

Church and State Relations Before Francisco de Vitoria

The question of CHURCH AND STATE RELATIONS is by no means new. It is as old as the Church herself. Is it not already prefigured, for instance, in the Old Testament? Do the famous statue of Nebuchadnezzar's dream, and the four great beasts of Daniel's own vision, representing four kingdoms eventually replaced by a fifth one of a higher order and wider proportions, not perhaps clearly point to the status, past and present, of this problem?

Many worthy attempts have certainly been made during the long course of Church-State history to solve this most important but difficult problem. Even nowadays renewed trials are being constantly undertaken with the same lofty purpose in mind. Unfortunately, the majority of the efforts exerted, especially in our times, are far from being successful, mainly because most of them are based exclusively upon purely juridical reasons or mere legal foundations. However, the Great Internationalist, Francisco de Vitoria (d. 1546) said, 'this is a question which cannot be settled by jurists, or at any rate not by jurists alone, for... jurists are not skilled enough in the divine law to be able to settle by themselves questions of this sort', which involve disputed matters of morality and, above all, of human conscience and divine law.

Consequently, in order to offer a complete solution and befitting the importance of so grave a problem, which pertains to both the public law and the forum of conscience, we have thought best to present here an expository and analytical study of the juridical-

theological answer of one of the greatest jurists and theologians of all times, the Founder of both the International Law and the renowned Spanish School of the sixteenth century.

Our purpose, therefore, is not to collect here all the papal and theological documentation connected with the problem of State and Church relations, but rather to set before the reader a systematic presentation of the ethico-juridical solution given to this problem by the greatest thinker of the Spanish Golden Age, the illustrious Dominican moralist Francisco de Vitoria.

In this essay we shall try to present the ideological sources of Vitoria's juridico-theological system.

THE HISTORICO-IDEOLOGICAL BACKGROUND OF VITORIA

The Roman universalistic idea of society was not doomed to die out altogether with the coming of Christianity. On the contrary, it was maintained and supported enthusiastically by all Christian writers of the Middle Ages, for it represented a true unitarian affirmation of oneness in both spiritual and political orders. Spread throughout the writings of the Doctors and Fathers of the Church we find striking assertions reflecting the mentality of the time in which they lived, and destined to create a vigorous tradition in favor of the universal supremacy of the Church, both in spiritual and in temporal affairs.

In the Middle Ages, however, disputes about the direct universal power of the Pope over temporal matters within Christian States were beginning to take a predominant place in many political and theological writings. Eventually, the field and the authors became divided, and a distinction was, more or less, clearly set out. Although the Pope was granted direct power over Christians the world over, he had only indirect power, — as it was later on called —, over temporal matters in so far as it was considered necessary for the attainment of the spiritual end.

The Medieval Solution

During the Renaissance period many attempts, endeavouring to unify the world under one ruler, were made to settle this most difficult problem in human history.

From the middle of the twelfth century two principal schools of thought emerged as antagonists: the Bologna school of Civil Law supporting the Empire and the Emperor's absolute powers; and the canonists, disciples and followers of the Italian Camaldulense Gratian who, in his famous *Decretum*, supported the Papacy. Soon it became quite clear that Christendom was divided in two; on one side were the lawyers, fervent imperialists who firmly upheld the Renaissance idea favouring the absolute power of the Emperor over all kingdoms; on the other side were the canonists and curialists, upholders of the medieval conception who defended a direct universal dominion of the Pope even in temporal affairs.¹

In the sixteenth century, both views were again advanced as lawful titles for the conquest of the newly discovered world. However, both of them were rejected with equal vigour by the 'Prima' Professor of the University of Salamanca, Francisco de Vitoria and his school. The Medieval conception of Christian Society was essentially a unitary one. All throughout the Middle Ages, it was generally taken as an obvious principle that whatever power there was in the world and by whomsoever wielded, should eventually be reduced to some fundamental unity. Political theories found intolerable that two supreme and independent powers should be left unreconciled in some higher unity. The problem was, as it still is, a very real one. The Imperialists solved it by eventually absorbing the Church into the State; their opponents, the Papalists, by inversely reducing the State into the Church. Thus, State and Church were then not two independent societies but rather two different organisms or functions of the same society or order.^{1a} Although to the medieval mind, the distinction was not between Church and State as two perfect and independent societies, but rather, between them as two different authorities and hierarchies which administered respectively the spiritual and temporal affairs of only one society; yet, at the same time, it must also be admitted that the medieval writers did not confused or identify these two orders with one another. Nevertheless, the continuous struggle between them, concerning mainly the Investi-

¹ The first group which was composed of lawyers based its theories on the Justinian Code — the *Pandects*, while the second one, composed of canonists, based their theories on the *Decretum* of Gratian, which was compiled about the year 1140

^{1a} Cfr. UNITAS, Vol. 37, No. 1, March, 1964 pp. 68-116 Article: *Church and State Relations*.

ture problems, involved the Empire and the Papacy in such an inextricable confusion that it was almost impossible for them to establish a clear-cut distinction; at the same time rendering it very difficult for us at present to judge both parties fairly.

This lasted for several centuries. "The fact is that", writes C. Dawson, "throughout the earlier part of the Middle Ages and down to the emergence of Thomism, there was an inevitable confusion between the temporal and the spiritual order, which led to tragic misunderstandings and conflicts. The struggle between the Papacy and the Empire was not a struggle between the Church and the secular State such as we know today. It was a conflict between two parallel forms of the same ideal, between the ideal of a theocratic empire and that of a theocratic church, each of which was inspired by the vision of an all-embracing Christian society — the City of God on Earth".²

The idea of a universal society, — be it called Christendom, Republic, Church or Imperium —, was predominant in the Middle Ages, and had become traditional until the discovery of the New World. "The contention, ecclesiastical and civil", says another author, "had in the Middle Ages been for precedence, and for the dominant control of a single human commonwealth. Subsequent disputes were rather collisions between two distinct societies, the religious and secular".³

The Thomistic Solution

Through the writings of St. Thomas, the concept of the State and Church as two independent, self-sufficient and perfect societies began to take hold of some theological minds. "At the same time", the above-mentioned author writes, "the rise of the new Christian Philosophy of St. Thomas at last provided a solid intellectual foundation for the ideal of an autonomous State, which does not transcend its proper sphere by theocratic claims".⁴

Following on this pattern many, especially the Catholic thinkers of the sixteenth and early seventeenth century, created

² "Church And State In The Middle Ages", a paper published in *Church and State*, by LATTEY, London, 1935, p. 71.

³ J. ARMSTRONG, "From The Council of Constance To The Treaty Of Westfalia", in *Church and State*, p. 94.

⁴ C. DAWSON, *op. cit.*, p. 71.

a definitive conception of the Church as a perfect society in itself. It was not necessary for them to elevate the Church to any higher plane than the writers of preceding ages, who had done that already to the utmost. Rather it was the task of the Counter Reformation, (and we must note here even incidentally, in order at least to get an idea of Vitoria's influence, that the Spanish theologians most especially those from the School of Salamanca founded precisely by Francisco de Vitoria himself, were leading in this movement) to put order in the relations between the universal Church and the new modern States, by scaling down the overgrown power of sovereignty to the normal proportions of an instrument designed for human convenience. Harmony between the spiritual and the temporal was sought through a demarcation of their respective spheres, and the Church recognized the State as a perfect society, though confined to the realization of purely temporal utilitarian ends. The Church too, emerged independent and endowed with a power of intervention in civil and political affairs. This was the programme inaugurated by the Spaniards in the second quarter of the sixteenth century, which, incidentally, was perhaps the most difficult period wherein to realize and heed such ideals.

Not everybody was faithful to the principles of St. Thomas. For instance, in the fourteenth century, there were several treatises like those of Augustus Triumphus (+1328), Richard FitzRalph — the Armachanus (+1360), and some others, which we are to see very soon in the course of this article, asserting the theory of the temporal supremacy of the Popes in the strongest terms. All those however, do not seem to add anything of importance to the contentions of Henry of Susa — the Hostiensis — (+1271), Giles of Rome (+1316), James of Viterbo (+1308), and other leaders of preceding decades.

Historian Carlyle has thus apraised the situation: "The truth is, as it seems to me, that from the fourteenth century the history of the relations of the temporal and spiritual authorities, while we must not overlook the great importance of papal authority, must be studied primarily under the terms of the relations of Church and State within the separate nations. This is true of the fourteenth and fifteenth centuries, and even more of the sixteenth,

and that not only, in the Reformed but also in the Catholic countries".⁵

The big and decisive step forward came from Vitoria's School of Salamanca. History is witness. One instance. "The thought of the Counter Reformation", says Armstrong, "can (must, we would say) be called New-Scholasticism, for its political theories were the product of commentators, mostly Spanish, on those parts of the Summa of St. Thomas which treat De Justitia et Jure, and therefore of civil society. They regarded the State as a natural growth, not as a mere juridical creation, and how much more sensible and realistic does their conception seem to modern eyes than the theories of subsequent rationalists, who postulated the artificial assumption of contracts".⁶

The problem was by no means an easy one, especially in Vitoria's time. Yet, the solutions were not wanting. We ourselves have already indicated that before Vitoria, there were at least two solutions or rather opinions offered, which however, he vigorously rejected. It has also been insinuated that there were in fact three possible, and actually given solutions to this most difficult and transcendental problem of State and Church relations.

Let us now briefly outline each one of them before we give Vitoria's own solution.

I

THE IMPERIALIST THEORY

The Theory

The same principles of unity in the universe, and unitary conception of the world, which we have seen as giving rise to the idea of a perfect universal society under God, also led many thinkers, especially during the latter part of the Middle Ages, to defend the sovereignty of the State over the Church, and to consider the latter as no more than a part of the Empire, and her

⁵ CARLYLE, *History Of Medieval Political Theory In The West*, Vol. 6, 1936, *Preface*, p. X.

⁶ *Op. cit.*, p. 104.

supreme visible head — the Pope — as a mere vassal of the Emperor. The complete absorption of the Church into the State was thus taken as a fact and taught as a principle, and in consequence, the question or problem of State and Church relations was thought of as non-existent.

This is the theory which has come to be known as *Caesaro-Papism or Imperialism*.

The attitude of many so-called modern politicians, and even States, differs very little from this imperialistic tendency. Some modern States, for example, appropriate to themselves the right to regulate exclusively the external affairs or relations of human life, assigning to each individual person and social unit their juridical position in the community, without in any way sharing this right with any other power whatsoever. Only sometimes, the Church is granted the right, or rather permission, to regulate her own internal affairs, but nothing more. The plenitude of power, claimed by the imperialists of old, is thus wielded by the modern State in a very remarkably identical manner.

As a complete history of this theory from its beginnings to the present is obviously beyond the scope of this essay, we shall limit ourselves to giving just an outline of it according to Vitoria's own exposition, adding, whenever we consider it necessary, some historical precedents, especially from the period covered by the later Middle Ages; for, as we have already pointed out, it is, more or less, from this time on (from the fourteenth century onwards) that the theory of the relations takes on a new shade more akin to those of modern times.⁷

The Universal power of the Emperor was a tenet held for many centuries. Not all of its defenders however, were led by the same aims and purposes. Some, mainly legists, Roman lawyers and post-glossators, all eternal admirers of the bygone Roman glory, tried to revive in an exaggerated imperialistic fashion, the already extinct political reality of the Roman Empire. Others, afterwards called 'pacifists', or peace lovers, wanted to unify the

⁷ The reader would find interesting, and instructive too, DR. GIERKE's *Political Theories of the Middle Age*, pp. 16-20 and notes 38-41, where the author traces the development of the Imperialists' argumentation throughout the Middle Ages, giving, at the same time, a long list of defenders and adherents.

world, under only one head or ruler, but for very different motives, viz., to avoid conflicts and wars. And finally another group, the third, whom we may name as 'opportunists' and 'nationalists', defended the same imperialistic views, but this time it was in favour of their own country or nation, thus desiring and intending to stabilize and ratify in a definite way the national greatness and power already acquired.

To the first group we could ascribe a long list of jurists and glossators, especially from the XIIth century, who would not admit any power higher than that of the Emperor, symbolized for them in the ideal prototype of Charlemagne.

Dante Alighieri (+1321), according to some, belongs to the second group. The great political and social disorders of his time prompted him to react violently against the actual order, hoping the one-head society to be the only remedy. Led by strong pacific ideas, he strenuously held the notion of an 'absolute universal monarchy under one supreme head', adducing, though wrongly, in its support, St. Thomas' own metaphysical principle: 'Maxime ens est maxime unum, et maxime unum est maxime bonum'.⁸

To the third, we may say, belong many politically minded German writers of the Later Middle Ages, and in general, all the Spanish imperialists of the late fifteenth and sixteenth centuries.

Though it may seem quite paradoxical now, many of those authors, especially those of later centuries, were of one mind in teaching that the world was ruled by two independent, though

⁸ Some writers have judged Dante a moderate, others a rabid imperialist. The truth is that his defence of the Empire was closely connected with the disordered state of Italy, the captivity of the Papacy in France, the disunion of the German Kingdoms, and the impotence of the Popes to restore the unification of Christendom. Thus when the chivalrous Henry VII was elected Emperor, he became Dante's hope and ideal, and so he expressed it in his *De Monarchia*. In this work he taught, in opposition to the canonists, that the Emperor's civil authority was derived from God and that therefore, could be exercised independently of the Pope. This treatise was publicly burned in Bologna by the papal legate.

Dante's idea of the world as one universal natural society or worldwide monarchy was in conformity with medieval thought, but the necessity of only one ruler, who derives his authority directly and immediately from God, was certainly mistaken. Cfr. J. EPPSTEIN, *The Catholic Tradition of the Law of Nations*. London, 1935, pp. 277-78, 283-90. Also DR. J. HOFFNER, *La Etica Colonial Española del Siglo de Oro. Cristianismo y Dignidad Humana*. Trans. from the German by F. de Asis Caballero. Madrid. 1957, pp. 19 ff. 39 and 367.

somehow subordinate authorities; both "Legistas y canonistas", has written C. Barcia Trelles, "de ordinario tan distanciados, coinciden en un punto: unos y otros piensan en un mundo colocado bajo la doble autoridad del Emperador, potestad temporal, y del Romano Pontífice, potestad espiritual".⁹

Though largely neutralized during the Middle Ages by the pre-eminence of the Church, the idea of a 'universal imperial power, was nevertheless, tenaciously defended during this period, and then faithfully maintained all throughout the following centuries, right down until Vitoria's time, by a long series of able writers.

Vitoria's Exposition

This theory was admittedly of great interest and importance to Vitoria, because all the arguments used by its adherents in its support were again put forward and adduced during his days as legitimate and lawful titles, whereby the natives of the New World could come under the sway of the Spaniards, who had discovered them only a few years before. "The first title that might be alleged, then, is that the Emperor is the lord of the world..."¹⁰ The power referred to in this title, observes Vitoria, is not that of ownership, but of jurisdiction: "even those who attribute lordship over the world to the Emperor do not claim that he is lord in ownership, but in jurisdiction only..."¹¹ This statement is further confirmed by another very important passage wherein Vitoria points to the very aim and purpose of the theory itself. After mentioning the contrary opinion of the Papalists, he says: "Other persons, on the contrary, exempt princes from ecclesiastical power to such a degree, that they leave scarcely any part of that power in its integrity, desiring that all disputes — even those of

⁹ In *Anuario De La Asociacion Francisco de Vitoria*, Vol. I, p. 199.

All writers hold, according to this author, that "el mundo constituido sobre un sistema jerárquico, podía ser un mundo pacífico; una serie de poderes escalonados y, dominando ese sistema de capas superpuestas, la autoridad bicéfala del Emperador y del Romano Pontífice". He also affirms that "tal vez esta ideal tesis se hubiera realizado si no hubieran aparecido en el mundo los dos movimientos del Renacimiento (concediendo absolutismo a los Príncipes) y la Reforma (independizando de Roma una gran parte de la familia cristiana)." *Ibid.*, p. 201.

¹⁰ *De Indis*, l. de tit. non leg., Introd., p. 313.

¹¹ *Ibid.*, n. 2, p. 322.

a spiritual nature — should be brought before a civil court, and settled therein".¹²

Although at first sight, this text of Vitoria might seem to contain an exaggerated affirmation, it is, in reality, an expression of the actual views and teachings of many famous writers of the past. Vitoria himself says of the celebrated Roman lawyer Bartolus of Sassoferrato (+1357) that he expressly held that 'the Emperor is the rightful lord of the whole world',¹³ and further, that he would consider as heretic anyone who dares to suggest a contrary opinion — "and if anyone," he says, "should presume to say that the Emperor is not the lord and ruler of the world, he would seem to be a heretic, for he would be making a pronouncement contrary to the decision of the church, and contrary also to the text of the Gospel which say: 'A decree went forth from Caesar Augustus that a census should be taken of all the world, as St. Lc. 2:1, has it; and so, Christ, too, recognized him as Emperor and Master'".¹⁴

Another reputable jurist, Baldus (+1400), used to nick-name 'asino montanos' every anti-imperialist.

Although this idea was impractical and in fact contrary to historical reality, it did actually prevail for many centuries, in spite of the fact that since the fourteenth century, it was already being pushed back into the background. The distinguished internationalist C. Barcia Trelles has insinuated as much. "La contradicción", he says, "entre el hecho: monarcas independientes, y el derecho: prolongación nominal de la lejana unidad romana y del imperio de Carlo Magno, no podía mantenerse de un modo indefinido; precisamente lo que sorprende es como perdura la galvanización del sistema imperial que vivía como una sombra augusta, vestigio del pasado que nadie osaba abiertamente contradecir".¹⁵ By Vitoria's time this theory did not only have strong support in its behalf, (coming especially from the Roman Law), but it was also of a long standing by then. This was true at least since the proclamation of Charlemagne as Holy Roman Emperor, at Rome

¹² *De Pot. Eccle.* I., 2, 3a, p. 3a, n. 1, pp. 61-62.

¹³ *Cfr. De Indis*, I, *de tit. non leg.*, Introd., p. 314.

¹⁴ Quoted by C. BARCIA TRELLES, *Anuario De La Asociacion* ... Vol. I, p. 201.

¹⁵ In *Anuario De La Asociacion*..., loc. cit., p. 201.

on Christmas day of the year 800, to the time of the 'ever August' Charles V, 'Lord of the world'.¹⁶

Arguments

In the sixteenth century, this latent idea once more tried to come to the surface, and this time in a very striking fashion. In the person of Charles V, under whose regime Spain was, affirms the above mentioned internationalist, a 'virtual Empire'¹⁷, the idea was once again revived. Instead of the title 'Royal Highness' of his predecessors, Charles V, in whom many saw a worldwide ruler, preferred to use that of 'Majesty', which then meant absolute sovereignty.¹⁸ In this connection, Vitoria observes rather ironically that the allegation which implies that the Emperor is real lord of the whole world, seems to be true, first of all because of the appellation itself: "This is supported", he says, "firstly, by appellation, 'Lord of the world', commonly given to the late Emperor Maximilian or to the present Emperor Charles, ever august".¹⁹ Furthermore, in his commentary on the Summa of St. Thomas, Vitoria is both pugnacious and ironical to the utmost. Breaking into his native language, he writes thus: "Quaerimus honores. Al Rey don Fernando solamente le llamaban 'Vuestra Merced'; ahora llaman 'Vuestra Majestad' y 'Divino Cesar', no falta decir sino que es Dios".²⁰ This is the *first* — the *traditional* — argument allegedly offered in favour of the imperialistic theory, according to Vitoria's exposition.

The *second* is *scriptural* in nature, and is based upon certain passages of Holy Writ, which some Christian writers used only to support their belief in the universality of the imperial power. For instance, they take the passage of St. Luke, 2:1: 'there went out a decree from Caesar Augustus that a census should be taken of all the world', as applying to Christian emperors even more fittingly than to pagan, for according to them, why should the former be in any worse condition than the latter?²¹

¹⁶ Cfr. *De Indis*, I. *Introd.*, p. 314.

¹⁷ Cfr. C. B. TRELLES, *op. cit.*, p. 203.

¹⁸ Cfr. LUIS SANCHEZ AGESTA, *El Concepto Del Estado En El Pensamiento Español Del Siglo XVI*. Madrid: 1959, pgs. 81ff.

¹⁹ *De Indis*, I, *de tit. non leg.*, *Introd.*, p. 314.

²⁰ In II-II, 94, 4.-V, p. 61.

²¹ Cfr. *De Indis*, I, *de tit. non leg.*, *Introd.*, p. 314.

Again, they add, Christ Himself seems to have favoured this same view when He said: 'render unto Caesar the things that are Caesar's', for how could Caesar have this right, save as an Emperor holding universal sway?²² All the arguments adduced from the Old Testament are mainly from the book of Genesis, which speaks of man as 'the king of creation'. "The allegation might also be supported", continues the Great Master of Salamanca, "by the fact that first Adam, and then Noah seem to have been lords of the world: 'let us make man to our image and likeness; and let him have dominion... over all the earth, etc.' (Gen. 1); and a little later: 'Increase and multiply, and fill the earth, and *subdue* it'...; and the similar pronouncement made to Noah (Gen. 8). But these two had successors. Therefore...".²³ The same is stated of King Nebuchadnezzar in the book of Daniel 2.

There is a *third* series, which we may call *juridical* argumentation. With the incorporation into the law of the Church of some ambiguous writings of the Fathers, and certain Encyclicals of the popes, together with some tendencious but then current notions in Roman Law, the utterances of the jurists became quite definite, significant and above all, influential in that same imperialistic line. The commentators or 'glossators' of the Law in general, expressed unequivocally what they thought was 'sane doctrine', and which was undoubtedly common at that time, namely that the Emperor was the rightful Lord of the world, as Bartolus of Sassoferrato himself (+1357), 'the prince of commentators', testifies. "And this is also", continues Vitoria, "the opinion of the glossator on x, 4, 17, 13. So, too, the glossator on X, 1, 6, 34".²⁴ "And they prove the allegation", says he, "first from Can, 41, C. 7, qu. 1, where Gregory²⁵ says that there is one King among bees, and in the world one Emperor; and also from Dig. 14, 2, 9, where the Emperor Antoninus says: "I indeed, am the lord of the earth"; and Cod. 7, 37 3. §. 1, 'everything is understood to belong to the Emperor' ".²⁶

²² *Ibid.*

²³ *Ibid.*, p. 315 and n. 1. pp. 316-17.

²⁴ *Ibid.*

²⁵ Vitoria has *Hieronimus* here following the editio Romana of the Corpus Juris Canonici, which attributes this to St. Jerome, says WRIGHT, H. F. in *Vitoria and the State*. Washington, 1932 p. 30.

²⁶ *De Indis*, loc. cit., p. 314.

A *fourth* kind of *analogical* argumentation is formed with similitudes from the organic and hierarchical arrangement found in the natural order, which all things, they affirm, must imitate. "Also, they say, the things which are outside nature ought to imitate things natural. But in things natural there is only one governor; as in the body it is the heart; in the soul it is reason; — and among bees it is the Queen, said Gregory a few lines before —. Therefore in the world there ought to be also one governor or rector only, just as there is one God".²⁷

History and authority are likewise adduced in confirmation thereof, thus pointing to a *fifth* source of arguments in defense of Caesaro-Papism. History is filled with names and facts which when carefully examined, would greatly help us understand this medieval imperialistic tendency. However, due to lack of time and in order to concentrate on Vitoria's reflections alone, we have to overlook them.

According to Aristotle,²⁸ St. Thomas,²⁹ and even St. Augustine,³⁰ and others whom Vitoria also cited, monarchy, taken in its widest sense, (as Vitoria generally takes it, that is to say, as the government of one,³¹) is the best system or method of government. But God, through Christ, has made all things wisely: 'In wisdom hast Thou made them all'.³² In the opinion of these great thinkers, it would therefore be in accordance with divine institution that there should be only one Emperor in the world.³³

Followers

There were certain really animated discussions and some strikingly violent struggles between the Empire and the Papacy to which our attention is sometimes pointedly directed by Vitoria. Among those he mentions, we find, for example, the names of such Emperors as Henry IV (1056-1106), Frederick II (1212-1250),

²⁷ *Ibid.*, p. 315.

²⁸ Cfr. *III Polit.*, c. 18.

²⁹ Cfr. *De Reg. Princ.* I, c. 2, and so on.

³⁰ Cfr. *De Civitate Dei*, c. 18.

³¹ Cfr. *An Introduction to the Church and State Relations According to Francisco de Vitoria*. UNITAS, March, 1964. p. 98, footnote 44.

³² *Psalm 103*: 24.

³³ Cfr. *De Indis*, *loc. cit.*, p. 315.

Philip the Fair of France (1285-1314) and Luis of Bavaria (1314-1347), and their struggles with Gregory VII (1073-1085), Innocent IV (1243-1254), Boniface VIII (1294-1303) and John XXII (1316-1334) respectively. We also find their followers and counselors: Pierre Dubois (c. 1321), Guillaume de Nogaret (+1303), Pierre Flote, Guillaume de Plaisians, P. de Homelos, etc., etc. Also the anonymous but famous '*Disputatio inter Clericum et Militem*' (written a. 1296-1303), and '*Quaestio de Potestate Papae*' or '*Rex Pacificus*'.

Among the most distinguished and influential writers of all those who had defended Caesaro-Papism, whose names are also found recorded in Vitoria's writings, are the Rector of the University of Paris who was later on canon of Padua, Marsiglius of Padua (+1312) who, in collaboration with his friend John of Jandun, wrote the '*Defensor Pacis*', where the most radical ideas of the whole imperialistic theory were ably arranged and artfully defended. According to him the Church is but an institution or part of the State to which she is completely subordinated. In his opinion, all power comes from the people, who delegates part of it to the Emperor and part to the Pope, but in subservience to the former. His theory, which was condemned by a papal commission in 1327, is certainly a pagan conception and one of the most heretical assaults on the very constitution of the Church. Vitoria himself has extracted from the *Defensor Pacis* several condemned propositions purportedly to show the exaggerated and extreme imperialistic leanings of the author.³⁴

Another foremost defender of these same revolutionary ideas was the Franciscan nominalist William of Ockham (+1349) who, together with his Minister General, was also involved in the politico-religious controversies of his day. He was closely followed by another conciliarist, the Chancellor of the University of Paris, Peter d'Ailly, and his disciples in the nominalist school, John Gerson (+1429), who was also Chancellor of the same University, and

³⁴ Cfr. *De Pot. Ecclē.* I., q. 3a, p. 4a, no. 3, pg. 94, and no. 9, pg. 100. In one of these propositions the author states that 'Our Lord did not pay the tax spoken of in Mt. 17, of His own accord, but rather compelled by the force of the law'. In another, that 'it is the Emperor's right and duty to correct and appoint the Supreme Pontiff', since, and this is the third proposition, 'all the ecclesiastical powers of the Church, whether executive, coercive or otherwise, come to the Pope from the Emperor, *'hoc habet ab Imperatore'*. Therefore, the conclusion is bound to be pure Caesaro-Papism.

Buridan. Vitoria has said that J. Gerson's teaching is very close to heresy if not downright heretical.³⁵

Also of the same opinion and leaning were Nicolo de Bernardo Machiavelli (+1527), one of the most influential of the Renaissance writers;³⁶ and Jacques Almain (+1515), and John Mayor or Mair (+1550), both of whom were well known to Vitoria. From the Spanish writers of the Golden Age, the jurist Miguel de Ulzurrun was perhaps the only one who actually and convincingly defended the Imperialist theory; the rest limited themselves to a mere repetition of their predecessors arguments without subscribing to the theory itself.

Two More Arguments

Finally, we have the argumentation based upon what has come to be known, after a Protestant custom, the *divine right* or *institution of kingly power*.³⁷ The argument goes like this: According to St. Augustine, St. Jerome, St. Thomas, and the Apostle himself, as Christ was in His humanity the Lord of the world, likewise, the imperialists maintain that the Emperor who is Christ's deputy and vice-regent in temporal matters, is also the lord and monarch of the world.³⁸

³⁵ Cfr. *Ibid.*, n. 19, p. 89, and also *De Pot. Papae Et Concilii*, n. 5, p. 237 where Vitoria thus qualifies Gerson's doctrine: "Gerson, however, the Chancellor of the University of Paris, teaches the following... But this Doctor has in everything being quite prejudiced against the authority of the Supreme Pontiff, and has herewith, unfortunately, poisoned many minds, for his idea of papal authority differs very little from schism".

³⁶ The thesis of the Florentine Machiavelli, as it is found precisely in his *'The Prince'*, stating that the State and political activities have no connection or regard to morality, was completely refuted by Francisco de Vitoria's *Readings*, published around the same time, in which he put into form his idea of society, which, we have seen, extends beyond the horizon of the Medieval Christendom, and is based upon a single moral standard, the Natural Law, applicable alike to man and the State, together with the rules of law based also upon principles of justice of universal application.

³⁷ Cfr. *De Pot. Civ.*, n. 6, p. 183 ff. Also *UNITAS*, March, 1964, pp. 87 ff.

³⁸ Cfr. *De Indis*, I, *de tit. non leg.*, n. 1, p. 319: "It might, however, be alleged by someone that after Our Lord's coming there was one Emperor over the world by express grant of Christ, in that He, as regards his manhood, was Lord of the world, according to Mt. 28: 'All power is given unto me', etc., which, according to St. Augustine and St. Jerome, is to be understood as regards His manhood. Also, as the Apostle declares, I. Cor. 15, 'He that put all things under his feet'. Therefore, just as He left on earth one vicar in matters spiritual, so also in matters temporal, and in the latter case it is the Emperor. St. Thomas, too, says in *De Reg. Princ.*, III, 13,

Lastly, the famous and most abused analogy of '*the two swords*', a metaphor based upon the allegorical exegesis of St. Luke 22:38 — which has also been the object of at least two different, and even opposite interpretations. In Lecley's opinion Alevin was the first theologian who used it in favor of the Emperor. According to Dr. Gierke, on the other hand, St. Bernard expounded it also for the first time in the opposite sense. It was later adopted by all the champions of theocratic rulership. For Vitoria however, it is absolutely worthless in either way, since it cannot be taken literally; it is nothing more than a pityful misunderstanding of Christ's own words on the part of His Apostles.³⁹

Vitoria's Rebuttal

As a general answer to all the arguments of the Imperialistic Theory, we may now repeat Francisco de Vitoria's own comment, wherein he says that "this contention and reasoning is in reality without any fundament at all, quite baseless, and therefore, altogether inadmissible".⁴⁰ The reason, he says, is because dominion is based either on natural or divine or human law. But the dominion of the whole world is based upon none of these. Therefore...

In the first place, St. Thomas says that no one is lord of the whole world by *natural law*, for in virtue of this law, all men are free except from paternal and marital dominion.⁴¹ Besides, as the Angelic Doctor states, it cannot be of natural law because dominion and pre-eminence have been introduced in the world by human law.⁴² Although in the abstract it would not seem to be

that Christ was from His nativity the true Lord and monarch of the world and that Augustus, though unwitting thereof, was acting as His deputy. Now it is clear that this deputyship was not in matters spiritual, but in matters temporal. Seeing, then, that Christ's Kingdom, if it were temporal, was over the whole world, Augustus was, on the showing, Lord of the world, and so, on the same principle, his successors were". For the interpretation of St. Thomas true mind, since the passage here cited is not his, the reader is advised to consult #III below, of this same chapter, p. 442.

³⁹ *Cfr. De Pot Eccle.* I, n. 19, p. 88: "As for the statement concerning the two swords, it is clear that it should by no means be taken literally. On the contrary, when Christ was pointing out to the Apostles the fact that they would meet with opposition, and that they must need some means of defense, they, *mistaking His meaning*, said: 'Lord here are two swords' etc. See TORQUEMADA, *Summa de Ecclesia*, bk. II, cc. 113, 114, 115."

⁴⁰ *De Indis*, I. *de tit. non leg.*, n. 1. p. 315.

⁴¹ *Cfr.* I, 92, 1 ad 2um.; 96, 4.

⁴² *Cfr.* II-II, 10, 10.

against natural law that there should be a universal authority in the world; yet, in a concrete case there is no reason 'why by natural law this dominion should be more proper for Germans than for Gauls', since by nature all are political animals.⁴³

In the second place, by *divine law*, 'neither was the Emperor Lord of the whole world' before the coming of our Lord since Nabuchadnezzar, the only one to be known as the 'King of Kings' certainly did not have 'a legal' rule over the whole earth. 'The Jews were not his legal subjects, since they were actually forbidden by their law to have any foreigner as their lord'.⁴⁴ Besides, "it will be plain to any one who would consider the titles and modes of succession whereby sovereignty and lordship in the world have come down to our own day".⁴⁵ With this consideration, "it is manifest that before the coming of Our Lord no one was vested with world-wide sway by divine law".⁴⁶

It is also certain that after the advent of Christ, none has been 'Emperor over the world by express grant of Christ'. It is manifest, or at least very probable in the affirmation of St. Thomas, that on His human side Christ was not Lord of the world, since 'His Kingdom was not of the same kind as a civil and temporal kingdom'. But even if we grant that, it would be an entirely capricious assertion to say that He bequeathed that power to the Emperor, there being no mention of such a thing in the whole Bible.⁴⁷ Moreover, if there had been any such institution by divine law, how could the Empire be divided? And how could Greece, the Patrimony of the Church, Spain, France, and other cities, which according to the Doctors, are free or can become so through prescription, not be subject to the Emperor? Consequently, it is a mere fiction to say that there is an Emperor and lord of the whole world by divine positive law.

Finally, in the third place, the Emperor is not lord of the world by *human law*. First of all, because there cannot be such

⁴³ Cfr. ARISTOTLE's *Politics*, bk. I, and ST. THOMAS' *De Reg. Princ.* I, c. 2.

⁴⁴ *Deuteronomy* 17.

⁴⁵ *De Indis*, I. *loc. cit.*, n. 1, p. 317.

⁴⁶ *Ibid.*, p. 318.

⁴⁷ Cfr. *Ibid.*, p. 320

law, properly speaking, inasmuch as no one has the necessary jurisdiction to promulgate it. And secondly, because the Emperor never did enjoy this position 'by lawful succession, by gift, by exchange, by purchase, by just war, by election, or by any other legal title'. Therefore, the Emperor was never the lord of the whole world.⁴⁸

Therefore, the Imperialists' opinion whereby ecclesiastical power is completely absorbed by the State to which even the Church herself is subordinate, cannot in any way be maintained. Besides, this has already been condemned, says Vitoria, against Marsiglius of Padua.⁴⁹

The Church then, as a self-sufficient and perfect society, has 'complete power over everything ecclesiastical, and is in no way subject to temporal rulers'. That much was actually admitted by the Great Emperor Constantine when he publicly professed before a group of bishops: "God has constituted you priests, and given you power to judge men, and so are rightly judged by you, but you cannot be judged by any man".⁵⁰

Without any reservation or doubt, we may thus conclude with Vitoria and say that in the spiritual affairs of the Church, secular princes have no power at all, neither administrative nor jurisdictional, either by divine law, or by the law of the State, unless such a concession is actually granted by the Church herself in a particular case. Any other measure, besides being an 'unauthorized innovation',⁵¹ would also be unjust and prejudicial to the Church as an independent, self-sufficient and perfect spiritual society.⁵²

For a more complete and thorough rebuttal of the whole Imperialistic Theory, the reader is referred to a future article wherein we intend to expose Vitoria's own argumentation against it.

⁴⁸ Cfr. *Ibid.*, p. 322. Also in II-II, 10, 10. — I, pg. 201.

⁴⁹ Cfr. *De Pot. Eccle.* I, q. 3a., p. 4a., n. 3, pg. 94.

⁵⁰ *Ibid.*, n. 3, p. 95.

⁵¹ Cfr. *Ibid.*, n. 7, p. 99.

⁵² Cfr. *Ibid.*, n. 5, p. 97.

II

THE MEDIEVAL THEOCRATIC CONCEPTION OF SOCIETY

The Papalist Theory

The Theory: Its Origin and Meaning

The fact that Philosophy and Theology, Faith and Reason, the Natural and Supernatural, State and Church, are distinct from each other, does not mean that they must also be separated and divorced, like two incompatible and opposed realities; for Christ Himself, their common source, is at the same time both Creator and Redeemer, King and Priest, God and Man. This is a truism, at least to us all Christians. Nevertheless, Pre-Thomistic theology, or the so-called Pseudo-Augustinism, and the whole Medieval History were tremendously confused precisely in this respect, so much so, that we may now be entitled to consider as their main and most salient peculiar characteristic the absorption of the natural into the supernatural, of the political and civil into the religious, and of the State into the Church.

The fundament and reason for that lamentable confusion, and consequently, for the theocratic theory itself, is to be found in Pseudo-Augustinism through its peculiar metaphysics of authority.⁵³

During the interval between the eleventh to the fourteenth century, especially from Gregory VII (+1085) to Boniface VIII

⁵³ Cfr. P. VENANCIO CARRO, *La Teología y Los Teólogos Juristas Españoles Ante La Conquista*, Tom. I-II, Madrid, 1944, p. 30: "Una tendencia pseudoagustiniana sirve de base a las teorías teocráticas de los siglos medios y se manifestó ruidosamente en el s. XIV, encontrando defensores en teólogos de todas las Ordenes religiosas y también adversarios. Son los defensores del poder temporal del Papado".

It would certainly be interesting to develop further this rather important point, but, for the present at least, we have to forego it for lack of time. As confirmation, however, of what has been stated above, let it be sufficient for the moment to recall here the different solutions that Augustinism and Thomism have given to these problems and the similar ones of 'State of Innocence', 'Original Sin', etc. etc. . .

For further information Cfr. V. CARRO, "*La Distinción Del Orden Natural y Sobrenatural, Según Sto. Tomás, y Su Transcendencia En La Teología y El Derecho*", paper published in *Cien. Tom.*, 62 (1942), pp. 274-306. Also H. X. ARQUILLIERE, *L Augustinisme Politique*, Paris, 1934, p. 491 ff., and J. RIVIERE, *Le Probleme De L' Eglise Et De L' Etat Au Temps De Philippe Le Bel*, Louvain, 1926, p. 44 ff., and so on.

(+1303), the neglect of the natural order in current writings was very remarkable. To almost all the theologians of this period, true followers of Pope Gelatius I (+496), Peter Damian, St. Isidore of Seville (+636), Hugh of St. Victor (+1141) and St. Bernard of Claravall (+1153), all of whom are great exponents of the spiritual tendency within every kind of human endeavor, power was mainly and almost exclusively spiritual and supernatural. Any power outside of, and independent from the spiritual authority was not even accepted as real power. According to them, there was no true power, unless derived from, and subordinate to that of Christ and His successors in the Roman See.

• This ideological confusion could lead to only one result, namely, the disordered medieval social structure. As we have already stated before, all throughout the Middle Ages, it was generally believed as an obvious principle that whatever power there was in the world should be reduced to some fundamental unity so that no power, whether political or religious, should be left unreconciled in some higher principle. Thus, the Medieval society — Christendom —, was certainly not composed of perfectly independent social units; it was rather a single society, at once spiritual and temporal. State and Church were then, not two independent societies, but two different organisms or functions of the same social unit. The Pope was the Supreme Ruler of the Church, and at the same time Head of Christendom; but the Emperor and the Kings were its temporal governors as well. The co-existence of two powers, administrations, or 'swords', within the same society or Christendom, was certainly one of the characteristics of the social structure of the Middle Ages before the rise of the national kingdoms. There were two distinct powers and hierarchies, but there were not two independent and sovereign societies. The Pope and the Emperor did not actually rule over two radically different social groups; rather, they were in charge of two distinct administrations within the same society — Christendom. Within a structure of this sort, it becomes difficult, if not impossible, at least in practice, to avoid encroachments especially from the stronger party, in the preserves of the other. This was precisely what happened with respect to the Church and the State during the Middle Ages.

The over-emphasis of the principle of unity to the almost complete exclusion of duality, the exaggeration of the ethical perfection of mankind and of the unitary conception of the world, were the main reason and the real 'philosophical groundwork', which led the papalists all throughout the Middle Ages, especially from the days of Gregory VII onwards, to consider and regard even political arrangements as part and parcel of the ecclesiastical organization, or in other words, to absorb the State into the Church. In the Middle Ages, writes Dr. V. Gierke, "the 'argumentum unitatis' becomes the keystone of all other arguments, biblical, historical, legal, which support the papal power over temporal affairs. If mankind be only one, if there can be but one State that comprises all Mankind, that State can be no other than the Church that God Himself has founded, and all temporal lordship can be valid only in so far as it is part and parcel of the Church".⁵⁴

It was certainly this exaggerated view and notion of the principle of unity which became the fundament upon which many canonists and theologians of that epoch based their assertions of absolute subjection of the temporal to the spiritual. It was not therefore, the result of any love of power on the part of the Popes that the medieval supremacy of the Church over all departments of social life was so eagerly asserted. Nowadays, only fanatics maintain this to have been the case, and it was neither the outcome of a dogmatic principle of the 'Catholic system', as some have also stated. It must be said that this supremacy in more ways than one, was the natural result of the historical development of national life, but above all, of the prevailing wrong socio-spiritual ideologies of the time. It was because of this wrong belief in the universality of the power of the keys, extended to both the temporal and spiritual affairs in accordance with the opinion then generally held all throughout the Middle Ages, especially in Christian Europe, wherein the idea of one only supreme authority all over Christendom was prevalent and of common acceptance, that the secular sphere of the State was subject to the direct intervention of the spiritual authority of the Supreme Pontiff.⁵⁵

⁵⁴ *Op. cit.*, p. 11

⁵⁵ Cfr. J. HOFFNER, *op. cit.*, pp. 3-95; H. ROMMEM: *The State in Catholic Thought*, 1953 pp. 521 ff.; also H. X. ARGUILLIERE, *op. cit.*, pp. 201-88, and V. GIERKE, *op. cit.*, pp. 10-13, 109-115 and Notes 9 to 25.

On the light of these principles, the allegory of '*the two swords*' was expounded by the curialist party as to favour the Pope and thus, also give confirmation to the same belief. Likewise, many statements of the Popes and Fathers of the Church, as well as all the analogies of 'gold and lead', 'heaven and earth', 'sun and moon', 'soul and body', and some others, then frequently used to express the spiritual and temporal powers' mutual relations, were also misinterpreted for the same avowed purpose.⁵⁶

The Theory's Climax: The 'Unam Sanctam'

In the opinion of not a few writers the climax of the theocratic theory, otherwise known too as 'Papalism' and 'Clericalism', was reached precisely on November 18, 1302 with the issuance of the celebrated Bull *Unam Sanctam* by the great jurist and legislator Pope Boniface VIII, wherein the thesis showing the Church as the ideal State, the true 'City of God', that is to say, the absolutely perfect Monarchy, with the Pope holding an all-embracing plenitude of power in the Christian community, was finally enunciated in definite and unmistakable terms.⁵⁷

The occasion of the Bull was a long and violent conflict between Boniface VIII and the King of France, Philip the Fair. Unlike the Holy Roman Empire, the French Monarchy had grown during the thirteenth century into a highly centralized and powerful State. But like the Emperors, the kings of France insisted on deriving their authority from the tradition of Charlemagne, and were quite reluctant to admit any principle implying subordination to the Papacy in secular matters. They acquired considerable influence in Italy especially through Charles of Anjou, so that at the beginning of the fourteenth century they were the mightiest

⁵⁶ Cfr. *De Pot. Eccle.* I, n. 3a., p. 3a., n. 14, p. 81 and n. 19, p. 88.

During the Middle Ages the principle of unity, which then covered both the religious and political lives, was so strong that whoever revolted against one, for example the secular order, sinned also against the spiritual, and inversely, whoever, by spreading heretical opinions, endangered the unity of the Church, violated also the secular public order, which became thus the secular arm of the spiritual power. The Christian faith, whereby one became member of the Church, was also, in accordance with the laws of the Empire, the fundament for his citizenship in the political society. This explains the legal status of heretics and Jews in those days, as well as the double purpose and function of the Inquisition also.

⁵⁷ Cfr. M. TORRES, *In Anuario De La Asociación Francisco De Vitoria*, Vol. II, pp. 149-157.

potentates in Europe. The controversy between the Pope and Philip the Fair had been caused by the King's taxation of the French clergy without previous consent or agreement from Boniface VIII, who considered the action as an infringement on the freedom of the Church. The conflict reached its peak with the promulgation of the Bull, which was meant precisely to define the powers of the Supreme Pontiff within the Christian world.

The portions of the Bull which bear more directly on the point under discussion are the following: "That there is one Holy, Catholic and Apostolic Church we are compelled to believe and to hold, our faith urging us...; and also that there is no salvation or remission of sins outside of her... In this one and only Church there is one body and one head, not two heads as if it were a monster: namely Christ and Peter, the vicar of Christ, and the successor of Peter; because the Lord said to Peter: 'Feed my sheep', speaking in general and not particularly about these or those sheep; so that it must be understood that He committed to him all His sheep.

"We are (also) taught by the words of the Gospel that in this Church and in its power there are two swords, a spiritual, to wit, and a temporal... 'Behold, here are two swords'... Both of them are in the power of the Church...; the one, indeed, to be wielded for the Church, the other by the Church; the former by the priest, the latter by the hands of kings and knights, but at the will and sufferance of the priest. For it is necessary that one sword should be under another and that the temporal authority should be subjected to the spiritual. For when the Apostle says, 'There is no power but from God and those powers that are, are ordained of God', they would not be ordained unless sword were under sword and the inferior, so to speak, were kept back by the other to be led to the most illustrious deeds... But... the spiritual power necessarily exceeds any earthly power in dignity and nobility, as spiritual things excel temporal ones... So, the truth bearing witness, the spiritual power has to establish the earthly power, and to judge it, if it be not good.

"If, therefore, the earthly power err, it shall be judged by spiritual power; if the lesser spiritual power err, it shall be judged by the higher, competent spiritual power; but if the supreme spiritual power err, it could be judged solely by God, not by man... Whoever, there-

fore, resists this power thus ordained by God, resists the ordination of God... *Consequently, we declare, state, define and pronounce that it is altogether necessary to salvation for every human creature to be subject to the Roman Pontiff.*"⁵⁸

If we want to interpret the Bull rightly as we ought to, we should examine it precisely on the light of Boniface's other declarations, especially those which he himself made before the College of Cardinals gathered in Consistory a few days later. Then the Supreme Pontiff explained the meaning of the document and defended himself from the false interpretations which, he said, were already being given to his words, charging him with the usurpation of the jurisdiction of the King of France.

From a careful reading of the Bull itself, we may conclude that only the last sentence can actually claim a dogmatic character, interpreted precisely in the sense indicated at the very beginning of the document, in the sense, that there is no salvation outside the Catholic Church. As regards the temporal power of the Church however, there is nothing in the Bull which should be understood as favouring the Pope's superiority and much less its universality. Nevertheless, it must also be admitted that the theologians and canonists of the day, whose great majority were supporters of the theocratic theory, generally understood and explained the text of the Bull as favouring that particular tendency.

Vitoria's Description

In the opinion of the curialists, the Pope was the highest authority in Christendom, who was entrusted with the furtherance of the christian faith in the whole world. Bound by the orders emanating from the Pope, all Christian Princes should cooperate towards that end; in doing so, they will also serve the spiritual good of the Church. This was the condition of their office; if they would act against that good they could be excommunicated and deprived of their rights by the Pope, who was believed at

⁵⁸ For the translation see S. Z. EHLER and J. B. MORRAL, *Church and State Through The Centuries*. A Collection of Illustrative Documents London, 1954, pp. 90-92.

that time, to be the source of their authority. The Emperor and the Kings were charged with carrying out the secular affairs of their kingdoms in a manner favourable to the cause of the faith. The Emperor was the temporal vice-regent of the Pope.

In this connection, Vitoria writes: "There are some persons indeed, who favour the Pope so zealously as to believe that kings and other temporal princes are merely his vicars or deputies — ministers, as it were, of the papal power —, and that all temporal power is derived from the Pope".⁵⁹ In his reading ON THE INDIANS Vitoria is still more specific.

"In this matter", he says, "there are some jurists, who hold that the Pope has full jurisdiction in temporal matters over the whole earth, and they even add that the power of all secular princes comes to them from the Pope. This is the tenet of *Hostiensis*, also of the *Archbishop*, and of *Augustinus Anconitanus*. *Sylvester* holds the same doctrine, making a much more ample and liberal concession of this power to the Pope. He has some singular remarks on this topic", adds Vitoria, "as for example, that 'the power of the Emperor and all other princes is sub-delegated as regards the Pope, being derived from God through the medium of the Pope', and that 'all their power is dependent on the Pope', and that 'Constantine gave lands to the Pope in recognition of his temporal power', and on the other hand, that 'the Pope gave the Empire to Constantine to his use and profit', nay, that 'Constantine's act was really not a gift, but merely the return of what had previously been taken away', and that 'if the Pope does not exercise jurisdiction in temporal matters outside the Patrimony of the Church, this is not for want of authority, but in order to avoid the scandal of the Jews and in order to promote peace'; and many other things even more empty and absurd than these. . . *Bartolus*, too, seems to be of this opinion in his comment on the *Extra-vagans*, and *St. Thomas* seems to favour it also at the end of II Sent.,⁶⁰ and *Herveus* is of the same opinion in his *DE POTESTATE ECCLESIAE*".⁶¹

⁵⁹ *De Pot. Eccle.* I, q. 3a., p. 3a., n. 1, p. 61. Cfr. also *De Temperantia*, the fragment '*De Regno Christi*', published in *Comentario Al Tratado De La Ley*, pp. 95 ff. In this place Vitoria cites also the names of *Hostiensis*, *St. Antoninus* of Florence, *Augustinus* of Ancona and *Sylvestre*, as supporters of the theocratic theory. But he adds; "There is, however, no solid basis in this opinion". p. 112.

⁶⁰ For a proper interpretation of *St. Thomas'* real opinion confer Chapter III of this same article, p. 547, and ff. below.

⁶¹ *De Indis*, I. de tit. non leg., n. 2, pp. 323-24.

Followers

In defense of the universal temporal jurisdiction of the Pope, Henry of Susa Card. of Ostia (+1271) was perhaps second to none. The Hostiensis, as he was generally known, exerted enormous influence upon all subsequent canonists, for he was the most celebrated jurist of his time being sometimes greeted as 'Pater Canonum', 'Fons et Monarcha Juris', 'Stella Decretorum', etc., so that the authority of his name was frequently used as the strongest argument in defense of papalism.

There was a great number of canonists and theologians, especially from the period between the fourteenth to the sixteenth century who, following the path open by the Hostiensis, held close to the same doctrine. From among those most frequently quoted, even by the Master of Salamanca, we may cite the following: First, the *Augustinians* Giles of Rome (+1316) founder of 'The Aegidian School', James of Viterbo (+1308): *De Regimine Christiano*, and Augustinus Triumphus of Ancona (+1323) — the Anconitanus —: *SUMMA DE POTESTATE ECCLESIASTICA*, who, together with their Generals Alexander of San Elpidio and William of Cremona, defended brilliantly the theocratic opinion; secondly, the *Franciscans* who, though generally against the interest of the Pope during those days, have at least two ardent papalists, the enigmatic Roger Bacon (+1294) and the influencial Spaniard Alvaro Pelayo (+1350) with his famous work *De Planctu Ecclesiae*. From among the *seculars* we may mention Henry of Cremona (+1312), W. Durand Jr. (+1328), Guido d' Baysio — the Archidiaconus —, and Richard Fitz-Ralph — the Armachanus (+1360). There are also some from the *Dominican Order*,⁶² like Ptolomy of Luca (+1327),⁶³ John of Naples (+1330), St. Anto-

⁶² *De Pot. Eccle.* I. q. 3a., p. 3a., n. 8, p. 70: "And although several followers of St. Thomas Aquinas are to be found among those who support the opposite opinion, nevertheless, it is my belief that St. Thomas agrees with the statements set forth above", i.e. Vitoria's own opinion.

⁶³ Cfr. the continuation of the *De Regimine Principum* of St. Thomas from chapter V of the second book to the end, which was added by Ptolomy of Luca.

nius of Florence — the Archbishop (+1459),⁶⁴ and Sylvester Prierias (+1523).⁶⁵

As we cannot offer here even a summary of all the conclusions of each individual author mentioned above, we shall limit ourselves to record some of the arguments most frequently used by the papalists, and which are also found in Vitoria's several works.

Arguments

The arguments put forward by the writers of the theocratic theory are primarily scriptural, the following passages of Holy Writ being the most frequently referred to: 'For the kingdom is the Lord's; and he shall have dominion over the nations';⁶⁶ 'The earth is the Lord's and the fulness thereof';⁶⁷ 'God shall reign over the nations';⁶⁸ 'The Lord hath prepared his throne in heaven: and his kingdom shall rule over all'.⁶⁹ From the Gospels they cite: 'All power in heaven and on earth has been given to me';⁷⁰ 'And I will give you the keys of the kingdom of heaven';⁷¹ 'And they said, Lord, behold, here are two swords. And He said to them, enough';⁷² and 'as the Father has sent me, I also send you'.⁷³ There are certainly more texts cited, but those given are the ones most often used, so that Vitoria was bound to admit that "the sole proof that these authors give herefor is in the passages" quoted above.⁷⁴

Besides, there are also some classic analogies which were used by these authors for the same purpose. Among them were the 'body and soul' of St. John Chrisostom, 'the moon and the sun' of

⁶⁴ The Archbishop, as St. Antoninus was known even to Vitoria, in spite of his wide knowledge and experience, led by Augustinus Triumphus, became also a follower of the theocratic theory. Of him says Vitoria: "And even the weighty authority of the Archbishop of Florence is not to be admitted here, for he followed Augustinus Anconitanus, just as in other places he usually follows the canonists". *De Indis, I, de tit. non leg.*, n. 7, p. 332.

⁶⁵ This distinguished Dominican, following St. Antoninus and A. Triumphus, defended also the same theocratic universal power of the Pope in his famous and influential '*Summa Sylvestrina*'.

⁶⁶ *Psalm* 21:25.

⁶⁷ *Psalm* 23:1.

⁶⁸ *Psalm* 46:5.

⁶⁹ *Psalm* 102:19.

⁷⁰ *Matt.* 28:18.

⁷¹ *Matt.* 16:19, cfr. also 17:17-19.

⁷² *Luke* 22:28.

⁷³ *John* 20:21. cfr. 1:10, and 19:11 and so on and so forth.

⁷⁴ *De Indis, I, de tit. non leg.*, n. 2, p. 324.

Pope Gelasius I, and the most abused of all — that of ‘*the two swords*’ of St. Bernard. To these they also added some classical expressions taken generally from Hugh of St. Victor⁷⁵ and St. Bernard,⁷⁶ but mainly from Gregory VII and the ‘most learned Pope’ Innocent III who, according to Vitoria, preferred to call himself ‘Vicar of God’ rather than ‘Vicar of Christ’, thus pretending, in the opinion of the papalists, to extend his power directly to the whole world, christian and pagan alike. Nevertheless, even those for whom the Pope was only Vicar of Christ were of the same opinion, because they made Christ even as a man, temporal lord of the whole world.⁷⁷

In spite of everything said above, it would certainly be a great mistake to believe that these theocratic ideas were the common teaching of Scholasticism or the official doctrine of the Catholic Church. Nothing would be farthest from the truth. First of all, because the defenders of that theory were mainly curialists or theologians of second and third rank; and secondly, because as Vitoria himself says, “The Popes never claimed for themselves what the above-mentioned thinkers attribute to them; nay, they admit the contrary in many passages”.⁷⁸ Nevertheless it existed; and therefore it must be admitted as a very influential tendency, which did not limit itself to just affirming the Pope’s right to intervene in secular matters ‘*ratione peccati*’ or ‘*delicti*’, as J. of Viterbo used to say,⁷⁹ but one which in fact denied the existence of any real temporal power outside the Church. It maintained firmly that all Christian princes owed their position to the ‘institution’ by the Pope, who, according to them, could not only judge them, but also

⁷⁵ Cfr. *De Sacramentis*, bk. II, c. 4, PL. Vol. CLXXVI, col. 418.

⁷⁶ Cfr. *Epist.* CCXXXVII, PL. CLXXII, col. 426: “... the church has two swords ‘ad praesidendum principibus, ad imperandum episcopis, ad regna et imperia disponenda’”. See also ST. BONAVENTURE, *II Sent.* d. 44, a2. q. 2; ALEXANDER OF HALES, *Summa Theologica*, III, p. 40, no. 2; BONIFACE VIII in the Bull ‘Unam Sanctam’, as quoted above; and VITORIA’S *De Pot. Eccle.* I, n. 18, pp. 86-88.

⁷⁷ *De Pot. Eccle.* I, nn. 15-17, pp. 82-85.

⁷⁸ *De Indis*, I. de tit. non leg., n. 3, p. 326.

⁷⁹ Cfr. R. HULL, *Medieval Theories of the Papacy And Other Essays*. London, 1934, pg. 459. The work of J. of Viterbo has been recently published by H. X. ARQUILLIERE, *Le Plus Ancien Traite De L'Eglise. Jacques De Viterbe, De Regimine Christiano (1301-1302)*. Ed. Paris, 1936. Cfr. also V. CARRO, *op. cit.*, pgs. 280-287. And RIVIERE, *op. cit.*, where this author makes a detailed examination of the works of many of the papalist writers mentioned above.

deprive them from their power, thus making of the spiritual head of the Church the only source from which all temporal power in the Medieval Christendom could derive its full perfection.

Alexander VI and Sixteenth Century Practice

During the first half of the sixteenth century, this same view was still very much in vogue. Significantly, there is one particular event from this period which shows the point more than sufficiently.

In 1493, when Christopher Columbus first returned from America, Pope Alexander VI undertook, upon request from the Spanish sovereigns,⁸⁰ to mediate between Spain and Portugal in the matter of their claims upon the New World. The apostolic Brief '*Inter Caetera*', which was issued the fourth of May of that same year,⁸¹ divided into two zones the territories to which both aspired. The meridian which runs one hundred leagues west (and south) of the islands Azores and Cape Verde was chosen by the Pope as the line of demarcation. This was modified in the following year by the Treaty of Tordesillas to read three hundred seventy (370) leagues west of Azores. All the territory to the west of this line was to revert to Spain; all that to the east of it was to fall under the dominion of Portugal. It was for this reason that Brazil, when discovered, came under the rule of the Portuguese monarchy. By the same logic, North America should have been Spanish. However, France, England and Holand chose to

⁸⁰ This fact disproves the opinion of some authors who, while trying to explain this act of ecclesiastical intervention, have considered the actuation itself as an 'act of arbitration' on the part of the Pope, as the recognized highest international authority of the sixteenth century Christian world. For that, however, it would have been necessary that the Pope should have been requested by the two interested parties. In practice, nevertheless, the Papal intervention had the effect of a true 'arbitral decision'. This, perhaps, might actually explain, at least partially, the fact that it has been so understood by many

⁸¹ There were five versions of these pontifical edicts in the form of '*motu proprio*'. The first one, dated April 3, 1493, is now lost; the second, '*Eximiae devotionis*', dated also May 3, 1493, was rejected by the Portuguese delegation to the meeting of Barcelona; the third, '*Inter caetera*', which carries same date, was also rejected; only the fourth, called also '*Inter Caetera*', dated May 4, 1493, merited the approval of the Portuguese delegation, and thus became the only official one. This is the one we follow in the text. There was another one, '*Dudum siquidem*', of September 26, 1493, issued also with the same purpose. Cfr. J. HOFFNER, *op. cit.*, pgs. 264-266.

ignore, in later years, the recognized international practice of those days.

Later, long discussions ensued as to the exact sense and scope of this apostolic Brief or edict. Many have since referred to it as to a document which actually entitled the Spanish Kings to the conquest of the New World. Indeed, the very words used by the Pope seem to bear, at first sight at least, that peculiar interpretation, which, we are bound to admit, is in full accordance with the common belief of the epoch.

"We have been informed that You — the Catholic Kings, to whom the document is addressed — have dispatched our beloved son Christopher Columbus, a man particularly worthy and highly recommendable, with ships and skilled men, not without great efforts, perils and expenses, in order to search for remote and unknown mainlands and islands on the sea on which no one had sailed before. They have actually discovered, We are also informed, some very remote islands and mainlands which have not been found by any one else before, in which people live peacefully, and go around unclothed, they say, and not eating flesh.

"As far as Your above-said envoys could judge, these people believe that one God-Creator exists in Heaven; they seem to be well fitted to embrace the Catholic faith and to be imbued with good morals. Some islands also contain gold, spices and many precious things. Wherefore, all things considered maturely and, as it becomes Catholic Kings and Princes, considered with special regard for the exaltation and spread of the Catholic faith, You have decided to subdue the said mainlands and islands, and their natives and inhabitants, and bring them to the Catholic faith.

"We recommend heartily such a holy and laudable purpose... and at the same time exhort You very earnestly in the Lord to carry out that excellent missionary work.

"And in order that You may embark on an enterprise of such importance more readily and audaciously, endowed with the liberality of Apostolic favour, We give, concede and assign to You in perpetuity, — out of Our own initiative, not at Your request or at a petition presented to Us by somebody else on Your behalf in this matter, but solely out of Our largess, sure knowledge and plenitude of Apostolic power, by the authority of Almighty God bestowed

upon blessed Peter and of Jesus Christ whose Vicar on earth We are —, all the islands and mainlands, found or to be found, situated one hundred leagues West and South from any of the islands which are commonly called the Azores and Cape Verde... By the strength of the present document, therefore, We constitute, invest and depute You, Kings of Castile and Leon and Your heirs and successors, as lords thereof with full, free and integral power, authority and jurisdiction.

"And, at the same time that we enjoin You to send to the said lands honest and God-fearing men, learned, skilled and experienced, to instruct the natives in the Christian faith, We also strictly forbid any persons of whatever dignity, even Imperial or Royal, under the penalty of an excommunication '*latae sententiae*' which they will incur '*ipso facto*' in case of contravention, not to dare, without your special license or that of Your successors, to approach, for the purpose of trade or for any other reason, the said lands".⁸²

Any purely superficial reading of the Edict certainly causes the impression that Alexander VI entertained no doubts as to his real power over those lands, adducing, as a justifying title, 'the authority of Almighty God and Jesus Christ whose Vicar on earth We are'. In fact, he seemed to have disposed at will of those countries, giving them to the Kings of Spain, of his own accord and liberality, and by the fullness of his apostolic authority, 'out of our own initiative, not at Your own request nor that of another on Your behalf, but solely out of Our largess, sure knowledge and plenitude of Apostolic power'. Indeed, in the opinion of many, this grant actually implied political sovereignty on the part of the Catholic Kings over those lands.⁸³ However, if we examine the Apostolic Brief carefully, we will notice: first — that this document is not a Bull in the strict sense⁸⁴ and second — that it does not contain a real 'donation' of those newly discovered lands, but a mere enfeoffment, as it is indicated by the formula: '*donamus*,

⁸² For the translation Cfr. S. Z. EHLER and J. B. MORAL, *op. cit.*, pp. 155-56

⁸³ Cfr. C. B. TRELLES, *op. cit.*, pg. 44 ff.

⁸⁴ By admitted custom, since the third century, only those pontifical decrees issued '*ad perpetuam rei memoriam*' are called 'Bulls'. Although it is true that these Edicts of Alexander VI were already in the XVI century called Bulls by some writers like J. de Sepulveda, etc.; nevertheless, there were also other names used like '*litterae*' (Acosta), '*diploma*' (D. de Soto), '*Concessio*' (Bañez), etc. Cfr. J. HOFFNER, *op. cit.*, pg. 264, note 2.

concedimus et asignamus', which, according to the accepted official medieval custom, was used in those days to signify only the transfer of a fief made for political purposes,⁸⁵ to which the strict obligation, otherwise so proper of every papal infeudation, of christianizing the territories thus granted under fief, was explicitly attached.⁸⁶

Nevertheless, the Edict was frequently referred to as a justifying title for the conquest of the New World, not only by the Kings themselves, but also, as contemporary evidence shows, by the politicians of the day; all of them, with few exceptions, considered the document as being practically of that attributive character. Indeed, the practice followed all throughout the colonization of America proves clearly this contention. The '*manifesto*' or '*requerimiento*', composed by the brilliant jurist of the crown Palacios Rubios, for instance, which all the Conquistadores were required to read to the Indians before going into war against them, though its original purpose was rather to inform the European nations, is certainly a good example. It was said there that the Kings of Spain, by gracious concesion of the Pope, Lord of the earth, were the right lords of these countries, whose inhabitants were bound to submit freely or otherwise, by force. This warning procedure continued in use all throughout that period of conquests. Hernán Cortés followed it in Mexico, and Francisco Pizarro in Perú.

The following are some extracts of the documents given to Pizarro when he set out for the conquest of Perú in 1533. "The Pope, as lord of the world, made donation of these islands and countries with everything therein to the Catholic Kings of Castile who were then Ferdinand and Isabella, of glorious memory, and their successors. And so it is that His Majesty is lord of these islands and countries in virtue of said donation... Therefore, I

⁸⁵ Cfr. J. HOFFNER, *op. cit.*, pg. 270.

⁸⁶ Cfr. *Ibid.*, There is no doubt that this obligation was imposed by Alexander VI upon the Kings of Spain. The kings themselves have testified to that fact very frequently in many official documents. Felipe II, for example, explicitly did so when he courageously refused to give up the colonization of the Philippines, in spite of the heavy financial burden that its continuation entailed to the Spanish Crown in the opinion of all the advisers, for the reason, he said, that the Holy See had given him and his successors the apostolic mission, and duty of preaching the Gospels in all these lands, and that, he added, I will do, even if I have to expend therein all the treasures of the Crown. Cfr. V. CARRO, *op. cit.*, pp. 111-112.

ask you to think this over and resolve to acknowledge the Church as Mistress of the universal world, and the Pontiff called Pope, in her name, and His Majesty, in his place, as lord and superior, King of these islands and countries in virtue of the aforesaid donation. . . . If you would dare to act contrary-wise, be sure that, with the help of God, I will begin to fight against you, and will also endeavor by all possible means to subject you to the obedience of the Church and of His Majesty".⁸⁷

Vitoria himself has made a long and explicit reference to this belief and practice. "A second alleged title", he writes, "to the lawful possession of these lands, and *one which is vehemently asserted*, is traced through the Supreme Pontiff; for it is claimed that the Pope is also temporal monarch over all the world, and that consequently, he could make the Kings of Spain sovereign over the aborigines in question, *and that so it has been done*."⁸⁸ "The authors of this opinion", continues the Master a little later, "say that the *Pope has free power*, on the footing of supreme temporal lord, *to make the Kings of Spain rulers over the Indian aborigines*. Adding that, even if it be assumed that he could not do this, at any rate *if these aborigines refused to recognize the temporal power of the Pope over them*, this would warrant him in making war on them and in putting rulers over them. Now, each of these *things has been done*. First, the *Supreme Pontiff granted the provinces in question to the Kings of Spain*. Second, *the aborigines were notified* that the Pope is the vicar of God and his vice-regent on earth and it was claimed that therefore, they should recognize him as their superior, and their refusal furnishes a good ground for making war on them and seizing their lands".⁸⁹

The Decline of Papalism

There is no doubt then, that the prevalent opinion everywhere at least up to the beginning of the second quarter of the sixteenth

⁸⁷ Cfr. SOLORZANO PEREIRA, *De Indiarum Jure*, Bk. II, c. 24, as quoted by H. MUÑOZ, *Vitoria and The Conquest of America*. Manila, 1938, pp. 69-70. Also J. HOFFNER, *op. cit.*, pp. 191ff.

⁸⁸ *De Indis*, I., de tit. non leg., n. 2, p. 323. Cfr. also *De Eccle.* I, q.

⁸⁹ *De Indis*, I. n. 2, pp. 324-325.

century, was still in favour of the theocratic theory. The adviser of the Court Juan Lopez de Palacios Rubios,⁹⁰ an eminent scholar and re-knowned jurist, together with the distinguished Dominican theologians Matias de Paz (+1519),⁹¹ Bernardino de Mesa and Cipriano Benet (+1522), defended the papalist theory during that period. So also did Juan Ginés de Sepúlveda,⁹² Vitoria's greatest and most effective adversary, Gregorio Lopez, Bobadilla, Zeballo, Herrera, A. Gurreiro, Ferrariensis and some others, all of them contemporary and strong opponents too of the Great Master.⁹³

Like most canonists and theologians, the Universities were also in favor of this same theocratic opinion, until the beginning of the second half of the 16th century, more or less. Since then, everybody, under the influence of Vitoria's systematic and well reasoned out opposition, which he based principally upon the fundamental thomistic distinction of orders, either changed the trend of their twisted ideas, as we know it happened, for example, with Dr. Navarro Alpizcueta and Gregorio Lopez, from their personal confessions; or unhesitatingly adopted the clear and logical exposition of the⁹⁴ Great Master of the School of Salamanca. Thus, the great majority, if not all, became followers of the so-called 'Middle Way' position which alone maintained a perfect balance between the two extremes of Caesaro-Papism and Papo-Cesarism. This position is the one we intend to offer presently as an answer to all the theocratic theorizations, or 'aberrations', as they have been also called, of both the Imperialist and Papalist opinions.

⁹⁰ Cfr. The portion extracted from Palacios' '*requerimiento*', given above, and his book, '*De Insulis Oceanis*', published by A. MILLARES CARLO, 1942. Mejico

⁹¹ Cfr. V. B. DE HEREDIA, "*El P. Matias de Paz, O.P. y Su Tratado de Dominio Regum Hispaniae Super Indos*", Published in *Cien Tom.* Vol. 40, 1929, II, pp. 173-190. Also E. BULLON, who has written on it in '*Anuario De La Asociacion Francisco de Vitoria*', pp. 99 ff. and '*Archivum Fratrum Praedicatorum*', where V. B. DE HEREDIA has edited the full text in 1933.

⁹² This author wrote several works, among them: '*Democrates Alter*' *Sive De Belli Causis Apud Indos*, in *Boletin de la Real Academia de la Historia*, t. XXI, Madrid, 1892, pp. 260-69. Also '*Democrates Segundo*' published by A. LOZADA, C.S.I.C. Instituto Francisco de Vitoria, Madrid, 1951

⁹³ Cfr. J. HOFFNER, *op. cit.*, pp. 280 ff.; also C. B. TRELLES, *op. cit.*, pp. 50 ff.; and H. MUÑOZ, *op. cit.*, pp. 70 ff.

⁹⁴ Confer all the great scholastics of the Spanish School of the sixteenth and seventeenth centuries who are unanimous in confessing this fact. J. HOFFNER, *op. cit.*, pp. 350 ff.; and especially in p. 359 gives a list of names of those authors who explicitly admitted their dependence on Vitoria.

III

MIDDLE WAY FOLLOWERS

Introduction: Augustinism and Thomism.

As we have seen in the two previous chapters, the various opinions held by the different medieval schools of thought regarding the fundamental questions of Science and Religion, Reason and Faith, Natural and Supernatural orders, were undoubtedly the reason which led many otherwise distinguished writers to maintain opposed, and even contradictory views also on the problem of State and Church relations. The Augustinians for example, always faithful to the idealistic Platonico-Augustinian way of thinking with its blurred distinction of orders, frequently confused and even identified their spheres of action. Likewise, because of their adherence to Duns Scotus' ideas, the Franciscans arrived also at similar conclusions. However, emphasizing the distinction without opposition of the natural and supernatural orders, the Dominicans, with the Thomistic School in general, followed a middle course also in this question of Church and State relations, proclaiming firmly and clearly the 'distinction without separation or opposition' of these two self-sufficient and perfect societies.

Having briefly sketched in the two previous chapters the two extreme views of the traditional theory,⁹⁵ with their exaggerated and unrealistic solutions to this most important politico-religious problem, we must now present the third position, the explanation of those authors who, without deviating to either side, have taken the middle road and have thus given us the real and truly traditional solution to this most complicated question of Church and State relations. This is what we have called the '*Middle Way*', the '*Via Media*' between the other two extreme ones. Besides, this is also Vitoria's own solution to the problem of the relations, and also his answer, to both the Imperialist and Papalist 'aberrations'. "*But we*", he says, "*tempering the force of these two conflicting opinions, shall take the middle course and thus answer the question stated above, by setting forth several propositions*".⁹⁶

⁹⁵ Cfr. *De Pot Eccle.* I., q. 3a., p. 3a. n. 1, p. 61; "There are some persons, indeed, who favour the Popes so much as to believe... Other persons, on the contrary, exempt princes from ecclesiastical power to such a degree that..."

⁹⁶ *Ibid.*, p. 62.

Some Predecessors of Vitoria

We can be sure that the politico-religious system of the Great Master of Salamanca did not appear all of a sudden or as a personal invention. Every perfect work, like the one Vitoria left us in his Readings ON ECCLESIASTICAL POWER, needs, by the rule of nature, both time and preparation. Prof. E. Nys⁹⁷ concludes that there must have been some authors, *some predecessors* who, beforehand, pointed the way and cleaned the path for him to follow.

The great historian Fr. V. Beltran de Heredia, specialized on Vitoria's epoch, has actually given us the names of some of those predecessors: "La doctrina Vitoriana", he says, "partiendo del *Angélico*, ha ido, pues, desenvolviéndose y precisándose mediante la lectura del tratado de *Juan de París* y de *Torquemada*, hasta adoptar forma propia, esa expresión feliz que después han de corroborar todos los teólogos de la escuela salmantina y encontrará su última consagración en las *controversias* de San Belarmino".⁹⁸ But these are not all. There were certainly some more whose names we do not know, nor will easily guess, as Vitoria does not make even a single reference to them. "Vitoria con marcada deliberación", continues the same author, "se abstiene de mencionar a Juan de París; como omite luego los nombres de *otros* representantes de la tendencia galicana"⁹⁹ a pesar de haberlos utilizado en gran escala".¹⁰⁰

We can be sure, however, that St. Thomas, John of Paris, Juan de Torquemada, Thomas de Vio Cajetan, and his own teachers

⁹⁷ *Introduction to Vitoria's De Indis Et De Jure Belli Relectiones*, in *The Classics of International Law*, published by the Carnegie Institution of Washington. W. 1917, pp. 58-59: "He (Vitoria) does not make his appearance in history as an inventor, as the initiator of a new doctrine which aroused at one and the same moment enthusiastic adhesion and passionate hostility. His task and his mission seem to have been rather to sum up and coordinate, in a spirit of great moderation and with much perspicacity, logic, and good sense, the most widely spread, or at any rate the most powerful, doctrines of his time, in such a way as to form of them an harmonious whole fitted for the uses of instruction; for in his works one can always trace the teacher".

⁹⁸ "Las Relaciones Entre La Iglesia y El Estado Según Vitoria" an essay published in *Cien. Tomista*, 56 (1937), p. 29.

⁹⁹ Almain and J. Mayor, both professors at the University of Paris during Vitoria's stay in that city, were certainly, with their frequent debates, both oral and written, on this matter, an occasion for Vitoria to dedicate himself to these kind of studies, but his doctrine and ideas in no way depend on these nominalist authors.

¹⁰⁰ Cfr. V. BELTRAN DE HEREDIA, *loc. cit.*, p. 29.

P. Crockaert and Fenario, among others, did really exert a considerable influence upon the venturesome politico-religious teachings and ideas of the most brilliant writer of the Spanish School: Francisco de Vitoria.

Let us then give here, in general outline, the main ideas of these authors, with respect only to this particular question of State and Church relations, as an introduction to his own exposition.

St. Thomas Teaching

Somewhere else,¹⁰¹ we have already expanded in general lines, St. Thomas' idea of society, and remarked too, that since the Middle Ages, the Political Philosophy of St. Thomas has provided a solid foundation for an ideal autonomous State founded upon Natural Law and limited in its claims to a purely temporal order. Indeed, "it was left for St. Thomas", writes a modern author, "to define clearly and exhaustively the idea of an autonomous natural order and a natural law, and to lay down the principle that 'the divine right which is of grace, does not destroy the human right which is of natural reason'".¹⁰²

St. Thomas Aquinas, with his fundamental principle of distinction of orders: natural and supernatural, which gave rise to two correspondently different spheres of jurisdiction, did really open a new epoch in both juridical and theological studies.¹⁰³ Before him, even the word 'supernatural' was almost completely forgotten. Due to his influence and that of his disciples, both notions soon acquired their true and real value. Besides, by affirming explicitly the independence of both spheres, St. Thomas declared himself also in direct opposition to both Imperialism and Papalism, as well as to the Augustino-Platonic principles upon which both of these theories were based.

"Grace", he proclaimed, "does not destroy nature; nor does the divine right which is of grace abolish the human right which

¹⁰¹ Cfr. UNITAS, March, 1964. Vol. 37, no. 1, pp. 68-116.

¹⁰² DAWSON, *op. cit.*, p. 73. Cfr. ST. THOMAS, II-II, 10, 10.

¹⁰³ Cfr. II-II, 164, 1 ad 1um.; I-II, 10, 1; 41,3; I, 99,2; I, 98, 2; I, 96, 3-4.

is of natural reason".¹⁰⁴ In the opinion of many, this is the most important and fundamental principle in the entire theologico-juridical system of St. Thomas. However, for its proper application to particular cases, his complete juridical system should certainly be borne in mind, most especially the juridico-natural foundation of society and secular power which constitute one of its main characteristics.¹⁰⁵ The distinction of societies and their natural limitations are but particular conclusions drawn out of these general premises in accordance with the different needs and ends of their respective members.¹⁰⁶

Now, according to Thomistic Political Philosophy, it is evident that every human right and duty is born and developed in function of human personality, of man himself, who, being God's own image, has an immortal soul and an essentially social nature. This means that man, first of all, did not originate with the States' and civil society's birth, and secondly, that his rights and duties, and even his life, are twofold: temporal and spiritual, as the Angelic Doctor himself has so beautifully and concisely expressed in another basic principle of Christian political thought: "Man, as such", he says, "is not completely ordained to political society... on the contrary, everything that he is, and has, and can, is ordained to God".¹⁰⁷

The reason for all this, according to our Doctor, is because the State is not a substance (continuum, simpliciter unum) but an ordered whole (totum ordinis), and so, the actions of each part cannot always be said to belong to the whole as such;¹⁰⁸ for "only the spiritual beings exist by themselves within the universal order of things, and everything else because of them".¹⁰⁹ Hence, whenever the supernatural good is concerned, the spiritual authority

¹⁰⁴ II-II, 10,10; Cfr. I, 1, 8 ad 2um.; II-II, 104, 6. Cfr. also J. TORQUEMADA, "*Tractatus compendiosissimi septuaginta trium quaestionum super Potestate et Auctoritate Papali ex sententiis Sti. Thomae collectarum*", at the end of his *Summa de Ecclesia*, Salamanca, 1560, pp. 615-631.

¹⁰⁵ Cfr. *De Reg. Princ.*, Lib. I, c. 1; I *Ethic.*, Lect. 1, c. 1.

¹⁰⁶ Cfr. I, 92, 1 ad 2um.; I, 96, 3-4; I-II, 21, 4 ad 3um.; II-II, 104, 1.

¹⁰⁷ I-II, 21, 4 ad 3um.; "Homo non ordinatur ad communitatem politicam secundum se totum et secundum omnia sua... Sed totum quod homo est et quod potest, et habet, ordinatum est in Deum." Cfr. also *De Reg. Princ.*, I. c. 14.

¹⁰⁸ Cfr. I *Ethic.*, Lect. 1.

¹⁰⁹ III *Contra Gent.*, c. 112.

of the Church always prevails over the temporal power of the State.¹¹⁰

This will be better understood if we have in mind St. Thomas' organic conception of the universe.

According to him "there is in the universe a double good corresponding to a double end: the first consists in the ordination of the entire universe to something outside of itself, like the army is ordained to the chief; the second consists in the ordination of the different parts of the universe among themselves, as the soldiers have also order among themselves; the second order depends on the first".¹¹¹

This is the fundament for the solution of our problem of State and Church relations.

"As the constitution of the city or kingdom is an image or copy of the constitution of the world, so its government too, must also correspond to that of its exemplar".¹¹² But in creation, says St. Thomas, we find order not only among the creatures themselves but also between them and God, to whom all are ordained.¹¹³ Therefore, we must also find a double ordination and a two-fold end in the city or State.

If the end of man would only consist in leading a virtuous life, then the prince or secular ruler should limit himself to the maintenance of the internal order of society, whereby it would become possible to attain the end of human society, which consists in the life of virtue, since the happy life is the virtuous life. However, "inasmuch as man and also the multitude or society, is ordained to an ulterior end which consists in the enjoyment of God, the end of the human multitude must be the same as that of the individual man. Therefore, the virtuous life is not the ultimate end of the associated multitude, but through a virtuous life to attain the enjoyment of God".¹¹⁴ If that end would be within the reach of human society, the prince should direct everything to its attainment; but since this is not possible without grace, "to lead to

¹¹⁰ Cfr. *De Reg. Princ.*, I, c. 14.

¹¹¹ CONTRA GENTES I. c. 78. Cfr. also I-II, 72, 4 and ad 1um.

¹¹² *De Reg. Princ.* I, c. 14.

¹¹³ Cfr. I, 21, 1 ad 3um.

¹¹⁴ *De Reg. Princ.* I, c. 14.

such an end will not be of human governance, but divine",¹¹⁵ and thus, it pertains exclusively to that king who is not only man, but also God, viz., to Our Lord Jesus Christ, Who by making men the sons of God, brought them to glory in heaven.

"Consequently, in order to assure also the distinction between spiritual and temporal things, the administration of that kingdom was entrusted not to earthly kings but to priests, and in the first place to the Highest Priest of all, the successor of Peter, the Vicar of Christ, the Roman Pontiff, to whom it behoves all Christian kings and nations to be subject as to the Lord Jesus Christ Himself".¹¹⁶

According to the Angelic Doctor, society has two ends: the intrinsic, the common good, and the extrinsic, the possession of God.¹¹⁷

These ends however, are not co-ordinated but subordinated, "for the end of the good life we lead in this world is happiness in heaven. Therefore, it is the duty of the king to devise such means for the good life of the multitude as shall be conducive to their attainment of happiness in heaven: he must prescribe such things as lead to happiness in heaven and, as far as possible, proscribe the opposite":¹¹⁸ because "those whose province is the care of antecedent ends ought to be subject to him whose province is the care of the ultimate end and be governed by his authority...; so, kings should be subject to priests in the law of Christ".¹¹⁹ "For this reason there is no usurpation when the spiritual superior intervenes regarding those particular temporal matters in which the secular power is subject to him.".¹²⁰

Within its own sphere nevertheless, and in matters pertaining to the temporal order, the State is perfectly autonomous, and the citizen is then bound to obey more the secular power than the

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Cfr. Ibid.*

¹¹⁸ *Ibid.*, c. 15.

¹¹⁹ *Ibid.*, c. 14, *Cfr. QUODL.* 13, 19.

¹²⁰ II-II, 60, 6 ad 3um.

ecclesiastical authority. Both come from God: and as the spiritual authority is supreme in matters affecting our salvation, so also is the secular supreme in everything related to the temporal welfare in accordance with the divine injunction: "Give to Caesar what belongs to Caesar."

"Both the spiritual power and the secular power derive their origin from the Divine power. This means that the secular power is subordinate to the spiritual power in the measure decreed by God, that is to say, in all matters concerning the salvation of souls; for in such things it is more profitable to obey the spiritual rather than the secular power. However, in those things which concern more the temporal and civil welfare the secular power should be obeyed rather than the spiritual, in accordance with what is said in Mtt. 22, 21: return to Caesar what belongs to him".¹²¹ In the teaching of St. Thomas the State then, is not the ultimate and most perfect society. For that reason, he concludes, the kings of all peoples must obey the vicar of Christ on earth.¹²²

This is St. Thomas' solution to the question of Church and State relations. Within its own field, the State is self-sufficient and independent; however, in relation to the supernatural, it is subordinate to the society of Christ's Kingdom.¹²³

St. Thomas had no occasion to develop further these political considerations. His principles were certainly precise and definite. By affirming the temporal sovereignty of the State in its own order, together with its partial subordination to the Church in all that pertains to salvation, he laid the foundations of the classical Catholic teaching on the question of State and Church relations.¹²⁴ Nevertheless, several centuries were allowed to go by before these fundamental Thomistic principles were worked out in detail by the theologians, and applied systematically to the solution of concrete and particular cases of political and ecclesiastical intervention. The main reason seems to have been the

¹²¹ In *II Sent.*, d. 44, q. 2, a. 3 ad 4um. Cfr. II-II, 147, 3. c.; *QUODL.* 12, 24.

¹²² Cfr. *QUODL.* 13, 19.

¹²³ Cfr. S. RAMIREZ, *Doctrina Politica De Santo Tomas*. Publicaciones del Instituto Leon XIII. Madrid. No. 1, especially pp. 48 ff.

¹²⁴ Cfr. II-II, 10, 10; 12, 2; 88, 12 ad 3um.; III, 59, 4 ad 1um.; 31, 2 ad 3um.; 64, 2 ad 3um.; IV *Contra Gentes*, c. 76; *De Pot.*, q. 10, a. 4 ad 13um.; *In Rom.*, c. 13, and so on and so forth.

wrong interpretation that many authors and commentators of St. Thomas gave, during subsequent centuries, to the following confusing statement which the Angelic Doctor allegedly attached to the principle given above, whereby he appeared to have qualified the basic principle itself: "unless per chance", the text says, "the secular power is conjoined with the spiritual as in the Pope who holds the submmmit of both, the spiritual and secular power alike, by the ordering of Him who is both Priest and King".¹²⁵

During many centuries, this genuine passage, together with the whole *spurious part* of the DE REGIMINE PRINCIPUM,¹²⁶ was a great obstacle, a real stumbling-block for many Thomists, and even Dominicans like Vitoria, who, because of such statements, did sometimes, though reluctantly, classify the Saint as a radical papalist. That was done explicitly by Vitoria in his Relection ON THE INDIANS, wherein he wrote, after describing the Papalist theory: "...and St. Thomas seems to favour it, too, at the end of the second book of the SENTENCES, the closing words of which are by way of solution to the fourth argument, which is the last of the whole book, namely, that the Pope holds the summit of both kinds of power, both secular and spiritual".¹²⁷

For all the authors, who mistakingly believed the passages to be genuine, the cited words contained an absolute affirmation of the Supreme Pontiff's unrivalled superiority in both the spiritual and political fields. This interpretation, however, is very far from the Angelic Doctor's real mind, as Vitoria himself has frequently observed. The text certainly cannot be taken as a statement or

¹²⁵ In II Sent. d. 44, q. 2, a. 3 ad 4um: "In his autem quae ad bonum civile pertinent est maior obediendum potestati seculari quam spirituali... nisi forte potestati spirituali etiam saecularis potestas conjungatur, sicut in Papa, cui utriusque potestatis apicem tenet..."

For a correct interpretation of St. Thomas' real meaning, according to Francisco de Vitoria, the reader is kindly referred to *De Indis*, I, de tit. non leg. n. 1, pp. 317-321; *De Pot Eccle.* I. q. 3a. n. S. p. 70, and *De Temperantia*, in its fragment *De Regno Christi*, n. 4, pp. 99-110 of the *Comentario*..., where the author, although unaware of the fact that some of these passages were spurious, excused the Saint from such a papalist tint and interpreted them in view precisely of the Angelic Doctor's other parallel places where he explicitly treated these same questions.

¹²⁶ From the fifth chapter of the second book to the end, which, according to the critics, has been added by Ptolomy of Luca.

¹²⁷ *De Indis*, I. de tit. non leg., n. 2, p. 324.

expression of general policy on the part of St. Thomas. It is, and so it should be accepted, in case its genuinity is admitted, as a mere reference to a real historical political fact.¹²⁸ From history we know that the Supreme Roman Pontiff has been during many centuries, until not long ago, not only the spiritual Father of the Universal Church, but also the temporal and political Ruler or King, not of the whole world, but of some parts of Italy, viz., the Church States and the Papal Patrimony, where he certainly enjoyed the powers referred to above, but only there and then.

This is the only possible satisfactory explanation of St. Thomas' controversial passage, and in fact the most in conformity, too, with the Angelic Doctor's entire political philosophy, as the distinguished Professor of Salamanca himself has pointedly asserted in several occasions.¹²⁹ The same could be said of all the other arguments advanced against St. Thomas' true teaching, since all of them are based on the last part of the *DE REGIMINE PRINCIPUM*, which as we know today, *is not authentic*.¹³⁰

John of Paris' Idea

These fundamental Thomistic principles were further developed and systematized by St. Thomas' disciples, the most distinguished of whom were John of Paris, Juan de Torquemada, Thomas de Vio Cajetan and Francisco de Vitoria, who constituted the core of the moderate tendency, later on followed by the entire Spanish School.

It is now commonly admitted that Vincent the Spaniard (+1216), rather than St. Bellarmine (+1621), was the first to use the term '*indirect*' in relation to the power of intervention of the Pope in temporal matters,¹³¹ though it was a disciple of St. Thomas, the Dominican *John Quidort of Paris* (+1306), who defined and

¹²⁸ Cfr. H. ROMMEN, *op. cit.*, p. 538.

¹²⁹ Cfr. *De Pot. Eccle.* I, q. 3a., p. 3a., n. 2, p. 64, where he explicitly affirms that "St. Thomas *did never attribute* such (temporal) power to the Pope...". And *Ibid.*, n. 8, p. 70, where he adds: "It is my belief that St. Thomas agrees with this (Vitoria's opinion)... because he *never attributed* power of this sort to the Pope..." Cfr. also *De Indis*, I, n. 1, pp. 319-20.

¹³⁰ Cfr. J. MATHIS, *De Regimine Principum*, 2nd, Revised Ed., Rome, 1948. *Preface*, p. VII.

¹³¹ Vincent the Spaniard denies the 'direct' power of the Pope over temporal matters, but admits an 'indirect' and 'ratione peccati' intervention. Thus, for example, while speaking of Innocent's III famous words: 'non

developed the teaching and terminology of the so-called 'indirect power theory' in his long and scholarly treatise *DE POTESTATE REGIA ET PAPALI*, written in about 1302 when the struggle between Boniface VIII and Philip the Fair was at its height.

In this book, which some writers have classified as 'the most notable work of the century',¹³² John of Paris studies in detail, after presenting himself as a follower of the "Middle Way" in the Prologue,¹³³ many different aspects about the nature and characteristics of both the State and the Church and their mutual relations.

Like St. Thomas and all the writers of the moderate traditional opinion, the author teaches discreetly though emphatically, that between the spiritual and temporal societies, there is certainly an ordered relation, which however, is not essential, like the one existing between the cause and its effect, but hierarchical, that is to say, an accidental, subordination. The ecclesiastical jurisdiction, he adds, is only spiritual, and cannot directly inflict any but spiritual penalties. Nevertheless, the Church has the right to intervene in temporal matters, in an indirect and incidental manner (*indirecte et per accidens*), whenever said temporal affairs may be an occasion of sin, i.e. because of a moral fault, or in so far, namely, as the temporal things become spiritual or ecclesiastical. Beyond the supernatural sphere, therefore, concludes our author, the Church, whose power is purely spiritual, can do nothing – '*nec aliquid ultra potest*' – except in an indirect and incidental manner – *nisi indirecte et per accidens* –.

intendimus judicare de feudo', he writes: "*directe, sed indirecte cognoscendo an peccet et inducendo ad paenitentiam... et ita per consequentiam feudum restituet. Haec est expressa opinio mea quod Papa non est maior vel inferior* (Read, superior, says the author) *quoad temporalia quod Imperator... Ex eodem enim principio procedunt. Ergo Papa de temporali se iurisdictione non debet intromittere nisi indirecte ratione peccati*". Quoted by J. RIVIERE, *op. cit.*, p. 54

¹³² Cfr. J. HOFFNER, *op. cit.*, p. 14.

¹³³ Cfr. *Fratri Johannis De Parisiis Tractatus De Potestate Regia Et Papali*, in Melchor Goldast; *Monarchia S. Romani Imperii*, Vol. II, p. 108: "*Inter has autem opiniones tam contrarias, quorum primam erroneam omnes putant; puto ego quod veritas medium ponit scilicet, quod Praelatis Ecclesiae non repugnat habere dominium in temporalibus et iurisdictionem, contra primam opinionem. Nec debetur eis per se, ratione sui status et ratione qua sunt Vicarii Jesu Christi et Apostolorum successores; sed eis convenire potest habere talis ex concessione et permissione Principum, vel ab eis ex devotione fuerit aliquod collatum eis, vel si habuerint aliunde*".

In some particular aspects of State and Church relations however, John of Paris was not altogether without error. The proverbial patriotic attachment of the French to even exaggerated nationalistic tendencies exerted, no doubt, its influence also in our theologian. Thus, for example, supposing we have a Pope who is heretical, incorrigible, or even contemptuous of ecclesiastical authority, then, John Quidort said, the Emperor or the King could indirectly intervene, either through the Christian people, the Cardinals, or through his own personal authority, to bring about the deposition of the unworthy Pope.

In spite of these minor deviations, due to his deep attachment to the national monarchy as a true Frenchman, John of Paris' doctrine, as a whole, marks a clear and definite step forward towards the solution completed by the Great Scholar of Salamanca.¹³⁴

More 'Middle Way' Followers

As followers of the same moderate tendency we may also cite the following theologians: Richard of Middleton - Midiavilla -, O.F.M. (+1298), Remigio Girolami of Florence, O.P. (+1319), Herve Natale de Nedellec, O.P. (+1323), Durandus of St. Porciano, O.P. (+1334), Pierre de la Palu - Paludanus -, O.P. (+1342),¹³⁵ Thomas de la Argentina, O.S.A., Guido Terreni, O. Carm., Alfonso Madrigal -El Tostado- (+1455), Juan Card. de Torquemada, O.P. (+1468), Juan Lopez de Segovia, O.P. (+1496), Thomas de Vio Card. Cajetan, O.P. (+1534), and a few others.¹³⁶

The arguments most frequently adduced by these 'Middle Course' Followers were almost invariably taken from the same sources. These were: the writings of some Holy Fathers, like St. Ambrose, St. Augustine and St. Bernard; also the documents of some Popes, as Gelasius I, Gregory the Great, Innocent III, and some others; and, of course, the teaching of St. Thomas, together with some popular pamphlets written at the time of the Pope-

¹³⁴ Cfr. V. CARRO, *op. cit.*, t. I, pgs. 297-309.

¹³⁵ This author is not altogether correct in the question of the papal power over temporal matters. According to Vitoria "he extends the power of the Pope in temporal matters more generously than is necessary". *De Pot. Eccle.* I, q. 3a., n. 14, pg. 81

¹³⁶ Among others not yet mentioned, but sometimes cited by Vitoria, we can name Antonio Rosellis (+1466), Henry of Ghent - the Gandavensis -, and John Andrew (+1348), 'one of the greatest canonists', in Vitoria's opinion. Cfr. *De Indis*, I, *de tit non leg.*, n. 7, pg. 332.

Emperor struggles, like the anonymous 'QUAESTIO IN UTRAMQUE PARTEM', written a. 1302, the 'QUESTIO DE POTESTATE PAPAЕ', and even the 'REX PACIFICUS'.

Juan de Torquemada's Doctrine

The only theologian of distinction who really brought about a significant development in the doctrine and terminology of the Church and State relations' question during the fifteenth century was undoubtedly 'the wisest member of the Sacred College', 'the greatest Theologian of his century', 'the Defensor Fidei', 'the founder of the treatise DE ECCLESIA', the great Spanish Dominican Cardinal, *Juan de Torquemada* –Turriscremata– (1388-1468).¹³⁷

In his excellent work SUMMA DE ECCLESIA, the Card. J. de Torquemada takes courageously the role of leader in the scientific reaction in favour of the Papacy and against the conciliar principle of popular sovereignty within the Church, defending clearly and brilliantly, in the first two books, the true nature and characteristics of both Church and State as perfect, self-sufficient and independent societies within their own respective spheres and orders of activity.

After a careful and detailed study of the different kinds of ecclesiastical powers, he finally considers, in the last four chapters –cc. 113-116– of the second book, the question of Church and State Relations, under the title of papal jurisdiction in temporal matters, presenting himself, without any reservation nor proviso, as a true follower also of the traditional Thomistic 'Middle Way'.

"We, therefore", he says, "leaving, as far as we can, these two above mentioned courses or opinions, which we consider least probable, . . . following the *middle way*, shall answer with two propositions: The *first*, which is against the Imperialistic theory, states, that: The Roman Pontiff by virtue of his own office –iure prin-

¹³⁷ Cfr. PASTOR, *History of the Popes*, T. II, p. 7 ff. Also E. NYS, *loc. cit.*, p. 75: "The Order of Dominicans had generally been faithful to the Holy See. Its traditional education proved this, and the names of eminent members, such as that of Juan de Torquemada, appeared in the first rank of the champions of the rights of the Pope against the pretensions of the Councils of Basel and of Florence". V. CARRO, *op. cit.*, pp. 319-ff., and J. MA. GARRASTACHU, "Los Manuscritos del Cardenal Torquemada En La Biblioteca Vaticana", in *Ciencia Tomista*, Vol. XLV (1930) pp. 188-217 and 291-322.

cipatus sui— has a *certain* jurisdiction in temporal matters in the whole Christian world ... And the *second*, against the Papalist opinion, affirms that: although the Pope has in a certain way —aliquo modo— jurisdiction over temporal affairs in the whole Christian world, yet this is not as ample, full and extensive, as the followers of the second extreme opinion maintain and hold, but only in so far as it is necessary for the preservation of the spiritual good, or as it is required by the needs of the Church, or by the pastoral duty of correction of sins ...".¹³⁸

Torquemada, therefore, and Vitoria shall do the same, denies all kinds of 'direct' temporal power *in the Pope as such*; but, at the same time, admits in the Supreme Pontiff the 'right of intervention' in civil and political matters —iurisdictionem aliquam in temporalibus— as a result —*ex consequenti*— of his sovereign spiritual authority. The Pope can, thus, act 'proprio iure', or by his own authority, in everything, whether spiritual or temporal, in so far as it is necessary for the defense of the Church and of her sovereign rights. "Although the Roman Pontiff 'iure Papatus', as we have said before, has no power *regularly and directly* as extensive *in temporal things* as in spiritual matters, nevertheless, he has also power in temporal things *as a result* of the spiritual authority —*ex consequenti*—, and of his own right —*proprio iure*— in so far, namely, as it is necessary for the conservation of spiritual things, the direction of the faithful towards their eternal salvation, the correction of sins, and the preservation of peace within the Christian people".¹³⁹

Our Theologian attributes to the Pope supreme and direct spiritual power over all the faithful in general, and over the council in particular. At the same time he strongly objects, and, in fact, refuses to grant the Supreme Pontiff any temporal power whatsoever, except indirectly and 'quasi per accidens', through the spiritual and supernatural order, 'via spiritali seu supernaturali', wherein, he says, the Pope has the power to intervene in the government of all nations, and in the administration of temporal matters, whenever such an action may be considered necessary, precisely in virtue of his own supreme spiritual power, or, as he says more correctly in perfect scholastic fashion, 'ex consequenti',

¹³⁸ *Summa De Ecclesia*, Lib. II, c. 113, Salamanca, 1560, p. 395.

¹³⁹ *Ibid.*, c. 114, p. 398.

i.e., as a result of the self-sufficiency and perfection of the spiritual authority of the Universal Church.¹⁴⁰

Cardinal Cajetan's Exposition

This same doctrine was later on followed and further developed by the most influential Dominican Cardinal *Thomas de Vio Cajetan* (1469-1534).¹⁴¹ Through his famous and commonly accepted trichotomy he formally parted from the medieval conception of universality of power in both the Pope and Emperor. One group of non-Christians, which according to him included the heathen together with heretics and jews, is under the power of Christian rulers, civil or ecclesiastical, '*iure et facto*'; other is only '*iure sed non facto*', and a third group is in no way, '*nec iure nec facto*', subject to either the Emperor or the Pope.¹⁴² Thus, power cannot be universal.

With this objective limitation of power in mind Cajetan goes on to define, in few but clear and precise words, the relation of civil and ecclesiastical authorities in his *Antologia tractatus De Comparatione Auctoritatis Papae Et Concilii*. Following Torquemada's line of thinking he states that the power of the Pope is

¹⁴⁰ Cfr. *Ibid.*, the whole chapter 114. It seems, however, that Torquemada, under the influence of the historical events of his time, went beyond the limits also of the true and real papal 'power of intervention', especially in the matter of deposition of princes. In the fourth proposition, for instance, he writes thus: "The Roman Pontiff seems to have also jurisdiction in temporal matters, because he cannot only punish with ecclesiastical censures the secular princes found at fault with their administration, but also depose them if they are found to be notably negligent therein". *Ibid.*, c. 114, p. 401.

¹⁴¹ The Following incident, reflective of the sudden reaction of his opponents, can greatly help us form an idea of Cajetan's influence, particularly in the line of papal power. With the occasion of the struggle between Luise XII of France and Pope Julius II, Cajetan, General at the time of the Dominican Order, wrote a book entitled *De Auctoritate Papae Et Concilii*, about the year 1511. This book was received in Pisa just when the four schismatic Cardinals were about to open their conventicle. The Cardinals sent it to the University of Paris to get it examined and refuted there, with the following explicit remarks: "We send to you a book or pamphlet suspicious and full of injurious remarks against the Councils of Constance, of Basel and of this our own, and also against J. Gerson, eximious defender of the Church, written by a certain friar called Cajetan, man of audacity and dangerous, who must be punished according to his fault". The book was judged by J. Almain, disciple of the nominalist J. Mair. On Cajetan's side in the same University was P. Crockaert, Vitoria's own professor at the Sorbone. Cfr. V. BELTRAN DE HEREDIA, *loc. cit.*, in *Cien. Tom.* Vol 56, (1937), p. 30.

¹⁴² Cfr. *Commentary in II-II*, 66, 8 (Leonine Ed. t. IX, p. 94).

spiritual and ordained to the supreme and ultimate end of man, for whose reason it has the following two characteristics: first, it is not direct with respect to temporal things, and secondly, it is extended to the temporal only in view of the spiritual.

Because of this principle, Cajetan says, the following two statements could both be affirmed, namely: that the Pope has and that he hasn't supreme power over temporal matters, provided, however, they are properly understood, for the first is true in so far as the temporal is ordained to the spiritual, and in no other way. "Because the power of the Pope", he writes, "is direct with regard to spiritual things related to the supreme end *simpliciter* of the human race; therefore, there are two characteristics of his power, one of not being direct with regard to temporal things; the other of being, with regard to temporal things related to spiritual things. This is because everything, including temporal matters, ought, without any doubt, to be ordained to the highest end by him whose function it is to direct all men to one end, and such is the Vicar of Christ. The first follows logically from the nature of his power.

"Accordingly, both things could truly be affirmed of the Pope: that he has supreme power in temporal matters, and that he has no supreme power over temporal matters, because both are true, provided they are properly understood. Thus the affirmative is true if understood 'in order to the spiritual', and the negative also if we add: 'directly or over temporal things as such'".¹⁴³

In his commentary on the *Summa Theologica* with reference to the following passage from St. Thomas Aquinas: "The secular power is subject to the spiritual power as the body is to the soul; for this reason there is no usurpation of power if the spiritual superior intervenes in the temporal order with regard to things in which the secular power is subject to it or which are ceded to the spiritual by the secular power",¹⁴⁴ Cajetan develops further this idea, giving us in few but exact words his final thought on the problem of the relations of State and Church, through the use of the analogy of body and soul.

¹⁴³ *Apologia*, Ed. Roma, 1936, nn. 639-640, p. 270.

¹⁴⁴ II-II, 60, ad 3um.

"The soul", he writes, "governs the body in a triple order of causality: by efficient causality, for it is the cause of the corporal movements of the animal; by formal causality, for it is the form of the body, and by final causality, for the body exists for the soul. It is also the same, proportionately, with the spiritual power in relation to the secular power: the power which disposes of spiritual things has a formal part to play in relation to the power which disposes of secular things; the latter are ordered to spiritual and eternal things as to their end; and since the highest end corresponds to the most exalted agent, it is, therefore, for the spiritual power to move and direct the temporal power and all that pertains to it to the supreme spiritual end.

"Hence, it follows that by its very nature, the spiritual power has authority over the temporal power in view of the spiritual end; such are the things in which the temporal power is subject to the spiritual. And this is what St. Thomas meant with the words: 'with respect to things in which the secular power is subject to the spiritual power', signifying thereby that the secular power is not completely and in every respect subject to the spiritual power. Consequently, we should obey, for instance, in civil affairs the Governor of the City, and in Military matters the Commander of the army, rather than the Bishop, who has no business to meddle in such matters unless in relation to spiritual things—*nisi in ordine ad spiritualia*—. But should anything whatsoever in temporal things in any way jeopardise eternal salvation, the prelate then intervening in that domain, by a command or a prohibition, is not thrusting his scythe into another man's harvest, but legitimately exercising his own authority: because all secular powers are subject on that score to the spiritual power. Such is the meaning to be given to the first paragraph of St. Thomas' answer in which he shows in what way the spiritual power is judge of temporal things. The second paragraph: 'with respect to things which are ceded to the spiritual by the temporal power', refers to prelates who, by the gift of secular princes, in many places possess both jurisdictions".¹⁴⁵

¹⁴⁵ In II-II, 60, 6 ad 3um. (Leonine Ed. T. IX, p. 33). Cfr. also *Ibid.*, 1, 10; 10, 8; and 43, 8

Conclusion

This was in general the status of the problem of Church and State relations before Vitoria pronounced his famous and influential READINGS ON THE POWER OF THE CHURCH and ON THE INDIANS recently discovered. Before the sixteenth century, as we have already seen, very few writers were found completely free from the medieval universalistic conception of society. After the second half of the same century, however, everybody, with the exception perhaps of one Solorzano Pereira,¹⁴⁶ were on Vitoria's side, either as convinced and professed followers or, at least, as sincere sympathisers.¹⁴⁷

With this historical and ideological background in mind, we can now more easily understand Vitoria's teaching and appreciate better the change it really brought about.

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¹⁴⁶ This reluctant Portuguese theologian after giving in his *Disputatio De Indiarum Iure*, Madrid, 1633, Lib. II, c. 23, a long list of authors who, according to him, denied the Pope's temporal power, he adds: "In spite of these, I still consider as more true and common the contrary opinion which grants the Roman Pontiff the use of both the spiritual and temporal swords, and not only the indirect power and authority, but also, when there is a just and sufficient cause — *iusta causa exigenti* —, the direct power...". Quoted by V. CARRO, *op. cit.*, Tom. II, p. 49.

¹⁴⁷ Among the immediate disciples and followers of Vitoria the most renowned and outstanding are the following: Domingo de Soto (+1560), Melchor Cano (+1560), Martin de Azpilcueta — Dr. Navarrus — (+1586) Domingo Bañez (+1604), Diego de Covarrubias Leyva (+1577), and so on and so forth.