiarum*, d. 37, q. un., § 51.

[88] Johannes Pontius, *Commentarii theologici quibus Joannis Duns Scoti quæstiones in libros sententiarum*, d. 37, q. un., § 17.

[89] J. Schmutz, "Was Duns Scotus a Voluntarist?", 147-184.

Vitoria, on the other hand, observes that "it is not necessary for one to be bound to the divine law to formally know that there is a law or a legislator who has promulgated it, but it is enough to know that a thing is good or bad, even if one is completely ignorant of the cause of its being good or bad, or whether it is forbidden or not."[90] Under this logic, the scholastics progressively eliminated the reference to God in the definition of sin, even for the case of *odium Dei*: hatred of God is evil because of its discord with the order of reason, so that, even if the divine prohibition were lacking, such an act would be evil because of its irrationality —more clearly, it would be evil because God is the supreme goodness and it does not seem reasonable to hate what is good in the highest degree.[91]

Grotius, accordingly, stays very close to the scholastic tradition (without being a scholastic himself, he is sometimes "more scholastic than his [Salamanca] models"[92]). It is puzzling, then, that authors such as Schneewind or Grossi argue that Grotius changes the understanding and content of natural law; allegedly, this change led to the overcoming of ancient thought, of medieval natural law, and of the doctrines of natural law defended by the jurist-theologians of Salamanca.[93] Pagden goes further astray when he asserts that Grotius merely reduces natural law to self-preservation.[94]

Finally, at least in Grotius' theory, the invocation of the 'etiamsi daremus' serves a double purpose. First, it highlights the legitimate normative autonomy of both civil societies —never again subject to ecclesiastical power— and individuals —who will freely adopt the natural precepts as intrinsic principles of their conduct. Second, Grotius emphasizes the preeminence and validity of the rule of law: law binds because it is just, and it binds everyone equally, including God.

Natural law thus becomes a tool for the protection of the rights of individuals. Nussbaum, clarifying Grotius' position, explains that the Dutch writer's tradition recognizes some moral truths that transcend time and cultural differences, and that originate, as concretions of the immutable

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[90] Francisco de Vitoria, *De eo ad quod tenetur veniens ad usum rationis*, f. 91r.
[91] J. Schmutz, "Was Duns Scotus a Voluntarist?", 147-184.
[92] A. Guzmán Brito, *El derecho como facultad en la neoescolástica española del siglo xvi*, 243.
[93] J. Schneewind, *The Invention of Autonomy*, 67; P. Grossi, *L'Europa del diritto*, 97.
[94] A. Pagden, *The Enlightenment...*, 65-66.

natural just, rights and freedoms without which men would not achieve their ends.[95]

IV. Conclusion

An author's ethical theory can be hardly summarized by saying that he or she participates in or distances himself or herself from a school. Thus, in the case of Grotius, it does not seem that his whole understanding of social life and natural law can be summarized by emphasizing that he is an anti-scholastic or that he is a mere repeater of the theses of the jurist-theologians of Salamanca. Nevertheless, when we look at Grotius' continuity with scholasticism, we more appropriately understand the substance of his arguments and the objectives of his theory. Grotius evidently maintains a permanent dialogue with Vitoria, Molina, Vázquez, Suárez, etc., which clearly occupies a relatively central place in his philosophical project.

By focusing more on Grotius' continuity than on his break with scholasticism, we can realize that he is far from willing to initiate a new vision of things, as Schneewind thinks.[96] Grotius, with all the complexity of his system, is, like the scholastics with whom he discusses, an Aristotelian. This explains why his political theory starts, as in Aristotle, with the recognition of a certain natural tendency to live in common, an inclination that men realize or put into practice because of the friendship that unites them and not because of self-interest.

His theory of law also follows Aristotle. Grotius explicitly adheres to the Aristotelian conception of natural law as what is just according to right reason. Now, unlike Aristotle, but along the lines of scholastic theology, Grotius defines natural law as an immutable order of justice, which not even God can change. God, who, for Grotius, is omnipotent, has his hands somehow tied by the order that he himself has given to the world, because of the metaphysical impossibility of contradiction in it. This is the context that explains the use of the 'etiamsi daremus' hypothesis, which is only

[95] M. Nussbaum, *The Cosmopolitan Tradition*, 97-140. Among others, this right is made up of the principles of non-injury, non-appropriation of another's property, the precept of repairing the harm caused, and the rule of 'pacta sunt servanda', which, to put it in Nussbaum's terms, is the cornerstone of the great edifice of social life.

[96] J. Schneewind, *The Invention of Autonomy*, 11.

that, a hypothesis, and which serves Grotius to underline the validity of the principle of the rule of law.

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