

THE ORIGIN AND NATURE OF THE STATE IN FRANCISCO DE VITORIA'S MORAL PHILOSOPHY

*El origen y la naturaleza del Estado en la filosofía
moral de Francisco de Vitoria*

LUIS VALENZUELA-VERMEHREN*
Universidad Católica de Temuco - Chile

ABSTRACT

Sixteenth-century Spanish thought is constitutive of an established, though insufficiently studied, tradition of European political theorizing. As against the politics of Machiavellism, the Spanish tradition argued in favor of an ethical perspective on statecraft. As an introduction to the subject, this article addresses key concepts set forth by the Dominican theologian-jurist Francisco de Vitoria regarding the natural foundations and teleology of the state and its coercive power. Terms such as “natural law”, “dominium”, and “perfect community” describe the Thomistic basis of his political philosophy and illustrate the moral significance and legitimate basis of political society in early modern Spanish politico-theological thought.

Keywords: F. de Vitoria, catholic theology, natural law, political theory, spanish political philosophy, Thomism.

RESUMEN

El pensamiento español del siglo XVI constituye una tradición establecida de teorización política europea poco estudiada en los círculos académicos angloparlantes. En contraste con el maquiavelismo, la tradición española argumentó a favor de una perspectiva ética en torno al arte de gobernar. Como introducción a dicha temática, se abordan los conceptos clave establecidos por Francisco de Vitoria respecto de los fundamentos naturales y la teleología del Estado y su poder coercitivo. Conceptos tales como “ley natural”, “dominio” y “comunidad perfecta” describen la base tomista de su filosofía política e ilustran el significado moral y fundamento legítimo de la sociedad política en el pensamiento político-teológico de la época.

Palabras clave: F. de Vitoria, teología católica, derecho natural, filosofía política española, Tomismo.

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* *lvalenzuela@uct.cl*

During the time of Machiavelli, an era to which the study of political thought has devoted considerable attention, there exists another corpus of political speculation on the rising European state authored by Spanish political and moral philosophers. The Dominican theologian and father of the so-called School of Salamanca and Spanish Neo-Scholasticism (*segunda escolástica*), Francisco de Vitoria (1483-1546), initiated a major shift in sixteenth-century Spanish political thought, which was a conscious attempt to bring theology to bear upon questions other than Christian metaphysics, particularly upon issues centering on the ethical problems associated with modern political statecraft. What is the nature and basis of law and political society? How are we to conceive the role of political authority in domestic politics? What is the basis and aim of sovereignty? What are the foundations of order in international politics? These are examples of the kinds of intellectual challenges that drew the attention of the Spanish thinkers in an age of the emerging state, of empire, of war and hence of questions surrounding political power and its proper place in human affairs.

In general, Vitoria's conceptualization of political society, informed by Thomistic and Aristotelian teleology, proved significant for the development of a modern conception of state politics and political ethics. As a consequence, his ideas, as well as those of his disciples and colleagues, contributed, for example, to the perennial debate between intellectualism and voluntarism in the philosophy of law, the just war tradition, the evolution of international law, and the Western tradition of human rights thinking.¹ An overview of his moral philosophy centered particularly on the teleological character of power (*i.e.* law, government, and authority) is thus requisite. I believe that a proper understanding of this teleology constitutes a fundamental point of departure for acquiring a greater awareness of the meaning of early modern Spanish political philosophy, which furthermore provided a vigorous critique of both state practice and the literature founded on the doctrine of Reason of State.² To this extent, it is arguably constitutive of an established tradition of European political theorizing, though often unexamined in any systematic manner.

In what follows, I wish to focus primarily on Vitoria's ontological conception of the state and thus limit my discussion to answering the following questions centered on his political philosophy in particular,

- 1 For a discussion on the Spanish contribution to the development of international law and human rights discourse, see for example, García y García (1997), Davidson (1994) and Brown (1934a).
- 2 For an overview of the attitudes of the Spanish theologian-jurists toward Machiavellism and Reason of State, see Mirete (2001).

and on Spanish political thought in general: 1) What is the nature of man in Vitoria's thought and how is this related to the nature of the political ordering of the state? 2) What is the particular role and purpose of state power in Vitoria's moral and philosophical conceptualization of the state? This involves addressing the notion of *dominium* in man and the state, how *dominium* is related to the question of human reason, the causes and purposes of public power or authority, and the nature of the state as a sovereign entity. The purpose of this procedure is to highlight Vitoria's naturalistic conception of power and provide a rendition of the ethical constraints to which power itself is subject in his view of it.

De Potestate Civili

Francisco de Vitoria's *De Potestate Civili* (*On Civil Power* 1528), is essentially an account of the origin and nature of political authority in society and of the scholastic doctrine regarding the obligatory nature of civil laws. Quentin Skinner has noted that the Spanish Thomists indeed developed a systematic theory of political society in opposition to the perceived heresies of the time (*cf.* 1980 148). While this is arguably true, I hold that Vitoria's conception of political power is a systematic political theory to the extent that it also interprets and expresses the key issues facing the rising Renaissance state. These included the questions of its necessity and *autonomy* (of the origin and nature of its sovereign status), of the general structure of government power operating within its boundaries, and the purposes or ends such power should pursue (*cf.* Sánchez 15).

In this latter respect, two interconnected spheres shape Vitoria's conception of state power. First is the general philosophical or ontological conception of the state insofar as it is considered to arise from both natural and eternal laws, and to possess a determinate end and guiding principle, namely the common good.

Secondly, there is the notion that the state's actual institutions are the result of human will, consent, and legal enactment, and that they are not severed from ethical postulates. The implication is that both supreme power (*summa potestas*) and law, inasmuch as they are the consequence of positive enactments, have as their chief ordering principle the precepts of natural right and justice. Indeed, the principles of natural justice, such as alterity and equality, inform positive arrangements and determinations. That is, Vitoria, in his Thomistic view of society, considered the just as guiding and directing actual political life. Natural right and justice, which are but that part of natural law that refers to the realm of rights and obligations in the social order, serves a constitutional function. Justice issues a restrictive and

prescriptive mandate directed at government, regardless of its particular form (e.g. democracy, aristocracy or monarchy). The whole of political society must hence find as its basis natural law *and* human will, human agreement (*consensus communis*) and nature.

The Natural and Divine Origin of the State

A rendition of Vitoria's conception of the state must be preceded by an account of the Thomistic conception of *dominium* in man, and how it is the basis upon which his state theory is created. The notion points to man's ethical nature, identifies the source of "rights" pertaining to him, and underscores the concomitant nature of the political order characteristic of Vitoria's conception of the state. The concept of *dominium* is deployed in a number of Vitoria's texts, particularly in *De Indis* where he argued for the sovereign character of the indigenous communities of the New World. However, we will not find a systematic definition of it in his political writings since he probably assumed that his audience was already familiar with the term. Brufau, however, offers a systematic theological exposition of *dominium* as used in Aquinas, Vitoria and Domingo de Soto, Vitoria's disciple and colleague. In my account, I will closely follow Brufau's analysis and discussion (1957).³

The Nature of Man: Divine Dominion, Human Dominion and Reason

In Thomistic thought, *dominium*, or power over something or someone, refers to two basic but varying notions of *dominium*: *dominium* as property and possession, and *dominium* as superiority or pre-eminence (cf. Brufau 98). In the first definition, *dominium* is exercised for personal benefit or utility; in the second, for the good of others, or for the common good. When we speak of human *dominium* we are referring to these two fundamental aspects which are but more "earthly" expressions of a higher order of *dominium*, that of Divine *dominium*.

The link between the idea of Divine *dominium* and human *dominium* is directly related to the relationship between the eternal law and natural law (and natural right) in Christian ethics. The underlying assertion is that man and government, both of which are considered as pertaining to the natural order, must assimilate, reflect and realize the ethical qualities and prescriptions of the eternal law which has imbued all things with a nature and hence with an end.

Divine *dominium* is a kind of *dominium* residing in God, exercising power over all things according to the will of the Creator, and

3 All translations of Spanish language texts are mine.

inclining them toward their natural end, the good. Divine dominion is dominion *per esentiam*, or by essence, and exists in a transcendent and independent fashion inasmuch as this dominion is considered perfect, infinite and belonging, in Aristotelian terms, to the first unmoved mover (*cf.* Brufau 99-101). Such dominion bears the quality, in its absolute independence from things created by it, of absolute freedom. Man, as a contingent and finite being (*i.e.* as *not* essence, as *not* pure being, unlike God), finds himself, by contrast, in a state of dependence on his Creator in the sense of the relationship that anything *created* maintains with that which *creates*, or with that which is the efficient cause of the created. This means essentially two things: that Divine *dominium* implies a relationship of “imitative subordination” of man to God and to the precepts of order for society created by God. Divine dominion is thus the exemplar of human dominion, something to be emulated, and the articulation of human dominion itself is performed *per participationem*, or by participation. Man, hence, as a created being, participates in the essence of the uncreated being, God, as the object of the Divine will. Hence, Aquinas states that:

To participate means to partake of something, *partem capere*; as a consequence, when something receives in a particular manner that which belongs to something else in a universal manner, it is said that it participates in it [...]. (Aquinas, cited in Brufau 115)

Human dominion then is a limited dominion that reflects the Divine and universal dominion that has created man. However, what does “participation” mean specifically? Participation is but the exercise of human reason and intellect in the cognitive qualities of man. Man participates in, or partakes of, Divine dominion, the highest form of superiority or pre-eminence, through cognition of the Eternal Law, which represents, in turn, the Augustinian view of Divine intelligence or reason and will ordering the universe and all things of creation to their natural end. This is the well-known Thomistic definition of natural law (*lex naturalis*), for the natural law is but the *participation* in the Eternal Law by *rational creatures*. Consequently, “the natural law [...] is the law which paves the way for human dominion [the rational creature] must realize the eternal law in accordance with his condition as a free and rational being” (Brufau 112).

To participate in the Eternal law, hence, is to be cognizant of the natural ordering of things according to Divine will. Since the ordering of things in Thomistic theology is self-defined as being concerned teleologically with the good and the just, human reason must strive to gain knowledge of the Will that orders him to direct himself toward the good and the just. Knowledge of the Eternal Law is knowledge

of the natural moral law and of natural right (or justice), of which they are part and towards which the activities stemming from the *human* will must order themselves, for the Eternal Law is but a “rule of action which impresses in all creatures a tendency toward their end [...]” (Brufau 110). According to this view, only rational creatures may partake of Divine dominion because only men, as creatures endowed with intelligence and free will, may exercise dominion; only men are *domini* in the sense of possessing superiority and pre-eminence, and of being able to make *use* of things or other creatures directing himself and these, as well, to their natural ends (*id.* 118).⁴

God directs man through his own reason and will (and in this latter sense he is considered to bear a resemblance to God-*imago Dei*), to order his life and his surroundings toward their intended end. In order for this to be the case, the power, absolute freedom and ethical content of Divine dominion is transferred to man qua man; and through his participation in the Eternal Law, which is tantamount to saying that by knowing the natural law and exteriorizing its precepts via his will, man himself exercises his own dominion, his own pre-eminence on the natural plane of existence.

However, one might add that his pre-eminence over his surroundings, or over others, is predicated upon that part of dominion relevant to the power man exercises over his own actions. Human dominion, indeed, implies the possession of a power, *potestas*, or faculty, and in fact presupposes it. Thomistic thought considers dominion over one’s own actions as the ultimate root and cause of dominion over other things (*cf.* Brufau 119). From this perspective, human *dominium* over property or other beings is but an extension or prolongation of the dominion over his own voluntary acts, “[one] which is actual and which does not imply an intrinsic incorporation [of the object of that dominion to the *dominus*], but rather a kind of dependency or ordering of such beings toward man” (*ibid.*). This dependency makes explicit a relationship of hierarchy between the *dominus* and the objects of his dominion. It underscores the idea that the “objects” surrounding him in nature, be these creatures or other physical things, are in a sense, “inferior” to the *dominus*, owing to their non-rational nature. They exist primarily as a means for perfecting his nature, and by doing so they too perfect themselves, for their perfection, Aquinas argued, is achieved by exercising that “servitude” and dependency necessary for the perfection of the *dominus* himself (*ibid.*).

4 The question of *use* or “usus” in man is analogous, in this view, to the notion of “usus” in God: He *uses* things by directing them to their natural ends.

Human Dominium, Reason, Will and Rights

Human reason, in this light, is capable of apprehending knowledge of the good and of the natural ends of things, of man, and of the proper means for their achievement. Nevertheless, human dominion must order that knowledge. It must make that knowledge manifest, through an additional element related to the notion of *potestas*: his will. If human dominion is marked by the power that man possesses over his own acts, it is because these very acts are the expression of his natural freedom and free will, and hence of his innate liberty (cf. Brufau 120). This idea does not admit a voluntarist ethic, for while dominion formally rests on the idea of will (*voluntas*) it does not imply the absence of rationality or of reason from human dominion. Brufau clarifies this idea:

[T]he will is supported by understanding [reason]: an act of will depends upon the representation made by reason [in the intellect of the *dominus*] of the object to the will itself, considering that object under the light of evil or the light of the good. (Brufau 120)

Reason then is intrinsically oriented toward cognition and articulation of universal moral principles. Hence, the power that man naturally possesses over things, the natural dominion proper to man, is imbued with ethical content. The question of orienting the will toward and making use of things is also intrinsically linked to the perfection of those very things. Moreover, such perfection as is possible to achieve for himself (*i.e.* moral perfection or physical conservation) is granted to him as a natural inclination by the natural moral law. Such dominion and power as man possesses naturally thus implies the possession of rights, that is, they designate man as the bearer of subjective rights. On this question, one scholar posits that,

[f]or Vitoria, natural law has the sense of obligation, but the *dominium* which is consequent upon it is not specifically said to be 'natural' nor ordained specifically to the natural act of self-conservation [...] Instead, Vitoria puts forward the traditional distinction between the spiritual and natural, where *dominium* belongs only to spiritual [*i.e.* rational] beings and is connected with liberty [...] Vitoria's *dominium*...is *the* (unqualified) subjective right, or better, subjective right *simpliciter*. It belongs to everyone, rather than its being one set of rights belonging separately to each individual. (Brett 130)

While Brett is correct to say that *dominium* is a subjective right, she also notes that "*Dominium* of men over all things is never called 'natural dominium'" (*ibíd.*). But if it is, in fact, a subjective right, a right attaching to men by a means other than positive law, then it

must possess a natural quality; that is, *dominium* must be natural. For example, the possession and use of things, the power or pre-eminence that men are seen as possessing over them, implies a right, and that right logically implies an *innate* faculty to exercise it, that is, a right (*ius*) to do, possess or exact something either for his own benefit or for the benefit of others.

Indeed, one finds “natural *dominium*” explicitly brought into play by Aquinas in *ST II-II*, Q. 66, a.1.

External things can be considered in two ways. First, as regards their nature, and this is not subject to the power of man, but only to the power of God Whose mere will all things obey. Secondly, as regards their use, and in this way, man has natural dominion (*naturale dominium*) over external things, because, by his reason and will, he is able to use them for his own profit, as they were made on his account: for the imperfect is always for the sake of the perfect.

Likewise, Vitoria, in his *relectio De Indis*, says “natural dominion is a gift of God just as civil ownership is, or indeed even more so, since civil ownership clearly belongs to human law” (1991b 242).

The naturalness of *dominium* is part and parcel of the theological language of Thomism, and the *potestas*, will, and reason associated with human dominion are accordingly exercised through that natural law upon which it is specifically said to be incumbent (*i.e.* by participation in the Eternal law). In any case, Brett’s conclusion that man possesses subjective rights, and is the bearer of such rights, precisely reflects his condition as *dominus*, for he must *use* things to perfect them and himself, impelling all things toward their prescribed ends.

I should stress, moreover, that this does not imply that a right pertaining to an individual is one permissible *merely* by positive legal enactment. Legal enactments that assign rights must make explicit the rights *naturally* pertaining to the individual. Vitoria explicitly denied the positivist assertion when discussing the concept of *ius* in his commentaries on Aquinas’s Summary of Theology. There he tentatively embraced the definition set forth by Conrad Summenhart:

[I]t should be noted that Conrad, who is the author of that noble tract, *On Contracts*, posits in question I a definition of that term ‘right’ [...] He says that right is a power or faculty pertaining to a person according to the laws. (Vitoria, cited in Brett 128)

However, Vitoria did not consider such a definition of “right” to be an equivalent of *dominium* but rather an abusive definition of it. This is so because, again, the kinds of rights he was addressing in his discussion of human dominion transcend mere positive legal

experience. These rights pertain to man's natural status as man in his dominion's semblance to Divine dominion (*cf.* Brett 129), and, in a sense, are prior to all legal or positivist concessions of rights, and are deemed to pertain to man's very dignity. In Naszalyi's words, a right is a faculty or power whose violation stirs injustice (*cf.* Naszalyi 78).

Dominion and Nature in Political Society

The meaning assigned to divine and human dominion is nonetheless the point of departure for Vitoria's conceptualization of the state and the role of public authority. Brufau's account of Vitoria and Aquinas on dominion stresses the connection between Divine dominion and the dominion which is characteristic of political authority in the state. Not merely man, but also the political order exists as a natural structure for the sake of the society that must develop within it. It is part of the universal order and cannot elude Divine Providence, which has furnished it with the tools necessary for preserving each of its creatures. Its very existence requires the articulation of an authority capable of directing its constituent parts toward the common good (*cf.* Brufau 125). Drawing upon Aquinas's *De regimine principum* (Bk. I, Ch.8), Brufau adds:

In this fashion, political power (*potestas politica*) is a *form* or the formal cause of the state. This *dominium* or political power partakes of the Supreme and Universal *dominium* of God; the exercise of such power, *regimen multitudinis*, also constitutes a participation in the Divine Government of all things. Accordingly, the *dominium* pertaining to its rulers, *regum dominium*, fulfils a ministerial role: the bearer of power, in the exercise of his office, is a minister of God. (125)

The doctrine describing the nature and character of Divine dominion and of human dominion in their teleological significance is at once the doctrine describing the character and purposive, ethical nature of the political order. The purposive quality of the political order certainly draws upon the ideas of Aquinas and Aristotle regarding the natural origin of society (*cf.* Vitoria 1960 115). Similarly, Vitoria's teleological conception of the state emphasizes first the natural origin of society itself (although this is not the central theme of *De potestate civili*) and of the public authority governing society. From the outset, Vitoria establishes the well-known Aristotelian idea concerning the natural origin of political society. He tells us first that man, unlike other creatures of nature, is by nature, indeed by necessity, a civil and social animal.

[T]o mankind Nature gave 'only reason and virtue', leaving him otherwise frail, weak, helpless, and vulnerable, destitute of all defense

and lacking in all things [...] So it was that, in order to make up for these natural deficiencies, mankind was obliged to give up the solitary nomadic life of animals and to live in partnerships (*societates*), each supporting the other. (Vitoria 1960 7)

This statement clearly reflects Aristotle's statements concerning the natural status of the *polis*. "What makes the State natural", Barker holds, is the fact that, however it came into existence, it is as it stands the satisfaction of an immanent impulse in human nature towards moral perfection -an immanent impulse which drives men upwards, through various forms of society, into the final political form. (xlix)

Aristotle's position is furthered by his view of man hypothetically living outside of the purview of the state. This is implausible because an isolated man is not a self-sufficient man; self-sufficiency is only possible in the context of society. "The man who is isolated", he remarks, "who is unable to share in the benefits of political association, or has no need to share because he is already self-sufficient -is no part of the polis, and must therefore be either a beast or a god" (*Pol.* 1253a 14). Vitoria thus stressed the natural sociability of men that thinkers such as Hobbes would later deny in favor of a "state of nature" predicated upon the human passions and the unbridled quest for power.

Such a view of the social order, of the natural quality of its very existence, was unquestionably related to the ethical problem of what pursuits, writ large, *should* the characteristic pursuits of that society be, or of the conditions under which a society based on mutual need and assistance could exist and flourish. One concept was of particular concern here: the notion of the "good" or the common good conceived as the realization of justice. Aristotle was clear in *Politics* on this question both when emphasizing the notion that society makes the moral perfection of man possible and when underscoring the idea of justice as a particular ordering of political society (*cf. Pol.* 1253a 15, 16). Vitoria similarly held that:

[I]n the case of will, whose ornaments are justice and amity (*amisticia*), what a deformed and lame thing it would be outside the fellowships of men. Justice can only be exercised in a multitude; and amity, which we use on more occasions than fire and water themselves, as Cicero says (*De amisticia* 6.22), and apart from which Aristotle says no virtue can exist (*Pol.* 1253a §38-40), would disappear completely without some sort of shared life [...] The clear conclusion is that the primitive origin of human cities and commonwealths was not a human convention or contrivance to be numbered among the artifacts of craft,

but a device implanted by Nature in man for his own safety and survival. (Vitoria 1991a 8-9)

The notions of justice and the good are *the* central features characterizing the development, the *modus vivendi* of the political society outlined by Vitoria, and one cannot but recall here the idea of natural right and the good. Man's practical reason, in what amounts to the Thomistic discourse on the subject of the principles of natural right operating in the psychology of the individual, is considered as being able to distinguish between good and evil, between the just and the unjust. Inasmuch as there exists a natural tendency in man toward acquiring knowledge of these principles, and knowledge that these are the principles that guide his actions and which should constitute the general aims of his conduct, it is also the case that these are the principles and aims of the social order.

Like man, whose individual will or dominion must command his individual acts, there exists in political society a natural institution furnishing society itself with the will or power necessary for the achievement of these ends. Vitoria saw public authority or power as governing the complex array of individual wills and bringing the body politic into unity from above, just as the human mind governs the activities of the different parts of the body.

Indeed, on the question of the origin of political authority Vitoria, in *De potestate civili*, makes the typical Aristotelian assertion that:

[N]ot merely in the physical sciences but in all human sciences as well: [...] *necessary causes*, the first and most potent of all causes, must be considered as functions of purpose.⁵ Whether this principle was established by Aristotle himself, or whether he got it from Plato, it has proved a mighty tool in philosophy, shedding light on all subjects. (Vitoria 1991a 4)

Again, Vitoria considered the natural origin of state power in its teleological dimension. Immediately after describing the natural origin of political society Vitoria adheres to the position that:

[T]he final and necessary cause of public power is the same. If assemblies and associations of men are necessary to the safety of mankind, it is equally true that such partnerships cannot exist without some overseeing power or governing force. Hence the purpose and utility of public power are identical to those of human society itself. (Vitoria 1991a 9)

5 See: *Phys.* 198b1 - 199b32.

Sánchez notes how this conception of the state is entirely at variance with the political theories of Bodin, Hobbes and Rousseau who stressed the conventional nature of the state. In their view, the state is mere human artifice, the outgrowth of custom or something imposed or willed by power (*cf.* Sánchez 28). Unlike voluntarist doctrine, or the political beliefs of Luther and Calvin who saw government as necessary for obliging sinful men to order, Vitoria embraced the view that society and power were wholly natural phenomena. Indeed, before the reception of Aristotle's *Politics*, political dominion had been seen as the result of an act of force, of God, of human agreement or an amalgam of these. The idea of lordship as the forceful assumption of power and subjugation of men had been handed down by Patristic sources and associated with an account of the Fall,

and of the appearance with Cain and Nimrod of sinful ambition and dominion, and it reflected too the Stoic assumption that men enjoyed equality, freedom and self-sufficing in an original state of innocence which had been lost through the appearance of human wickedness. (Luscombe 757)

The idea of government, then, came to be a fundamental remedy for the sinfulness of men, which, in turn, had dissolved their original state of equality.

Nevertheless, Vitoria's conception of government considered the state itself as emanating not from the loss of innocence but rather as something called for by human nature itself. It is not enough, Naszalyi notes, that each individual should act virtuously in order to achieve a way of life marked by order and perfection. What is necessary is that there exist a higher form of organization capable of bringing men into social unity, of directing their deeds toward social order and harmony (*cf.* Naszalyi 101). In sum, this position is antithetical to the positivistic view that political power is *only* the expression of human consent or human will, *voluntas*, or law. Rather, the very existence of the state is ontologically a "natural" thing wholly independent of human consent though its actual operations will require the force of human will (*cf. id.* 174).

Since the teleology of the state in Vitoria's political thought is the achievement of the common good, the reason why men are brought into such unity is that very conception of the good.⁶ In this respect, the question of what the common good is precisely is then resolved

6 Vitoria's account of the state in *De potestate civili* does not discuss the concept of the common good save to remark that it is the both the end and cause of public authority. In any case, the concept itself is implicit in the Thomistic conception of the state, especially in the idea of the role of public authority in society.

into a question of the unity of the social order as a function of public power whose primary task must be the realization of a just social order. The realization of justice and the unity of the state and society make possible the achievement of the common good.

A corollary to this is the position of the individual seen as not being entirely subsumed or absorbed by the whole or by the public authority representing the whole to the detriment of his individuality. The state merely assumes the task of maintaining order and justice within a community composed of men who are formally equal to one another. The individual is considered free with regard to political power for the "community which [such power] represents transcends all particular relationships" (Lissarrague 16). It is a qualitative trait of this view of the state that one of its chief tasks is to promote not merely the common good, but by virtue of the common good, the individual flourishing of the human personality despite its coercive faculties. True to the natural law conception of man as being essentially free, Vitoria noted in *De Iure Belli*, "free men [...] do not live for the convenience of others, but for themselves" (Vitoria 1991c 303). In his view, the state, in overseeing the general well-being of a society predicated upon justice, provided man with the foundations necessary for the flourishing of his individuality (*cf.* Naszalyi 217-218).

The Efficient and Material Causes of Public Authority

Vitoria's assertion regarding the natural and divine origin of state power embraces two interlocking issues, *i. e.*, the efficient and material causes of public authority.

If [...] public power is founded upon natural law, and if natural law acknowledges God as its only author, then it is evident that public power is from God, and cannot be over-ridden by conditions imposed by men or by any positive law. (Vitoria 1991a 10)

This position does not hold that public power is *directly* the result of Divine Will, or of a voluntaristic conception of God as directly ordering and impinging upon the operations of political society. As the efficient cause of nature, God has created an order (nature) within which political authority emerged, and which exists, or is articulated, independently of Divine Will. God, in this view, has merely furnished public power with a certain *potency* enabling it to pursue the ends for which it was created through the actual office of the sovereign.

Sánchez has examined this question in engaging the concepts of "power" and "potency" (*potestas* and *potentia*) in Spanish political thought. For Martín de Azpilcueta, Sánchez notes, there is no difference between power and potency. Both terms are derived from the

common root, *possum*. These terms “signify a force or forces, created both naturally and supernaturally, acquired in a *de facto* or *de iure* manner, and which *are not, but may be, actualized or realized*” (Sánchez 39).

As a result, Azpilcueta defines power as a proximate faculty or ability to do something (namely, to govern), while the office (*officium*) of the sovereign is the actualization of that very faculty. Vitoria similarly holds the view that “public power is the authority or right of government over the civil commonwealth” (1991a 18). This power, inasmuch as it is a potency belonging to the community itself, is conceived as being unitary and indivisible. The actual realization of that potency and power, however, may be articulated through one or more offices, as when Hobbes similarly held the “The Office of the Sovereyn” may consist of “a Monarch, or an Assembly” (*cf.* Hobbes Pt. II, Ch. 30 376) Hence, Sánchez rightfully holds that “the power of the state is indivisible as a potency of the community, but divisible in the actual determination of offices” (Sánchez 43).

Lissarrague’s view of this follows a similar interpretive path. He sees Spanish political theory, especially its theory of public power, as embodying the distinction between *essence* and *existence*. Power as essence comes from God but pertains fundamentally to the community. Power as existence, however, is the result of a *concrete* realization of that essential power in a concrete office. It represents “the manner in which [power] articulates itself in reality” (Lissarrague 69).

This position must not be viewed as asserting the doctrine of the Divine Right of Kings; it is merely a statement pointing to the ontological status of political authority, one which underscores the Divine authorship of public power but which does not simultaneously furnish the office of the sovereign with unlimited power. Such power is always limited by the question of the teleological nature or end of political authority. To cite merely one other example, Juan de Mariana (*De Rege et Regis Institutione* 1599), similarly limits royal power and establishes that both natural and positive law restricts such power (*cf.* Sánchez 140-141). It is a keynote feature of the Spanish conception of the State, as we shall see below, that the office of the sovereign is always guided by the task for which it was created, and any deviation from what is conceived as the proper, or natural moral direction of the state results in tyranny.⁷ The idea of Divine authorship of political power stands in stark contrast to the positivistic assertions in this regard. To assert Divine

7 Hence, thinkers such as John of Salisbury, Aquinas, Manegold of Lautenbach, Marsilius of Padua, and Almain, had already developed statements regarding justifiable resistance to tyrannical rule. See Luscombe (768-770).

authorship is equivalent to saying that all positive arrangements, legal or institutional, are ordered by a higher standard, and it is in this regard that one may clearly see Spanish thought as a principal purveyor of the tradition of intellectualism or *iusnaturalism* in the philosophy of law.

In any case, Vitoria further argued, “the material cause on which this naturally and divinely appointed power rests is the commonwealth. The commonwealth takes upon itself the task of governing and administering itself and directing all its powers to the common good” (Vitoria 1991a 11). In other words, the *primary* bearer of public authority is the social body itself, which has received it from God.

The reasoning behind this argument, and its concomitant implication, may be stated briefly as follows: no single individual or group may be naturally entrusted with public authority for no one may be considered as naturally superior to others (all men are, by natural right, equal to one another) (*cf.* Brett 132).⁸ From this position, it follows that public authority is entrusted to the entire Republic or commonwealth itself. This power is vested in the community whose task is that of providing the social order with an agency for self-defense. This means that such authority as is vested in the community must carry out the primary tasks associated with sovereignty: that of governing society, and of duly punishing those bent on dissolving its integrity. Public authority, understood as the office of the sovereign, is hence a coercive power or force directing society to its natural ends while endowed with the legitimate means providing for its self-defense.

The Organic Conception of the State

This ontological conception of public power emphasizes the directive role of public power and its hierarchical nature. Here, the state is conceived, in the terminology of the Middle Ages, as a “mystical body” or *corpus mysticum*, a concept that did not wane toward the end of the Middle Ages but rather grew.⁹ It persisted in Spain through Alfonso X’s *Siete Partidas* as glossed by Gregorio López (*Las siete Partidas del Rey don Alfonso el Sabio, glosado por el licenciado Gregorio López*, Salamanca, 1555) (*cf.* Sánchez 35). López’s gloss established the king as the head of the community directing its members. The idea not only established the hierarchical and unitary nature of the state but also emphasized the idea of kingly or princely power as

8 This is also Urdanoz’s view found in Vitoria (1960 121). Vitoria himself thus suggests “if no one was superior to any other before the formation of cities, there is no reason why in a particular civil gathering or assembly anyone should claim power for himself over others” (Vitoria 1991a 11).

9 Vitoria does not discuss this concept but it is clearly an implicit feature of his doctrine.

being an essential part or member of a greater whole (*id.* 36). The doctrine is clearly outlined in Sebastian Fox Morcillo's *De regni regisque Institutione* (1556) and in Domingo de Soto's *De Iustitia et iure* (1580). The manner in which the mind guides the activities of the various members of the human body is a standard analogy for describing the ordering of human society through the office of the prince. This idea accentuates once again the assertion that political power, in its varying subordinate or super ordinate forms, embodies a functional unity whose primary end is the common good.

However, it is also the case that such unity implies the persistent claim that political power is not above the community, not detached from it, and not exempt from its own edicts and laws. Hence, Soto's claim that "the prince is not separate from the community but rather a part of her, although in a position of pre-eminence as its head" (Soto, cited in Sánchez 37). I must disagree then with Skinner's recent contention that Vitoria's thought can be associated with "absolutist theory" (*cf.* 2009 329). If a defining trait of absolutism is the idea of rule without restraint, as in Hobbes' characterization of the sovereign as not being bound by the civil laws that are of his creation,¹⁰ then a similar case cannot be made demonstrating the absolutist temperament of Vitoria's sovereign. Vitoria thus embraced Soto's position when he established that "laws passed by a prince also bind the prince himself, even if he is the king [...] the king is free to make laws as he chooses, but cannot choose whether to be bound by the law or not" (Vitoria 1991a 40).

The background to this outlook in the history of political thought is not difficult to pinpoint. Roman law had initially established that a ruler is free from the laws (*legibus solutus*) and that his will has the force of law. Indeed, the late eleventh century revival of Roman law described the prince or emperor as the sole source of law (*cf.* Luscombe 763). Another theory emerged, however, namely that the people had only conceded *authority* to the emperor by way of a concession. This had led to the perception, among several writers, that the authority of rulers was largely subject to established laws (*id.* 764). For example, John of Salisbury and Bracton held that rulers should legislate following the precepts set forth by considerations of justice. By the sixteenth century, Jacques Almain held that the authority bestowed upon a ruler could never be absolute and that, as Luscombe argues, "although

10 In Pt. II, Ch. 26 of *Leviathan*, Hobbes argues: "The Sovereign of a Common-wealth, be it an Assembly, or one Man, is not Subject to the Civill Lawes. For having power to make, and repeale Lawes, he may when he pleaseth, free himselfe from that subjection, by repealing those Lawes that trouble him, and making of new" (Hobbes 313).

monarchy is the best form of government it is limited by being a rule over free men” (*ibíd.*).

The contention that a ruler is subject to the laws of the community is equivalent to asserting one of the limits surrounding the exercise of political power. While it is true that this theory of the state allows ruling authority, on extraordinary occasions, to annul the precepts of the Decalogue¹¹ (as when public power may authorize killing as legal punishment, or killing in war when a competent public authority declares the latter) such determinations must take place within the parameters of natural right and justice.

To this extent, I have expounded Vitoria's political doctrine in terms of the general duties of the state toward political society. However, this also extends to the idea of the *rights* pertaining to the state itself when viewed as a sovereign political organization.

The Sovereign Status of the State

The organic conception of the state implicit in Vitoria's political writings underscored, as I have suggested, the idea of a *whole*, a *communitas perfecta*, brought into unity by its governing authority, whose self-sufficiency enables it to pursue its natural ends. This idea of a “perfect community” logically involves an attendant conception of internal and external sovereignty.

While the formulation of the concept of sovereignty is conventionally associated with the emergence of the modern states-system culminating in its political formalization with the Westphalian settlement of 1648, early conceptions are already found in medieval writings as in the idea of the prince who recognizes no superior. The first expression is to be found in Cassidorus, between the fifth and sixth centuries (*cf.* Sánchez 72), which emphasized the pre-eminence of the king inasmuch as others did not consider his acts as being the object of scrutiny.¹²

In Spain, this idea of independence was outlined in Alfonso X's *Espéculo*, where he examined the faculties of kings, counts and judges to enact legislation. There exists, in his account, the notion of a hierarchy that culminates in the office of the king or prince (all other offices being inferior to these) and in the idea that there is no temporal authority higher than that of the ruler (*cf.* Sánchez 72). By the sixteenth century, under the reign of Charles V, the term “superior” was firmly established in the political literature highlighting the temporal

11 This idea, Sánchez notes, would give rise to the doctrine of Reason of State (*cf.* 50).

12 On this point see A.F. von der Heydte, cited in Sánchez (72).

authority of the prince or king as recognizing no higher authority.¹³ Vitoria does not directly address this point in *De potestate civili*, but it is wholly implicit in his treatment of public power, and is overwhelmingly discussed by the theologians and jurists who elaborated their thoughts on the state based on Vitoria's doctrine of state power.¹⁴

In Vitoria's political thought, the idea of the perfect community is grounded upon the Aristotelian and Thomistic notion of self-sufficiency of political society. Vitoria had noted this in his commentaries on Aquinas's Summary of Theology: "What do we call a republic? We answer that, according to Aristotle, the republic should be self-sufficient" (Vitoria, cited in Naszalyi 134-135). The content of that self-sufficiency is quite specific and is indicative principally of its capacity to right wrongs and of its capacity for self-defense through the exercise of its jurisdiction and authority. Vitoria thus argues in *On the Power of the Church* that the civil community is self-sufficient and that,

[h]ence it may defend itself and protect itself from harm by anyone whatever, and carry the laws necessary to this end on its own authority. The argument is confirmed by the fact that princes may protect their own commonwealth from offence (*inuria*) by any other commonwealth, not merely by self-defense but also by exercising their authority [...] and this includes offences by the clergy. (Padgen & Lawrence 107)

This reflects a number of problems concerning the power of Church authority, within a context of religious unrest and violence, and the capacity of civil power, as opposed to ecclesiastical power, to redress certain offences committed in this setting. But once again, in *De iure belli*, the subject is taken up in the following manner:

The commonwealth has the authority [...] not only to defend itself, but also to avenge and punish injuries done to itself and its members. This is proved by Aristotle's dictum that 'the commonwealth should be self-sufficient (*sibi sufficiens*)' (*Politics* 1280b33-35); the commonwealth cannot sufficiently guard the public good and its own stability unless it is able to avenge injuries and teach its enemies a lesson, since wrongdoers become bolder and readier to attack when they can do so without fear of punishment. So it is necessary for the proper administration of human affairs that this authority should be granted to the commonwealth. (Vitoria 1991c 300)

13 In the diplomatic correspondence of the time, the term is used very frequently. See, for example, "Cédula de 8 de abril de 1453" (Enrique IV 45).

14 For a concise summary of this in Domingo de Soto, Martín de Azpilcueta, Gregorio López, Diego de Covarrubias, Juan Ginés de Sepúlveda, Fernando Vásquez de Menchaca, see Sánchez (72-111).

The idea of the perfect community, or that degree of self-sufficiency which is the keynote feature of the *communitas perfecta*, is associated with the *dominium* characteristic of public power, or of governing authority. That self-sufficiency, as Naszalyi notes, is but “certain jurisdiction, authority, or faculty, that is, a *right*” (emphasis mine). Vitoria’s position on this question is also perfectly clear: “a temporal commonwealth has the right, if there is no other way to preserve its safety and well-being, to exercise its own jurisdiction and authority” (Padgen & Lawrence 94). The significance of such jurisdiction and authority, indeed of the political power of the ruling institution of government, the office of the prince or king, lies precisely in its ability to preserve the community, to defend it against acts that threaten its integrity, for “otherwise its power would be crippled and insufficient for its own purpose” (*ibid.*). However, the underlying purpose, or end, of power is not merely self-defense (though self-defense is intimately linked as a means to that purpose) but the peaceful unity of the human consortium under the aegis of public power (*cf.* Naszalyi 136); the achievement, in fact, of the common good (*cf.* Sánchez 51-52).

Here, I believe we witness the construction of a modern paradigm of the state in European political thought. The new particularism of European politics, *i. e.* the dissolution of the idea of a *Respublica Christiana* and the *de facto* creation of discreet political communities, paved the way for the forging of political theories that extolled the virtues of sovereign independence between republics, and even between these and Papal authority. It is thus a common mistake to view Vitoria as either wholly medieval, or backward-looking, in his outlook.

Vitoria’s thought on these matters was unambiguous. He saw in the existence of these two authorities (temporal state and Church) two distinct purposes and two distinct jurisdictions. While man’s life is ordered toward God or spirituality (more so than to the very community in which he lives) (*cf.* Lissarrague 31) the political authority to which he is subject does not assume the task of fulfilling his spiritual needs or ends but rather takes it upon itself to oversee the general conditions of social life within which man temporally exists (*ibid.*). The general implication of this view, which Vitoria drew from Bellarmine (*cf.* Naszalyi 129), was that the Church had no temporal jurisdiction over political communities (only indirectly so in matters concerning the role of power in moral or spiritual questions within Christian communities) (*id.* 129-130).¹⁵ Thus, Vitoria’s assertion that “the emperor [and Pope, Vitoria would also state] is not master of

.....
 15 A lucid discussion on this question may be found in Carro (1947).

the whole world” in *De Indis* (Vitoria 1991b 253) is predicated upon the view that dominion may only exist by “natural law, divine law, or human law” (*ibid.*); and it was clear that neither the Church, nor any single person, possessed such dominion by any of these means.

The idea of a ruling authority as recognizing no superior, the organic conception of the state in which a *potestas* brings society into unity and directs that very society toward determinate ends (justice, the common good, peace), and the accompanying notion that self-sufficiency is the ability to licitly punish wrongdoers and to defend the state against illicit attack or intervention, furnishes Vitoria’s political theory with distinctively modern attire. These traits, rather than a defense of monarchy or of absolutism, are a construction of the state as a sovereign entity, and imply two conditions which describe that sovereign status: a) that the state *is not part of* any other state, but rather a whole unto itself; and b) that the whole provides the conditions under which the state organizes its collective life, generating its own laws, administering justice, and directing that very whole to its natural ends. “A perfect community or commonwealth”, Vitoria notes in *De iure belli*, “is therefore one which is complete in itself; that is, one which is not a part of another commonwealth, but has its own laws, its own independent policy, and its own magistrates” (Vitoria 1991c 301). Vitoria thus described the modern notion of internal and external sovereignty, and in this manner, unveiled, as Naszalyi notes, “the superiority of the state in matters relevant to it, even above and against spiritual authority; a superiority that is a keynote feature of the sovereign state, that is, the capacity to realize its particular interests independently” (145-146).¹⁶

The emergence of this principle, which placed emphasis upon sovereign independence as a principal trait of the European state, quickly gained broad acceptance in European political and legal thought. However, Spanish thinking on the state, as against the “heresy” of naked and unbridled power, and above and beyond its dismissal of Lutheranism, became a specific enjoinder regarding the ethical precepts that should instruct and inform all men and sovereign powers. Despite the Catholic origin of these ideas, which may or may not have found broad appeal, the very denial of church authority in the temporal realm, coupled with the assertion that the nature of man, his rights and duties, is but the nature of the sovereign state and governing hierarchy in its rights and obligations toward society, proves, I believe, to be a modern argument forging, in a sense, an essentially secular state architecture, and, moreover, an unwavering critical attitude toward

16 On the modern nature of Vitoria’s conception of the state, see Scott (1934 35).

power that is also constitutive of contemporary critical statements regarding state conduct.

Conclusion

Vitoria's political thought grounded its conception of the state in a naturalistic vision of political life. The natural origin and necessity of the state and government implied a natural right and moral faculty to govern and defend itself against illicit aggression, and to apprehend the common good in society. A chief claim of his thinking was that political power and dominion are a representation of the dominion and moral faculties of natural man. These faculties incline both man and state to the social realization of their natures, which, in Vitoria's teleological view, tend toward the attainment of the common good, justice, and peace. Such a view was based on the presumption that men cannot live in isolation and that there must exist a ruling authority, whatever its particular form, that makes social life possible and is at the service of men and their individual and collective flourishing. This, in turn, meant that government has, as a key check on its conduct, the principles of natural right from which even the *summa potestas* cannot divest itself. It is a central tenet of this Thomistic natural law argument that the sovereign state itself finds its justification in its ability to serve the community of men that comprise it. Its modern attire becomes ever more pronounced if we see this last statement as a first assertion regarding the role of government in providing security for the society over which it must invariably rule. Since then, political philosophy would argue in similar terms.

Nevertheless, the evolution of natural law thinking after the Spanish *segunda escolástica* led to a radical transformation of the basis of state theorizing. The idea of the inherently social nature of man and his concomitant ability to grasp the nature of law, whose ultimate source was to be found in the divine, was replaced by rational empiricism, philosophic individualism and, as in Hobbes's philosophy, an assertion of the wickedness of man placing him in a theoretically baleful predicament. Rommen rightfully argued that the result was that,

[t]he state, together with its law which has its source in the absolute will of the sovereign, is the savoir of man from the natural law of "might is right"; it affords security and protection by monopolizing all power; and it demands as a price strict obedience and subordination through identification of natural law with positive law (Rommen 76).

Here, the idea of natural sociability and the teleology of ruling authority were substituted for an anarchical "state of nature" governed

by the passions. The state thus became entrusted with the task of furnishing order and with establishing itself as the “Mortall God” whose will would become the ultimate source of law (*cf. id.* 76-77).

The upshot of this line of thinking was to sustain a systematic attack, in typical nominalist fashion, against this kind of natural law by denying the assertion of universal or “otherworldly” norms as governing human social behavior or political power. This assault, in turn, allowed empirical reason to justify particular forms of authority and social relations not necessarily based on the permanent or immutable precepts espoused by Thomism.

But the consequences of Spanish thought for the study of the history of political ideas have never been quite far-reaching. Nor has Spanish political thought ever achieved a status worthy of extended and systematic scholarly analysis in the English-speaking academy. Whatever the reason for this, what did remain was a mode of thinking that has re-emerged in debates on human rights, legal philosophy, international law, and war. In this respect, I believe Spanish thought to be not merely of casual interest but of historical importance in the shaping of the past and present. Broadly speaking, it seems to me that an enquiry into the history of political ideas has as a chief aim understanding not only particular historical contexts but also the current structure of beliefs shaping the contemporary political world. That is, even in the immediacy of the present the weight of past systems of thought presses itself, often without our knowledge, upon the fabric of current theorizing in philosophy, ethics and law. It might be argued, therefore, that in order to understand contemporary liberal thought we might find it incumbent upon ourselves to look at Locke, Mill, or Kant as a way of comprehending the origin of our thinking on the subject. Likewise, if we wish to understand, for instance, contemporary human rights thinking or the nature of contemporary international law, we might do well by examining thinkers such as Vitoria, Soto, Suárez and other Spanish writers who offered more than brief sketches on the inalienable rights of man, international relations or the nature and purposes of the state.

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