

Church and State Relations According to Francisco de Vitoria

Introduction

Generally speaking, the Vitorian doctrine in the matter of State and Church relations is based and founded upon the Thomistic political philosophy of the Middle Course followers, rather than upon the exaggerated theories of Caesaropapism or Papocaesarism.

In order to get an exact and clear idea of Vitoria's reasoning in this transcendental but complicated question, we must bear in mind, first of all, his teaching on perfect society in general as well as his view on the juridical and ethical perfection of State and Church in particular; and secondly, the fundamental historical and doctrinal principles upon which he has based the solution of this most intricate problem.

We shall now consider the first point. According to the writers before Vitoria, the perfect society was the medieval Christendom, which was composed of an Empire and a Church — *Regnum* and *Sacerdotium* — distinct from, but complementary to each other. Within this social framework, local entities, political as well as religious, were tied up in such a close unity that their identification and individual boundaries disappeared almost completely. As a consequence of this unity, the limits of the civil and the ecclesiastical power were likewise vague and ill-defined. Yet, both rested on the same ultimate basis of divine authority — theocracy. The principle of unity was well brought out. The

distinction of orders however, was greatly confused, and at times, completely obliterated.

In the medieval kind of universal community, every lower end and intermediate social group were so close and knit together with the immediately higher end or wider group that their ordination and subordination to them, and eventually to the highest felicity of the widest community, was incompatible with, and even destructive of, all kinds of independence of intermediate units.

Although it was in sharp contradiction with actual facts and popular opinions, this theoretical thought of exaggerated concentration at a single point of the whole life of the community, was so firm and widely accepted that its influence has forced some writers like Dr. O. Von Gierk to conclude that "the very idea of the state. . . . was enfeebled and well-high suffocated by the consequences that were flowing from the medieval idea which itself was being formulated by theory".¹

Vitoria, however, by rejecting the medieval theories of Pope-Emperor relations, while retaining the traditional unitary conception of society in its salient points — State, Church; Community of Nations, Universal Church; Christian World — *maintained the principle of duality under unity*, and defended the co-existence of a double sovereignty; the sovereignty of the State in the temporal realm, and the sovereignty of the Church in the spiritual domain.

Contrary to the modern theory of the state-controlled Church, as deduced from the old Aristotelian idea of the City-State, he conceded also the full independence of both the State and the Church.

In the Vitorian conception, therefore, the medieval Christendom became the 'Christian World', with the world-wide community of nations and the universal Church as its integral parts. Within this new Vitorian framework of humanity, the State and the Church are also united, but at the same time, they remain distinct from each other, differing essentially, not only in origin, but also in nature, purpose and government. Yet, according to him, both are perfect societies ordained by God — the Church directly by

¹ *Political Theories of the Middle Ages*. Translated by F. W. MAITLAND, Cambridge, 1958, p. 95.

divine law, the State indirectly through the natural law — and each is also supreme within the sphere of its competence. Intrinsically therefore, the State and the Church are not in opposition. They are, rather, complimentary to each other. But this point has been extensively, and, we believe, sufficiently dealt with in a previous article (1a). The second, however, still calls for further study, which we intend to do presently.

The Principles of Distinction, Concord and Order: Fundament of Vitoria's Solution

It is our conviction that Vitoria's success in the treatment of this most intricate problem of State and Church relations has been principally due to his unflinching fidelity to, and masterly application of the following fundamental principles of Thomism, upon which he based the entire solution: first, the principles of *distinction* without opposition nor separation; secondly, the principle of *unity* without identification nor confusion; and lastly, the principle of *harmonious cooperation* without essential or absolute subordination. By the light of these basic Thomistic principles of *distinction, concord* and *order*, which the Angelic Doctor himself had previously used in reference to the natural and supernatural orders,² Vitoria was able to strike and maintain a perfect balance between the distinction of the Church and the State as two independent social and juridical units on the one hand, and the unity and even subordination of these two societies as integral parts of the universal ethical community of the 'Christian World', on the other.

In order to understand better our author's doctrine, it is necessary to take into account what was a beautiful historical reality in Vitoria's native country, namely — the picture of an ideal State ready and willing to acknowledge and give effect to all the rights of the spiritual society.

Although this ideal Catholic State is no longer a common episode in the world of today, Vitoria's teaching will always remain true and equally applicable to all perfect societies, Catho-

^{1a} Cfr. our article "Church and State Relations", in UNITAS, Vol. 37, No. 1, pp. 68-116.

² Cfr. I-II, 91,1; II-II, 10,10 and 147,3; III,8,1 ad 2um; *Contra Gent.* III, cc, 76-77; *De Reg. Princ.*, Lib. I, c. 15, etc. etc. etc.

lic or not,³ for it enunciates the fundamental rights and duties of both Church and State as springing from their very constitution as perfect societies, intrinsically complete and self-sufficient, and extrinsically independent.

The same principles, therefore, that determine the mutual relations between Church and State in a well-ordered but limited commonwealth, govern also, according to Vitoria, the attitude of the Universal Church towards its counterpart the world-wide natural Community of Nations within the 'Christian World', for the relation between this ethnarchic secular authority and the Church corresponds exactly to that traced by Vitoria as ideally obtaining between the temporal and spiritual powers as such.

A perfect balance between the two sovereignties of Church and State can only be established through a careful application of the Principles mentioned above. These two 'self-sufficient' and 'perfect' societies can live together and coexist with each other, only because they do not belong to the same order. Their essential distinction assures their full independence. This fact has been amply demonstrated by Vitoria with reasons both philosophical and traditional.

Following the footsteps of the Popes of the first millenium, when the papacy had not yet achieved political hegemony in the family of Western peoples, Vitoria carefully distinguished between the two spheres of activity of both powers, thus literally accepting the view of Pope Gelasius I (492-496), who, in a letter to Emperor Anastasius, wrote thus:

"There are indeed, most august Emperor, two powers by which this world is chiefly ruled: the sacred authority of the Popes and the royal power. Of these the priestly power is much more important, because it has to render

³ To confirm this statement we may cite Vitoria's preference for the words 'temporal' and 'spiritual' instead of 'State' and 'Church', whenever he deals with their relations, thereby generalizing the whole question; and also because Vitoria himself has studied directly this question of the Church's right of intervention in the affairs of a pagan State, not only in his Reading *On The Powers of the Church*, but also in his *On the Indians* recently discovered, which he conveniently divided into three parts, the last of which reads as follows: "In the third part — we shall inquire — what rights these sovereigns, — the sovereign King of Spain Charles V — and the Church, obtained over them — the Indian States — in matters spiritual and touching religion". Cfr. *De Indis, I, Intro*, pg. 284. Ed. P. LUIS G. ALONSO GETINO, Madrid, 1934.

account for the kings of men themselves at the Divine tribunal. For you know, our very clement son, that although you have the chief place in dignity over the human race, yet you must submit yourself faithfully to those who have charge of Divine things, and look to them for the means of your salvation. You know that it behoves you, in matters concerning the reception and reverent administration of the Sacraments, to be obedient to the ecclesiastical authority rather than to control it. So in such matters you ought to depend on ecclesiastical judgment, instead of seeking to bend it to your own will. For in matters pertaining to the administration of public discipline, the bishops of the Church, knowing that the Empire has been conferred on you by Divine instrumentality, are themselves obedient to your laws, lest in purely material matters contrary opinions may seem to be voiced, with what willingness, I ask you, should you obey those to whom is assigned the administration of Divine mysteries? So just as there is great danger for the Popes in not saying what is necessary in matters of the Divine honour, so there is no small peril for those who are obstinate in resistance (which God forbid) at the time when they ought to be obedient".⁴

By referring to this text, Vitoria obviously recognizes, together with the Pope, the existence of two independent authorities, to each of whom entire obedience is due in their respective planes. At the same time however, he also makes it clear that he does not regard the two authorities as being of the same quality or as operating in parallel planes. For him, the Church is a spiritual and supernatural society directly ordained for the eternal salvation of its members, while the State is a human and natural society directly ordained for the temporal good of all men. Church and State, therefore, differ radically as to purpose, order and means. The scope of civil authority is then, the temporal welfare of her subjects, while the attainment of eternal felicity, or the good ordering of men's relations with Almighty God, both in this and in the life to come, is the exclusive business of the

⁴ Cfr. S. EHLER & J. MORRAL, *Church and State Through the Centuries*. A Collection of Historic Documents with Commentaries, London, 1954, pg. 11. Many other names from the list of medieval Popes have been also cited by our author in this connection, like ex. gr. Nicholas I, Gregory VII, Innocent III, etc., but we feel that this one instance alone suffices for our present purpose.

Church.⁵ Their essential distinction and mutual radical independence in relation to their respective proximate ends is thus clearly and sufficiently stated.

It is the contention of Francisco de Vitoria that since both societies are self-sufficient and perfect, and therefore, fully autonomous and sovereign within their own respective orders and spheres of activity, it is logically concluded that neither is ordained to the other *per se* and in an absolute manner.⁶ It does not follow from this, however, that they are separated and still less antagonistic, nor are all kinds of subjection to, and intervention of, the Church in matters civil and temporal thereby automatically removed, because there are necessarily parts in man's life to which both, Church and State, can rightly claim some interest and jurisdiction. And so it follows that if man is to be guided and governed properly towards his greater good, and that of society as well, it is indispensable for both perfect societies to unite their efforts and work together in these — now called 'mixed' — matters with order, harmony and cooperation.⁷

This concord between the two powers should by no means be limited to a purely external relation or a negative function. It should rather be positive in nature and vitally intrinsic; and as Vitoria indicates, it should include in one way or another, some kind of true and real subordination of the State to the Church, not only in the order of perfection, but in the order of jurisdiction as well.

However, since these two powers are supreme and independent, and the matter over which they rightly exercise jurisdiction is oftentimes common ground, disagreement and conflict may easily occur. In such cases, only one of them can prevail, and

⁵ Cfr. *De Pot. Eccle.*, I, q. 2a, *Introd.*, pg. 19; *Ibid.* q. 3a. p. 3a, n. 8, pg. 69; *De Pot. Civ.*, n. 15, pg. 196; *De Matrim.*, p. 2a., n. 1, pg. 471, and n. 2, pg. 477; in II-II, 42, 2; II, n. 1, pg. 299; also 47, 10; -II, pg. 368; and 60, 6-III, n. 2, pg. 54. *De Pot. Eccle.* I, q. 1a., n. 5, pg. 9.

⁶ Cfr. *De Pot. Eccle.*, I, nn. 3-13, pgs. 8-18.

⁷ Cfr. *Ibid.*, 2. 3a., p. 3a, nn. 9-10, pgs. 71-75. This same idea is briefly expressed by a modern author while commenting upon this text of Vitoria: "Debe haber alguna unión y concordia entre ambos poderes, porque los súbditos son comunes y hay materias que interesan bajo aspecto diverso a ambos poderes, y sería violar la justicia con respecto a los súbditos al ponerlos en conflicto de legislaciones y dañando sus conciencias". C. HAMILTON, *Filosofía Jurídica De Fr. F. De Vitoria*, in *Anuario De La Asociación...* Vol. VIII, 1948, Madrid, pg. 245.

thus be entitled to exercise jurisdiction, because "there is no authority that is not from God", says Vitoria with the Apostle,⁸ and since 'the existing authorities are appointed by God', there must also be order and gradation between these two authorities, for "God has made everything 'with order, weight and measure' ". But the Church by the explicit will of her Founder, was given a nobler and higher end, i.e., man's eternal and ultimate welfare. Therefore she cannot possibly be the secondary power, which in these or similar cases of conflict should be prevailed upon, "since man's spiritual values are superior to his material and temporal goods or interests".⁹ Hence, it is the duty of the State to give way to the rights of the Church.¹⁰

In this manner, the Pope, who has 'no mere temporal power' at all, can, however, intervene, as a matter of fact, in everything temporal, in so far as it can be considered necessary for the supernatural good of the spiritual society whose supreme authority is self-sufficient and perfect.¹¹

Statement of the Problem

This summary of the fundamental lines of Vitoria's exposition of Church and State relations indicates clearly our author's strong inclination for concrete problems and practical solutions. Instead of arguing in this connection, for example, about the intrinsic metaphysical perfection of both State and Church, or of their intrinsic essential differences as perfect juridical societies, he rather prefers to discuss, in a less abstract and speculative manner, about the place that both should obtain in the hierarchical ladder of perfect societies while in the exercise of their own respective juridical powers. Thus his comparison of these two societies is not in the line of intrinsic perfection but in that of external jurisdiction.

"I have decided to treat principally of two questions: first, whether civil power is subject to spiritual power; and secondly,

⁸ *Rom.* 13:1.

⁹ Cfr. C. HAMILTON, *op. cit.*, pg. 245.

¹⁰ Cfr. *De Pot. Eccles. I.*, 2 3a., p. 3a., n. 1, pg. 60-61.

¹¹ Of course a similar affirmation could also be made concerning civil authority, for, although this is purely temporal, yet, in defense of its own trampled rights, it could likewise have the right to intervene, sometimes, in ecclesiastical affairs.

whether ecclesiastical officers are subject to civil power. We have then, this question: is spiritual power to be set over temporal or civil power? And since — as we suppose for the time being, and as we shall later on prove — the Pope is sovereign with respect to all ecclesiastical power, this question also arises: is the Pope in like manner superior to all temporal princes and powers?

*"I shall not revive here the dispute as to which of the two sorts of power is the more perfect; for it is indubitable that the spiritual is the more excellent, the more eminent, and possessed of the supreme dignity; since different faculties, like different arts and forces, and like all things which serve a purpose, are to be valued according to the purpose which they serve; and since the purpose of spiritual power excels that of temporal power to the same extent that perfect blessedness and ultimate felicity excel human or earthly felicity... Spiritual power, then, is in every way greater and more august than temporal power, and should be accorded a veneration and obedience in like manner greater than the veneration and obedience accorded to temporal power. Therefore, passing over this comparison of the two sorts of power, let us turn to THE OTHER QUESTION, namely: is the Pope superior to civil powers, in jurisdiction and in authority?"*¹²

How We Propose to Solve It

Since the solution to this question depends upon a *two-fold* consideration — *juridical* and *ethical* —¹³ of society, we propose to answer it separately, dividing Vitoria's '*propositions*' in two groups, in order to avoid the apparent contradiction that some authors have allegedly observed in his treatment of the problem of Church and State relations. Besides, this procedure of treating every problem juridically, as well as theologically and morally, is quite in consonance with the character of our 'spiritually minded jurist and juridically inclined theologian', and his customary method of examining every question, even the most material, presented to his consideration, under this three-fold role of theolo-

¹² *De Pot. Eccles.* I, 2. 3a., *Introd.* and n. 1, pgs. 60-61.

¹³ Cfr. UNITAS: *Church and State Relations*; Vol. 37, no. 1, pp. 68 ff.

gian, jurist and moralist. And this present one of Church and State relations is certainly not an exception.¹⁴

We would like, however, to caution our readers against one possible danger in this procedure of ours. The solution to a problem of this nature by either the jurist or the theologian alone, i.e. separately taken, warns Vitoria repeatedly, would be fragmentary and, therefore, unacceptable. So, in order to avoid a similar inconsistency, the two conclusions, which in our essay are going to be treated separately, should by no means be taken as two complete, independent and separate solutions to two distinct realities in two different orders, but rather as two parts of the same solution to the selfsame reality or entity considered in two different orders; or, in other words, as two partial solutions of one only problem considered under two different formalities or points of view.

In accordance then, with the threefold role of Vitoria's treatise, the order of which we intend to follow, we have divided the whole question in two parts, covering the three aspects of his study: the juridical, theological and moral, with the understanding, that only the combined solution will be a complete and perfect, and therefore satisfactory, answer.

I

IN THE NATURAL JURIDICAL ORDER

Introduction

Taking for granted, as already proved,¹⁵ the question of the primacy of the spiritual over the temporal and of the Church

¹⁴ This fact has even been appreciated and duely stressed by the renowned Protestant internationalist J. Brown Scott, who, while commenting Vitoria's teaching on Papal intervention in temporal affairs, said explicitly: "The matter might be looked upon from a twofold standpoint: first, from the *spiritual*... and second from the standpoint of *temporal jurisdiction*.... It will be recalled," continues the same author, "that, in denying to the Pope (at the beginning of his treatise *On The Indians*) jurisdiction in matters material and temporal...., Vitoria was careful to reserve from the denial the spiritual domain. Here, however (that is, at the end of the same Reading of *De Indis*), he applies the distinction on behalf, and to the benefit, of Christianity", granting the Pope the right to intervene in temporal affairs in case of necessity, thus arriving at a perfectly balanced solution. Cfr. J. BROWN SCOTT, *The Spanish Origin of International Law, Part I. Francisco de Vitoria and His Law of Nations. Carnegie Endowment for Intern. Peace*, Oxford, London, 1934. p. 154.

¹⁵ Cfr. UNITAS, Vol. 37 No. 1 pp. 68 ff.

over the State, in the line of dignity, perfection and nobility, Francisco de Vitoria sketches first of all, in his Reading *On The Power Of The Church*, the two opposite opinions. Then, in *eight* brief but clear and convincing *propositions*, he summarizes his own solution to the problem of jurisdictional superiority.¹⁶ For the moment, only the first five will be examined, since there alone is the problem solved according to juridical standards, considering both societies formally as such. The relativity of these statements and their limitation to a purely logico-natural order is clearly brought out, not only in the argumentation used for their confirmation, but also in their exact formulation made precisely in accordance with the 'ordinary' juridical development of society in general.

Distinction of Powers

In this specific sense, Vitoria *first* states that '*the Pope is not the lord of the whole world*'.¹⁷ And to corroborate it, he adduces some texts from Sacred Writ,¹⁸ wherein Our Lord seems to have forbidden His disciples to have dominion not only of jurisdiction but also of ownership, as St. Bernard himself confirms.¹⁹

¹⁶ Cfr. *De Pot. Eccles.* I, q. 3a. p. 3a., n. 1, pg. 62: "But we, tempering the force of the two conflicting opinions, shall answer the question (of whether the Pope is superior to civil powers in jurisdiction and in authority) by setting forth several propositions".

¹⁷ Cfr. *Ibid.*, n. 2, pg. 62. Also *De Indis*, I, nn. 4-5, pgs. 292-94; and n. 19, pg. 304.

¹⁸ Cfr. *Matt.* 20:25-28: "You know that the rulers of the Gentiles lord it over them, and their great men exercise authority over them. Not so is it among you. On the contrary, whoever wishes to become great among you shall be your servant; and whoever wishes to be first among you shall be your slave; even as the Son of Man has not come to be served but to serve, and to give His life as a ransom for many". Cfr. also *Luke* 22:25-26.

¹⁹ Cfr. *De Consideratione*, L. II, c. 6: "For what did the Holy Apostle transmit to you, other than this? 'That which I have, he said, I gave unto you'. And what is this gift? One thing I know: it is not gold or silver. You may claim the latter for any other reason that you will, but not by Apostolic right; for he was not able to give you that which he himself did not possess; but that which he had, he gave, namely, the care of the Churches. And what does he say concerning worldly dominion? Hearken to his own words: 'Neither as being lords over God's heritage, but being examples to the flock' (I Peter, 3). And lest you should chance to think that this admonition was given merely by reason of humility, and not in the spirit of truth, remember the words of the Lord, in the Gospel: 'The princes of the Gentiles exercise dominion over them'. Clearly, worldly dominion is forbidden to the Apostles. How is it then, that you dare either to usurp the office of apostle by means of dominion, or to seize dominion in the name of the Apostles? One or the other of these two things (that is, either the office of apostle, or dominion), is expressly forbidden to you. If you wish

Yet it was alleged that since Christ as man was the temporal ruler of the whole world, His representative and Vicar on earth should likewise have similar domain. But we know from Christ Himself that His 'Kingdom is not of this world'.²⁰ And the Supreme Pontiffs themselves, like Popes Melchiades and Nicholas I, says Vitoria, have explicitly admitted "that dominion over certain lands has been granted them by the Emperor", and not by Christ.²¹ But "even if we grant that He was temporal Lord, adds Vitoria, it is guess-work to say that He bequeathed that power to the Pope (or the Emperor), there being no mention of any such thing in the whole Bible".²² And even St. Thomas, while commenting on these words of Christ, "expressly says that Christ's Kingdom is not temporal or such a Kingdom as Pilate conceived, but a spiritual kingdom, in as much as Our Lord declares in that passage: 'Thou sayest that I am a King. To this end was I born and for this cause came I into the world, that I should bear witness unto the truth'. "Therefore", concludes Vitoria on his own, "it is a mere fiction to say that by express grant of Christ, there is one Emperor or one Pope lord of the world".²³

Notwithstanding this interpretation, some churchmen and jurists strongly held and 'vehemently asserted',²⁴ that the Pope had "full jurisdiction in temporal matters over the whole earth", to the extent that, "even the power of all secular princes comes to them from the Pope".²⁵ Vitoria claims that in this respect, some of these writers have made singular remarks, as for example: "that the power of the Emperor and all other princes is subdelegated as regards the Pope, being derived from God through the medium of the Pope, and that all their power is dependent

to possess both at the same time, you shall lose both. Do not suppose that you are exempted from among the number of those of whom God said: 'They have reigned, but not by me; princes have arisen and I knew them not'. The Apostolic rule prohibits dominion, and proclaims the obligation of service. Go ye, therefore, out into the field; the field is the world; and go ye not as lords, but as stewards of God".

²⁰ *John* 18:36. Vitoria's Teaching on this point of Christ's temporal power is admittedly wrong... but his argument is valid.

²¹ *Cfr. De Pot. Eccles.* I, q. 3a., p. 3a., n. 2, pg. 63.

²² *De Indis, I, de tit. non leg.*, n. 1. pg. 320.

²³ *Ibid*

²⁴ *Cfr.* Our article *Church and State Relations Before Francisco de Vitoria*, PHILIPPINIANA SACRA, Vol. XIV. No. 42 pp. 439 ff.

²⁵ *Cfr. De Indis, I, de tit. non leg.*, n. 2, pg. 323.

on the Pope, and that Constantine gave lands to the Pope in recognition of his temporal power,²⁶ 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".²⁷

Vitoria's categorical answer to these and similar statements of papalist writers is that "the Pope is not civil or temporal lord of the whole world in the proper sense of the words 'lordship' and 'civil power'",²⁸ because "if Christ the Lord had not temporal power... much less has the Pope, he being Christ's Vicar".²⁹ This proof is, in Vitoria's 'expressed opinion', sufficient, "for no lordship can come to him save either by natural law, by divine law or by human law".³⁰ The assertion, therefore, of such lordship is "ungrounded and arbitrary" in the case of the Pope, as well as in that of the Emperor, since "it is certain that none comes to him by natural or by human law, and none is shown to come to him by divine law".³¹

But even "assuming that Christ had this power, it is manifest that it has not been entrusted to the Pope", — for, although "the Pope is no less Vicar of Christ in spiritual than in temporal matters", yet "the Pope has no spiritual jurisdiction over unbelievers, as even our opponents admit, ... therefore neither does he have it in temporal matters. Hence, there is no ground in the argument that because Christ had temporal power over the world, it follows that the Pope possesses the same power. Christ undoubtedly had spiritual power over the whole world, not less over believers than over unbelievers... yet, the Pope has not that

²⁶ The document '*Donation of Constantine*' is now universally regarded as a palpable forgery. Since the sixteenth century it has been generally admitted to have been authored by some Frankish writer during the century between 750-850.

²⁷ *De Indis*, I, *de tit. non leg.*, n. 2, pg. 323-324: "Mirabilia dicunt". Cfr. also *De Pot. Eccle.* I, q. 3a., p. 3a., n. 1, pg. 61.

²⁸ *Ibid.*, n. 3, pg. 325. And *De Pot. Eccle.* I, n. 2, pg. 62.

²⁹ *Ibid.*

³⁰ *Ibid.*, n. 3, pg. 326.

³¹ *Ibid.*

power over unbelievers",³² but "only within the church".³³ Therefore, "there is no force in the consequence: Christ had temporal power over the world; therefore the Pope has it too", for "Our Lord's injunction to Peter, 'Feed my sheep' (John 21:17), clearly shows that power in spiritual and not in temporal matters is meant...".³⁴

The power of the Church, then, over temporal and civil matters is coextensive with her spiritual authority and supernatural purpose. Papal authority is, likewise, limited to 'those to whom the Gospel has been preached' and are, thus, 'within the pale of salvation'. Properly speaking therefore, papal powers are purely spiritual³⁵ and so, in the mere natural order, no temporal jurisdiction over political rulers can be attributed to the Pope as such.³⁶ This, says Vitoria, is the conclusion of St. Thomas in his commentary to the text of St. Paul (I Cor. 5:12): 'For what have I to do with judging those that are outside?'. Whereupon, St. Thomas says: 'The prelates have received power only over those who have submitted themselves to the faith'. "Hence", concludes Vitoria, "it appears clearly that St. Paul declares it not his business to pronounce judgment on unbelievers...".³⁷ Neither the Pope, therefore, can claim authority to judge and punish those beyond the 'pale of salvation', or, as St. Paul said, those 'that are outside', for "it would be a strange thing that the Pope, who cannot make laws for unbelievers, can yet sit in judgment and inflict punishment upon them".³⁸

Outside the spiritual sphere, therefore, the Pope can do nothing, because "they who are not Christians can not be subjected to the judgment of the Pope, for the Pope has no right to condemn or punish them other than as Vicar of Christ. But as the 'papalist' writers themselves admit, they cannot be punished just because they do not receive Christ, i.e., only for the sin of infidelity. Neither can they be punished for not

³² *Ibid*

³³ *De Pot. Eccle.* I, q. 3a., p. 3a., n. 2, pg. 63. For a brief interpretation of this dictum consult *De Pot. Papae Et Concilli*, n. 18, pg. 269.

³⁴ *De Indis*, I, *de tit. non leg.*, n. 3, pg. 326-327.

³⁵ Cfr. *Ibid.*, nn. 7-12, pgs. 333-343.

³⁶ Cfr. *Ibid.*, n. 16, pg. 348.

³⁷ *Ibid.*, n. 16, pg. 349.

³⁸ *Ibid.*, n. 16, pg. 350.

receiving the judgment of the Pope, for the latter presupposes the former".³⁹ They must first enter into the supernatural order, through the Church, so that the Pope may have authority over them.

In conclusion then, "it becomes clear that many jurisconsults are in error, for they hold that the Pope is lord of the world in the strictly temporal sense; and that he possesses a temporal authority and power of jurisdiction throughout the world and over all princes. In my opinion, this statement is indubitably and manifestly false, though the authorities cited declare it to be manifestly true. I believe that it is merely a fabrication intended as flattery and adulation for the Popes. More sagacious jurisconsults hold the opposite view on this point. Even St. Thomas himself never attributed such dominion to the Pope. although he was a most zealous supporter of the papal authority".⁴⁰

In brief, "it is certain that such a belief has no foundation in the Scriptures; neither do we read anywhere that this power was given to the Apostles by Christ, that they exercised it, or that they spoke of possessing any such power; and furthermore, the Pope himself has never recognized the existence of the power in question, but has testified to the contrary in many statements, from which we have already drawn several quotations".⁴¹

Independence of Both Powers

From this implicit but definite assertion of the principle of differentiation and essential distinction of powers, Vitoria logically deduces his *second* conclusion, wherein he goes further and affirms a strict and absolute independence of civil from ecclesiastical power, in the sense that no civil power can depend constitutionally on the power of the Pope, as for instance, inferior ecclesiastical powers do. "*Temporal power is not derived from the Pope*", he says, "*as inferior spiritual powers are, for example, bishoprics, or curateships, or other spiritual powers*";⁴² because "nobody takes orders from his equal",⁴³ "nor gives what he does

³⁹ *Ibid.*, and *De Pot. Eccle.* I, 2. 3a., p. 3a., n. 2, pg. 63.

⁴⁰ *De Pot. Eccle.* I, q. 3a., n. 2. pg. 64.

⁴¹ *Ibid.*

⁴² *Ibid.*, n. 3, pg. 65.

⁴³ *De Pot. Papae Et Concilii, Intrd.*, pg. 214: "Par in parem non habet imperium", writes Vitoria quoting Roman Law.

not have".⁴⁴ Moreover, "the Pope himself is not a temporal sovereign"; therefore, the institution of Kings and Princes by the Pope is another fiction of the Papalists.⁴⁵ Vitoria contends then, that the attitude of these two distinct and independent powers towards each other in a purely juridico-logical order is one of harmonious mutual cooperation — a relation best suited to powers which, being *equal*, deal with each other not like *potestates inferiores*, but *sicut par in parem*.

It may also be concluded from what has been said above, as Vitoria actually does in the *third* proposition, that civil authority does not in any way depend on the *temporal power* of the Pope: "*Civil power is not subject to the temporal power of the Pope*".⁴⁶ We must, however, observe that Vitoria does not say '*to the Pope*', but rather '*to the temporal power, or sovereignty, of the Pope*', because, as he himself states, and we shall prove at length in the second part of this essay, "it is certain that all powers are subject to the Pope, by virtue of his spiritual power, which makes us all his sheep, while he himself is the shepherd".⁴⁷ Besides, "this submission to the Roman Pontiff", adds St. Thomas, "is necessary for salvation".⁴⁸

The reason put forward by Vitoria in confirmation of this 'obviously true' proposition is certainly valid. It is based upon civil society's juridical perfection. The temporal Republic or State, he says, is self-sufficient, complete and perfect in itself, and, therefore, independent from any other outside power of the same temporal nature, for otherwise it would not be complete and perfect. Besides, it cannot be proved 'in any way whatsoever'

⁴⁴ *De Pot. Eccle.* I, q. 3a., n. 3, pg. 65: "Nemo dat quod non habet".

⁴⁵ Cfr. *Ibid.*, n. 3, pg. 66: "I maintain that the Pope is not set over temporal kings and princes, even in the sense of creating or being able to create them; and I am as free from doubt with regard to this proposition as I was with regard to the first; although my opponents commonly assert that the Pope created all temporal power, delegating it and making it subject to his own authority. They claim, too, that the Pope made Constantine Emperor. But all these assertions are fictitious and highly improbable; neither are they supported by any reasonable argument, or by the testimony of any of the Fathers of the Church or even by the theologians. The fact is that certain legal commentators bestowed this power upon the Pope, because of their own poverty both of material possessions and of doctrine."

⁴⁶ *Ibid.*, n. 4, pg. 66

⁴⁷ *Ibid.*: "I do not say that civil power is in no way subject to the Pope..., but that it is not subject to him as temporal sovereign".

⁴⁸ *Contra Errores Graecorum*, II, 27. Cfr. BONIFACE VIII's '*Unam Sanctam*', as quoted in PHILIP. SACRA, Vol. XIV. pp. 442-444.

that the Pope possesses such a temporal power; therefore we hold the proposition as formulated.⁴⁹

The Pope as Such Lacks Temporal Jurisdiction

Three very important, and at times most controversial, corollaries can now be drawn from these conclusions. It follows logically from what we have just said, that the Pope has no jurisdictional authority, '*via ordinaria*', to judge and decide upon ordinary civil disputes arising among secular Princes, nor for instance, upon their rights or claims to hold certain territories or domains. Neither "is there reason for appealing to him in ordinary civil quarrels",⁵⁰ because the Pope, as proved above, is neither 'a temporal Lord', nor 'superior to Princes in a temporal sense', nor could he be regarded as being 'possessed of such secular power', as has been confirmed by the Supreme Pontiffs themselves, like Alexander III,⁵¹ Innocent III,⁵² and also St. Bernard,⁵³ among others. Consequently, Vitoria goes on in the second and third corollaries, that the Pope has no authority to depose secular Princes, 'even with due cause',⁵⁴ nor to ratify or repeal civil laws.⁵⁵

These limitations, however, must be understood, as Vitoria remarks, in a particular and restricted sense, as affecting only the '*ordinary power*' of the Pope, or in '*via ordinaria*', because, as we repeatedly say with Vitoria in several other instances, and as history has often confirmed,⁵⁶ the Supreme Pontiff can certainly intervene 'in some extraordinary cases', and do all these things, though not precisely 'by virtue of any temporal power',⁵⁷ nor as a juridico-natural entity, but rather because, and in virtue of his supreme spiritual authority: "*Sed ratione spiritualis prae-*

⁴⁹ Cfr. *De Pot. Eccle.* I, n. 4, pg. 67.

⁵⁰ *Ibid.*, n. 5, pg. 68.

⁵¹ C. 7, X, 4, 17.

⁵² C. 13, X, 2, 1.

⁵³ *De Consideratione*, Lib. 1, c. 6. Cfr. above, pg. 10, note 19.

⁵⁴ *De Pot. Eccle.* I, n. 6, pg. 69.

⁵⁵ *Ibid.*, n. 7, pg. 69. Cfr. also *De Indis*, I, de tit. non leg., n. 7, pg. 330 ff., and n. 16, pg. 348 ff.

⁵⁶ The cases of Pope Zacharias, who deposed the French King Childerich III, and Innocent III, who also deposed Sancho III of Portugal, cited by Vitoria, *Ibid.*, n. 19, pg. 87, are just two examples.

⁵⁷ *Ibid.*, n. 5, pg. 68.

cise".⁵⁸ 'Ordinarily' speaking, therefore, the Pope can do nothing in a purely natural order, for, in this temporal sphere, the State is also autonomous and independent as a perfect juridical society. His whole authority is spiritual and should, then, be always exercised in the supernatural order and in view of spiritual motives.

In the *First Reading On The Indians*, Vitoria, with the Angelic Doctor, teaches exactly the same doctrine. There, he explicitly states that Christ, and the same could proportionally be said of the Pope, has 'all kinds of power even in matters temporal', for it is known that Christ's dominion 'is not excluded in matters temporal'. However, this power is purely and necessarily supernatural in nature, since it is extended to civil matters only in so far as they are 'directly ordained to the spiritual good and the salvation of souls, that is, as far as they 'serve the aim of Redemption, apart from which he has none'.⁵⁹

"There is no mere temporal power in the Pope", Vitoria now concludes categorically in his *fourth* proposition.⁶⁰ This is his best and shortest formula; which is perhaps better than the 'indirect power' of John of Paris,⁶¹ and the 'ex consequenti' of Torquemada, for these latter bring with them the source of some confusion by at least suggesting the existence of two different powers in the Pope, which is precisely the opposite of what they mean to imply. According to our theologian, although the Pope has no real temporal power at all, his intervention in temporal and civil affairs is sufficiently assured and justified by the superiority of the spiritual authority, whose supreme manifestation and highest rank he holds.

To prove his statement, Vitoria, with St. Thomas,⁶² Torquemada⁶³ and Cajetan,⁶⁴ adduces several arguments based upon the

⁵⁸ *Ibid.*

⁵⁹ Cfr. *De Indis*, I, de tit. non leg., n. 1, pg. 319-20. Also DE SOTTO in *IV Sent.*, II, 28 ab.

⁶⁰ *De pot. Eccle.* I, n. 8, pg. 69: "In Papa nulla est potestas mere temporalis".

⁶¹ This formula was later on adopted and patronized by Card. Bellarmine, and since then has been commonly accepted by the Theologians.

⁶² Cfr. *II-II*, 40, 1; *De Reg. Princ.*, I, 14; *In Ep. Ad. Rom.* c. 13.

⁶³ Cfr. *Summa De Ecclesia*, Lib. II, cc. 113, 114, 115.

⁶⁴ Cfr. *De Auctoritate Papae Et Concilii*, Tract. II, c. 13 ad 8., and also *The Church and State Relations Before Francisco de Vitoria*, in PHIL. SACRA, Vol. XIV, no. 42, pp. 457 ff.

nature of spiritual and civil powers. The spiritual and temporal powers differ essentially with respect to their proper and immediate ends; and since the Pope is endowed with the supreme spiritual or ecclesiastical authority, it follows, that he has no power which tends to a temporal end, for 'without such temporal power he would still be the Pope', and so it is 'neither necessary nor reasonable' to put any temporal power in the Pope, when there is no corresponding goal for it in the Church.⁶⁵ Besides, no temporal lordship can be said to come to the Pope "save either by Natural law or by Divine law or by Human law.. But it is certain that none comes to Him by Divine law. Therefore the — contrary — assertion is ungrounded and arbitrary".⁶⁶

State and Church Co-ordination

We may now close this juridico-natural study of State and Church relations with Vitoria's *fifth* proposition, wherein he asserts that "*temporal power is by no means dependent upon spiritual power, in the way in which an inferior art or skill is dependent upon one that is superior*".⁶⁷ And the reason is precisely the absolute independence of civil power, 'the existence of which is not absolutely due to the existence of spiritual power', while 'an inferior art does actually exist precisely because of the existence of the superior art', and so 'the comparison is not quite exact'. Even if the intention is to justify the 'occasional' and 'extraordinary' papal intervention in temporal affairs, Vitoria says that there is no need to establish, as some Doctors have done,⁶⁸ an intrinsic and direct subordination of the State to the Church, and of civil to ecclesiastical power, just as if temporal power as such were a mere instrumental cause essentially ordained to the spiritual as to its proper principal end, upon which it would depend for the very exercise of its own causality, like an inferior art or faculty which depends on its superior for both its existence and function.⁶⁹ Civil and spiritual powers are related differently.

The State and its power are not a part of the Church nor is the former ordained to the latter as to its proper end, for 'even

⁶⁵ Cfr. *De Pot. Eccle.* I, n. 8, pgs. 69--70.

⁶⁶ *De Indis*, I, *de tit. non leg.*, n. 3, pg. 326. Cfr. J. HOFFNER, *Op. cit.*, pg. 363 ff..

⁶⁷ *De Pot. Eccle.* I, n. 9, pg. 71.

⁶⁸ Cfr. *Ibid.*

⁶⁹ Cfr. *Ibid.*

if the latter did not exist, and if there were no state of supernatural blessedness, there would still be a certain order in the temporal State, and a certain power",⁷⁰ just as a similar order and power exists also even among irrational creatures. 'There is a great difference, then, between the two comparisons'. Consequently, we should not conceive of the one power as being derived from the other, or as existing solely because the latter exists, or as forming, so to speak, an instrument or part of that superior power, in the way, for example, that the gubernatorial and episcopal authorities form part and depend from the kingly and papal powers respectively, for these minor powers are neither independent nor complete, while, on the other hand, civil power is by its own nature independent, self-sufficient and perfect, and 'directed to its own immediate end'.⁷¹

Considering then, the Church and State formally as juridical societies, both are, each in its own order, absolutely independent and sovereign: the State in the secular and the Church in the religious realm. Hence it follows that in the conduct of public affairs, neither is subject to the other within the limits to which each is restricted by its constitution, and that the model for the relationship between the two powers, within the same natural order, is *co-ordination*, not subordination of the State to the Church, as was demanded by the theocratic systems of the Middle Ages; nor of the Church to the State, as postulated by totalitarian States in the last three centuries, nor even separation between the two, as now proclaimed by many modern States,⁷² and much less antagonism as something positively harmful to both.

⁷⁰ *Ibid.*

⁷¹ Cfr. *Ibid.*, n. 9, pg. 71-72.

⁷² The principle of 'separation of Church and State' has been officially condemned by many Supreme Pontiffs; among others: Pius IX in the encyclical *Acerbissimum* and in the *Syllabus*, thesis 55; also Leo XIII in *Arcanum*, *Immortale Dei* and *Libertas*; St. Pius X in *Vehementer* and *Pascendi*; and Pius XII in several occasions, specially in *Address to a group of Italian Catholic Jurists*, and *Summi Pontificatus*; also *Vatican II*, *The Church Today*, Ed. W. Abbott, p. 280 ff. It is to be noted, however, that the Church does not condemn the separation of Church and State absolutely and under all circumstances, but merely does not approve of it in principle. This principle states that normally, Church and State belong together and should not be turned asunder; for example, it is unnatural for a married couple to live separately, although separation could actually be defended in particular instances as the better or less harmful arrangement in view of quarrels which might have arisen, so also the ideal relation between Church and State is certainly to be found, not in the separation of the two, but in their harmonious cooperation under a rule of concord and order. Cfr. H.

No matter how much they may devote themselves, under a rule of moderate and peaceful separation, to their own respective fields, which is determined by their specific objective ends, the State and Church will still be bound by the law of cooperation and order, because in actual life, there always remains a sphere of matters that is common to both, and which consequently must also be regulated by both. Surely, the Church can not leave altogether to the State the question of deciding how far a matter is common, or how much of it is spiritual, or how is it to be settled or regulated upon, because being a visible spiritual and perfect society like the State, it must take part and decide, in union and cooperation with the latter, all the so-called 'mixed matters' which naturally fall under the jurisdiction of both, thus acting in a manner truly in accordance with her character of a self-sufficient and independent visible society.

Conclusion: State and Church Co-ordinated Independence

According to Francisco de Vitoria, therefore, there is in this world a twofold society, spiritual and earthly, each of which is ordained to a definite and specific final end; the former to the spiritual, the latter to the temporal. Both have their own power absolutely independent, complete and perfect in relation not only to their essence and immediate purpose, but also as to their origin and sphere of activity.

And, although the spiritual is over the temporal in dignity and perfection, it does not necessarily imply '*ratione sui*', or by itself, an intrinsic or essential subordination of the latter; nor does it take away their real distinction. It simply signifies a certain order among distinct and independent, but co-ordinated powers. Of itself, 'ordination' does not always imply 'subordination' or 'subjection'; at least not with respect to those that are equal, nor even among those that are hierarchically graded but belong to different orders.⁷³ Thus the Pope may actually have the supreme spiritual authority, and still possess no temporal

ROMMEN, *The State in Catholic Thought. A Treatise in Political Philosophy*, N. Y. 4th Ed. 1955, p. 586 ff.

⁷³ Cfr. *De Pot. Eccle.* I, n. 10, pg. 73-74. Also J. TODOLI, O.P.: "*Naturaleza y Primacia del Bien Comun*", an essay published in *Revista de Filosofía*, Vol. IX, 1950, pg. 590 ff.

power of any kind in purely temporal matters, 'ordinarily' speaking, or '*via ordinaria*'.

Within the logico-natural order, even his right of intervention in civil affairs, as required only by the principle of co-ordination and harmony, is not really a juridical right, but one of charity, since it is due him only because of the superiority of his spiritual authority, which, after all, is completely and purely spiritual. The Pope, then, has no mere temporal power, not even to judge, confirm or repeal civil laws. In the natural juridical order, therefore, these two powers are perfectly distinct and completely independent, because "even if there were no spiritual power... nor supernatural felicity, yet there would still be civil power".⁷⁴

The Church and the State, then, being the two great sovereignties of this world, are not meant to ignore nor to abhor each other, but to work together in concord, harmony and co-ordination for the temporal and spiritual benefit, not only of their common members, but also for that of society at large.⁷⁵

This juridical solution to the problem of State and Church relations is naturally incomplete and partial, thus, unsatisfactory. Unless therefore, supplemented with the theological consideration of it, — for this question is really both juridical and theological, so that the solution of the problem by either the jurist or the theologian *alone* would be fragmentary and therefore unacceptable —, it would also be inadequate. It is then, both necessary and logical for us to add the theological or ethical examination of this question so that the discussion be complete and the juridical solution adequate from both the moral point of view of the theologian and the legal or material viewpoint of the jurist. "It is not for jurists alone, says Vitoria, to settle questions of this sort, ...since these matters are to be discussed with reference also to the Divine law";⁷⁶ so, following also Vitoria's plan, we add in the following pages, the theologico-moral study of the problem of the relations.

⁷⁴ *Ibid.*, n. 9, pg. 71.

⁷⁵ These ideas of Vitoria have found a clear and official expression, and at the same time a signal ratification, in the teaching of the Supreme Pontiffs, specially of Pope Leo XIII. Cfr., for example, his *Immortale Dei*, in *The Pope and the People*. London: 1950, pgs. 50-52; and of VATICAN II: *Gaudium et Spes* and *Dignitatis Humanae*.

⁷⁶ *De Indis*, I, *de tit. non leg.*, n. 7. pg. 332.

II

IN THE ETHICO — SUPERNATURAL ORDER

Introduction

Following Vitoria's schematical development of the problem of Church and State relations in his *First Reading On Ecclesiastical Power*, we have finally arrived to the most difficult and intricate part of the whole discussion, that is, to the point where the *fundament, nature and exercise* of the *papal power of intervention* in temporal affairs must be considered in an absolute and ethical manner, in accordance with the present divine providential order of the universe.

There is no doubt as to the existence of this right of intervention at least in matters of absolute necessity; yet, a shade of uncertainty cannot be totally ignored as to whether there is in the Church any juridical or ethical foundation for such a right. At this point, our great scholar abandons the mere temporal order, the '*via temporalis*', and going into the supernatural and ethical, into the '*via supernaturalis*', answers the question in accordance with the common and accepted practice of true and outstanding theologians, "who, unlike jurists, are not allowed to hold and defend in their discussions, anything uncommon, new and unheard of, against the opinion of the wise".⁷⁷ He does this in *three* brief but clear *propositions*, which, however, to some 'superficial' readers who have not sufficiently considered the diversity of Vitoria's point of view, have seemed to be in direct opposition to the five preceding ones.

1. FOUNDATION OF THE POWER OF INTERVENTION

State and Church Subordination

A subordination of ends necessarily demands a hierarchy of means and a subjection of powers. The subordination of the temporal common good to the supernatural happiness of man signifies the subjection of civil and political authority to religious and ecclesiastical power, and, at the same time, constitutes the

⁷⁷ *De Matrimonio*, n. 7, pg. 455.

foundation of the power of intervention of the Church in temporal matters.

In Vitoria's opinion, the fact of having acknowledged the juridical independence of State and Church within their own field of action does not imply a denial of distinction of rank between them in all orders; rather, it should be firmly affirmed that the Church, by reason of her higher end or purpose, is ethically superior to the State. In fact, he would be a bad or illogical Christian, says Vitoria, who would question or deny that, for the value and moral perfection of a society must be gauged by its purpose, since it is the purpose that circumscribes and determines the nature and mode of operation of a society and justifies its right to exist. "The necessity and value of everything, not only in matters natural, but also in all human affairs," he says, "should always be considered from the view-point of its purpose or end, which is the first and most principal of all causes",⁷⁸ since "the reason for a given act or custom is to be deduced from the end which it serves."⁷⁹

Now, the Church by her own constitution is a society far more perfect than any other, for the end for which the Church exists is as much higher than the end of other societies as divine grace is above nature, and immortal blessings are above the transitory things of this world, as Our Lord Himself has made it plain in the following meaningful words: "For what does it profit a man if he gain the whole world, but suffer the loss of his own soul".⁸⁰ In order to express the distinction of powers, and, at the same time, stress this superiority and pre-eminence of the Church over the State, Vitoria, following the wont of all ecclesiastical writers, makes use of many comparisons like the following: of *soul* and *body*, *heaven* and *earth*, *gold* and *lead*, *sun* and *moon*, etc. For the same purpose, he utilizes even the words of Sacred Scripture narrating the Creation of the world: "And God made the two great lights, the greater light to rule the day and the smaller one to rule the night, and... God set them in the firmament of the heavens to shed light upon the earth".⁸¹ By the use of these and

⁷⁸ *De Pot*, Civ., n. 2, pg. 173.

⁷⁹ *De Matrimonio*, n. 1, pg. 471.

⁸⁰ *Matt.* 16:26.

⁸¹ *Gen.* 1:16.

similar analogies in connection with the State and Church, Vitoria clearly teaches both their distinction and subordination.

In spite of their essential distinction and absolute independence within a logico-temporal order, State and Church, ethically considered, are really and necessarily hierarchically ordained, as 'the temporal power of the former is also subordinate and subservient to the latter's spiritual authority'.⁸² "Notwithstanding then, the truth of the foregoing statements," Vitoria writes most emphatically in the sixth proposition: "*civil power is, in a sense, subject and subordinate to the spiritual power of the Pope*".⁸³ This is Vitoria's explicit teaching, which, in his own words, is also in full agreement with St. Thomas' own doctrine, including the one contained in the *De Regimine Principum*.⁸⁴

State and Church Intentional Subordination

A faculty or power can truly be subordinated to another and yet remain essentially distinct from it, for there certainly can be subjection, not only among powers of the same nature or kind, but also, as in the present case, among powers which, though substantially different, are nevertheless, intentionally ordained to a common final end, thus becoming, so to speak, parts of a common higher order. As the soldier, for instance, in Vitoria's example, does not become a smith, nor the politician a soldier, when they both give them orders as to their own subjects and subordinates, so likewise, by ordering civil and political rulers, the Pope does not thereby become one. "The meaning, therefore, of Ptolomy of Luca's words in the *De Regimine Principum* (not St. Thomas', as our author thinks), is that the Emperor was Christ's viceregent to the extent only that temporal power is subordinate and subservient to spiritual power. In this sense, truly, kings are the servants of bishops, just as the smith's art is subject to the knight's and the soldier's, while all the time neither the soldier nor his superior officer is a smith, but is only concerned to give the smith orders about the making of armour".⁸⁵

⁸² Cfr. *De Indis*, I, *de tit. non leg.*, 1, pg. 320.

⁸³ *De Pot. Eccles.* 1, q. 3a., p. 3a., n. 10, pg. 72.

⁸⁴ For an explanation of this reference of Vitoria to the spurious part of this work of St. Thomas, we refer the readers to our article *Church and State Relations Before Francisco de Vitoria*, in *PHILIPPINIANA SACRA*, Vol. XIV, No. 42, pp. 461 ff. and notes 125 and 126.

⁸⁵ *De Indis*, I, *de tit. non leg.*, n. 1, pg. 320. Cfr. also II-II, 47, 11 *ad 3um*.

Distinction certainly does not preclude subordination. The temporal power of the state can truly be subordinate to the spiritual authority of the Pope and Church without thereby the Pope nor the Church becoming civil or political powers. The nature and kind of this subordination, however, can be best explained by comparing it with the relation that exists, not between an instrument and its superior principal cause (a relation which Vitoria has explicitly rejected previously), but between the military Art and Political Science, or also between the captain of a ship and the persons charged with the upkeep of the vessel, who obviously are, though not in everything, subject to the shipmaster. Civil power is, therefore, subject to the spiritual authority in the same manner that "the art of manufacturing weapons is subordinate to that of soldiers and generals, and the art of ship-building is subordinate to that of the seaman, and the art of making ploughshares to that of agriculture, etc."⁸⁶

The ordination, then, of the temporal and political power of the State to the spiritual and supernatural authority of the Church is neither direct nor essential, because this subordination does not proceed from the objective (*finis operis*) common good of civil society to which its political authority is immediately and directly ordained, but rather from the subjective and intentional (*finis operantis*) ultimate end of the spiritual society, thus making their subjection indirect and accidental, though real and necessary, since it is so demanded by the absolutely ultimate transcendent end of human society as a requirement of its ethical unity.⁸⁷

State and Church Jurisdictional Subordination

The Church, then, has a right of authority over temporal and political matters, not because of the political things themselves, but because of the spiritual principle involved; for the order of agents always corresponds to, and follows, the order of ends. And since the end of every civil government is subordinate to the end of the spiritual authority, the latter must, therefore, have power over the former and also be able to direct it by its own counsel, and even control it by its orders, if and when the supernatural interests should so require, "for," as St. Thomas himself says,

⁸⁶ *De Pot. Eccle.* I, n. 10, pg. 72. Cfr. *De Matrimonio*, n. 2, pg. 477.

⁸⁷ Cfr. *Ibid.*, and *De Indis*, I, n. 1, pg. 320.

"he who is concerned with the ultimate end is always found to be in a position of authority over those who are doing such things as are ordered to the ultimate end.... And since the administration of the Kingdom of Christ and the ultimate end was entrusted not to earthly kings but to the priests, and in the first place to the Highest Priest of all, the successor of Peter, the Vicar of Christ, the Roman Pontiff, it behoves all Christian kings and nations to be subject to him as to the Lord Jesus Christ Himself... For all 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...; and so, the kings should be subject to the priests in the law of Christ".⁸⁸

Civil society, therefore, should pursue its temporal common good so as to enable man to obtain his eternal life, for the temporal welfare of the State is naturally ordained to the supernatural end of the individual man, who, while in quest of his real, complete and perfect happiness, must also use the temporal common good as an intermediary end, whose worth and value is proportional to its service towards the attainment of the absolutely ultimate transcendent end. Considering then, the State and Church within the same ethical and theological order, the former is naturally ordained to the latter as the State's common good is also subordinated and ordained to the Church's final end, the ultimate transcendent Divine Good. Their respective powers are likewise, ordained and subordinated.⁸⁹ By no means should we therefore, according to Vitoria, conclude that these two perfect societies are altogether separated or divorced like two 'unrelated arts', or two completely different and absolutely autonomous temporal republics.⁹⁰ The reason, says the Master, is because human sociability is neither specified by this or that particular community, nor is it ordained to any limited, individual society, but rather to *the* community of human life as such, or to *the* universal, ethical society of the 'Christian World', as we have already explained in another article.^{90a}

⁸⁸ *De Reg. Princ.*, I, 14.

⁸⁹ Cfr. *De Pot. Eccle.*, I., n. 10, pg. 72.

⁹⁰ Cfr. *Ibid.*

^{90a} Cfr. *An Introduction to the Church and State Relations according to Francisco de Vitoria*, UNITAS. March, 1964. pp. 68-118.

The all pervading principle of 'duality under unity' is, once again, the foundation of Vitoria's reasoning. Human life is one and single because of the unity of man's final end, but at the same time, it is also twofold: spiritual and temporal, because of its own intrinsic nature. This distinction, however, does not of itself imply the existence of two perfect ultimate ends, nor an essential dependence or absolute juridical subordination of the authorities that rule them, as if 'one would exist only because the other does, thus becoming like a part or instrument of the latter's superior power'; which is definitely not the case. Their difference in perfection is rather due to, and based upon the intrinsic diversity of their respective natures in relation to their immediate specifying ends.⁹¹ The superiority of the Church and of her spiritual authority over the State and its temporal power corresponds then, to the predesigned hierarchy of ends in human nature, according to which the eternal salvation of the immortal soul is far more sublime and perfect than the secular welfare and temporal happiness.

The subordination of the State to the Church, and of the temporal to the spiritual is, however, demanded by the absolute unity of the ultimate transcendent end of man, which comprises both the vision and glory of God, to which all other ends are also subordinated. It is the duty of the ultimate transcendent end of man — the supernatural Christian end — which objectively demands a certain subordination of the natural to the supernatural, and of the human and temporal to the christian and eternal in both the individual and society. This is the divine order of things which does not admit any exception.

In spite of the essential distinction of these two powers then, the good of humanity requires, not only their co-existence, but also, and even more so, their hierarchical and subordinated cooperation. *The State*, though juridically self-sufficient and perfect, is nevertheless, *inferior to the Church*, not only in honor and dignity but also *in jurisdiction*. And although this subjection of political power to spiritual authority is not due to the former's specific purpose, but rather to the higher perfection of the latter's supernatural authority, it is real and necessary.^{91a}

⁹¹ Cfr. *Ibid.*, n. 9, pg. 71.

^{91a} Cfr. ST. THOMAS. II-II. 60. 6 ad. 3um.

Therefore, since the aim of the Church is by far the noblest of all ends, her authority must also be the most exalted of all authority; and we should not look upon it as inferior to civil power, or in any way dependent upon it, for the objective connection and order that exists between the being, the good and the true, is necessarily followed by a moral order of aims, values and ends, and by a parallel hierarchy of the societies in charge of them, so that the highest community is always devoted to the realization of the highest end.

On account, then, of the subordination of the end of the State, — secular happiness —, to the end of the Church, — the salvation of souls —, and to the individual man's end, — the vision of God —; the subordination of the temporal political power to the spiritual authority also follows as a necessary consequence, precisely in the interest of the superior end, but only in so far as this end is concerned. Thus, the spiritual power has a true right to intervene in the field of the temporal power if acts of the latter injure or actually endanger the superior end.⁹² It can easily be observed that this whole reasoning is founded upon the ethical unity of human life and of its ultimate end, which by no means can be found divided. "We, therefore, should not suppose that the civil and spiritual powers are entirely independent and completely separated like two distinct temporal Republics, such as the French and English nations".⁹³

Further Confirmation of the Power of Intervention

This same idea is perhaps, more emphatically and clearly expressed in Vitoria's *Reading On Marriage*, written upon request by the King of Spain on the occasion of Henry VIII's of England divorce from Catherine of Aragon. "The temporal Republic or State," he writes, "is, in some manner, subordinate to the Church, and so, too, civil or temporal power is likewise subject to spiritual

⁹² Cfr. UNITAS, pp. 75-87. Also *De Eccle.*, I, no. 10, pg. 72.

⁹³ *Ibid.*, n. 10, pg. 72-73. Cfr. BELTRAN DE HEREDIA: "Las Relaciones entre la Iglesia y el Estado según Vitoria," in *Cien. Tom.*, 56 (1937) pg. 28: "Aunque distintas en sí, con dominio también propio sobre objetos formalmente distintos, no es posible aislar de tal modo estos dos poderes que no haya entre ellos algún orden. La excelencia en dignidad que hemos reconocido en el Sacerdocio, se funda en el del fin al que se ordena. Y por consiguiente la subordinación de los fines es la que ha de regular las relaciones entre ambos poderes".

authority. For, as Aristotle has said in I Ethic. 1, (and St. Thomas confirmed, making use of the same comparison,⁹⁴) whenever the end of an art or faculty is inferior and thereby subordinate to the end of a higher one, both the art itself and the artist are ordained and subordinated to the second one. In like manner, the arts of manufacturing weapons and of shipbuilding are subordinate to military science, and construction engineers submit to the Emperor.

"Now, since the temporal good of society, civil honesty and even society itself are ordained to the spiritual good and perfect happiness of man as a rational being, it must therefore be concluded that *in a certain way*, civil power and authority also be subject to, and dependent on, the spiritual power. There is no doubt then, that not only in matrimonial contracts but in all civil or temporal affairs as well, does it belong to the spiritual authority to direct (authoritatively) the secular or political power in all things connected with spiritual matters, and to fix the limits and prescribe the boundaries to which the operation and function of civil power must be adjusted.

"I do not mean to say, however, that temporal power is entirely or even ordinarily subject to spiritual power", observes Vitoria. "Indeed, nothing is farther from my mind than to suppose that princes are, so to speak, vicars of Christ, or of the Popes; on the contrary, I believe that they have received judicial power from God, even as the Popes themselves have received such power, and that spiritual power cannot interfere with the exercise of this temporal jurisdiction except in special cases".⁹⁵

In Vitoria's mind there is no doubt as to the juridical subordination and dependence of the temporal with respect to the spiritual power. In the 'confirmation' of the *sixth* proposition, Vitoria demonstrates the same conclusion, using as the core of his argumentation, the service character of all social ends and of the State itself. The end of the State — the temporal common good, can only be realized by enabling the citizens to obtain their ultimate and transcendent end, the salvation of their souls and the vision of God, through the pursuing of their secular tasks, in peace and security and in mutual help, since all the limitations on

⁹⁴ *Ibid.*, n. 10, pg. 72. And St. THOMAS, II-II, 40, 2 ad 3um., and a. 3.

⁹⁵ *De Matrimonio*, p. 2a., n. 2, pg. 477.

the power and authority of the State are implicit in the very purpose for which the State itself exists. After all, "the end for which a society exists, and for which authority is given it, determines the limits of its powers".⁹⁶ The existence, then, of the State and its powers, as well as the limitations of those powers spring from the same source. This being the case, the ultimate purpose of the State and its authority must not be divorced from the nature and destiny of man.

Consequently, when conflicts arise, it can not be said that under all circumstances must the end of the state prevail, for there are certainly genuine limits to the sacrifices that the citizens can make for the common good. In a genuine conflict between Natural Law and the Positive Law of the State, the Natural Law prevails; so too, in a genuine conflict between the salvation of man's soul and a positive demand of the State. Furthermore, because of the relativity of the end of the State, there can never be required from all the citizens the renunciation of their basic domestic and religious rights and duties; for it is precisely to enable them to live up to these obligations in peace and security that society itself has come into being.⁹⁷

In Vitoria's Christian conception, then, the end of the State is relative and limited, and the State itself only a unit of the community of nations and of the transcendent ethical order of the 'Christian World', founded on reason and revelation from God.

The temporal common good is not an absolute value. It remains within the sphere of secular life, and is viewed from the ultimate end of the human person and from the final purpose of all creation as from a higher good. Hence, it is a relative end, and by no means the highest. Man's end is beyond this world; his last end, the salvation of his soul, is transcendent, and the Church — the institution which by Divine Will furthers this last end — is also beyond the end of the State. The temporal common good is the external secular felicity, while that of the Church is eternal happiness. The State and its common good do not constitute the whole of morality; religion and the Church are also part of the moral order, and certainly, says Vitoria, a 'more noble, excellent and august one'.

⁹⁶ *Ibid.*, n. 1, pg. 471 Cfr. *De Pot. Civ.*, n. 2, pg. 173.

⁹⁷ Cfr. UNITAS, same article. pp. 75-104.

Since beyond these two individual final ends, there is still another common transcendent last end: the perfect human happiness and the glory of God, the good of the State must be ordained to that same supernatural last end, which is the end of every individual man. Civil society, must then pursue the common temporal end so far as it enables the individual person to attain eternal life, for the end of the State, the values it is called on to produce, are essentially intermediary in the order of human ends. As long as men believe in the immortality of the soul and in the supremacy of the First Cause, the last and supreme end is the salvation of souls and the glory of God.

"If any given form of civil or political administration should thereby prove itself detrimental to the spiritual government, then — even if said form were effective and well-fitted to the attainment of the ends of civil power itself — the king or prince would nevertheless be bound in conscience to change that form",⁹⁸ and even 'sacrifice it entirely', at least in 'cases of necessity and extreme usefulness', in the interest of the spiritual authority. This is so, adds Vitoria, not only because of the latter's greater dignity and higher perfection, a fact which after all, would only engender an obligation of charity, but *mainly because of the latter's greater and higher jurisdiction* and the former's real dependence and subordination.⁹⁹ For, if temporal power were in no sense subject or subordinate to the spiritual authority, then even granting that spiritual good is greater and more noble than temporal good, there would arise no obligation to preserve the former with detriment of the latter.

As no private individual, for example, is ever bound to undergo sacrifices and endure injury to his own interests only in order to preserve a foreign State, so likewise, no president or ruler of any independent and autonomous State is ever obliged in justice to further the welfare of another State with prejudice to his own only because the latter is much greater and powerful. Consequently, if the temporal and supernatural orders would be related to each other just like two independent temporal States, there would be no reason to impose upon the king or prince a strict obligation to serve the spiritual interests with preference, and

⁹⁸ *De Pot. Eccle.*, I, n. 10, pg. 73.

⁹⁹ *Cfr. Ibid.*

even detriment, to the temporal State. Not for charity's sake, but for the cause of justice, therefore, should the spiritual good be allowed to prevail over the temporal good.

Temporal power, then, according to Vitoria's clear reasoning, is really and truly subordinated to spiritual authority. And so, political rulers are obliged to serve also spiritual interests, "not merely with respect to their own subjects, in whose case it would certainly be necessary for them to succour those citizens even with great detriment of temporal interests and the temporal government",¹⁰⁰ but also out of regard for other Christians. If for example, "a great spiritual injury to Africa should result from the civil administration of the Spanish State, the Spanish prince would be bound to correct and even change that form of administration",¹⁰¹ because the obligation arises, not from the citizens' subjection to their civil ruler, but 'from the ordination and dependence' of the State and political power to the Church and spiritual authority,¹⁰² and through them, to the ethical and transcendent community of the 'Christian World'.

Conclusion

The fundament of Vitoria's teaching — his unitary conception of the world as a perfect ethical unity —, is reiterated once more at the end of this argumentation. We need not, however, stress it further here since that has already been done at length by us in the article cited earlier.

"The 'Whole Church' or 'Christian World' ", he says, "is one single mystical body composed of two orders: the temporal and spiritual, and one only Head, Jesus Christ; for it would be monstrous for a body to be without head or for a head to be joined to two bodies".¹⁰³ As in the natural body 'all the members are mutually connected and properly subordinated', so too, within the community of the 'Christian World', "all offices, ends, and powers

¹⁰⁰ *Ibid.*, n. 10, pg. 74. This argument, which Vitoria considers 'insufficient', is however, the most frequently used by all writers.

¹⁰¹ *Ibid.*

¹⁰² Cfr. *Ibid.*, n. 10, pg. 73-74. Also *De Indis*, I, *de tit. non leg.* n. 5, pg. 328.

¹⁰³ *De Pot. Eccle.*, n. 10, pg. 74.

are hierarchically ordained and properly subordinated".¹⁰⁴ for the benefit of the human person and the perfection of the order of creation.

The coordination, therefore, that must certainly exist between State and Church cannot be only external but also intrinsic and vital, for it is demanded, not only by the fact that both have the same subjects to look after, but also and principally because both have a common purpose, that of the 'whole' world', a positively supernatural end. And so the State must necessarily be in coordinated subordination with respect to the Church. This intimate coordination, or, as we could also call it, vital and intrinsic subjection, of the State to the Church, arises from the fact that the whole universe forms a unity. The elevation of the natural to the supernatural order, brought about by the Redemption of Christ, is the cause and basis for this positive ordination.

The common purpose, then, of both societies: the ultimate end of man — his salvation, and God's eternal glory — demands not only the positive subordination of their respective immediate ends, but also, and more especially, their harmonious co-existence and mutual cooperation under a direct subjection of the State to the Church in matters both spiritual and temporal, though, in this last instance, only when it is required as something 'necessary or extremely useful' for the latter's good, for Vitoria notes that civil power, although subordinated, is also 'self-sufficient, autonomous and perfect' within its own realm.¹⁰⁵

In conclusion therefore, according to Vitoria's conception, the relation of Church and State should not be reduced to a purely external cooperation, but must necessarily be one of vital and intrinsic subordination.

In the spiritual order, or, as Vitoria would prefer to say, in the present order established 'after the coming of our Lord', man's ultimate purpose and society's final end, is supernatural. Hence, Church and State must be hierarchically ordained. Although Church and State are essentially distinct by their immediate origin, peculiar means and proximate ends, yet, because of the absolute unity of the ultimate supernatural end to which both are also ordained as integral ethical parts of the 'Christian World',

¹⁰⁴ *Ibid.*, n. 10, pg. 75.

¹⁰⁵ Cfr. *Ibid.*, n. 14, pg. 80.

both societies must of necessity live harmoniously together in mutual cooperation in order to achieve this common purpose united within the ethical openness of the 'Christian World'.¹⁰⁶

But this is not enough for Vitoria. The Church must also be, according to him, the superior to the State, as the spiritual holds sway, too, over the temporal. And so, in order to attain man's ultimate purpose: his salvation, and the world's final goal: God's eternal glory, the State must be, within the present divine providential order, subordinated also to the Church.

2. NATURE AND EXTENT OF THE POWER OF INTERVENTION

Nature of the Power of Intervention

With this general and abstract assertion of the superior perfection of the Church and of the primacy of her spiritual authority, the concrete problem of the interrelation of both powers, secular and religious, and of the exact competency of the latter in the field of temporal affairs, is by no means yet completely solved. In order to bring to perfection this solution, Vitoria, following Thomistic principles, elaborated what is now commonly called, with more or less propriety, the 'theory of indirect power' of the Pope in temporal matters.

Before considering the exercise of this power however, we must first discuss its nature and the range of its extension, if we are to follow to the end Vitoria's general pattern. In other words, we must study the *nature and extent of the 'power of intervention'* of the Pope in political and civil affairs as it has been developed by him in the *seventh* and *eighth* of his '*propositions*', both of which are but a clear and logical sequence of what has already been said. Vitoria himself has time and again stated that the Pope as such, has no power at all over temporal matters '*via ordinaria*' in the mere natural and temporal order, because of the presupposition that there is a sphere of full independence for the temporal power within which the State is principally sovereign, ordinarily and as a rule, since civil society, as has been

¹⁰⁶ Cfr. *Ibid.*, q. la., nn. 2 & 3, pgs. 7 & 8.

proved before,¹⁰⁷ has an essentially though relatively independent end, and is a perfect juridical society.

In spite of this political independence, civil power is, nevertheless, according to Vitoria's fundamental doctrinal principles, ordained and subordinated to the spiritual authority of the Pope, which leads our theologian to conclude thus: "*the Pope has some 'temporal' power and authority over the whole world*".¹⁰⁸ The reason is because "it is necessary for a convenient ecclesiastical administration so that the Church may attain her spiritual ends that some temporal power should exist therein",¹⁰⁹ for, as it has been stated before, temporal things are not only subordinated, but also necessary for spiritual and supernatural ends. "Consequently, Christ would not have made sufficient provision or taken sufficient care for spiritual matters, if He had not left some power which would be fitted, when need should arise, to regulate and employ temporal things in such a manner as to promote spiritual ends; but this function does not pertain to the office of secular princes, who are ignorant of the comparative relationship between temporal and spiritual matters, and are not entrusted with the care of the latter. Therefore, the task of employing temporal things for spiritual ends is a function of ecclesiastical power; and consequently, if it should at any time be necessary to use the material sword and temporal authority for the purpose of preserving and administering spiritual interests, the Pope would have the power to do so".¹¹⁰

Besides, this proposition also has the support of tradition. Vitoria quotes the testimonies of several outstanding Supreme Pontiffs, like Nicholas II, John XI, Gregory VII, Urban II, Boniface VIII, Innocent III, and others,¹¹¹ and cites, too, the names of some distinguished doctors like St. Bernard and Pierre de la Palu.¹¹² All the above-mentioned then, are in consonance with Francisco de Vitoria's doctrine.

An observation, however, should be made here regarding the expression 'temporal power', which by no means should be taken

¹⁰⁷ Cfr. UNITAS, Vol. 37, No. 1, pp. 87 ff.

¹⁰⁸ *De Eccle.* I, n. 11, pg. 75.

¹⁰⁹ *Ibid.*, n. 11, pgs. 75-76

¹¹⁰ *Ibid.*, n. 12, pg. 76.

¹¹¹ Cfr. *Ibid.*, n. 11, pg. 75. Also n. 14, pg. 81.

¹¹² Cfr. *Ibid.*

literally to mean 'civil power', because, firstly, as Card. Manning notes, this word 'temporal power' has been, and still is, used sometimes indifferently to signify either the 'indirect temporal power' of the Pope, i.e. the power of intervention of the Pope in temporal matters, or the true and real 'temporal power of the Prince', i.e., civil power; and, secondly, because of the very arguments and reasons advanced here by Vitoria himself to prove these two propositions. They all assign to this 'temporal power' a purely spiritual purpose, thereby clearly indicating its spiritual nature.¹¹³ And finally, because it is the only satisfactory interpretation that can really and properly fit with Vitoria's entire ecclesiological system. A close inspection of that system makes this obvious.

All papal powers are always and invariably meant by Vitoria in a spiritual sense. Consequently, the so-called 'indirect power', and the 'temporal power' of the Pope, as used in propositions seventh and eighth are, according to him, nothing more than the selfsame spiritual or ecclesiastical power that the Pope has to intervene in temporal matters, which is called 'temporal' only because of this object, the temporal matter, over which it is materially exercised on certain rare and unusual occasions. "It is not a temporal power but a spiritual one by nature and purpose", says beautifully a modern author also in connection with this passage, "material only anent to the matter over which it is exercised, since every human society, even though ordained to a purely supernatural purpose, needs means connatural to the composite reality of the human being".¹¹⁴

In his *Commentary to the Second Part of the Summa of St. Thomas*, written some where about the year 1535, Vitoria said that "if we take the Pope as such, and not as a secular prince, he has no temporal power at all; yet he has all the power with regards to the spiritual end".¹¹⁵ And again in his *Reading on Temperance*, read during the school year 1537-38, he made it clearer by saying that "the temporal power some times belongs in an extraordinary way to the Pope because of the spiritual

¹¹³ Cfr. *De Matrimonio*, p. 2a., n. 1, pg. 471, and *De Pot. Civ.*, n. 1, pg. 173.

¹¹⁴ C. HAMILTON, *Op. cit.*, pgs. 245-46.

¹¹⁵ In II-II, 39, 4.-II, pg. 278.

administration, must be understood in the sense that to the Supreme Pontiff has been given the power to use secular things and temporal kingdoms in so far as it is necessary for his supernatural end and spiritual office, i.e., for the government of the Church. And in his manner, the Pope could have some power even over kings and emperors. But such power, I think, would not be purely temporal... — *Sed non puto quod meram potestatem temporalem...* —".¹¹⁶ The same thought was once more expressed and further confirmed two years later, 1539, in his *First Reading On The Indians*.

In this *Reading* Vitoria shows clearly that the power of intervention which the Pope has in temporal and civil affairs is not temporal, nor in any way different from his real power as spiritual leader of the Church and successor of Christ. 'As the smith's art is subject to the knight's and the military to the political while all the time neither the knight is a smith nor the politician a soldier, but limit themselves simply to give them orders. For this same reason, the power of the Pope, which is spiritual like that of Christ from whom it comes, does not become temporal, though some times, it may also be exercised even jurisdictionally over civil and political matters, by giving orders to temporal rulers'.¹¹⁷

He thinks that there is no real need for putting in the Pope any temporal power, be it called direct or indirect, so that he may discharge properly his functions as spiritual ruler of the universal Church, because "in St. Thomas' view", writes Vitoria interpreting the Angelic Doctor's mind, "Christ's kingdom was not of the same sort of civil and temporal kingdoms and yet He had all kinds of powers, even in matters temporal, which would subserve the aim of redemption, yet apart from that aim He had none".¹¹⁸ Similarly, Vitoria says on his own that "the Pope likewise has temporal power only so far as it is in subservience to matters spiritual, that is, as far as is necessary for the administration of spiritual affairs".¹¹⁹ The reason is because "the art to which a higher

¹¹⁶ *De Regno Christi*, no. 4, a fragment of the *Reading De Temperatia*, published by V. B. DE HEREDIA in *Comentario...*, pg. 99-100.

¹¹⁷ Cfr. *De Indis, de tit. non leg.*, n. 1, pgs. 319-20.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, n. 5, pg. 327.

end pertains is imperative and preceptive¹²⁰ as regards the arts to which lower ends pertain. But the end of spiritual power is ultimate felicity, while the end of civil power is political felicity; therefore, temporal power is subject to spiritual power",¹²¹ and consequently, the Pope, is endowed with all necessary powers, since it is a fact that "whenever anybody is entrusted with the charge of an office, he is implicitly granted everything without which the duties of the office can not rightly be discharged.

In as much as the Pope is a spiritual pastor by Christ's commission, and the discharge of the duties of this office cannot be hindered by the civil power, there being no lack in the provision of things necessary either by God or by Nature, it is beyond doubt that power — jurisdictional, that is — over things temporal has also been left to him so far as is necessary for the government of things spiritual".¹²²

Consequently, "there is no doubt", concludes the Master of Salamanca, "that only *in this way* . . . the Pope has authority in the whole world",¹²³ not as a temporal ruler, for then "a bishop would also be a temporal lord in his bishopric",¹²⁴ but only as a Vicar of Christ and Successor of St. Peter, and in so far as it is necessary 'for the spiritual end' and "for profit in things spiritual".¹²⁵ This is also the teaching of St. Thomas, J. de Torquemada, and Cajetan,¹²⁶ adds our author, as it is, too, "the view held by Pierre de la Palu (Paludanus), Durand and Henry of

¹²⁰ We can see in these words of Vitoria a clear rejection of the '*directive power theory*' advanced by some modern authors to replace the old one of '*indirect power*'. Its condemnation by Pius VI is contained in Denz. 1505.

¹²¹ *De Indis*, n. 5, pg. 328.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*, n. 5, pg. 329: In addition, Vitoria says that "since a bishop is also within his bishopric a vicar of Christ and so . . . in the same way and on the same principle that the Pope has authority in the whole world, bishops have it also within their bishoprics". Continuing in another Reading, he says "For I don't know of anything that the Pope could do in the whole Church, which the bishop could not do also in his diocese, except what refers to the universal Church, like matters of faith. Everything else, however, that the Pope can do, the bishop, it seems, can also do, unless his powers are otherwise limited by the law . . .". *De Matrimonio*, n. 7, pg. 457.

¹²⁵ *De Indis*, I, n. 5, pg. 329.

¹²⁶ Cfr. Our previous article, "*Church and State Relations Before Francisco de Vitoria*", in PHILIPPINIANA SACRA, Vol. XIV, 1979, No. 42 pp. 455-471; where the teaching of these three predecessors of Vitoria has been more lengthily discussed.

Gent (Henricus Gandavensis)",¹²⁷ and many others.¹²⁸ It is also in this sense "that all those numerous rules — analogies and affirmations of papalist writers — which say that the Pope has both swords are to be interpreted".¹²⁹ So understood, "certainly no one rightly calling himself Christian should deny this power to the Pope".¹³⁰ Consequently, concludes Vitoria, "although the Pope as such is not really a temporal lord, yet he has power in matters temporal, when this is necessary for, and subserves matters spiritual".¹³¹

The 'power of intervention' or 'indirect temporal power' is not, therefore, according to Francisco de Vitoria, a distinct power in itself, in addition to the spiritual power. It is the same spiritual power directed to temporal or political matters, not precisely as they are of a political and secular nature, but rather on account of the spiritual interests involved, or, as it is more commonly expressed, '*ratione peccati*', in as much as they are subject to the moral law, of which the Church is by Divine institution the only authoritative interpreter. All special interventions of the spiritual power in political and secular affairs then, are always necessarily motivated by only one object: the avoidance or repression of sin, since it is precisely because of the spiritual principle involved that the Church has such a right of intervention in the sphere itself.

The formal, and therefore primary object of this power is always 'the spiritual'. The power that the Church possesses over political and secular things is not directed to them as such, but as they affect the spiritual order, not precisely because of their own nature, but rather because of their positive or, at least, negative ordination to the supernatural. Although the subject matter of this rare and unusual power is certainly something temporal or civil in nature, yet, like all papal interventions which are always directly ordained to a spiritual end, the actuation itself is applied to political affairs only when so required by a supernatural purpose. And so, this power is specifically and of its very nature, spiritual in character because it only aims directly, as to the first

¹²⁷ *D Indis*. I, n. 5, pg. 329.

¹²⁸ Cfr. *De Eccle.* I, n. 13, pg. 79.

¹²⁹ *De Indis*, I, n. 5, pg. 329.

¹³⁰ *Ibid.*

¹³¹ *De Indis*, I, *de tit. leg.*, n. 10, pg. 369. Cfr. *De Eccle.* I, nn. 1-3, pgs. 60-66

object of its activity, at spiritual things, although it may also indirectly intervene, when such action is a necessary means in order to obtain spiritual ends, in temporal affairs, which are thus regarded as a secondary object with which the spiritual power is only concerned in exceptional circumstances.

There is no need, therefore, and perhaps not even justification, for adding another power, whether 'temporal' or 'indirect', to the Pope as such, besides his spiritual power, which can always be, normally and as a matter of course, exercised over spiritual things, and rarely or '*ad casum*', that is to say, when so required by necessity, over civil and political affairs viewed under the formality of the 'supernatural'.

It is perhaps because of these theological reasons why Vitoria did never use the term 'indirect power', and explicitly qualified with the words 'certain', 'some', 'in a sense', etc., the adjective 'temporal', which, after all, he used only rarely and as an abridgement of 'Pope's power over temporal matters', which, of course, is less misleading and more exact,¹³² since the temporal and political character of the affair, to which this power is applied, is always secondary and incidental. Whenever the power of intervention is exercised, it is always done under the formality and point of view of morality and spiritual interest, i.e., when superior interests of a spiritual nature happen to be involved in the temporal event. The end, therefore, towards which the action and power are intentionally ordained is always spiritual; and so, the power itself must also be spiritual, since every act and faculty is necessarily specified by its proximate end and formal object.¹³³ Consequently, it is but improper to call the power of intervention 'temporal', or even 'indirect', only because it happens to be exercised upon an object which is only materially so.

According to Francisco de Vitoria, then, the so-called 'temporal' or 'indirect' power is really identical with the spiritual power of jurisdiction of the Pope, as applied to temporal things in so far as and whenever it is necessary, or rather of necessity,

¹³² There is quite a good number of writers who, though holding the content of the theory, yet avoid also the use of the term 'indirect', only because it connotes the existence of two powers in the Pope, thus becoming an actual source of confusion.

¹³³ Cfr. *De Pot.* I, p. 3a., n. 8, pgs. 69-70. Also UNITAS March, 1964, pp. 106-113.

for the attainment of the spiritual goal of the Church. Of itself, it is not a mere repercussion on the temporal, as some writers have wrongly thought, but truly a spiritual power which directly affects the temporal though only because of the spiritual.

Extent of the Power of Intervention

This power of intervention of the Church in civil and political affairs, however exceptional it may be, is, nevertheless, necessary, and *extends as far as the primacy of the supernatural requires it*, for the Church is self-sufficient and her right effective. Thus, her power is not confined merely to the spiritual in the temporal, but embraces also the temporal itself. She can, for example, not only excommunicate princes, but also depose them and "infringe civil laws which tend to breed sinners, just as he (the Pope) has infringed the laws with regards to prescription by a party acting in bad faith".¹³⁴ "I hold, indeed," says Vitoria, "that he has this power in the highest degree; for to whatever extent, and at whatever time such acts may be necessary for spiritual ends, the Pope is able not only to perform all the acts that may be performed by secular princes, but also to create new princes, depose others, divide empires, and do many other things".¹³⁵ The Church's power is truly universal. It covers not only everything which in human affairs is supernatural and sacred by its own nature, but also everything that is in some way or another related or connected with it.

According to Thomistic and Vitorian teaching, some things are supernatural essentially and substantially; others only in a certain essential mode or way. Again, others are supernatural, not essentially, but as a result of an intrinsic determination and ordination to a supernatural purpose, or just merely externally, as when they are intended in a definite and permanent way, or only presently, i.e. at the moment of their use, or in a purely circumstantial manner, for a supernatural end. According to this classification, therefore, everything may become spiritual or supernatural, and, thereby, also the object of the jurisdictional power of the Pope.

¹³⁴ *De Indis*, I, de tit. non leg., n. 5, pg. 328.

¹³⁵ *De Pot. Eccle.* I, n. 12, pg. 76.

Classification of things according to 'the Supernatural'.¹³⁶

Things are SUPERNATURAL either	Essentially	Substantially or absolutely	Eternal Life, Grace, Sacraments, Mass, Religion, Cult, Strict Mysteries, etc...
		Relatively or <i>Quoad Modum</i>	Miracles, Prophecies, Positive Law, Natural revealed Truths, Acts of Natural Virtues ordained by charity....
		Through Intrinsic Ordination	Natural Law, Moral Obligations, Morality, Sin or Sinful Acts....
	Not Essentially	Through Extrinsic Ordination	Permanently { Sacred Vestments, Consecrated Chalice or Church, Cemeteries ...
			Momentarily { Money for the Missions, Mass Stipends, Alms for the support of the priest....
			Circumstantially { Deposition of Civil Rulers, Condemnation of Political acts and or Parties....

Within the supernatural order, the Church, as a perfect, self-sufficient, and independent society, has complete and absolute jurisdictional authority over the spiritual. But since almost every thing can become, as indicated, spiritual and supernatural, at least by designation or circumstantially; therefore, the Church may also obtain such powers over any thing that is so transformed and ordained. Thus, for instance, the State itself, whether Catholic or not, would certainly fall under the direct jurisdictional power of the Church if, disregarding its negative subjection to the directive power of the Spiritual Society, would trespass the

¹³⁶ Cfr. LUIGI BENDER, *Chiesa E Stato*, Rome, 1945, pgs. 59 ff.

limits of its natural boundary and jeopardize the spiritual welfare of the Church and the 'Christian World'.

The Supreme Pontiff is therefore vested, according to Vitoria, with the widest power of intervention, and the highest arbitral functions, even in temporal and political affairs. "And on this principle also", he says, "when princes are at variance with one another, for example, about some right of sovereignty and are rushing into war, the Pope may even *act as judge* and inquire into the claims of the parties and deliver judgment, a *judgment which the parties are bound to respect*, lest those numerous spiritual evils which are the inevitable result of a war should befall."¹³⁷

And the fact that the Pope does not do these things now, at least not so often, certainly does not mean that he can not do it. It might be due to external reasons like 'fear of scandal', or simply "because he wishes to prevent the princes from thinking that his motive is ambition, or also because he is afraid of a revolt from the Apostolic See on the part of the Princes",¹³⁸ but certainly not for the lack of power itself, because the Pope, Vitoria frequently repeats, can always act upon anything, whether spiritual in itself or only supernaturalized, 'in the way most conducive to spiritual welfare', for 'it certainly falls within the authority and power of the Supreme Pontiff' 'in the interests and good of Religion', to take the course through which he thinks 'the spiritual matters would best be served'.¹³⁹ Therefore, "whenever an act is necessary to the spiritual life of the subjects, temporal considerations must be laid aside",¹⁴⁰ for, as we have stated before in a previous article where the question of ecclesiastical authority has been considered more at length,¹⁴¹ "the Pope possesses full power even in temporal matters",¹⁴² "in cases where it is necessary in order to rid the Kingdom of scandal, to defend religion against pagans, or for any other similar spiritual purpose".¹⁴³

Conclusion

In conclusion, then, writes Vitoria in the *eighth* proposition, "the Pope, for the purpose of attaining spiritual ends, has the most

¹³⁷ *De Indis*, I, *de tit. non leg.*, n. 5, pg. 328.

¹³⁸ *Ibid.*, n. 5, pg. 329. Cfr. also in II-II, 10, 10.-I, pgs. 200-201.

¹³⁹ Cfr. *Ibid.*, *de tit. leg.*, n. 10, pg. 369.

¹⁴⁰ *De Pot. Eccle.* I, n. 14, pg. 79-80.

¹⁴¹ Cfr. UNITAS, Vol. 37, No. 1, pgs. 88 ff.

¹⁴² *De Pot. Eccle.* I, n. 18, pg. 86.

¹⁴³ *Ibid.*, n. 19, pg. 87.

ample 'temporal' power, even over all princes, kings and emperors",¹⁴⁴ because the Church, as the only one perfect spiritual society of the supernatural order, enjoys not only a spiritual independence, but also a derived moral and temporal self-sufficiency, so that "if the spiritual authority—the Pope—were not in any other way able to preserve the spiritual society—the Church—from harm and injury, he could, on his own authority do everything—including the acts which otherwise would pertain to civil and political authority—that might be necessary for its safety; otherwise spiritual power itself would be defective and insufficiently prepared to attain its natural end".¹⁴⁵

According to the great Master of Salamanca, then, the 'temporal power of the Pope, as such, is spiritual in nature and direct in action, and, although 'not ordinary', yet even wider than the political power of the State itself. It is, in other words, the same spiritual power of the Pope as exercised over temporal and civil matters, under the formality of a supernatural aspect, and in so far as it is necessary for a spiritual purpose: the salvation of man.

But we must also carefully distinguish between the *possession* of a power or right,—which depends on the essence of things—, and the actual historical *exercise* of that power or right,—a fact which depends on circumstances—, for the question of whether the Church, by the nature of things, has a certain right of action and power of intervention over the temporal, and the question of whether she actually makes use of such a right and power at any particular time of her history, or how she does it, are two entirely different questions, which could and should, consequently, be studied also separately.

3. USE AND EXERCISE OF THE POWER OF INTERVENTION

Exceptional Character of the Power of Intervention

The topic next discussed by the Prima Professor of Salamanca is about the way and method followed in the *use and exer-*

¹⁴⁴ *Ibid.*, n. 12, pg. 76.

¹⁴⁵ *Ibid.*, 13, pg. 79.

cise¹⁴⁶ of this occasional, 'not ordinary', *papal power of intervention*. Few words on this item will suffice to show that our interpretation of Vitoria's teaching, so far, has been correct.

Time and again have we stated with Vitoria himself that the Pope's right to intervene in temporal affairs is limited only by the requirements of the spiritual good, in whose regard the Supreme Pontiff can always do whatever might be necessary. "The Pope is able to do not only whatever is necessary for spiritual ends, but also whenever it is required for their administration".¹⁴⁷ It would seem quite logical to conclude thereupon that civil and political power is, if not useless, at least unnecessary; for if the Pope can do everything that the civil government is supposed to, what need is there then, for another power besides the spiritual? Wouldn't this be an unnecessary, and therefore null and void, multiplication of faculties?

Foreseeing these and similar other false consequences, Vitoria has categorically affirmed that the Pope can not do immediately anything which civil power should and could perform,¹⁴⁸ even in case of great and notorious negligence on the part of the temporal ruler,¹⁴⁹ unless, again, his intervention would be very useful or extremely necessary for the spiritual good of man and of the 'Church' herself. Not every necessity, therefore, says Vitoria rightly, suffices to justify papal intervention; it must be a 'case of necessity', because the State also has, by Natural Law itself upon which it is founded, as it has been shown before,¹⁵⁰ a true and genuine sovereignty upon its own independent end, and since grace does not abolish nor impair nature, neither does the Church make the natural community of the State superfluous.

"In ordinary cases, the Pope has no power to act directly on his own authority upon purely political matters",¹⁵¹ says Vitoria,

¹⁴⁶ Cfr. *De Pot. Eccle* I, n. 13, pg. 77: "To expand this matter more fully, however, we should also consider whether one should conceive of this temporal power on the part of the Pope as being *exercised only indirectly*, by means of spiritual power and the spiritual sword; or whether the Pope may exercise temporal power *directly*, acting on his own authority".

¹⁴⁷ *Ibid.*, n. 12, pg. 76. Cfr. *De Indis*, I, n. 5. pg. 327.

¹⁴⁸ Cfr. *Ibid.*, n. 13, pg. 77: "That would be usurpation of office".

¹⁴⁹ Cfr. *Ibid.*, n. 13, pg. 78: "Because in purely temporal affairs... the Pope can do nothing".

¹⁵⁰ Cfr. *UNITAS*, Vol. 37, No. 1, pgs. 87 ff.

¹⁵¹ *De Pot. Eccle*. I, n. 13, pg. 77.

because such acts pertain to civil power and the Pope should not and cannot usurp civil power; 'except in cases of necessity'. To do so would really be an insult and injury to civil princes. Besides, if the Pope were able to make use of such powers solely on the ground that they are convenient 'in the interest of the faith', and expedient to preserve Christianity',¹⁵² since they 'assist in the attainment of spiritual ends'; then, the State itself 'would cease to exist' and the Pope would be able to exercise civil power 'on every occasion', since "the whole temporal administration is, in its entirety, not only convenient, but also necessary in attaining spiritual ends."¹⁵³ The Pope most certainly needs not only a 'reasonable cause' but also a 'sufficient reason'. "In order, therefore, that a given act may fittingly be performed by the Supreme Pontiff, it does not suffice that the act in question should be necessary only in a general sense to the attainment of spiritual ends; on the contrary, the particular case involved should also be *one of necessity*; that is, a case in which civil power ceases to function, not one in which it still has the ability to perform its offices".¹⁵⁴

Therefore, before making use of the power of intervention, "the Pope, in my opinion," says Vitoria, "should first avail himself of his spiritual power",¹⁵⁵ by admonishing, urging and even commanding, for example, the prince to change or repeal the law that might have been found by the spiritual authority to be dangerous and prejudicial to the spiritual good, and only "if the secular prince refuses to obey this command, then the Pope himself can and should revoke the law, acting on his own authority. And the revocation", adds Vitoria, "will be effective".¹⁵⁶ In like manner could the Pope act with the whole Christian people should they decide to elect a prince who, 'from the point of view of divine law', would turn out to be dangerous to their faith; the Pope, then, ought to admonish the people, and even command them to rid themselves of such a ruler, and 'only in case the people were unwilling or unable to obey the Pope, could he, on his own

¹⁵² Cfr. *De Indis. I, de tit. leg.*, n. 14, pg. 373 Cfr. ST. THOMAS, II-II, 10, 10.

¹⁵³ *De Pot. Eccle. I*, n. 13, pg. 78

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.* Another prove against 'The Directive Power Theory'.

authority, remove the prince, who would thus be deprived from his princely office by the authority of the Pope".¹⁵⁷

Generally speaking therefore, in civil and political affairs, "the Pope cannot anticipate the acts of temporal power",¹⁵⁸ nor can he use his authority to act in cases which in no way are 'opposed to spiritual welfare or to the interests of Religion', "however negligent temporal power may be on these occasions, in the administration of the State",¹⁵⁹ for that fact alone suffices to bar the exercise of the papal power. Should the Pope, however, declare something necessary to defend Religion from spiritual danger, or 'to rid the kingdom of scandal', or 'for any other similar spiritual purpose', and 'he be right', then, "if there is no other way to carry on with the work of salvation",¹⁶⁰ the Pope has power to apply the remedy considered best according to the circumstances,¹⁶¹ and we must abide by the papal decision 'even though the accompanying detriment to the administration of temporal affairs be great, because whenever an act is necessary to the spiritual life of the subjects, temporal considerations must always be left aside'.

Another case where the Pope could also apply his intervention power is when, for instance, two princes declare war against each other 'with manifest and obvious detriment to Religion'. The Pope could then not only forbid the continuation of the war, but if the contending rulers cannot come to an agreement in any other way, "he can also act as their judge deciding, on his own authority, in favour of one".¹⁶²

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

¹⁶⁰ *De Indis*, I, n. 12, pg. 371.

¹⁶¹ Cfr. *De Pot. Eccle.* I, n. 14, pg. 79, and n. 19, pg. 87. Also in II-II, 39, 4.-II, pg. 278.

¹⁶² *De Pot. Eccle.* I, n. 13, pg. 79. Another concrete example, and a much debated one at that, specially in Vitoria's time, was the monopoly and control of all missionary endeavours and commercial enterprises with the Indians, which Pope Alexander VI conferred upon the Spaniards shortly after the discovery of the Americas. The justifying purpose in this case was also the spiritual good and utility of the Church.

Many more instances of papal interventions, of the kind stated above, could certainly be cited, for they were numerous specially during the tenth to the sixteenth century, but when the Middle Ages receded and the faith became less vigorous, they also became more and more rare, till the present times, when they scarcely exist. For a list of Papal interventions, both authoritative and pacific of the mediatory or arbitral kind, may be consulted the work of J. EPPSTEIN: *The Catholic Tradition and the Law of Nations*, pgs. 463-474

According to Francisco de Vitoria, then, the Pope is justified in exercising his 'temporal' or 'indirect' power over civil and political affairs only *in case of urgent necessity*, with the right,¹⁶³ then, to do by himself, and in virtue of his own authority and spiritual jurisdiction, everything required for the preservation of the spiritual good.

The Church Practice with 'Mixed Matters': a Confirmation

In order to further clarify and confirm this point of ecclesiastical authority's *right of intervention*, as we prefer to call it, in temporal and political matters, we may also cite here, by way of instance only, a case of 'mixed matters': the classic example of *marriage*. This question was also studied by the Prima Professor of the University of Salamanca upon request from the rulers of Spain on the occasion of Henry VIII's divorce, and is now of special interest to us because it also afforded the Master the opportunity to express himself, though in a brief manner, upon that other wider problem, which has for many centuries bothered the best minds of Christendom, and which is still the object of serious studies, namely, the problem of limitation of powers.

Before answering the question of whether the temporal prince could act on his own authority in what we now call 'mixed matters', like matrimony for instance, Vitoria reminds us of his doctrine of the State as a perfect and self-sufficient society,¹⁶⁴ which he afterwards uses as the main proof of his argumentation.

¹⁶³ Again we can see here another explicit rejection by Vitoria of the theory which some modern theologians have proposed to replace the old one of the 'indirect power'.

It is commonly admitted that, in general, all precepts and commands bind under penalty of sin, and "it matters not", says Vitoria in *De Pot. Civ.*, n. 17, pg. 200, "whether laws be human or divine, in so far as their binding force is concerned", and "I shall add that civil laws are binding under pain of sin or guilt, in the same manner as ecclesiastical laws". *Ibid.*, n. 15, pg. 197. And although it is true that the Pope, and the secular ruler too, according to Vitoria, "has undoubtedly the power to exempt one from liability to guilt, if he should so desire. . . , i.e., if he does not wish to exact obedience to his laws from his subjects, but merely wishes to give an account of what should be done, commenting and directing, rather than issuing commands", (*Ibid.*, n. 20, pg. 205), yet, we cannot possibly apply this principle, as the 'directive power theorists' want, to all cases, usually of transcendent consequences, of papal intervention in temporal affairs, though we may readily admit and actually hold that this is so in the ordinary and minor instances of ecclesiastical interventions.

¹⁶⁴ Cfr. UNITAS, Vol. 37, No. 1, pgs. 87 ff.

"I do not doubt," he says, "that the secular prince, owing to the very nature of his power, possesses control and jurisdiction over matrimony, even to the point of prohibiting intermarriage among persons related by blood or by marriage (affinity); neither do I doubt that he can make laws and establish impediments like those established by the Church".¹⁶⁵ The reason for this being, that, as Aristotle says, since "the reason for a given act or custom is to be deduced from the end which it serves".¹⁶⁶ the State thus has a definite jurisdictional claim upon this matter of matrimony, being as it is of interest, and clearly beneficial to the State, and so, consequently, within the extent of its jurisdictional civil powers.

Lack of such a power in the State would mean that "civil power would be deficient, and the State would not be self-sufficient, if the latter could not even create laws befitting its own welfare and touching upon matters dealt with in no other laws".¹⁶⁷ The State, thus, would not be sufficient unto itself nor perfect society either. But all this is certainly contrary to what we have said is Vitoria's conception of the state. The justification, then, for the use and exercise of civil power in 'mixed matters', like this of matrimony and similar ones, is to be found in the very nature and end of the State, or in its reason or cause and immediate purpose.¹⁶⁸

Notwithstanding the sequence and truth of the above given reasoning, Vitoria goes on to say: "It is my contention, however, that inspite of the foregoing statements, the Church may prohibit the exercise of this jurisdiction by civil power: that is, spiritual power — the Pope, for instance, — may prohibit and prevent the temporal prince from exercising the sort of jurisdiction in question".¹⁶⁹ The reason, again, is the principle of subordination of powers, or the classification of faculties, made according to their respective ends, within the absolute and ethical consideration of society. "I now take for granted", says he, "as this has already been sufficiently proved above, that the State is, in some manner, subordinate to the Church, and so, likewise, civil and political authority is also subject to the spiritual authority. For,

¹⁶⁵ *De Matrimonio*, p. 2a., n. 2, pg. 475-76.

¹⁶⁶ *Ibid.*, n. 1, pg. 471.

¹⁶⁷ *Ibid.*, n. 1, pg. 475.

¹⁶⁸ *Cfr. Ibid.*, n. 1, pg. 472.

¹⁶⁹ *Ibid.*, n. 2, pg. 476.

as Aristotle already said in I Ethic 1, whenever the end of an art or faculty is inferior and thereby subordinate to the end of a higher one, both the art itself and the artist are ordained and subordinated to the second one. Just as, for example, the art of the military is subordinate to the political.

"Therefore", continues Vitoria applying the analogy to the problem at hand, "as temporal happiness, civil honesty and even society itself, are ordained to the spiritual felicity and perfect good of man as a rational being; so likewise, it must be concluded, civil power and authority must be, in a certain way, subject to, and dependent on, the spiritual power. There is no doubt, then, that not only in matrimonial contracts, but in every civil and temporal affair as well, it belongs to the spiritual authority to direct — authoritatively — the secular or civil power in all things related to spiritual matters, and to prescribe the boundaries and fix the limits to which the operation and function of civil power must be adjusted".¹⁷⁰

However, "I do not mean to say that temporal power is entirely subject to spiritual authority", observes Vitoria. "Indeed, nothing is farther from my mind. On the contrary, I believe that they both have received judicial power from God, . . . and that spiritual power can not interfere with the exercise of the temporal jurisdiction, except in special cases".¹⁷¹

Having thus firmly established and unequivocally acknowledged the existence of both jurisdictions, the temporal and the spiritual, with their proper independent spheres of action, Vitoria is not however yet satisfied and so, desirous of drawing still clearer the line of demarcation upon which the harmonious operation of the two powers undoubtedly depends, stresses further the Aristotelian principle of classification of faculties in view of their respective purposes, whereby the lesser end is made to yield to the greater, with the inevitable result in our case, that the lesser, that is, the material or temporal faculty, yields to the exercise of the greater: the spiritual faculty. "But I do contend", he says consequent to this principle, "that the Church may, when acting with due cause, deprive temporal power of the authority to examine into and exercise jurisdiction over certain matters, which

¹⁷⁰ *Ibid.*, n. 2, pg. 477.

¹⁷¹ *Ibid.*,

it would otherwise be authorized to determine and regulate, inasmuch as their very nature pertains to the realm of civil power. The Church might perform such an act, for example, on the ground that the matters in question could not be administered by civil power alone in a manner sufficiently serviceable and suitable to the attainment of spiritual ends".¹⁷²

And the question of matrimonial contracts precisely affords an example of such affairs. Since the marriage contract depends upon Divine Law, all its requirements must, therefore, be determined in accordance to that law. And so, no suitable laws concerning matrimony can be made by persons other than those thoroughly familiar with said Divine Law. For human erudition alone, cannot achieve a satisfactory understanding of the many questions which occur in connection with the marriage contract. "For all these reasons, therefore", concludes Vitoria, "everything related to matrimony — and the same could also be affirmed of every question within the group of 'mixed matters' — would be reserved to the spiritual power, even though marriage were not a sacrament", because only the spiritual power can determine authoritatively the requirements of Divine Law.¹⁷³

Conclusion

The fundamental reason for all this is found in Vitoria's idea of the Church and State as two perfect societies. The Church is "a perfect and self-sufficient spiritual society",¹⁷⁴ and, consequently, she has the right to do on her own authority whatever might be necessary to preserve herself free 'from harm and injury'.¹⁷⁵ And as a State could, in defence of its own autonomy

¹⁷² *Ibid.*, n. 2, pg. 477-78.

¹⁷³ *Ibid.*, n. 2, pg. 478.

¹⁷⁴ *De Pot. Eccle.* I, n. 14, pg. 79.

¹⁷⁵ Cfr. *Ibid.*, This right, however, is not exclusive to the Church. As a matter of fact it is found, with proportional relativity, in every society. "If the Spanish were not able to defend themselves against injury from the French in any other manner, it would be permissible for them to seize the cities of the latter, set up new princes and rulers therein, punish the guilty, and perform other similar acts on their own authority, as if they were the true rulers of the French, a right which all the Doctors must acknowledge. In like manner, therefore, if the spiritual power were not in any other way able to preserve the spiritual society from harm, it could also, on its own authority, do whatever might be necessary for its safety. Otherwise the spiritual power would be imperfect and insufficiently prepared to attain its proper end".

and independence, depose the rulers of another State, by its own authority, and introduce therein a new administration, "as if they were their true rulers";¹⁷⁶ so, likewise, the spiritual power, by its own authority too, which is always spiritual, could also intervene in, and make use of, temporal things for its own preservation, as if it were a temporal power, for otherwise the spiritual power would not be self-sufficient and perfect.¹⁷⁷

On account, therefore, of the subordination of the end of the State: secular happiness, to the end of the Church: the spiritual salvation of man, the subordination of the temporal power to the spiritual authority follows as a necessary consequence in the interest of the superior end, but only in so far as this higher supernatural end is concerned. Thus, the spiritual authority has the right to intervene in the field of the temporal power if and when acts of the latter injure or actually endanger the superior end. This act of intervention is, therefore, obviously *extraordinary*, and cannot be considered arbitrary, because it must always be proved necessary and justified, on the part of the Church, by a 'reasonable and sufficient cause'.

According to Francisco de Vitoria, then, the power of the Pope is only one: the spiritual. And it is precisely through this power that the Church intervenes 'indirectly' in the temporal sphere, without thereby impairing the independence and sovereignty of the State within its own temporal order.

Criterion For The Solution of State and Church Conflicts

Granting that the interventional power of the Pope is 'not ordinary', and exceptional in character; yet, even within those 'limited cases of necessity', conflicting decisions may quite possibly be found. If both powers contend to be sovereign in a specific matter, demanding, for example, one of them an exclusive right and absolute loyalty, where the other cannot grant it, whose decision is the Christian citizen bound to obey? Whose authority prevails? In this and similar cases, the objective superiority of either society must not only be evident but also effective. Vitoria answers: "If the Pope should say that a certain political adminis-

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*, and *De Indis, de tit. non leg.*, n. 5, pg. 328. Quoted above pg. 38.

trative measure is not convenient to the temporal government of the State, no heed ought to be paid to the Pope, because the judgment of these matters, which in no way fall under the papal authority, pertains exclusively to the prince".¹⁷⁸ But if, on the other hand, the political actuations of the civil administration go beyond the competency of the State and trespass upon the field of the exclusive competency of the Church, by interfering with purely ecclesiastical affairs, which are also over and above the sphere of temporal jurisdiction, then, the spiritual authority can and must act by itself and its judgment should then also prevail, since the State's right has ceased to exist therein, and "it is not for the King to pass judgment in spiritual things".¹⁷⁹

Yet, "it is also possible that doubts and controversies may not infrequently arise between these two powers",¹⁸⁰ in matters which are neither purely spiritual nor merely temporal but common to both. In such cases of conflict, however, the decision or judgment of either of the two contending parties is seldom, if ever, found to the satisfaction of the other, as the common saying implies: 'nobody is a judge of his own cause'. Consequently, without however implying unqualified acceptance of this statement, the principle given above to solve the cases of apparent conflict between State and Church, wherein the latter's decision is said to prevail over the other's for the admitted reason that she is in charge of the higher spiritual good of society to which the natural and temporal end of the State is necessarily ordained and subordinated, as it has been sufficiently proved above¹⁸¹ is, though theoretically unimpeachable, in fact of little practical value, especially in these days of indifferentism and little faith. The establishment, therefore, of a more practical criterion seems only in order.

This criterion, however, which in order to be practical must also be particular, could very well be the judgment of a duly constituted and properly qualified authority, or of a good, learned and trustworthy man — a wise man —, provided said judgment is reached after, and based upon, the objective consideration of the nature, purpose and circumstances of each individual case.

¹⁷⁸ *De Pot. Eccle.* I, n. 14, pg.80.

¹⁷⁹ *Ibid.*,

¹⁸⁰ *Ibid.*,

¹⁸¹ Cfr. UNITAS, Vol. 37, No. 1, pg. 75 ff., and 104 ff.

But since these 'common or mixed matters' are all spiritual or supernatural, if not by nature, at least circumstantially, the decision or judgment is, therefore, very appropriately given by the Church through her spiritual ministers, for, as Vitoria himself says, "the settlement of these matters does not properly belong to jurists or laymen, or at any rate it does not belong to them alone, because these things are not subject to the spiritual authority in virtue of any human law, and so any question concerning them ought to be examined from the point of view, not of human, but of divine law, in which jurists and lay men are not sufficiently versed to be able to solve the difficulties. It is a question for the forum of conscience, the department of the priests, that is to say, of the Church".¹⁸² "It would not be reasonable, then, to say that this tribunal — formed for the solution of doubts and controversies — should be constituted of secular princes, for they cannot judge aright concerning spiritual matters. And so, it is evident that this office pertains to the princes of the Church",¹⁸³ who are the only ones qualified to pass judgment in every case which actually involves both temporal and spiritual interests.

After everything has been thought of and said, we must, therefore, conclude that *the most equitable and just criterion* for the solution of all State and Church conflicts is to be found, according to Vitoria's teaching, in *man's true judgment*. Man's conscience, based upon the solid objective validity of the all-embracing binding force of Divine and Natural Law, is, in reality and under God, the supreme practical arbiter, though, of course, the Church herself, with her infallible representatives on earth, is, not only the best qualified, but in fact the only guaranteed arbitress. This is also, at least in principle, St. Thomas' view.¹⁸⁴

This solution may perhaps not be as difficult as it seems; since every conflict or collision in the field of State and Church relations can arise only from the enactment and application of positive human laws, whose validity and obligation, however, may never prevail over and against the force of the laws mentioned above precisely because of their relativity and service character with respect to the absolute and objective value of Divine and

¹⁸² *De Pot. Eccle.* I, n. 14, pg. 81.

¹⁸³ *Ibid.*,

¹⁸⁴ The superiority of Divine and Natural Law is clearly shown in I-II, 91, 2; 94, 1-6; 97, 1; 97, 4 ad 3um.; II-II, 57, 2.

Natural Law. In consequence, every act of either civil or ecclesiastical power, which transgresses the bounds drawn by these laws, is formally null and void, and as such must be treated by every one, whether it is an unlawful executive act or an unjust statute, either of the President or of the Pope, since all are included under the universality of the scriptural principle which states that 'we must obey God rather than man'.¹⁸⁵

"Everything said above, however", cautions Vitoria, "must be taken as spoken absolutely",¹⁸⁶ and so, although 'all things might be lawful to the Pope, provided he acts in the manner stated above, yet not all things might be expedient'.¹⁸⁷ In the exercise, therefore, of the power of intervention the Pope must always act, warns Vitoria, "with a regard for moderation and proportion, so as to go no farther than necessity demands, preferring to abstain from what he lawfully might do rather than transgress due limits, and with an intent directed more to the welfare of the people than to any other outside motive".¹⁸⁸

With these fundamental principles and practical criteria, Vitoria deems that the way is now clear for an easy and true solution to all concrete problems, and in particular to the Imperialists' and Papalists' problem, as well as to the other of our Lord's temporal Kingship,¹⁸⁹ and Alexander VI's Bull. "*Sed ex dictis patet etiam ad hoc solutio*".¹⁹⁰

¹⁸⁵ Cfr. also I-II, 96, 4; II-II, 104, 5; *De Reg. Princ.* I, 6.

¹⁸⁶ *De Indis.*, I, *de tit. leg.*, n. 12, pg. 372.

¹⁸⁷ Cfr. I *Cor.* 6:12.

¹⁸⁸ *De Indis.*, I, n. 12, pg. 371. Cf. in II-II, 10, 10, -I, pg. 200.

¹⁸⁹ In order to get a complete idea of Vitoria's teaching with respect to the *Kingship of Christ*, besides the Reading *On the Power of the Church*, and *On the Indians*, the new fragment of the reading *On Marriage* entitled *De Regno Christi*, recently published by V.B. DE HEREDIA in *Comentario al Tratado de la Ley*, Madrid, 1952, pgs. 95-100, should certainly be consulted.

¹⁹⁰ *De Pot. Eccle.* I, n. 19, pg. 88.

An observation. As the reader must have noted by now, Vitoria's terminology in this whole treatise is by no means altogether accurate. It is in fact, too general and abstract. The doctrine underlying it, however, is as exact and precise as it could be expected. This is a fact generally admitted by the commentators of Vitoria. Some of them, however, putting Vitoria's seventh and eighth propositions together with the fourth, which as we have shown, belong in different orders, have seen in them a plain contradiction in doctrine as well as in terms. Others, on the other hand, have thought both doctrine and phraseology perfect. The truth, again, seems to remain in the middle. For us Vitoria's doctrine is as perfect as we could have desired it.

Yet, his expressions are, unfortunately, not as accurate as they should be. Some times due, perhaps, to the inherent difficulty of the subject-matter

CONCLUSION

FRANCISCO DE VITORIA is deservedly acknowledged everywhere as the Founder of International Law, and he could also be justly proclaimed, we may now venture to add, as the most distinguished theologian of the whole traditional school for having successfully evolved, with clarity and precision, long before the appearance of St. Bellarmine's *CONTROVERSIES*, a complete and perfect solution to the most intricate problem of Church and State relations, through masterly application of the most fundamental principles of Thomism.

Vitoria's Twofold Solution

The Vitorian solution is twofold, in accordance, namely, with the two members of the transcendental thomistic distinction of orders, which he has so brilliantly applied all throughout the discussion, and the double function of human society.

The learned scholar of Salamanca shows the profoundest respect for both the Church and her head, as well as for the State and its authority. He places the Spiritual Republic or Church and the Temporal Society or State side by side, and teaches that in the mere natural juridical order both of them, in their formal capacity of juridical societies, are perfect, self-sufficient, and independent.

Considering, therefore, formally in a logical abstraction, the Church and the State in their physical reality as social entities, both possess, according to our theologian, individual sovereignty, and hence, in the carrying out of their public affairs, neither has to obey the other within the limits or field of action to which each is restricted by their constitution of perfect juridical societies. Both of them, thus, obtain the right to administer freely and without hindrance, in accordance with their own laws and judg-

itself, others because of their brevity, as happens for instance with the expression 'Pope's temporal power', which obviously is an abridgement of 'Pope's power over temporal matters', which is clearer and more in conformity with the whole Vitorian system, they frequently remain inexact and vague. In any case we ought not to expect from Vitoria a precision of words not yet reached even by our twentieth century writers in this field.

ment, everything that might fall within their own respective competences. Their self-sufficiency, however, is relative only to their own order and respective ends, the temporal common good, and the spiritual salvation of man. So too, their independence and sovereignty. Consequently, within the natural juridical order, the Pope has no jurisdiction over the State or its authority. There is no juridical subordination of powers in this field; and so, the Supreme Pontiff cannot have 'temporal' or 'indirect' power within this juridico-natural sphere of human social activity.

Within the supernatural order, however, or, as Vitoria would also say, 'in the present order of things established after the coming of Our Lord', the relation of Church and State is not, nor can be, reduced to one of purely external cooperation, but must of necessity be one of vital and intrinsic subordination, as required and demanded, not precisely by the fact that both may actually have the same subjects to look after, but rather and principally because of their common ultimate purpose, which is that of the 'whole world', a positively supernatural end, whose absolute unity necessarily requires, for its proper attainment, the coordinated subordination of the State with regards to the Church.

Because of the ethical unity of the universe, and as a consequence of the elevation of the natural order to the supernatural level, a positive ordination of the temporal to the spiritual must also follow. It is, therefore, the common purpose of both perfect societies, the ultimate supernatural end of man, which demands, not only the positive subordination of their respective immediate ends, but also, and most specially, their own harmonious coexistence with mutual cooperation under a direct hierarchical subordination of the State to the Church, and of political power to religious authority, in matters spiritual as well as temporal, though in the latter case only in so far as, and whenever it is, required by the primacy of the supernatural on account of which the Supreme Pontiff has, and may therefore also use, when spiritual interests are involved, the 'right of intervention'.

Resume of the Three Theories

The unitary conception and exclusive idea of the Christian peoples of the Middle Ages, which for many centuries dominated

their entire historical perspective, was the cause of great confusion in both the political and ecclesiastical fields giving rise to two opposed but equally exaggerated and erroneous tendencies or theories which claimed for their respective charges, the Empire or the Papacy, worldwide jurisdictional power and authority.

Besides, in the medieval stage, with said unitary conception of the Christian order, a veritable synthesis of the temporal and spiritual, there was no room either for the modern point of view according to which the realization of a unified Christian order does not consist any more in a synthesis or harmony of distinct powers or social units, but rather in the affirmation of their complete separation and absolute independence in every aspect of public, and even private, administration. For now, instead of one only order, there are two superimposed structures, religious and secular, with the latter holding the upper hand and claiming unbridled absolutism and control of all kinds of public manifestations, including the ecclesiastical and religious, thus effectively doing away, they think, even with the causes of difficulties and conflicts in the question of State and Church relations.

According to the Master of Salamanca, however, who followed a moderate 'Middle Way', none of these two ideologies is correct, though the first appeared to him closer to the ideal principle. The unity of the Christian order is as logical and natural as the oneness of the human race itself, which, although composed of so many individual members, ordains them all, and their activities as well, in function precisely of the universal harmony. The unity of the human race also demands a unitary conception of history as well as the removal of all particular, accidental and petty differences in favour of the peaceful coexistence of all peoples. Likewise, the universality and unity of Christ's Redemption also demands the establishment of a unified Christian Order, or 'Christian World', wherein both Church and State, though essentially distinct, could, hierarchically ordained, effectively cooperate towards the harmonious realization of the ultimate end, the glory of God and the salvation of all men.

In order, therefore, to avoid both the medieval extreme of excessive unity in the universality, with obvious loss to duality of orders—spiritual and temporal, Church and State —, and also the

modern aberration of absolute independence and separation, without benefit to harmonious cooperation and subordinated unity, Vitoria clearly and firmly proclaimed the principle of duality under unity, admitting the absolute distinction and relative autonomy of the two powers in relation to their specific ends, while at the same time stressing the perfection and superiority of the spiritual over the temporal, and of the Church over the State, thus achieving, through a perfect combination of both principles, an objective and balanced solution to all the problems of Church and State relations, which certainly, neither the medieval nor the modern absolutist tendencies have satisfactorily given.

Instead of putting the center of unity in the Papacy, as the Papalist group generally did, or in the Empire, as their opponents the Imperial jurists claimed, he placed it in a higher principle, in God Himself, to Whom all social units, secular and religious, are directly and organically ordained, in conformity with the divine laws of jurisdictional hierarchical subjection, as integral parts of the ethical unity of the 'Christian World', which thus came to replace the restricted medieval Christendom.

The 'Christian World' or Order must be conceived, according to Francisco de Vitoria, not precisely as a true synthesis, but rather as an ethical unity of all, even the essentially distinct, and independent societies, and powers, which cooperating harmoniously together within a perfect Christian hierarchical order, contribute effectively towards the attainment of the complete supernatural ultimate end of man, to which both the spiritual and the temporal, the Church and the State, are, in the present providential order, divinely ordained.

In comparative reference to the famous Chalcedon's definition of Christ's two natures, we may thus graphically express Vitoria's teaching with this Council's very words, which, in conformity with his mind, can now be presented as a figurative and analogical definition of the perfection and relation of State and Church.

When the Fathers of this Council affirmed the existence of two perfect natures in Christ, they also implicitly, though figuratively, asserted the existence of two societies in the world, perfect too, specifically and objectively considered. And as there are

two operations in Christ, human and divine, so are there two kinds of actions in the Christian people of this universal community, one spiritual, temporal or earthly the other, for both are distinct. And finally, *as the two perfect natures are physically united in one only person — Christ —, so also these two perfect societies are similarly united in one only moral person which is the absolutely universal community of the 'Christian World'.*

ANTONIO CABEZON, O.P.
University of Santo Tomas
Manila