Francisco de Vitoria and the Pre-Hobbesian Roots of Natural Rights Theory

Thomas D. Williams, L.C.

Among critics of the Enlightenment project there exists a sometimes latent, sometimes overt resistance towards the language of human rights. In its milder form, this resistance is experienced as a vague discomfort or uneasiness with rights language, while in its more virulent form it expresses itself as active hostility.

More than a few thinkers have expressed grave misgivings about the espousal of human rights language. Russell Kirk described rights as «a Newspeak term, often supercilious, readily employed to advance causes hostile to genuine order and justice and freedom.» To engage in rights talk, warned Kirk, is to risk «hoist[ing] ourselves by our own verbal petard.»[1]

Yet as widespread as this resistance may be among cultural conservatives in general, it is particularly acute among Catholics, since the Catholic Church has not only joined the contemporary trend to frame moral discourse in the language of human rights, but has taken a leading role in the process.[2] Brian Benestad, refers to a «quiet revolution» brought about by the adoption of rights talk. «Many citizens,» he writes, «including Church leaders, do not realize that rights are not simply another way of talking about classical virtue or the teaching of

---

[1] Russell KIRK, *Redeeming the Time*, Wilmington, DE: ISI Books, 1996, 239.

[2] To cite just one example, the 1992 *Catechism of the Catholic Church* speaks of rights in the following numbers: 912, 1269, 1631, 1807, 1882, 1886, 1889, 1901, 1907, 1925, 1930, 1931, 1935, 1944, 1945, 1956, 1978, 2032, 2070, 2186, 2203, 2213, 2237, 2242, 2243, 2246, 2254, 2270, 2273, 2294, 2298, 2306, 2344, 2375, 2378, 2381, 2383, 2407, 2411, 2414, 2420, 2424, 2430, 2431, 2458, 2492, 2494, 2498.

Alpha Omega, VII, n. 1, 2004 - pp. 47-59

Jesus Christ. In fact, the doctrine of rights presupposes an understanding of human nature 'which is no longer defined in terms of its highest aspirations,' but rather assumes that people cannot really rise above preoccupation with their own interests.»[3] Kenneth R. Craycraft, Jr., assistant professor of theology at St. Mary's University, has contended that the very notion of rights employed in recent official Church documents is "problematic at best." According to Craycraft: «The Church has adopted a language that may be irreconcilable with its more ancient and basic claims about man and his relationship to God.»[4] Similar arguments are put forward with no less vigor by Ernest L. Fortin, Joan Lockwood O'Donovan, Alasdair C. MacIntyre, Robert P. Kraynak, Michel Villey and others.[5]

In part, these attitudes reflect a common historical misunderstanding, namely, that a single, unified rights tradition can be traced from the earliest theories of the rights of man to contemporary rights claims, and that this theory originated with Thomas Hobbes. Typical of this mindset is Ernest Fortin. In speaking of the evolution of natural law theory through the centuries, Fortin, following his mentor Leo Strauss, turns to «the seventeenth-century founders of modern liberalism, especially Hobbes and Locke, who broke decisively with the previous tradition and sought to establish the whole of political thought on a new and suppos-

---

[3] J. Brian BENESTAD (ed.), *Human Rights, Virtue, and the Common Good: Untimely Meditations on Religion and Politics*, Vol. 3 of Ernest L. Fortin: Collected Essays, Lanham, MD: Rowman & Littlefield, 1996, from the foreword, xii-xiii.

[4] Kenneth R. CRAYCRAFT, "Religion as Moral Duty and Civic Right: *Dignitatis Humanae* on Religious Liberty," in *Catholicism, Liberalism, and Communitarianism: The Catholic Intellectual Tradition and the Moral Foundations of Democracy*, Kenneth L. GRASSO, Gerald V. BRADLEY, Robert P. HUNT (eds.), Lanham, MD: Rowman & Littlefield, 1995: 60.

[5] See Ernest L. FORTIN, "Human Rights and the Common Good," in Ernest L. FORTIN, *Human Rights, Virtue, and the Common Good: Untimely Meditations on Religion and Politics*, Vol. 3 of Ernest L. Fortin: Collected Essays, J. Brian BENESTAD, (ed.), Lanham, MD: Rowman & Littlefield. 1996: 19-28; Ernest L. FORTIN, "The New Rights Theory and the Natural Law," in Ernest L. FORTIN, *Classical Christianity and the Political Order: Reflections on the Theologico-Politico Problem*, Vol. 2 of Ernest L. FORTIN: Collected Essays, J. Brian BENESTAD (ed.), Lanham, MD: Rowman & Littlefield. 1996: 265-86; Ernest L. FORTIN, "The Trouble with Catholic Social Thought," in *Human Rights, Virtue, and the Common Good*: 303-14; Joan LOCKWOOD O'DONOVAN, "The Concept of Rights in Christian Moral Discourse," in *A Preserving Grace: Protestants, Catholics, and Natural Law*, Michael CROMARTIE (ed.), Grand Rapids, MI: Ethics and Public Policy Center/William B. Eerdmans Publishing Co., 1997: 143-56; Alasdair C. MACINTYRE, *Are There Any Natural Rights?* Brunswick, ME: Bowdain College, 1983; Alasdair C. MACINTYRE, *After Virtue: A Study of Moral Theory*, London: Gerald Duckworth & Co., 1985[2]; Robert P. KRAYNAK, *Christian Faith and Modern Democracy: God and Politics in the Fallen World*, University of Notre Dame Press, 2001; Michel VILLEY, "Abrégé du droit naturel classique," *Archives de philosophie du droit* 6 (1961): 25-72; Michel VILLEY, *Le droit et les droits de l'homme*," Paris: Presses Universitaires de France, 1983.

edly more solid foundation.»[6] This break issued from a change in understanding of the human person. «Human beings,» Fortin continues, «were no longer said to be naturally political and social. They are solitary individuals who once existed in a prepolitical 'state of nature'... Individual rights, conferred by nature, replace duties as the primordial moral phenomenon.»[7]

In this regard, "pre-Hobbesian roots of natural rights theory" can mean two things. Pre-Hobbesian roots can refer to the remote and proximate precursors that led up to and influenced Hobbes' natural rights theory, or can refer to all natural rights theorizing that antedates Hobbes. For those who hold that a single, unbroken rights tradition exists, these two approaches boil down to the same thing. In reality, two separate and parallel natural rights traditions exist, with radically different conceptions of man, society, and the state.[8] The older tradition grounds rights in Christian anthropology, with its understanding of man as created in God's image and likeness and thus worthy of a certain sort of treatment. The other, more recent tradition, is rooted in British Enlightenment anthropology which posited a natural state of antagonism among individuals and a natural right to self-preservation, from which other rights emerged.[9]

Thomas Aquinas and Natural Rights

Though I wish to focus on the contribution of Francisco de Vitoria to natural rights theory, before I delve into this topic, I must make mention of Thomas Aquinas and his understanding of justice and right. It is important to remember that Vitoria was a Dominican Friar, as was Aquinas, and was a true intellectual disciple of the latter. When

---

[6] Ernest L. FORTIN, "Natural Law," in *Human Rights, Virtue, and the Common Good: Untimely Meditations on Religion and Politics*, Vol. 3 of Ernest L. FORTIN: Collected Essays, J. Brian BENESTAD (ed.), Lanham, MD: Rowman & Littlefield, 1996: 161-2.

[7] Ibid.

[8] Possenti states that «esistono due tradizioni dei diritti dell'uomo, che certo esibiscono non pochi punti di contatto, ma che non sono identiche né per quanto riguarda l'elenco e l'ordine dei diritti, né per quanto concerne la loro giustificazione: la tradizione apertasi col 1789 e l'altra più antica proveniente in vario modo dal seno del cristianesimo e dalla cultura mediterranea» (Vittorio POSSENTI, "Diritti umani e natura umana," in *Rivista di Filosofia neo-scolastica*, 2/1995, Università cattolica di Milano, 251). Though Possenti errs in his attribution of the origins of Enlightenment rights theory to the French revolution, he is correct in pointing out the differences that separate the two traditions.

[9] It is therefore, «a right of nature: that every man may preserve his own life and limbs, with all the power he hath» (Thomas HOBBES, *The Elements of Law Natural and Politic: Part I Human Nature, Part II, De Corpore Politico, with Three Lives* [1640], J. C. A. GASKIN (ed.), New York: Oxford University Press, 1999, Part I, Ch. XIV, 6, 79).

in 1526 Vitoria was elected to occupy the principal chair of theology at the University of Salamanca, he replaced Peter Lombard's *Sententiae* as the standard classroom text with Aquinas' *Summa theologiae,* and this substitution later became general practice throughout Catholic Europe. Moreover, Vitoria considered his work on rights and on jurisprudence in general to be a natural and organic development of Aquinas' thought and in his lectures on rights continually cites him.

It has often been said that the idea of subjective, individual rights is foreign to the thought of Aquinas, who limited his considerations to objective *right* in the singular, yet this opinion does not hold up to a careful reading of Aquinas. Right (*ius*) is not a static term with a single application, and Aquinas himself made note of the etymological development that the word had already undergone in the 13th century.[10] Though Aquinas most often employs right (*ius*) in an objective sense and does not develop a theory of individual rights as such, there are numerous instances where Aquinas uses the term in a subjective or individual sense, in speaking of particular rights.[11]

For Aquinas, right (*ius*) forms the object of justice, and is equivalent to "the just" (*iustum*).[12] Justice as a virtue aims at establishing equality among men, a condition of balance or equilibrium. This state of equilibrium we call the just order, or a situation of objective right. A little further on, however, Aquinas speaks of "right" not as an objective situation or rule, but on the individual level, whereby "right" approaches the more modern notion of subjective right. Aquinas states that «the 'right' or the 'just' is a work that is adjusted to another person according to some kind of equality.»[13] It is in this sense that Aqui-

---

[10] Initially, he writes, right was used to denote the just thing itself, then designated the art whereby one knows what is just, later the place where justice is administered, and finally a rule of law (See *Summa Theologiae* [hereafter *S. Th.*], II-II, 57, 1, ad 1).

[11] We have, for example, the very helpful assortment of texts compiled by H. Hering where Thomas employs ius in this manner. The references Hering adduces are, from the Summa Theologiæ, I-II, 58, 2 (*ius contradicendi*); II-II, 62, 1, ad 2 (*ius dominii*); II-II, 66, 5, ad 2 (*ius possidendi*); II-II, 69, 1 (*ius prælationis*); II-II, 87, 3 (*ius accipiendi*); II, 46, 3, obj. 3 (*ius in homine*); II, 57, 6, ad 3 (*ius mansionis cælestis*); II, 67, 2 (*Ius accedendi ad mensam Domini*); II, 67, 6 (*ius baptizandi*); Suppl., 57, 1, ad 7 (*ius successionis*); Suppl., 64, 1, ad 3 (*Si aliquis redditur impotens ad debitum solvendum... mulier non habet ius plus petendi*); Suppl., 64, 4, ad 1 (*ius petendi*); *Q.D. de virtutibus in communi*, q.1, a.4 (*ius et facultatem repugnandi*); *Quodlib*. II, 8 (*ius exigendi*). See H. HERING, *De iure subjective sumpto apud s. Thomam*, in *Angelicum*, 16 (1939), 295-97.

[12] «Et propter hoc specialiter iustitiae prae aliis virtutibus determinatur secundum se obiectum, quod vocatur iustum. Et hoc quidem est ius. Unde manifestum est quod ius est obiectum iustitiae» (*S.Th.*, II-II, 57, 1).

[13] «...ius, sive iustum, est aliquod opus adæquatum alteri secundum aliquem æqualitatis modum» (*S.Th.*, II-II, 57, 2).

nas places *ius* in his definition of justice, in saying that justice is the habit by which one renders to each his right with a constant and perpetual will.[14] The concept of right forms the nucleus of the definition of justice and contains both the notion of moral obligation and the specific matter which forms the content of the obligation.

In his various iterations of the definition of justice, Thomas employs three terms interchangeably as the content of justice, namely "one's own" (*suum*)[15] or "due" (*debitum*)[16] or "right" (*ius*).[17] He uses these three terms as synonyms without distinction, and thus one understands that for Aquinas, right (*ius*) means that which is due to another, or that which is one's own.

Right draws its content from what is due to, or belongs to the person. Justice, in fact, rests essentially on the notion of possession or belonging, and distinguishes between *mine* and *yours*.[18] This belonging does not refer to what one possesses *physically* but rather *morally* (or legally), first, because one cannot render to another that which he already has in his possession, and secondly, because a moral obligation can only arise from a moral relation.[19] The moral bond of what is due (or one's own or one's right) obtains its force from the suitability of the thing to the person. Thus Aquinas observes that «in external operations, the order of reason is established... according to the becomingness (*convenientiam*) of the thing itself; from which becomingness we derive the notion of something due which is the formal aspect of jus-

---

[14] «...iustitia est habitus secundum quem aliquis constanti et perpetua voluntate ius suum unicuique tribuit» (*S.Th.*, II-II, 58, 1).

[15] See *Summa Contra Gentiles* (hereafter *CG*), I, 93; II, 28; *S.Th.*, II-II, 58, 1; II-II, 58, 11; *Super epistolam ad Romanos*, ch. 14, lectio 2; *De virtutibus*, 1, 12, ad 26.

[16] Thus Aquinas writes: «Iustitia enim... ad alterum est, cui debitum reddit" (*CG*, II, 28); or that "iustitia est ad reddendum debitum alteri» (*S.Th.*, II-II, 56, 2). See also Ibid., II-II, 58, 1, ad 6.

[17] See, for example, *S.Th.*, II-II, 58, 1; *De Veritate*, q. 1, art. 5, ad 13; *CG*, II, 28.

[18] «Iustitia... quae secernit suum a non suo» (*S.Th.*, I-II, 66, 4, ad 1). Such a separation of property is greatly assisted by the social order. De Finance notes that «only in virtue of a social organization, at least embryonic, that the firm outlines of 'mine' and 'thine' will begin to appear» (Joseph DE FINANCE, *An Ethical Inquiry* (1967), trans. Michael O'Brien, Rome: Editrice Pontificia Università Gregoriana, 1991, § 196, 348).

[19] Thus, for example, stealing refers to taking something that does not belong to you. Though the object may have changed hands (and consequently physical possession), it still *belongs* to the one from whom it was stolen. The moral obligation of restitution rests on the idea of a moral attachment existing between the person and some specific goods. Physical possession is a circumstantial condition, a mere relation of contiguity, which cannot of itself give rise to moral obligation.

tice: for, seemingly, it pertains to justice that a man give another his due.»[20]

How is this "becomingness" to be understood? According to Aquinas, «that which is ordered to a man is what is said to be his own.»[21] Since according to Thomas's teleological framework man is not perfect, but must move toward perfection, as what is potential moves to what is actual, a man's "own" refers not only to what he actually possesses, but to that which is necessary for him to become fully himself.[22] The quality of "becomingness," therefore, takes on a meaning of perfectiveness. That becomes a man, which leads him to the fullness of his being. In this regard Aquinas remarks that «that which is required for a thing's perfection is necessarily due to it.»[23] Natural right, from a Thomistic standpoint, hinges on the becomingness of particular perfective goods to the individual in order for him to achieve the fullness of being.

This was the legacy inherited by Aquinas' confrere and disciple, Francisco de Vitoria (1483-1546). We now turn to his thought.

Francisco de Vitoria, the School of Salamanca, and the Rights of the "Indians"

As noted earlier, it is common for those of the Anglo-Saxon tradition to attribute the notion of subjective rights primarily to Hobbes and Locke, and thus to identify rights language with other aspects of Hobbes' anthropology and liberal political theory. Yet a full century before Hobbes began writing on the subject, Vitoria and his followers in the Salamancan school were debating natural rights in a different historical context and with radically different suppositions about the human person. Hobbes himself was unfamiliar with the theories that

---

[20] *S. Th.*, I-II, 60, 3.

[21] Ibid., I, 21, 1 ad 3.

[22] But this prompts the question of what exactly 'his' means... *Having* is often opposed to *being*; but, in fact, it is rather its complement. It involves a certain unity between what is possessed and the one who possesses, but it is a unity in which the distinction between the two is preserved, a unity which implies subordination, finality, completion. What is possessed is related to the one who possesses as the part is related to the whole, the limb to the living being, the instrument to the agent who makes use of it (with whom it forms one dynamic totality) etc. In this sense, one can say that every existing being 'possesses' the principles of being that are intrinsic to it, as well as the accidental qualities which are proper to it: these 'belong' to it, because they are linked with its being in a more profound manner than are the effects which are merely worked upon it from without. In the same way, everything without which a thing could not exist, and could not be what it is, can be said to be 'due' to it" (DE FINANCE, § 196, 346-7).

[23] *CG*, II, 28.

emerged from Salamanca, and thus Vitoria can in no way be considered a precursor of Hobbes. Nonetheless, Vitoria's writings were of enormous importance for political theory not only in Spain, where his thought became somewhat of an orthodoxy, but throughout continental Europe, and effectively set the agenda for subsequent discussions on international law in Catholic Europe until the late seventeenth century.

Vitoria is commonly regarded as the founder of the "School of Salamanca," which would include such thinkers as Domingo de Soto, Diego de Covarrubias and the Jesuits Luis Molina and Juan de Lugo. Established in 1218, the University of Salamanca is one of the oldest universities in the world, and already enjoyed great prestige when Vitoria arrived in 1526. Nevertheless, Vitoria infused new vigor into Thomistic and natural law studies at Salamanca, and inspired a following that endured long after his death. The emperor Charles V had frequent recourse to Vitoria's counsel, which eventually led to the Indians being placed under the protection of the Spanish crown.

Vitoria's works can be broken down into two groups: (1) his extensive commentaries on the writings of Thomas Aquinas, and (2) his *relectiones*. For the twenty-year period that Vitoria held Salamanca's prime chair of theology, he offered yearly formal lectures to the entire student body of the university on topics of particular importance or current interest, in accordance with the statutes of the university.[24] Because of health problems in his later years, Vitoria was not always able to fulfill this obligation, and his *relectiones* totaled fifteen, of which thirteen have been preserved. Though he did not personally publish these lectures, he left copious notes and his students often transcribed his lectures verbatim, which facilitated the publication of his *relectiones* in 1557. Several of the *relectiones* became famous, especially *De indis* and *De iure belli hispanorum in barbaros*, both of which deal with the legal and ethical questions surrounding the Spanish colonization of America. Though of prime importance for the development of political and legal thought in continental Europe, Vitoria's writings are relatively unknown in the English-speaking world,

[24] The constitution of the University of Salamanca, established by Pope Martin V in 1422, called for all university professors to offer an annual formal lecture concerning some point of interest related to the subject matter of their courses. These *relectiones*, as they were called, provoked little interest until the arrival of Vitoria, and his lectures are the most famous in the history of this university which was Spain's principal seat of learning and the theological axis of Catholic Europe after the Reformation. See Ramón HERNÁNDEZ MARTÍN, *Francisco de Vitoria: Vida y pensamiento internacionalista*, Madrid: BAC, 1995, 113.

and his political works were only translated into and published in English in 1991.

The relectio *De indis*

The first appeal made on behalf of the indigenous peoples of the New World had come from the Dominican friar Antón Montesino, of the convent of San Esteban in Salamanca, on December 21, 1511 on the island of Hispaniola. The denunciation quickly crossed the Atlantic and the situation of the *indios* became the object of intense study in Burgos, Valladolid and Salamanca, as well as in the court of King Ferdinand.[25] Vitoria was introduced to the ethical problems of the conquest of the New World when in the summer of 1523, after eighteen years of studies and teaching in Paris, he returned to Valladolid, Spain to occupy a teaching post at the College of San Gregorio.[26] When three years later Vitoria arrived in Salamanca, he encountered an atmosphere of intense concern for the plight of the Indians of the New World, with missionaries being sent from Vitoria's convent of San Esteban to the American continent and frequent reports arriving regarding the state of affairs with the indigenous peoples.

Vitoria's first extant document dealing with the topic of the natives of the New World came eight years later. Struck by news regarding Pizzaro's conquest of Peru, Vitoria resolved to study the question of the situation of the *indios* in depth, and in November 1534 wrote a passionate letter of denunciation to his religious superior, Miguel de Arcos.[27] He accused the Spanish conquistadores of invasion and aggression and refuted the theological arguments in favor of the conquest, provoking a crisis of the nation's conscience.[28] In early January 1539, Vitoria pronounced his celebrated lecture *De indis recenter in-*

---

[25] Another important figure in the struggle for the rights of the indios was the Dominican Fray Bartolomé de las Casas. In 1542 he presented his famous *Very Brief Narrative of the Destruction of the Indies*, in which he denounces abuses of Spanish colonists in their treatment of the indigenous peoples.

[26] See HERNÁNDEZ MARTÍN, 55.

[27] See Luciano PEREÑA VICENTE, "Proceso a la Conquista de América: Veredicto de la escuela de Salamanca, nuevas claves de interpretación histórica," inaugural lecture of the 1987-1988 academic year in the Leo XIII Faculty of Politics and Sociology, Pontifical University of Salamanca in Madrid, 1987, 13. The text of the letter itself can be found in Vicente BELTRÁN DE HEREDIA, *Francisco de Vitoria*, Barcelona-Madrid, 1939, 121-124.

[28] See Luciano PEREÑA VICENTE, *Derechos y deberes entre indios y españoles en el nuevo mundo*, Salamanca: Cátedra V Centenario, 1992.

ventis,[29] which encapsulated his thought regarding the legitimacy of Spanish claims in the New World, followed by its sequel, *De iure belli hispanorum in barbaros*, pronounced on June 18th of the same year, and which together earned him the title of Father of International Law.

Vitoria begins his important *Relectio de indis* by proposing three points for his treatment of the "Indian question," namely, (1) by what right the Indians have come under the power of the Spaniards, (2) what jurisdiction the Spanish monarchs may have over the Indians in the temporal and civil orders, and (3) what authority the Spanish monarchs and the Church may have over them in the spiritual and religious orders.[30] Vitoria immediately asserts that these international juridical questions must be considered under the light of divine (and natural) law, since the Indians are not subject to Europe's human and positive laws.[31]

Vitoria breaks his dissertation into six parts: (1) a brief preamble, (2) the problem of the Indians of the New World, (3) the dominion of the Indians over their property and lands, (4) illegitimate titles of the Spanish occupation of the New World, (5) legitimate titles of the Spanish occupation of the New World, (6) a brief epilogue.

In the important third part Vitoria asserts that the Indians have a true right of ownership (*dominium*) of their things and lands, and rightfully possessed them before the arrival of the Spaniards. The concept of *dominium* forms the linchpin of Vitoria's entire argument on behalf of the Indians, since the capability of moral and juridical possession distinguishes a morally relevant subject to whom justice is owed. Summing up arguments to the contrary, Vitoria states that only four possible grounds could be put forward to deny the Indians their status as subjects of natural rights: either because they are sinners, or infidels, or simpletons, or irrational. Vitoria refutes all these arguments, one by one. He states that *dominium* is based on man's creation

---

[29] Francisco DE VITORIA, *Doctrina sobre los indios*, Ramón Hernández Martín (ed. and introduction), Salamanca: Editorial San Esteban, 1992, 17.

[30] Ibid., 61.

[31] «Quia cum illi barbari… non essent subiecti iure humano, res illorum non sunt examinandae per leges humanas, sed divinas» (Francisco DE VITORIA, *Obras de Francisco de Vitoria*, Teófilo Urdanoz, OP (ed.), edición crítica del texto latino, versión española, introducción general e introducciones con el estudio de su doctrina teológico-jurídica, Madrid: BAC, 1960, 649). Vitoria includes natural law in his understanding of divine law, as he states in his 1532 *Relectio de potestate Ecclesiae prior*: «Et licet ius naturale sit ius divinum, tamen non se extendit ultra limites naturae» (Ibid, 275).

in God's image, that is, on his rational nature.[32] This rational nature is not obliterated by sin, and nor is it altered by one's acceptance or rejection of the Christian faith, and thus neither infidelity nor other mortal sins deprive the Indians of their property rights.

As for the other two arguments regarding the Indians being simpletons or without the use of reason, Vitoria admits that irrational creatures cannot have property rights. Vitoria repeats the Thomistic argument that human beings differ fundamentally from irrational animals in that the human person does not exist for the sake of another, as do animals, but for his own sake, an argument that is central to the Church's contemporary understanding of natural rights.[33] Moreover, since irrational animals cannot suffer injustice, they cannot be the subject of rights.[34]

We have already seen the importance of the notion of "belonging" or "possession" for Aquinas' understanding of justice. The object of justice (and subject of rights) can only be such a being as is capable of possessing. Yet the word "possession" can denote different realities. A thing is said to possess its parts, such that a mammal "possesses" fur or hair, an analog clock "possesses" hands, or a man "possesses" health or athletic skills.[35] We also have the case of *de facto* physical possession, as when a man is said to "possess" what is in his pocket, or a squirrel "possesses" the store of nuts stockpiled its nest (in fact, we say "its nest" to signify just this sort of possession). Finally we have the case of *de iure* or moral possession, for instance when a person "possesses" stock in a company, or a piece of real estate that perhaps he has never so much as visited. Unlike *de facto* possession, *de iure* possession implies a moral or legal tie that attaches a piece of property to its owner, and exacts the respect of other moral

---

[32] «Dominium datur imagine Dei. Sed homo est imago Dei per naturam, scilicet, per potentias rationales; ergo non perditur per peccatum mortale» (Francisco DE VITORIA, *Doctrina sobre los indios*, Salamanca: Editorial San Esteban, 1992, 67).

[33] «Nec est idem de creatura irrationali, quia puer non est propter alium, sed propter se, sicut est brutum» (Ibid., 72). The Second Vatican Council states that man «is the only creature on earth that God willed for its own sake» (Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, 24).

[34] «Creaturae irrationales non possunt habere dominium. Patet, quia dominium est ius, ut fatetur etiam Conradus. Sed creaturae irrationales non possunt habere ius. Ergo nec dominium. Probatur minor. Quia non possunt pati iniuriam. Ergo non habent ius. Probatur assumptum» (Francisco DE VITORIA, *Obras de Francisco de Vitoria*, Teófilo Urdanoz, OP (ed.), Madrid: BAC, 1960, 661).

[35] Aquinas explains this sort of possession or "having" as being between two realities, the "haver" and what is had, where there is no medium between them. Such is the sort of possession of components, such as quantity or quality. See *S. Th.*, I-II, 49, 1.

agents. The mere fact of someone's holding something in physical possession does not entail this moral or legal tie.[36]

Whereas non-personal beings are capable of possession in the first two senses described above, Vitoria, following Aquinas, would assert that they are not capable of possessing in the moral, or *de iure* sense.[37] The moral attachment of property to an owner would require a *moral subject*. Thus, for Vitoria, justice and rights refer only to human persons. Moreover, the Indians clearly are rational, since they have an ordered society, cities, marriage, magistrates, laws, artisans and markets, all of which require the use of reason. Since the distinctive characteristic of human beings is reason, the Indians are human beings and no one has the right to deprive them of their property. Vitoria furthermore adds the important point that rights reside not in the exercise of reason, but in the possession of a rational nature, whereby even children who have not yet attained the use of reason are capable of ownership.[38]

In the fourth part of his *relectio*, Vitoria proceeds to enumerate and systematically refute what he terms the illegitimate claims by which the barbarians of the New World could be subjected to Spanish rule. Basing his arguments on the previous section in which he establishes the Indians' legitimate title to their property and lands, Vitoria rebuts eight claims such as the emperor's supposed lordship over the world, the universal temporal rule of the pope, and the Indians' sinfulness and refusal to accept faith in Christ. Even if these claims were true, writes Vitoria, the Spaniards would still have no right to occupy these provinces, depose their rulers, or despoil them of their property.

In the fifth part of *De indis*, Vitoria next presents what he considers to be the legitimate claims of the Spaniards concerning dealings with the natives of the New World. He formulates what he calls the "right of natural partnership and communication" (*naturalis societatis*

---

[36] When Aquinas deals with restitution as a requirement of commutative justice, he speaks of a situation «occasioned by one person having what belongs to another» (*S. Th.*, II-II, 62, 1). Here a situation exists where *de facto* possession (having) is at odds with *de iure* possession (what belongs to another). As this example illustrates, justice deals not with *de facto* possession, but with *de iure* possession.

[37] Aquinas uses this argument to assert that charity cannot have an irrational creature for its object: «we cannot wish good things to an irrational creature, because it is not competent, properly speaking, to possess good, this being proper to the rational creature which, through its free-will, is the master of its disposal of the good it possesses» (*S. Th.*, II-II, 25, 3).

[38] «Pueri ante usum rationis possunt esse domini. Hoc patet quia possunt pati inuriam, ergo habent ius rerum. Ergo et dominium, quod nihil est quam ius» (Francisco DE VITORIA, *Obras de Francisco de Vitoria*, Teófilo Urdanoz, OP (ed.), Madrid: BAC, 1960, 663).

et communicationis), along with corollary rights to migration[39] and to commerce and free dealings with all peoples. Vitoria adds to this a right to preach the Gospel without interference in the provinces of the New World—leaving the acceptance or rejection of the Christian faith up to their hearers—as well as the protection of the innocent against tyranny, if it should come down to that.

The Spaniards could have a legitimate title to recourse to arms and occupation only as a last resort, if after having exhausted all other peaceful means to insure these rights, they were to suffer injury and malice at the hands of the Indians. Any attempt to deprive a man of his rights constitutes an injury, and the vindication of injuries provides grounds for a just war. Spain could assert that its conquests had been just only if the Indians had in some way injured the Spaniards by denying them access to their lands or the possibility of preaching the Christian faith, which did not seem to be the case.

In his epilogue, Vitoria says that given the present situation, the Spanish crown should not abandon contact with the New World, since it would result in intolerable damage to the Spaniards, even though, he notes, the Portuguese have drawn great benefit from their intense commerce with similar peoples without resorting to conquest.

Conclusion

What should be clear after this brief exposition is that the question of natural rights was the subject of earnest debate and study in a Scholastic intellectual context long before Hobbes wrote *Leviathan* in 1651. Moreover, a certain natural rights theory dovetails with the Thomistic understanding of justice, grounded in an appreciation of man's moral uniqueness as a rational being made in God's image and likeness. The accusation that Christians, in adopting rights language to articulate moral truth, have appropriated the triumphant Enlightenment political language to their own ends does not stand up to a careful historical analysis. The term "rights revolution," which has been applied a-critically to the Catholic Church in the second half of the twentieth century, reflects historical amnesia, because none of this happened overnight.[40] Paradoxically, it was the secular statesmen and

---

[39] «Hispani habent ius peregrinandi in illas provincias et illic degendi, sine aliquo tamen nocumento barbarorum nec possunt ab illis prohiberi» (Francisco DE VITORIA, *Obras de Francisco de Vitoria*, Teófilo Urdanoz, OP (ed.), Madrid: BAC, 1960, 705).

[40] For example, of the 25 discrete rights enumerated in Pope John XXIII's 1963 encyclical *Pacem in Terris* (nos. 11-27), all but three are referenced to earlier popes.

thinkers who underwent an abrupt change. Natural rights were Catholic and Christian before they were "modern," and understood properly, rights language provides a worthy vehicle for expressing perennial truths about man, society, and the state.

Sommario: *Fra i critici del progetto illuministico si trova una certa resistenza al linguaggio dei diritti umani. Molti pensano che il concetto dei diritti sia proprio una invenzione dell'Illuminismo britannico, e che sia impossibile adottare questo linguaggio senza importare allo stesso tempo tanti presupposti antropologici ed etici della filosofia dell'*Aufklärung*. In questo articolo l'autore intende mostrare come il concetto dei diritti soggettivi era già presente nel pensiero scolastico prima della comparsa di Hobbes, prendendo come esempio emblematico il teologo dominicano Francisco de Vitoria e la sua difesa dei diritti degli* indios *in America. L'autore si fissa soprattutto nella famosa conferenza* De indis recenter inventis, *che Vitoria pronunciò a Salamanca in gennaio dell'anno 1539 e in cui Vitoria analizza la legittimità delle pretese della corona spagnola nel Nuovo Mondo. L'argomento di Vitoria gira intorno al importante concetto del* dominium *degli* indios *sulle loro terre, cioè la capacità di proprietà morale e giuridica che sta alla base di qualsiasi diritto naturale.*

Parole chiave: diritti, possesso, proprietà, *indios*, Aquino, Hobbes, Vitoria, dignità, *dominium*, Fortin, Salamanca, *Relectiones*.

Key words: rights, possession, property, Indians, Aquinas, Hobbes, Vitoria, dignity, *dominium*, Fortin, Salamanca, *Relectiones*, ownership.