

## An UFO called state of nature: on the presence of the modern state of nature before Hobbes

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**Abstract:** Academic literature is unanimous in recognizing the relevance of Hobbes’s concept of state of nature for modern political philosophy. Many authors, especially under the influence of Leo Strauss and Quentin Skinner, have argued that this concept already existed before Hobbes; specifically, in Thomas Aquinas and the authors of the second scholasticism, strongly influenced by Aquinas. This article shows that this claim is based on an erroneous identification between the modern state of nature, the *status legis naturae* of Thomas Aquinas and the *status naturae purae* of late scholastic theology, and challenges the textual evidence advanced by them to prove the pre-existence of the concept. In doing so, it also contributes to better identify the precedents of Hobbes’s state of nature and to elucidate its historical relationship with related, though different scholastic concepts it has been confused with.

**Keywords:** state of nature; *status legis naturae*; *status naturae purae*; second scholasticism; Quentin Skinner; Leo Strauss.

**Resumen:** La literatura académica reconoce unánimemente la relevancia del concepto de estado de naturaleza de Hobbes en la filosofía política moderna. Muchos autores, especialmente bajo la influencia de Leo Strauss y Quentin Skinner han argumentado que este concepto existía previo a Hobbes, específicamente en Tomás de Aquino y los autores de la segunda escolástica, fuertemente influenciados por Tomás de Aquino. Este artículo busca mostrar que este argumento se basa en una identificación errónea entre el estado de naturaleza moderno y el *status legis naturae* de Tomás de Aquino y el *status naturae purae* de la teología escolástica tardía, e impugnar la evidencia textual que ellos proponen para demostrar la pre-existencia de este concepto. Al hacer esto, también busca identificar de una mejor manera los precedentes del estado de naturaleza de Hobbes y dilucidar su relación histórica con diversos conceptos escolásticos relacionados, aunque distintos, con los que ha sido confundido.

**Palabras clave:** estado de naturaleza; *status legis naturae*; *status naturae purae*; segunda escolástica; Quentin Skinner; Leo Strauss.

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The origin of the Hobbesian concept of state of nature has been a recurrent subject of study. Thanks to these investigations, we know quite precisely the evolution of the concept (Lechner, 2019) and the various traditions that converge in its conformation (Hamilton, 2013). In general, there is some consensus on the originality of the Hobbesian concept and on its sources.

This notwithstanding, very influential authors have pointed out that, with some secondary differences, the concept of state of nature already existed before Hobbes, especially in the authors of the second scholasticism or even in Thomas Aquinas, so that Hobbes's originality would not be in inventing the concept, but in incorporating very diverse elements— taken from a huge variety of sources—into a new synthesis.

Straumann (2015, p. 130) synthesizes this practically canonical position<sup>1</sup> as follows:

the *communis opinio* in the scholarly literature agrees that the concept of the state of nature was made usable for political philosophy by Hobbes after it had served medieval Christian theology as an antithesis to the state of grace. In Thomas Aquinas, *status legis naturae* describes the state in which humanity found itself before the revelation of Mosaic law. This use can also be found in the late Spanish scholastics, and it establishes a fundamental dichotomy between *status naturae* on the one hand and *status legis Christianae* on the other. “State of nature” in this sense can also describe a political community, specifically a pagan one, and need not refer exclusively to pre-political conditions<sup>2</sup>.

The paragraph closely follows Strauss (1953) and contains virtually all the theses I discuss here.

The aim of this article is to criticize this *opinio communis* by showing that it is based on several confusions, that none of the texts that have been pointed to as evidence is conclusive and that, in many cases, the references are simply incorrect. It certainly does not follow from this that the concept was Hobbes's creation; but it does confirm that any use of the term with respect to authors prior to Hobbes requires caution and important precisions. In doing so, it will also contribute to better identify the precedents of Hobbes's state of nature, to elucidate its historical relationship with related, though different scholastic concepts it has been confused with and to explain in what sense and with what

<sup>1</sup> As far as I'm aware, only Höpfl (2004, 231; 2006, 127) and Schrock (1997) have criticized it explicitly; Terrel (2001, 398-399) and Scribano (2008) distinguish the concepts, but they do not enter into controversy with other authors.

<sup>2</sup> Straumann emphatically criticizes Höpfl and Thompson (1979) for attributing to Hobbes the invention of the concept (Straumann 2015, 130 n3), and Tuck (1999) for attributing to him the invention of the term, which would already be present in Grotius (Straumann, 2015, p. 131 n8). The latter issue will not be discussed here.

limits it can be stated that the thought of the late scholastics constitutes one of the sources of the modern concept of the state of nature.

I will not consider here the wide use of the term that generically designates the various versions of a pre-political condition of man. Examples of such use are the classic works of Carlyle and Carlyle (1903), Gough (1957) or Gierke (1987)<sup>3</sup>, but also the *Introduction* of the very recent *State of nature* (Somos and Peters, 2022)<sup>4</sup>. It is not my intention to contest this use of the term, but the claim that it is the same concept that, from Hobbes onwards, characterizes modern political philosophy.

Posed in this way, the problem only arises with respect to authors immediately prior to Hobbes who used very similar terms to designate totally different things; that is, with respect to Thomas Aquinas and the authors of the second scholasticism. With respect to all other alleged precedents, arguments are simply based on erroneous or hardly understandable references.

Specifically, I will try to show that:

1. Within the various elements that converge in the modern and specifically Hobbesian notion, there is one that is proper and characteristic of the scholastics, from which it took its name: the idea of a “pure” consideration of human nature, which is profoundly different in its content, although not so much in its logical structure.
2. There are in these authors other notions with similar names and a common “historical” or “preterite” connotation, such as *status legis naturae*, which also contributed to the shaping of the concept, but which designate a completely different thing.

Consequently, it is incorrect to affirm that the concept is present in the theologians of the second scholasticism.

3. The other authors who have been pointed out as proof of the preexistence of the concept
  - a) simply propose a pre-political condition of man, i.e., a “state of nature” in a loose sense, or
  - b) they use similar expressions with completely different meanings.

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<sup>3</sup> Carlyle and Carlyle (1903) use the concept profusely in volume 1 (2nd to 9th century) but do not seem to use it in volume 6 (14th to 17th century).

<sup>4</sup> The term does not appear in Burns and Goldie (1998).

4. Due to their corresponding influence on the shaping of the concept—which I will try to describe in the present paper—the terms *status purae naturae* and *status legis naturae* came to be used very early on as synonyms for the modern state of nature, thus leading to confusion about their original meaning.

If all this is correct, we should conclude that the secondary literature has not yet succeeded in clarifying the real relationship between modern *status naturae* and the thought of the second scholasticism, and that this is so largely because it has been thought that the problem was already solved (notable exception seems to be Scribano (2008)).

The paper is structured as follows: first (1), I will present a general outline of the way in which the pre-existence of the concept has been understood in general, and the relationship between the Hobbesian version and the thought of second scholasticism in particular, in order to identify the main problems raised by this reading. To do this, I will use the synthesis presented in a remarkable article by James Hamilton (2013). Then (2), I will carefully analyze the arguments and textual evidence presented by two particularly influential authors, to which many others refer as proof of the conceptual continuity I am trying to criticize: Leo Strauss (1953)<sup>5</sup> and Quentin Skinner (1978)<sup>6</sup>. In a third place, I will consider the—significantly scarce—arguments and textual evidence from other authors (3). Finally, on the basis of the distinctions raised throughout the discussion with these scholars, I will draw some conclusions about the way in which each of these concepts contributes to the shaping of the modern concept of the state of nature (4).

### 1. “Hobbes did not invent the concept”: on the presence of an UFO

One of the most comprehensive studies on the sources of the Hobbesian concept is the forementioned article by Hamilton (2013), entitled “The origins of Hobbes’s state of nature”.

Regarding our particular problem, Hamilton (2013, p. 153) states that

Hobbes did not invent the concept of a state of nature but his usage was unusual in its single-minded secularity. It emerged in medieval theology as the pre-lapsarian condition conceived as the first state, the state of nature as originally established, and a state of innocence. After

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<sup>5</sup> Strauss is followed, e.g., by Hamilton (2013), Lev (1989, p. 24) and the aforementioned Straumann (2015, p. 130).

<sup>6</sup> Skinner is followed, e.g., by Salmon (1991, p. 238); Claeys (1989, p. 37); Zagorin (2005, p. 37); Azevedo and Moreira (2009, p. 47); Nootens (2013, pp. 22-23); Pierson (2013, p. 161); with qualms, Braun (2007, p. 15); emphatically by Beitz (2009, p. 55).

the Fall, people lived in a state of fallen or corrupt nature. However the term “state” itself was not theological. The Spanish Dominican Domingo de Soto, following Thomas Aquinas, defines it as “a condition of liberty or servitude”.

Hamilton’s reasoning, which in its general lines is very similar to that of Strauss (whom he quotes on this point) and Skinner, contains the following claims:

- a) What is original in Hobbes is not the concept of state of nature, but its secular use.
- b) The origin of the concept is theological and medieval, because
- c) it meant in the first place the state of innocence in which man was originally created.
- d) After the fall, man lives in a state of corruption of his nature that receives the same name.
- e) The term “state”, on the other hand, is not theological, for it simply means a relatively stable “*conditio libertatis, aut servitutis*” (Soto, 1556, p. 683)<sup>7</sup>.

The first claim (a) is precisely what I would like to criticize. Regarding Hamilton’s second claim (b), it is necessary to introduce a precision that completely modifies the general sense of what he affirms in (c) and (d).

The idea that man’s nature has passed through various “states” throughout history has its origin in a rigorously theological context, since it corresponds to the various stages of the history of salvation. These stages and their correlative “states” were extensively studied by medieval theology. In this sense, Hamilton’s thesis (b) is correct.

However, the distinction between these states *is not historical*, but theological and metaphysical. Although they were formulated in the context of a theological consideration of history, their differences are not limited to the historical moment in which they occur, but instead are relative to the most intimate constitution of man. They are states of man’s nature, not moments of his historical evolution. Precisely for this reason it was possible that, after several centuries of theoretical elaborations of very different kinds, at the dawn of modernity, some theologians came to conceive a state of human nature that is not historical, but purely hypothetical and abstract, which was called *status purae naturae*, state of pure nature.

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<sup>7</sup> Facsimile edition in Soto (1967). The reference corresponds to *De iustitia et iure* VII, q.5, a.1 (“*utrum religionis votum ad statum perfectionis attingat*”), “*Id quod sic elucidatur, status, idem sua voce esse indicatur quod conditio libertatis, aut servitutis*”.

The very idea of a “pure nature” shows that the theological question concerning the possible states of human nature (i) is not identical with the historical or mythical question concerning the conditions in which man has actually lived (ii). The two issues merge into one when myths describing human evolution include anthropological explanations (as does Hesiod in *Works and days* 106-202 or, without the historical progression, Plato in *Republic* 415a<sup>8</sup>), but they are still formally different.

Raised by theologians, the question (i) concerning what is natural to man regardless of any historical moment and any extrinsic consideration excludes the influence of the supernatural order, both from grace and from sin. Whether or not he was the first to raise it, the classic *locus* of the distinction is Cajetan’s commentary on *Summa Theologiae* I-II q.109, a.2 (Aquinas, 1892, pp. 292-293). Supernatural, despite the controversies concerning its concept (Sanz Sanchez, 2017), means here something that exceeds human nature and comes to it from outside, because of an intervention of higher instances without which this nature remains thinkable and possible.

Raised by the modern political philosopher, the idea of a “pure” consideration of human nature came to mean something completely different. The extrinsic influence that was removed was no longer that of a superior nature, but that of social or political life (Terrel, 1997, p. 399): it was now a matter of considering the nature of man outside political society, thus rejecting the Aristotelian premise of man's natural political character.

This difference of approach modifies the meaning of the second question (ii), referring to the conditions in which man has actually lived throughout history. While the theologian (and Hesiod or Plato) asked sacred history what were the possible states in which man’s nature could exist, and in what way those states produced the essential characteristics of each stage of history, the modern philosopher inquires how man is *always*—by nature—and in what way that immutable nature explains each of the political states in which he can find himself.

Drawing on this hypothetical construction and on elements of the other *status* (above all, but not only, on the state of fallen nature; Thornton (2005)), Hobbes conceived man’s pre-political condition as a description of his more authentic nature, from which the political order can be explained. Since then, there have been multiple versions of this single concept, which differ greatly in

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<sup>8</sup> Hesiod (2006, 94-105); Plato (1937, 304-305).

the description of the original condition but have the same name and structure and fulfill a practically identical theoretical function.

From the theological concept of “state of pure nature” Hobbes seems to have taken the name and the precise structure of the concept<sup>9</sup>. Through an “eclectic philosophical process” (Hamilton, 2013, p. 170), elements of classical myths, Pyrrhonist skepticism, historical-anthropological observations from his time and, most especially, from Thucydides (Klosko and Rice, 1985), theological controversies about original innocence and the consequences of original sin and a particular conception of natural law and subjective rights<sup>10</sup>, among others, converge in his “thought experiment” (Tricaud, 1988; Pasquino, 1994; Martinich, 2005, p. 63).

If what has been said so far is correct, it is necessary to introduce important precisions in points (c) and (d). For the purposes of the attribution of the name, this canonical reading does not make major distinctions between the condition of man before and after original sin: without denying their differences, it seems they can be designated with a single name, because they are different versions or realizations of the same idea.

Strictly speaking, however, in medieval or early modern theology there is no such thing as a state of nature which exists in different ways before and after the fall; what does exist are different states of human nature. The distinction may seem too subtle, but it is very relevant. Properly speaking, Hobbes’s state of nature is neither the state of innocence, nor the fallen state of nature (Thornton, 2005, pp. 164-168; Hoekstra, 2007), nor any of the states of nature defined by the theology of his time. And vice versa: none of these states is the state of nature, because all of them are states of human nature. In the theological context from which the name is taken, the generic expression “state of nature”, without an adjective to determine it, is meaningless.

In Romance languages, it is possible to express this difference by inserting an article: both in the plural and in the singular, the Spanish expression “*estado(s) de la naturaleza*”, as the Italian “*stato*” or “*stati della natura*”, denote various states in which human nature can be found. On the other hand, the expression “*estado de naturaleza*” or “*stato di natura*”, just like the English “state of nature”, and despite

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<sup>9</sup> Hobbes knew Suarez well, as Forteza (1998) shows.

<sup>10</sup> Both Hamilton (2005, especially p. 164) and Pagden (1995) subscribe to Brett's (1997) thesis on the influence of Fernando Vázquez de Menchaca (1931) on the Hobbesian conception of subjective rights.

its peculiar grammatical structure<sup>11</sup>, have been adopted by the common use of language to designate a “natural”, original or innate state of man, peculiar to modern thought. To connote in English the first kind of meaning, we will use the expression “state of human nature” or the plural form “states of (human) nature”, to make apparent a fundamental difference: since the state of nature is only one, every other state is not natural.

Regarding point (e), it is true that the Latin word *status* does not always refer to a theological concept and that, as Soto points out, it can embrace very different ways of life: there can be a state of poverty, of religion, of marriage or celibacy, etc. It is, however, a different sense of the word, and it would be a mistake to confuse them.

The key to the problem can be found in the same quotation from Soto: the word *status* means there a stable condition of freedom or servitude. According to this sense, it would certainly be possible to think of a “state” of life which, for some reason, we could call *naturalis* or even *naturae*; but that *status* would be neither one of the states of human nature of the scholastics nor the modern state of nature.

Referring to human nature as such, as Soto (1552) himself uses the word *status* throughout his *De natura et gratia*, it only has in common with that first meaning the idea of stability in a way of life. But a *status* of human nature is much more than a concrete mode of man’s life; it is an intrinsic disposition of nature with respect to its supernatural end (Sagüés, 1964, p. 768, n.689; Rahner, 2006)<sup>12</sup>. Such an idea necessarily implies that nature itself, without being destroyed or transformed into another, is able to receive an extrinsic influence that completely alters the attributes that define it, stably placing it in in another *status*<sup>13</sup>. Something like this is only possible in a theological context; only the mode of the ordination of human nature to God, author of nature, is capable of producing these effects. In this sense, which is the relevant one here, the term *status* is strictly theological.

By referring to the pre-political condition of man as state of nature (Strauss, 1953, p. 184), Hobbes transformed a concrete and circumstantial situation —a *status* in the sense proposed by Soto

<sup>11</sup> Morphologically, the expression makes the adjective *naturalis*, understood as “innate”, equivalent to the genitive of the noun *natura*; semantically, it presents human nature as a contingent *status*.

<sup>12</sup> Making the same distinction between the meanings of *status*, Sagüés (1964, p. 767; n.689) quotes the following definition, which he attributes to Suarez, “*conditio permanens qua genus humanum se habet, secundum legem divinae providentiae, respectu finis ultimi et mediorum ad eum obtinendum*”.

<sup>13</sup> Thomas Aquinas expresses this identity in *Summa Theologiae* III, q.61, a.2, ad 2, “*eadem est natura hominis ante peccatum et post peccatum, non tamen est idem naturae status*”.



and quoted by Hamilton— into a description of human nature —according to the theological sense of *status*.

Thus understood, the concept of state of nature seems to be Hobbes's invention. In any case, it is not present in the work of the theologians from whom it takes its name and none of the texts offered as proof of this presence demonstrates the contrary.

As Höpfl (2004, p. 232) states it with a clarity that excuses the extension:

The idea of a historical originating act presupposes a state of affairs preceding the act, and students schooled in contractarian accounts of political authority from Hobbes to Rawls are bound to regard the features of that 'original condition' as decisive for establishing the terms and conditions of the originating act. But neither Molina nor his scholastic predecessors ever depicted that state or even gave it a name, and most Jesuits never mentioned any pre-civil condition. And no one at that time, scholastic or humanist, thought that 'state of nature' was the appropriate concept for the pre-governmental (or in some cases pre-contractual) condition. The hypothesis of men *in puris naturalibus*, the *status legis naturae*, or even a *status naturae* or *conditio naturae/naturalis* hardly ever occurred in this context, and did not function like Hobbes's or Locke's 'state of nature' when it did [...]. Commentators have supposed, groundlessly, that the pre-governmental condition was considered to be 'natural' as opposed to 'civil', whereas it was invariably thought of as a social and in some sense civil condition, when it was thought of at all.

## 2. Hunting an UFO: textual evidence for the pre-existence of the state of nature

These fundamental distinctions about the various senses of the term *status* in medieval and scholastic theology are the basis for criticising the textual evidence invoked by the two authors whom most of the literature follows and who have attempted to show the existence of the concept before Hobbes.

### 2.1. Leo Strauss and *Natural right and history*

In his classic work *Natural right and history*, Leo Strauss (1953, pp. 184-185) tries to show that Hobbes's novelty did not consist in having invented the concept, but in "the identification of the pre-political life of man with 'the state of nature'". Thus, the state of nature "became an essential topic of political philosophy only with Hobbes, who still almost apologized for employing that term". The thesis, stimulating and very rich in consequences, contains an ambiguity that induces to multiple confusions.

Indeed, according to Strauss,

- a) “Prior to him the term ‘state of nature’ was at home in Christian theology rather than in political philosophy. The state of nature was distinguished especially from the state of grace, and it was subdivided into the state of pure nature and the state of fallen nature. Hobbes dropped the subdivision, and replaced the state of grace by the state of civil society”.  
From Hobbes onwards, the remedy to the “inconveniences” of this “state of nature” is not “divine grace”, but “the right kind of human government” (1953, p. 184).

Immediately afterwards, in an extensive footnote, Strauss states that:

- b) the “original meaning of the term” can be found already in Aristotle (*Physics* 246a 10-17), Cicero (*Officiis* I, 67; *De finibus* III, 16, 20; *Laws* III, 3)<sup>14</sup>;
- c) according to Thomas Aquinas, before Mosaic law man lived in the *status legis naturae* (*Summa Theologiae* I-II, q.102, a.3, ad 12), which is the same state in which, according to Suarez, the “Gentiles” continue to live in, which implies that it is a “condition of civil society”, according to *De legibus* I, 3, sec. 12; III, 11 («*in pura natura, vel in gentibus*») and 12 («*in statu purae naturae, si in illo esset respublica verum Deum naturaliter colens*»);
- d) the same concept of “*status legis naturae*”, as opposed to “*status legis Christianae*”, is present in Grotius (*De iure belli* II.5, sec. 12.2) and, as opposed to human law, in Wyclif (*De civili dominio* II, 13);
- e) finally, the prehistory of the Hobbesian notion of state of nature is found in Soto, as reported by Suarez in *De Legibus* II, 17, sec.9.

The opposition between different states raised in (a) may be found in English Reformed theology (at least in Love, 1652, quoted by Hoekstra, 2007, p. 112), but not in Catholic or medieval theology. It was a matter of controversy whether this “natural state” or “state of nature” corresponded to the pre- or post-lapsarian situation (Thornton, 2005; Hoekstra, 2007) but it certainly did not correspond to the *natura pura* of the scholastics.

Catholic theology, on the other hand, did not know a state of nature opposed to the state of grace, but many states of human nature, among which there was not the state of grace, but the *status*

<sup>14</sup> I present the references as reported by Strauss.

*naturae reparatae* or *redemptae*. In fact, the term “state of grace” does not mean a *status* of human nature in the history of salvation, but the singular condition of the soul of the person justified by grace (Denzinger, 2009, nn.1520-1531, especially 1524), which cannot be known with certainty but only supposed and expected from God (nn.1533-1534).

It is though also incorrect to affirm that the state of nature is divided into the state of pure nature and the state of fallen nature, for at least two fundamental reasons:

- (i) because they are not two kinds of states of nature, if by this it is meant one and the same thing (the state of nature) which can occur in two different ways (pure or fallen), because that thing did not exist at all. In medieval theology there were many possible states of human nature, none of which could receive the generic name; in Reformed theology, when it does occur, the name designates either the state of innocence or the fallen state;
- (ii) because the complete list of possible states of human nature with respect to the supernatural order is not limited to these two (pure or fallen), as it also includes the state of original innocence, with further possible distinctions within it (e.g., *status naturae integrae* and *status iustitiae originalis* (Sagüés, 1964, pp. 768-769; nn.690-691)), each of which had its own relevance in the political order.

As regards to the *status legis naturae* from Thomas Aquinas (c), it does not refer to a *status* of human nature, although in a certain sense it implies it, but to the condition of man with respect to the moral law<sup>15</sup>. Like the circumstantial *status* defined by Soto (1556, p. 683), the *status legis naturae* designates a contingent and particular situation: the historical moment in which only natural law was in force, because no other law had been given to men; neither the *lex vetera* of Moses, nor the *lex nova* of Jesus Christ. This *status* is the same thing as the *aetas legis naturae* that Vitoria (1960, p. 1019) speaks about in

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<sup>15</sup> The expressions "*status legis novae*" or "*gratiae*", "*status legis veterae*" and "*status legis naturae*" appear occasionally in the work of Thomas Aquinas to designate the moral condition of man under each of these laws (all quotations are taken from the *Corpus Thomisticum* edited by Enrique Alarcón; www.corpusthomicum.org). According to *Summa contra Gentiles* IV, 55, 11, under this criterion the "*status humani generis*" are three, "*primus ante legem; secundus sub lege; tertius sub gratia*". The biblical commentaries use the expression "*status legis*" to designate the time of the Mosaic law. In *In IV Sent.*, d.1, q.1, a.2, qc.3, it is asked whether in the "*status legis naturae*" the sacraments would be necessary. In the other statuses, the *lex naturalis* remains in force but "*recipit determinationes diversas*" (*In IV Sent.*, d.34, q.1, a.1 ad 4). The treatise on law in the *Summa Theologiae* (I-II, q.90-108) distinguishes between "*status legis veterae*" and "*status legis novae*", but I could only find the expression "*status legis naturae*" once, in the place quoted by Strauss (q. 102, a.3, ad 12). *Summa Theologiae* III, q.60, a.5 also alludes to "*status legis naturae*" (but not to the others) as that in which "*nulla lege exterius data*" to man. According to this exploration, which does not intend to be exhaustive, "*status legis naturae*" is a normal term of very scarce use (only three places in the entire work of Aquinas). "*Status naturae*" appears once in the *Commentary on the Letter to the Hebrews* 11, 2, in which he distinguishes three statuses, "*scilicet naturae, legis et gratiae*". The sense is that of subjection to the law; the use of the term is purely casual.

*De temperantia*. Suarez himself, in the first text quoted by Strauss (Suarez 1612, 17; I, c.3, n.12), in distinguishing between “*status legis naturalis*”, “*scriptae*” and “*gratiae*”, specifies that this is a distinction between states of man according to the law (“*status hominum per leges*”), not between states of human nature according to the order of grace.

Certainly, Suarez’s *status naturae purae* is also a *status legis naturae*, but this does not mean that they are the same thing, as Strauss would like to demonstrate with the other two texts.

In *De legibus* III, c.11, Suarez asks whether the end of civil power is the same “*in Ecclesia*,” that is, after the order established by redemption, as that which “*ut in pura natura, vel in gentibus spectari potest*” (1612, 235). The whole chapter aims to show that civil power is not ordered to the “eternal happiness of the future life”, nor to the “spiritual happiness” in this life (1612, 237; n.6), nor even to the happiness of the members of the community singularly considered, but only to the “happiness of the perfect human community” as such (1612, 238; n.7). Nowhere in the text is it suggested or implied that the “Gentiles” live “*in pura natura*” nor is the relationship between the two situations even posited; it is simply assumed that, *with respect to the end of civil power*, the *status purae naturae*, which is strictly hypothetical, and the *status legis naturae*, in which the “Gentiles” actually live, are identical. The passage does not allow to identify them.

This same coincidence is all that the third passage quoted by Strauss allows to conclude. Dealing with the subject matter of civil laws (1612, 244; III, c.12, n.9), Suarez argues that they may command things concerning God insofar as they are necessary for the good of the *respublica*, so that if in the state of pure nature there were a *respublica* that would render natural worship to the true God (“*in statu purae naturae, si in illo esset respublica verum Deum naturaliter colens*”), civil law could prohibit and punish false cults and doctrines. Suarez’s presumption, which is all that Strauss quotes, seems to assume that in the *status purae naturae* there would be *respublica* and leaves open the possibility of a natural worship of the true God, which we know from other passages that Suarez considers natural law (1612, 129-133; II, c.7; 1612). It does not seem possible to conclude much more.

Suarez’s *status purae naturae* is a “condition of civil society”, just as Strauss claims; but the proof of this is not (it cannot be) the life of the “Gentiles” in *status legis naturae*, for they do not live in *status purae naturae*, but in the state of fallen nature, as everyone else after Adam’s fall.

Regarding (d), the link between this *status legis naturae* and the modern state of nature is certainly possible, as the passages from Grotius and Wyclif show, but for reasons very different from those that link it to the different theological states of human nature and, most especially, to the state of pure nature.

In order to clarify this linkage, it is necessary to re-emphasize the difference between the origin of the name (i) and the theoretical content that each of the various notions that contribute to its conformation brings to the concept (ii).

- (i) Strictly speaking, the expression *status legis naturae* means something completely different from the *status purae naturae* from which the state of nature takes its name.

*Status legis naturae* means a historical condition, a stage in man's history; *status purae naturae* designates an abstract and fictitious way of considering that nature. When Hobbes invents his state of nature, he merges both senses in one term which, if not new, is at least distinct from these two.

The nominal similarities and the conceptual indistinction in post-Hobbesian philosophy have easily confused scholars who have read the expression *status legis naturae* as if it were the same as *status purae naturae*, which they had already identified with the modern state of nature.

- (ii) With respect to the content of the concepts, it is possible to identify a certain overlap between the three, at least in some respects.

Indeed, both the *status legis naturae* and the *status veterae legis*, in which the Mosaic law rules, historically coincide with the state of fallen nature, which is one of the sources of the Hobbesian state of nature. However, the passage from one to the other, such as the entry into civil life by virtue of a covenant, does not entail any change in man's nature.

At the same time, both *status* are opposed to the *status novae legis*, which does entail a radical change in human nature. In the Thomistic reading, received in its essentials by the theologians of the second scholasticism, the evangelical law is not so much a moral precept to be fulfilled as a radical renewal of the heart that makes possible the fulfillment of the moral law moved by charity<sup>16</sup>.

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<sup>16</sup> For example, *Summa Theologiae* I-II, q.106, aa.1-2; q.108, a.3; q.109, a.4.

Thus, in terms of its concrete content, the modern state of nature is more similar to the *status legis naturae* than to the *status pura naturae*, since both are characterized by the presence of natural law alone, which can be understood in opposition to divine law (as in Grotius' quotation) or in opposition to human law (as in Wyclif's quotation).

From the *status pura naturae*, therefore, modern state of nature seems to have received only the name and its abstractive logical structure.

Regarding the “original meaning of the term” (b), finally, the list of sources quoted by Strauss is quite surprising. The passage from Aristotle's *Physics* (1996, p. 175) refers to the ἔξεις, i.e., habits or dispositional states which, when perfect, are said to be “natural”. It is difficult to see in which way this relates to the Hobbesian state of nature. As for Cicero's texts, they all seem to refer to the normative character of nature, which is distinctive of Stoicism: *De Officiis* (1928, p. 68) uses the expression “*status naturae*” to mean a virtuous condition from which arduous or painful things (*acerba*) should not turn us away; *De finibus bonorum et malorum* (2010, p. 371) refers to that natural condition whose conservation is the end of our first inclination and the object of our first duty: “*ut se conservet in naturae statu*”; in *De legibus* (2006, 237), finally, Cicero claims that nothing is more appropriate to the “*ius condicionemque naturae*” than the “*imperium*”, without which neither the house, nor the city, nor the nation, nor the human race are sustained, specifying that by that “condition and right” he means the law. None of these texts seems to refer to the “*conditionem hominum extra societatem civilem*” described in Hobbes's *De Cive*, which Strauss takes as the starting point of his disquisitions, nor, except for the last one, to “the life in a healthy civil society”, to which he seems to refer them.

It is difficult to determine, finally, what exactly Strauss meant when he placed the prehistory of the modern concept in Soto and Suarez (e). Possibly because of an *erratum* that is impossible to correct beyond mere presumptions<sup>17</sup>, Strauss' citation (*De legibus* II, c.17, n.9; Suarez 1612, 183-184) refers to a text on the difference between natural law and the law of nations, in which neither Soto nor his work is named. While the aspects of Soto's thought that can be linked to the modern state of nature are numerous—for example, his description of the social consequences of original sin or the conventional origin of private property—most of them are neither exclusively his nor characteristic of his time; with their differences, they are simply Catholic theology, already present in Augustine of

<sup>17</sup> Nor does the presumption of the most plausible errors solve the problem, neither *De legibus* I, c.17, n.9; nor III, c.17, n.9; nor II, c.7, n.9; nor II, c.16, n.9; nor II, c.18, n.9 contain anything like what Strauss reports. The most plausible text would seem to be the nearby II, c. 18, n.3 (Suarez 1612, 185) which I will discuss below.

Hippo or in Thomas Aquinas and their respective traditions, which stand at opposite poles with respect to the problem of the relationship between political society and sin, but are unanimous with respect to the necessity of political life and the supernatural character of justification.

In general, one is left with the feeling that Strauss, like the other authors we consider here, is too quick to read any expression that includes the idea of a *status* and the reference to *natura* as a precedent or synonym of the modern concept. In fact, the same note we are analyzing also consigns an incidental reference by Montaigne (2007, p. 572) to “*nostre estat naturel*” whose link with the Hobbesian *status naturae* is at least obscure.

Beyond these difficulties in the use of sources, the underlying discrepancy with Strauss always concerns the pre-existence of the concept. If my reasoning is correct, Strauss’s thesis on Hobbes’s originality (which seems plausible, although it is not indispensable to subscribe to it in this context) should be expressed in this double affirmation: from Hobbes onwards (i) the “pre-political life of man” fully describes his authentic nature; (ii) for this reason, it can be designated as “a condition of mere nature” or as a “*status purae naturae*”, according to a language borrowed from theologians, or, with a new expression, as a “state of nature”.

## 2.2. Quentin Skinner and Foundations of modern political thought

Quentin Skinner (1978) also attempts to situate the origin of the modern state of nature in the work of the theologians of the second scholasticism, whom he gathered under the name of “Thomists”.

Throughout chapter V of the second volume of his *Foundations of modern political thought*, especially in the section entitled “The theory of political society” (1978, 148-166; esp. 155-160), Skinner identifies a series of elements proper to the “natural condition of mankind” described by these authors which, subsequently, will converge in the modern concept of the state of nature. I will try to reproduce in order the essentials of his argumentation, and then proceed to discuss it.

- a) Skinner introduces the problem in the context of the need for these authors to refute the heretical thesis according to which “the establishment of political society is directly ordained by God”, to demonstrate, instead, that “all secular commonwealths must originally have been set up by their own citizens as a means of fulfilling their purely mundane ends” (1978, p. 154).

In this context, it becomes necessary to consider “the nature of the situation in which men may be said to find themselves ‘simply in the nature of things’”. This condition, certainly, cannot be political, even though it might be social, whereby the foundation of any kind “of commonwealth” must come deliberately from a “concerted action on the part of their own citizens” (1978, p. 155).

The appropriate method for this description of the “natural” or “original condition of mankind” (1978, p. 155, 158) consists, at least in Suarez, in “an examination of what may be said ‘to exist immediately in the very nature of things’”, referring in note to the discussion of the human capacity to make laws in *De Legibus* III, especially at the beginning of chapter 2.

- b) Although “these theorists rarely make use of this canonical phrase”, “[t]here is no doubt, however, that these writers possess the concept of the state of nature even when they do not possess the phrase, and that they already recognise the heuristic value of employing it as a device for elucidating the relationship between the positive laws and the theorems of natural justice”.

Indeed, Skinner continues, “[i]t would be a mistake, moreover, to suggest (as some commentators have done) that the phrase itself is never used by any of these theorists”. As an example of this mistake, he refers to volume III of Frederick Copleston’s *History of Philosophy* (1953, p. 348).

The proof of this presence of the concept would be in that “Molina, for example, refers at several points to the condition of mankind ‘*in statu naturae*’ and he imagines the ‘*status naturae*’ as that situation in which all men may be said to have found themselves after the Fall and before the inauguration of political societies”. This statement is supported by references to Molina (1659, pp. 1688-1689) and to Blaise Romeyer (1949).

- c) For these authors, Skinner concludes, this original condition of man is defined by an “equality, liberty and independence” (155) in everything similar to that of the modern state of nature, except for two fundamental differences, taken from Thomas Aquinas: the full validity and knowledge of the natural moral law and the denial that this “freedom and independence” implies solitude and absence of social bonds (1978, pp. 156-157).
- d) Consequently, the problem that Suarez tries to answer would be essentially the same as the one posed by Locke and Rousseau, which can be formulated in two different questions: what motivates men to abandon the original freedom of the state of nature?; and how do free and



equal men legitimize the power of one man over another at the moment of establishing social life? (1978, pp. 158-159).

According to Skinner, their answers (at least that of Suarez) are very similar to those of Locke: the first question is answered by noting the difficulty of preserving peace and justice without laws, because of man's wickedness resulting from original sin; the second, by means of the figure of consensus manifested in a choice in the state of nature.

The basic assumption in Skinner's reasoning (a) is to consider this alleged state of nature of the authors of the second scholasticism as a consequence of thinking of man "simply in the nature of things" ("*ex (sola) rei natura*"; Skinner refers to *De Legibus* III, c.1, n.1, corresponding to Suarez 1612, 196, and to c.2, n.1; in 1612, 201). In this logic, the state of nature would be nothing other than the consideration of man "*in puris naturalibus*". The problem, however, is much more complex.

The consideration of what follows from something "*ex natura rei*" is a methodological principle that does not apply only or in the first place to man, but runs through the entire work of Suarez. Applied to man, it gives rise to the idea of a "*status naturae purae*", a concept whose primary meaning is not political, but theological. Then, by mentally excluding everything that comes to human nature extrinsically, Suarez does not arrive at a pre-political condition, but at a condition that we could call "non-theological".

Indeed, this notion aims to explain the relationship between nature and grace in the context of the ordering of man to his ultimate end. By virtue of this abstractive consideration, Suarez and the authors of this period introduced a sharp separation between natural end and supernatural end of man (Esposito, 2015) that marked the following four centuries of Catholic theology<sup>18</sup>. But neither the consideration of man *in puris naturalibus*, nor the resulting *status naturae purae*, aim to explain the origin of political society.

Probably because of this first confusion, Skinner constantly translates *status purae naturae* as "natural condition of mankind", exactly the term that gives title to chapter XIII of Hobbes's *Leviathan*. The conceptual difference is twofold: (i) *status purae naturae* is a *status*, not a condition, and, for that very reason, (ii) it does not refer to mankind, but to the common *natura* of man. This, in turn, allows

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<sup>18</sup> The starting point of this controversy is the classic *Surnaturel* by Henri de Lubac (1946), whose main theme is precisely the critique of pure nature.

us to explain a third difference: (iii) while Skinner uses the adjectives “natural” and “original” interchangeably, the *status* of man *in puris naturalibus* is anything but “original”, since it does not refer at all to a certain type of primordial circumstances, real or imaginary, but to an abstract consideration of the nature of man apart from any actually existing condition.

Skinner’s erudite work shows interesting elements of continuity between various theses of the authors of the second scholasticism and some aspects of the modern concept of the state of nature, such as the natural “equality, liberty and independence” of all men (c). None of them, however, is sufficient to conclude that they had already conceived this notion. It is true that Vitoria, Soto and Suarez insist that “man has been created free” (Skinner, 1978, p. 155) and that, according to this same principle, men are equal and no man has a natural right to rule over another; but this idea is as old as the *Digesta*: “*iure naturali omnes liberi nasc[untur]*” (Justinian, 1889, volume I, 198; 1, 1, 1, 4). Regarding independence, Skinner seems to understand it as synonymous with a juridical freedom that excludes slavery, though not servitude, as seems to be inferred from his reference to Soto<sup>19</sup>; if so, again, it is a juridical dimension of the natural equality and freedom of man recognized long before. Unlike what happens with the state of nature, which did not exist as such before modern thought, all these concepts were part of the juridical and political tradition of the West, gradually varying their meaning according to the context and the intention they were used with.

For this reason, and despite the similarity in their structure and concepts, the problem that Suarez or Molina attempt to answer is still profoundly different from the one presented to Locke or Rousseau (d). Both authors do pose the problem of the origin of the political order by assuming man *in puris naturalibus*; but since *status purae naturae* is not a hypothetical or imaginary historical condition, as was the state of nature in the classics of modernity at least until Rousseau, but a mode of considering human nature, the questions about the motives for founding society and for the legitimization of political power are not posed under the assumption of a temporal succession, be it real or fictitious. Suarez’s question is not “why abandon natural freedom”, since this freedom is an attribute of nature, not an original moment that might be preserved; nor does he ask “what serves to legitimate the act of

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<sup>19</sup> Skinner's reference is to Soto (1569, 102b-103a), corresponding to *De iustitia et iure* IV, q.2, a.2. The precise text would appear to be as follows, “*Etenim qui natura est dominus, nequit natura servus veluti rebus possessis in suum ipsius commodum vi, sed tanquam liberis sui que iuris hominibus in rem ac bonum ipsorum, eos scilicet docendo moribusque instituendo. Quapropter neque illi tenentur, veluti mancipia eis servire, sed equitate quadam & honestate naturali, nisi vbi essent mercede conducti*”. González (Soto 1968, 290, with facsimile reproduction of Soto 1556) also translates “*sui iuris*” as “*independent*”.

inaugurating a Commonwealth” (Skinner, 1978, p. 159), because that act of consent is precisely what legitimizes the Commonwealth by virtue of its natural character.

Certainly, it is not impossible to read in Suarez a pre-political *moment* that may have common elements with some versions of the state of nature (Schwarz, 2008) —even though Suarez claims that it was either brief or never existed (1612, p. 203; III, c.2, n.5)— but it seems more appropriate to read it as a pre-political *modus* of considering man (e.g., Suarez, 1612, p. 202; III, c.2, n.4). Whatever the case, this situation is not original nor natural in the sense of the state of nature (“innate” or “manifestative of the natural”) since, in the Aristotelian approach of Suarez, the natural is not the original fact, but the *telos* or full realization of something (Aristotle 1932, pp. 8-9; 1252b 30-35). Strictly speaking, even in this pre-political condition, man remains naturally political (Suarez 1612, pp. 19-20; I, c.3, n.19 and pp. 197-198; III, c.1, nn.3-4; 1613, p. 215; III, c.1, n.4 and p. 218; III, c.2, n.5).

Skinner is probably right when he states that these authors “helped to lay the foundations for the so-called ‘social contract’ theories of the seventeenth century” (1978, p. 159)<sup>20</sup>. It is also true that Locke’s argumentative structure is, at times, very similar to that of Suarez (Baciero 2003), as Skinner claims to have understood from Dunn’s work (1978, p. 159, note 2). The problem is that, as he himself acknowledges, Skinner uses “Dunn’s suggested distinctions [on Locke] to interpret the analogous structure of Suarez’s thought”, and not vice versa, as would be historically correct (Schrock, 1997).

Regarding the evidence for the use of the term by authors of the period, Skinner’s arguments are rather weaker. Copleston does not claim that “the phrase is never used by any of these theorists”; on the contrary, he attributes the concept not only to Mariana but even to John of Paris but denies that it is present in Suarez (Copleston, 1953, pp. 348-349). In none of the three cases does he distinguish between the term and the concept, and the reference to John of Paris’ *Tractatus de potestate regia et papali* suggests that he understands it in a loose sense, simply as a synonym for a pre-political condition.

As for Molina’s quotations (b), on which much of the strength of the argument depends, they are simply wrong. Skinner refers to pages 1688 and 1689 of the 1659 edition of *De iustitia et iure*, edited in six volumes by Schönwetter in Mainz (Molina, 1659), which correspond to *Disputatio* 46 of *tractatus*

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<sup>20</sup> Schrock (1997) denies this; it is possible to disagree with him on this point without affecting the substance of his critique to Skinner.

V, in which Molina discusses “*quid & quotuplex lex fit*”. At number 21 of this *Disputatio*, distinguishing among the various types of law, Molina puts in fourth place in his list, after the eternal law, the natural law and the law of the state of innocence, and before the law of grace and human law, the “*lex status naturae post peccatum*”, which includes the totality of natural law, the precepts relative to faith, hope and charity and precepts relative to original sin and to contrition for mortal sins, all of them derived from the eternal law. “*Lex status naturae post peccatum*” does not mean the way in which the law of the “state of nature” (which, by the way, does not exist at all) would have remained after sin, but the law of man in state of fallen nature. Nor does Molina’s text include any reference to an eventual moment prior to the “inauguration of political societies”. Considered in its proper context, none of this bears any relation to the modern state of nature.

Skinner adds to this erroneous quotation (to confirm it?) an article by Blaise Romeyer (1949) on the different states of human nature according to Suarez which, neither in the pages Skinner refers to (Romeyer, 1949, pp. 40-42) nor in the rest of the text, even names Molina nor, certainly, mentions a pre-political state of nature that does not exist in these authors.

### 3. SETI Project: occasional references to the pre-existence of the state of nature

Beyond merely incidental references<sup>21</sup>, most of the authors who ascribe the notion of state of nature to scholastic theologians repeat the arguments of Skinner (Salmon, 1991) or Strauss (Straumann, 2015), or use the concept in a loose sense (Tuck, 1979; Tierney, 1997; Zorrilla, 2010) or else identify the modern state of nature with one of the other states of nature, (such as Castilla (1995), with the state of innocence).

I will discuss briefly two authors who add textual arguments different from those of Strauss and Skinner.

(a) David Luscombe (1982) entitles his contribution to *The Cambridge History of Later Medieval Philosophy* (1100 to 1600) as “The state of nature and the origin of the state.” There he states that the “discussion of the origin of rulership and of the state was closely bound to an assessment of the state of nature”, because

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<sup>21</sup> Such as those mentioned in notes 5 and 6.

If men are naturally innocent, equal, and free, if property is naturally held in common, if natural law is unchanging and perpetual, the state [the Commonwealth] through its maintenance of private property, unequal liberties, and serfdom, is a contradiction of nature or at best it is based on conventions that qualify nature (1982, 760).

Luscombe's claim is somewhat more complex and nuanced than that of what I have called wide use of the term, since he does not describe a mere pre-political condition, but he also implies a certain "unnaturalness" of Commonwealth which would justify the use of the term "state of nature".

It is possible to make at least three comments to Luscombe's thesis, two of which would require a discussion that exceeds the limits of this article. First, it is quite clear that the problem only arises before the reception of Aristotelian natural politics in the thirteenth century, as Luscombe himself states (1982, p. 759); thereafter, these institutions may or may not be convenient or even desirable, but they are not considered unnatural. Secondly, these institutions (private property; unequal liberty and serfdom) would only be contrary to human nature as such insofar as it would be understood that it only truly corresponds to the state of original innocence, for those institutions were universally recognized as consequences of fallen nature. That human nature was not understood in this way by the majority of the thinkers of the period prior to the reception of Aristotle is proved by the fact that their theoretical effort was not directed to an overcoming or correction of an unnatural Commonwealth, but to its justification by virtue of human nature as it really is. Thirdly, even granting that for most authors of the period these institutions were actually contrary to nature *simpliciter*, only private property seems to have been regarded as essential to civil life at all, beyond the concrete regimes of the time. If this is so, it is not the Commonwealth as such that constitutes "a contradiction of nature", but only some of its institutions. Consequently, it does not seem correct to affirm that the pre-political condition is the natural condition of man, nor to designate it as state of nature.

(b) In the aforementioned article, Hamilton (2013, 154) states that:

The concept gained in secular associations in the writings of such diverse writers as Montaigne, Suarez and Grotius. Bartolomé de Las Casas used the term specifically for the condition of Native Americans.

The reference to Montaigne is the same as that proposed by Strauss (1953, p. 185), to which I alluded previously. Grotius, on the other hand, is contemporary to Hobbes. Therefore, only the references to Suarez and Las Casas are relevant to our problem.

The reference to Suarez (1944, p. 185) corresponds to *De legibus* II, 18 (1612, pp. 184-187), in which he wonders whether the *ius gentium* is prescriptive or only permissive, for which he discusses the thesis according to which the law of nations (*ius gentium*) does not belong to human nature “*absolute spectata*” (1612, p. 184; II, c.18, n.1), but “*iam constituta in civil communitate*”. This same “*absoluta*” consideration of human nature is designated later, in number 3 (1612, p. 185), with the expressions “*homini absolute spectatis*”, “*status naturalis hominum*” and “*pura conditio naturalis*”. As can be seen, the proximity of this concept with the terminology of the modern state of nature is quite greater. There are, however, important differences.

Suarez’s argument in point 3 aims to demonstrate that the law of nations pertains to man not only insofar as he is presupposed “*congregatus in aliqua societate humana*”, but also according to the “*status naturalis hominum*”, that is, according to the “*pura conditio naturalis, qua homo est animal sociale*” (1612, p.185; emphasis added). The proof would be that, as stated in the law “*Ex hoc iure*” (Justinian, 1889, volume I, 198; *Digesta* 1, 1, 4), the very distinction of peoples and division of kingdoms (“*discretio gentium & divisio regnorum*”) belongs to the *ius gentium*, so it could hardly be its presupposition. The law of nations, therefore, does not arise “*ex illa suppositione*”, but simply from the addition to this absolute consideration of human nature of the natural principle that the division into cities and kingdoms is more suitable to the preservation of men. The point is that this addition is possible precisely because the “*pura conditio naturalis*” does not consist in a pre-political condition at a certain moment in history, but is the very constitution of human nature, which *includes sociability and politicity* in any of its possible *status* (Suarez 1612, 200-201; III, c.1, n.11), regardless of whether one lives in a political community or not.

Admittedly, these distinctions are subtle and could be read with skepticism: however, the fact remains that without them, Suarez’s argument to prove the naturalness of the law of nations would be unintelligible. There is in Suarez a “*conditio*” or “*status naturalis hominum*”, but it is not a pre-political moment of history, but an abstract consideration of nature that includes both sociability and politicity. It is precisely because *absolute spectatus* man is social and political that he never lives alone, but he associates and tends to constitute political communities, so that a non-political life is as contrary to his nature (i.e., to his natural end) as a solitary life. What his “*status naturalis*” or “*conditio pura*” excludes is not social or political life at all, but the fact that it may imply this or that mode in particular (Suarez, 1613, p. 219; III, c.2, n.7; Höpfl, 2004, pp. 248-249). In fact, according to Suarez, there is even a *political regime* that is natural, which is democracy (Suarez, 1612, pp. 203-210; III, 3-4; 1613, pp. 219-220; III,

c.2, 8-9). Considered from that which pertains to him by nature, and abstracting from all subsequent additions (that is, *in puris naturalibus*), Suarez's man is not an individual who freely decides to join in society, but a member of a concrete political community that can be imagined outside of it.

And so, again, if in any sense this *conditio naturalis* constitutes a precedent of modern state of nature, it will be so only because of its precise structure, not because of its content.

The reference to Las Casas, in turn, refers to Pagden's *The fall of natural man* (1982, 139) in which he quotes the following passage from the *Apologética Historia*: "all these Indian peoples are, without taking them away from their natural state... well-disposed and well-proportioned to receive noble souls".

Pagden's text translates the following passage from Las Casas (1967, I, 201; c.39), which I reproduce at length for clarity:

Por todas las susodichas causas seis naturales, y por otras accidentales que se introdujeron hablando de aquéllas, queda, si no me engaño, asaz evidentemente probado ser todas estas indianas gentes, sin sacar alguna, de su mismo natural, común y generalmente de muy bien acomplixionados cuerpos, y así dispuestos y bien proporcionados para recibir en sí nobles ánimas y recibirlas con efecto de la divina bondad y certísima Providencia, y por consiguiente, sin alguna duda, tener buenos y sotiles entendimientos .

As can be seen, Hamilton's reading is based on an erroneous translation of Pagden. Las Casas is not excluding a hypothetical consideration of the Indians in a new "state", different from their "natural state"; he is simply saying that all these "*indianas gentes*", without exception ("*sin sacar alguna*"), by their very innate complexion ("*de su mismo natural*"), are of a certain kind that is superfluous to describe.

Bartolomé de las Casas does not use the term "state of nature," nor does he possess the concept. As Victor Zorrilla (2010, 27; translation is mine) states in his essay titled, precisely, "El estado de naturaleza en Bartolomé de Las Casas":

Las Casas does not use, anywhere in his work, the expressions "natural state", "state of nature" or other similar. I use them here to refer not to something Las Casas speaks of explicitly, but to his implicit assumptions. For Las Casas, the state of nature refers to a firm metaphysical condition that poses a series of basic demands on men of all times. The natural state does not allude primarily, then, to some historical period, real or idealized, nor to the human essence in

its factual existence, but to the intimate configuration that comes to man by virtue of his rational and social nature.

Thus, granted for practical reasons that the term be used with respect to the thought of the authors of the second scholasticism, it would be necessary to give it a completely different meaning. Taken in a precise and restricted way, until otherwise proved, it must still be said that Hobbes “did invent the concept”.

#### 4. *Status (purae/legis) naturae*: continuity and discontinuity of concepts

The discussion of the texts in which the state of nature has been claimed to be found before Hobbes makes it possible to specify in what sense each of the notions it has been confused with is indeed a source that contributed to its shaping, to the point that, very early on, it was designated by those very terms. Certainly, the identification of similarities and differences is not a complete explanation of its origin, which, moreover, as Hamilton (2013) has shown, is particularly complex; it is, however, an important contribution to explaining the continuity between seventeenth-century scholastic thought and a modern thought that understood itself in opposition to the latter.

As I have tried to show in this article, the scholarly literature correctly identifies a profound influence of scholastic theology on the origin of one of the most characteristic concepts of modern political thought; but this influence is much more complex and problematic than has been claimed. Much more complex, indeed, than the mere reception of an already consolidated concept.

To the extent of this influence, the modern concept of state of nature can be described in a quite unitary and homogeneous way. With its differences, it always refers to a (a) original and (b) non-political (c) situation of man, in which (d) his nature reveals itself undistorted, on the basis of which properties, (e) either in a real or fictitious temporal succession and (f) by virtue of some kind of voluntary act, (g) a proportionate political order is constituted. The description of the content of this vital condition, whatever it may be, is accomplished by (h) an abstractive process through which everything that man receives from social life becomes mentally excluded.

The concepts of *status purae naturae* and *status legis naturae* contribute in different and complementary ways to this characterization. Like the state of nature, *status legis naturae* is a condition of life (c), not a state of human nature, which intrinsically includes politicity (b), even though it may not actually occur. In this sense, non-politicity (b) is exclusive to the modern state of nature because,



unlike the two scholastic notions, it was conceived in an explicitly anti-Aristotelian context. Indeed, the *status legis naturae* does not necessarily exclude civil law, but the law of Moses or that of Jesus Christ, the latter of which does include a change in human nature.

Unlike the state of nature, neither *status purae naturae* nor *status legis naturae* are original conditions of men (a). The *status purae naturae*, in fact, is a *hypothetical* state of human nature that reveals that which is most proper to it (d), so it does not include in its meaning any kind of temporal reference (e); it can neither be attained nor abandoned, since it is indifferent to any human decision (f) and is not constituted in order to justify any particular kind of regime (g). From this concept, however, the modern state of nature took its name and two fundamental aspects that explain this homonymy: both are presented as a description of authentic human nature (d) mentally constructed by excluding all that is adventitious to it (g).

The *status legis naturae*, on the other hand, being a situation of man's life (c), includes in its meaning temporality (e), although not necessarily historicity, just like the state of nature. However, it is not a state that can be departed from by virtue of human choice (f), nor is it designed in order to justify a subsequent political structure (g). By virtue of this temporal character, and just like the state of nature, the *status legis naturae* continues to operate in a hidden way in all subsequent life situations, which are superimposed over it and modify it without abolishing it completely.

In this sense, the state of nature received from the *status legis naturae* the fact of being a certain "moment", that is, of a certain situation of life (c) that occurred in a real or fictitious past (e) defined by the absence of another particular law: the Mosaic or evangelical law, in one case; the civil law, in the other.

If all this is plausible, one would have to conclude that the modern notion assumes from other sources the idea of an original (a) pre-political (b) condition (c) conceived in function of a particular political government (g) instituted by virtue of a covenant or pact (f). All these elements were part of the long tradition of Western pactism, except for the explicit functionality of the characteristics of this state with respect to a political order that it is intended to justify (g), which is a typical feature of the modern state of nature (Klosko, 2005).

Adding the precisions noted here, this description is not particularly distant from that in which Strauss (1953, p. 184) placed Hobbes's originality: the identification of the pre-political life of man with his authentic nature.

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