

## A SPANISH INTERNATIONALISM

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*"From all that has been said, a corollary may be inferred, namely: that international law has not only the force of a pact and agreement among men, but also the force of a law; for the world as a whole, being in a way one single State, has the power to create laws that are just and fitting for all persons, as are the rules of international law. Consequently, it is clear that they who violate these international rules, whether in peace or in war, commit a mortal sin; moreover, in the gravest matters, such as the inviolability of ambassadors, it is not permissible for one country to refuse to be bound by international law, the latter having been established by the authority of the whole world."*

—Excerpt from the *Relectio "De Potestate Civili."*



HE general disregard for international law and the complete breakdown in the mechanism for enforcing it suggest the need for a reestablishment of the moral principles which gave that law its binding force. Our Holy Father has sounded this warning note concerning the present immorality: "Certainly one of the most dangerous errors of our age is the claim to separate morality from religion; thus removing all solid basis for any legislation. . . . 'There is no peace to the wicked,' says the Holy Spirit, because they live in continuous struggle and conflict with the order established by nature and by its Creator. Only when this order is restored, when all peoples faithfully and spontaneously recognize and profess it, when the internal conditions of peoples and their outward relations with other nations are founded on this basis, then only will stable peace be possible on earth. But to create this atmosphere of lasting peace, neither peace treaties, nor the most solemn pacts, nor international meetings or conferences, not even the noblest and most disinterested efforts of any statesman will be enough unless in the first place are recognized the sacred rights of natural and divine law."<sup>1</sup> In a word, the modern world cannot expect law to be enforced when it either denies or holds in contempt every moral ground for its observance. In this it can learn much from Francisco de Vitoria.<sup>2</sup> According to his conception, natural law, a derivation of the eternal

<sup>1</sup> Pius XI, Encyclical Letter: *The Sacred Heart and World Distress*. (May 3, 1932), chapter 3.

<sup>2</sup> Sometimes spelled Victoria.

law, is the source of the law of nations, and it confers rights and creates obligations.

To understand the man and his system we must attempt to keep him in his proper historical surroundings. If we remove the *primary* professor of theology at Salamanca University from the fast-moving events of his age, our appreciation of the man and his matter must be considerably diminished. Ernest Nys, perhaps the most learned of the French historians of the modern law of nations, has this to say for that era: "In the history of humanity there has been no epoch comparable in importance to the glorious years which mark the end of the fifteenth and the beginning of the sixteenth century."<sup>3</sup> It was the Renaissance era, and the age which witnessed the discovery of a New World.

In such an epoch lived Vitoria. He visualized the necessity of a new line of conduct, a system of morality that would govern the relations of the states in the new international community. In response to the demand of his period, Francisco was about to furnish a legal structure for international relations. That he succeeded is evident from the words of James Brown Scott, who maintains in his masterful embodiment of the Vitorian legal teaching "that there was a Spanish school of international law in the sixteenth century, within forty years after the discovery of America; that the founder of this school was Francisco de Vitoria, *prima* professor of theology in the University of Salamanca; and that his two *Relectiones, De Indis Noviter Inventis* and *De Jure Belli*, set forth his law of nations, which was to become the international law not merely of Christendom but of the world at large."<sup>4</sup>

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Spain emerged from the Crusades as one of the leading powers of Europe. The fate of Christendom had been in her hands for nearly eight hundred years while she waged war with the Moslems. Thirteen years after the marriage of Ferdinand

<sup>3</sup> Vitoria, *De Indis et De Jure Belli Relectiones* in the collection, *The Classics of International Law*, edited by J. B. Scott (Washington, 1917); Introduction, p. 18.

<sup>4</sup> Scott, James Brown, *The Spanish Origin of International Law, Part I, Francisco De Vitoria And His Law Of Nations*, Carnegie Endowment for International Peace. (Oxford, 1934), Preface, p. 9a. This work by an international scholar is invaluable to the student of international relations not only for the author's fine analysis of Vitoria and his times, but also for the appendices which have reproduced in English the famous *Relectiones* of the master. In this article, the author has drawn freely from the work of Doctor Scott, and makes full and due acknowledgment.

and Isabella, three events conspired to render the Spanish supremacy secure. With the formal surrender in 1492 of Granada, the Moslem stronghold, Spain acquired a new religious and geographical unity. At home, the new power had rid itself of all danger of exploitation by internal enemies of the Christian Faith. And finally, "that foreign dreamer," Columbus, whose plans had seemed so practical to the learned Dominicans of the College of Saint Stephen's, had sailed, in that memorable year, until he discovered a New World beyond the western sea. The golden age of Spain was in sight, and she was soon to rise from a group of medieval states to the key position among the nations of the world.

Like every discovery, the finding of America created new problems. Some Spaniards crossed the ocean prompted by the spirit of adventure or the lust for gold. Others, considerably fewer, missionaries, sought only to Christianize the Indians. Exploitation of wealth and human personality soon began.

Meanwhile, in the Old World, the early years of the sixteenth century had witnessed the gradual dissolution of the unity of Christendom. Powerful immoral forces had sapped the vitality of the Holy Roman Empire and the Papacy waned in popularity as a peace tribunal. Those were the years when exaggerated nationalism was born. Independent states, forerunners of the modern European state system, recognized no authority other than themselves. The old canon and civil law soon became inadequate and a more clearly defined rule of conduct was necessary. It was then that the Dominican theologian of Salamanca, Francisco de Vitoria, delivered the *Relectiones* in which is to be found the true moral basis of the law of nations. For the first time there was proposed a philosophy of international law in the modern sense of a universal law, applying equally to all peoples—even to the "barbarian principalities."

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Francisco was born in Vitoria, the principal city of Alava, in Old Castile, about the year 1483. Following an elder brother, Diego, he entered the Order of Friars Preachers while still very young. Sometime after his profession of vows at the Convent of Saint Pablo of Burgos, he was assigned to the college of the Dominicans in Paris. It was there his happy privilege to attend courses at the Sorbonne, then admittedly the world's center of learning. During his eighteen years in Paris, he taught theology,

discovered the weaknesses which had brought scholasticism into disrepute, and made the acquaintanceship of several famous humanists. Vitoria's success as a teacher prompted his recall from Paris and subsequent appointment as Regent of Studies and Professor of Theology at the College of San Gregorio in Valladolid. His solid learning and the charm of his expression secured for him in 1526 the much coveted *primary* chair of theology at the greatest of Spanish universities. At Salamanca, as *prima* professor, he remained for twenty years, and did much to initiate the revival of Scholastic theology in Spain. In his studies on Spanish law, Eduardo de Hinojosa said that if Spain had notable theologians before Francisco de Vitoria, it is nevertheless to him that the revival of theology is due.<sup>5</sup> Melchior Cano, one of Francisco's most illustrious pupils, paid this tribute: "What doctrine I have, worthy of the approval of the wise, what skill I have in the judgment of men and things, what literary culture I have above other scholastics and utilize in my works,—doctrine, judgment and eloquence,—I owe all to this man, whom I have followed as my chief and to whom I have yielded obedience, giving careful heed to his precepts and his admonitions."<sup>6</sup>

It was the duty of the professor of theology to give a public reading, technically called a *relectio*, during the course of the year. Vitoria's position, fortunately for us, brought him into close contact with worldly affairs, and his discourses, therefore, very often treated of matters with international implications. The notes of twelve of these lectures, accurately recorded by eager students, were published some years after his death. Two of these which treat of public law, *De Indis* and *De Jure Belli*, form the juridical contribution upon which is based the Salamanca professor's reputation as the founder of modern international law. *De Indis*, a *Reading* of 1532, considers the true and false titles which the Spaniards might advance to justify their domination of the New World. *De Jure Belli Hispanorum in Barbaros* is intended to complete the earlier lecture. A third work, *De Potestate Civili*, contains practically the entire political philosophy of Francisco.

That Vitoria was competent to discourse on conditions in the New World there can be little doubt. His Dominican brothers, among whom was Bartolomé de Las Casas, were among the leaders in the Christianizing of the Indians. When the mission-

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<sup>5</sup> *Estudios sobre la historia del derecho español* (Madrid 1903), quoted by Ernest Nys, *op. cit.*

<sup>6</sup> *De Locis Theologicis* (Venice, 1567), Bk. XII, c. i, p. 670.

aries returned to Spain, as they often did to plead the cause of the aborigines in the Spanish court, they would give accurate accounts of affairs in the colonies to their brother theologians.

It is significant that the Emperor Charles V attended the *lectiones* of Vitoria, although His Majesty later took offence because of certain doctrines expounded by the master. The *prima* professor did not hesitate to proclaim the limitations on the power of the Emperor. Before the Prior at the Convent of San Esteban received the letter containing the royal reprimand, Charles had often consulted the Dominican theologian on certain doubts as to the instruction and conversion of the natives. And after the imperial wrath had cooled, the Emperor again communicated with the author of the *Reading on the Indians Recently Discovered*. Some few years later, the Pope and the Prince Regent of Spain, Philip II, nominated him as a theologian of the Council of Trent. Ill health obliged Francisco to decline the honor, but his views prevailed through his disciples who were present.

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The juridical and theological teachings of Vitoria are even more interesting than his life and era. It will be sufficient to state some of the more important principles in his system, and thus ascertain to what extent he contributed to the modern law of nations.

Francisco devotes a *Relectio, De Potestate Civili*, to the conception of the State in national and international law. His first conclusion concerning the civil power is that "All power—whether public or private—by which the secular State is governed, is not only just and legitimate, but is so surely ordained of God, that not even by the consent of the whole world can it be destroyed or annulled."<sup>7</sup> With remarkable precision he establishes the causes of civil power: the efficient cause, God: "For if we prove that public power has been set up by natural law, then—since God is the sole author of natural law—it becomes evident that public power is of God and that it cannot be contained within the limits of man's nature or of any positive law"; the material cause, the State itself, by natural and divine law; and the final cause, the greatest utility.<sup>8</sup> Each state, "a perfect community," is but one state among many, not self-

<sup>7</sup> cf., Scott, J. B., *op. cit.*, Appendix C, p. lxxii.

<sup>8</sup> *Ibid.*, p. lxxvi et sq.

sufficient from an external viewpoint, but a member equal with others in the international community. And this international community is composed of states without reference to geography, race or religion. Thus Vitoria included the American principalities of his day. The deliberate will of the international community is international law.

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The Dominican theologian and jurist envisaged "a real law," says Professor Nys, "based on sociability, because there is a natural society, there are mutual relations, a communion and a bond between peoples. One nation has the right of entering into relations 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."<sup>9</sup> He was concerned with the right of the Spaniards to sojourn temporarily in the lands of the Indians, and he proves the existence of this right from "*the law of nations, which either is natural law or is derived from natural law.*"<sup>10</sup> The law of nations is that which natural reason has established among all nations. The natural law forms the source from which international rules are derived. Since these general rules are not sufficient to meet every concrete situation, usage and custom supplement the natural precepts.

It has already been stated that the two *Relectiones, De Indis* and *De Jure Belli*, are recognized by many international jurists as the foundation for the modern science of international relations. Francisco opens his discourse *On the Indians* thus: "Teach all nations, baptizing them in the name of the Father and Son and Holy Spirit' (*St. Matthew*, last chap.). This passage raises the question whether the children of unbelievers may be baptized against the wishes of their parents. . . . The whole of this controversy and discussion was started on account of the aborigines of the New World, commonly called Indians, who came forty years ago into the power of the Spaniards, not having been previously known to our world. This present disputation about them will fall into three parts. In the first part we shall inquire by what right these Indian natives came under Spanish sway. In the second part, what rights the Spanish

<sup>9</sup> Quoted by Wright, Herbert, in a public address delivered at Catholic University, Dec. 1930, *International Law: Old Wine in New Bottles*, p. 9.

<sup>10</sup> *Ibid.*, Appendix A, p. xxxvi. (Italics ours).

sovereigns obtained over them in temporal and civil matters. In the third part, what rights these sovereigns of the Church obtained over them in matters spiritual and touching religion, in the course of which an answer will be given to the question before us."<sup>11</sup>

The careful observer can appreciate the vast extent which such a problem could and did acquire in the hands of the *prima* professor of Salamanca. He proceeds to answer the objection that the whole question of Spanish sovereignty must have been so thoroughly investigated by the Spanish sovereigns that any further discussion would be superfluous. Supposing that the matter raises a genuine doubt, "it is then advantageous to take advice and to deliberate and to abstain from premature action before finding out and determining how far it is or is not lawful."<sup>12</sup> When he adds: "We hear of so many massacres, so many plunderings of otherwise innocent men, so many princes evicted from their possessions and stripped of their rule, there is certainly ground for doubting whether this is rightly or wrongly done," we quite agree that the question was *not* "superfluous."<sup>13</sup>

The introduction finished, Vitoria goes immediately to the heart of his subject. In rapid succession he examines the claim of the aborigines to true ownership in public and private law; whether mortal sin, heresy or unbelief preclude ownership; whether the use of reason is a prerequisite to ownership; and whether a person of unsound mind can be an owner. The last words of the first section contain the principal conclusion: ". . . the aborigines in question were true owners, before the Spaniards came among them, both from the public and the private point of view."<sup>14</sup>

In the second section, Francisco considers the illegitimate titles for the subjection of the natives of the New World to the power of the Spaniards. He demonstrates clearly that the Emperor is not lord of the whole world, basing his arguments on natural and divine law. Nor is the Pope civil or temporal lord of the world in the proper sense of the words "lordship" and "civil power." Granting that the Pope has temporal power insofar as it subserves things spiritual, he insists that the Pope "has no temporal power over the Indian aborigines or over other un-

<sup>11</sup> Vitoria, Francisco, *De Indis*, cf. Scott, J. B., *op. cit.* Appendix A, p. i et sq.

<sup>12</sup> *Ibid.*, p. ii et sq.

<sup>13</sup> *Ibid.*, p. v.

<sup>14</sup> *Ibid.*, p. xiv.

believers."<sup>15</sup> Later in the same section, we come to this conclusion: "Although the Christian faith may have been announced to the Indians with adequate demonstration and they have refused to receive it, yet this is not a reason which justifies making war on them and depriving them of their property."<sup>16</sup> War is no argument for Christianity.

The third and final part of this remarkable *Relectio* is concerned with the lawful titles whereby the aborigines could have come into the power of Spain. The master discusses the basis of natural society and fellowship, rights of travel and trade, nationality, and precisely which rights could be affirmed or denied in the name of Christianity.

The other important legal contribution of Francisco de Vitoria, *De Jure Belli*, is intended, as the title indicates, to be a discourse on the law of war—a supplement to the previous *Reading On the Indians*. In the opening paragraph, the jurist outlines his subject matter: "I will deal with four principal questions. First, Whether Christians may make war at all; secondly, Where does the authority to declare or wage war repose; thirdly, What may and ought to furnish causes of just war; fourthly, What and how extensive measures may be taken in a just war against the enemy?"<sup>17</sup> The matter contained in this *Reading* is an invaluable aid in any study of the problems of peace and war. In it is to be found a general interpretation of the Church's teaching on the law of war. Francisco answers the first question in a single proposition: "Christians may serve in war and make war." In response to the second question, he responds: (1) Any one, even a private person, can accept and wage a defensive war; (2) every State has authority to declare and to make war; (3) a prince has the same authority in this respect as the State has.<sup>18</sup>

The third principal question concerning a just war should provoke special interest among modern readers. Vitoria says, in brief: (1) Difference of religion is not a cause of just war; (2) extension of empire is not a just cause of war; (3) neither the personal glory of the ruler nor any other advantage to him is a just cause; (4) there is a single and only just cause for commencing a war, namely, a wrong received; (5) not every

<sup>15</sup> *Ibid.*, p. xxiii.

<sup>16</sup> *Ibid.*, p. xxx.

<sup>17</sup> Vitoria, Francisco, *De Jure Belli*, cf. Scott, J. B., *op. cit.*, Appendix B, p. xlix.

<sup>18</sup> *Ibid.*, p. li, et sq.



kind and degree of wrong can suffice for commencing a war.<sup>19</sup>

Finally, he speaks of the law of war, the fourth principal question in this tractate. He states: (1) In war everything is lawful which the defence of the common weal requires. For the end and aim of war is the defence and preservation of the State. (2) It is permissible to recapture everything that has been lost and any part of the same. (3) It is lawful to make good out of enemy property the expenses of the war and all damages wrongfully caused by the enemy. That is clear, for the enemy who has done the wrong is bound to give all this redress. (4) Not only are the things just named allowable, but a ruler may go even further in a just war and do whatever is necessary in order to obtain peace and security from the enemy; for example, destroy an enemy's fortress and even build one on enemy soil, if this be necessary in order to avert a dangerous attack of the enemy. This is proved by the fact that the end and aim of war is peace and security. Even when the victory has been won and redress obtained, the enemy may be made to give hostages, ships, arms and other things, when this is genuinely necessary for keeping the enemy in his duty and preventing him from becoming dangerous again. (5) Not only is all this permissible, but after victory has been accomplished and redress obtained and peace and safety secured, it is lawful to avenge the wrong received from the enemy and to take measures against him and exact punishment for the wrongs he has done.<sup>20</sup> After resolving innumerable doubts raised by these striking doctrines, Francisco concludes *De Jure Belli* with three canons of warfare whose importance cannot be exaggerated:

- I Assuming that a prince has authority to make war, he should first of all not go seeking occasions and causes of war, but should, if possible, live in peace with all men, as St. Paul enjoins on us (*Romans*, xii). Moreover, he should reflect that others are his neighbours, whom we are bound to love as ourselves, and that we all have one common Lord, before whose tribunal we shall have to render our account. For it is the extreme of savagery to seek for and rejoice in grounds for killing and destroying men whom God has created and for whom Christ died. But only under compulsion and reluctantly should he come to the necessity of war.
- II When war for a just cause has broken out, it must not be waged so as to ruin the people against whom it is directed, but only so as to obtain one's rights and the defence of one's country and in order that from that war peace and security may in time result.

<sup>19</sup> *Ibid.*, p. liii et sq.

<sup>20</sup> *Ibid.*, p. lv.

III When victory has been won and the war is over, the victory should be utilized with moderation and Christian humility, and the victor ought to deem that he is sitting as judge between two States, the one which has been wronged and the one which has done the wrong, so that it will be as judge and not as accuser that he will deliver the judgment whereby the injured State can obtain satisfaction, and this, so far as possible, should involve the offending State in the least degree of calamity and misfortune, . . .<sup>21</sup>

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Even this brief sketch of Vitoria's Spanish internationalism shows that the Salamancan scholar was humanely and reasonably liberal. He shared neither the supineness of the pacifist, nor the cruelty of the militarist. His teaching, striking though it may seem to ears inclined to deprecate Renaissance theologians, is but the synthesis of doctrines embodied in the Old and New Testaments and the writings of the Doctors, canonists and theologians of the Church, especially St. Augustine and St. Thomas Aquinas. It was through the genius of Francisco that the age-old truths were rescued from their oblivion and made to bear upon the problems of a changing world. As a member of the Dominican Order, at once democratic and international, he sensed the pulse of his times. That is why the renowned international jurist, James Brown Scott, can say of him: "Vitoria was a liberal. He could not help being a liberal. He was an internationalist by inheritance. And because he was both, his international law is a liberal law of nations."<sup>22</sup>

<sup>21</sup> *Ibid.*, p. lxx.

<sup>22</sup> Scott, J. B., *op. cit.*, p. 280.