

THE FOUNDER OF INTERNATIONAL LAW

Among the galaxy of illustrious geniuses which the Order of Friars Preachers has given to the service of the Church and humanity is Francis de Vitoria, the first internationalist. We dare affirm that after St. Thomas no master in the entire Dominican school exercised a greater influence on the minds of his contemporaries. From Vitoria's time until the eighteenth century the University of Salamanca, where he taught, was the big center of scientific activity in the Peninsula, and it is granted by everybody that for its ascendancy it was indebted to the great master Vitoria. He has been called the Pythagoras and Socrates of the Spanish school, and is considered by many as the restorer of scholasticism in the sixteenth century.

Dominic Soto, the great theologian of the Council of Trent; Melchior Cano, the father of "De Locis Theologicis"; Banez, the valiant defender of the traditional doctrines of the Thomistic school; Medina, the founder of Probabilism; Mancio del Corpus Christi, whose science astounded even the most learned; Peter de Soto, the reformer of the University of Oxford, and many others, Dominicans and members of other orders, as well as secular priests and laymen, received from the lips of Vitoria their theological and philosophical training.

As our chief purpose is to discuss Francis de Vitoria as an internationalist, we shall put down the main outlines of his life, which will serve to show the religious and scientific formation of the great Dominican and its impress upon the men and institutions of his century.

I

Francis de Vitoria was born about the year 1480 in the city of Vitoria, capital of Alava, in the northern part of Spain. Early in his tenth year he received the habit of the Dominican Order at the convent of St. Paul Burgos, one of the three most important houses of the Order in Castille. A few years previous to his entrance into St. Paul's, his brother, James de Vitoria, had been vested with the white robes of Saint Dominic in the same community.¹

¹James de Vitoria is generally considered as the restorer of the Holy Name Society. (See Tournon "Hommes illustres," Vol. IV, pag. 58; and "Anne Dominicane," Janvier, pag. 6).

Father Tournon, in his work "*Hommes illustres de l'Order de Saint Dominique*"² tells us that Francis and James de Vitoria "gave such a good account of their vocation that, according to the testimony of Spanish historians, both shed a new splendor not only on the Dominican Order, but also the Schools, on the Church and on the kingdom of Spain at large." And the historian of Sevilla, Matamoras, testifies "that Francis de Vitoria,—whom he calls excellent, divine, incomparable man— was considered from the very early days of his religious life by the Superiors of St. Paul's, as the future ornament of the Order, the light of the Schools and the perfect exemplar of a good religious."

It was an excellent custom among the Spanish Dominicans to send the brightest of their young religious to complete their studies in the University of Paris, where the traditions of St. Thomas flourished in their full splendor. Among the colleges affiliated to the famous university was the Dominican Convent of St. James, founded by the first disciples of St. Dominic in 1217. Francis de Vitoria was sent to this *Studium Generale* of the Order, where he studied philosophy and theology under Friars John Fenario and Peter Crockart.

On October 16, 1521, Vitoria received the degree of *licenciado* in theology, and immediately started to teach with great success. Soon after he was created a doctor in the same faculty.

His professorship at the Sorbonne did not last more than a few months, for in 1522 he was recalled by the provincial of Spain and appointed professor at the famous College of St. Gregory of Valladolid, where he also became Regent of Studies. In 1525, the professor of dogma at the university of Salamanca, Peter de Leon, O. P., having died, his superiors ordered Vitoria to prepare himself for the examination which was held to fill the vacancy thus created. Even though on that occasion the most learned professors of Spain and Portugal opposed Vitoria, he was chosen to hold the most important chair in the foremost Spanish university.³ He continued to teach at Salamanca until his death, which took place August 12, 1546.

² Vol. IV, pag. 59.

³ Since this time until the eighteenth century the professor of Dogma at the University of Salamanca was almost always a Dominican. The successor of Vitoria was the famous theologian Melchior Cano, O. P. (See Fr. Getino, O. P., "*De Vitoria a Godoy*" in the Review "*Ciencia Tomista*," 1913, and "*Historia de un Convento*," "*Autonomia Universitaria*," and "*Vida y Proceso de Fr. Luis de Leon*, O. S. A.," by the same author.

We have stated previously that the influence of Vitoria on his contemporaries was surpassed only by that of St. Thomas on the men of his own day. The influence of the Spanish Dominican was exercised mainly in the class room, since over and above all he was a most gifted teacher. All contemporary authors affirm that his lectures to thousands of young scholars—who came from all over the world—produced a true revolution in the theological and philosophical field, not only in the Peninsula, but also in other countries. Melchior Cano, always so moderate in his judgments, says: "Spain has received this eminent professor of theology by a singular gift of God."⁴ Alfonso Munoz, in a letter to Prince Charles, speaking of the merits of Vitoria as a teacher, says: "When the theology in Spain was in a state of confusion and disorder, dumb and almost without expression, Vitoria restored it to its proper clarity, to its integrity and splendor." Moreover, he adds that "a confirmation of his testimony are the numerous disciples of the Dominican master, who are to be found everywhere in Spain and in foreign nations."

Banez, Medina, Navarro Alpizcueta, Ximenez Arias, Vasco or Vaseo, Nicholas Clernad, Nicholas Antonio and many others say the same, and all agree in assuring us of the incomparable qualities of Vitoria as a teacher.⁵

That is possibly the reason why Vitoria wrote so little, or at least published so few and such small works. Almost all the books we have of his are the lectures given in the class-room, published after his death by some of his pupils. Among those books there is one of the greatest value in our own days. It is entitled "*Relationes Theologicae*" (Theological Relations) and it is made up of thirteen dissertations read by him at different times in the University of Salamanca.⁶

Seven of these dissertations deal with purely theological subjects, such as increasing of charity, homicide, simony, magic arts, duties of man and matrimony; the others, intensely interesting not only to the theologian but also to historians and students of law, treat respectively the authority of the Pope and Council, ecclesiastical authority, civil authority and the affairs of the Indians, and specially on the rights and duties in time of war.

⁴ "*De Locis Theologicis*," Book XII. Prologue.

⁵ All these testimonies and many others can be seen in Fr. Getino's *Life of Francis de Vitoria*.

⁶ Fr. Touron gives a brief explanation of the "*Relationes Theologicae*" in his work "*Hommes illustres*." Loc. cit.

II

Position of Vitoria in the Science of International Law

We are in justice bound to point out that to an American belongs the honor of being the first to call the attention of the scientific world to the merits of the political and international ideas of Vitoria. Reading the works of Grotius, Wheaton noticed the name of the Spanish Dominican among those cited by the Dutch internationalist in his work "*De jure belli et pacis*," and he investigated to find out something about the great scholar. Since then, no writer on international law fails to mention the name and works of Vitoria, though it frequently happens that the opinions of the illustrious Friar Preacher are misrepresented in such a way as to indicate a very imperfect acquaintance with his writings. However, since the days of Wheaton, Vitoria has become a popular author, though one of the most falsely interpreted.

As an internationalist he ranks among the very first, and if we accept the statements of prominent jurists, we may justly call him "the founder of international law." Yet this glorious title is generally given to another. To vindicate for Vitoria the right to this enviable paternity we offer the testimony gathered from the works of the most eminent non-Dominican leaders of international law.

De Nys, in his work "*Les Origines de Droit Internationale*," 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," states the same author," says that international law is, and means for him, a juridical bond which is established between nations, or rather of the international juridical society of which it is the expression. In Vitoria's system this law is a real one, based on sociability, because there is a natural society, there are mutual relations, a communion, a bond between peoples: "*Quod naturalis ratio inter gentes constituit vocatur jus gentium*." 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. This statement and position of Vitoria is of the most vital interest. It remains only to know if the international law is a juridical duty or is only a matter of international courtesy. And to estab-

lish the question as the Spanish professor did, was to advance a problem which in future centuries continued to preoccupy the minds of the students of international law."⁷

Menendez y Pelayo calls Vitoria the "father" of a new science, that of international law. Eduardo Hinojosa says: "The most glorious title of the Dominican scholar is that he was the first writer who formulated clearly and scientifically the principles of justice on which the international relations were based at the time of the war."

The very phrase "international law"—in its modern acception—is to be found for the first time in the writings of Vitoria, though it is generally attributed to Richard Zouch. "It is Francis de Vitoria," says this author, "who first admitted into a classification of law, international law in its modern acception, '*jus inter gentes*'."

Thomas Albert Walker, in his "History of International Law of Nations," states: "In Vitoria's treatment of these problems the reader, who is unprepared for the surprises of the literature of the Reformation Age, will be astonished to discover the setting forth of principles which the history of international law is wont to represent as entirely modern." Such is the affirmation of eminent scholars of international law.

A brief review of the doctrines of Vitoria will be sufficient to show the justice of such statements. In dealing with the law of nations he maintained that the Pope's authority was limited to religious matters, and to those questions which are related to religion, or mixed questions; that the right to life, liberty and property could not be denied to the pagans. He stands out among the Spaniards and Portuguesees 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. He strongly condemned the slaughter of innocents, among whom he included women, children, agriculturists, strangers, jurists and the clergy. Slavery is not for him a legitimate consequence of war; hostages, he affirms, cannot rightfully be put to death on a breach of faith by an enemy, and he condemned looting as illegitimate. He

⁷ See Edward de Hinojosa "Discurso leído en la Academia de la Historia," pag. 38 and the following.

considered the seizure of property justifiable only as a means of effectively waging war or satisfying for an injury received. He deemed the plundering of a country permissible only where it is necessary to carry on war, to deter the enemy, or to rouse the spirit of the soldiers; and concluded by urging the conqueror to exercise his right over hostile territory with Christian moderation. Vitoria opposed vigorously three fundamental errors concerning false juridical principles which were current in his time: I. That the infidels had no right to possess anything and war with them was therefore always just. II. That the Emperor of the Romans was the temporal sovereign of the whole world. III. That the Pope was spiritual sovereign all over the earth.

We can within the limits of a review article give barely the main outlines of the juridical teachings of Vitoria. All he has said can be summarized in these, his own words:

I. "Assuming that a prince has authority to declare war on another nation, he cannot go seeking occasion and causes of war, but should, if that is possible, live in peace with all men. He should, moreover, think that other nations are his neighbors whom he is bound to love as himself, and that we all have a common Lord, before whose tribunal we shall have to render an account. It is the extreme of savagery and ruthlessness to look for grounds for slaughtering and killing men created by God and for whom Christ died.

II. "When war—for a just cause—is declared it must not be carried on so as to destroy the country against whom it is directed, but only so as to secure the rights and defence of the nation, and in order that from that war peace and security may in time result.

III. "When the war is over and victory has been won, it should be utilized with moderation, the victor ought to think that he is a judge between two nations, the one which has done the wrong and the one which has suffered it. He would be a judge and not an accuser, that he may 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, the offending individual being chastised within lawful limits."

"It is difficult, says an American writer, to imagine how more prudent or more equitable rules could be formulated than the noble Christian principles which summarized Vitoria's doc-

trines on the law of war." Certainly the results of the Conference of Peace now sitting at Paris would be most lasting and beneficial to mankind if the deliberations of this distinguished assembly were guided by the Christian principles laid down by the great internationalist of the sixteenth century.

III

Grotius and Vitoria

The beginnings of international law are generally traced to a Protestant author, Hugo Grotius, because of his work "*De jure belli et pacis*"; yet this distinction is very doubtful, if not completely apocryphal. It is not a bold affirmation to say that the honor belongs to Vitoria rather than to the Dutch internationalist.

Mackintosh, the Scottish historian of international law, tells us: "The origin of natural, political and international law ought to be sought in the Scholastic Philosophy, and especially in the Spanish philosophers of the sixteenth century, who were animated by a spirit far more independent than the scholastic writers of old, thanks to the progress brought by the renaissance of our schools." Some years afterwards, Mackintosh wrote his famous work, "*Progress of Ethical Philosophy*," in which he called Spain the most powerful and magnificent of all nations, and declared that Francis de Vitoria "worthy of eternal remembrance, because he was the first to explain the doctrine of the schools in the language of the century of Leo X."

Previous to this Scottish author, Wheaton, the North American historian of the "*Progress of International Law in Europe and America*," had studied with the greatest care the fifth and six "*Relationes Theologicae*" and he had the greatest praise for the international ideas of Vitoria. Revier, De Nys and many other writers of histories of international law make the same affirmation. But it was A. de Giorgi, the biographer of Alberico Gentili, the celebrated internationalist, who dared to say at a congress of internationalist scholars, that Vitoria was not only the inspirer of Gentili but the "true father of the science of international law."⁸

Why does the name of the illustrious Dominican remain shrouded in oblivion? Why is the title of father and founder of international law given not to him but to Grotius? It may be

⁸ Loc. cit. pag. 48-49.

because the former was a Catholic, a priest, a religious, and the latter a Protestant.. Be that as it may, we do know that the masters of the study of international law are not ashamed to proclaim Vitoria and not Grotius "the father of international law."

Let us go a step farther and examine closely the relations of the Dutch internationalist and the Spanish friar:

The history of the development of international law has yet to be written. Till now the merits of those who treated this science before Grotius have not been recognized. It is very vague what is original and what is not so in the writers of international law, and in fairness each one must be conceded what he deserves. The desire of glorifying a famous author at the expense of all those who contributed to build the pedestal of his glory is a momentous error. As a matter of fact, this has been the case with many students of the works of Grotius.

Different jurists had treated of international regulations before Vitoria; but their studies must have been of little profit to him. John of Legnano, professor at Bologna, who wrote early in 1360 a book entitled "De bello," had little to commend him to Vitoria. Of slight value, it remained unpublished till 1515. Paride de Puteo of Naples, with his bulky volume "De re militari," dedicated exclusively to military organization, cannot be considered a great influence on Vitoria. Martin Gariti, distinguished jurist and canonist, professor at Pavia and Siena, wrote the most important book on the subject previous to the Spanish professor. Three Spaniards had written on war ahead of Vitoria; Francis Arias de Valderas, Alfonso Alvarez Guerrero and John Lopez de Segovia. Vitoria surpassed them all in the method as well as in the profundity and novelty of his theories. No one before him formulated with a greater precision the principles of mutual relations between nations. It is true that he made use of the works and labors of his predecessors; yet he does not accept servily their opinions; on the contrary, faithful to his own method, he subjects them to a severe criticism. Only after this does he admit or reject them.

For the rest, there is in Vitoria a vast amount of original investigation. He represents a decided progress compared with the authors enumerated, for he initiates a new phase in the scientific study of international law both in method as well as in breadth of view by searching for new sources of juridical knowledge. In the scope of his investigations he treated problems unknown to his predecessors.

This is not the case with Grotius. His works as well as those of Gentili are no more than the development and continuation of the writings of the Dominican.

It is necessary to keep in mind that the progress in the development of the science of international law is not a constant one. Grotius represents an advancement as compared with Vitoria, and the former's theories of the law of war surpass those of the latter in several instances; yet there are cases in which the studies of the Dutch writer show a retrogression. Neither in method, nor in his main doctrinal points does Grotius differ a great deal from the Friar Preacher. The important difference—if we can call it a difference—is that Grotius treated more extensively the same questions Vitoria treated with characteristic brevity.

A mere glance at the works of Grotius is enough to prove that the influence of Vitoria on the Dutch scholar is greater than generally is admitted. "The importance of Vitoria's opinion," says a great American writer, "on the law of nations may be gauged from the fact that Grotius cited Vitoria's '*De jure belli*' no less than forty-four times in his '*De jure belli et pacis*,' although he does not use Vitoria's words, and that only twice does he expressly take exception to Vitoria's statement. Grotius himself, in the prologue to his great 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. Vitoria, it is true, wrote with brevity, but clearness of ideas is one of his striking features.

Reading the works of Grotius, it is seen that he is indebted to Vitoria to a far greater extent than he is willing to admit, and the arguments used by the Dutch writer constantly recall to mind those of Vitoria. Hermang Conring goes even so far as to say that if Grotius excelled in philosophy and produced the incomparable work '*De jure belli et pacis*' he owed it to his reading of the Spanish jurists, Ferdinand Vazquez and Diego Covarrubias, who had in their turn made use of the work of their master, Francis de Vitoria." Daniel George Morhof, in his "Poly-history," said "that Grotius' indebtedness to Vitoria may be greater than has hitherto been recognized." Until recent years we find scant credit given to any Catholic writer in the history of international law.

"Ever since the Reformation," writes James Lerimer in his "Institutes of the Law of Nations," "the prejudices of Protestants

against Catholics have been so vehement as to deprive them of the power of forming a dispassionate opinion of their works even if they had been acquainted with them, which they rarely were."

Finally, in a recent discourse of Maura, Premier of Spain, we find the following affirmation: "In the sixteenth century, when the Spanish sovereignty gathered together the greatest difference of races and continents, of peoples and frontiers, his thinkers, his theologians, his philosophers were those who derived from these sciences the ethical and juridical consequences which form the international law. For this reason Spain is the fatherland of Francis de Vitoria, whom Hugo Grotius declares to be his predecessor, and whom many and prominent authors declare to be 'the father of this science.'"

From the above quoted testimonies of prominent writers the position of Vitoria in the international field can be grasped. For the rest, and to finish this already too long article, let it be noted that Alberico Gentili never spoke of Vitoria without giving to him the title of "the most learned man." Grotius called him "a theologian of sane mind" and mentioned him among the authors he had studied when writing his book, "*De jure belli et pacis*." Hermang Conring, one of the most famous German writers of the seventeenth century, praised very highly the merits of Vitoria, and even in our own days jurists like Gierke, Holzendorf, Hinojosa, Pifal y Mon, Menendez Pelayo, Mella, Aznar and many others, acknowledge and proclaim the importance of the doctrines of Vitoria in the history of public and international law, giving to him the glorious title of "father of the science of international law."

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—Bro. Sylvester Sancho, O. P.