

FRANCIS DE VITORIA, THE FOUNDER OF INTERNATIONAL LAW

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WITHIN the past twenty-five years and especially since the World War the study of international law has attained great prominence. Governments have sought to know and codify the laws which ought to regulate their relations with other nations. Congresses have convened intent upon solving great international problems. Mankind is no longer satisfied with promises of "victory," "national greatness," "revenge," and the like. The reaction against war has resulted in the search for a means of establishing permanent universal peace. A world court has been created to which nations may submit their controversies and from which they may hope to obtain justice. Although these things are so modern in fact, the fundamental principles underlying them were taught in the first half of the sixteenth century by the Spanish Dominican friar, Francis de Vitoria, at the University of Salamanca.

When a celebration took place in Holland two years ago to commemorate the third centennial of the publication of the great masterpiece *De Jure Belli ac Pacis* of Grotius, those who organized the celebration realized the necessity of honoring the two eminent Spanish theologians to whom Grotius was greatly indebted for the ideas and materials on which he built his juridical system. Accordingly a committee consisting of Mynheer Treub, formerly Dutch Minister of Commerce, and Professor Van der Mandere of the University of Leyden, travelled to Spain and with fitting ceremony placed a tablet in the famous Dominican convent where Vitoria lived and a wreath of flowers before the statue of Francis Suarez in Granada.

Whether it is true as Nys remarks that "no epoch in the history of humanity has been comparable in importance to the glorious years which marked the end of the fifteenth and the beginning of the sixteenth century,"¹ no one can deny, however, that its greatest event,

¹ Introduction, p. 18, Vitoria, "*De Indis et De Jure Belli Relectiones*," in the collection, *The Classics of International Law*, edited by James Brown Scott (Washington, 1917).

the discovery of the New World, is of paramount importance. Europe was thrilled at the news that the bold expedition of Columbus had discovered lands, the existence of which were not previously known. Spain, then in the zenith of her military power, in her intellectual prime, full of the vigor of a civilization recently triumphant over the Moors, rejoiced in her new possessions. But no sooner had she obtained a secure hold upon these lands than the process of exploitation began, and it was not confined merely to natural riches but extended to the very persons of the natives who were treated with great ruthlessness and deprived even of their elemental rights.

The discovery of America, the claims of the Spaniards to its possession and their treatment of the natives, caused frequent discussions of the principles of law and right upon which their claims and their actions might be justified. These discussions were attended by the leading men of the kingdom and often by the Spanish sovereign himself. Some there were who maintained that the Spanish had the right to occupy these lands and to subjugate their inhabitants not only through peaceful means but even by war. Some went so far as to declare that this violent subjugation was, at the same time, the most efficacious means of Christianizing the Indians. Not only the excesses and abuses which crept into the New World as a consequence of this line of thought and method of procedure, but the very thought and procedure themselves, were strongly opposed by many zealous missionaries. A description of the part they played would fill most glorious pages, particularly in a history of the Dominican Order: "to the sons of Saint Dominic belongs the honor of being the first protectors of American liberty, and the first to raise the voice against the enslavement of the native indians."² The most celebrated of these missionaries were Montesino, Cordova, Luis Cancer de Barbastro, protomartyr of Florida, and Bartholomew de Las Casas, rightly called the "Apostle of the Indians."

At this crucial moment there was a real need for a man of genius to arise, capable of clarifying, crystalizing, and codifying the scattered and vague laws of the past actualized by the disputes arising from their current application to the American problem. In 1526 the ranking chair of theology at the University of Salamanca became vacant by the death of Pedro de Leon. Candidates for the chair entered into competition; and according to the prevailing custom of the period the judges were the students who cast their vote after attending

² Rev. L. A. Dutto, *The Life of Bartolomé de Las Casas* (St. Louis, 1902), p. 48.

lectures by each of the various competitors. Francis de Vitoria was unanimously chosen and held the chair until his death twenty years later. The Dominican was well fitted intellectually to undertake his new duties though only about forty-three years old, and "under his leadership the College of Salamanca attained a position unique in Spain."³ He taught theology in a scholarly and attractive way, enriching it with citations from the Fathers and by the facts of ecclesiastical history. To him is attributed the revival of theological activity in the Catholic universities of his time. He restored scholastic philosophy to its former prestige and educated a noteworthy group of illustrious disciples, among them Melchior Cano, Dominic Soto, Bartholomew Medina, Martin de Ladesma. He himself did not commit his lectures to writing, that task being performed by his pupils, eager to retain in a permanent form the teaching they had received, and a few of them were published after his death in 1546.⁴

Vitoria was highly esteemed and his reputation spread far beyond the boundaries of Spain. Pope Paul III invited him to take part in the Council of Trent, but he excused himself on the plea of old age and persistent ill-health. On numerous occasions he was consulted by Charles V who sought guidance on questions of conscience and knotty affairs of state. Vitoria was chiefly a theologian and his knowledge of theology was so broad and expansive that he included within its field the elucidation of many questions pertaining to other sciences both sacred and profane. In 1530 the king asked his opinion on the validity of the arguments put forward by Henry VIII of England with a view to procuring the nullity of his marriage with Catherine of Aragon, the aunt of the Spanish monarch. His lectures *De Matrimonio*⁵ treated the whole question on broad lines, and his judgment that in this case the marriage was valid doubtless pleased the king. Charles V also sought his advice on questions relating to the religious instruction and conversion of the Indians and the business of their baptism, this latter subject having been brought before the Council of the Indies by Bartholomew de Las Casas.

³ D. A. Mortier, O.P., *Histoire des Maîtres Généraux de l'Ordre des Frères Prêcheurs* Vol. V (Paris, 1911), p. 379.

⁴ A new edition of these lectures supplemented by hitherto unpublished manuscripts has been undertaken by Fr. Vincente Betrán de Heredia, O.P. (Valencia).

⁵ Herbert F. Wright, "The Divorce of Henry VIII," in *American Catholic Quarterly Review* XLIV (1919) No. 176, 556-65, gives a complete digest of this *relectio*.

In 1532⁶ were delivered the two famous lectures *De Indis* and *De Jure Belli Hispanorum in Barbaros* in which he reviews the false and true titles which the Spaniards might allege to justify their domination in the New World, either of which would have sufficed to give him a distinguished place in the history of international law. Before the time of Vitoria "the law of nations was European in origin and restricted to a continent; through him it crossed the ocean and in applying it to the peoples of America it dropped its continental character in order to become universal in fact as well as in theory. Evidently Vitoria looked upon his *Relectio de Indis* as his principle contribution, his tractate on war being in the nature of an afterthought hurriedly put together in his scant leisure to give, as he himself informs us, completeness to the earlier reading."⁷ The two taken together constitute, although in summary form, the first treatise of the law of peace and war. "Professor Nys, perhaps the most learned of writers on the law of nations, stated after years of investigation, that the treatise on the Indians and the little tractate of Francis de Vitoria on War were superior to anything which had ever been written on the same subject."⁸

The title "Father of International Law" until recent years has been attributed somewhat erroneously to Hugo Grotius, because of his work *De Jure Belli ac Pacis*. The international law of today, however, is rooted in a more remote past. Grotius himself, in the prologue to his greatest work, acknowledges that he has consulted Vitoria among other theologians and jurists, but he belittles them because of their brevity, and charges most of them with confusion of ideas. True, Vitoria's lectures are brief, but clearness of ideas is one of his striking features. "Vitoria inaugurated both in method and in doctrine, a new period of scientific treatment of international law and the writings of Gentilis and Grotius, generally held as the veritable founders of this science, as much, are nothing but the development and continuation. . . . Neither in method nor fundamental doc-

⁶ Father Getino, O.P., writes, in his work *El Maestro Fr. Francisco de Vitoria y El Renacimiento Filosofico Teologico Del Siglo XVI*, "If we take the phrases of Vitoria at the end of a letter we would say that these *Relectiones* were delivered in 1532, forty years after the discovery; but these phrases do not refer to the time of discovery but to the years in which the emigration began. The greatest difficulty in adopting this date of 1532 is that it does not explain how Charles V had no knowledge of the *Relectiones* until 1539." Footnote, p. 100.

⁷ James Brown Scott, *The Spanish Origin of International Law* (Washington, 1928), p. 89.

⁸ *Ibid.*, p. 21.

trine do Gentilis and Grotius differ essentially from the Spanish Dominican. The difference between them consists alone in that the two Protestant writers treated in detail, fullness and development, in their works which are the result of long years of study, and wrote *ex professo*, on the same matters which Francisco de Vitoria was obliged to treat with that brevity and precision required by the occasion of his two readings."⁹ Professor Nys assures us that the illustrious Dominican was the first who had an exact idea of international law, and that to him belongs the merit of giving the first definition of it. "Francis de Vitoria," writes the same author, "says that international law is, and means for him, a juridical bond which is established between nations. . . . In his system this law is a real law which is based on sociability, because there is a natural society, there is mutual intercourse, a communion and a bond among peoples: One nation has the right of entering into relation with another nation to such an extent that the denial of the exercise of this right justifies war. In other words, Vitoria saw clearly the interdependence of nations, their reciprocal rights and duties."¹⁰

Frankly and independently he formulated his judgments, caring not whether they coincided with opinions of Pope or emperor. Charles V in a memorable letter¹¹ to the Prior of the Dominican convent of Salamanca complained against "the excessive liberty taken by the theologian Vitoria in problems of such delicacy affecting the greatness of his empire." This protest is said to have served merely to encourage the theologian to go deeper into the matter. More than a brief outline of his juridical teachings can hardly be given here. Vitoria maintained that the Pope's authority was limited to religious matters, and to those questions which are related to religion. He stands out among the Spaniards and Portuguese as the defender of the proposition that infidels cannot be deprived of civil power or sovereignty simply because they are infidels. He makes his position strikingly clear by declaring that the Spaniards have no more right over the Indians than the latter would have over the Spaniards if they had come to Spain. It is not lawful to kill the innocent, among whom are enumerated, women, children, "harmless agricultural folk,

⁹ Eduardo Hinojosa, *Discurso leído en la academia de la historia*, p. 47 ff., cited by Scott in *The Spanish Origin of International Law*, p. 65.

¹⁰ Ernest Nys, *Les Origines de Droit Internationale* (Paris, 1894), p. 11.

¹¹ Written November 10, 1539.

foreigners or guests who are sojourning among the enemy,"¹² and the clergy. Slavery is not a legitimate consequence of war; hostages cannot rightfully be put to death because of a breach of faith by an enemy. The seizure of property is justifiable only as a means of effectively waging war or satisfying for an injury received. "It is undoubtedly unjust in the extreme to deliver up a city to be sacked, without the greatest necessity and weightiest reason. . . . If the principle of war require the seizure of the larger part of the enemy's land, and the capture of numerous cities, they ought to be restored when the strife is adjusted and the war is over, only so much being retained as is just, in way of compensation for damages caused and expenses incurred and of vengeance for wrongs done, and with due regard for equity and humanity, seeing that punishment ought to be proportionate to the fault."¹³

Vitoria concludes his lectures on the law of war with three canons or rules of warfare. In substance they are, first, granting that a ruler has the authority to wage war, he should not seek occasions and causes of war but ought to have peace with all men. Secondly, when war has broken out for just causes, the belligerent may not aim at the destruction of the opposing nation, but the prosecution of his own rights and the defence of his country and in such a way that peace and security may eventually be obtained. Thirdly, at the end of the war, the victor should use his victory with moderation and Christian modesty and ought to consider himself as a judge between the wronged nation and the nation doing wrong and not as a prosecutor. "It is difficult to imagine how more prudent or equitable rules could be formulated than those with which Vitoria concludes his *De Jure Belli*."¹⁴

No one has surpassed the great Dominican in his field and many years will pass before the ideals of justice and international peace outlined by him are fully realized. Vitoria must have seemed to those who heard him from his chair in the University of Salamanca, to be far ahead of his time, when to us he seems modern and, in some respects, in advance of our practice, if not of our thought. "He boldly advocated opinions which some of the international lawyers of today are just beginning to find courage to uphold. For instance, 'if a war which is of advantage to one state or to one province be detri-

¹² Victoria, *op. cit.* p. 288.

¹³ *Ibid.*, p. 295.

¹⁴ Herbert F. Wright, *Francisci de Victoria De Jure Belli Relectio* (Washington, 1916), p. 4.

mental to the world or to Christianize society, it is for that reason unjust.'"¹⁵ Since wars in modern times are waged on a larger scale than those of the Middle Ages, and their frightful consequences are felt more easily throughout the world on account of our greater worldwide interdependence, both economic and otherwise, it seems more likely that a war which in itself is just and lawful, may be unlawful on account of the greater evils and dangers which would follow from it.

The principle of that cardinal American policy proclaimed by President Monroe in his famous message of 1823 to Congress was zealously defended three centuries earlier by Francis de Vitoria when he declared that the colonization of America as *res nullius* was juridically unjustifiable. It was the theories of Vitoria, likewise, which President Wilson, consciously or not, sought to apply in practice and which formed the basis of Articles X to XVII of the League of Nations.

In a passage taken from his *De Potestate Civili* Vitoria appears as an international lawyer, "perhaps not of his time, hardly of our time, but surely of a possible future time. 'It is not to be doubted,' he says, 'that the world is in a certain sense a single community, possesses the right to prescribe equitable and appropriate laws for its members, like those which constitute the law of nations. Hence it is,' he adds by way of illustration, 'that the violators of international law sin mortally as well in peace as in war, and that in unimportant matters, like the inviolability of ambassadors, it is not lawful for any nation to refuse to observe the law of nations.'"¹⁶ The sense of oneness is present to the man who wrote those lines, although they were lost on his contemporaries. A community of nations already existed for Brother Francisco some four centuries before our day, which is not over-careful of finding ancestors for its alleged discoveries."¹⁷

The year 1932 marks the four hundredth anniversary of the delivery of these famous lectures of Francis de Vitoria, and to commemorate this event the American Institute of International Law will convene at the University of Salamanca. All the universities of the world in which international law is taught will be invited to send representatives to the congress. An assemblage of this kind is without precedent in international relations. It is proposed to found an

¹⁵ *Ibid.*, p. 3.

¹⁶ Vitoria, *Relectio III, De Potestate Civili*, p. 93.

¹⁷ Scott, *op. cit.* p. 62.

Institute of International Relations bearing the name of the illustrious Dominican which will be maintained by Americans and sponsored by the American Institute of International Law. The purpose of this Institute of International Relations would consist principally in explaining the fundamental doctrines of international law, inspired by the theories of the Spanish school of the sixteenth and seventeenth centuries. The Convent of San Gregorio in Valladolid where Father Vitoria lived, now owned by the Spanish Government, will be converted into a residential club for university students of Spain and America. A committee of six prominent persons has been formed in the United States to initiate this memorial to Francis de Vitoria and to keep alive the works of other great Catholic teachers who taught moral and juridical concepts which must be universally applied to Christianize and thus harmonize the relations between peoples.

This movement in the United States to honor the distinguished Dominican had its origin a little more than a decade ago at the Catholic University of America. The historical background was outlined in a lecture "Spanish Colonization In America" by Doctor J. De Siqueira Coutinho in March of 1916. The reasons for the unjust treatment of the Indians by the Spaniards were examined; also the defence of the former made by Las Casas and other Dominicans. These Dominicans were greatly aided by their fellow-religious, Francis de Vitoria, who enthusiastically proclaimed with some success the principles of international right and wrong which should govern the relations between the natives and the new settlers. At the same institution, a few months later, Mr. Herbert F. Wright's doctoral dissertation, *Francisci de Victoria De Jure Belli Relection*, the result of two years' research, appeared; it was the first work on the subject to be published in this country. When it is considered that Vitoria dictated his lectures and that no manuscripts belonging to him have been found, the difficulty of securing a true text of them immediately becomes apparent. Doctor Wright with his profound knowledge of philology has carefully examined the early editions of the *Relectiones* in an effort, which proved most successful, to obtain a text more conformable to the original than any previous edition. His revised text has been incorporated into the work on "Victoria" in the collection *Classics of International Law*.

Opportunities for travel and the growing interest for international affairs have in recent years greatly increased the number of Americans privileged to visit Europe and seriously to observe its

varying problems. Desirous of promoting a better understanding and a more friendly spirit between United States and Spain and Spanish American countries, Doctor James Brown Scott, Secretary of the Carnegie Endowment for International Peace and Professor of International Law at Georgetown University, began the publication of the *Classics of International Law* which have secured for him a world-wide reputation and recognition as an eminent authority in the doctrines of Vitoria and all that relates to international law. The University of Salamanca, November 11, 1927, conferred on Doctor Scott and also on Benjamin Fernandez y Medina, the diplomatic representative of Uruguay to Spain, the degree doctor *honoris causa* as a sign of appreciation for their admirable work in furthering the cause of the Spanish origin of international law.

The general movement for the abolition of war can only succeed if it is based upon sound fundamental principles of international right and wrong such as those expounded by the theologian Vitoria four centuries ago. Mere Utopian dreams and pious aspirations cannot eradicate the aboriginal habit of war. There must be a psychology of peace built upon justice, equality, and charity. Perhaps the greatest service to be rendered by the centenary convention at Valladolid will be the attention it will draw to these fundamentals so adequately expressed by Francis de Vitoria.

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