

THE 16TH CENTURY DEBATE ON THE THOMISTIC NOTION OF THE LAW OF NATIONS IN SOME IBERIAN COMMENTARIES ON THE *S. TH.*, IIAE-II, Q. 57, A. 3: CONTRADICTION OR PARADIGM SHIFT?

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The sixteenth century is considered the golden age of philosophy in Portugal. In the political and economic spheres it was a period when the kingdom of Portugal was strong both in a European context and in its relations with New World territories.

The political, economic and cultural life in Portugal in the 16th century, combined with its geopolitical situation, favoured relations with territories and cultures of the American, African and Asian Continents. In the philosophical and theological fields, contact with such ethnic and cultural diversity, and with so many different worldviews, gave rise to the debate concerning the right to conquer new territories, peacefully or by force, and concerning the right to exploit property, people or goods found in them.

In the academic context these issues are dealt with in the commentaries on Thomas Aquinas' *Summa theologiae*, especially the I-IIae, q. 40, I-IIae, qq. 90-97 and II-IIae, qq. 57-59, which were usually produced in the area of moral theology teaching programs. Here, among other questions, academics faced those concerning the theoretical base of law and justice, the legitimacy of ownership and of the use of natural resources in conquered territories, and also the issue of slavery. Obviously, neither the questions nor their scholastic debate are, in themselves, original but they take on special meaning in the historical, political and cultural life of the 16th century. This context is now well documented, especially in the fields of the history of expansion and the discoveries, and the history of ideas. With regard to the production of a theoretical and doctrinal framework, particularly in the areas of ethics and political philosophy, at least in the Portuguese case, there is a lack of study of the available documentation. This may be justified by the fact that the sources for the study of intellectual production in 16th century Portuguese universities are still mostly in manuscript form, making access to this body of doctrine difficult.

The scientific community now benefits from new sources and studies on the reception of thomism in the period commonly referred to as Iberian Scholasticism, particularly concerning the ethical and political theses originating from the University of Salamanca. A significant contribution was made to this wealth of sources by the collection *Corpus Hispanorum De Pace*, directed by Luciano Pereña. A large number of studies is also now available on the history and the doctrinal characteristics of the School of Salamanca, and on the specificity of philosophical and theological commentaries produced there.¹

¹ For our subject, see the following works: M. BELDA PLANS, *La Escuela de Salamanca*, Madrid 2000 and M. ANXO PENA, *La Escuela de Salamanca. De la monarquía hispánica al orbe católico*, Madrid 2009, both containing a broad and updated bibliography. The thoroughly documented collective work by L. E. RODRIGUEZ-SAN PEDRO BEZARES (coord.), *Historia de la Universidad de Salamanca*, Vols. I-IV,

Nevertheless, in Portugal, studies on the philosophical writings of the universities of Coimbra and Évora during the 16th century are sparse and have been produced unsystematically. The most comprehensive study on the remaining sources is the work by F. Stegmüller, *Filosofia e teologia nas Universidades de Coimbra e Évora no século XVI*, which collects the result of research started by this scholar in 1931 on the manuscripts extant in Portuguese libraries, relating to primary sources for the study of philosophy and theology in the 16th century.² Yet, the material mentioned remains to be studied, perhaps because this requires interdisciplinary teams of specialists in fields ranging from codicology – specifically, the field of modern cursive writing – to Latin, associated with the knowledge of the subjects discussed by scholastic renaissance contained both in commentaries on Thomas Aquinas’ *Summa theologiae*, and in commentaries on Aristotle’s work.

In fact, it is only recently that systematized research projects that ensure a study of the 16th century academic production in Portugal in the context of Iberian Scholasticism have emerged in Portuguese universities.³ The intellectual exercise we propose here aims to arouse the interest of the scientific community to this estate, and to contribute, albeit modestly, to shedding light on it.

In 16th century Portugal, academic thought was mostly produced at the universities of Coimbra⁴ and Évora.⁵ However, it is known that the intellectual output of the

Salamanca 2002-2009, should be consulted, since it includes a collection of exhaustive studies mainly on the University of Salamanca, but also on other Peninsular universities, and on the European context they are part of. On the history of the University of Salamanca from his genesis to Renaissance, see Vol. I, 21-96. On the concept of “School of Salamanca”, its generation and settlement (15th-16th centuries), see vol. III.1, 251-281. On the doctrinal and historical identity and differences of the Universities of Salamanca and Alcalá, see Vol. III.1, 1041-1064. On the history of the medieval university of Lisboa-Coimbra, see Vol. III.1, 1065-1086; for a better understanding of the relations between the 16th century universities of Coimbra and Salamanca (particularly exchanges of academics and mainly doctrinal), see Vol. III.1, 1087-1146.

² This work was written in German, entitled: *Studien zur Literaturgeschichte der Philosophie und Theologie an den Universitäten Coimbra und Évora in XVI Jahrhundert*, and was translated into Portuguese by A. MORUJÃO, with the title *Filosofia e Teologia nas Universidades de Coimbra e Évora no século XVI*, Coimbra 1959. On the page VII of its “Prefácio”, Stegmüller states that he rewrites in full and publishes here the results of his research published in F. STEGMÜLLER, “Zur Literaturgeschichte der Philosophie und Theologie an den Universitäten Évora und Coimbra im XVI. Jahrhundert”, in *Spanische Forschungen der Goerresgesellschaft*, 1. Reihe, Band 3, Münster 1931, 385-438; IDEM, “Spanische und portugiesische Theologie im englischen Bibliotheken”, in *Spanische Forschungen der Goerresgesellschaft*, 1. Reihe, Band 5, Münster 1934, 372-89.

³ We emphasize two Research Projects: (1) *Conimbricenses e Verney* (Universidade de Coimbra), whose research group have recently published the first Portuguese edition of the Commentaries by the Conimbricenses on Aristotle’s *De Anima – Sobre os três livros do Tratado da Alma de Aristóteles Estagirita*, tradução de Maria da Conceição CAMPS, Lisboa 2010. (2) The Research Project *Iberian Scholastic Philosophy at the Crossroads of Western Reason: The Reception of Aristotle and the Transition to Modernity* (Universidade do Porto), led by Prof. José F. P. Meirinhos, covering the fields of metaphysics, ethics and politics, and philosophy of nature. This project is ongoing at the Instituto de Filosofia da Universidade do Porto, and is linked with the main Project *Aristotelica Portugalensia*, which has recently made available an electronic database of sources and studies concerning both Portuguese authors and authors related with Portugal, from the Middle Ages to the 16th century (<http://www.ifilosofia.up.pt/gfm/arca>: accessed on 2011-09-07).

⁴ This university was created in 1288 by D. Dinis, and was confirmed in 1290 by a papal bull from Nicolaus IV. Its first statutes dated from 1309. From the 14th to the 16th century, the university subsisted as

Universities of Salamanca, whose foundation dates back to Alfonso IX of Leon (1218/1219), and of Alcalá, established in 1499 from the old *studium generale* of Alcalá de Henares, stands out in the Peninsular context from the 14th century and in a particularly vibrant way from the 15th century onwards.

With regard to the debate on ethical and political issues arising from contact with the New World, there is now global recognition of the influence of Francisco Vitoria and the group of philosophers and theologians who surrounded him and gave continuity to his teaching. It is a fact that the foundation of the universities of Coimbra and Évora happened well after the movement started by Vitoria but the spirit of academics who exercised their activity in Portugal was undoubtedly influenced by that movement.

In the interpretative notes on the edition of the work by Juan de la Peña,⁶ Luciano Pereña claims to be convinced that, at the University of Salamanca, there must have existed a collective research program whose objective would have been to study in depth the legitimacy of the Spanish enterprise in America,⁷ and that it would have involved a plan to disseminate the doctrines of the School of Salamanca aiming to reach the universities of Coimbra and Évora, among others. Our analysis also seeks to test the validity of Pereña's thesis, by comparing some texts and doctrines by theologians from Salamanca, Coimbra and Évora, regarding a commentary on one particular question, discussed by Thomas Aquinas in the *Summa theologiae* IIae-II, q. 57, a. 3, about the notion of *ius gentium*: is it a natural or a positive law?

The selection of this question was in some ways external to the research. When we started our work, the question about the nature and scope of *ius gentium* seemed to be a limited subject, which could be evaluated either by reading the referred article of the *Summa* or by analysing the subsequent commentaries on the article, produced at Iberian universities. However, the debate proved to be far more complex. It is therefore crucial not to lose sight that our goal is guided by the aforementioned heuristic interest, and the nature of *ius gentium* is studied here in order to bring to light some 16th century manuscript commentaries extant in Portuguese libraries. So, rather than make an exhaustive study of the theme of the nature and basis of the law of nations, what is presented here is the result of a hermeneutic exercise, whose purpose is to present texts and problems contained within them, drawing attention to their specificity and doctrinal wealth.

Initially, our subject ranged from the analysis of Thomas Aquinas' *Summa theologiae* II-IIae, q. 57, a. 3 to the commentaries by Thomas de Vio, Francisco de

a single university of Lisboa-Coimbra, switching during these two centuries from Lisboa and Coimbra, before being definitively established in Coimbra in 1537, by order of John III.

⁵ Although its creation was an initiative of John III, Cardinal D. Henrique was the one who materialized the project, approved by Pope Paul IV in a bull dated April 1559.

⁶ L. PEREÑA, "Glosas de interpretación", in JUAN DE LA PEÑA, *De bello contra insulanos. Intervención de España en América* (Corpus Hispanorum De Pace [CHP], Vol. X, CSIC), Madrid 1982, 149-53.

⁷ L. PEREÑA, "Glosas de interpretación", 150: "Plenamente desarrollado el proyecto hizo escuela en Salamanca, y por los cauces del magisterio universitario se proyectó primero en las lecturas todavía inéditas de Luis de Molina, Fernando Perez y Fernando Rebello en la Universidad de Evora, de los profesores Antonio de Santo Domingo, Manuel Soares y Pedro Barbosa en la Universidad de Coimbra y los profesores Francisco de Toledo, Francisco Suarez y Juan de Salas en la Universidad Gregoriana de Roma. Significó el cauce más importante de difusión en Europa que actualizaron después Francisco Maldonado en París y Gregorio de Balencia en Dilinga".

Vitoria, Domingo de Soto, António de Santo Domingo⁸ and Fernando Perez.⁹ During our research, the commentary by Thomas de Vio was excluded, as it was confirmed to be a paraphrase of the aforementioned work by Aquinas. The selection of authors and commentaries produced in Portugal also followed an external criterion. We focused on those manuscripts identified by Stegmüller related to the issue and the article in question. Moreover, the investigation was restricted only to manuscripts whose author is identified, written in the 16th century and existing in the National Library of Portugal – BNP. According to these criteria, the chronological limit of this research was fixed at 1600, the research does not include anonymous manuscripts and only analyzed the asset estates in BNP.¹⁰

The texts of the *Summa theologiae* and the 16th century commentaries here analyzed focus on two main issues. 1. Whether the law of nations is a natural law or a positive one; 2. Whether the precepts of the law of nations are unchangeable or not, with special regard to the legality of slavery and to the principle of immunity of ambassadors in wartime. The aim of this comparative analysis is to determine if there is a changing paradigm between Aquinas' doctrine on the foundations of *ius gentium* and that of the 16th century theologians. Is there a change in the place of *ius gentium* within the law and in the concept of law of nations? If so, what are the key concepts involved? What main doctrines and innovative elements are discussed?

⁸ We resume here some of the biographical data on António de S. Domingo available in F. STEGMÜLLER, "Zur Literargeschichte", 10. He was born in Coimbra, in 1531. In 1547 he entered the Dominican Order. He began his activity as a commentator on Aquinas' *Summa theologiae* in Lisbon. Between 1578 and 1586 he commented on various questions in the *Summa theologiae*, mainly Parts I and II-IIae. In 1573 he was appointed to the Chair of Prima at the University of Coimbra. Scholars estimate the date of his death between 1596 and 1598, but there is no unanimity on this subject. There is a study by A. XAVIER MONTEIRO, *Frei António de S. Domingos e o seu pensamento*, Coimbra 1952. This work published the result of his doctoral research, and it contains an ample bio-bibliography on António de S. Domingo. However, due to the scarcity and incompleteness of the sources he used, some deductions are merely hypothetical, as the author recognizes. The main scientific contribute of that work is to make available the partial transcription of the manuscript by António de S. Domingo (Lisboa, Biblioteca da Academia das Ciências, Ms. 654), which consists of the *Tractatus de peccato originali*, corresponding to the lectures given by S. Domingo in Coimbra, in the Chair of Prima. Stegmüller enumerates Monteiro's work in the Bibliography on S. Domingo, but I am of opinion that he did not use directly this source, since he affirms that all the assets of António de S. Domingo remain unpublished (F. STEGMÜLLER, "Zur Literargeschichte", 11).

⁹ According to Stegmüller (F. STEGMÜLLER, "Zur Literargeschichte", 41), Fernando Perez was born in Córdoba, around 1530, and came to Évora in December 1559. There, he taught theology first in the Chair of Vespers (1559-1567), and later in Prima (1567-1572). He was Vice Chancellor of the university for few years. He left Évora and went to Coimbra, being succeeded by Luis de Molina in the teaching of theology. He still taught for some years in Coimbra at the College of the Jesuits. We may note that, since his treatise *De iustitia et iure* is dated from 1588, it corresponds to the period he was teaching at Coimbra. Fernando Perez died on the 13th February 1595. Little information is available about his life and work. It is interesting to note that in the flap of Volume X of CHP (CSIC, Madrid 1982), the work by Fernando Perez, *Quaestiones de bello et pace*, is noted that is about to be published, but, as far as we know, this never happened.

¹⁰ According to Stegmüller (F. STEGMÜLLER, "Zur Literargeschichte", 402), beside the manuscripts extant in BNP Library, other 16th century manuscripts, containing commentaries on Aquinas' *Summa theologiae* II-IIae, q. 57, extant in the Biblioteca do Palácio Nacional da Ajuda (Lisboa) and in the Biblioteca Pública de Évora. The latter were not consulted. Basically, for the period here analysed, these sources consist of two manuscripts containing commentaries by Ferdinandus Rebello (Lamego, (?) – Porto, 1608).

I. THOMAS AQUINAS: THE ROOTS OF *IUS GENTIUM*

In the *Summa theologiae*, Aquinas analyzes the concept of *ius gentium* in two stages. First, when he deals with the nature of the law in the part of the *Summa* later designated as the *De legibus* treatise, corresponding to *Summa theologiae* I-IIae, questions 90 to 97. Then when he analyzes the nature of justice and its relation to rights, in the part of the *Summa* later designated as the treatise *De iustitia et iure*, which corresponds to *Summa theologiae* II-IIae, questions 57 to 59.

This study only focuses on two main aspects of the thomistic notion of *ius gentium*. The first is exposed by Aquinas in *Summa theologiae* I-IIae, q. 95, Article 2, on the origin of human law, and the second in Article 4, on the suitability of the division of law established by Isidore of Seville. Both are complemented by the doctrine of I-IIae q. 97, Article 1, whether human law must somehow be modified. The arguments on these questions conclude that the law of nations is a human law (a positive law) which is derived from natural law with the same immediacy with which, in sciences, conclusions derive from first principles. Thus, the distinction made by Isidore of Seville between natural, positive, and civil law, this latter being a kind of positive law, is correct, as is the inclusion he made of the law of nations in natural law.

In *Summa theologiae* I-IIae, q. 97, a. 1, Aquinas shows that, despite the proximity of human law to natural law, the former is mutable, since human reason gets to know natural law progressively. However, this modification is fair only if it is in order to achieve better harmony between human law and natural law. Otherwise – if human law contradicts natural law and human rationality – such a law will not even have to be respected as a law, as Aquinas stated in q. 95, a. 2. These basic ideas are essential to understand Aquinas' conception of *ius gentium*, to evaluate its presumed ambiguity and to understand the 16th century discussion on the nature of the law of nations.

Let us analyze more closely the arguments in the questions and articles we referred to. In question 95, a. 2, Aquinas defends that human law is necessary to discipline human reason, by fear and coercion, since it may be used for good or evil. So, human law coerces to attain both personal good, which consists of the achievement of virtues, and common good, which consists in social peace.¹¹ Later, Aquinas affirms that the essence of law is the accomplishment of justice. Thus, human law is only just if it is made according to the rule of reason, because reason is the nature of man, and the rule of reason is in accordance to nature. To overcome the tautological formulation of this reasoning, Aquinas distinguishes two ways for laws to derive from rational nature: 1.

¹¹ S. THOMAE AQUINATIS, *Summa theologiae* I-IIae q. 95, a. 1, resp.: “Sed quia inveniuntur quidam protervi et ad vitia proni, qui verbis de facili moveri non possunt; necessarium fuit ut per vim et metum cohiberentur a malo, ut saltem sic male facere desistentes, et aliis quietam vitam redderent, et ipsi tandem per huiusmodi assuetudinem ad hoc perducerentur quod voluntarie facerent quae prius metu implebant, et sic fierent virtuosi. Huiusmodi autem disciplina cogens metu poenae, est disciplina legum. Unde necessarium fuit ad pacem hominum et virtutem, ut leges ponerentur [...]”.

“sicut conclusiones ex principiis”; 2. “sicut determinationes quaedam aliquorum communium”.¹²

In the first case, human law is the result of an inference which arises spontaneously and necessarily from principles of nature. For example, “do not kill”. This conclusion derives from the general principle of the right to life, so it is contradictory to deny it. In the second case, human law arises from a sentence derived from those primary conclusions. For example: the determination on the specific punishment for murder. In the first case, the force of law derives from a natural necessity. In the second, it derives from *the match between means and ends*. In the first case, norms derive from principles as necessary conclusions. In the second, they derive from the conclusions as specific determinations. Both conclusions are precepts of human law. But, insofar as the first form of reasoning is based on a principle *prima facie*, the conclusion comes from the direct knowledge of the nature of things. However, the second form of reasoning supposes a human deliberation on that nature, and the knowledge of its ends. This distinction is of utmost importance. In fact, it points to the roots of the distinction, in positive law, between principles directly derived from nature, and contingent or secondary norms. In *Summa theologiae* I-IIae, q. 95, a. 4, *respondeo*, Aquinas places *ius gentium* in the first kind of law, and civil law in the second.¹³

Analyzing the correctness of the division of law made by Isidoro de Sevilha, Aquinas emphasizes two aspects: the necessity of a final cause in the determination of all kinds of beings, and the intervention of the principle of proportionality or suitability in the case of intermediate ends. That is what occurs in human law: it is instituted with a view to an end (to achieve both, personal virtues and social peace) and it is ruled by natural law, this latter being a superior norm which, in turn, is based on divine law. As Isidoro’s division supports both principles, ends and proportionality, it is therefore correct.

In Article 4, of q. 95, Aquinas analyzes in more detail Isidoro’s thesis on the place of *ius gentium* within law. Positive right includes every kind of right included in the definition of law given by Isidoro, which integrates these three principles: suitability and proportionality of the ends, orientation for the common good, and published form. But these are characteristics that the law of nations and civil law have in common. So, the principle of distinction between these two kinds of law cannot be found in the definition of positive rights. It is to be found in the way in which positive rights derive from natural rights. The law of nations derives directly from natural rights, in the same way that necessary conclusions derive from the axiomatic principles arising from human rational nature. However, civil law derives from the aforementioned right as a specific determination of them. Therefore, although the law of nations in Aquinas’ doctrine is a positive right, it is still linked to natural law.¹⁴

¹² Cf. S. THOMAE AQUINATIS, *Summa theologiae* I-IIae, q. 95, a. 1, resp..

¹³ Cf. S. THOMAE AQUINATIS, *Summa theologiae* I-IIae, q. 95, a. 4: “[...] Est enim primo de ratione legis humanae quod sit derivata a lege naturae, ut ex dictis patet. [...] Nam ad ius gentium pertinent ea quae derivantur ex lege naturae sicut conclusiones ex principiis, ut iustae emptiones, venditiones, et alia huiusmodi, sine quibus homines ad invicem convivere non possent; [...] Quae vero derivantur a lege naturae per modum particularis determinationis, pertinent ad ius civile, secundum quod quaelibet civitas aliquid sibi accommodum determinat”.

¹⁴ To a better understanding of the relation between *lex* and *ius* in the 13th century, see K. PENNINGTON, “Lex and ius in the Twelfth and Thirteenth Centuries”, in *Lex und Ius. Beiträge zur*

According to the principles on which it is based, Aquinas's argument is undeniable. However, when he discusses the nature of *ius gentium* no longer within the context of law, but within the theory of justice, some problems emerge, as may be seen by analyzing the arguments found in *Summa theologiae* II-IIae, q. 57, a. 3. Here the question is to decide whether the law of nations is a natural right or a positive one. This seems to be a pointless question, since we have just concluded that it is a positive right, which is still linked to natural law. So, why does Aquinas raise this issue again? He is now focusing on the content of *ius gentium*, in the light of the applicability of its norms within the theoretical context of justice. Accepting that the law of nations is a conclusion which derives directly from moral principles *prima facie*, and taking in to account some specific rules it includes, we are faced with the possibility of contradiction.

Let us take the example of slavery. According to Aquinas' principles, how is it understood? Aquinas quotes Aristotle *On Politics*, Book I, where slavery is understood as a natural condition of humans. But, if the law of nations derives necessarily from natural law, as Aquinas supposes, and in turn, the latter derives from an unchanging divine law, it might be concluded that slavery derives from God the creator, although indirectly, and it is therefore necessary for human beings as part of human nature. If it does not derive from natural law, then the law of nations is not a natural right but a human one. Therefore, it changes according to the human author of the law and it does not have to be respected.

This is an intrinsic contradiction of a doctrine which, in a creationistic theological context, considers the law of nations as a natural right. In order to overcome it, Aquinas introduces a distinction between natural right *per se* and natural right *secundum quid*, and places *ius gentium* in the latter. The law of nations is placed in a kind of midway position between natural right *stricto sensu* and positive right. According to its origin, it is a natural right, as it derives from first principles in a natural order (e. g.: nourishment, reproduction, preservation of life). This reasoning ensures that it is a right which is respected and observed by all nations, with no need to be formally instituted. The law of nations is characterized by being founded on human reason and by being rooted in human consensus. It is precisely in this way that it differs from natural right *stricto sensu* which concerns what human beings have in common with irrational creatures. On the other hand, since *ius gentium* requires human consensus, it is characterized by rationality, the specific quality of human beings. Therefore, it only applies to relations between humans. Moreover, natural right *stricto sensu* considers *absolute et per se* things, relations originated by things, and actions to which nature predisposes. However, *ius gentium* considers things according to their utility and suitability for people to lead a good life. Thus, it supposes knowledge of the means and ends of things and actions, which cannot

Begründung des Rechts in der Philosophie des Mittelalters und Frühen Neuzeit, hrsg. A. FIDORA, M. LUTZ-BACHMANN und A. WAGNER (Politische Philosophie und Rechtstheorie des Mittelalters und der Neuzeit, Texte und Untersuchungen II.1), Stuttgart – Bad Cannstat 2010, 1-23. For the analysis of the concepts of *lex naturalis* and *ius naturale*, see M. PERKAMS, "Lex naturalis vel ius naturale. Philosophische-theologische Traditionen des Naturrechtsdenkens im 12. und 13. Jahrhundert", in *Lex und Ius. Beiträge zur Begründung des Rechts in der Philosophie des Mittelalters und Frühen Neuzeit*, hrsg. A. FIDORA, M. LUTZ-BACHMANN und A. WAGNER (Politische Philosophie und Rechtstheorie des Mittelalters und der Neuzeit, Texte und Untersuchungen II.1), Stuttgart – Bad Cannstat 2010, 89-117, particularly 113-17, for the position of Thomas Aquinas. For the concept of *ius gentium* by Aquinas, see also in the same collection of studies M. LUTZ-BACHMANN, "Die normativität des Völkerrechts: Zum Begriff des *ius gentium* bei Francisco Suárez im Vergleich mit Thomas von Aquin", 476-81.

happen without reasoning. The knowledge of ends and the deliberation of means lead human reason use nature and act appropriately.¹⁵

This is, in short, the doctrine of Thomas Aquinas on the status of *ius gentium*. It is a natural right *secundum quid* which demands the consideration of ends and of the suitability of the goods concerned to achieve the goal of the law itself. Private property, of which slavery is, after all, a particular case, is legitimate not only due to the nature of the “thing itself” (*res ipsa*), but also in order to achieve the purpose known by human reason: the optimization of resources to better manage the common good and to maintain peace.

Nevertheless, some contradictions appear in Aquinas’ arguments, to which the 16th century commentators were sensitive. After all, we may ask, in Aquinas view is the law of nations a positive right or a natural one? Later we will analyze this debate more closely. For the moment, a question arises: Why was Aquinas not aware of the impasse? In my opinion the answer is as follows: For Aquinas, there is no impasse in the aforementioned reasoning. Analyzing the questions and articles of the *Summa theologiae* we referred to, it becomes clear that all positive law derives from natural law, in which the former finds its righteousness and obligation.

The difference between the law of nations and civil law is to be found in the level of proximity of positive law regarding the first principles of natural law known by human reason and made explicit by it. The law of nations is closer to natural law than to civil law. However, nowhere is it a determination *per se* of natural law, but only an application of it in order to harmonize the coexistence between human beings. It is therefore ruled by the principle of appropriateness of means in order to achieve social organization. According to this argument, some variation in the precepts of *ius gentium* can be considered, as Aquinas admits in *Summa theologiae* I-IIae, q. 97, a. 2.

The 16th century commentators, whose texts are studied, accepted precisely those theses of Aquinas, usually quoted the same sources and authorities, and sometimes argued in the same way as Aquinas does. However, some differences can be found, both in their form and in the contents, while the influence of Renaissance Humanism on Iberian Scholasticism is quite clear. A more flexible interpretation of thomistic texts, a greater proximity between theoretical arguments and the practical aspects of life, namely concerning the legitimacy of slavery,¹⁶ the law governing war, and the notion of

¹⁵ In *Summa theologiae* II-IIae, q. 57, a. 3, resp., Aquinas refers to the right to property, and gives as example the right to have a field. In the nature of the field, there is anything which, *absolute et per se*, makes a field to belong more to one person than to another. However, concerning both the opportunity to cultivate it and its peaceful use, belonging to one is more appropriate than belonging to another. In Aquinas’ view, what makes the right to property a natural right is not the truly nature of things, but the consideration of the ends things imply. So, there is a natural right *secundum quid*. Slavery is an example of right to own people as property and it might also be considered a natural right *secundum quid*, since the suitability between servant and master is achieved for the common good.

¹⁶ Considered by Aristotle a natural condition of human beings, slavery is later instituted in Roman Law, as can be read in *Institutiones justinianae* I, III, in *Corpus Iuris Civilis* I, Berlin 1899, *De iure personarum*, 2: “Summa itaque divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi. [...] *Servitus autem est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur*. Servi autem ex eo appellati sunt, quod imperatores captivos vendere iubent ac per hoc servare nec occidere solent qui etiam mancipia dicti sunt, quod ab hostibus manu capiuntur. Servi autem aut nascuntur aut fiunt. nascuntur ex ancillis nostris: fiunt aut iure gentium, id est ex captivitate, aut iure civili, cum homo liber maior viginti annis ad pretium participandum sese venumdari passus est [...]”. The text is very clear:

dominium can be pointed out as expressions of those differences. Texts also emphasize the awareness of the real possibility for human law to depend on the will of the legislator, if the fundamental relation between positive and natural law is not clarified. More than anything these commentaries underline both the debate concerning Aquinas' doctrine on the place of *ius gentium* within natural law, and the decision on its positive or natural state. Yet, this is only a contradiction of Aquinas' doctrine if the possibility of dissociation between natural law and positive right is considered. This possibility is not part of Aquinas' thought, due to the doctrine of creationism, on which the hierarchy of laws is founded, and the monarchical regime which supposes that divine power is transferred to temporal order, so that the latter executes human justice in the most perfect and suitable way.

However, in the 16th century, the mental framework and the social organization paradigm were deeply transformed. The idea of a common consensus between human beings, emerging without connexion to a divine law was now considered as a real possibility. Thus, due to the possibility of a divorce between natural and positive law, the contradiction of Aquinas' notion of *ius gentium* causes perplexities. In fact, this is one advantage of analyzing such a notion within Iberian Scholasticism's commentaries on Aquinas, since a real change of paradigm, not only in social organization but also in worldview, can be seen. The central role of God as supreme and perfect legislator is progressively replaced by a worldview and a doctrinal context focused on human nature and free will.

II. FRANCISCO VITORIA AND DOMINGO DE SOTO: *IVS GENTIVM* AS POSITIVE LAW

As was mentioned, this study takes into account the hypothesis proposed by Luciano Pereña on the existence of a project originating at the University of Salamanca which aims to disseminate in Iberian Universities the ethical and political theories of Francisco de Vitoria and of his followers. To ascertain both the validity of this hypothesis and the possibility of a paradigm shift in 16th century scholastic doctrines of *ius gentium*, some commentaries on Aquinas' *Summa theologiae* II-IIae, q. 57, a. 3, are analyzed here, especially those produced by the theologians whose names are linked to the foundation of the School of Salamanca.

As Miguel Anxo points out in his study on the School of Salamanca, there are two main features which characterize this intellectual movement. On one hand, the awareness these authors had of being the initiators of a new way of thinking. On the other hand, the practical approach of moral theology of Vitoria and his followers, in particular Domingo de Soto and Melchor Cano.

Regarding the medieval tradition of justice and law doctrines, the ethical and political theses by Vitoria are considered by specialists to be innovative, as can be seen in his commentary on *Summa theologiae* II-IIae, q. 57.¹⁷ This commentary follows exactly

slavery is a norm of *ius gentium*, by means of which someone is under the control of another *contra naturam* (emphasis added).

¹⁷ FRANCISCO DE VITORIA, *La justicia*, ed. L. FRAYLE DELGADO, Madrid 2003 (reimpresión de la primera edición, 2001), q. 57, a. 3, pp. 23-30.

the same structure as the question in the parallel text by Aquinas. It begins with the analysis of the notion of *ius gentium* within the context of the virtue of justice (article 1), then examines the thomistic distinction between natural and positive right (article 2), and finally discusses the place of *ius gentium* within natural or positive law (article 3).

In the first paragraph of his commentary on *Summa theologiae* II-IIae, q. 57, a. 3, Vitoria defines natural right and analyses the notion of *ius gentium* within the context of *ius* and *iustitia*. ‘Natural’ is an attribute which concerns a kind of relation that supposes some equality and justice. This relation, however, must be one of two main types, either *absolute et per se*, or *secundum aliquid*. In the first case, equality derives from a natural right considered *absolute et per se*. In the second, the natural relation can be based on a natural right *secundum aliquid*. In this case, the derived equality depends on the rational deliberation of the ends of the goods concerned and the suitability of their use in order to achieve common good and social peace. Vitoria considers that *ius gentium* belongs to the latter category. Basically, he follows the distinction given by Aquinas between natural right *per se* and natural right *secundum quid*. Vitoria also emphasises that the *ratio* on which *ius gentium* is based does not consist of a natural equality, as it does not regard justice *per se*, insofar as this latter derives from the essence either of the good concerned or the relation originated by them. The foundations of the agreement that *ius gentium* supposes lie in a consensus derived from a human statement established by reasoning.¹⁸ Regarding this definition, Vitoria does not consider *ius gentium* as a natural right *stricto sensu*, and this interpretation is according to Aquinas’ doctrine. However, between these two authors there is a difference in the ultimate *ratio* of *ius gentium*. To Aquinas, it is a natural right *secundum quid* because of its dependence on a rational consideration of the ends. Vitoria does not ignore this condition. However, he establishes the foundations of *ius gentium* in the human consensus attained by all peoples, and that is the reason why he places it within positive law. This difference is introduced by Vitoria precisely while discussing the status of *ius gentium*. He considers the difference between *ius gentium* and natural right, as Aquinas does. However, is *ius gentium* the same kind of natural right, as Aquinas considers it, or is it a positive right? Vitoria recalls the question in the same way Aquinas debates it. He refers to the division of law made by Isidoro de Sevilha. As we have seen, Isidoro considers the law of nations as a positive right, and distinguishes it from natural law and civil law. But there is an objection: if *ius gentium* is not part of natural law, and some precepts of *ius gentium* are common to those of the Decalogue, the former are not a natural law, but a positive one. According to Aquinas, Vitoria also considers the precepts of the Decalogue as a natural right *absolute et per se*: their justice does not depend on any other principle or relation.¹⁹ Vitoria recognizes that this is precisely the sense of the thomistic notion of natural right and accepts it.²⁰ However, he states that *ius gentium*’s equitability does not derive from this kind of law, but depends on

¹⁸ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: “[...] lo que es adecuado y justo [...] en cuanto se ordena a otra cosa, es derecho de gentes. Así pues, aquello que no es equitativo por sí mismo, sino por un estatuto humano fijado racionalmente, eso se denomina derecho de gentes. De tal modo que por sí mismo no conlleva equidad, sino en relación a alguna otra cosa”.

¹⁹ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: “Todas estas cosas son justas por sí mismas y no en relación a otra cosa”.

²⁰ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: “Decimos pues con Santo Tomás que el derecho natural es un bien por sí mismo sin orden a algún otro”.

other principles and relations extrinsic to natural law, such as human consensus and agreement among peoples.²¹

Vitoria continues his commentary by discussing Ulpianus' notion of natural law and rights.²² Like Aquinas, he also considers that the notion of natural law Ulpianus uses is broad, and that rationality, which is specific to human beings, is essential in the definition of *ius gentium*. However, Vitoria includes the law of nations within positive right. In fact, he bases the fact that the law of nations is to be respected on human agreement or consensus, rather than on human deliberation and reasoning.

Vitoria's explanation of *ius gentium* is part of his programme of moral theology teaching and so he emphasizes that the main goal of this debate consists of evaluating the morality of human actions. It is, therefore, important to point out the obligatory condition of *ius gentium* for moral conscience. Vitoria's reasoning is coherent with the principles he establishes. If *ius gentium* were a natural right *absolute et per se*, to disobey would be to act against nature, human reason, and finally against God. To disobey it would always be a sin. However, Vitoria places *ius gentium* within positive rights. Does it mean that its obligatory condition depends on its geographic and historical context? If it so, its obligatory condition is the same as civil law.

To understand the scope and the novelty of Vitoria's view on the notion of *ius gentium* regarding Aquinas doctrine, it is necessary to be aware of the fine line which divides these two Dominicans on the notion of positive right. Aquinas considers as positive law one which derives from an explanation of natural law by human reasoning. Hence, all positive law is an explicit deduction of natural law and if it is not so – if positive law is against natural law – it does not have the essential character of law. In that case, it does not have to be respected, even if it is instituted and promulgated by a competent authority.

In Aquinas view, both the law of nations and civil law are deduced as conclusions from principles of natural law. The distinction between those kinds of law is the *type of reasoning* implicated in that deduction. The reasoning which produces the norms of the law of nations derives from the natural principles *prima facie* as necessary conclusions, while the norms produced by the civil law derive from the first principles as secondary determinations. According to the primacy of the principle of reason in the general theory of man and morality Aquinas assumes, the forms of law are coherently distinguish in an epistemological paradigm.

Vitoria does not adopt this paradigm as such. In fact, his view of the law of nations, compared with medieval doctrines and particularly with Aquinas' view on the foundations of *ius gentium*, implies a change of paradigm. Vitoria founds the law of

²¹ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: “En cambio, el derecho de gentes no es un bien de suyo, es decir, se dice que el derecho de gentes no tiene en sí equidad por su propia naturaleza, sino que está sancionado por el consenso de los hombres”.

²² Natural rights are all the rights deriving from principles which belong to the physical condition of human beings. Here, the notion of nature is used to mean “physical nature”. Hence, natural rights are those that human beings have in common with irrational creatures, such as the right to nourishment, reproduction and all kinds of actions which ensure survival for individuals and species. This thesis is defended by the Roman legislator Ulpianus and is based on the Stoic doctrine which identifies *ratio*, *nomos* and *physis*. Aquinas disagrees with this doctrine and quotes the opinion of the legislator Gaius as support: “quod naturalis ratio inter homines constituit, id apud omnes gentes custoditur”; cf. S. THOMAE AQUINATIS, *Summa theologiae* II-IIae, q. 57, a. 3, resp., quoting *Digest* I, 9.

nations in *human consensus* which supposes that human deliberation and will are crucial for the law to be constituted.

Thomas Aquinas conceives his notion of *ius gentium* from the Greek-Roman paradigm, within which human reason can effectively know the nature of beings, as humans are considered to be both superior to other creatures and part of them. Through human reason, *physis* is expressed in *nomos* and the necessary condition of the former becomes present in the latter.

However, almost three centuries of philosophical discussion divide Aquinas and Vitoria, marked, among other things, by the debates on the role of human will and reason in moral acts, and on the necessary or contingent condition of both physical nature and human will. Vitoria considers the latter distinction as essential for the establishment of the difference between natural law and positive law. In fact, while the former is based on an irreducible principle of necessity, the latter is founded on human agreement and consensus.²³ In the particular case of *ius gentium* this consensus is universal, inasmuch as its norms express the will of all peoples, and are respected over time and place.

Hence, for Vitoria this is the main characteristic of *ius gentium*: to be established by rational statement and to be sanctioned by human consensus. This consensus, however, can be established either in a private or in a public way. In the first case, since it does not go further than the relation between two persons, it cannot be considered a law. In the second case, human consensus results from the agreement of a large group of people. Therefore, because of its public nature, it meets the condition to be respected and to become a law. This applies to *ius gentium*. Thus, it can be defined as a right with public nature, established by universal consensus.

It is now clear that Aquinas and Vitoria have different views regarding the nature of positive law, insofar as the former considers that its foundation is necessary, while the latter supposes that it is contingent, since it does not depend on human knowledge of natural law, but on human will and consensus. However, does it mean that Vitoria assumes the subjective condition of positive law, seeing it as a fortuitous human consensus? The answer is no. In fact, Vitoria safeguards the relation between *ius gentium* and natural law in at least two ways. First, he points out the link between right and justice. The “common consensus between all nations”, which defines *ius gentium*, does not necessarily imply the public nature of the law, or in other words, it precedes this necessity and it roots it. For Vitoria, the main principle on which the concept of the law of nations is founded is the existence of a common consensus on the principles of a universal concept of justice, preceding explicit human consensus and formulation, and subsisting in human nature independently of its expression in a public form. Vitoria’s doctrine of *ius gentium* as a positive law based on human consensus supposes the existence in human nature of a common concept of humanity, which provides a human agreement on universal principles of justice. Therefore, even if they are not published, that positive law and its norms must be respected, at least concerning precepts without

²³ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: “[...] Todo derecho distinto del natural es positivo. Se llama positivo porque procede de algún consenso. [...] Los teólogos afirman comúnmente que es lo mismo derecho natural que necesario: es decir, el derecho natural es aquel que es necesario en cuanto no depende de voluntad alguna. Y el que depende de la voluntad o beneplácito de los hombres se denomina positivo”.

which principles of natural right, required to preserve the common good, could not be respected.²⁴

Finally, in his commentary on *De iustitia* Vitoria discusses the possibility of abolishing *ius gentium*, since he defends that it is not a law necessary *per se* and it does not depend directly on natural law. Analyzing this possibility he emphasises once more the foundation of *ius gentium* on universal consensus – *consensus totus orbis* – and points out that in order to abolish it, the same consensus of all nations would be required, which would be impossible to obtain.²⁵ However, this conclusion does not mean that the law of nations is an unchangeable law, and in fact Vitoria recognizes that in part it could be abolished. Indeed, according to the law of nations, prisoners of war were to become slaves. But this norm changed in the Christian world, since in case of war between Christian nations, the prisoners of war were allowed to stand trial, which not happen to slaves. Vitoria considers that in this case, the Christian worldview contributed to the changing of law, in the same way that, as we have seen, Thomas Aquinas recognized that human law might be changed, due to a greater knowledge of natural law by human reason. In the particular case of slavery, Vitoria states that “Christians could not truly sell slaves”. Hence, he assumes that in the case of slavery the law of nations was modified or, as he says, abolished in part.

The commentary by Vitoria on the thomistic conception of the law of nations forms the basis to create a law that, rooted in a universal consensus, reaches all peoples and nations, and safeguards the achievement at least of the basic principles of social peace and common good. However, Vitoria’s doctrine of *ius gentium* contains within it the possibility of conceiving the disconnection between natural law and positive right. Since he points to human consensus as the basis of *ius gentium*, he is thus undermining the foundation of the law of nations on universal principles of human reason.

Vitoria’s doctrines on ethics and politics were continued by the professors who succeeded him in the teaching of Moral Theology at Salamanca, namely by Domingo de Soto and Melchor Cano. They became the main vehicle for disseminating the theses of Vitoria, both in Iberian universities and in the European political and religious context.²⁶ Here we only analyze briefly some theses referred to by Soto in his commentary on

²⁴ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: The law of nations is not considered a law *absolute et per se* necessary but a *quasi necessarium ius*, since without it natural law would be safeguarded with difficulty. The reasoning of Vitoria is as following: let us consider that *ius gentium* is respected in a unilateral sense. If there was a group of people who disrespected it, this group would create an inequality between the rights respected by all peoples. The definition of injustice is precisely this inequality. Therefore, concerning the principles without which natural right could not be safeguarded, universal consensus is required and its absence creates a strong inequality and injustice (Vitoria gives the example of the right of ambassadors to immunity in wartime).

²⁵ FRANCISCO DE VITORIA, *La justicia*, q. 57, a. 3: “[...] Cuando se establece y admite una vez algo por virtual consenso de toda a orbe, para a abolición de tal consenso é necesario que se ponga de acuerdo toda orbe. Cosa que sin embargo es imposible porque es imposible que todo el orbe esté de acuerdo en la abolición del derecho de gentes”.

²⁶ According to M. Anxo, Vitoria, Soto and Cano renewed the theological teaching method and gave it the characteristics today known under the concept of School of Salamanca. Vitoria “recrea”, Soto “relaciona” and Cano “formula”, as Anxo says. Cano was directly involved in the Council of Trent and gave up teaching, while he was occupied in the government of the Catholic Church, with close links to Crown; cf. M. ANXO, *La escuela de Salamanca*, 25, 54 and 64.

Aquinas's *Summa theologiae* II-IIae, q. 57, a. 3, which can be found in his *De iustitia et iure*, Book III, chapter 1.²⁷

Soto's doctrine on *ius gentium* closely follows that of Vitoria. He first discusses the relation between justice and law (article 1), then he analyses the division of law, making a clear distinction between divine law and human law and between natural rights and positive rights (article 2).²⁸ In article 3 he discusses the place of *ius gentium* between the two latter kinds of right. His arguments follow the same method of Aquinas' *quaestio*. First, he points out the arguments in defence of the thesis he wants to deny – "*ius gentium* is a natural right"²⁹ – and then he explains his own doctrine. He categorically states *ius gentium* is a positive right and affirms that this is the correct interpretation of Aquinas's doctrine.³⁰ He founds his argument on the thomistic distinction between what derives "necessarily from nature" and what derives "by appropriateness of means and ends". The former is a natural right, while the latter depends on human reasoning. So, since the law of nations is a right established by human reasoning, it is specific to human beings, and it is a positive right, clearly distinct from the natural right *simpliciter* considered.

Soto considers *ius gentium* a law which establishes a set of rational norms to organize the relation between human beings in specific circumstances and in order to attain specific ends.³¹ But that could also be a good definition for civil law. How to therefore can this to kinds of law be distinguish, since both are positive laws insofar they are established by human reasoning in order to achieve specific ends? Soto distinguishes both forms of law stating that civil law is deduced from a natural principle but is determined by human will: "*ius autem civile colligitur ex uno principio naturali et altera praemissa arbitrato humanu posita*".³²

Analyzing moral reasoning, Soto makes an important distinction between rational conclusions which consist in a positive human right, and assertions founded on human

²⁷ DOMINGO DE SOTO, *De iustitia et iure (De la justicia y del derecho)*, Madrid 1967-1968, 5 Vols., Latin-Spanish bilingual edition (photostatic copy of the 1556 edition). The commentary on *Summa theologiae* II-IIae, q. 57, a. 1 to a. 3 is on Book III, q. 1, a. 1 to a. 3, 191-98.

²⁸ DOMINGO DE SOTO, *De iustitia et iure* q. 57, a. 2: "Y para que la división aparezca clara, el derecho primeramente se divide en divino y humano. Y el derecho divino en parte es natural y en parte positivo. Porque todo derecho natural es divino por ser Dios el autor de la naturaleza y por consiguiente de cualquiera de su derecho". Soto clearly distinguishes this to kinds of law, divine and human. The former is founded on God's nature or ordinance, while the latter is discovered by human beings as a law written and proclaimed in their own nature. These two kinds of law could still be divided into natural and positive law. Within this framework, all other subdivisions of law are included, either divine or natural, civil or *ius gentium*.

²⁹ Cf. DOMINGO DE SOTO, *De iustitia et iure*, q. 57, a. 2. Soto exposes three arguments: 1. the law of nations is "the law in which all humans agree" and that can only be natural; 2. slavery is a rule of the law of nations and is a natural condition of humans, as stated by Aristotle and the Digest; 3. the law of nations is common to all peoples and it is not a positive law. So it must derive only from nature.

³⁰ DOMINGO DE SOTO, *De iustitia et iure*, q. 57, a.3: "[...] El derecho de gente se distingue del derecho natural y se halla comprendido en el derecho positivo. Aunque Santo Tomas no formule expresamente esta conclusión [...] en respuesta a las dificultades con que al principio de la cuestión arguye que el derecho de gentes es natural se ve claramente que su pensamiento es negar esto, y en consecuencia afirmar que es de derecho positivo".

³¹ DOMINGO DE SOTO, *De iustitia et iure*, q. 57, a.3: "El derecho de gentes se deduce por vía de conclusión de los principios naturales de las cosas consideradas en orden a un fin en determinadas circunstancias".

³² DOMINGO DE SOTO, *De iustitia et iure*, q. 57, a.3.

free will, which derives from those conclusions. The first types of conclusions are based on the consideration of the nature of things. Insofar as *ius gentium* derives from this kind of conclusion, it could be established by all people. Thus, it derives from a common consensus based on the common rational nature of human beings. Since they are all rational, as they use the same rational principles, they necessarily reached the same conclusions. The second type of conclusion, however, characterizes civil law. Its scope is limited to a particular nation or human group, whereas the scope of *ius gentium* scope is universal and spreads to all people. Based on these distinctions, Soto points out three main characteristics of the law of nations: 1. it arises by rational deduction from natural principles. 2. it does not need the congregation of all humans in the same place. 3. it is common to all people.

Soto also discusses the immutability of the principles of the law of nations, and assumes the difference between principles necessary *absolute et per se*, which cannot be abolished, and principles which may not be required and which may be abolished in certain circumstances. He includes in the former principles required for the harmonious coexistence of human beings (e.g., the division of property). In the latter, he includes slavery, which could be abolished and in fact was abolished in the case of prisoners of war between Christian nations.³³ Among principles of *ius gentium* which can be abolished, Soto also includes the rule of the immunity for ambassadors in wartime. But he concludes his reasoning in a surprising way. *Ius gentium* certainly determines that the faith of the enemies and the life of ambassadors should be preserved. However, if they both spread erroneous doctrines, they should be *killed by fire*, without any need to obtain a dispensation from the rule: “si causa fidem contrarium posceret non esset servandum; imo si corrupta dogmata disseminarent exuriendi essent, neque dispensatione opus esset”.³⁴

III. TWO 16TH CENTURY COMMENTARIES PRODUCED IN COIMBRA: ANTONIUS A SANCTO DOMINICO AND FERDINANDUS PEREZ

The work of Stegmüller that we referred to earlier identifies nine commentaries on the *Summa theologiae* II-IIae, q. 57, four of which are anonymous, produced by Moral Theology teachers at Coimbra and Évora universities, between the second half of the 16th century and the beginning of the 17th.³⁵

Given the length and the number of the remaining texts, it can be concluded that *ius gentium* was not at the time the core of the debate. In fact, it constitutes a kind of introduction to the main discussion on the right to property and on the human rights it involves. Following the criteria I described at the beginning of this explanation, my analysis only covers the commentaries produced by António de S. Domingo (“[material] tradita idibus januarii 1580”) and by Fernando Perez (“anno Domini 1588”), described in the set of manuscripts referred to by Stegmüller.

³³ DOMINGO DE SOTO, *De iustitia et iure*, q. 57, a.3: “Porque la esclavitud es de derecho de Gentes y sin embargo se dispensó a fin de que los cristianos, prisioneros de guerra, no se convirtieron en esclavos”.

³⁴ DOMINGO DE SOTO, *De iustitia et iure*, q. 57, a.3.

³⁵ W. STEGMÜLLER, “Zur Literargeschichte”, 402.

The commentary by António de S. Domingo on the *Summa theologiae* II-IIae, q. 57 is part of his treatise *De iustitia et iure* and is divided into four articles, only three of which are significant for our subject. Article one is closely based on the commentary by Soto on *De iustitia et iure* III, q. 1, a. 1. This dependence can be seen in the formal framework, the authorities quoted, the arguments discussed and also by the similarity in the arguments exposed in both texts. However, the doctrinal differences between the two theologians can already be found in this first article.³⁶ Article 2 still reveals the dependence on Soto's commentary (*De iustitia et iure* III, q. 1, a. 2), concerning both the authorities António de S. Domingo quotes and the arguments against the existence of natural right (taken up again from Aquinas' *Summa theologiae* II-IIae, q. 57, a. 2). However, when discussing this argument based on Soto's commentary, António clearly assumes the division of rights given by Isidoro de Sevilha and adopted by Aquinas, instead of the division proposed by Soto.

In the explanations of his doctrine on the concept of law, António first defines both natural right ("illud quod habet eadem vim apud omnes") and positive right ("illud quod ante legem nihil interesat utrum sic vel alter fieret, postquam autem lex posita est iam multum interest"). The principle deduced from these definitions, accepted both by Aquinas and Soto is also accepted by António de S. Domingo: "Bonitas in iure naturali sumitur ab objecto [res sunt prohibita quia mala]; bonitas in iure positivo pendet a voluntate legislatoris [res sunt mala quia prohibita]". Nevertheless, the Portuguese theologian emphasizes that positive law results from human deliberation and the will of the legislator. Thus, in contradiction with Soto's arguments, he concludes that the law of nations cannot be a positive right, since all people recognize the same value in it: "habet eadem vim apud omnes".

The concept of nature, as applied to human beings is the main difference between the doctrines of Soto and António de S. Domingo. Soto defends that nature consists of what humans have in common with irrational beings. Therefore, nature excludes rationality, which is specific to human beings and which is linked to deliberation and decision. In fact, those are elements of positive law, while all human law is rational and consensual. António de S. Domingo, in turn, considers that the term "natural", applied to human beings, can have two meanings, while human nature is *dupliciter* composed: "homo constituitur ex duplici natura, scilicet, animali et rationali".³⁷ Given this dual nature, humans perform some actions which irrational beings also perform out (like reproduction, subsistence and conservation of individuals and species). But there are some actions that humans perform which require the deliberation of their ends, such as the division of goods and the maintenance of peace. These are ruled by the law of nations, which derives from first principles of moral order obviously distinguished by human

³⁶ ANTONIUS A SANCTO DOMINICO, *De iustitia*, Lisboa, BNp, Cod. 5512, f. 2v: "[...] ius est ars aequi et boni, quam definitionem Soto [...] interpretatur de virtute epicheia. Sed non video quare, mens Vlpiani clarissima est, nihil enim aliud vult nisi quod scientia illa sua quam ipse vocat ius sit ars per quam docemus quid sit bonum et aequum in quaquamque re". He clearly criticizes the interpretation made by Soto, who, based on Ulpianus' doctrine, contrasts the art of *bonum* and *iustum*, which characterizes natural law, to human positive law. Since this latter can be unjust, it requires in the legislator the virtue of *epikeia* (reasonableness).

³⁷ Lisboa, BNp, Cod. 5512, f. 4r.

reason.³⁸ Therefore, António de S. Domingo considers *ius gentium* a natural right which cannot be exclusively rooted in human consensus. If this were so, the rules of *ius gentium* would be produced by an arbitrary will and their universality and immutability would be conditioned.

Nonetheless, can we regard natural right as truly unchangeable? António de S. Domingo analyses this issue based on Aquinas' arguments. He first distinguishes levels of immutability, comparing them with the levels of evidence in sciences. In this hierarchy, mathematics takes the first place, physics the second and moral science the third. He then recalls Aquinas' argument – taken from Aristotle – on the non absolute immutability of natural law, which concludes that the mutability of natural law depends on progressive human knowledge of it. Finally, he takes up Aquinas' argument on the necessary inference by human reason of the first practical conclusions of moral action from moral principles *prima facie*. Practical reason possesses the evidence of the first moral principles – such as “do as you would be done by” – in the same way as speculative reason possesses the evidence of the first theoretical principles – such as the principle of identity. The basis of *ius gentium* is precisely *this common rationality* which ensures its universality.

António de S. Domingo analyzes the place of the law of nations in article 3. Here he clearly distances his doctrine from that defended by Soto, both in the form and content of his arguments.

He begins his commentary with a definition of *ius gentium* which differs from those presented by the authors referred to so far: “*ius gentium vocatur illud quod a primaevo iure naturale elicitur medio discursu humano*”.³⁹ Thus, in his opinion, the main characteristic of *ius gentium* is the fact that it depends on human discourse, since it is defined as human consensus obtained “through” (*per medium*) discourse. In fact, he emphasises the intermediary role of discourse at the origin of *ius gentium*.⁴⁰

He continues his commentary with arguments taken from the commentary by Vitoria, who affirms that the distinction made by theologians (“*quae clarius de hoc loquuntur*”) between *ius gentium* and natural law, is to be preferred to that by Ulpianus, between a positive law and natural law *lato sensu*, given the scope of the latter. Theologians defended that there are extremely broad principles of natural right – e. g. “love God and your fellow man with all your heart” – from which direct conclusions

³⁸ Lisboa, BNp, Cod. 5512, f. 4r: “Igitur ius naturale dividitur in ius naturale et ius gentium: cuius divisionem rationem assignat S. Th. loc. cit. Quod homo constituitur ex duplici natura, scilicet animali et rationali, ille igitur autem pertinent ad conservationem hominis quatenus est animalis vocantur de iure naturali, sicut procreato filiorum, defensio vitae; et omnia alia quae alia irrationalia faciunt instinctu naturae. Illa autem quae commune sunt ei quatenus rationalis sunt de iure gentium”.

³⁹ Lisboa, BNp, Cod. 5512, f. 6r: “Ius gentium vocatur illud quod a primaevo iure naturale elicitur medio discursu humano”.

⁴⁰ António de S. Domingo roots in human discourse the principle of the immunity of ambassadors in wartime. It is interesting to remark that he uses the Latin noun *oratores* to designate “ambassadors”, instead of *legatores*, which is often used in these commentaries. The link between *ius gentium* and *oratores* will be better understood later in his text. In fact, *ius gentium* contains precepts which are particularly useful in wartime, such as the legitimacy of slavery and the immunity of ambassadors. These two precepts also concern *ius bellum*. The proximity between *ius gentium* and the primary principles of moral law can be clearly seen, since the precepts of *ius gentium* are necessary for the accomplishment of peace, which is the aim of all law regarding common good.

derive – e. g.: “no other gods shall be adored”; “human beings should not commit adultery and should not steal”.

To build his argument, António de S. Domingo recalls Aquinas’ doctrine exposed in I-IIae, q. 95, a. 2. On one hand, there are extremely broad principles which may be recognized by all human beings as universal principles. Their conclusions are spontaneously known by human reason, so they constitute a natural human right. On the other, there are also conclusions derived from these first principles which do not have the same clarity. Therefore – and here lies the originality of this commentary – they need to be grasped by human discourse, and they are at the origin of *ius gentium*. As António de S. Domingo affirms, it is through human discourse that people attain the division of goods.

He then discusses the place of *ius gentium* within the law. According to the doctrine exposed in article 2, he affirms that the law of nations is part of natural right. He explicitly criticises the arguments by Soto and implicitly also criticises his interpretation of Aquinas’ doctrine of law. The intellectual effort he makes is in order to combine, at the root of *ius gentium*, both its natural origin and human will.⁴¹

Finally, what does the doctrine of António de S. Domingo on the nature of *ius gentium* consist of? He concludes that the law of nations is nearer to natural law than to positive law, and it is attained by human beings’ reason (*oratio*) and will (*consensus*). That is the way to solve Aquinas’ contradiction and to understand the reason why in some texts Aquinas includes *ius gentium* within natural law, while in some others includes it within positive rights. However, for António de Santo Domingo it is absolutely clear that the law of nations derives from reason “instigante natura” and “natura docentes”. But nature has two main ways to teach: either *directly* or by means of something else, “supposito alio”.⁴² Principles such as the precepts of the Decalogue, which do not need human discourse to be recognized as norms of right, derive directly from the teaching of nature. However, there are principles which do not derive directly from nature. So, they presuppose some other determination in order to be respected. That is what happened for instance in the case of the division of goods which is the origin of private property. This division does not derive from nature but it does suppose both the law of war and the possibility of war being just.

Concerning precepts arising from this kind of “natural teaching”, which is the case of *ius gentium*, human discourse and consensus are necessarily supposed and required for the existence of the law of nations.⁴³ Therefore, as *ius gentium* supposes, reasoning and will, it is a positive law. Briefly, for António de S. Domingo *ius gentium is a natural law*,

⁴¹ Throughout ff. 6r, 7v and 7r, António de S. Domingo criticizes the arguments exposed by Soto on the positive foundations of *ius gentium*, and defends Thomas Aquinas against the possible ambiguity of his doctrine. We read in f. 7v: “Ad autoritatem ergo S. Thomae, dico quod quia ius gentium maxime propinquum est iuri naturale, et nihilominus factum est ex placito hominum, propter hoc S. Thomas varius videtur esse in hoc, aliquandum enim vocat hoc ius naturale, aliquandum positivum”.

⁴² Lisboa, BNp, Cod. 5512, f. 7v: “Ad primum argumentum [Soti] dico quod natura dupliciter docet aliquid, vel tanquam faciendum immediate, sicut Deum esse colendum, aut non esse furandum. Vel tanquam faciendum supposito alio: primum pertinet ad ipsum ius naturale nullo supposito: secundum autem pertinet ad ius gentium v.g. ad divisionem rerum non inclinatur natura immediate sed supposito iure belli id est quod sint iniusta bella”.

⁴³ Lisboa, BNp, Cod. 5512, f. 7r: “[...] inclinatur ad quaedam supposito discursu humano, et ista pertinent ad ius gentium, quia, si non adesset humanus discursus, et placitum hominum, tale ius non esset: et propter hoc ius istud pertinet ad ius positivum”.

made explicit by human reason and approved by human consensus, through discourse. Its obligatory nature derives both from natural law and from common sense, with no specific institution or published condition, while in this case it would depend on the authority of *Respublica*. It depends on what the ensemble of individuals deduces by using natural reason.⁴⁴

António de S. Domingo founded his doctrine on Aquinas' thought, which affirms that the obligatory condition of natural right derives from norms arising through natural reason to attain equity.⁴⁵ He also distinguishes between norms without which human coexistence does not survive or at least with difficulty subsists. In that case, *ius gentium* cannot be abolished (like the right to private property);⁴⁶ and norms which can be abolished, since they are not necessary for the subsistence of human coexistence. Norms related to slavery belong to this group. In fact, António de S. Domingo recognises that slavery could be abolished if there were no human consensus on it. However, while he considers that there is an essential and causal link between the law of nations and natural law, he reaches this unexpected conclusion: if there are norms which are not necessary *ex natura rei* for human coexistence, only God could abolish them, since *ius gentium* does not recognize any superior authority but God.⁴⁷ Hence, if someone acts against the law of nations, he is committing a sin, which is mortal or venial according to its gravity. This last sentence of article 3 is underlined in the manuscript and closes his arguments on the nature on *ius gentium*.

As mentioned earlier, the final commentary to be analyzed is that by Fernando Perez on *Summa theologiae* II-IIae, q. 57, a. 3.⁴⁸ It consists of a very short text, included in one of the *disputationes* which compose his likewise brief treatise on *De iustitia et iure*. Indeed, he affirms that this treatise, together with the treatise on *De dominio et servitute* is a sort of foundation for his treatise *De restitutione*.⁴⁹

⁴⁴ Lisboa, BNp, Cod. 5512, f. 7r: “[...] ius gentium quantum est de se non habet unde obliget, non enim fertur auctoritate alicuius principis vel praelati, sed tantum ex commune hominum consensu non quidem communicato inter se, quia tunc haberet auctoritatem a Republica, sed quia cuilibet ita visum est: consensus autem iste non potuit obligare posteros. Igitur ius gentium si habet robur habet a lege naturale”.

⁴⁵ Lisboa, BNp, Cod. 5512, f. 7r: “[...] Autor est S. Thomas 1^a, 2^{ae} loco supra citato [S. Th. I-IIae, q. 95, a. 4] ubi ait, quod ius gentium ex eo obligat, quia naturalis ratio illud dictat tanquam è propinquo habens aequitatem”.

⁴⁶ Lisboa, BNp, Cod. 5512, f. 7r: “Attendendum est ergo ad id quod ipsum ius praecipit id est ad materiam, et si illa talis fuerit quod sine illa humanus convictus vix aut nullo modo possit sine illo subsistere, tunc est indispensabile, sicut v. g. divisio rerum, vix enim moraliter loquendo, est possibile, quod pax conservetur inter omnes si bona communia fuerint, et ultra hoc erit administratio iniqua”.

⁴⁷ Lisboa, BNp, Cod. 5512, f. 7r: “Si autem aliqua fuerint sine quibus potest humanus convinctus subsistere, tunc ista non quidem sunt dispensabilia nisi solo a Deo, quia nullum alium superiorem recognoscit ius gentium nisi solum Deum: sed nihilominus potuisset per dissuetudinem abrogari: sicut v. g. quod victi in bello fiant servi victoris, non tamen interest ad convictum humanum: et propter hoc potuisset per dissuetudinem aboleri. *Quamdiu autem ius gentium subsistit, obligat in conscientia propter legem naturalem à qua habet vigorem, et propter hoc qui facit contra illud peccat, mortaliter, vel venialiter secundum materiam*”.

⁴⁸ This commentary extant in the Cod. 2623, [I], ff. 2r-4r, BNp (the Roman character [I] corresponds to the convention established by Stegmüller to identify different parts of the same codex, within which the folios of different works and authors are identified with the same Arabic numerical reference). Codex 2623 also contains the following treatises by Fernando Perez: *De dominio et servitute* – f. 8r-39v; and *De restitutione*, ff. 40r-282v.

⁴⁹ FERDINANDUS PEREZ, *De iustitia et iure* (Lisbon, BNp, Cod. 2326, f. 1r): “Ad utilissimam restitutionis materiae, quoad possim, breviter et accurate illustrandam, oportet prius, veluti totius

The treatise *De iustitia et iure* by Perez is divided into four *disputationes*. The first debate is on the origin of law and on the types of division it admits (“unde et quantummodis ius dicitur”). The second discusses the subject analyzed here (article 3 of *Summa theologiae* II-IIae, q. 57: “Utrum ius gentium potius ad ius naturale quod ad positivum pertineat”). The third discusses the legitimacy of private property (“Utrum divisio rerum sint licita aut licite introducta”) and finally the fourth discusses the nature and division of justice (“Quid et quotuplex sit iustitia”). Here only *disputatio* 2 is analyzed.

Although by its title Perez indicates that the debate is on *Summa theologiae* II-IIae, q. 57, a. 3, the main discussion is on Aquinas’ doctrine of law (*Summa theologiae* I-IIae, q. 95, articles 2 and 4). The arguments Perez puts forward of *ius gentium* are not original. His commentary also depends closely on that produced by Soto, as was seen in the commentary by António de S. Domingo. However, Perez seems to be more neutral than the Portuguese Dominican. He begins by exposing a set of theses usually discussed on the subject and by making a summary of the state of the debate on the division of law and the notion of justice.⁵⁰

He first establishes the difference between natural and positive right. Natural law does not depend on any human institution or external law, but only on the internal light and *dictamen* of human reason.⁵¹ Positive right is characterised by human production of content. Perez illustrates its contingent condition with a didactic explanation: a positive law is a kind of law whose subject only attains importance when it is *positum*. Then, he exposes the arguments in support of the inclusion of *ius gentium* in natural law and shows that they are not conclusive. The arguments are: (1) if *ius gentium* were not a natural right, it could be changed by political authority; (2) principles of natural morality concern natural right; *ius gentium* derives from those principles, which are based on human social nature;⁵² and (3) the precepts of the Decalogue derive from natural right and are also common to *ius gentium*, so the latter must be a natural right. Perez recalls the contradictory opinion – *ius gentium* is a positive right – and the authorities by whom this thesis is supported: Soto, whose theses are followed by Afonso de Castro and Tomás de Torrecremada.

How to overcome the impasse? Perez exposes his own position. Natural right is the right instituted by the creator of nature with no human interference or institution.⁵³ Conversely, the law of nations is the right which, according to human nature, is

tractationis fundamenta ante oculos ponere duas alias praevias perutilisue materias: alteram de iustitia et iure [...] alteram quae nunc maxime controvertitur de dominio et servitute”.

⁵⁰ See, e.g., *Dispute* 1 (f. 1r). Analysing the origin of the law, Perez explicitly refers to Soto’s *De iustitia et iure* III, 1, 2, and affirms that “[Soto] satis discutit [ista argumenta, i.e., the thesis of Isidoro, assumed by Aquinas (ius dicitur a iustum), and that by Ulpiano (ius dicitur a iustitia)].

⁵¹ Lisbon, BNp, Cod. 2326, f. 2v: “[...] ius naturale est quod ubique eadem habet vim [...] ex natura lumine atque dictamine et non ex humana institutione vel exteriori lege”.

⁵² The same argument is given by Aquinas in *Summa theologiae* I-IIae, q. 95, a. 4.

⁵³ Lisbon, BNp, Cod. 2326, f. 3r: “[...] vocamus ius naturale quod natura ipsa vel potius auctor naturae lumine naturae dictante instituit absque hominum consideratione et institutione”. Here Perez seems to come close to the doctrine of Soto who, following Ulpiano, defends that the natural right is a kind of natural-rational instinct (cf. DOMINGO DE SOTO, *De iustitia et iure* III, q. 1, a. 2: natural right is taught and stimulated by nature, since it does not appear in any code and it is everywhere suggested by natural instinct). These principles instituted without human deliberation cannot be the conclusions Aquinas points out, which are deduced from *prima facie* principles, since these conclusions already imply reasoning.

sanctioned by human reason and institution, insofar as human beings consider the ends, the circumstances and the historical development (*rerum eventus*).⁵⁴ Principles of natural right are absolutely necessary and emerge spontaneously in human reason, without any rational deliberation: they derive as primary conclusion from first moral principles. However, *ius gentium* concerns rational precepts derived from the consideration of the ends and circumstances, in the fallen historical condition of human beings after the original sin. Perez admits that it is a right sanctioned by human law, so he considers *ius gentium* as a positive and instituted right.⁵⁵ However, since he formulated the question in an alternative way – is it nearer to natural or to positive law? – at least he adopts Aquinas’ thesis and affirms that the law of nation is nearer to natural right. In fact, even when it cannot be deduced as a necessary consequence of natural right, it can be deduced by an imperative reason – *vigente ratione*. Finally, he affirms that this is the right way to understand Aquinas’ thought, otherwise Aquinas would be contradicting himself.⁵⁶

IV. CONCLUSION: A CHANGING PARADIGM

The 16th century debate on the nature of *ius gentium* among Iberian scholastics academics in the universities of Salamanca and Coimbra is based mainly on the doctrines on the nature of law and justice explained both by Aquinas in the *Summa theologiae* and his subsequent commentators. These debates demonstrate the existence of a contradiction behind Aquinas’ arguments on the nature of the law of nations. The main issue discussed is the status of *ius gentium* within the law. To solve this question a definition of natural law and an explanation of the way in which precepts instituted by human beings derive from it is required. At the core of the discussion is the changeable condition of the law of

⁵⁴ Lisbon, BNp, Cod. 2326, f. 3v: “[...] Deum esse colendum, parentibus esse deferendum honore et caet., ea vero sunt iuris gentium, quae quamvis lumina natura consona sint, tamen ratione et institutione humana sunt sancionata, dum homines finis circumstantias et rerum eventus considerarunt”. This deliberation of ends and circumstances happen *considerandum naturam lapsam*. It is precisely due to this condition of rational nature that *ius gentium* requires common agreement among peoples for peaceful coexistence.

⁵⁵ Lisbon, BNp, Cod. 2326, f. 3v: “ius gentium patet esse ex humana institutione”. The division of goods and the norms for slavery in the context of war are both ruled by the law of nations and both were instituted due to the presence of original sin in human nature.

⁵⁶ Lisbon, BNp, Cod. 2326, f. 3v: “[...] ius gentium quamvis simpliciter humanum sit tamen potest quodammodo ius naturale vocari, quia a naturale iure aliquo modo derivatur, quia etiamsi non per necessariam consequentiam tamen per vigentem rationem á iure naturale deducatur et ita videlicet explicandus Div. Th., alioquin ipse secum pugnabit”. The commentary by Perez ends with the solution of difficulties 1 to 4. His arguments are the following: 1. Human authority of the Princes can change the law of nations, if required for the common good, as proved by the abolishing of slavery in the case of war between Christians; (2 e 3): precepts of natural right derive as necessary consequences from moral principles (e.g., the precepts of the Decalogue); however, the norms of *ius gentium* derive as probable sentences. Hence, knowledge founded on a probable statement is not science but opinion. (4): there are three doctrines which must be rejected: a) the statement that civil right is a natural right, b) the doctrine which includes precepts of the Decalogue in the law of nations, and finally c) the definition of natural right as extensive to irrational creatures. In fact, both the precepts of the Decalogue and the norms of natural right are ordered to moral virtue and moral action, since they are moral precepts. Thus, irrational creatures cannot be under those rules.

nations: what rational argument can explain the link between the common nature of *ius gentium* and the mutable condition of some of its precepts? Could any link between natural law and the law of nations be found, particularly when some norms of the former are truly unfair and contrary to the basic principles of human dignity?

Aquinas' arguments certainly contain some theoretical gaps, which were subject to different interpretations, as usually happens with philosophical doctrines. Nevertheless, the comparative analysis between the concepts of law and justice stated by Aquinas and his commentators, and also the discussion of the place they establish for *ius gentium* within the law, mainly reveal discrepancy between the theoretical debate and both the historical circumstances in which it occurs, and the moral and practical issues it engages. This discrepancy between doctrines and practice reveal, although in a timid and sometimes controversial way, these authors' awareness of the necessity to change both mentalities and theoretical paradigms.

Regarding the debate on the relationship with the peoples of the New World, the question of *ius gentium* was crucial, since this law did not only regulate religion and the cult of gods, but also ordered the preservation of the faith of enemies. This latter norm goes against the argument on spreading Christian faith, on the policy of the Portuguese and the Spanish crowns base the validity of the subjugation of New World territories and peoples. Domingo de Soto has a very clear opinion on this particular issue: if in wartime ambassadors spread doctrines which disagree with Christian faith, they must be killed. As for the case of slavery, it was conceived by the law of nations, both as a natural principle and as a condition for prisoners in wartime. However slavery could neither be a natural law principle, nor an unchangeable law. In fact, Christians partially abolished it, while determining that, in case of war among Christian peoples, prisoners should not be reduced to slavery. Consequently, *ius gentium* is to a certain extent changeable. The debate on these issues shows that 16th century commentators on Aquinas were sensitive to the fact that those questions should be discussed in the context of the policy of conquest and in defence of the human dignity of indigenous people.

With regard to the theoretical foundation proposed by the authors we referred to, two main positions are to be considered here. First, the arguments defended by Vitoria and followed by Soto, according to which the origin of *ius gentium* is a virtual consensus of human beings, which derives from the fact that all possess the same human rational nature. *Ius gentium* is consequently a positive right. However, this opens up the possibility for the progressive introduction of human free will in the establishment of law and rights, and for the progressive subjective condition of law, while the distance between the foundations of natural and positive law is increasingly evident.

António de S. Domingo was particularly sensitive to this difficulty. Due to that complexity, he states that if the law of nations were a positive right depending on human consensus, the foundation of this law would lie in human subjectivity, and both the universality of the law and its appropriateness to a natural and objective order is in danger. Nevertheless, the defence of the natural foundation *absolute et per se* of *ius gentium* brings us to an astounding sentence, supported by António de S. Domingo, on the necessity of "God's authority" for *ius gentium* to be changed.

It is perhaps Fernando Perez who puts forward the most balanced argument, insofar as he seeks to the foundation of natural positive law. This is indeed a crucial notion in the debate and these commentators seem to be aware of it, although they do not go far

enough in clarifying it. Perez argues that *ius gentium* is a natural right and shows that, as a result of being instituted by humans, it is a positive law. He also clearly distinguishes the rules of natural right (those which belong to the Decalogue) from the rules of *ius gentium*, which are a positive right. Perez affirms that in cases of coincidence between the Decalogue and the rules of *ius gentium* (for instance the precepts on the cult due to God and on the honour due to parents), those which belong to the latter are natural principles. In all other cases, the principles of *ius gentium* depend on human consensus and belong to positive right.

With regard to the formal framework of these commentaries, we see that there is a set of common sources they depend on. In the case of Ant3nio de S. Domingo and Fernando Perez, there is a clear dependence on Soto's *De iustitia et iure*, from which they both read and debate Aquinas' doctrines, although they also reveal awareness of the arguments explained in Aquinas' *Summa theologiae*. Reading these commentaries, it is clear that there existed a common teaching project, using the same methods and having the same doctrinal goal. Therefore, the hypothesis by Luciano Pereña on the existence of a global project of doctrines and methods for the teaching of philosophy and theology in the 16th century universities can be confirmed. However, the existence of common goals does not mean homogeneity of doctrines or arguments. In fact, an examination of these commentaries reveals freedom of choice regarding arguments and doctrines, which can be confirmed both in form and contents.

Finally, a characteristic of these commentaries becomes evident when we read them from an historical perspective. A conflict is seen between the theological doctrines those authors taught, which were founded on the broad cultural tradition of the Catholic Church's *forma mentis*, and human and social reality, whose novelty in a changing world also needs to be understood in a new way of thinking. These discrepancies explain the reason why these authors sometimes reasoned in an unexpected way and reached paradoxical conclusions.

In effect, the 16th century academic debates on the nature of law and justice illustrate the hesitation and perplexity these authors sometimes reveal in their arguments. This difficulty points out both the complexity of the issues they deal with and the awareness they have of the need to re-evaluate the suitability of old theories in the light of new and diverse cultures. On the other hand, since these commentaries present different ways of interpretation based on different philosophical traditions, they allow us to evaluate the diversity of arguments on ethics and politics Aquinas' doctrines permits.

The textual and doctrinal analysis undertaken on some 16th century commentaries of Aquinas' notion of *ius gentium* reveals the philosophical interest and wealth, particularly of manuscript sources, for a better understanding of ethical and political doctrines discussed by the Iberian scholasticism academics. At the same time, dealing with these sources, we confirm how far we are from having a real perception of the philosophical worldview cultivated in this crucial period of the History of Western Philosophy. As we increase our knowledge of the philosophical doctrines of the period, we may have to rewrite this past of the History of Western Civilization. By doing so, we will also be able to better understand both the roots and the genesis of modern and contemporary philosophy. However, to attain this goal, the persistent analysis of the extant documental legacy unread in our libraries is required. Only then will we have a better perception of the influence the doctrines defended by 16th century academic

scholastics have on ethics and politics, particularly in the European mental framework. This knowledge could be very useful not only for our cumulative perception of the past, but mainly to inspire solutions for the future.

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