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Abstract

This Article argues that Francisco de Vitoria and Domingo de Soto were responsible for the creation of international law. Part I discusses the formation of Vitoria's personality and life's work. Part II discusses the time Vitoria spent teaching at the University of Salamanca. Part III highlights the principles of Vitoria's internationalism. Part IV discusses Vitoria's Americanist thinking. Part V offers biographical notes on Domingo De Soto. The Article concludes by arguing that De Soto would not have agreed with Spain's approach of an armed expropriation of the land and lives of the Indians.

ESSAY

THE INTERNATIONALIZATION OF FRANCISCO DE VITORIA AND DOMINGO DE SOTO

*Ramón Hernández, O.P.**

I love the [U]niversity of Salamanca; for when the Spaniards were in doubt as to the lawfulness of their conquering America, the [U]niversity of Salamanca gave it as their opinion that it was not lawful.¹

INTRODUCTION

It was in 1526 that Francisco de Vitoria assumed the most prestigious chair of theology of his university, the University of Salamanca. In so doing he catapulted onto the stage of an intellectual world debating themes and issues that affected the foundations of the Catholic Church, civil society, Western culture, and the status of man himself as a subject of inalienable rights grounded in his dignity and intellectual nature.

As to the Catholic Church, the revolution represented by Martin Luther's reforms had erupted in a manner that called into question the very internal constitution of ecclesiastical society. In the political order, the confrontation between Christian princes, the interminable wars between France and Spain, and the conflicts in Italy, Germany, and elsewhere in Europe, had never before acquired such intensity nor such sweeping proportions. The Ottoman empire, at the height of its expansionist powers, represented another danger that led to war. There were also the wars in the Americas. When Vitoria ascended to his professorship, war appeared to be an invincibly malignant tumor that had infected all of Christendom.

Vitoria applied his genius to these and other serious problems of his time, and provided keys to their possible reso-

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1. Samuel Johnson, in 2 JAMES BOSWELL, *THE LIFE OF SAMUEL JOHNSON* 242 (John Murray, ed. 1839).

lution. His thinking is not subject to the facile historicism that measures and limits the import of a teacher's thinking by and to the time in which he lived, and scholars still study his works with the same fervor as in his time. Many of his writings and teachings speak to our time and our world with the same freshness that they had in the sixteenth century.

In this respect, his influence on Spanish and non-Spanish universities and their thinkers in the sixteenth and seventeenth centuries is clear. This influence extended to the universities of Coimbra, with Pedro Barbosa; of Paris, with Juan Maldonado; of Louvain, with Leonardo Lessio; of Dilingen, with Pedro de Soto and Gregory of Valencia; of Rome, with Francisco Suárez; of Mexico, with Alonso de Veracruz and Bartholomew de Ledesma; and of Lima, with Juan Ramírez.² His influence was not limited to ecclesiastical and theological circles, however, as it extended to great European thinkers of differing ideological and philosophical persuasions. The Dutchman, Hugo Grotius, in particular in his *De Jure Belli et Pacis*,³ published in 1625, refers extensively to Vitoria and transcribes many of his paragraphs.⁴ In turn, the work of Grotius would influence John Locke and Samuel Pufendorf, who themselves would mark the reflection of the Encyclopedists and jusnaturalists of the eighteenth century.

The rise of liberal and democratic doctrines in the nineteenth century, the declarations of the rights of man, and the rise of peaceful accords among states would turn the eyes of many intellectuals to Vitoria, who began to be recognized as the founder of international law. The creation of the League of Nations in 1919, and of the United Nations in 1945, underscored the actuality of Vitoria's figure and doctrine. In recognition of his internationalist work, his bust was prominently displayed in the halls of the United Nations in New York and the Organization of American States in Washington, D.C.

2. FRANCISCO DE VITORIA, *LA ÉTICA DE LA CONQUISTA DE AMÉRICA* 458-95, 551-96 (Consejo Superior de Investigaciones Científicas, Corpus Hispanorum de Pace ed., 1984).

3. HUGO GROTIUS, *ON THE LAW OF WAR AND PEACE* (L. Loomis trans., 1972) (1625).

4. See A. Truyol y Serra, *Francisco de Vitoria y Hugo Grocio: Cofundadores del Derecho Internacional*, in 111 *CIENCIA TOMISTA* 17-27 (1984).

I. FORMATION OF VITORIA'S PERSONALITY AND LIFE'S WORK

His parents, Pedro de Vitoria, of Alavá, and Catalina de Compludo, of Burgos, were both of noble families and well-established in the city of Burgos before the birth of Vitoria. Vitoria's classic biographer, Gonzalo de Arriaga, wrote that his parents were "residents of the city of Burgos and of honorable descent."⁵

The debate as to Vitoria's place of birth engendered much quarrelsome discussion among historians from 1927 through 1953. The controversy was fueled by many books, articles, and scholarly journals for over twenty-five years. In 1953, Vicente Beltrán de Heredia, O.P., arrived at the solution that is today generally accepted as accurate. Beltrán de Heredia had always argued that Vitoria had been born in the city of Vitoria. However, in April, 1953, while studying in the National Historic Archives in Madrid, he discovered the dispositive evidence while examining a calfskin manuscript entitled *Libro de la fundación [del] convento de San Pablo de Burgos*, attributed to a certain Fray Antonio de Logroño. Herein he noticed that its author, complaining of a sale made by the Monastery of San Esteban of Salamanca to that of San Pablo of Burgos, pointed out that the former took advantage of the university salaries of two brothers of the latter while charging the full price of the sale. The two brothers from Burgos were the "Masters Fray Francisco de Vitoria, native of Burgos, and Fray Domingo de Soto, native of the city of Segovia."⁶

The majority of scholars yielded to the newly found evidence, although others were quick to protest on the ground that such testimony represented no more than the circumstantial reference of a monk jealous of matters pertaining to his monastery. The merit of the document, however, lies in the quality of the attesting witness. Fray Antonio de Logroño was the conventual of Fray Francisco de Vitoria in the Monastery of San Pablo de Burgos, and they lived together during his youth.

5. Gonzalo de Arriaga, *Historia del insigne convento de San Pablo, Orden de Predicadores, de la ciudad de Burgos*, in ARCHIVO MUNICIPAL DE LA CIUDAD DE BURGOS, códice 23, fol. 74v.

6. Antonio de Logroño, *Libro de la Fundación, sitios, rentas, jueros, heredades, enteramientos, scripturas del Convento de San Pablo de Burgos*, in ARCHIVO HISTÓRICO NACIONAL DE MADRID, ms. 57B, fol. CCLVIIIv.

As the oldest chronicler of Burgos as the home of Vitoria, he was also extremely interested in the history of the city and its Dominican monastery. Those who would contest such evidence would have to do so on the basis of older and more reliable documentation.

Much ink has been spilled in the attempt to determine the year of Vitoria's birth as well. For many years 1492 was accepted as the year of his birth, mainly as a result of Narciso Alonso Cortés's homage to Ramón Menéndez Pidal, written in 1925. In this study, Cortés proffers the testimony of Vitoria himself in the contest of Hernán Núñez, with his three opponents, for Prime Chair of Theology of the University of Salamanca. In this testimony, in 1533, Vitoria assured his audience that he was more or less 40 years of age. As a result, Vicente Beltrán de Heredia believed that 1492 represented the most likely date of Vitoria's birth. Coming from such an eminent Vitoria scholar, most historians accepted his estimate as accurate.

This author has argued, on a number of occasions, against this choice of the year 1492, preferring that of 1483, as reported by the historian Arriaga. Indeed, a document in the National Historic Archives of Madrid supports my position. This document presents Vitoria as a *deacon* as of March 12, 1507. If he had been born in 1492, it would mean that he would have been a deacon at the age of 15. Those familiar with the canonical legislation of the time would know this to be impossible.

Vitoria entered the Dominican monastery of Burgos in 1505, and made his religious profession the following year, one of special significance for the monastery.⁷ Vitoria received a solid philosophic and humanistic training at Burgos. As befitted such a model monastery, there reigned an atmosphere of the strictest religious and scholarly exigency, in which Vitoria remained for the one year of his novitiate and the two of his profession. Although some believe that he left Burgos to continue his studies in Paris at the Sorbonne in September 1507, on the basis of a document found by this author in June 1983,

7. Ramon Hernández, O.P., *Documento más antiguo, inédito, de Francisco de Vitoria*, in 11 ARCHIVO DOMINICANO 69-84 (1990).

Vitoria appears to still have been in Burgos as of December 7, 1507.

Vitoria must have left for Paris in 1508, to begin the academic year in the Dominican Monastery of St. Jacques. He must have been well advanced in his studies in the arts and philosophy, because he only needed the 1508-09 academic year to complete them. In 1509 he began his theological studies, which would end in 1513, the year in which he began his professorship of philosophy and the arts, prior to his position as docent of theology. The Dominican General Chapters of 1513 and 1515 assigned him to teach theology in the University of Paris in 1516, and, on the basis of his excellent humanistic, philosophic, and theological preparation, he began his work that year.

What in particular influenced Vitoria's formation, the foundation of his internationalism and of his pointed concern with American themes? We can clearly observe three intellectual movements that were particularly influential in the French capital at the time: humanism, nominalism, and Thomism. Vitoria knew how to appropriate the most positive elements of each of these currents of thought. As to humanism, he established an early contact with the circle surrounding Erasmus of Rotterdam, to whose innovative ideas he was attracted, and he also struck up a friendship with the Spanish humanist, Luis de Vives, who was also in Paris between 1508 and 1512.

We can discern some reflection of these friendships in a letter that Vives wrote to Erasmus later, when Erasmus's books began to fall prey to persecution in Spain. One of Erasmus's critics was Diego de Vitoria, Francisco's brother. Speaking of Diego, Vives wrote to Erasmus that

[Diego] has a brother who is different from him, Francisco de Vitoria, who is also a Dominican, a theologian of Paris. He is an individual of the greatest renown and credit among his brethren. Remember that on more than one occasion he defended your cause before different assemblies of theologians in Paris. He is very skillful in these scholarly argumentations. He has been successfully cultivating good letters since he was a child.⁸

The last sentences contain two items of particular interest.

8. 7 ERASMUS OF ROTTERDAM, *OPUS EPISTOLARUM* 83-85 (P.S. Allen ed., 1960).

The first is that Vitoria was a careful student of the classics from the time of his youth. Such an important detail from Vitoria's adolescence, as narrated by Vives, could only be known by one who knew this from Vitoria himself, a fact that is suggestive of the close friendship that they shared during their time in Paris together. The second is that Vitoria was strongly influenced by the Dutch humanist during his stay in Paris, to the point that he would defend him on multiple occasions in public gatherings at the university, in which Erasmus had many exalted opponents.

The second Parisian influence that left its mark on Vitoria was nominalism. Among the nominalists, Vitoria cites the philosopher Juan de Celaya, of Valencia, and in his writings he mentions other contemporaries of this school, including Jacob Almain and John Major. Vitoria rejected nominalism as a system, although he knew how to discern and benefit from its better insights—in particular, the practical aspect of its theology—through his contacts with the movement and its thinkers. He was greatly interested in human and juridical-ethical problems, including the special orientation of nominalist writers towards mathematics and the natural sciences.

While in Paris, if Vitoria's open and broad mind assimilated and was influenced by many elements of humanism and nominalism, Thomism would represent the preferred system by which he would evaluate and incorporate the others. In this respect, Vitoria acknowledges two teachers with special gratitude and admiration: Juan Fenario of Feynier, and Peter Bruselense, or Crockaert. The first, who would become the General Master of the Dominican Order, was at the time much lauded as a good teacher and as a man of both outstanding intelligence and common sense. The second had taught philosophy in Paris and had followed a nominalist current of thought. Weary of such literalist disquisitions on which many authors grounded their theology, Crockaert entered the Dominican Order at St. Jacques in Paris. He succeeded in imbuing himself with Thomism and began a fruitful teaching career. It was Peter Crockaert who introduced Aquinas's *Summa Theologiae*⁹ as the standard textbook in Paris, and, in so doing, broke with the centuries-old tradition that sought to explain

9. THOMAS AQUINAS, *SUMMA THEOLOGIAE*, in 2 BASIC WRITINGS OF SAINT

theology on the basis of Peter Lombard's *Sentences*.¹⁰ It would be Vitoria who would introduce this innovation in the college of San Gregorio de Valladolid and at the University of Salamanca. The relationship and mutual influence of master and disciple must have been strong, because Crockaert chose Vitoria as his collaborator on his 1512 edition of the *Secunda Secundae*. The preface to this work is the first known writing of Vitoria. It is composed in a polished, Renaissance Latin that reveals the affections and ideals to which he would dedicate his life. He lauds Aquinas for his frequent use of two sources that are in close accord with the humanist renaissance: sacred Scripture and the moralists and philosophers of antiquity. The practical orientation that Vitoria would always give to theology, and his eagerness to transform the sciences in light of the problems of his time, moved him to publish other similarly practical works.

II. TEACHING AT THE UNIVERSITY OF SALAMANCA

When he returned to Spain in 1523, Vitoria was assigned to a teaching position at the college of San Gregorio of Valladolid. This city on the banks of the Pisuerga river was at the time imbued with Americanist airs which made a strong impression on Vitoria. It was here that in 1512 the First Laws of the Indies had been drafted by the junta of Burgos, and it was here that many young Dominicans were being trained for missionary work in the New World. It was also here, during Vitoria's docency, that the Royal Council of the Indies was established under the initial presidency of García de Loáisa.

In 1526, Vitoria ascended to the position of Prime Chair of Theology of the University of Salamanca and definitively established himself in the Monastery of San Esteban of Salamanca. In his intellectual prime, and with an excellent background, he was able to discern and appreciate the difficulties and disquiet of his time with a lucidity that surprised his contemporaries. He soon found many good friends and admirers among the humanist community in Salamanca, including

THOMAS AQUINAS (Anton C. Pegis ed. & Laurence Shapcote, O.P. trans., Random House 1945).

10. PETRUS LOMBARDUS, *Sententiarum libri quatuor*, in *Patrologia Latina* (J. P. Migne, ed. 1880).

Hernán Núñez de Guzmán, professor of Greek, Juan Martínez Silíceo, professor of natural philosophy, Bernardino Vázquez de Oropesa, professor of Biblical studies, and the theologian Martín de Frías.

Other admirers and friends soon arrived as well. In 1531, the Flemish humanist Nicolás Clenardo arrived to occupy a professorship of Greek, and in 1536, another Flemish scholar, Juan Vaseo, arrived to teach humanities. Two years after Vitoria's arrival, the celebrated canonist Martín de Azpilcueta, otherwise known as the Navarrese Doctor, would become another especially good friend of Vitoria, until 1538 when Emperor Charles V sent him to Coimbra in order to accommodate King John III of Portugal's affection for scholars.

One of the requirements of Renaissance humanism, in addition to proper stylistics, was the critical sense that had to be applied to history, literature, philosophy, Scripture, and theology. In this sense, arguments on the basis of authority or tradition alone did not suffice, and each had to be subjected to the most rigorous rational examination. Melchor Cano, Vitoria's preferred disciple, exalted this kind of theological reasoning and acclaimed Vitoria himself as the best exponent of this Thomist tradition. This same critical disposition would lead Vitoria to confrontations with some of the very humanists who on occasion sought to resolve the highest of theological problems on the basis of mere language and grammar. He would call them "grammarians posturing as theologians."

The principal and official text of all professors of theology traditionally had been Peter Lombard's *Sentences*.¹¹ Once he arrived, Vitoria replaced it with Aquinas's more scientific and theological *Summa Theologiae*. Once the other professors saw the success and superiority of Aquinas's text as compared with that of Lombard, they too adopted it for their courses. This change was not officially recognized in the statutes of the University of Salamanca, however, until the reform of 1561. In addition to their ordinary lessons, the university constitution required all professors to give an annual and extraordinary lesson, known as the "relection,"¹² before the full community of university faculty. The subject of these relections generally

11. See LOMBARDUS, *supra* note 10.

12. In Latin, *relectio*, or in Spanish, *repetición* or *relección*.

concerned timely questions of public affairs or questions with respect to which the professor was best prepared as a result of his research or studies during that particular year. These annual conferences had not generated much interest at the University of Salamanca prior to Vitoria's arrival, and Vitoria's relections would become the principal sources of both his own and his university's renown.¹³

Of all of Vitoria's relections, only the first and the last have disappeared. This itself is unusual, as the majority of the university's professors limited themselves to performing the minimum or to keeping up appearances, and, once they had completed their obligation, they destroyed their folios and manuscripts. Vitoria did not follow this procedure, as he realized that these gatherings represented propitious opportunities to disseminate ideas and principles among a larger and more learned audience. His strong practical sense, and his preference for moral and legal themes, comes through clearly from both his regular notes and his relections.

Of the thirteen relections that have been preserved, six are directly concerned with the basic principles that govern relations among different societies. These are *De potestate civili*, the two concerning the authority of the Catholic Church, *De potestate Ecclessiae prior* and *De potestate Ecclessiae posterior*, and the two that together are called *De Indis*: *De Indis* and *De iure belli*. The remaining seven concern independent and different themes that were addressed more exclusively to the materials that he taught in his classes.¹⁴

In 1536, Vitoria delivered another noted relection entitled, *De Simonia* (On Simony). There was much speculation at the time about the need for a new council that would thoroughly reform the Catholic Church. The Protestant revolution was sweeping throughout Europe, and simony was one of the vices most criticized and in need of urgent reform. In 1537, Vitoria chose the apparently inoffensive topic of moderation in

13. See V. BELTRÁN DE HEREDIA, O.P., *LOS MANUSCRITOS DEL MAESTRO FRAY FRANCISCO DE VITORIA* (1928).

14. These are *De matrimonio*, *De augmento caritatis*, *De temperantia*, *De homicidio*, *De simonia*, *De magia*, *De eo quod tenetur puer*. For example, the relection entitled *De matrimonio* (On Marriage) was delivered on January 25, 1531, at a time when all of Europe keenly awaited the announced divorce of Henry VIII of England, and the imminent threat of the Anglican schism.

his relection entitled *De temperantia*. However, his normally reserved character erupted when he considered the relevance of this theme for the Americas. The question of the Indies had been burning within him for many years, and, in this connection, he considered the licitness of cannibalism in cases of extreme necessity. This was, of course, related to accounts from the New World concerning the existence of cannibals, the offering of human victims to the gods, and the eating of humans sacrificed in this manner. Could this be, he asked, a legitimate ground for war against these natives? On the basis of carefully crafted doctrine, Vitoria proceeded to define and establish limits that bound the power of Christian princes over the Indies, and that both strongly condemned abuses and called public conscience to account.

Vitoria's presentation had an immediate impact. The news of its dissemination reached the royal court and caused concern that such matters not be addressed in public again. Although Vitoria wanted to consider the matter in greater depth, he responded with his habitual prudence.

In 1539, he believed that the moment had finally arrived in which to present his first relection, *De Indis*, to the university community. Here he established, first, the rights of the Indians to their freedom, their property, their territories, and their self-governance. In the second part, he firmly denied the legitimacy of the then-reigning justifications for a just conquest of the Indies. While in the final part of his relection Vitoria set forth other grounds that provided the Spanish emperor with just grounds for his American expeditions, his rejection of the reigning ethic certainly disturbed many observers because Vitoria mediated and limited the omnipotent authority of the emperor by means of new arguments based on careful and precise definition.

Six months later, Vitoria presented his second relection on the Indies, *De iure belli*, in which extraordinary constraints were placed on the right of waging war. The tenor of Vitoria's teaching could not fail to cause dissonance at the Spanish court which, at the time, was engaged in many armed conflicts in Africa, Europe and the New World. The emperor himself, Charles V, wrote a letter, dated November 10, 1539, to the prior of the Dominican monastery of Salamanca in which he expressed grave concern that some members of his community

had called into question Spain's rights over the Indies. Charles V ordered the prior to collect the various writings and copies in question, send them to the court for further study, and ordered that henceforth such matters were not to be raised or addressed in public "without our express permission."¹⁵

The degree to which Vitoria was involved in these imperial interventions is not clearly known. We have to believe that the great internationalist was able to bear them with equanimity, as he continued to solicitously receive and attend to the emperor's requests for counsel. Some of his advice concerned various pastoral problems in the Indies, and some concerned the sending of qualified teachers for the establishment of universities. By this time Vitoria was in the last years of his life, his strength increasingly sapped by gout. In February 1545, he received letters from the emperor and from Prince Phillip sending him, as imperial theologian, to the Council of Trent.

When Vitoria died on August 12, 1546, the sorrow at his passing was shared by the whole university. If, at the time, Salamanca stood at the head of all of the universities of the world, it is due to the intellectual environment created and animated by Vitoria. In the year of his death, no fewer than twenty-four renowned Salamanca professors had been his disciples. He was buried in the capitular hall of the Monastery of San Esteban, which in 1951 became known as the "Pantheon of Theologians."¹⁶

III. PRINCIPLES OF VITORIA'S INTERNATIONALISM

Two years after gaining his professorship at Salamanca, Vitoria delivered one of his most systematic and revolutionary relections, *De potestate civili* (On Civil Power). During this time of incessant wars among different nations, as well as among peoples of the same faith, it was important to inquire into the bases and possible limits of human authority. There was an urgent need to invoke the supreme argument of the natural unity of all peoples in order to definitively dissolve armed con-

15. See L.G. ALONSO-GETINO, O.P., *EL MAESTRO FRAY FRANCISCO DE VITORIA: SU VIDA, SU DOCTRINA E INFLUENCIA* 150 (1930).

16. See generally R. HERNÁNDEZ, O.P., *UN ESPAÑOL EN LA ONU: FRANCISCO DE VITORIA* 119-27 (1977).

flicts, and to study the possibility of international accord on the basis of a society of nations bound together by common principles and laws.

As a theologian, jurist, and moralist, Vitoria possessed the elements necessary to resolve these questions from their first principles to their practical applications. In order to precisely define the problem of political power and authority, he begins by framing the question in theological terms. Although the supreme source of power and authority lies in God, Vitoria is careful to point out that this is true in the sense that all created perfection, whether it be of an individual or social character, is a participation of the infinite perfection that is God. This is the meaning of the scriptural statement that "there is no authority except from God;"¹⁷ as a result of this origin, Vitoria considers power, as such, as just and legitimate. It follows that no human will or universal agreement can dissolve it: any sort of human or chaotic anarchy that would seek to eliminate all power would constitute an affront to nature. Lastly, the immediate and mediating source of this divine power is the people.

Theology is not alone in speaking of the necessity of authority. The same idea is rooted in the most basic principles of philosophy. Plato and Aristotle grounded the absolute necessity of authority in its end, as the final cause is the supreme reason of all things. And here, to the possible objection of the materialists that no ends exist, Vitoria's response cannot be more adequate: if we do not want to live in an eternal and vicious circle of error, at the very least we must postulate the existence of a supreme truth.

Vitoria assigns a high finality and end to all authority. It is not limited to the mere protection or defense of the individual and society. Man needs authority and power in order to perfect his nature by developing his material and spiritual resources to the fullest extent possible, and by leading other created beings to their fullest perfection. Societal, and not merely personal, authority is required, because none of this can be realized by men and women in isolation, without the support of their fellows.

Contrary to later thinkers who would view society as a human invention, as a social compact for the mere security of

17. *Romans* 13:1.

individuals, Vitoria views society as rooted and flowing from nature. To Vitoria, in nature lies the efficient cause and primary origin of all power, be it physical or moral, personal or social, or private or civil. Each of these different dimensions of power flows from the same conditions of human nature, and ultimately each must be attributed to the creator of this nature who implanted these inalienable conditions within it. As a result, Vitoria held firmly to the view that civil authority resides in the people and in the community. The transmission or delegation of this power to the rulers is always problematic in cases in which broad popular participation is denied or not possible. In this sense, Vitoria openly supports the aspiration of modern democracies to popular participation and the clear and responsible intervention of the people in political affairs.

Civil power has its limits, however, and these are principally found in the rights of citizens. Individuals possess personal and inalienable rights that constitute part of human dignity, and which can be expressed as rights to freedom and to physical, intellectual, and moral perfection.

On the basis of this definition of civil power and its relation to the rights and freedom of man, Vitoria develops a broad vision that includes all of the nations of the world. In 1528, Vitoria's lectures at Salamanca were a lesson in pure, modern international law, as he laid the foundation for a Society of Nations, for something greater than the present United Nations. Its basis lies in the inescapable and inalienable unity among all peoples and races, one grounded in that human nature that is conferred without distinction on all persons. Humanity itself, prescinding from its gathering into different nations, must seek its common good, and work to preserve, defend, and organize itself in ways that it considers most appropriate. Nevertheless, the time might come when government by isolated and divided nations may no longer suffice to ensure the security of human nature; indeed, the time might come when some form of universal government would be perceived as the most advantageous and appropriate solution. As Vitoria observes, "the human race had the right to choose a single ruler in the beginning, before the division of peoples and nations. It can still do so now, as this power, as a natural

right, does not disappear."¹⁸ This solution is always available because political authority is rooted in human nature, and because political authority can be prescribed in various, legitimate forms that express the will of the citizens. "As of the moment that the republic possesses the right to administer itself, that which is done by the majority, is that which is done by all."¹⁹

One of Vitoria's preferred expressions is the word *orbe*, or orb, with its particularly juridical-internationalist connotation and its reference to the unity of peoples.²⁰ He is fully aware that the ideal of international political unity will be difficult to achieve in practice, and, moreover, that the ideal is never achieved immediately. The objective still remains, however, the concord among all peoples and persons that can safeguard the rights that inhere in all peoples and persons. The leaders of the different political communities must join together to design the bodies and arrangements that will ensure the security and progress necessary to prevent the more powerful from infringing the inalienable rights of the weakest, least favored, and least developed, and that will favor their improvement and perfection, because to deny such improvement and perfection would be to violate nature itself.²¹

IV. VITORIA'S AMERICANIST THINKING

The Salamanca theologians who concerned themselves with the problems of the Indies and the New World, as men of principle who moved within the realm of speculation, often have been labeled excessively theoretical, unconnected to the real world. Yet, once we become familiar with their lives and work, we cannot avoid noticing their hunger for accurate and

18. FRANCISCO DE VITORIA, *DE POTESTATE CIVILI* 14 (T. Urdánoz, O.P., ed. 1960).

19. *OBRAS DE FRANCISCO DE VITORIA: RELECCIONES TEOLÓGICAS* 180 (T. Urdánoz, O.P., ed. 1960).

20. As Vitoria writes, in Fr. Urdánoz's translation,

El orbe todo, que en cierta manera constituye una sola república, tiene poder de dar leyes justas y a todos convenientes, como son las del derecho de gentes. . . . Ninguna nación puede darse por no obligada por el derecho de gentes, pues éste viene conferido por la autoridad de todo el orbe.

Id. at 191.

21. RAMÓN HERNÁNDEZ, O.P., *DERECHOS HUMANOS EN FRANCISCO DE VITORIA* 179-84 (1984).

timely information, and their reluctance to pronounce judgment on the basis of anything less than the most complete information. This disposition is more apparent in two of the most representative figures of the Salamanca School, Vitoria and Soto. As we will see further on, Soto was particularly troubled by the kind of ceaseless anxiety for additional information that in the end would prevent him from rendering a definitive judgment.

A commentator who has studied closely the internationalist and Americanist thinkers of the sixteenth century has observed that, within the Salamanca School, "the Dominicans experienced the problems of the Indies more closely and poignantly [and that] although they possessed more information about Indian affairs, they were concerned with increasing this knowledge."²² There are abundant references in the writings of these theologians to the writings and letters of the American missionaries, and there was continuous correspondence between the Monastery of San Esteban and its brethren in the New World. We can go so far as to speak of a true fusion of interests between the theologians and the missionaries in the Indies.

There is no doubt that in his writings Vitoria took into account the news and information that was arriving from the Americas. In 1534, Francisco Pizarro's chaplain during the conquest of the Incas, Vicente de Valverde, returned from Peru with other *conquistadores* who brought with them portions of the immense treasure of the Inca king, Atahualpa. Many had found what they had set out to find—a great fortune in a short amount of time. They returned to enjoy it peacefully in their own country.

Upon the conclusion of the Peruvian conquest, Valverde returned to San Esteban, his mother house. Friars were amazed and aghast when they heard the incredible account of the conquest of such an extensive empire by 180 Spaniards. For the Dominicans, who had been the first to respond in number to the evangelization of the territories of the Caribbean and New Spain, new and grandiose realms had been discovered for the extension of the Christian faith. Valverde

22. C. Bacierio, S.J., *Conclusiones definitivas de la segunda generación*, in VITORIA, LA ETICA DE LA CONQUISTA DE AMÉRICA, *supra* note 2, at 416.

must have also told the friars of the grave defects and atrocities of the Peruvian conquest and of their excessive avidity for gold, land, and Indian labor. Vitoria, upon hearing such accounts, would judge the execution of Atahualpa and the unlawful enrichment of many Spaniards severely. As he wrote in a letter to his fellow Dominican, Miguel de Arcos of Seville, in November 1534, "my blood freezes in my veins when I imagine them."²³

By 1534 Vitoria had been accused of breaking with both the emperor and the papacy. In 1537, with his Americanist comments in *De temperantia*, his relection on temperance, suspicion grew and became increasingly threatening. As mentioned earlier, his two relections on the Indies, *De Indis*, provoked imperial anger. The first, pronounced in early 1539, fully developed the Americanist thinking that Vitoria had begun to develop in his relection on civil power and authority. Vitoria did not begin, as did many other authors of his time, from the basis of the universal authority of Pope or emperor, because he denied the principle that either possessed universal authority. Nor, as did others, did he rely on certain opinions of civil or ecclesiastical law: the inhabitants of the Indies were ignorant of such laws, and they possessed their own. Vitoria would begin on the basis of natural right and *jus gentium* implanted in the human nature that he saw as common to all peoples and as the sole basis of any possible dialogue with the New World.

Since the first councils of Burgos, which produced the "First Laws of the Indies" between 1512 and 1513, the Spaniards had been invoking in their American conquests the so-called *Requerimiento* or Requirement. This document, which had to be read to the Indians before the commencement of any war, spoke of the universal authority of the Pope, and of the particular authority that the Spanish monarchs had received from the Pope over this part of the New World for the purpose of colonizing and evangelizing it. The Indians had to accept the sovereignty of the Spanish monarchs, and if they did not, they would be compelled to submit by force. The conquerors would preach the Christian faith, but they left the decision to assent to the Indians. Vitoria denied that this document pos-

23. See ALONSO-GETINO, *supra* note 15, at 144.

sessed any legitimacy, and he refuted each of the seven grounds on which it sought to justify the conquests.

On the basis of natural right and *jus gentium*, Vitoria proposed eight principles that he believed to be legitimate and capable of justifying the conquest. We do well to observe his arguments carefully. The adage, *summum ius, summa iniuria*, i.e., extreme law, or rigor of law is the greatest injury, was continuously present in his mind when dealing with the application of natural right to the Indians, as was the Pauline dictum, "all things are lawful for me, but not all things are expedient."²⁴ As a result, his eight legitimate principles are not absolute nor incapable of prudent application.

The first of Vitoria's eight principles concerns the natural communication and sociability among peoples. His presentation contains a rich international doctrine: free communication among peoples, the freedom of the seas, free commerce, trade, and contracting among civil societies, and even the freedom of information. Vitoria develops the content of each of these in the first four propositions of his first principle.

Second, he invokes the friendship and fraternity that must exist among all persons. All races are part of the human race, and each shares a natural right of friendship that demands a respect, love, and mutual assistance that civil authorities are obliged to support and further. Ancient law believed that there existed natural rights to the air, river sources or headwaters, rivers, and the seas and their coastlines. Agreements among states could limit access to that which is found within their borders, though such agreements may not absolutely close frontiers to those who, without prejudice to their inhabitants, seek to enter.

It might come as a surprise that a friend of peace such as Vitoria would consider the defense of these rights to be a just basis for war and the removal of leaders. He addresses the question of war in his last three propositions, although each is subject to careful limits and conditions, and that in exercising the right of war moderation must be employed according to the nature and quality of the injury suffered. This question of war would be the topic of his second reelection concerning the Indies. The only war that is just is a defensive war provoked

24. 1 Corinthians 6:12.

by, and proportionate to, a grave injury. To this he adds three simple and valuable rules: before war, nations must resort to all available peaceful means to resolve the dispute; during the war, nations must act without hatred and with a view to minimizing harm and casualties; and after the war, nations must be moderate and judicious in victory.

Vitoria grounds each of these legitimatizing principles in natural right. He connects the second principle, which concerns evangelization, to the first and discovers in the propagation of the Catholic faith the rights to teach truth and fraternal redress. The third and fourth, which deal with the defense and protection of converts, are necessarily rooted in the defense of religious freedom and the special fraternity that religious faith supports. The fifth concerns the defense of innocents or of the fundamental rights of human life against those who sacrifice and consume human flesh. The sixth deals with the free choice of sovereignty, which is a natural right of all peoples. The seventh concerns the defense of allies and friends, including those who do not share common traditions or faiths. Lastly, and with particular reference to the civic and religious conditions in the Indies, the eighth addresses the protection and aid of the less fortunate. This last of Vitoria's principles relates to the first part of his relection on the Indians. Vitoria believed that Spain's mission was a limited one of protection and advancement until such time as the Indians could adequately govern themselves.²⁵ This strict temporal limit to Spanish influence and domination was a central theme of his Americanist thinking. Thus, although Vitoria provided natural right and *jus gentium* justification for Spanish sovereignty over the Indies, there is no doubt that its application was frequently unjust and inhuman. The goal of colonization must be to prepare, in as short a period as possible, a people for a regime of self-governance that respects the fundamental rights of man.

V. BIOGRAPHICAL NOTES ON DOMINGO DE SOTO

As mentioned above, along with his teacher Vitoria, Domingo de Soto was a renowned representative of the Salamanca school of Americanist thinking. Consequently, in conjunction with Vitoria, he helped to establish principles still of value to-

25. Francisco de Vitoria, *supra* note 19, at 724.

day. The best biography and bibliography of Domingo de Soto and his works is that of the Dominican Vicente Beltrán de Heredia, *Domingo de Soto: Estudio biográfico documentado*,²⁶ which he published in 1960 on the 400th anniversary of the celebrated theologian's birth. In it, Beltrán de Heredia gathers all of the writings and studies of the main scholars and commentators, including Luis de León, Diego de Colmenares, Gonzalo de Arriaga, and other historians of the Monastery of San Esteban, who wrote of Soto's history, character, and writings. A tireless historian, Heredia discovered many hitherto inaccessible archived sources for inclusion in his biography.

Domingo de Soto was born, of modest origins, in Segovia in 1495.²⁷ He began his studies in philosophy in 1513 in the recently inaugurated University of Alcalá, studying under St. Thomas of Villanueva. In the summer of 1517, attracted by the then-prevalent nominalist school of thought, he went to study at the University of Paris, its then leading academic center. There he studied in the college of St. Barbara, in which one of the most brilliant scholars of the time, Juan de Celaya, was then teaching.

Upon completing his philosophical studies, he began his theological career and soon caught the attention of Vitoria, who was then teaching at the college of St. Jacques. His theological training consisted in the exposition and study of Aquinas's *Summa Theologiae*. Two years of such study under Vitoria's guidance sufficed to assuage his nominalist disquiet.

In early 1519, Soto returned to Alcalá to continue his theological studies while beginning his docency in philosophy. Here, wounded by the lance of religious calling, he left for the Monastery of Monserrat, where he opened the disquiet of his soul to one of the venerable monks, an expert in spiritual guidance who, after learning of his love of studies, recommended the Dominican order to him. He began his novitiate at the Monastery of San Pablo de Burgos in 1524, and made his religious profession the following year. His superiors then promptly sent him to San Esteban and the university setting in Salamanca.

26. VICENTE BELTRÁN DE HEREDIA, O.P., DOMINGO DE SOTO: ESTUDIO BIOGRÁFICO DOCUMENTADO (1960).

27. See generally DIEGO DE COLMENARES, HISTORIA DE LA INSIGNE CIUDAD DE SEGOVIA, Y COMPENDIO DE LAS HISTORIAS DE CASTILLA 717-29 (1640).

Domingo de Soto began his teaching career as Vitoria's assistant. By this time, Vitoria was ill and required assistance in preparing and teaching his courses. In September 1532, the great theologian Vázquez de Oropesa died, and, as was customary at the time, there was often intense competition for such professorships between the Augustinians and the Dominicans, the two best prepared orders. Although Soto's opponent was the eminent Augustinian, Alonso of Córdoba, he prevailed with the aid of his Vitorian training, and took possession of the vacant theological chair in November 1532.

Like his teacher Vitoria, Domingo de Soto was open to all of the political and social problems of his time. This openness earned him the confidence of the academic and civic communities, and contributed to his early stature as counselor of leading figures in government, including the King of Spain, bishops, and other leaders of official institutions. On a number of occasions, Soto had to intervene during years of drought and low harvests to ensure the timely provisioning of grain to the university and city of Salamanca. In 1542, he presented a reelection on alms and the causes of poverty to the university community, which was very well received and which he would later publish in Latin and Spanish. As an enthusiastic promoter of the university and its publications, he succeeded in acquiring a printing press for the university in order to better disseminate the important and timely ideas that were being generated there by this time.

As a prolific author, Soto left an impressive body of work that covered various disciplines, including physics, dialectics, logic, philosophy, law, spirituality, and theology. His philosophical works were frequently edited during the sixteenth and seventeenth centuries, and became university texts of choice.²⁸ The University of Alcalá was one of the first to rely on them, until the appearance of its own famous man of letters, Gaspar Cardillo de Villalpando. As to Soto's writings in physics, the

28. Soto began to publish in the field of the arts in 1529 with his *Summulae*, first printed in Burgos, and which had 10 subsequent editions during the same century. He then published his commentary, *In Dialecticam Aristotelis*, which was first edited in Salamanca in 1543, and which would appear in 13 more editions during the sixteenth century. In 1545, he began publication of his *Super octo libros Physicorum Comentariorum*, which was republished eight times thereafter. The edition of his *Quaestiones* on Aristotle's *Physics* would be reprinted nine times. This body of philosophical work ensured that Soto became one of the most widely read and admired scholars.

French scholar, P. Duhem, claims that Soto formulated the laws governing falling bodies sixty years before Galileo.²⁹ This subject has recently been revisited, and there can be no doubt that Soto was one of the most influential Spanish precursors of modern physics.³⁰

Emperor Charles V designated Soto as one of the theologians to represent Spain at the ecumenical Council of Trent. On March 23, 1545, Soto suspended his classes and traveled to Valladolid, where he joined Bartolomé de Carranza, another theologian chosen by Charles V as imperial representative. The prestige of the Salamanca School and the strength of their arguments at Trent ensured the success of the Thomist doctrine of the intrinsic justification of grace, in opposition to the arguments of extrinsic or imputed justification that were defended by the Lutherans. In 1547, as a result of these discussions, and in order to better publicize the prevailing doctrine that resolved this widely debated topic, during the Council Soto published his important work, *De natura et gratia*.

In 1548, in recognition of Soto's wisdom and proverbially prudent character, Charles V chose him as confessor and counselor. Charles V, who at the time disagreed with Pope Paul III and sought some means of reconciliation with Lutheranism following his victory over the Protestant princes at the battle of Mühlberg, found himself before the Peace of Augsburg (1555), which sealed the schism and for the first time allowed each prince to decide the religion of his subjects. Soto also gave his assent to the document. Still, life at the court did not please Soto, and he missed San Esteban and his theology classes at Salamanca. In January 1550, he succeeded in freeing himself from his imperial duties and returned to Salamanca.

In 1552, the students of the university, by acclamation, sought Soto's appointment to the Prime Chair of Theology. From his university watchtower, Soto could keep a keen eye on developments within and beyond the borders of Spain. Addressing the newly developing questions of international law that were inspired by the discovery of the Americas, Soto wrote a work that he himself cited but has since disappeared. This

29. See P. DUHEM, *LES PRÉCURSEURS PARISIENS DE GALILÉE* (1913).

30. See generally, e.g., W.A. Wallace, *Mechanics from Bradwardine to Galileo*, in 32 J. HISTORY OF IDEAS 15-28 (1971).

was his *De ratione promulgandi Evangelium* (On the Promulgation of the Gospels), which contained an exhaustive treatment of the question of the lawfulness of Spanish dominion over the New World.³¹

This work would be the most useful for our present purposes, but, because it is lost, we have to reconstruct much of his thinking on the topic on the basis of portions of his other writings.³² Most important, we have his relection entitled *De dominio*, which he pronounced at Salamanca in 1535 before Victoria's own relections on the Indies.³³ The first part of the work, *Aquí se contiene una disputa o controversia* (Herein is a Dispute or Controversy), which is included among the treatises of Bartolomé de Las Casas, constitutes Soto's summary of the celebrated debate between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in Valladolid in 1550 and 1551. Soto himself incorporates in his summary a number of observations that somewhat moderate and modify Las Casas's arguments.

There are two main sources that are useful for studying Soto's position *vis-à-vis* Las Casas. We have Soto's summary of the Las Casas-Sepúlveda ethical debate and a revealing letter from Las Casas to Soto in which Las Casas refers to Soto's concerns as expressed in prior correspondence. We will look at these writings rather carefully.³⁴ We will begin with the letter, as it is also the first in time.

A. *The Revealing Letter of Las Casas to Soto*

As mentioned earlier, the first occasion in which Domingo de Soto clearly considered the question of the Indies was in his

31. Soto provides a catalogue of his writings at the end of his *COMMENTARIORUM IN QUARTUM SENTENTIARUM: TOMUS SECUNDUS* (Salamanca, 1562). Interesting biographical notes concerning his character and many virtues are contained in the funeral oration delivered by Fray Luis de León. See Luis de León, *Oratio funebris habita in exequiis Magistri Dominici Soti*, in 7 *LUYSII LEGIONENSIS, OPERA NUNC PRIMUM EX MSS. EIUDEM OMNIBUS EDITA* 385-405 (Salamanca, 1891-1895).

32. For our purposes, other important works by Soto include: *De iustitia et iure libri decem*, which he published in 1553 and was reprinted in thirty subsequent editions; his relection, *An liceat civitates infidelium seu gentilium expugnare ob idolatriam*, of 1553, the original of which is housed in the Vatican Library; and the *Commentariorum in Quartum Sententiarum liber Primus* of 1557.

33. DOMINGO DE SOTO, *DE DOMINIO* (J. Brufau Prats ed., Granada, 1964).

34. This letter, which was discovered and published for the first time by Marcel Bataillon, is often reproduced and included in works on Soto. See, e.g., BELTRÁN DE HEREDIA, *supra* note 26, at 638-41.

De dominio reelection at the University of Salamanca in 1535. Here he poses very precisely the question of the lawfulness of the dominion of the Spanish monarchs over the Indies. His response is quick, and to us, surprising: "*Con qué derecho retenemos el Imperio ultramarino, poco ha descubierto? En verdad que yo no lo sé.*"³⁵ This simplicity and humble recognition of the nullity of Spanish title is startling in a master that enjoyed such prestige and stature and who might be thought to have an answer for everything. Three years later, after Vitoria's own reelections on the Americas, Soto still seems to harbor important doubts about the legitimacy of Spanish dominion.

Las Casas by this time had been in Spain about three years, and he sought to attract the best theologians of the time to his cause. In 1548, he writes a letter to Soto in which he requests Soto to intercede before the imperial court in favor of his proposals to protect indigenous peoples. Soto, having so ably represented the Emperor and Spanish theology at the Council of Trent, at the time was still Charles V's confessor and counselor, and Las Casas took advantage of this opportunity.

In his letter, Las Casas refers to their earlier correspondence, and to Soto's enduring uncertainty and disquiet about the ultimate lawfulness and justification of the Spanish conquest as a result of the infrequent and often contradictory reports from overseas. Las Casas advises him that there is a clear criterion available to discern the accuracy or fallacy of these reports. Those who have an interest in abusing and plundering the riches of the Indians send favorable accounts of the conquest and the *encomiendas*, the system by which a parcel of land and group of Indians were "commended" to a Spaniard in principle responsible for the spiritual and material welfare of those under his authority, and unfavorable accounts of the capacities and qualities of the Indians themselves. Las Casas claimed that those who provided these accounts were not truthful because their hearts and intellects were tainted by avarice.

On the contrary, those who tell the truth are the missionaries who do not seek to enrich themselves at the price of crimes

35. "By what right do we possess the transatlantic Empire that has recently been discovered? In truth, I do not know."

and injustice, who are disinterested and who only seek the salvation and promotion of human beings. Las Casas tells Soto about letters from other Dominican missionaries who were sent to the New World to work with Las Casas in his newly consecrated diocese of Chiapa.³⁶ Las Casas tells Soto that he must consider the testimony from his own conventuals to be of unimpeachable accuracy.

Las Casas's position is uniform and straightforward, and he seeks to persuade Soto of its truth: the conquest must cease and the *encomiendas* must be abolished. Although less impulsive than Las Casas, Soto's response is largely the same, and its terms largely reflect those of Las Casas: the *encomiendas* must be abolished immediately. He must have also told Las Casas that before rendering final judgment about the conquests he hoped to receive full and complete information from the Indies. He must also have told him that he soon expected the return to Spain of the pacifier of Peru, Pedro La Gasca, or at the very least missives from him that would, he believed, provide impartial accounts of developments in the Indies. Las Casas seeks to disabuse Soto of such expectations, and warns him beforehand that the pacific activities of La Gasca, while doubtless laudable, cannot be fully trusted because much of his conduct in the Indies was neither good nor just. Moreover, La Gasca's information cannot be considered complete because he has not visited all affected parts of the Indies.

This, in a word, was Domingo de Soto's objective: complete information. However, he still would have to wait quite some time before his expectations would be met, and the passage of two years would find him still afflicted with such indecision and uncertainty. This is evident in his position with respect to the famous and solemn debates between Las Casas and Sepúlveda in Valladolid in 1550 and 1551. Soto was one of the assisting theologians charged with compiling the official summary of the discussions, and to this account we now turn.

36. See TOMÁS DE LA TORRE, O.P., *DIARIO DE VIAJE: DE SALAMANCA A CIUDAD REAL DE CHIAPA 1544-1545* (Candido Aniz, O.P., ed., 1985). Las Casas confirmed that when the San Esteban missionaries left Salamanca for the New World they were requested to correspond faithfully about the progress of their missionary work in the Indies and not to forget their brethren in the mother house in Spain. *Id.*

B. Soto's Account of the Las Casas-Sepúlveda Controversy

As we noted above, Soto did not disagree with Las Casas about the necessity of immediately closing the *encomiendas*. The real problem was the conquest itself as a means of evangelization. Soto's account notes that this was the real issue at the Valladolid debates, and that it was on this question that Las Casas and Sepúlveda focused their arguments.³⁷ Charles V, however, had called the conference to inquire into the best methods of converting the Indians and securing their fealty to Spain, without committing any injustices that might disturb the imperial conscience.

Soto describes the presentation of the problem in the following terms:

The point into which your lordships and graces are to inquire here, is, in general, to examine and establish the forms and laws required in order to preach and promulgate our Catholic Faith in these new lands, that God has discovered for us, as would be most fitting for His holy service, and to examine the manner of treating the peoples, subjects of His Majesty the Emperor, without injury to the royal conscience, and in conformity with the Bull of [Pope] Alexander [VI]. However, these contending lords have not addressed the problem in this manner; in general, and in the form of a consultation; in particular, rather, they have argued and discussed another question, i.e., whether it is licit for His Majesty to wage war on those Indians before they have been preached the faith, in order to subject them to his Empire, and that, once subjected, they can more easily be taught and enlightened by the Gospels of their errors and of the Christian truth.³⁸

37. Bartolomé de Las Casas published Soto's summary of the Valladolid conference in 1552 in Seville among other treatises of his own that advocated the cause and defense of the Indians in America. A reproduction of this account can be found in BARTOLOMÉ DE LAS CASAS, O.P., *I TRATADOS* 217-499 (Agustín Millares Carlo & Rafael Moreno trans., 1965). A more recent edition that also contains it is B. DE LAS CASAS, *OBRA COMPLETA* 10 (Alianza Editorial, S.A., 1991), and a doctrinal study thereof is Ramón Hernández, *Las Casas y Sepúlveda frente a frente*, in 102 *CIENCIA TOMISTA* 209 (1975).

38. In the original the passage reads as follows:

El punto que vuestras señorías, mercedes y paternidades pretenden aquí consultar, es, en general, inquirir y constituir la forma y leyes cómo nuestra santa fe católica se puede predicar e promulgar en aquel nuevo orbe, que Dios nos ha descubierto, como más sea a su santo servicio, y examinar qué forma puede haber cómo quedasen aquellas gentes sujetas a la Majestad del

Soto believed that the evangelization of Christian doctrine was the only and true justification for entering the Indies. He makes no reference here to the possible dominion of Spain or of the Emperor over the New World. The extension of Spanish sovereignty for its own sake or for the increase of riches alone does not justify any entry into American territory. The exclusive purpose is the preaching of the Gospels; everything else concerns the mere means, better or worse, that might be necessary to attain this objective.

For Las Casas, on the contrary, evangelization must come first, and once they have been converted, the Spanish monarchs may admit them to their jurisdiction by means of reasonable tributes, but without depriving the Indians of their goods or autonomy, and never by means of compulsion or war. In the last years of his life, Las Casas would add yet another condition, that the above would follow only if the Indians who have already been converted consent to Spanish sovereignty. He added this additional condition in his work, *Sobre los tesoros del Perú*, which corrected and modified his earlier important work, *Tratado del imperio soberano*. Juan Ginés de Sepúlveda, on the other hand, argued that it was necessary to subject the Indians to imperial domination, and that only once they were subjected would evangelization be possible.³⁹ If the Indians do not accept the vassalage of the Spanish monarch, it will be necessary to employ force and all necessary means of war to secure their submission.

Las Casas refused to recognize any validity to Sepúlveda's thesis that the Christian faith could be more effectively preached once the Indians had been conquered. The faith, he responds, is a subjection of one's understanding and requires good will toward those who are preaching, and this is impossi-

Emperador, nuestro señor, sin lesión de su real conciencia, conforme a la bula de Alejandro. Empero estos señores proponientes no han tratado esta cosa así, en general y en forma de consulta; mas, en particular, han tratado y disputado esta cuestión, conviene a saber, si es lícito a Su Majestad hacer guerra a aquellos indios, antes que se les predique la fe, para sujetarlos a su Imperio, y que después de sujetos, pueden más fácil y cómodamente ser enseñados y alumbrados por la doctrina evangélica del conocimiento de sus errores y de la verdad cristiana.

LAS CASAS, *OBRAS COMPLETAS*, *supra* note 38, at 219.

39. JUAN GINÉS DE SEPÚLVEDA, *DEMÓCRATES SEGUNDO O DE LAS JUSTAS CAUSAS DE LA GUERRA CONTRA LOS INDIOS* (Angel Losada trans., 1951).

ble to acquire by conquest. In support of this position, he cites many passages from Scripture that suggest that the preachers must set good examples of goodness, kindliness, meekness, and modesty. To arrive with weaponry in hand was to follow neither the mandate nor the example of Christ, but rather the example and laws of Mohammed. Subterfuge was an improper means of attaining the objective: it cannot be a question of introducing faith by means of force, because force is only employed to dominate them in order to preach to them.

Las Casas had distinguished six situations in which the Catholic Church, according to Canon law, could order Christian princes to wage war on unbelievers, although he was careful to make clear that none of them was clearly applicable to the situation of the Indies:

- (1) If they had forcibly occupied Christian lands;
- (2) If, with the grave sins of idolatry, they sully or contaminate [the Christian] faith, sacraments, temples, or images. Thus did Constantine order that it was prohibited for gentiles to have idols where Christians might be scandalized;
- (3) If they knowingly blaspheme the name of Jesus Christ or the saints or the Church;
- (4) If they knowingly impede the preaching of the faith;
- (5) If they wage war on Christians;
- (6) In order to liberate innocents, although this is not completely obligatory because war may bring a greater evil, as would be the case in the event of the death of an even greater number of innocents.

Soto does not fully agree with all of Las Casas's distinctions in his lengthy argument to defend the Indians. To this effect, he introduces something of his own into his account of the discussion. Soto believes that, in effect, Las Casas argues that if the Indians knowingly impede the Catholic faith, as do the Moors who already possess notice of Christian faith, it is licit to declare war, but if they impede preaching, believing that we are going to rob and kill them as enemies, then there are no grounds for just war. Soto rejects this distinction of Las Casas.

A second Las Casas distinction that does not convince Soto is the following: if it is only the Indian princes who impede preaching, then just war is justified; but if the whole people do not want to listen, and want to remain subject to their traditional religion, there can be no justification for war.

Domingo de Soto avoids all of these distinctions in order

to argue that there does exist a lawfully justified right, which is the power and faculty, granted by Christ to all Christians, to preach the Gospel to the whole world: "Go into all the world and preach the gospel to the whole creation."⁴⁰ Soto interpreted such words to mean that Christians possess the right to preach to all peoples, and to protect and defend preachers, including by means of arms if necessary to ensure that they are permitted to do so.

Las Casas made a distinction here. This Gospel precept does not oblige Christians to compel gentiles to listen, but only to receive, preachers, in the event they desire to hear the preachers. Soto disagrees with this interpretation: one thing is to compel them to allow Christians to preach; it is quite another to compel them to attend Christian sermons. For Soto this is the crux of the problem. The question is not the end, i.e., evangelization, because this follows from both Christ's mandate and the natural law to teach the truth.⁴¹ Rather, the question is the lawfulness of force or war as a means of attaining this end. May the Indians be compelled to allow Christians to preach? For many authors—and contrary to Las Casas—this is licit, and Soto does not appear to disagree.

A more complicated and related question is the following: May the Indians be compelled to attend the preaching of the Christians? As to this, Soto appears to disagree with Las Casas's position. Las Casas clearly saw that the answer to this question was necessarily negative. Soto was attentive to the use that Las Casas and Sepúlveda made of biblical texts, such as "Go out to the highways and hedges, and compel people to come in, that my house may be filled,"⁴² although he believed that further study would be required following the conference.

40. *Mark* 16:15.

41. In the first conclusion of his *Comentario al Cuarto libro de Las Sentencias*, Soto states that the Church and every believer have the divine and natural right to propagate the Christian faith throughout the world. As to divine right, proof lies in Gospel sources. As to natural right, Soto argues that all people possess the freedom and faculty to "teach others" (*ius docendi*) and persuade them of the norms of good conduct. Some commentators doubt the authenticity of Soto's reference to *ius docendi* here, and believe that it is the invention of his modern commentators, particularly Venancio D. Carro, who was so instrumental in bringing to light the international and Americanist doctrine of Domingo de Soto. However, Soto himself explicitly employs these terms: "*Potest quisque quecumque ea, quae sunt naturae, docere; neque illo docendi iure privari valet.*" D. DE SOTO, *COMMENTARIORUM*, *supra* note 31, at 266b.

42. *Luke* 14:23.

However, these doubts of Soto's do not seem to affect this problem. With Bartolomé de Las Casas, he always defends the view that one cannot compel the Indians by force to listen to preachers. In sum, we might describe Las Casas's view as follows: the Church must preach the Gospels to the Indians through its missionaries, but only if the Indians allow them to preach; if they do not, all use of force is illicit and the missionaries must retreat and await a more favorable opportunity. Sepúlveda's view may be stated as follows: one should attempt to preach to the Indians by peaceful means, but if they do not accept the preachers peacefully, however, force will be needed to compel them to hear the faith. Domingo de Soto's position might be stated in the following terms: it is necessary to preach the Gospels to the Indians, even if they do not want to receive it, because this is a mandate of Christ; if they do not allow the missionaries to preach, the Indians can be repelled by use of force, but under no circumstances may violent means be used to compel them to listen.

CONCLUSION

The above condensation of Domingo de Soto's position with respect to the question of the Indies appears throughout all his writings on the subject. His doubts only concerned the immediate causes of the conquest, and because of this he always would await complete information that would never arrive. In his relection *De dominio*, he begins his argument with the words of Christ: "Go into all the world and preach the gospel to the whole creation." This is a precept that implies both a right and an obligation to preach the Gospel in all the lands of the Earth. It would seem that that this is a legitimate ground on which to justify Spain's presence in the Indies. At this point Soto proceeds carefully, measuring his words prudently, because he is aware that it is here that the risks of abuse, spurious invocations of rights of defense, and avarice are greatest. This precept, however, is only a ground for presence, a presence necessary to preach; it will never be a ground for dominion or sovereignty, much less a ground for the armed expropriation of the lands and lives of the Indians.