

THE NATURAL LAW IN THE TIMES OF ST. FRANCIS  
XAVIER: FRANCISCO DE VITORIA (1492-1546)

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St. Francis Xavier was born in the Kingdom of Navarra in 1506 and died at the gates of China in 1552. His formation years were spent at the University of Paris where he stayed from 1525 to 1536. There he came across the intellectual debates of his time such as the impact of Renaissance Humanism, the introduction of Aquinas' *Summa Theologiae* as a textbook in the universities, the teachings of the nominalists, the influence of Luther, and also the consequences of the recent discoveries of new lands and of new people<sup>1</sup>.

Contemporary with St. Francis Xavier there was another Spaniard, also Francis by name. This Francis, Francisco de Vitoria, was a Dominican priest who would become years later a great theologian and jurist at the University of Salamanca, the oldest one in Spain. Vitoria was born in Burgos fourteen years earlier than Francis Xavier, i.e., in the year 1492, a turning point in history. It was precisely in 1492, when three caravels, those small, fast sailings ships, sailed under the command of Christopher Columbus and discovered—or better said—encountered immense tracts of lands, which eventually would be known all together as the new American continent. Those lands were inhabited by people till then completely unknown to the civilized world and that encounter between the two worlds, and the

<sup>1</sup> For a study of the life of St. Francis Xavier during his years as student at the University of Paris see Iturbe, 2007, pp. 39-58.

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circumstances surrounding it, were the source of a serious debate among the most important minds of the 16<sup>th</sup> century.

The discovery of America placed Spain in a very privileged position regarding other European kingdoms. Thanks to the efforts of the Catholic Kings, Isabella I and Ferdinand II, Spain had become a unified kingdom and in the times of their grandson, Charles V, it was transformed into a great empire. The newly discovered lands enormously increased the dominions of the empire: «an empire on which the sun never sets».

After the original euphoria that accompanied the news of the achievements done by Columbus during his trips, and the subsequent settlement of many Spaniards in the new lands together with missionary activity, little by little news emerged about the condition of the people inhabiting those lands. It was precisely a Dominican friar, Fray Antonio de Montesinos, who denounced the ill treatment inflicted by the conquerors on the Indians, as the inhabitants of these lands were known. Montesinos spent several years in the island of Hispaniola (now the Dominican Republic and Haiti). The denounce raised by him and other members of his order led King Ferdinand II to convene a commission which promulgated the Laws of Burgos in 1512. These were the first set of ordinances aiming at protecting the native Indians by regulating the treatment towards them. They were based on the principle of human dignity, according to the doctrine of natural law which had been taught by St. Thomas Aquinas three centuries earlier. It was stated that the Indians were free people, with rights and duties, owners of their private property, to whom the Christian faith could be legitimately preached but acknowledging that faith is a gift of God and to believe is a free human action. These laws neither changed the mind of many of the conquerors overnight nor were always applied in the colonies. But they were an expression of an ongoing quest for a moral solution to some political and religious issues: Was the conquest of the new territories legitimate or not? Does the right to preach the Christian faith authorize the use of coercion?

This debate, which in one way or another spread all over Spain, found an echo in the classrooms of the University of Salamanca and in the lectures of its most reputed *Magisters*. Francisco de Vitoria had been teaching in Salamanca since 1526 when he was elected to the Prime Chair of theology and would remain in that University till his

death in 1546. During all those years he would have many opportunities to personally meet people who had been living in the colonies, especially friars staying at the same Dominican Convent of St. Stephen where Vitoria was.

Vitoria was convinced that «the duty and mission of a theologian is so omnicomprehensive that there is no topic, argument, or discussion which remains outside the scope of theology and, consequently, of the theologian»<sup>2</sup>. Thus, he focused his intellectual efforts, sometimes even at the request of the King and Emperor, Charles V, on the analysis of the new political, ethical and religious issues from the point of view of the doctrine of Natural Law. Consequently, both in his ordinary and extraordinary lectures, Vitoria lively discussed topics such as the dignity of human person, the nature of freedom, the distinction between natural and supernatural order, the possibility of using coercive methods for preaching the Christian faith, the concepts of just and unjust war, and others, finding in the doctrine of Natural Law the right tool for the adequate solutions to the different problems of the time.

In this paper we want to discuss how, during the times of St. Francis Xavier, the School of Salamanca in Spain —whose founder was Francisco de Vitoria—, applied the doctrine of Natural Law to a particularly thorny issue, namely, the legitimacy of the conquest and evangelization of America. This study might help us to understand the doctrine of Natural Law as an ever valid approach to many contemporary ethical issues affecting the globalized society of our 21<sup>st</sup> century.

#### THE IMPORTANCE OF A DOCUMENT

In recent times, the importance of the doctrine of Natural Law has been highlighted. The International Theological Commission, from the Holy See, issued in 2009 a document titled «The Search for Universal Ethics: A New Look at Natural Law». In our present world, when the interaction between different cultures and religions is part of daily life, when we face threats affecting the ecological equilibrium of our planet, when terrorist groups make use of more and more sophisticated means of lethal destruction, when biotechnological developments pose a serious threat to the very identity of

<sup>2</sup> Vitoria, *Relectio De Potestate Civili*, Introduction. The translation is ours.

human beings by genetic manipulation, cloning and so on, then there is an urgent need to find out common ethical values which are valid for people from different backgrounds and from different ways of thinking. The abovementioned Document, which was the result of a worldwide discussion and study, begins with the following pregnant questions:

Are there objective moral values capable of bringing people together and securing peace and happiness for them? What are they? How are they recognized? How are they realized in the life of individuals and of the community? These questions about good and evil, questions which always return, are today more urgent than ever, in as much as people are more aware of forming a single community in the world<sup>3</sup>.

The efforts to define a universal ethics had a clear manifestation in the *Universal Declaration of Human Rights*, prepared by the United Nations in 1948. This declaration is «one of the finest successes of modern history. It ‘remains one of the highest expressions of the human conscience in our time’»<sup>4</sup>. It was written just few years after the end of the Second World War, a period of unutterable violation of human rights, which had been legitimized by laws issued by the official authorities of certain countries. The *Universal Declaration* speaks of inalienable human rights which transcend any positive law, i.e., rights which are rooted in human nature and not simply granted by the legislator. They already exist, prior to any legal formulation.

In spite of its great value, the *Universal Declaration* of 1948 has been challenged by some people who try to dissociate the relationship between legality and morality. Some groups judging the *Declaration* not fully universal, tried to elaborate a certain ‘global ethics’ based merely on the consensus of the different traditions. This ‘global ethics’ would point out ethical values which represent the minimum commonly practiced and accepted by different peoples. The methodology used to elaborate this ‘global ethics’ is inductive, i.e., it examines those values which are common to the great religious and philosophical traditions, and from them it defines a set of moral principles. However, this methodology is insufficient since it does not

<sup>3</sup> International Theological Commission (ITC), 2009, point 1.

<sup>4</sup> ITC, 2009, point 5.

reach the ultimate foundations of all moral obligations and of any juridical and political order.

The Document of the International Theological Commission invites people «to consider the resources that a renewed presentation of the teaching of the natural law contains»<sup>5</sup>. This teaching affirms that it is possible by the light of reason to know the correct moral practices according to human nature and to express them in a normative manner, as precepts or commandments. It says:

Such fundamental precepts, objective and universal, are needed to found and to inspire the ensemble of the moral, juridical, and political determinations that regulate the life of man and of society. They constitute a permanent, decisive authority and assure the dignity of the human person in the face of fluctuations of ideology... In fact the natural law, founded on reason, which is common to all human beings, is the basis for collaboration between all men of good will, beyond their religious convictions<sup>6</sup>.

#### SOURCES AND DEVELOPMENT OF THE THEORY OF NATURAL LAW

The concept of natural law, i.e. of the existence of ethical values which are rooted in human nature and do not depend on the confirmation of any positive legislation, can be found in the different religious traditions of the world and in some philosophical schools. Already in classic Greek culture we have the figure of Antigone — daughter of Oedipus—, in the tragedy written by Sophocles in the V c. B.C. Antigone pleads her rights to bury his brother in spite of the prohibition decreed by King Creon. She does it by referring to those «unwritten and immutable laws... [which] exist not since today or yesterday, but always»<sup>7</sup>.

During that time, in Ancient Greece, we also have the Sophists, those itinerant teachers of philosophy whose aim was mainly to convince people rather than teaching the truth. They reduced the concept of natural law to the physical component only, i.e. to physical nature. Thus, the fact that in nature 'the strong should prevail over the weak' is a natural law for the sophists, different from the laws originated by convention.

<sup>5</sup> ITC, 2009, point 9.

<sup>6</sup> ITC, 2009, point 9.

<sup>7</sup> Sophocles, *Antigone*, vv. 449-460.

From the Sophists, Plato and Aristotle accepted the distinction between positive laws, i.e., originated by convention, and the natural law, which is rooted in nature. Positive laws are neither eternal nor universal while natural law binds on every person, always and everywhere. For Plato and Aristotle there is no need of opposing natural law and positive law. The laws of the City, when the authorities seek the common good of their citizens, are generally good and «constitute the realization, more or less successful, of a natural law in conformity with the nature of things»<sup>8</sup>. There is no opposition between one and the others; on the contrary, the positive laws, which can change from place to place and from century to century, are a way of putting into practice and enforcing some of the contents of the natural law.

With Stoicism the concept of natural law is at the bottom of a universal ethics. Whatever corresponds to nature, both in a physico-biological and in a rational sense, should be incorporated in the lives of every individual. Man should live according to nature for there is a divine law, a divine rationality, present in the entire cosmos. In the words of Cicero «the law is the supreme reason inserted in nature which enjoins on us what must be done and prohibits the contrary»<sup>9</sup>.

The Fathers of the Church, already in the first centuries of the Christian era, tried to integrate the teachings of Sacred Scripture, particularly the New Testament, with those ones from the ancient philosophers. They affirm that there should be no opposition between following nature and following Christ. Since Christ, the logos, is the Creator of the world, whatever is commanded by nature and by reason would indicate the moral duties to man. All the moral teachings of the Bible are an expression of that unwritten natural law. They do not blindly follow the teachings of the Stoics but they adapt them and modify them according to Christian doctrine. Man is the image of God and cannot be reduced to a simple element of the cosmos. Man transcends the cosmos since it is called to a life of union with God.

St. Augustine, the most important of the Western Fathers, says that «the eternal law is the divine reason or will of God, which or-

<sup>8</sup> ITC, 2009, point 20.

<sup>9</sup> Cicero, *De legibus*, I, VI, 18.

ders and preserves the natural order and prohibits disturbing it»<sup>10</sup>. He teaches that the commandments are imprinted on the human heart and distinguishes the evolution of the natural law according to the different states of nature in the history of salvation: before original sin —original nature—, after original sin —fallen nature—, and after Christ's death on the Cross —restored nature—.

During the middle ages the Patristic doctrine of natural law was continued by the scholastic theologians. It was closely related to the Roman concept of *ius gentium* (law of the nations), i.e., the universal principles regulating the relations between different peoples. With St. Thomas Aquinas the doctrine of natural law assumes a form which can be considered 'classical'. Accordingly, natural law is a participation of the rational creature in the eternal plan of God for mankind, namely, the eternal law. It is not a rigid, closed and complete set of moral norms, but a dynamic source of constant inspiration. It «considers the ethical and political order as a rational order, a work of human intelligence. It defines for it a space of autonomy, a distinction without separation, in a relationship with the order of religious revelation»<sup>11</sup>. This natural law is a point of reference, a criterion for evaluating the legitimacy of different positive laws and of different customs.

When we reach the sixteenth century, after a period of scholastic decadence, we find a renewal of the doctrine of natural law in the midst of many ongoing cultural transformations. This doctrinal evolution took place mainly in Spain and it was related to the new geopolitical circumstances which were posing several important ethical questions to be addressed, such as: Which were the titles that justify the Spanish dominion over the newly discovered territories? Which were the rights of the native people from those lands? Is anything like a just war and in whose hands lies the authority to declare and to make war? These questions were seriously studied by theologians, particularly those from the University of Salamanca, among whom the most important and influential was Francisco de Vitoria. He, from the foundations of the doctrine of the natural law, prepared the groundwork for a future international law, i.e. a continuation of the *ius gentium* of the Romans: «a universal norm that regulates the mu-

<sup>10</sup> St. Augustine, *Contra Faustum*, XXII, c. 27 [PL 42, col. 418].

<sup>11</sup> ITC, 2009, point 27.

tual relations of peoples and states»<sup>12</sup>. Let's see the intellectual evolution of our Magister.

#### THE INTELLECTUAL CAREER OF FRANCISCO DE VITORIA

Francisco de Vitoria joined the Dominican order in the city of Burgos in 1505. Three years later was sent to the University of Paris where he joined the College of Saint-Jacques remaining there till 1522 when he went back to Spain with a Master and Doctorate degree in his hands.

In Paris, like St. Francis Xavier, Vitoria received the influence of three different schools, namely, Thomism, Nominalism, and Humanism, especially since he had opportunity of dealing with notable humanists such as Luis Vives and Erasmus of Rotterdam. Those were times of change and renewal in the University of Paris. Years later, Francisco de Vitoria would bring these changes into his own educational activities.

Vitoria returned to Spain in 1523 and began to teach theology at the monastery of St. Gregory in the city of Valladolid, which was the see of government at that time. In Valladolid there was the 'Council of the Indies' which had judicial, legislative and executive functions with regards to the American and Asian colonies. Three years later he joined the University of Salamanca and he was instrumental in promoting the teachings of Aquinas to the extent of introducing the *Summa Theologiae* as the basic textbook for teaching philosophy and theology instead of the traditional *Book of Sentences* by Peter Lombardo.

Magister Vitoria was a gifted professor who managed to keep the attention of his students during his highly attractive lectures to the point that some of them talked of him as 'other Socrates'. He did not write any book and all his works are collection of class notes taken by his pupils during his regular lectures, in which he commented on the thought of Aquinas, and his *Relectiones*. These were special lectures held on particular occasions, similar to the disputed questions (*Questiones disputatas* and *Questiones quoadlibetales*) of the Middle ages. In them a professor took again one of the topics he had been teaching during the year and developed it as a seminar addressed to all the students and teachers of the School. Vitoria gave 15 *Relectiones*, 13 of

<sup>12</sup> ITC, 2009, point 28.

which have been preserved. Among the most famous ones we have *De potestate civili* (about the civil power), *De potestate ecclesiae* (about the ecclesiastical power), *De indis prior* (about the question of the Just Titles which the Spanish might put forward in order to justify their domination in the New World) and *De indis posterior* (known also as *De iure belli*, about the legitimacy of a just war)<sup>13</sup>. When we read the heading of these *Relectiones* we clearly see that for Francisco de Vitoria, theology was a lively science dealing with the most important topics of the time.

#### THE NATURE OF TEMPORAL POWER

Before discussing the issue of the Just Titles, let's discuss Vitoria's understanding of civil power which was explained in *De Potestate Civili*, the first of all his *Relectiones* given in Christmas 1528. It is a clear example of the influence of Aristotle on his thought. He considers man as sociable by nature and the society in which man lives as having, also by nature, an authority that helps to fulfill its original purpose. Vitoria applies the Aristotelian theory of the four causes to this analysis. First of all, he analyzes the final cause of the society which is to reach the complete development —spiritual and material— of each of its citizens. Due to the limitations that every human being has, it is natural and convenient that he does not stay alone but together with others in a politically organized community, which requires an authority. Vitoria says:

It is clear that the source and origin of cities and republics is not a human invention, but it is something rooted in nature for it is needed for helping human beings. From this it also follows that it is for the same reason, i.e., something rooted in nature, the necessity and purpose of the civil powers... [T]here will not be any stable society unless there is a governing power<sup>14</sup>.

The next cause to be analyzed is the efficient one. For Vitoria, unlike Aristotle, the efficient cause of the society is God. His argument is very simple: if by natural law there are societies and these

<sup>13</sup> See Beltrán de Heredia, 1928, pp. 110-119. About the first European editions of Vitoria's *Relectiones* see L. Alonso Getino, *Relectiones Teológicas del Maestro Fray Francisco de Vitoria*, 1933, pp. VII-XLVIII.

<sup>14</sup> Vitoria, *Relectio De Potestate Civili*, point 5.

societies require some type of government, then it is clear that the one who promulgates the natural law is the one who causes the societies to exist, namely God.

Regarding the material cause, Vitoria affirms that it is that one in which the power of governing resides, i.e., the society itself. He says:

The material cause on which this power resides is by natural and divine law, the same republic, to which belongs to govern itself, to administer and to direct towards the common good all its powers. This is proved in the following way: since because of natural and divine law there is a power to govern the republic and, removing any positive and human law, there is no especial reason by which that power is more in one than in other, it is necessary that the same society be self sufficient and has power to govern itself<sup>15</sup>.

Vitoria explains that all political power comes from God, but it is handled down to the community which in turn gives it to the constituted legitimate authority. The community or society receives the power of government but it can not exercise it because of its own limitations. Thus, it has to transfer it completely to the legitimate authority which could be only one person or more than one. For Vitoria, who personally was in favour of the monarchy, kings are not divine authorities since God is the cause of every political power. He says: «All public or private power by which a republic is governed, is not only just and legitimate, but it has God as its author. Thus, not even because of the agreement of everyone else, it can be abolished»<sup>16</sup>.

This understanding of political power as belonging to the natural and divine law is applied also in the case of non-Christian territories. Against the opinions of some theologians who placed the foundation of all power in the grace of God and not in human nature, Vitoria clearly states that political power has nothing to do with the supernatural order. Quoting St. Paul who commands to obey the legitimate authorities of his time, which were non-Christian, he affirms that there should not be any doubt that among pagans there were also legitimate authorities.

<sup>15</sup> Vitoria, *Relectio De Potestate Civili*, point 7.

<sup>16</sup> Vitoria, *Relectio De Potestate Civili*, point 1.

Finally Vitoria explains the formal cause of the society by defining political power as the «faculty, authority or right to govern the civil republic»<sup>17</sup>. He does not explain more for he considers that with the analysis of the other three causes everything has already been said. Thus, political power is the formal cause of the society.

The final part of the *Relectio De Potestate Civili* deals with the type of obligation imposed by positive or human laws. He states that they oblige in conscience since they have been promulgated by a legitimate authority whose power had been granted by God through the republic. It is clear that Vitoria clearly distinguishes between supernatural and natural order. As Prof. Mariano Fazio has written:

Vitoria interpreted St. Paul's passage that *omnia potestas a Deo* (all power comes from God) in a different way than the defenders of the theory of the divine power of the kings. For them, the king receives the power directly from God... While admitting a contractual element in the origin of the political power, Vitoria also kept distance from the radical contractualism, which will be carried out till the last consequences with Hobbes and Rousseau for whom the society was an exclusive product of the social contract. The harmonious relationship between natural law, of divine origin, and positive law, underlines the relative autonomy of the temporal aspects and its intrinsic ties with Transcendence avoiding false supernatural approaches or autonomous statements of absolute character<sup>18</sup>.

#### THE RELECTIO DE INDIS AND THE ISSUE OF THE 'JUST TITLES'

Having discussed Vitoria's ideas about the nature of civil power, we come now to analyze the famous issue known as the 'Just Titles' with reference to the legitimacy of the conquest of America by Spain. More than forty years had already passed since the first trip of Columbus. During those decades several settlements of Spaniards took place and the relationship with the natives was far from peaceful.

When Columbus returned from his first voyage, Spain asked Pope Alexander VI for the same privileges that had been earlier granted to Portugal. Thus, the Pope issued some documents —Papal Bulls— by which it was granted to Spain the dominion over all terri-

<sup>17</sup> Vitoria, *Relectio De Potestate Civili*, point 10.

<sup>18</sup> Fazio, 1998, Chapter 4. The translation is ours.

territories discovered by Columbus. Few years later, in the Treatise of Tordesillas, and based on these Papal donations, Spain and Portugal drew an imaginary line and stated that all territories situated West of that line would belong to Spain while those situated East of that line would belong to Portugal. This decision was not well accepted by other kingdoms such as France and England. Also, not everyone gave the same value to the Pontifical Bulls and it was questioned whether the Papal donation constituted a legal title of dominion or just a mandate to evangelize. This discussion was known as the problem of the «Just Titles».

The denouncement by members of the Church of the pitiful situation of the natives in the colonies and the doubt about the legitimacy of the political dominion awoke in Spain a sort of national examination of conscience about the rightfulness of the whole business. As we have already said, Vitoria had met at the Convent of St. Stephen many religious who had spent time in the colonies and from their stories he concluded:

I hear of no miracles or signs or religious patterns of life; nay, on the other hand, I hear of many scandals and cruel crimes and acts of impiety. Hence it does not appear that the Christian religion has been preached to them with such sufficient propriety and piety that they are bound to acquiesce in it, although many religious and other ecclesiastics seem both by their lives and example and their diligent preaching to have bestowed sufficient pains and industry in this business, had they not been hindered therein by others who had other matters in their charge<sup>19</sup>.

This paragraph has been taken from his *Relectio De Indis*, which he gave in January 1539. *De Indis* was an effort to analyze three main topics: 1. Whether the Indians were true owners of their territory before the arrival of the Spaniards; 2. By what rights the Spanish sovereigns obtained dominion over them in temporal and civil matters; 3. By what rights the kings or the Church obtained dominion over them in matters related to religion.

In the first part, Vitoria begins with an interesting analysis of the moral obligation every person has to form himself a right conscience. Thus, if there is a positive doubt about the goodness or evilness of a

<sup>19</sup> Vitoria, *Relectio De Indis*, Second Section, point 14.

particular action, that person —especially if he is an authority— should do the necessary consultations in order to come out of his doubt before acting. Only then his action would be considered morally right.

Vitoria flatly rejects the arguments used by some people to justify the way of dealing with the natives in the new continent and to reject them as true owners of the land. The arguments were: the grave sins committed by the natives, their unbelief and their lack of intellectual level. Vitoria clearly distinguishes between the natural order and the supernatural order. Thus he considers an error to assert that people living in state of mortal sin cannot be owners of anything at all. «This is the error, says Vitoria, of those who have maintained that grace is the title to dominion and consequently that sinners... have no dominion over anything. That was the error of the poor folk of Lyons, or Waldenses, and afterwards of John Wycliffe»<sup>20</sup>.

Vitoria clearly states that a sin in itself, unless it's a crime punished by civil law, cannot be an obstacle for owning possessions or for holding political offices. Also the lack of Christian faith is not a reason to deny power to any legitimate authority. He says: «From all this the conclusion follows that the barbarians in question cannot be barred from being true owners, alike in public and in private law, by reason of the sin of unbelief or any other mortal sin, nor does such sin entitle Christians to seize their goods and lands»<sup>21</sup>. In fact, he affirms, «dominion is founded on the image of God»<sup>22</sup>, i.e., on the radical dignity and equality of all human beings insofar as they have been created to God's image. Thus, a human being is not a legitimate owner because of a supernatural privilege, but because of his natural human dignity.

In the second part of the *Relectio* Vitoria discusses seven titles of dominion which he considers inadequate. Without entering in each of these discussions, it is interesting to mention that Vitoria rejects the widely accepted thesis since the Medieval times that, by divine law, the Emperor was the lord of the whole world and that the Pope was also a civil or temporal lord. Quoting Aristotle once again, He explains that power is of two kinds:

<sup>20</sup> Vitoria, *Relectio De Indis*, First Section, point 5.

<sup>21</sup> Vitoria, *Relectio De Indis*, First Section, point 19.

<sup>22</sup> Vitoria, *Relectio De Indis*, First Section, point 5.

the one originates in the family, like that of the father over his sons and that of the husband over the wife, and this is a natural power; the other is civil, for, although it may take its rise in nature and so may be said to be of natural law, as St. Thomas says (*De Regimine Principum*, bk. 1, ch. 2), yet, man being a political animal, it is founded not on nature, but on law<sup>23</sup>.

Thus, in the concrete institution of civil power, even if there is a case of an emperor who rules the entire world, this dominion is not of Divine law or of Natural law but of positive law.

The second title rejected by Vitoria was the claim that the Pope, by divine law, is a temporal ruler for the entire world. This was the theory of the two swords proposed by some medieval theologians. Accordingly, the Pope had the spiritual sword for religious matters and the temporal sword for political matters. The latter he delegated it in the secular rulers whose power come from the Pope. Vitoria explains that «the Pope has temporal power only so far as it is in subservience to matters spiritual, that is, as far as it is necessary for the administration of spiritual affairs»<sup>24</sup>. Vitoria proves this statement by discussing the relationship between the end of the spiritual power, namely, eternal happiness, and the end of civil power, namely, temporal happiness. The fact that at that time the Popes had temporal power was because of reasons of convenience for the exercise of their spiritual power which is essential to their office. But that temporal power did not extend to new territories and to new peoples. Vitoria affirms:

This shows that the title under discussion cannot be set up against the barbarians and that Christians have no just cause of war against them either on the ground that the Pope has made a gift of their lands on the footing of absolute lord or that they do not recognize the lordship of the Pope... What has been said demonstrates, then that at the time of the Spaniards' first voyages to America they took with them no right to occupy the lands of the indigenous population<sup>25</sup>.

<sup>23</sup> Vitoria, *Relectio De Indis*, Second Section, point 1.

<sup>24</sup> Vitoria, *Relectio De Indis*, Second Section, point 3.

<sup>25</sup> Vitoria, *Relectio De Indis*, Second Section, point 4.

Vitoria also rejects the opinion that the commandment of Christ of preaching the Gospel to all nations was a legitimate title to dominate the native people of the new territories. He considers that the Christian faith is a gift and that it has to be received only in a spirit of freedom. Any type of coercion should be rejected. He said: «war is no argument for the truth of the Christian faith. Therefore the Indians cannot be induced by war to believe, but rather to feign belief and reception of the Christian faith, which is monstrous and a sacrilege»<sup>26</sup>. At the same time, Vitoria sustains the obligation of the Indians to listen to the teachings of the missionaries and to follow the truth, but in a spirit of freedom.

In the third part of *De Indis*, Vitoria analyses the legitimate titles that justified the Spanish conquest. For this he develops his theory of *ius gentium*, the law of the nations, a universal law that can be applied to everyone. Both in *De Indis* and in *De Indis Posterior*, Vitoria uses several times the concept of *totus orbis* (the entire world) putting the foundations for an international community of all the nations, to which men belong due to their social nature. Consequently, there is a radical equality among all nations and there is no need of distinguishing between Christian and Non-Christian nations. The reason for that is not a supernatural one, but the fact of sharing a common human nature:

The fact of linking the existence of the *Totus Orbis* to human nature, i.e., to the natural order, carries out as a consequence that the norms of justice ruling the international community come, at least in their origin, from the natural law and, most precisely, from the *ius gentium*, i.e., the law of the peoples<sup>27</sup>.

For Vitoria the foundation of the international community is the natural sociability of men. This characteristic of sociability comprehends the entire human race and it implies moral and legal obligations. Basing his teachings on the doctrine of the *ius gentium*, Vitoria explains which titles are the legitimate ones regarding the dominion over the new territories. The first one is that of natural society and fellowship among peoples. He states:

<sup>26</sup> Vitoria, *Relectio De Indis*, Second Section, point 7.

<sup>27</sup> Fazio, 1998, Chapter 6. The translation is ours.

The Spaniards have a right to travel into the lands in question and to sojourn there, provided they do no harm to the natives, and the natives may not prevent them. Proof of this may in the first place be derived from the law of nations (*ius gentium*), which either is natural law or is derived from natural law...<sup>28</sup>

This first title is known as the *ius communicationis*, i.e., the right to visit other territories, to establish commercial relationships with other peoples, to foster friendship among different races, and so on. This is based on the natural bond of relationship existing among all men. Rejecting the future thesis of Hobbes, one century later, Vitoria quotes Ovid saying: «Man is not a wolf to his fellow man, but a man»<sup>29</sup>. Thus Vitoria sustains that if the native indians reject this *ius communicationis* the Spaniards have the right to seize the territories and sovereignty of the natives. But, «if the natives allow the Spaniards to traffic peaceably among them, the Spaniards could not allege in this connection any just cause for seizing their goods any more than the goods of Christians»...<sup>30</sup>

The second title is the *ius evangelizandi*, i.e., the right to preach the Christian Gospel all over the world. This right is a consequence of the previous one of free travelling and trading all over the world. The right goes together with the right by the natives to freely accept or not the evangelical message. However, if the right of preaching is not recognized by the natives, or moreover is obstaculized, then «this furnishes the Spaniards with another justification for seizing the lands and territory of the natives and for setting up new lords there and putting down the old lords...»<sup>31</sup>. However this should be done only in extreme cases and without excesses.

The remnant titles are like a corollary of these two of social relationships and of evangelization: right of intervention if the Indian princes forcibly oblige converts to go back to their ancient religion; right of intervention in case of existence of inhuman customs such as human sacrifices or cannibalistic practices; right to accept the wish of the majority if they truly and voluntarily plead for the rule of the King of Spain as their sovereign; right of helping a native group in

<sup>28</sup> Vitoria, *Relectio de Indis*, Third Section.

<sup>29</sup> Vitoria, *Relectio de Indis*, Third Section.

<sup>30</sup> Vitoria, *Relectio de Indis*, Third Section.

<sup>31</sup> Vitoria, *Relectio de Indis*, Third Section.

case it asks help from the Spaniards to fight against a more powerful one<sup>32</sup>.

#### CONCLUDING REMARKS

The importance of Vitoria during the 16<sup>th</sup> century is clearly seen in the influence left on the several thousands of students who passed through his lecture-rooms and on those of his pupils holding chairs of arts or theology at the University of Salamanca and others. Events like the condemnation of Sepulveda's book on the Indians and the New Laws of the Indies (1542) show the mark imprinted by the teachings of our *Magister*.

The awareness of the importance of Vitoria's legacy has grown along the centuries, especially during the 19<sup>th</sup> and 20<sup>th</sup> in which studies about his works multiplied enormously. He is considered the founder of International Law and his law of the nations (*ius gentium*) is an application of the doctrine of natural law to the relationship between peoples from the entire world (*Totus orbis*). It is quite significant that the United Nations, in June 1987, decided to name the Hall of the Council of Peace of Geneva as 'Francisco de Vitoria Hall'. It was a deserved homage and recognition to this great scholar for his efforts to foster international peace among all the nations of his time. His teachings about political and ecclesiastical power show a great equilibrium and are quite innovative since he broke with ancient theories, specially the theocratic one which tried to grant divine approval to what was mere positive law and customs of the time. For him, a law is unchangeable only if it is natural or divine. The positive laws promulgated by civil authorities are not permanent since they adjust to the concrete circumstances of the society. However, these positive laws —provided they don't go against the natural law— oblige in conscience since they have been promulgated by a legitimate authority which has received power, though indirectly, from God.

<sup>32</sup> Due to the scope of our paper, we do not discuss two titles given by Vitoria which have a theocratic flavor and are based on his understanding of the indirect power of the Pope on temporal matters. At first sight they seem to contradict his own teachings regarding the separation between supernatural and natural order. This question has been the object of debates among scholars. We can justify him considering that while he broke with medieval political theories Vitoria was also a son of his time.

Vitoria, as a theologian, discussed about all current topics, though respecting at the same time the necessary autonomy of the legal sciences and of philosophy. He was convinced that natural law, i.e., a participation of the eternal divine law in human beings, has been reinforced by the law of the Gospel. He applied his scholarship to analyze the legitimacy of the conquest of America and the way of conducting the evangelization of the people inhabiting those lands.

Francisco de Vitoria, the same as St. Francis Xavier, was concerned with the temporal and eternal happiness of the people of his time. Francis Xavier, far from the academic circles of the University of Paris, spent many years of his life fully dedicated to an intense missionary task seeking the good of the people he was dealing with. Francisco de Vitoria spent all his life at the University, first as a student and then as a teacher. From his academic position he fought for «the interests of the Indians and not merely for the profit of the Spaniards»<sup>33</sup>.

Vitoria, on the line of Aquinas, distinguished between natural and supernatural order, between temporal and spiritual power, between what belongs to man and what belongs to God. His political vision had in its centre the dignity of the human person as *imago Dei* (image of God), a person called to live a life of supernatural grace, a grace that does not destroy nature but heals it, strengthens it, and leads it to its full realization. We see in Vitoria's teachings the importance of the doctrine of the nature law as a tool to address the varied problems affecting our present day society. Quoting the abovementioned Document of the International Theological Commission we conclude that:

It is the moral law inscribed in the heart of men and of which humanity should always become more aware as it advances in history. This natural law is not at all static in its expression; it does not consist in a list of definitive and immutable precepts. It is a source of inspiration that always springs up in the search for an objective foundation for a universal ethics<sup>34</sup>.

<sup>33</sup> Vitoria, *Relectio de Indis*, Third Section.

<sup>34</sup> ITC, 2009, point 113.

## BIBLIOGRAPHY

- Desantes-Guanter, J. M.<sup>a</sup>, «Los Mensajes Simples en el *Ius Communicationis* de Francisco De Vitoria», *Persona y Derecho*, 20, 1989, pp. 191-209.
- Díaz, B., *El Internacionalismo de Vitoria en la Era de la Globalización*, Pamplona, Eunsa, 2005.
- Fazio, M., *Francisco de Vitoria. Cristianismo y Modernidad*, Buenos Aires, Ciudad Argentina, 1998.
- International Theological Commission (ITC), *The Search for Universal Ethics: A New Look at Natural Law*, Vatican City, 12.VI.2009. The official version of this document is available in Italian and French. The English translation used in this paper has been prepared by Joseph Bolin and it is available online (<http://www.pathsoflove.com/universal-ethics-natural-law.html>).
- Iturbe, M., «The Years of St. Francis Xavier as a Student at the University of Paris», in *St. Francis Xavier. His Times and Legacy*, ed. K. Acharya and C. Mata, Mumbai, Somaiya Publications, 2007, pp. 39-58.
- Sarmiento, A., «La Condición Personal como Fundamento de la Libertad e Igualdad de Derechos entre los Hombres y los Pueblos, según Francisco de Vitoria», en *X Simposio Internacional de Teología de la Universidad de Navarra*, Pamplona, Eunsa, 1990, vol. 1, pp. 265-271.
- «La Obligatoriedad de las Leyes Civiles según Francisco de Vitoria», *Scripta Theologica*, 41.2, 2009, pp. 585-610.
- Vitoria, F. de, *De Indis et De Iure Belli*, Relectiones edited by Ernest Nys, Washington, 1917, Reprinted by Oceana Publications Inc., Wildy & Sons Ltd., New York, 1964 (available online: [http://en.wikisource.org/w/index.php?title=De\\_Indis\\_De\\_Jure\\_Belli](http://en.wikisource.org/w/index.php?title=De_Indis_De_Jure_Belli)).
- *Relección de la potestad civil* (1528) and *Relección de la potestad de la Iglesia* (1532), Electronic Version prepared under the direction of Prof. Juan Cruz Cruz, Publicaciones del Proyecto de Pensamiento Clásico Español, Pamplona.  
[<http://www.unav.es/pensamientoclasico/autoresyobras/Poder%20civil.pdf> and <http://www.unav.es/pensamientoclasico/autoresyobras/Poder%20Iglesia.pdf>]