

BOOKS

Is Natural Law ‘Anachronistic’?

The *Political Writings of Francisco De Vitoria* (1485-1546) is a valuable addition to the Cambridge series of texts in the *History of Political Thought*. The importance of Vitoria is that he promulgated the concept of natural law developed by St. Thomas Aquinas (1225-74) and applied it to the policies of Spain in the New World in the period just prior to the Council of Trent, to which he was nominated by Charles V as a delegate, but was forced to refuse because of ill health.

In the book’s Introduction, the translators report that Vitoria has been called the father of international law, but then disclaim such a notion as “anachronistic,” since according to them the concept of an international law has its origins in the “modern” natural law theorists, Hugo Grotius and Samuel Pufendorf, who were antagonistic to the Thomist concept of natural law.

In reality, Grotius and Pufendorf deliberately divorced international law from natural law, as the latter had been defined by both St. Augustine and St. Thomas Aquinas. Vitoria, on the other hand, defined the law of nations either as natural law or as derived from natural law. Thus, rather than being “anachronistic,” Vitoria’s concept of international law is merely *unpopular*, in a world that has been shaped intellectually by the British Empire.

In fact, Vitoria’s writings on law provide one of the most compelling arguments that can be made against the validity of the British-spawned so-called Black Legend, which portrays Spain and Spanish policy toward the New World as a criminal policy of genocide. Vitoria was not uncritical of abuses against the Indians; but he denounced reports of such butchery and pillage as being contrary to the natural law—which affirmed the Indians’ equality before God—which he promulgated as

the basis for Spanish policy. From that standpoint, among the most important works of Vitoria contained in this volume are his lectures “On Law,” “On Dietary Laws, or Self-Restraint,” “On the American Indians,” and “On the Law of War.”

Man in the Image of God

The most important conception which Vitoria affirms as the basis of natural law is that all men, including the Indians, are created in the image of God. On this basis Vitoria argues explicitly against the Aristotelian contention that the Indians, being insufficiently rational to govern themselves, were slaves by nature and could therefore be justly enslaved by the Spaniards.

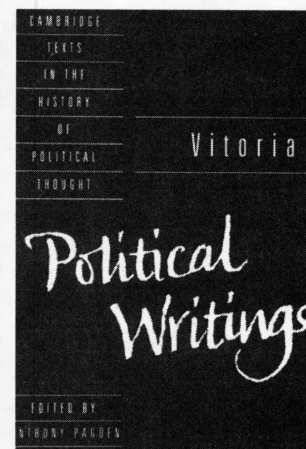
On the same grounds, Vitoria dismisses the following four justifications for brutalizing the Indians: that they are (1) sinners; (2) unbelievers; (3) madmen; or (4) insensate.

In answer to the first, he says that “man is the image of God by his inborn nature, that is by his rational powers. Hence he cannot lose his dominion by mortal sin.”

To the second, he responds that according to Aquinas, unbelief does not cancel either natural or human law. “It is clear that it is not lawful to take away the possessions of Saracens, Jews, or other unbelievers on the grounds of their unbelief *per se*; to do so is theft or robbery, no less than it would be in the case of Christians.”

To the third, he counters that the Indians’ humanity cannot be violated on the grounds that they are irrational in the sense that they are children before the age of reason, because “the child is already formed in the image of God.”

In answer to the fourth argument, he says that “they are not in point of fact madmen, but have judgment like other



Francisco De Vitoria:
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and Jeremy Lawrance
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men. This is self-evident, because they have some order in their affairs; they have properly organized cities, proper marriages, magistrates and overlords, laws, industries, and commerce, all of which require the use of reason. They likewise have a form of religion, and they correctly apprehend things which are evident to other men, which indicates the use of reason. Furthermore, ‘God and nature never fail in the things necessary’ for the majority of the species, and the chief attribute of man is reason; but the potential which is incapable of being realized in the act is in vain.”

He concludes that if the Indians seem to us insensate and slow witted, “I put it down mainly to their evil and barbarous education.”

Moreover, Vitoria agrees with St. Thomas Aquinas that forcible conversion to Christianity is evil. “The proof is that belief is a matter of will, but fear considerably diminishes the freedom of will. To come to the mysteries and sacraments of Christ merely out of servile fear would be sacrilege. . . . Hence the barbarians cannot be moved

by war to believe, but only to pretend that they believe and accept the Christian faith; and this is monstrous and sacrilegious."

Doctrine of Just War

Ultimately, then, according to Vitoria, the only basis in natural law for Spanish military policy in the New World is the *just war* doctrine developed by St. Augustine and elaborated by St. Thomas Aquinas. To this doctrine Vitoria adds several additional conditions implicit in the writings of the aforementioned: (1) "difference of religion cannot be a cause of just war"; (2) "enlargement of empire cannot be a cause of just war"; and (3) "the personal glory or convenience of the prince is not a cause of just war."

Vitoria also stipulates that the "sole and only just cause for waging war is when harm has been inflicted," but that "not every or any injury gives sufficient grounds for waging war." Moreover, Vitoria argues that "we must take account of the scale of injury inflicted" and that "punishments should be diminished in favor of mercy. This is a rule not only of human law, but also of natural and divine law."

He concludes with three rules of war: (1) "since princes have the authority to wage war, they should strive above all to avoid all provocations and causes of war"; (2) "once war has been declared for just causes, the prince should press his campaign not for the destruction of his opponents, but for the pursuit of the justice for which he fights and the

defense of his homeland, so that by fighting he may eventually establish peace and security"; and (3) "once the war has been fought and victory won, he must use his victory with moderation and Christian humility."

In a world in which genocide is being committed openly in Bosnia and elsewhere, and in which "Free Trade" and "Democracy" have been elevated to the status of false gods before whom humanity itself is sacrificed, a return to Vitoria's method of defining the law of nations from the standpoint of natural law is urgent. His notion of natural law is not an "anachronism," but rather, it is the notions that flow from British liberalism that are the anachronisms for mankind today.

—William F. Wertz, Jr.

A *Limes* To Separate Rich and Poor?

The Empire and the New Barbarians: North-South Rupture is the translated title of Jean-Christophe Rufin's book, which first appeared in 1991, and has recently been translated into German. The French author speaks out in a brutal and shocking manner about things which for years have only been discussed in whispers at meetings of the Trilateral Commission and the Ditchley Foundation under such rubrics as mass migration, emigration, and overpopulation: namely, that a new "*Limes*" is being constructed between North and South. Following the model of the ancient Roman *Limes*, whose ruins dot the landscape of southern Germany today, this "protective wall" is supposed to protect the North against barbarians "flooding in" from the poor regions of the South.

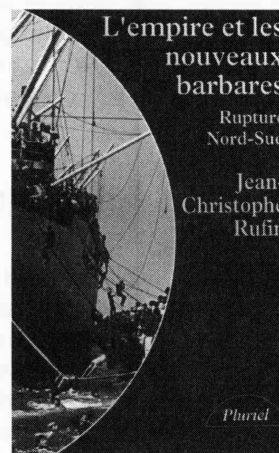
"For the first time, the myth of development has been burst apart, revealing a long-hidden reality: The North and South are developing in diametrically opposite directions. . . . These differences make it possible to draw the ideological line which separates the North from the new barbarians. . . . Today's new *Limes* between North and South marks the beginning of a new type of worldwide apartheid.

The idea of the *Limes* more or less explicitly contains the intent of delineating, and then protecting the North. But this will occur by means of forcing an abandonment of the South, which will be considered barbarians. This [abandonment] is already evident today in many regions. In demographic terms: The effort to keep the size of the world's population within bounds, will be supplanted by a hope that at least the masses in the South can be curbed; people will set their hopes on malthusian catastrophes which can regulate it."

- Under Malthusianism, Rufin includes its totalitarian forms, such as are practiced in China, as well as "natural" Malthusianism. He considers famines and plagues, such as cholera and AIDS, to be essential "correctives against population growth."

- As for economics: The universal idea of development will be supplanted by a selective policy according to which aid will only be granted to the buffer states located along the perimeter of the *Limes*, in order to guarantee their stability.

- As for politics: The universal foundation of democracy will be replaced by a new coming to terms with the totalitarian states of the Third World (China, Iran), insofar as they prove themselves



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capable of contributing to regional stability, especially in regard to preventing massive flows of refugees.

- As for the military side: The direct and excessive influence of the big powers in wars in the Third World will be replaced by a more differentiated treatment which will depend on the conflict's local specifics. Conflicts breaking out directly on the *Limes*'s perimeter will provoke massive retaliation from the North, while the other conflicts will merely be a matter of indifference.

As far as the North is concerned, most of the developing countries are no