In its September-October 1992 issue, the Review *published an article by Sergio Moratiel Villa entitled "The Spanish School of the new law of nations"*[1] *which describes in three sections entitled "Las Casas, a man of prayer and action", "Vitoria: the gentle rebel" and "Suárez hands on the torch to Grotius" the extremely important contribution of Spanish theologians-cum-philosophers-cum-jurists to the development of modern international law. The last section of the 1992 article sets the stage for further research by the author into the history and philosophy of international law.*

The philosophy of international law: Suárez, Grotius and epigones

by Sergio Moratiel Villa

Francisco Suárez, "the prince of modern jurists", was accused by some of being a great anti-monarchist, even the first regicide, because he was the first "convinced and avowed republican".

He incorporated Platonist, Aristotelian, Augustinian and Thomist ontology, metaphysics and theodicy within a legal framework; in jurisprudence, he introduced the world of ideas into the material world; his discourse on law is valid for his own day and for all time. In dealing with abstract questions, he developed a philosophy of law that is applicable to concrete situations.

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Original: Spanish

[1] *IRRC*, No. 290, September-October 1992, pp. 416-433.

In the lecture hall and in his writings, he taught that law must be the science of liberty, an inexact science, since it straddles individuality (*ego*) and community (*ens sociabilis*), which is not to be confused either with personal morality or public opinion. Every normal human being has an innate sense of what is right: individuals are equal in metaphysical terms but not in practice; equal quality obtains greater or lesser — i.e. disproportionate — quantity. The law stipulates what is right and proper, it is the rule of reason and truth, even though it is always rooted in the subjective judgement of someone as prone to error as any other human.

All men share a series of conditions which make it possible for the individual's free will to co-exist with the free will of others, in accordance with a general law of freedom. The law is applied without prejudice to anyone; justice is done and everyone receives his just deserts. Law, justice and order do not stem, in either material or moral terms, from equality but from proportionality; they are based on the internal and external prerequisites for the development of the rational and social life of the individual and of mankind.

Just as freedom is inconceivable without intelligence, so also duties are inconceivable without rights, both the former and the latter being innate. Duty is the application of the normative faculty of intelligence to freedom; right is the guarantee and endorsement demanded by freedom. Duty impels us towards a goal; right offers us the means to achieve it. Each individual has physical and intellectual capacities conducive to self-preservation and personal development. The application of his powers of reasoning to external freedom is the source of right, which is therefore innate and based on personality in relation to others. As human beings are creative, free "second" causes, and as the effects they have are an extension of their personalities, they all possess rights by virtue of their faculties. It is the task of (an equitable and distributive) justice to recognize this nature, which is common to all human beings, to solve the equation and to achieve the requisite equity.

Individual liberty is not restricted through association but develops in the process. Law does not prohibit the use of liberty but its abuse. States, like individuals, have certain inherent natural rights: life, self-preservation, development, independence, equality, defence and so forth. These are fundamental rights. The States also have rights acquired through usage and custom, treaties, international legislation, etc. For purposes of self-preservation, the State needs institutions that are consistent with its social goal. For example, the fundamental right to

self-preservation must go hand in hand with the right to development, since in the absence of the latter the former would be difficult to sustain.

Suárez's contributions to international law, following Vitoria's preliminary analytical treatise, consist in the elucidation and systematic compilation of general and specific types of law, their origin and nature and their various forms and categories: the different manifestations of natural law and the law of States as international standard-setting, that is to say the law of nations.[2] He drew a clearer distinction than his predecessors between *jus gentium* as international law and the earlier *jus gentium* derived from Roman jurisprudence; the modern version is "the law that different peoples and nations must observe in their mutual relations". He viewed the law of nations as a category of law endowed with a "rational basis" consisting in the fact that the human race is divided into many different peoples and realms but still preserves a certain moral and political unity imposed by the natural precept of mutual love and mercy. In his book *De legibus*, published in 1612, he explains that there is a natural law with which human beings are familiar, not through subjective moral awareness but through the harmony that exists between human structure and the divine plan. Although the rights of the individual are those which should prevail, society as a whole has a separate existence from the sum of its individual members. The social goal consists in individuals' free decision to provide mutual assistance and to form a political community; sovereignty is ultimately vested in the people. Authority comes into being with the establishment of society, but it can be disobeyed and overthrown if it fails to fulfil its task. In some cases, the objective social structure cannot be recognized and there may be different interpretations, habits and customs, the ordering of which is the responsibility of the law of nations. The ordering of relations between nations devolves on international law and "the global community".

For Suárez, the existence of a human society clearly transcends State boundaries, the need for norms in such a society, the inability of reason to provide all the norms required with apodictic force, and the right of human society to remedy that shortcoming through the application of custom as law, when such custom is in conformity with nature. He concluded that international law comes into play at the point where natural

[2] See my article, "The Spanish School of the new law of nations", in *IRRC*, No. 290, September-October 1992, in which I wrote (p. 431), "Vitoria and Suárez were the founders of the philosophy underlying all law, Vitoria for one branch of law, Suárez for law in general".

law and civil law intersect: international relations must occur on the basis of the criteria contained in international law inasmuch as the latter stems from "the shared needs of peoples". It is therefore founded on the community of nations: States cannot exist in isolation. He invokes the concept of interdependence as a pillar of international law and a basis for ensuring peace, justice, freedom, progress and co-existence.

The modern law of nations is predicated on the existence in the world of groups that exercise territorial sovereignty and form a community of nations, each with its own internal or municipal law and with authority which is subject only to such restrictions as are stipulated in the law of nations. This law must be applied, individually or collectively, not by virtue of a supreme authority but by the will of the members of the community of nations. International law is thus the public legislation of the community of groups exercising their respective territorial sovereignty and authority.

Vitoria and Suárez arrived by different routes at a common goal: the need for a single and universal norm to govern the relations of individuals within a State, and of States among themselves and in the global community made up of individuals and States.

When the Romans called their fetial law a law of nations, they did not mean that it constituted positive law established by mutual consent of the different known peoples; non-Romans remained outside the scope of Roman fetial jurisdiction. As the Romans saw it, "*jus gentium*" was the law — both public and private — of civilized peoples; in a narrower sense, it was Roman law applied to foreign peoples (barbarians).

Suárez's writings abound in quotations from Vitoria. They were both eminent theologians, but likewise jurists and philosophers, men of the Spanish renaissance, for at the time theology was viewed as an all-embracing science that studied the overall behaviour of every individual. In their view, the duties and functions of theologians covered a wide area: no argument, topic or text was alien to the purpose and practice of theology. They had more breadth of vision, a clearer perception of progress and a more marked inclination to deal with legal topics than professional jurists themselves. They even placed themselves at considerable risk, opposing the ambitions of the church hierarchy for secular authority, advocating limits to the authority held by lay sovereigns and formulating principles that circumvented divine and canon law.

The teachings of Suárez show a manifest and unusually modern interest in the safeguarding and promotion of human rights. Freedom,

justice, development and peace lack a solid basis and are seriously jeopardized unless the dignity and the equal and inalienable rights of the members of the universal family are recognized. States must guarantee absolute respect for fundamental rights and freedoms.

For Suárez, natural law incorporates the human dimension in the global plan of creation. His interest in the applicability of the general and abstract to the particular and concrete, coupled with his critical attitude, make him an integral part of the most modern philosophy. In his view, objective morality consists in the conformity or lack of conformity of the objects of human acts, by virtue of their essence, with rational nature. Subjective morality is rooted in instinct. Human nature is inseparably linked to the three enemies of the soul (the world, the flesh and the devil) and the seven deadly sins. With few exceptions, action is not determined by ideas but by feelings. Natural inclinations, passions and desires are the great motivators and regulators of life. He adds, however, that ideas are often closely related to powerful feelings, to strong drives and proclivities which motivate their implementation. Virtues are determined by education, voluntarily concluded agreements and the interest of society. Laws have secured increasingly wide acceptance. Law, according to Suárez, is "a just and stable precept that is sufficiently well promulgated". It is based on eternal law in the Augustinian sense. Natural law is preceptive divine law and positive divine law, as laid down in both Testaments. In its moral dimension it is simply a gradual clarification of natural law. He even states that Christian law adds no positive moral precept to natural law.

His social doctrine may still be of interest today: society is a community based on natural law; it follows that civil authority — as distinct from the authority of kinship — has its remote origins in God, but its immediate subject is the "association" as such. Explicit or tacit popular consent is required to establish civil society and the corresponding sovereignty of the people must be transferred to a specific type of political regime. Suárez's consensus is radically different from Rousseau's "contract" in terms of its philosophical and theological premises. Once a specific type of political regime has been established, the community cannot arbitrarily withdraw the authority conferred. It may do so only in extreme cases of tyranny or social anarchy. The goal of civil society, which is the temporal common good, in itself inherently restricts the authority of the State. An uprising against the tyrant, even if it leads to his death, is therefore legitimate since he can be deposed by the representatives of the community that vested him with authority.

Supranational unity is the source of the law of nations which, as Suárez sees it, is not that part of natural law which governs the association of

peoples, but a positive law, primarily of a customary and consensual nature, accepted by all peoples as the basis for their mutual relations. The just war falls within the scope of the law of nations.

It has been said — perhaps rightly — that international law is based solely on opinions generally accepted by civilized nations, and that the resulting obligations are fulfilled solely through the application of moral sanctions: fear of public opinion, reluctance of the authorities to provoke general hostility and to suffer serious ill-consequences if they violate generally observed norms. And the system works, albeit not always.

Suárez developed this basic idea of the law of nations according to Vitoria: the sovereignty of the individual State is limited by the fact that it forms part of a community of nations linked by solidarity and mutual obligations.

Just as Vitoria defended "*jus soli*", the principle of nationality by place of birth (one's native country and the world are not incompatible), Suárez defended the equal rights of men and women. One cannot fail to be struck by the modernity of this view, given that women still feel subject to discrimination in so many places today. The world community had and still has its customs and legal practices but the applicability of legislation still leaves much to be desired — examples abound.

The rich heritage of Grotius

Rousseau and Voltaire criticized Grotius: Rousseau, in the early chapters of the *Social Contract*, branded him as an erudite anthologizer, a collector of quotations and authorities; Voltaire labelled him an extravagant compiler of quotations in the guise of arguments.

The debate concerning Grotius as the founder of international law dates back at least to the beginning of the twentieth century, when Frederick Pollock said of Grotius that he had laid the foundations of modern international law through his reformulation of the theory of natural law. Today, many writers belittle Grotius's role as a modernist of the lay school. In a nutshell, his contribution to the theory of natural law is now increasingly interpreted as that of an eclectic transmitter of doctrine, whose synthetic work is cast in a more theological than lay mould. In the first place, Grotius was, in form and substance, an erudite Dutchman firmly rooted in an age of solid and conflicting theological convictions.

He has been heavily criticized for placing undue emphasis on natural law and neglecting the law of nations. Generations of statesmen and

diplomats, particularly Protestants, have supported Grotius's work, citing certain passages, not always his own, *ad nauseam*. His views were consulted, for example, by the "founding fathers" of the great American republic: John Adams, Thomas Jefferson, James Madison, James Wilson and John Marshall.

In effect, much of Grotius's work is merely a repetitive echo of principles that had already been commonplace for generations in Spain, and which are to be found not only in voluminous incunabula and dusty tomes of the fifteenth, sixteenth and seventeenth centuries, but also in manuals, dating from the same centuries, for the troops, such as that of Ayala. In practice, they were also used in the battlefield, and legal, religious and military advisers to the army in Spain consulted them frequently in connection with military operations. The law of nations and the law of war were no mere academic terms but meticulously applied regulations throughout the great Spanish empire. Spanish military operations were conducted in consultation with a "jurist", often a simple missionary but somebody who was familiar with the principles of war necessary for the restoration of peace, justice and order (when force wielded in the name of the law is victorious, it may impose the law). Ayala, from whose manual Grotius, by his own admission, drew considerable inspiration, was an officer and legal adviser to the army of Philip II in Flanders. He wrote a manual for use by the army. Belli, whose work also influenced Grotius, was a military judge in the armies of Charles V and Philip II. There can be no doubt that the entire military command was familiar with and discussed humanitarian issues and questions of international law which were already a traditional field of inquiry in Spain: the fifth book of the *Etimologías* of Saint Isidore of Seville, Saint Raymond of Peñafort, the *Siete Partidas* of Alfonso X the Wise, Alfonso Tostado, Gonzalo de Villadiego, Juan López (also cited by Grotius as Johannes Lupus), Francisco Arias de Valderas, Alonso Cano, Domingo de Soto and many other exponents of the law of nations.

Grotius said of Suárez that it was difficult to find his match in terms of acumen among philosophers and theologians. He admitted that Suárez had been the first to assert that international law consisted not only of mere principles of justice applicable to relations among States but also of longstanding customs observed in such relations by the Europeans and hence termed customary law.

Those who are familiar with Suárez's fine achievements have always been surprised by Grotius's attitude towards him. For example, Sir Robert Phillimore, more than a century and a half ago, was surprised that Grotius

had been unaware of Suárez's extremely clever dissertations on natural, public and international law.

For all too long it has been customary for writers, mostly Protestants, to treat Grotius as the "singlehanded founder" of modern international law or to view him as a shining luminary in the shadowy realm of jurisprudence, followed perhaps, but at some distance, by a few minor satellites scarcely worth considering. Grotius has certainly had enormous influence. This is universally known and ceaselessly reiterated. A fact that is sometimes overlooked, however, is that his great work owes much to a long list of notable precursors: Irnerius, Bartolus, Baldus, Tertullian, Saint Augustine, Saint Isidore, Saint Thomas, Legnano, Bonet, Martinus Laudensis, Henricus de Gorkum, Juan López, Wilhelm Matthaei, Francisco Arias, Vitoria, Soto, Vázquez de Menchaca, Suárez, Pierino Belli, Baltasar Ayala, Alberico Gentili and many more. The fact is that, since the Reformation, the prejudice of both Protestants and Catholics has been such that it has prevented them from forming an impartial opinion, although some — though very few, including Grotius — have been familiar with the work of the other camp. It may be said that, while Grotius's work is virtually bereft of originality, it contains everything of value that existed at the time of its author. His *De jure belli ac pacis* brings together a great deal of material that is not and has never been relevant to the field of international law — the author was also a theologian, businessman, legal consultant, historian, statesman and patriot who was exiled and escaped from prison, leaving his wife in his place. The book contains almost the whole of international law as it existed in 1625 (between 1680 and 1780, it ran to thirty editions in Latin, nine in French, four in German and three in English; a Spanish edition was unnecessary — his sources were sufficient).

Many years ago, something very important came to light in connection with the long-lost commentary on the treatise *De jure praedae* by Grotius, the manuscript of which was discovered and published four years later by G. Hamaker. Professor Jan Kosters, examining a gloss it contains, was the first to show that it is actually a summary of Suárez's now famous distinction between the traditional law of nations, positive law and customary law. But Grotius wrote his commentary in 1604 and Suárez only published his *De legibus* in 1612. But how can a "summary" contain the distinction that was made in a later work? Hamaker and subsequently Kosters examined the "summary" more closely and found in facsimile — as many of us have since done — that one page was marked as though for insertion in a particular place. It becomes clear on comparing the texts that the insertion, although handwritten by Grotius, differs from the rest

of the manuscript (smaller writing, firmer strokes). The obvious conclusion is that the page thus inserted was not written in 1604 but much later...

Grotius quotes Vitoria in the Prolegomena to his magnum opus *De jure belli ac pacis*; also in *Mare Liberum* (1609), which is in reality a chapter of a work written, as we have seen, in 1604, *De jure praedae*, in which Grotius's references to the professor from Salamanca relate in particular to the question of the characteristics of a political community, which must have its own counsel and authority. Although Grotius did not publish *De jure praedae* (except for chapter 12, extracted and published as *Mare Liberum* in 1609), he doubtless considered for some time developing it into a treatise on the law of nations. We now know that he incorporated a good deal of both the spirit and letter of the work in his famous *De jure belli ac pacis* (1625). When Suárez's *De legibus* appeared in 1612, Grotius must certainly have read it with interest and summarized the author's important distinction, inserting the gist of it at the appropriate point in his as yet unpublished manuscript. But, that being the case, why did Grotius fail to acknowledge his debt to Suárez, as he had done in the Prolegomena where he was indebted to other authors? He makes only four passing references to Suárez in as many notes. Internal evidence shows beyond a doubt that Suárez influenced not only the formulation of the law of nations but also Grotius's arguments concerning natural law. Grotius was in England and was received in audience more than once by James I. When he published his *De jure belli ac pacis*, he was living in exile in Paris, depending on the hospitality of Louis XIII and on a somewhat irregular allowance from the royal treasury. In his straitened circumstances as a protégé, he avoided referring to "controversies of our time", and it is quite possible that, on those grounds, he felt it would be unwise to cite Suárez at greater length, since his "political" writings had kindled the wrath of reigning monarchs (James I, Louis XIII, Maria de Medici). However that may be, Grotius was well acquainted with *De legibus*, since otherwise he would not have cited it. Given the similarity of concepts in the writings of the two authors, it is difficult to avoid the conclusion that Grotius drew liberally on those of Suárez.

As to Ayala, clearly Grotius either had not read him or was lying, for he is utterly mistaken when he says that Ayala did not address the issue of the just and unjust war (chapter 2 of Ayala's Manual devotes 34 pages to the subject).

The law of nations began to take on modern attributes with the writers of the Spanish school. They added to the older idea of a law shared by many peoples the new concept of law applied between different States.

The theory of the natural equality of human beings was familiar but still awaited the daring innovator who would reflect its implications in the field of international law. The task fell to Vitoria. Grotius dealt less comprehensively with natural law than his predecessor Suárez or his successor Pufendorf. His main aim was to establish rules for international society, the grand system applicable to the cluster of communities (many norms were deduced from municipal law, from a comparison of society with the human organism and from regulations governing duelling in many places).

In the works of Vitoria, Suárez, Vázquez de Menchaca and Ayala — the best known jurisconsults of the Spanish School — there are explicit statements to the effect that States have equal rights based on norms stipulated by nations in treaties. But they did not unquestioningly accept the common concept of natural law. This is particularly clear in the writings of Las Casas. Vitoria refers to natural law based on reason: "in the beginning, everything was common to all". These authors differentiate between the ideal *jus naturale* and the positive *jus gentium* in accordance with the general tradition (Saint Thomas). Suárez made a broadly similar distinction and was then able to adapt the immutable *jus naturale* to the practical life of mankind. Grotius quite simply followed suit. A new application was found for this concept (equality of States) after the Reformation; the old theory of a higher common good had fallen into abeyance owing to the inability of both the emperor and the pope to command universal obedience. The notion of a society of States had ousted that of the universal empire. It was the task of pioneering publicists to come up with an analysis of such a society, its members and its legislation.

There has since arisen considerable confusion (and a measure of abuse) in respect of "equality of States", inasmuch as some held themselves to be "more equal" than others. Grotius denounced the excesses and outrages perpetrated throughout Christianity by the warlords, "abuses that would have put even the barbaric nations to shame"; they took up arms for futile reasons and often without cause. All the respect due to divine and human law was flouted, as though the contestants were authorized to commit any manner of crime without restraint. Grotius, the most influential of all writers on the law of nations in Central Europe, the "miracle of Holland" as he was dubbed by Henry IV of France, saw how "his" main principles were applied in 1648 with the signing of the Peace of Westphalia, which did away with the medieval theory of international relations and set the stage, according to many Protestant authors, for the modern State system. The ideas transmitted by Grotius changed Central European ideology; however, large parts of the world remained outside the Grotian system: Russia (until Peter the Great), Turkey, Asia, Africa,

Spain, Portugal, Latin America and Oceania. Furthermore, some 200 States in a Europe dominated by bishops and minor Protestant princes had espoused the hallowed principle of "*cujus regio ejus religio*". Yet almost two centuries previously, the modern system of the society of nations had taken shape when a socially modern State came in contact and entered into conflict with non-Christian peoples, "infidels", and the lawfulness and justification of war became a pressing issue. Grotius's Spanish precursors had already proclaimed the absolute equality of sovereign States before the law. The equality of States is an irrefutable corollary of their concept of the equal sovereignty of the King of Spain and the local chieftains in America, and also of territorial independence. As recently as 1937, Mussolini said that the law of war was not applicable to the conflict in Ethiopia "because the Ethiopians are outside Christianity".

Presenting theories and opinions that differ from those printed and propagated in the West, especially parts of the West with Protestant majorities, is an arduous task that still runs up against prejudice which is firmly rooted in the muddy waters of a certain type of "black legend". Unfortunately, the requisite concerted effort has not yet been made to analyse theories and opinions concerning various aspects of international law formerly and currently prevalent in less developed countries. The United Nations now has some 200 Member States. International law should be developed in line with the growth of the "family of nations", broadening its perspectives and enhancing the scope of its application. With that end in view, the International Law Commission was established as a subsidiary organ of the United Nations General Assembly in 1947.

The school of Spanish theologians, philosophers and jurisconsults of late fifteenth century and the early sixteenth and seventeenth centuries must be credited with the explicit definition of a law of nations based at once on recognition of the independence of nations — as opposed to imperialism and theocracy — and on the guarantee of individual freedoms. A general law of human beings, higher than that of States, brings together and interlinks individuals through the agency of the State. The chief merit of Vitoria and Suárez lies in the fact that they emphatically asserted — sooner and more effectively than Grotius — that nations are bound by natural law, which is independent of God and based on human nature itself. Grotius is to be credited with having employed the term "natural law" in a legal dissertation, as a subtitle to be precise: "*libri tres, in quibus naturae et gentium item juris publici praecipua explicantur*". It will be noted that three types of law are involved: natural, international and public. Let it not be said that he was thereby breaking new ground, that of rationalist natural law along the lines of Descartes and Kant, following

a path that runs parallel to that taken by the intellectualist law of the Spanish School influenced by Saint Augustine and Saint Thomas: Vitoria, who takes considerable account of historical circumstances, is as rationalist as Kant and Hobbes are intellectualist, since they took little or no account of the circumstances prevailing in their day. The purpose of Grotius's work, like that of Kant and Hobbes, was to develop a law of nations, which its originators recognized as very much ahead of its time and which Pufendorf, Wolff and De Vattel were to develop further without claiming to elaborate a separate international law. All three, as it happened, paid tribute to Suárez as a pioneer of "the history of political theory".

Neither international law based solely on the law of nature (naturalists) nor international law based solely on custom and conventions (positivists) contains the whole legal truth. Consent does not form the basis of all international law. The recognition in Article 38 of the Statute of the International Court of Justice that it must apply general principles of law and take account of the teachings of eminent publicists shows that customs and conventions are not the exclusive source of international law. The Charter of the United Nations is also perceptibly influenced by the naturalists (Vitoria, Suárez, Grotius) since the equality of nations and the inherent right of legitimate self-defence are recognized.

All contemporary international humanitarian law, whether from The Hague, Geneva or the United Nations, can fit in the moulds shaped by the group of (Catholic) authors of the so-called Spanish School of International Law. Grotius (though not a Catholic) is one of them...

Epilogue

Rousseau viewed his Utopian contemporary, the Abbé de Saint-Pierre, as a moth attracted by light: "This rare man, an ornament to his age and to his kind — the only man, perhaps, in all the history of the human race whose only passion was the passion for reason — nevertheless only progressed from error to error (...), because he wished to make all men like him instead of taking them as they are and will continue to be."[3]

It is good to have treaties, conventions, legislation, usage and customs; but they are of little use unless applied in practice. We inherited a very

[3] *Confessions*, Book IX.

imperfect law of nations from the Chaldean, Persian and Hebrew tribes (inviolability of emissaries, *lex talionis*), the Greeks (burial of the dead), the Romans (*jus gentium*, fetial law, *vae victis*), the Hindus (inaccessible writings from 4000 B.C., the Vedic period, inter-tribal relations, due respect for emissaries, castes, minor kingdoms, prohibition on causing undue damage, proper treatment of prisoners of war, truces), the popes and monarchs of the Middle Ages, Machiavelli, etc. But the Hebrews (like the Tatars), for example, flouted virtually all norms of human behaviour: conquest was the prelude to the burning of towns, the killing or enslavement of women and children, and the deportation of men, justified in all cases by reference to the Law of Moses, the Psalms and the Prophets; the Greeks were barbaric towards the "barbarians", although in their case we find some humane principles (ransom as an alternative to slavery or death). The Roman *jus gentium* was a form of civil law applicable only, with considerable discrimination, to Italiot tribes; *jus gentium*, natural law and fetial law (applied to declarations of war, the signing of peace and negotiations in general) were extremely confused. When the Arabs waged holy war, they sometimes engaged in acts that fell short of holiness. Machiavelli's diplomacy was inspired by the horrors perpetrated by the "paragon of princes", Cesare Borgia. Among Catholics and Protestants, crimes such as those committed by Catherine de Medici in France, the inquisitors in Spain, the Duke of Alba in Flanders, and Tilly and Wallenstein in Germany are prime examples of "do as I say, but not as I do".

Grotius wrote his treatise *"Jus praedae"* in justification of the war in the Indies. His assertions in "*Mare Liberum*" are much more explicit (and more militaristic) than anything set down in *De jure belli ac pacis* (a title copied from Cicero, *Oratio pro Balbo*, chapter 6: *"universum denique jus belli ac pacis"*[4]), in whose pages the material relating to international law and humanitarian law is, as it were, buried beneath the great mound of detail accumulated through his amazing erudition. He apparently said, shortly before dying in a shipwreck: "By dint of undertaking much, I have achieved little".

Before Grotius, three Italians also examined the question of "war and peace": Giovanni da Legnano, Pierino Belli and Alberico Gentili. But should anyone happen to assert that an old "Italian school" of international

[4] Cicero was also the first to refer to *"jus bellicum, fidesque jurisjurandi"*, in *De Officiis*, Book III, chapter XXIX, a locution related to *"pacta sunt servanda"*.

law exists, they can easily be refuted by pointing out that the writers in question are heavily overshadowed by the prominent figures of the "modern" Spanish School of International Law.

The road to hell, as we know, is paved with good intentions. Legislation, proclamations, notices and treaties failed to serve at the Battle of Solferino. It was there that Dunant rejuvenated the age-old ideals of humanitarianism, proposing not long afterwards in his book "Memory of Solferino" principles and norms that were to be incorporated in the *international humanitarian law* of the Geneva Conventions, their Additional Protocols and the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (the historical concept of "human rights" is civilization's response to the eternal problem of human dignity). How astonishing and superb was the trajectory of (modern) international law and humanitarian law or of international humanitarian law, which within scarcely three generations — Father Montesinos, Father Vitoria, Father Suárez — made more progress than in all previous centuries, came to maturity and has been leading its adult life ever since!