

Vitoria's New World Order:

The Great Commission and the Discovery of the New World

By Ruben C. Alvarado

Contra Mundum, No. 2 Winter 1992

Copyright 1991 by Ruben C. Alvarado

Francisco de Vitoria was a man fired by a concern that justice and proper treatment be given the Indian nations conquered by his fellow Spaniards. He did not shrink from the duty of laying down the law—God's law—to Emperor, Pope, and the high mightinesses of sixteenth century imperial Spain. His work stands as a monument to Christian scholarship, both intellectually and spiritually.

The year 1492 constitutes a landmark in the history of the world. It marks the beginning of Europe's great reorientation: from internal to external growth, from rebuilding a civilization devastated in the previous hundred years by plague, famine, and civil war, to expanding it precociously into the world beyond. In the year 1492 Spain, the nation which would prove to be at the center of this expansion, achieved two remarkable and complementary goals, both of fundamental importance: the final expulsion of the Moors, bringing about a victorious conclusion to the centuries-long struggle between Christian and Muslim for control over the Iberian peninsula; and the discovery of the New World, the so-called "Indies", by the Genoese Christopher Columbus in service to the Spanish crown. The latter brought about a shift in perspective, a broadening of horizons, which reverberated throughout the West. At once Europe was on the world stage in a way it had never been, bringing a heady consciousness of globalism as yet unknown to medieval man. As the mid-sixteenth century Spanish historian Francisco López de Gómara put it: "The greatest event since the creation of the world (excluding the incarnation and death of Him who created it) is the discovery of the Indies."¹

The discovery of the New World constituted the most important in a series of discoveries made by Portuguese and Spanish explorers, opening new avenues and opportunities for

1 Quoted in J.H. Elliott, *The Old World and the New, 1492-1650* (Cambridge: At the University Press, 1969), p. 10. An excellent description of the impact of the New World on the Old, both subjectively and materially, is given in this book.

trade and exchange with foreign lands. Earlier in the fifteenth century the Portuguese had already been conducting exploratory voyages steadily further down the coast of Africa. Vasco da Gama's rounding of the Cape of Good Hope at the turn of the century, and consequent discovery of a route to India and the Far East independent of the Mediterranean Sea (and consequently of Venetian and Turkish control), opened a new era for trade to the East Indies, whose importance rivaled that of the New World. The reach of the European market was dramatically increased within the span of a few years.

The new trade routes and the abundance of resources made available through these discoveries put Portugal and especially Spain at the center of an Atlantic-oriented trade network, which began to supplant the heretofore-dominant Mediterranean-based trade-system. The center of gravity of European trade had been located in the Mediterranean Sea, especially by virtue of Venice's preponderance in the eastern Mediterranean by which she controlled trade between Europe and Asia. With the new route to the East around Africa Venice's monopoly was undercut. The vast amount of resources available in the West Indies and the growth of the Spanish colonial empire further worked for a shift in the traditional trading pattern. Much more of European trade was now channeled through Portugal and Spain along these new routes, since the crowns of these countries reserved actual trading privileges to themselves.

Paradoxical as it may seem, the actual coordination and exploitation of this new trading system was overseen and coordinated not by the Portuguese and the Spanish but by large financial and mercantile interests mainly out of other areas of Europe. Thus the official reservation of all trading privileges to subjects of the respective crowns had the actual effect of merely restricting the physical points of entry and exit to the crown-designated cities in Portugal and Spain, mainly Lisbon and Seville. In actuality the city which increasingly formed the center of this new trading system was Antwerp. There all of the flows of manufactured goods to the New World and Asia, as well as the silver, the pepper, the raw materials from East and West came to be channeled. The financial coordination of this trade was also carried out by "remote control" as it were. The main offices of the major financial interests in Europe were located in Antwerp. These were the Augsburg and the Genoese bankers, in the first place the house of Fugger. They organized the trade between the New World and Spain, and that trade, along with loans to the Spanish crown, helped to make their fortunes.²

Thus the imperial conquest by Spain of Mexico and Peru was not simply the result of the gallantry, deviousness, and brute force of the Spanish soldiers. Its impetus lay in the prospects of reward to be gained from the newly-expanding economy, an economy increasingly controlled and administered by highly placed and exclusively privileged trading and financial interests intimately involved in the construction and expansion of the Hapsburg empire of Charles V.³ As the prospects for gain became evident these

2 H.G. Koenigsberger, *Early Modern Europe 1500-1789* (London and New York: Longman, 1987), pp. 33, 91.

3 Indeed it was the house of Fugger which virtually purchased the election of Charles to the imperial throne. Consider the following letter written by Jacob Fugger to Charles, reminding him of his debt:

interests were quick to join in, outfitting exploratory voyages as well as putting up the capital for efforts at colonization. For example, “it was Hungarian copper, mined by German entrepreneurs, which helped to finance the Portuguese voyages to the Indies and at least some of the Spanish ventures in South America.”⁴ The Genoese in Seville were from the beginning involved financially in the New World exploration and exploitation, beginning with Columbus's (a fellow Genoese) expeditions.⁵ Their connections to the monarchy and with relatives in Antwerp and Genoa positioned them very well within the growing commercial system.

The way in which the conquests were carried out reflected the new realities on the European scene. Just as the so-called “New Monarchies” with the support of finance kingpins were subjugating constitutionally-established free institutions at home, the advancing forces of the Spanish crown were subjugating the Indian nations in the New World with the support from this same source. The spread of the gospel was the formal legitimation of the conquest; in actuality the Church was subordinated to the status of department of state, a tool for the pacification of subjects. The “New Monarchies” were creatures and benefactors of moneyed interests bent upon bringing as much of the inhabited globe under their control as possible. These interests enabled kings to make war on their subjects and their neighbors by providing the vast sums of money required for such efforts; in exchange they received monopoly privileges in mining and banking which made for “the really great profits, the gigantic accumulations of capital”⁶ which overshadowed other sources of income and enabled them to supply the voracious requirements of monarchs, and in the process further binding them to their own interests.

Accordingly, while the Spaniards did not arrive in the New World simply to obtain plunder—they brought wives, they built cities, they established themselves permanently as residents of these lands, and brought much of “home” with them—still the lust for gold was paramount.⁷ A spirit of gain had taken hold, fueled by the demands and the opportunities made possible by empire. It drove the colonists to subordinate all efforts at long-term, settled investment to short-term schemes of profit maximization in terms of current demands back in Europe. It required the forced subjugation of the Indian populations to those short-range schemes rather than long-term assimilation and

It is clear as the light of day that your Imperial Majesty would not have attained to the Roman Crown without my help, because many of the princes reposed their faith and their confidence in me and no one else. If I had left the house of Austria in the lurch and favored France, the money and goods that they would render me would not be lacking. To such a degree have I neglected my own interest.

Quoted in Ramon Carande, *Carlos V y sus Banqueros* [Charles V and his Bankers] (Barcelona: Editorial Critica, 1977), i, p. 457.

4 Koenigsberger, *Early Modern Europe*, p. 33.

5 Ruth Pike, *Enterprise and Adventure: The Genoese in Seville and the Opening of the New World* (Ithaca, NY: Cornell University Press, 1966).

6 Koenigsberger, *Early Modern Europe*, p. 33.

7 And not only to them but also those of other nationalities likewise involved in the colonization of New Spain: Lyle N. McAlister, *Spain & Portugal in the New World, 1492-1700* (Oxford: Oxford University Press, 1984), pp. 80-1, 108.

amelioration in terms of peaceable, sustainable work relations. It required as well the massive importation of slaves from Africa for plantations geared to meet the demand for such novelties as sugar and tobacco. It is easy to exaggerate the degree to which such exploitation actually occurred. McAlister has explained how Spanish colonization was not a purely exploitative enterprise but involved long-term investment of people, labor, and capital from the Old World, belying the current stereotype that the English went to till the land, the Spanish went to loot it. Nevertheless, the presence of what he terms the “bonanza” or “get-rich-quick” mentality did much to undermine more intelligent, humane, and just efforts at investment.⁸

Queen Isabella had declared at the very beginning of the conquest that “Castile possessed a just title to the Indies because of its obligation to evangelize the Indians, and, indeed, this was the sole justification for the presence of its subjects in those parts.”⁹ There were many who fervently believed in that goal, despite actions on the part of the conquerors which did so much to defeat that purpose. The propriety of the way in which the conquest and colonization of the Indies was being carried out was called into question: doubts and disputes arose over the degree to which the conquest of the Indies in fact exhibited a character exactly contrary to its avowed purpose. As Koenigsberger notes, “It is to the great credit of the Spaniards that they debated these problems passionately and learnedly—no other European nation did, before the eighteenth century.”¹⁰

Empire vs. Community of Nations

This debate extended to the very foundations: the relationship of law and gospel, church and state, the doctrine of the just war. In fact it generated the formation of a new field of inquiry: that of universal, global international relations. Because the questions the discovery and conquest of the Indies raised were new ones—these were new lands, with unknown peoples, heretofore totally out of the picture with respect to the ages-old classical cum Christian world whose focus lay in the Mediterranean Sea—they generated the development of a body of principles, based in the Christian, scholastic tradition, but further developed in a novel way.

The basic concept of international relations had heretofore lain in the concept of the *jus gentium* or law of nations developed during the time of the Roman empire and not essentially breaking from its classical-imperial ideal. The Roman conception was formally universal but nevertheless bounded by the physical extent of the Roman empire: it was what might be termed the “common law” of that empire, to which all subject nations were likewise bound. It thus depended on the supremacy of a human institution, viz. Caesar.¹¹ But the discovery of the Indies, along with the incorporation of Africa as a continent into the world-picture and the realization of the vastness of the globe itself with

8 McAlister, *Spain & Portugal*, pp. 108, 213, 247f.

9 McAlister, *Spain & Portugal*, p. 78.

10 Koenigsberger, *Early Modern Europe*, p. 93.

11 Antonio Truyol Serra (ed.), *The Principles of Political and International Law in the Work of Francisco de Vitoria* (Madrid: Ediciones Cultura Hispanica, 1946), p. 53.

its circumnavigation by Magellan (1519-1523), rendered this kind of schematic obsolete. Rather than real or potential subjects of a universal Roman empire,¹² the world was perceived to be made up of independent, autonomous peoples, each with their own governments, each capable of interrelationships with other nations in terms of a *jus gentium* which bound them reciprocally but subordinated them to no supreme human institution. The man who made this conceptual breakthrough was the Dominican theologian Francisco de Vitoria. “Vitoria gives the *jus gentium* the character of *jus inter gentes*, a juridical order binding human groups which are independent as such; he creates, in short, the modern concept of international law.”¹³

Vitoria developed his ideas concerning the relationships of nations in a treatise devoted to the controversy over the Indies question. Actually his ideas were given over two successive teaching years. It was the custom at the time for professors at the end of each year to give a *relectio* or review of an important matter of doctrine. Vitoria, as Prima Professor of Theology at the University of Salamanca (thus the premier theologian of Spain), gave many of these in his twenty-year-long career there, of which fourteen have been preserved. The *relectiones* of 1538-9, *De Indis* [Of the Indies], summarized his ideas and were seminal to the future development of the field.¹⁴

Empire, Conquest, and the Great Commission

The text he chose, from the Bible, to be the focus of his *relectio* went to the heart of the current debate. As Queen Isabella had affirmed, the only true title the Spaniards had to the conquest of the Indies concerned the necessity to bring the gospel to the “barbarian” nations there. Consequently Vitoria begins the *relectio*: “The passage which is to be reiterated is from Matthew: *Disciple all the nations, baptizing them in the name of the Father, of the Son, and of the Holy Spirit.*” Thus the first modern treatise on international law consisted of an exposition of the meaning of the Great Commission.

The controversy as he saw it consisted in three parts: by what right are the Indian nations subjected to the Spaniards; what power do the princes of the Spaniards have over the Indian nations with respect to temporal and civil matters; what power do both these princes and the Church have over the Indian nations with respect to spiritual things and religion.

The Role of the Church

From the outset of the *relectio* Vitoria is anxious to firmly establish one condition: that the Church possesses an independent authority and jurisdiction to deliberate over this

12 A dream which lived on into the sixteenth century: Frances Yates, *Astrea: The Imperial Theme in the Sixteenth Century* (London: Routledge & Kegan Paul, 1975).

13 Truyol Serra, *Principles of Political and International Law*, p. 53.

14 The *De Indis* is available in English in J. Scott Brown, *The Spanish Origin of International Law. Part I: Francisco de Vitoria and his Law of Nations* (Oxford and London, 1934). For convenience' sake I will cite here from Truyol Serra's abridged translation (see n. 11 above).

question and render judgment accordingly. He emphasizes that the question, being a matter of conscience, is not a matter for the civil authorities to decide alone. Alluding darkly to the lack of attention which had been paid to ecclesiastical authority in the whole affair of the conquest to date, Vitoria vigorously asserted the jurisdiction of the Church on the basis of Deuteronomy 17. He insists on the competence of the doctors which the Church has established to pronounce on matters of “conscience” which are of public import. As Beltrán de Heredia underlines, Vitoria is anxious to deny the monopoly of jurisdiction asserted by secular authorities and jurists. “The promoters of the committed scandal pretend without foundation to monopolize judgment over an affair which affects the conscience and falls, therefore, under the jurisdiction of the moral theologian.”¹⁵ *The Pre-Conquest Status of the Indian Nations*

Thus defending his inquiry into what many considered to be a closed subject already dealt with properly by both Ferdinand and Isabella and later Emperor Charles, Vitoria proceeds to analyze the substance of the titles of conquest. In order to affirm a right of conquest it was held that the Indian nations possessed no rights of sovereignty—they held, from a Christian perspective, no legitimate title to an independent civil existence—and therefore a Christian nation held the right of conquest over them. Their status either as sinners and infidels, or as irrational creatures or idiots would deprive them of the rights of sovereignty. Vitoria proceeds therefore to analyze the status of the Indians prior to the arrival of the Spaniards in order to determine the applicability of these charges. He first declares that even though the Indians, being idolaters, lie in “mortal sin”, such does not of itself deprive them of these rights. Even Christian princes and kings do not lose their sovereignty if in mortal sin—otherwise kingdoms would change hands every day. Priests do not lose their authority when in mortal sin, as the Church since Augustine had declared; how much more so those in civil authority, which is of less weight than spiritual authority? And the Indians are in their present state because of ignorance, not in willful rebellion as would be the case with Christian priests or princes. Therefore they do not lose their rights of civil authority and sovereignty because of their spiritual state prior to the arrival of the Spaniards.

It was also argued that the Indians lacked the power of reason and therefore are denied such rights, even as Aristotle had declared some are naturally slaves because they lack the reason necessary to self-government and therefore require to be governed by others. Vitoria denies that these Indians are in such a state. “There is a certain method in their affairs,” he declares, “for they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason: they also have a kind of religion. Further, they make no error in matters which are self-evident to others; this is witness to their use of reason.”¹⁶ Their apparent lack of reason is due more to their poor education and their being so long strangers to the gospel than to their inherent nature. “Accordingly I for the most part attribute their seeming so unintelligent and stupid to a bad and

15 Vicente Beltran de Heredia, R. P., *Francisco de Vitoria* (Barcelona et al, Editorial Labor, S.A., 1939), p. 84.

16 Truyol Serra, p. 58.

barbarous upbringing, for even among ourselves we find many peasants who differ little from brutes.”¹⁷

Universal Rule of Emperor or Pope?

Having thus declared the Indians true possessors of rights of civil sovereignty prior to the arrival of the Spaniards, Vitoria proceeds to consider titles of conquest by which the Spanish actions might conceivably be justified. Firstly he describes what he considers illegitimate titles. And number one on the list is the one springing out of the old imperial dream: that the Holy Roman Emperor is *ipso facto* ruler of the entire earth, and therefore the Indian nations owe him obedience. Vitoria rather argues that the nations since their creation after Babel have been independent polities, and the empires that have arisen were never world-wide; the only universal reign is that of Christ's since His ascension, and that is a spiritual reign, to which all temporal powers, including the Emperor, are subjected. Therefore the Emperor's pretensions to universal rule are groundless.

Those who would argue, on the other hand, for the Pope's universal dominion over all the nations by virtue of being the Vicar on earth of Christ the King, are also gravely in error, argues Vitoria. The Pope cannot grant the Indian nations into the power of the Spaniards. Even though he be the Vicar of Christ, he possesses thereby only a spiritual authority, and the civil authorities are subjected thereby to him only insofar as it concerns spiritual things, the things having to do with spiritual redemption. Temporal authority is therefore only indirectly subject to spiritual authority, by virtue of the ultimately spiritual *telos* or end of all temporal things. What is more, only those temporal authorities which have received the faith are subject to the spiritual authority of the Pope; the unbelieving nations are not under his jurisdiction. Vitoria supports this assertion by an appeal to I Corinthians 5:12-13: “For what have I to do to judge them also that are without? do not ye judge them that are within? But them that are without God judgeth.”

Proper Use of the Spiritual Power

Therefore an appeal to either of the traditional medieval aspirants to universal dominion is denied by Vitoria. Vitoria does argue, however, that the Pope can and should play a mediating role in the disputes between Christian nations. “When princes are at variance with one another about some right of sovereignty and are rushing into war, he can act as judge and inquire into the claims of the parties and deliver judgment, a judgment which the princes are bound to respect, lest those numerous spiritual evils should befall which are the inevitable results of a war between Christian princes.”¹⁸ This illustrates Vitoria's meaning when he speaks of the subjection of the temporal to the spiritual power. Since war involves many spiritual evils, jurisdiction over the parties involved accrues to the spiritual power in order to properly account for those spiritual ends. Notice that in this Vitoria declares the princes to be bound by the decision of the spiritual power. Such a

17 Ibidem.

18 Truyol Serra, pp. 60-1.

mediatory spiritual power is what he considers the jurisdiction of the Church. Vitoria explicitly notes that such a power is not restricted to the Pope but in fact also pertains to every bishop with respect to his diocese. In fact it is the power he himself was exercising in these *relectios* about the Indies.

Improper Use of the Spiritual Power

But what if these barbarians are presented the gospel and refuse to accept it? Does not the Pope then have the authority to remand them into the hands of Christian princes? No, says Vitoria. In the first place, they are not obliged to believe the gospel message if it is not accompanied by miracles or other proofs or means of convincing. And even if the faith is presented to the barbarians in this way and they do not accept it, the Spaniards may not for that reason make war upon them. True, if the barbarians after having been beseeched and admonished do not wish to listen to the preachers of religion they cannot be excused of mortal sin.¹⁹ If the Christian faith is presented to them in such a way that reasonable proofs of its validity are brought forth and lifestyles in conformity with the natural law are exhibited (which, Vitoria affirms, is a great confirmation of the faith) and this is done not once but continually, the barbarians are obliged to receive faith in Christ under penalty of mortal sin.

Now, it cannot be said in the present case that such proofs and demonstrations of the validity of the gospel have been brought forth to the barbarians to the degree that they now lie under penalty of mortal sin. They are not obliged to believe in that which has not been presented with probable motives of persuasion. Vitoria then asserts that he has not heard of miracles or other signs, nor of religious examples of lifestyle. On the contrary he has news of many scandals and inhuman acts and acts of impiety perpetrated in these regions. Even though there have been very religious ecclesiastics working there, their efforts have been subverted by others with very different interests.

What if the gospel is properly presented to the Indians? If they reject it may not they then be forcibly subjected to Christian authority? Wrong again, says Vitoria. Even if the barbarians have had the gospel presented to them in sufficient manner and they do not accept it, that still does not give the right to make war on them or despoil them of their goods, he declares. St. Thomas said that those who have never received the faith, like Jews and Gentiles, cannot by any means be forced to believe. Truly it is sacrilege to come to the sacraments and mysteries of faith only because of servile fear. Article 45 of the Council of Toledo affirms that no one may do violence to the Jews because God has mercy on those whom He will and hardens those whom He will. Gregory also in *Qui Sincera* declares that those who bring aliens to the faith through a harsh rather than gentle manner serve their own interests rather than the interest of God. The Christian emperors who had most holy and wise Popes as counselors never made war on infidels in order to secure their conversion. War, thus, does not constitute an argument in favor of

¹⁹ Vitoria uses here the Roman Catholic distinction between venial and mortal sins. A venial sin is one which does not in itself result in a soul's damnation; a mortal sin, on the other hand, is one which does. Protestants, of course, reject this distinction.

Christianity.

Intervention for Violations of the Law of Nature?

Apart from their reception of the gospel, may not war be made upon the barbarians for their violations of the law of nature which is common to all nations? Vitoria again answers in the negative. Christian princes may not, even with the authority of the Pope, make war on barbarians even because of alleged violations of the law of nature amongst themselves. Because the Pope has no jurisdiction over barbarians; as St. Thomas says with reference to I Cor. 5, prelates only have jurisdiction over those who submit to the faith. Infidels, fornicators, and idolaters lie outside their jurisdiction, as Paul says. And these Indians are for the most part ignorant of that law, and ought not be punished for what they do not comprehend.

The idea that the Indian nations have submitted to the rule of the Spaniards by their own free will is to be rejected, because such agreements are valid only when free of fear or ignorance. The barbarians have not known what they were doing, nor did they understand what the Spaniards were offering. These offers were made by armed organized bodies to an unarmed and intimidated crowd. They also already had rightfully established princes and magistrates who could not lawfully be set aside, just as the princes could not lawfully deliver the nation into the hands of foreign powers without the consent of the people.

Especially the idea that the Indian nations have been given to the Spaniards by virtue of the special donation of God, as were the Canaanites to the Israelites, is to be rejected. Just because the barbarians are great violators of the natural law does not mean that they occupy a place analogous to the Canaanites. That was a special case in which clear divine revelation was given to the Israelites, which is lacking in this case. Besides, among some Christians worse sins are committed than among these barbarians.

The Rights of Natural Communication

What then, constitute legitimate titles of conquest? These do exist, and are to be divided into temporal and spiritual categories. They come into play whenever the basis for relations between peoples and nations, the rights pertaining to *the natural society and communication*, are violated, as well as the legitimate right to preach the gospel and build the Church throughout the world.

By virtue of the fact that all men have a common ancestry in Adam, all are neighbors, as Augustine affirmed with reference to the parable of the Good Samaritan. Thus all peoples and all nations owe each other basic rights of friendship, of neighborliness, summed up in the idea of "communication". By this understanding all peoples have the freedom to travel within and between nations, as well as the freedom to do business and further commerce within and between nations. Princes may not infringe either of these basic rights unless their practice in a specific case redounds to the injury of their people.

Thus the Spaniards have the right to travel to and sojourn within these Indian nations. It is contrary to the law of nations not to practice hospitality and treat visitors well, unless the foreigners misbehave. “Friendship among men exists by natural law and it is against nature to shun the society of harmless folk.”²⁰ Since natural and divine law confer these rights of communication, any human law which infringes them is null and void. Those things which the Indians allow other strangers to share in may not be legitimately denied the Spaniards. The *Institutes* of Justinian declare that “by natural law running water and the sea are common to all, so are rivers and harbors, and by the law of nations ships from all parts may be moored there”²¹: the freedom of the seas is guaranteed by the rights of natural community and communication.

The Spaniards also possess the right to conduct trade with these nations so long as they do not harm them, “as, for instance, by importing thither wares which the natives lack and by exporting thence either gold or silver or other wares of which the natives have abundance.”²² This is a rule of the *jus gentium*, which is the same between Christian nations as between other nations. For example: “It is clear that if the Spaniards kept off the French from trade with the Spaniards, and this not for the good of Spain, but in order to prevent the French from sharing in some advantage, that practice would offend against righteousness and charity.”²³

These rights apply regardless of religious belief. Christian princes have no right to deprive Muslims or Jews of their property because they refuse to believe in Christ—“the act would be theft or robbery no less than if it were done to Christians.”²⁴ Thus “neither may the native princes hinder their subjects from carrying on trade with the Spanish; nor, on the other hand, may the princes of Spain prevent commerce with the natives.”²⁵ If the Indians adhere to this rule the Spaniards have no more right to seize their goods than they do to seize the goods of Christian.

Citizenship and its advantages also cannot be denied the children of Spaniards who are domiciled in any Indian nation, if that is desired. Domicile, and privileges of citizenship, also cannot be hindered, as long as the Spaniards are willing to shoulder the same burdens there as other citizens.

If the Spaniards are denied any of these rights, they must first remonstrate with the offenders and attempt to bring them to a right understanding of the situation, showing all signs of their desire to live and traffic peaceably among them without doing any damage to them at all nor posing any threat to them. If the Indians insist on denying these rights and appeal to violence, the Spaniards have the right to defend themselves even to the point of building fortifications, and if need be to prosecute war against them. If the

20 Truyol Serra, p. 61.

21 Truyol Serra, p. 63.

22 Truyol Serra, p. 64.

23 Ibidem.

24 Truyol Serra, p. 65.

25 Truyol Serra, pp. 65-6.

Indians then insist on continual belligerence the Spaniards have the right to bring the full penalties of war against them, including despoiling them of their lands, possessions, and freedoms; but this must be done in due proportion to the provocation.

The Rights of Spiritual Communication

Thus far Vitoria outlines the rights pertaining to the natural society and natural communication. With regard to spiritual things—the preaching of the gospel and the extension of the Church—rights likewise accrue which cannot be denied by the Indian nations. Now the Spaniards have the right to preach the gospel freely amongst the Indians, and if they are allowed that freedom then war cannot be made upon them nor may their lands in any way be seized. But if the Indians, either princes or people, do not allow this freedom, “after first reasoning with them in order to remove scandal, may preach it despite their unwillingness and devote themselves to the conversion of the people in question, and if need be they may then accept or even make war, until they succeed in obtaining facilities and safety for preaching the Gospel.”²⁶ This condition applies also where preaching is allowed but converts are persecuted or conversion is otherwise hindered. Such action must be done with moderation and even restraint since it could easily backfire and lead to the hardening of the populace against the gospel. And most definitely must war not be prosecuted to secure conversion. “War is no argument for the truth of the Christian faith. Therefore the Indians can not be induced by war to believe, but rather to feign belief and reception of the Christian faith, which is monstrous and a sacrilege.”²⁷

Possible Titles

Vitoria turns to some remaining titles of conquest not yet considered. As to the legitimacy of what Truyol Serra terms “colonization as a trust”,²⁸ where the government of a nation is taken over because of the incompetence of the indigenous government in order to better provide for the welfare of the people, Vitoria is hesitant and circumspect. He can conceive of instances where such an assumption of sovereignty might be legitimate, but only where the issue is absolutely clear. The welfare of the populace must be the sole consideration, according to the principle of charity whereby the interests of one's neighbor are to be looked after. “Let this, however, as I have already said, be put forward 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. For this is the respect in which all the danger to soul and salvation lies.”²⁹

A title of conquest is appropriate where the rulers are tyrants or where innocent people are condemned to death for ritual purposes, sacrificed or killed for cannibalistic purposes. The Spaniards can by right intervene here in order to save innocent people from unjust

26 Truyol Serra, p. 67.

27 Truyol Serra, p. 68.

28 Ibidem.

29 Truyol Serra, pp. 68-9.

death. If, also, the Indians deliver over their government to the Spaniards freely and voluntarily, such is a legitimate act. Both prince and people must give consent to such a transferal of sovereignty. Fear and ignorance must be absent, which cannot be said for the titles gained which are now under consideration. Finally, the Spaniards may ally with one Indian nation against another if their cause is a just one. Such is entirely legal, and the rewards of war which would accrue to the Spaniards, entirely acceptable.

Vitoria's Achievement: A Practical Theology of International Relations

There in bare outline is Vitoria's *De Indis*. The first modern treatise on international relations constitutes a ringing defense of the rights of nations as such, and, just as important and just as indispensable, of the role of the Church in mediating those relations. That Vitoria used the Great Commission as the text upon which his exposition was based was no accident. His treatment constitutes a brilliant outworking of its implications for international relations. It was no mean achievement to champion the rights of heathen nations over against Christian ones, in a climate in which the forces of conquest and subjugation in the name of Christ were in the ascendancy; no less courageous was the affirmation of the rights of the Church to oversee and pass judgment on the conduct of the secular Christian princes, at a time when these princes were using the Church, in both Protestant and Catholic countries, in order to further their own dominion.

The rights of the heathen nations considered together with the rights of the Church mean the subordination of secular interests to the interests of the Kingdom of Christ. The preaching of the gospel, the disciplining of the nations, bringing them to submission to Christ, are the ultimate goal of Christian civilization. Christian princes are then to restrict their appetites in order to ensure the achievement of that goal. Thus the rights of the spread of the gospel, and of the free interchange between sovereign nations, are to be paramount, while the political dominion of secular empire, denied.

Vitoria establishes an "empire of law", so to speak, in which the role of the secular power is simply to maintain peaceable and equitable relationships among the peoples regardless of race, color, creed, or nationality. The secular power is to protect everyone in their common rights of "communication". Additionally the freedom of the preaching of the gospel is to be preserved, even to the point of using force to ensure that freedom. Secular "communication" and spiritual "communication" are thus mutually reinforcing. The freedom to travel and conduct trade fosters the growth of mutual ties and understanding, laying the groundwork for the preaching of the gospel. The gospel reestablishes the peoples in the fullness of community with God and man which is the cause of schism and of war.

It is the role of the Church to watch over the way in which the secular power carries out its God-given duties and ensure compliance with the law of God. The theocratic basis of Vitoria's exposition is thus crucial. The Church mediates between the nations in the interest of that law, both for the good of the Church and for the good of all peoples,

because the gospel message cannot be received unless it be freely preached and the peoples be free to accept it. Compulsion is simply out of the question here. With the growth of the Church International the spiritual Kingdom of Christ expands into all the world, in fulfillment of the Great Commission. Thus the ultimate purpose of international law, which Vitoria clearly perceived, is to enable the fulfillment of that Commission.

What impact did Vitoria's exposition have on the contemporary situation? For one thing, very soon after its appearance a new set of laws for the Indies, the *Nuevas Leyes de Indias*, showing the clear influence of his ideas. But the Council of the Indies, the body commissioned by Charles to determine policy, appears mainly to have ignored Vitoria: he appears to have been more influential in New Spain than in Old. Charles himself took some notice of his work, recommending, for instance, that problems brought to his attention by priests returning from the New World be referred to Vitoria for his counsel.³⁰

Be that as it may, it is apparent that the strongest powers behind the colonization movement, the mercantile and financial interests, had something other than the spread of the gospel and Christ's Kingdom in mind. In fact they were doing everything in their power to ensure that the Church would have as little influence as possible in the way the colonization was conducted. So while the crown, influenced by the followers of Vitoria, legislated in favor of the rights and protections for the Indians, the actual practice fell far short of such ideals. The power behind the crown ensured that the crown used the gospel, and the Church, as a tool for the expansion of imperial dominion. This reversal in priorities became the rule for all of the Christian nations. The submergence of the Church into the role of chaplain to the secular power, or her sidelining into the limbo of privatization, made this arrangement permanent. The result has been five centuries of the expansion of, and continuous warfare between, autonomous modern nation-states: "the rise and fall of the great powers".³¹ The vision of Francisco de Vitoria must be re-appropriated if we are ever to break out of this particular version of cyclical history.

30 See Vicente Beltrán, *Francisco de Vitoria*, pp. 130ff.

31 Paul Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (New York: Random House, 1987).