Economic Globalization and Natural Law Theology

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Economic globalization has always required ideological legitimation. In the first instance this legitimation was explicitly theological; today in Roman Catholic circles, it continues to be. The first modern legitimations of what would become economic globalization were made upon the universalist bases of the "law of nations," a derivation from "natural law" as it was conceptualized in the 13th century by Thomas Aquinas and interpreted by his 16th century Scholastic successors, the Spanish Dominican and Jesuit jurists of the so-called School of Salamanca. The work of the Spanish was both continued a century later, and adapted to Protestant theological exigencies, by the Dutch jurist, Hugo Grotius, and others. These early, theologically informed justifications of economic globalization are the bases for what has come to be known as "the law of nations" and hence our traditions of international law. Even today under conditions of so-called secularization of international law, legitimations of globalization retain traces of reliance on natural law, and thus to their original religious bases.

In the broadest of senses, 'globalization' can be seen as a process or series of processes effecting worldwide linkages, joint action and the formation and maintenance of transnational institutions, made possible by recent advances in electronic communications and high-speed international travel, such as IGOs – *inter-governmental organizations* – like IMF, OPEC, WTO, NAFTA, EEU, ASEAN, UN, EEU, NATO, World Court – and arguably world politico-religious movements like Al Qa'ida. Likewise, we can list cultural and social trends, such as English as the language of business, commerce and travel, transnational migration and missionizing, world fashions in music, art, design, cyberspace as a global domain, and finally, the many NGOs – *non-governmental organizations* of worldwide relief and humanitarian organizations Red Cross/Crescent, Save the Rain Forests, Greenpeace, Oxfam, *Médecins sans Frontières*, Amnesty International and so on. This paper is limited to the subject of economic globalization, and its relation to religion.

As far as economic globalization and religion are concerned, I shall argue that the main principles behind the high-tech modern phenomenon of economic globalization is a religious history. Dating to the beginnings of Western mercantile capitalism from as early as the 16th century in the beginnings of Western

expansion, colonialism and world domination, religion played a key role in the legitimation of what we now recognize as economic globalization. (Sklair, 1999: 144, and 156-9) In this sense, while our contemporary forms of economic globalization may be unique in terms of their technologies, they are centuries old in terms of their principles of legitimacy. (Beyer, 1994: 1; Padgett, 2002) Thus, although economic globalization represents a great quantitative change in world economic (and other) conditions, it is *not* as a qualitatively new phenomenon, since it is just capitalism taken to its 'natural' and full extent, much as Immanuel Wallerstein has famously argued. (Wallerstein, 1974) In accepting Wallerstein's chronology of the rise of a global world economic system – 1450-1670 – I am thus committed to produce evidence of religious legitimations of early capitalism for this period. The bulk of this paper devotes itself to exploring the critical theological moves legitimating economic globalization of the 16th and 17th centuries in the West, primarily in Spain and the Netherlands.

"Law", International Law, Natural Law and Religion

In speaking of legitimating so robust a process as economic globalization, it would seem that much more than religious forces, understood as *moral* forces or *theological* argument, would be required. Economic globalization would seem to demand state power and its key legitimating agencies – one of which, for example, would be *the law.* Further, since economic globalization essentially occupies the international arena, the most pertinent domain of law would be *international law* or the '*law of nations.*' Where is religion in *that*? As I shall show, there is abundant religion in *that,* primarily arising first out of neo-Thomist attempts to apply *natural law* or the *law of nature* to legitimate and regulate political and economic activity in the period of early capitalism.

A small symptom of this theological heritage is how globalization is often thought to be "natural" – what everyone 'naturally' desires. How did we get to this place? In behalf of what root values has economic globalization committed us? As a matter of intellectual history, what were the debates over the principles that made economic globalization a practical possibility, and if these debates invoked religious arguments and sanctions, what were they, and who were the participants? I believe that students of religion have overlooked the religious intellectual and institutional features that make globalization possible or legitimate, as far as it is – that makes what is itself a human construct pass as something of nature, something given.

Looked at as a matter of the history of religion, economic globalization required certain *legal* legitimations, and these *legal* legitimations were, in the first instance (and in Roman Catholic circles at least continue to be), *theological.* These early religious legitimations were made in turn upon the universalist bases of the law of nations, a derivation from 'natural law' as it was conceptualized in the 13th century by Thomas Aquinas and by his 16th century Scholastic successors, the Spanish Dominican and Jesuit jurists who articulated early formulations of the law

of nations. And, while it is true that these original legitimations were made on behalf of either a Spanish or Portuguese *imperium,* the logic of these legitimating strategies made the hegemonic practices of *imperium* harder to sustain by argument. Freedom once asserted becomes, in logic, freedom for all, and not just for the *imperium.* This weakness in Iberian logic will be exploited by Grotius, as we will see. Furthermore, later, even under conditions of so-called secularization of the law of nations and international law that followed, legitimations of globalization retain traces of reliance on natural law, and thus to their original religious bases.

Let me at least try to sketch out the main lines of this story here, by touching on main authors and works that are considered high points of the discourse of the law of nations, and thus, according to my claim, main figures in the legitimation of economic globalization.

With Portuguese and Spanish 'discoveries' of the New World, Western European society was flooded with masses of new data about human cultures heretofore unknown. Attempts at understanding saw Westerners trying to fit the peoples and civilizations of the New World into pre-existing templates provided by examples of the then known world of the Mediterranean and Muslim cultures or from textual authorities such as the bible or the Western classics. These efforts soon enough were abandoned, to be replaced by what have become in time our own modern comparative ethnographic social and cultural sciences. (Pagden, 1982)

More perhaps than a venue of comparative thinking, the New World became the site of competitive commerce and colonial expansion. Spain and Portugal were burdened with the need to demonstrate the legitimacy of their claims of dominion before the Papacy and the nations of Christian Europe (Pagden, 1990: 13f). Prodded then by the need to justify their policies in the New World, the Spanish in particular, undertook a project of legal reasoning about the status of the 'others' of the New World. Were their societies really proper societies or were they more like animal packs, and thus prime targets for employment as 'beasts' of burden, slaves? Were their 'religions' really 'religions' or just magic or demonic rites? Did the Indians enjoy legitimate dominion over the territory that they occupied? Was an Indian 'king' a real 'king,' and therefore was rebellion against him just? Did native governance over their territory conform to principles of *natural law*, or did they deviate from divinely inscribed rules, such as seemed the case with human sacrifice in the New World? Under what conditions could the Spanish make war and exert their own dominion over the native folk of the New World, and still conform their behavior to the highest principles of the natural law, divinely inscribed into the human soul? Were the Indians human beings in the full sense of the term? Questions such as these were put to a rigorous system of debate in the traditional manner of the medieval Schoolmen in great Spanish universities, such as Salamanca. (Pagden, 1988; Pagden, 1990: ch. 1) Notable among the prominent theologians who challenged the designs of the Spanish crown were members of the

so-called School of Salamanca, chief among whom were, the Dominican academic, Francisco de Vitoria (ca. 1485-1546), his Jesuit compatriot of a century later, Francisco Suarez (1548-1617), and the most famous among their number, Bartolomé de las Casas (1484-1576). Even though these attempts to regulate crown policy by way of law were frequently ignored by the settlers in New Spain, the results of these debates formed what Anthony Pagden calls "an important part of the ideological armature" of the Spanish crown, and thus in their own way, Pagden at least, believes they made a difference at least for a while (Pagden, 1990: 5 and 25).

For our purposes, prominent among the arguments of the Salamanca Schoolmen were some of the first modern legal opinions governing international commerce and trade. (Pagden, 1990) Francisco de Vitoria, for example, affirmed it as part of natural law that the Spaniards had 'natural' rights to travel without restriction among the Indians, to trade with them, to import Spanish goods and to export surplus commodities, such as gold and silver, likewise to explore and mine precious metals on Indian lands (Nussbaum, 1954: 81; Vitoria, 1991: 278-84). All these rights rested on the assumption of the natural sociability and desire for communication of the human species. On the natural right of all peoples to free passage, Vitoria appeals to the paramount – but as we will see problematic – value of sociability and community. (Pagden, 1990: 21):

> Amongst all nations it is considered inhuman to treat strangers and travelers badly without some special cause, humane and dutiful to behave hospitably to strangers. This would not be the case if travelers were doing something evil by visiting foreign nations. Second, the beginning of the world, when all things were held in common, everyone was allowed to visit and travel through any land he wished. This right was clearly not taken away by the division of property *(diuisio rerum)*; it was never the intention of nations to prevent men's free mutual intercourse with one another by this division. (Vitoria, 1991: 278)

This seemingly humane declaration takes a coercive turn, however, when one realizes that it trumps anything one might call individual rights. The Indians, for example, legally were deprived of the right to 'close their doors' to their (uninvited) Spanish 'guests.' By dint of natural law principles, failure to yield to this right of free passage justified exacting sanctions. The Spaniards interpreted the natural right of sociability to entail that native folk were *required to love* the Spaniards and to permit them to further their interests, both material and religious, just as the gospel enjoined Christians to love their neighbors as themselves? Not to do so, infringed upon natural law, thus granting the aggrieved party to wage "just war" in response to this rebuff to sociability. (Pagden, 1990: 22) Indians could likewise not deny exercises of the natural rights to free passage by the Spaniards. Denial of free passage *ipso facto* constituted a *casus belli* against the Indians as offenders against natural law, with the consequent potential for surrender of Indian dominion to the Spanish. Other aspects of the application and

conception of the law of nations by the Spaniards are similarly double-edged. As a contemporary of the celebrated Bartolomé de las Casas (1484-1576), for example, Vitoria defended Las Casas' criticism of the vicious economic exploitation by the Spaniards against of the native inhabitants of the New World (Nussbaum, 1954: 79; Pagden, 1991; Todorov, 1999). Yet, Vitoria was generally comfortable defending Spanish national colonial interests in the New World. He opposed some reasons for the Spaniards making "just" war against the New World Indians, but approved others. Nor did symmetry seem to have figured much in the working out of this kind of legal thinking: other European powers were not granted free passage and access to Iberian markets and resources!

Whatever the moral and humane merits of this sort of jurisprudence and its workings out, prominent international lawyers have pointed to these Spanish theologians as founders of international law, the so-called "law of nations" (Rossi, 1998; Scott, 1934). And, although a case can also be made on behalf of the Dutch Protestant thinker, Hugo Grotius (1583-1645), as a stronger candidate for the title of founder of the international law or the law of nations, the Spanish theologians are not to be dismissed (Nussbaum, 1954: 296-306). After all, Grotius himself frequently notes, that the great Dutch legal thinker was deeply indebted to the Spaniards (Grotius, 1916: 4, 9, 14, and 18).

From Grotius to George W. Bush

Spanish efforts to articulate the terms and principles of the law of nations were soon followed by the efforts of legal scholars from competing European Protestant powers. While the results of the work of the Protestant scholars will differ in key respects – in particular in terms of their assertion of the rights of the *individual* – they nonetheless continue much of the thrust of the Spanish Scholastics, especially Hugo Grotius, the most widely read and esteemed of all Renaissance masters of the law of nations.

Grotius is known primarily for his treatises on just war and freedom of passage on the high seas. Tending toward a Protestant individualism as much as the Catholic Spaniards favored sociability and communication, Grotius is more concerned with the "simple principles of security," such as embodied in our right of personal self-defense. While Grotius does not deny the value of sociability, the right of individual self-defense trumps it, largely because society is derived from the individual will (Pagden, 2002: 8-9). For Catholics like Vitoria and his fellows, society is a natural divine institution; the individual is a construct. For Grotius things are the other way round (Pagden, 2002: 9). Nicely capturing this individual ground of a common human nature, Grotius says that God has given people "the same origin, the same structural organism, the ability to look each other in the face... and recognize their natural social bond and kinship" – all done individually by the individual (Grotius, 1916: 2).

Despite different first principles, Grotius accepts natural law, although he

prefers a secular conception of it. While he never denies the central Scholastic theological conception of natural law, he argued that even if God did not exist, natural law would still be compelling. Much else that Grotius asserts links him to the Scholastics. In his 1608 *The Freedom of the Seas*, he affirms with Vitoria the universality and 'natural' quality of the law of nations. His arguments for free passage over the seas – against Portuguese claims to ownership over the high seas – rest on natural law (Grotius 1916). International trade is also natural because, as it is self-evident, its conditions are written on nature, so to speak. Grotius could then affirm with Vitoria the view that "every nation is free to travel to every other nation, and to trade with it... on the following most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable" (Grotius, 1916: 7). With characteristic eloquence Grotius argues:

> God Himself says this speaking through the voice of nature; and inasmuch as it is not His will to have Nature supply every place with all the necessaries of life. He ordains that some nations excel in one art and others in another. Why is this His will, except it be that He wished human friendships to be engendered by mutual needs and resources, lest individuals deeming themselves entirely sufficient should for that very reason be rendered unsociable? So by the decree of divine justice it was brought about that one people should supply the needs of another, in order, as Pliny the Roman writer said that in this way, whatever has been produced anywhere should seem to have been destined for all. (Grotius, 1916: 7)

The line from Grotius onward could be extended in great detail by including such figures as Immanuel Kant or Kant's contemporary, the rationalist philosopher, Christian Wolff and the latter's leading interpreter, the Swiss, Emeric de Vattel (1714-1767). For present purposes, I can only sketch the barest outlines of this evolution by pointing to Vattel's great work, The *Law of Nations or The Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns* (Vattel, 1758). It was introduced from Europe to America by Benjamin Franklin, and immediately became the main authority in matters of international law in the courts, congress and diplomacy of the new republic (Lapradelle, 1964: xxv). From the late 18th century, it was widely read as an established textbook in American universities, and thus entered into international legal thinking in the USA. In a way, this evolution culminated in the Wilsonian promotion of international law in the early decades of the 20th century and in the foundation of the United Nations. Some might argue that we are now witnessing the undoing of this internationalist tradition in, for example, recent American conflicts with the Security Council of the United Nations over war in Iraq (Lapradelle, 1964: xxx; Rossi, 1998: 143-4).

To return to my main point about economic globalization, these classic authors unanimously support the principle of universal and natural human rights – with varying degrees of theological motivation and justification. Chief among

them for originating and sustaining economic globalization is the right to free passage, first articulated by the Dominican jurist Francisco de Vitoria. It is judged a fundamental and unquestioned right that people may visit and travel in the lands of others, and to perform various acts of trade and commerce across national borders. Absent this right and economic globalization cannot be deemed legitimate. While it may be true that in "actual state practice 'freedom of commerce' was never a rule of law, but at best a principle of commercial policy," this right of free passage forms the fundamental basis for the legitimation of the perceived universal and natural right to trade across the boundaries of states, and thus forms the fundamental legal ground for so-called condition of free trade that we call globalization (Nussbaum, 1954: 84). It is, in short, more than any other principle, the legitimating idea upon which economic globalization rests.

Hitting the Hard Hobbesian Ground

In our own time, no one invokes the tenets of theological and metaphysical natural law to justify economic globalization – at least explicitly. Here, politico-economic positivism and realism dominate the relation between states, much as Hobbes and Machiavelli argued. On positivist terms, for example, free passage cannot be assumed, but rather requires the enabling agency of deliberately drawn – 'positive' – legal treaty commitments. Yet, there is evidence that elements of natural law sensibility are taken-for-granted as the pre-contractual bases for positive treaties themselves. Thus, even for agents of economic globalization like an international trading body such as the WTO, it is just *assumed* that the world will be a better place for all if the free passage/free trade policies of economic globalization were to be ratified by binding treaties. Quoting from a recent account of the mind of the WTO, we read: "The underlying philosophy of the WTO is that open markets, nondiscrimination and global competition in international trade are conducive to the national welfare of all countries" (Hoekman & Kostecki, 2001: 1).

While the thinking here may be largely prudential and not consciously grounded in *a priori* theological convictions about the divinely inscribed, natural teleology of humankind, these remarks are worth another look. Just how corrigible is the faith of globalizers, say that "political constraints prevent governments from adopting more efficient trade policies, and that through the reciprocal exchange of liberalization commitments these political constraints can be overcome" (Hoekman & Kostecki, 2001: 1)? What empirical state of affairs would have to apply for the authors of the above statement to alter their view of the 'natural' quality of international economic exchange? For some free marketeers, faith in the superiority of free markets and economic globalization may not be an empirical matter at all, but rather a view that reflects a metaphysics – a religion, if you will – a symptom of a globalized market 'theology.'

In pointing out the cryptic metaphysical character of faith in the essential goodness of economic globalization, I am not urging an embrace of classic natural law doctrine. No consensus exists, for example, about the content of natural law, nor is there likely to be one. Moreover, one will have to overcome the dominance of positivism and realism in economic and political matters. Even when a limping concept of presumed international law is in play, recent world events point out how vulnerable our institutions of international law are. To some, little has changed from what Hobbes opined centuries ago – namely that "international law is no more than an inane phrase." Nations are simply not bound by legal bonds other than those they positively choose to enact and enforce. As H.L.A. Hart has argued, the sense of 'law' operative in speaking of the law of nations or international law is unlike law in the sense of positively legislated law, such as 'municipal' or 'national' law. For one thing, the law of nations is not the work of a legislature, nor does it have "courts with compulsory jurisdiction and centrally organized sanctions" (Hart, 1961: 209). The 'laws' of international *law*, according to Hart, are like the rules of "honor or of fashion," the result of the "'opinions and sentiments current among nations in general'," a kind of international common code of conduct – more like the "rules of obligation" or customary rules typical of a small-scale, tightly knit isolated society (Hart, 1961: 222). This is why, in the end, the perceived security and welfare of a nation's citizens executed by the nation-state still always trumps international law – even regarding those positive contracted treaty obligations entered into with another nation-state (Moynihan, 1990: 1-6; Nussbaum, 1954: 144-6).

But, by the same token, in order for there to be 'positive,' contractual agreements about trade and commerce, for good or for ill, partners in such compacts must already have formed a pre-contractual sense about certain desiderata. It is, ironically, precisely in terms of such a pre-contractual 'natural' and unspoken sense of what is appropriate that globalizers today press their case for open markets. Globalizers thus trade on the unspoken view that it is self-evidently healthy, in addition to being profitable to those who can work the angles of expansive open world markets, that we all assume with them that human communication and sociability are 'natural' and unquestioned values. Vitoria and Grotius return by the back door, so to speak! What is monstrous in the view of globalizers, then and now, are those hermit regimes that seal off their peoples and goods at the borders – North Korea being today's prime case in point. To the extent, we felt sympathy for such conceptions of human nature, we would join chief international law theorists in thinking about the fundamentals of international law as having a "universal 'meta-state' character (that)... 'embraced all peoples of all continents' in a set of *community* beliefs, not merely societal relations" (Rossi, 1998: 110).

In this paper, I have resisted taking a position on economic globalization itself, but rather have tried to historicize the economic values in terms of their origins in the Scholastic and early Renaissance theological and jurisprudential

thought of the likes of a Vitoria or a Grotius. (Pagden, 2002: 1) I have historicized these economic values inherent in today's economic globalization neither because I oppose them or assent to them, but because I seek to understand them. Thus, while I personally lean towards the core liberal values of communication, sociability, freedom of travel, cosmopolitan openness and such that thinkers like Francisco de Vitoria and Hugo Grotius promoted, I am not yet prepared to defend their compelling qualities very far. I have rather sought to place the rise of the values of economic globalization within a series of historical contexts because they need to be carefully rethought in light of the actual cultural and economic globalization of our planet as other civilizations bring their sometimes contrary claims about what is 'natural' before the world for recognition. What I seek to provoke then is discussion about *why* these core liberal economic values of communication, sociability, freedom of travel, cosmopolitan openness and such *should* be values for us and others.

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