

## VITORIA AND THE RIGHT OF SELF-DETERMINATION\*

By  
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A little more than a year ago today, I had the privilege of giving a talk at the University of Santo Tomas on the subject of Francisco de Vitoria and the United Nations. I propose this time to develop further the ideas I suggested then regarding the work of this 16th century Spanish theologian who must be reckoned one of the founders of modern international law.

Vitoria, like all men of genius, was in many respects far ahead of his time, so much so, that even today, after more than four centuries, some of his ideas seem amazingly modern. As I pointed out previously, they are among the basic principles of the United Nations Charter, and specially of those chapters which deal with the problems of colonial, or non-self-governing territories and the right of self-determination of peoples. It is on these aspects that I propose to dwell the most today.

During the last century, the reputation of Hugo Grotius as the "father of international law" became widely established. Without wishing in any way to detract from the undoubted merits of the great Dutch publicist, it should be pointed out that recent scholarship has tended to bring to the fore the work of the Spanish writers who antedated Grotius and, particularly, to single out the outstanding contributions of the Jesuit Francisco Suarez and the Dominican Vitoria. In his book "On the Law of Nations", Professor J. L. Brierly, of Oxford, states that few books have won so great a reputation as Grotius' *DeJure Belli Ac Pacis*, but, he says, and I quote, "to regard its author as the 'founder' of international law is to exaggerate its originality and to do less than justice to the writers who preceded him". Among these he points to the importance of Vitoria's role in the expansion of international law into a world system.

In the United States, the eminent Professor James Brown Scott, in his introduction to the selected works of Suarez, published by the Carnegie Foundation for International Peace, writes the following: "Francisco de Vitoria, in the course of his lectures on theology at the University of Salamanca, dealt in concrete terms with the problems of man and society and laid the foundations of modern international law. Suarez, it may be said, continued the work of Vitoria... supplying a complete philosophical background for the legal, political and international doctrine of his Dominican predecessor."

And if we go back to earlier times, we can find a Vitoria enthusiast in the 17th century: an outstanding north German scholar, Hermann Konring, who taught at the University of Helmstedt, considered at the time one of the chief seats of Protestant learning. Professor Konring stresses that Vitoria was the first to raise moral problems in juridic questions, pointing out that the Spanish continued

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\* An address recently delivered before the student body of the College of Law, University of the Philippines.

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to study theology and philosophy in this way and that similar works are vainly sought among the French, or Dutch or Germans, whose genius, he says, is not suited to this study. "Often," he adds, and I quote, "I am surprised that Hugo Grotius was able to make progress in this kind of work... However, if he excelled in philosophy and produced the incomparable book, *DeJure Belli Ac Pacis*, he owed it to his reading of the Spanish juriconsults Fernando Vasquez and Diego Covarrubias, who had in their turn made use of the work of their master, Francisco Vitoria."

It is specially noteworthy that the above words were written by a Protestant, since it has been suggested that the rise of Grotius' reputation at the expense of that of his Spanish predecessors is due, in part at least, to sectarian prejudice. I do not wish here to attempt to decide who deserves the purely honorific title of "father of international law", nor do I believe myself qualified to do so. In any case, all such controversies are sterile and the title is obviously an arbitrary one which depends entirely on how the terms are defined. Suffice it to say that the contributions of the Spanish school of international law can no longer be minimized and that the applicability of some of Vitoria's concepts to such modern problems as the right of self-determination of colonial peoples, lends special interest in our own day to a study of his ideas.

Francisco de Vitoria's collection of lectures, or "Relecciones", entitled "On the Indians Lately Discovered" deserves to rank among the great pioneering works which serve as stepping stones in the development of the human spirit.

In order to understand properly the significance of such master-works one should take into account the particular circumstances under which they originated. Truly creative productions are not elaborated from purely abstract ideas unrelated to existing conditions or to human problems. They are the product of the reaction of specially sensitive and imaginative minds to the life around them. Vitoria was born at a crucial time in the history of Spain, and in fact at a turning point in world history. His birth and early life coincided with that great intellectual and artistic upsurge in Europe known as the Renaissance. It also coincided with the great era of discoveries and explorations in which Spain and Portugal played a leading part and which for the first time made evident the physical unity of the globe, bringing into direct and permanent contact the different races of men in varying stages of civilization, inhabiting hitherto unknown continents. In other words it was a time which witnessed the growth of a new world viewpoint.

For Spain these were particularly auspicious times since they were marked by the consolidation of national unity following the reconquest of the last Moorish kingdom of Granada, and, in the same climactic year of 1492, by the discovery of America.

The spiritual and physical energies which had accumulated in Spain during the 700 year struggle, which partook of the nature of a crusade, to recover the country from the Arab conquerors, were now free to direct themselves outward. The resulting explosion led Spain in a very short time, to become the leading military power in Europe and to establish a vast empire beyond the seas on which the

sun never set. But this rapid physical expansion had also a spiritual side. Accompanying the conquistadores went members of the religious orders intent upon spreading the faith and establishing christianity. It was in this spirit that the Dominican Father Bartolome de las Casas devoted his life to the defence of the mis-named Indians and pleaded their cause before the Council of the Indies in Spain. As a result the Council prohibited the outright enslavement of the Indians and dictated measures for their protection, which, it must be confessed, were not always applied in practice.

This then was the atmosphere in which Vitoria grew up. Because of his early revealed gifts, he was sent by the Dominican order which he had joined to complete his studies in Paris. And after returning to Spain, in view of his outstanding accomplishments, he was appointed in 1526 *prima* Professor in theology at the University of Salamanca, where he remained for twenty years until his death. During this time, and in great part due to him, Salamanca became one of the great seats of learning to which students came not only from all of Spain but from other countries of Europe as well. Salamanca was repeatedly consulted by the King and the Council of the Indies regarding the unprecedented legal and moral problems which arose as a result of Spain's world conquests. Vitoria of course took a leading part in these consultations.

As a teacher, Vitoria quickly achieved renown because, rejecting the arid abstractions of sterile scholasticism, his original mind dealt with the great moral problems of the day in a fresh and concrete manner. A Belgian scholar, Jean Vasée, who knew him at Salamanca, speaks of him in the following words: "His erudition was incredible, his reading almost unlimited, his memory ready; he was like a miracle of nature."

Faced with the problems brought up by the royal councils, and with the knowledge of actual conditions in America through reports he received from Dominican co-religionists who had accompanied the conquistadores, Vitoria could not in all conscience evade the issues raised. The outcome of his soul searching was a series of three lectures delivered under the general title of "On the Indians Lately Discovered". With extraordinary moral courage and intellectual honesty, he there examined the legal foundations on which Spanish domination over the Indians and their lands might be established, resolutely rejecting the false titles commonly claimed to justify it. It should be remembered that he did this at a time still essentially feudal in outlook, and in a country whose king was also Emperor of Germany and the most powerful sovereign of the age.

To question Emperor Charles V's right to extend his empire by force of arms would seem a rash venture indeed, and yet Vitoria's words rang clear: the Emperor is not lord of the whole world, and even if he were, that did not entitle him to seize the lands of the Indians. Inasmuch as the Indian aborigines were not of unsound mind, though they be as backward and stupid as was alleged, they were not precluded from being true owners in public and private law or from the right to be governed by their own rulers. The Spaniards, he said, and I quote, "took with them no right to occupy the lands of the indigenous population."

Another title to Imperial dominion over the newly discovered territories was based on the Bulls of Pope Alexander VI. Vitoria rejected this title with equal firmness. The Pope, he said, is not the civil or temporal lord of the whole world. And even if the Pope had secular power over the world, he could not give that power to secular princes. The Pope does have temporal power, Vitoria asserted, but only so far as it subserves things spiritual. Therefore, he concluded, the Pope has no temporal power over the Indians. Vitoria pursues this conclusion unflinchingly to its logical corollary: a refusal by the Indians to recognize any dominion of the Pope is no reason for making war on them and for seizing their goods.

The boldness of the Professor of Theology in making known the truth as he saw it with regard to the powers of both Emperor and Pope did not long go unnoticed. Charles V addressed an angry letter to the Prior of Salamanca forbidding any further discussion or the publication of any works which questioned the right of the Emperor to his dominions beyond the seas. Though obeying this injunction, Vitoria never retracted a single word of what he had already said, and such was his moral prestige and influence that not only was he never directly attacked by the royal authority, but when years later the King selected the participants for the all-important Council of Trent, Vitoria was among those invited to attend. However, the bad state of his health did not permit him to accept and in fact he died shortly after.

With regard to Vitoria's relations with the papacy, it is reported that when his famous lectures "On the Indians lately Discovered" were first published after his death, there was a move to have the work placed on the Index. But to the eternal credit of the Church, the move failed and Vitoria's works have remained open to all the faithful.

Vitoria also took up the claims that the Spanish conquest was justified because the Indians were unbelievers and, in view of their barbarous practices and immoral conduct, were living in mortal sin. To this Vitoria answered that the Indians, or barbarians in general, are not precluded by unbelief or by any other mortal sins from being true owners alike in public and private law. And even though the Christian faith may have been announced to them with adequate demonstrations and they had refused to receive it, this was not a reason, Vitoria asserted, which justified making war on the Indians and depriving them of their properties.

Another argument put forward to justify the Spanish conquest, and there are many still using it in our own day to justify other more recent conquests, was that because of their ignorance, evil customs, and backward mentality, the Indians were unfit to maintain a civilized state, thus giving the Spaniards the right to establish by force a civilized government of their own.

As I pointed out in my previous talk, Vitoria recognized the force behind this argument. Yet he was very reluctant to accept it. "I dare not affirm it at all," he said, "nor do I entirely condemn it". He could only allow it with many reservations and precautions. Let it be put forward, he admonishes, "without dogmatism and subject also to the limitation that any such interposition be for the welfare

and in the interests of the Indians and not merely for the profit of the Spaniards."

I also pointed out that these words express essentially the same spirit that animates the Charter of the United Nations regarding the problem of non-self-governing territories. Article 73 of the UN Charter states, and I quote, "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants of these territories. . . ."

Vitoria, it is true, recognized the existence of certain lawful titles to Spanish dominion in America and to just causes of war against the inhabitants. Some of these may seem rather dated, but they are based on general principles which Vitoria believed to be justified under natural law. For example, basing himself on the natural right of all peoples to travel freely and to lawfully carry on trade, he felt that the Spaniards were justified in establishing these rights by force should they be denied by the aborigines. He also contended that if the Indians prevented the Spaniards from preaching the gospel, as was their right, they could make war to enforce this right after reason and persuasion had failed. In addition, Vitoria claimed that the Pope as spiritual head could entrust the Spaniards alone with the task of converting the Indians, and he also allowed that the Spaniards could take the Indians under their protection if after being converted to Christianity, their chiefs desired to bring them back to idolatry by force or through fear. Moreover, he said, if a large number of Indians were converted, the Pope might give them a Christian sovereign in the interest of protecting the faith.

In all of these cases, however, Vitoria hedged these views with explicit reservations. All should be done to avoid the use of force, but if war were necessary to gain these just ends, it should be waged in moderation and proportion and with the intent directed more to the welfare of the aborigines than to the gain of the Spaniards.

Be that as it may, when all is said, the fact remains that to Vitoria falls the glory of having first enunciated the basic proposition that no power on earth has the right to claim lawful title over the lands and properties of so-called backward peoples, or to overthrow their governments, without just cause. In other words, Vitoria claimed that all peoples, whatever their failings or defects, whatever their race, creed or color, had definite inalienable rights of which they could not lawfully be deprived, including the right to govern themselves.

Such a view was at that time revolutionary. And to a certain extent it still is today. No such doctrine had ever been propounded by the Greeks or the Romans, who always believed that their wars of conquest against the so-called barbarians needed no justification. This Vitorian doctrine was based on Christian ethics and the Thomist philosophy of natural law. In modern times it has been further developed under the name of the right of self-determination of peoples. The first attempt to apply it as a part of international law was made

after the first World War. But its application was very far from the theory.

When the UN was founded in 1945, this principle, some 400 years after it was proclaimed by Vitoria, was finally acknowledged by all, and Article 1 of the UN Charter states in its second paragraph that one of the purposes of the United Nations is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". And in furtherance of this principle, the UN Trusteeship System was established to supervise the administration of non-self-governing territories. This was a great step forward over the mandate system of the former League of Nations.

Nevertheless, the problem of how or when to apply the right of self-determination is one which is still far from being solved. It has been the subject of many controversies in the United Nations with the colonial powers often ranged on one side against the others. The Commission on Human Rights has been requested by the UN General Assembly to make recommendations to further international respect for the rights of peoples to self-determination. The Commission has discussed the problem during several sessions and proposed various recommendations but nothing has yet been decided. I mention all of these facts to show that this question is difficult and complex and is one which is very much alive today.

Mr. Trygve Lie, the first Secretary-General of the United Nations, in a work published after he had retired from office, singled out the three most important problems which threaten the peace of the world. According to him these are (a) problems arising as the result of East-West conflicts, that is to say, the cold war; (b) the economically underdeveloped lands and their demand for improved living conditions and a more just distribution of the world's wealth; and (c) the struggle of recently subjugated peoples for fuller freedom and national independence. Under this last heading, he adds, would come such sources of discord as racial problems and religious differences, as well as "colonialism". It will be noted that of these three major problems facing the world today, two are related to the subject of Vitoria's lectures which we have been discussing.

Vitoria, of course, made no attempt to take up the question of how to safe-guard or implement these rights through governmental institutions or international machinery which, it may be added, did not exist in his day. His great merit lies in that he saw the problem clearly and established the legal principles for a just appraisal of it.

He was aided in this task by his adoption of the theory of natural law propounded by his Dominican predecessor, St. Thomas Aquinas. For, once the premise is admitted that there is a natural law which antecedes all human law and is not dependent on any particular religious faith, then the conclusion logically follows that international laws derived from it should apply equally to all, irrespective of racial, religious, or geographical differences. To draw a logical conclusion from a premise is not always a simple matter, specially when the path is obstructed by deep-seated prejudices and the powerful forces of self-interest, as in this case. But nevertheless Vitoria successfully overcame these obstacles.

Vitoria's influence passed beyond the confines of Salamanca not only through his pupils, but also, after his death, through the publication of his lectures on the Indians and the laws of war, of which a first edition appeared in Latin in the French city of Lyons in 1557. Other editions were later published at Antwerp, Venice, and Cologne in Germany.

The effect produced by this work on the scholars and humanists of the time was deep and widespread, as is shown by the comments of the German Professor Konring quoted earlier. Even more important, perhaps, was the influence that Vitoria's ideas exerted through the medium of his great successors such as his fellow-countryman Francisco Suarez, the Italian Alberico Gentile, Professor of civil law at Oxford, and finally the Dutchman, Hugo Grotius.

Vitoria's reputation has of course been specially high in Spanish-speaking countries. Among the early advocates of independence of the various countries of Spanish America his opinions were frequently cited and there were frequently to be found in the independence movement clerics who were undoubtedly influenced by his works. It is a fact, for instance, that in the Congress of Tucuman which in the year 1816 formally declared the independence of Argentina, a majority of the delegates were churchmen.

Finally, it should be said that as a teacher he won the admiration and affection of his pupils. It is reported that when in his last days he was unable to walk because of his infirmities, he was carried to his classroom on the shoulders of his pupils because of their eagerness to hear his words. I think you will agree no greater glory could befall any teacher.