1492-1992

500th ANNIVERSARY OF THE DISCOVERY OF THE AMERICAS

ENCOUNTER BETWEEN TWO WORLDS

By adopting the theme "Encounter between two worlds" for the celebration marking the 500th anniversary of Christopher Columbus's first voyage to the Americas, the international community was seeking to highlight what the Old World and the New World have in common and what can bring the peoples on either side of the Atlantic closer together. Such concern is understandable in a community engaged in a ceaseless quest for a new world order based on dialogue and harmony.

There is no denying that what began in 1492 was initially a clash of different races and cultures; there is no concealing the blood that was spilt, the dark side of *la Conquista*. On the other hand, there is no doubt that Europe gained an entirely new perspective and that the New World emerged transformed by this initial shock. Thenceforth, over the centuries, the mixing of the races and the growth of transatlantic communications led to the exchange of ideas, the spread of knowledge and the gradual development of a civilization common to the two continents.

Such a commemoration would not be complete without reference to the work of the prescient Spanish jurists and theologians who understood at once, at the height of the struggle, that the time had come to change the nature of human relations within each State and between States themselves, to make conflict less inhuman and generally to promote mutual understanding.

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The Spanish conquest has been seen as the violation of a pristine world, a violation deplored by Montaigne in his *Essays*. Yet the aim was not merely to amass wealth, but also to save souls. This could not be achieved without destruction and enslavement. How can such acts

be justified? How should the conquistadors have behaved towards the Indians, those unfamiliar beings, those "godless, lawless savages"? In 1511, the Dominican friar Antonio de Montesinos delivered an impassioned sermon denouncing the enslavement of the Indians. "Are they not human beings? Do they not have rational spirits?". For the first time in history, a European was speaking out against the emerging colonialism.

Bartolomé de Las Casas, a Dominican theologian who felt conversion to Christianity should be a matter of free choice, condemned the excesses committed by the conquistadors and championed the cause of the Indians. He spent his life pursuing his ideal of a Spanish-Indian society where peace, prosperity, justice and Christianity would triumph once all forms of oppression had disappeared.

The strong sense of otherness that marked relations between the Europeans and Indians as the Spanish discovered the New World was at the centre of the concerns of Francisco de Vitoria and his followers at the prestigious University of Salamanca.

The role played by Vitoria, the "Spanish Socrates", in developing the law of nations is well known. Challenging mediaeval theories about the universal political power of the Pope and the Emperor, he contributed to the Thomist concept of natural law and laid the foundations for international law based on the idea of a universal community *(totus urbis)*. He proclaimed the equality of all peoples, whether Christian or pagan, before the law, and thus called into question the legality of the conquest whose excesses he deplored.

Vitoria — who by no means rejected the concept of just war — also succeeded in tempering *jus ad bellum*: only an *injuria*, a grave violation of a right, such as the right to preach, to communicate and to trade with the Indians, could justify the use of force. Vitoria also recognized the right to intervene on humanitarian grounds, in order to assist innocent people subjected to the tyranny of barbarian chiefs, thus making his thinking very relevant to the present day. He implied respect for the principles of humanity and proportionality when he declared in *De jure belli* that might was not necessarily right and that war should be a last resort, an extreme remedy when there were no other means of restoring justice. Finally, the victor should enforce a peace characterized by Christian moderation and concern for the welfare of all.

It is true that Vitoria's endeavours to limit the violence of conflict and attenuate the suffering it causes are more those of a moralist than of a jurist, and that his humanitarian thinking is not devoid of the ambiguity caused by confusing law, religion and the interests of the

Spanish Crown. He nevertheless made an outstanding contribution to what was to become the law of war.

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As part of its ongoing research into the origins of humanitarian law, the *Review* is marking the anniversary of the Encounter by inviting its readers to discover these jurists and theologians of the Golden Age of Spanish empire, who did so much to give a new direction to humanitarian thought. The contributors to this issue look first at the principles underlying the sixteenth-century Spanish theory of war and then at how the School of Salamanca and, above all, Vitoria developed a veritable theology of human rights.

The Review