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CIVIL AUTHORITY ACCORDING
TO FRANCIS DE VITORIA

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THE NOTION OF CIVIL AUTHORITY ACCORDING TO
FRANCIS DE VITORIA

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INTRODUCTION

The question of civil authority is one that has occupied the minds of men down through the ages, and philosophers, theologians, canonists and jurists have proposed a variety of solutions to the problem ranging between the extreme theories of state absolutism and inalienable popular sovereignty.

Among the great thinkers who have turned their minds to the problem, Francis de Vitoria holds an eminent place. To him belongs the distinction of being the first of the scholastic tradition to develop, in systematic form, the principles of public power enuniated by St. Thomas Aquinas.

Vitoria, of course, was not the first to treat of the problem. It had already been the subject of acrimonious debate for four centuries, during the quarrel between the Popes and the Emperors over the right of investiture. But it remained for Vitoria to pose the problem with exact precision and evolve the solution through a systematic analysis of the four causes of civil authority. He is, in a sense, the founder of the traditional scholastic teaching on civil power.

Francis de Vitoria takes his surname from the town of Vitoria, in the province of Alava, Spain, where he was bom around the year 1483. About the turn of the century, he entered the Order of Preachers at the Convent of St. Paul, in the city of Burgos. His great intellectual promise won for him the honor of being sent by his superiors to study at Paris. He completed his course of studies at the Dominican Convent of St. Jacques and at the Sorbonne, where he had as a professor the celebrated Peter Crockart, O.P. Altogether, he remained in Paris for eighteen years as a student and as a professor of Sacred Theology.

Upon his return to Spain, he became professor of Theology at Valladolid, a post which he held for three years. In 1526 he was elected to fill the *prima* chair of Theology at the University of Salamanca, the most famous seat of learning in all Spain. Here Vitoria introduced the *Summa Theologiae* of St. Thomas Aquinas as a classroom text, supplanting the traditional *Sententiae* of Peter Lombard.¹

Among the students of Vitoria during his professorship at Salamanca were Melchior Cano, Peter Soto, Bartholomew de Medina and Dominic Bafiez. The extraordinary excellence of Vitoria as a philosopher and theologian is attested by the praise of his students and his contemporaries.

With the happy advent of Vitoria to our midst, there dawned for us a day worthy to be recorded in red letters, according to the words of the wise Cano, who witnessed the consequent transformation: 'Spain received, by special gift of God, the greatest teacher of theology.' Azpilcueta praises the *lectiones* of Vitoria because of their great novelty and utility. Bafiez divides Spanish theology into two epochs: before Vitoria and after Vitoria. Nicolaus Antonius describes the subsequent theologians of Spain—who were numerous, and indubitably great—as blossoms of the Vitorian tree.²

Vitoria devoted the last twenty years of his life to teaching at Salamanca, where he died on August 12, 1546.

The most famous of Vitoria's political writings are the treatises *De Indis* and *De Iure Belli*, written in 1539.³ These works

¹Cf. J., Brown Scott, *The Spanish Origin of International Law*, (Oxford, 1934), I, p. 74: "It is evident that Vitoria had devoted himself—we might say consecrated himself—to St Thomas Aquinas, teaching the *Summa* in Paris and in Valladolid; and not withstanding the fact that the *Sententiae* of Peter Lombard were prescribed, he was permitted to base his instruction upon the teaching of the great Dominican Summist ---- They were pleased—as well they might be—with Vitoria's exposition of the *Summa*, and he continued to base his instruction on the *Summa*, with the result that the *Sentences* eventually gave way to the *Summa*."

²From the address of Luis G. Alonso Getino, O.P., on the fourth centenary of Vitoria's appointment as *prima* professor of Theology at Salamanca. Translation from Scott, *op. cit.*, p. 90.

³These tracts are called *relectiones* or lectures. They were public lectures given during the semester. Cf. Scott, *op. cit.*, p. 75. These two, and eleven other public lectures of Vitoria are published under the title *Relectiones Theologicae tredecim partibus* ---

were occasioned by the controversial issue of the legitimacy of the Spanish conquest of newly discovered America. In recent times, these two works of Vitoria have come to be generally recognized as the foundation of modern international law, and to Vitoria is conceded the title "Father of International Law," in preference to Grotius, whom Vitoria preceded by almost a century.⁴

No less important is Vitoria's tract *De Potestate Civili*, in which he constructs his theory of the state and of civil authority.⁵ This work finds its completion in the comparison between civil and ecclesiastical authority, in the two tracts *De Potestate Ecclesiae*.⁶ Much of Vitoria's political thought is contained in his commentaries on the *Prima Secundae* and the *Secunda Secundae* of the *Summa Theologiae* of St. Thomas Aquinas.⁷

The scope of this work will be confined to an investigation of Vitoria's teaching on the precise point of civil authority, its nature and causes, with a view to determining Vitoria's position in relation to the ancient scholastic teaching.

This investigation is prompted by the fact that there is a decided lack of unanimity among the interpreters of Vitoria's doctrine, to such an extent that he has been identified with directly opposite theories of civil power.

Peter Soto⁸ and Dominic Bafiez®, disciples of Vitoria, call upon his authority in support of the theory that the people are the primary and original subject of power, and they transfer that power to designated rulers.

⁴This honor was, for a long time, attributed to Grotius on the basis of his work *De iure belli et pacis*, published in 1625. Cf. Scott, *op cit.*, pp. 94, 160, 288.

⁶*Relectio III, De Potestate Civili*, in *Relectiones Theologicae tredidim*, Lyons, 1586.

⁷*Relectiones I and II*, 1532, 1533.

⁸The commentary on the I-II of the *Summa* is as yet unedited. Two manuscripts are at the Vatican Library, Vat. Lat. 4. 630 and Ottob. Lat. 1. 000. The commentary on the II-II has been edited by Beltran de Heredia, O.P.: *Francisco de Vitoria, O.P.: Comentarios a la Secunda Secundae de Santo Tomas*, (Salamanca, vol. I, 1932; vol. II, 1932; vol. III, 1934; vol. IV, 1934; vol. V, 1935).

De Iustitia et Iure, (Salamanca, 1562), IV, q. 2, a. 1.

Decisiones de Iure et Iustitia (Venice, 1595), q. 62.

Suarez, however, interprets Vitoria as holding for the theory of immediate divine donation of power upon the ruler, presupposing his election by the community.¹⁰

Zigliara interprets Vitoria in a similar light. He holds that the Vitorian theory of initial popular sovereignty is applicable only in the abstract order. Consequently, he would have Vitoria concede to the people, not a determined power which resides in them as in a subject, but rather a constitutive right by which they determine for themselves who the subject of power will be. Once the subject is determined by the people, God directly bestows authority upon him.¹¹ Fabre¹² and Beuve-Méry¹³ follow this opinion.

On the other hand, Delos,¹⁴ and following him, Naszályi,¹⁵ are of the opinion that Vitoria considers the community as the subject of power in the concrete, but deny that the theory of translation of power is contained in the Vitorian doctrine. They consider that any alienation of power is totally contrary to Vitoria's organic conception of the state, and they view the theory of translation as the culmination of the voluntarism of Suarez. Public power, being immanent to the community (as Vitoria teaches), is the "*vis ordinatrix*" of social life, and thus cannot be alienated. The community always retains its power, and exercises it through its organs, the prince and the magistrates.

Recasens y Siches sees in Vitoria a champion of the contractarian school, fully identified with the thought, not only of Suarez, but of Hobbes, Locke and Rousseau.¹⁶

r»F. Suarez, *De Legibus*, (Lyons, 1619), HI, c. 4, n. 5.

1»T. M. Zigliara, O.P., *Summa Philosophica*, (Rome, 1867), III, p. 196.

12L. Fabre, "L'origine du pouvoir," *Revue Augustinienne*, (1910), XVH, p. 702.

r3H. Beuve-Méry, *Le théorie des pouvoirs publics aapres Francois de Vitoria et ses rapports avec le droit contemporain*, (Paris, 1928), pp. 49 sq.

MJ. T. Delos, O.P., *La société internationale et les Principes du droit public*, (Paris, 1929), pp. 204-211.

3SA. Nasáljd, S.O. Cist., *Doctrina Francisci de Vitoria de Statu*, (Rome, 1937), pp. 203-312.

ieL. Recasens y Siches, "Las teorfas politicos de Fr. de Vitoria," *Anuario de la Asociacion Francisco de Vitoria*, (1929-30), II, pp. 175-222.

Urdânoz defends the viewpoint that Vitoria is the principal representative of the classical scholastic opinion, the precursor of Suarez and St. Robert Bellarmine.”

, It is evident that Vitoria could not be the protagonist of so many diverse theories. What is his true doctrine? Is he a contractarian and a champion of popular sovereignty? Is his doctrine in conformity with that of Bellarmine and Suarez, or is it directly opposed? Is his the organic theory, or the theory of immediate divine right? Has he laid the groundwork for the radical democracy of Rousseau and the modern liberalistic doctrines of the state? These are the questions which we will attempt to answer in the following pages by a critical examination of the Vitorian text.

”T. Urdânoz, O.P., “Vitoria y la concepción democrática dd pc^er pubhco y dd estado,” *Anuario de la Asociacion Francisco de Vitoria*, (1947-48), VIII, pp. 261-332.

Chapter I

THE PERFECT COMMUNITY

Any discussion of political authority must necessarily begin with the notion of civil society, for authority is rooted in the very nature of society, in such a way that a society without authority cannot be conceived.¹

Society in general is the moral union of many persons acting together for a common end.² We discern in the notion of any society, therefore, the twofold aspect of multitude and unity. The multitude constitutes the material element of society, the aggregate of individuals who comprise the social body. The formal element of society is the moral union which binds men together to act for a common end. Society, then, is not a simple collection of individuals or families, but an organized collectivity, unified by the bonds of mutual rights and duties relative to the common good.

A society is called natural when it has its source and specific determination *from* human nature. The conjugal union, the family and the state are natural societies. Of these, the state alone is a juridically perfect society, because the state alone is capable of fulfilling all the necessities of human life.

Vitoria adopts the Aristotelian and Thomistic notion of a perfect society or community, which is founded on self-sufficiency.³ He directly poses the question: "What is the repub-

¹*De Pat. Cio.*, n. 5:societas nulla consistere potest sine vi aliqua et potestate gubernante et providente."

²Cf. St. Thomas Aquinas, *Opusculum contra impugnantes Dei cultum et religionem*, ch. III.

³*Pol.*, I, 2. lect. 1: "Primo ostendit ex quibus sit civitas. Quia sicut vicus constituitur ex pluribus domibus, ita civitas ex pluribus vicis. Secundo dicit, quod civitas est communitas perfecta: quod ex hoc probat, quia, cum omnis communicatio omnium hominum ordinetur ad aliquid necessarium vitae, ulla erit perfecta communitas quae ordinatur ad hoc quod homo habeat sufficienter quicquid est necessarium ad vitam: talis autem communitas est civitas."

lie?" and answers that it is "properly called the perfect community. To be perfect is to be complete, lacking nothing which is required for self-sufficiency.

A perfect republic or community is that which of itself is complete, which is not a part of another republic, but which has its own laws, its own councils and its own magistrates.⁸

The perfect community, first of all, must be intrinsically complete and self-sufficient. The intrinsic self-sufficiency of the perfect community arises from its ability to provide the means necessary to attain the end of the community, which is the conservation of the public good.⁹ The public good cannot be maintained, however, unless there be a public power and authority to direct and rule the community. It is public authority functioning through its legislative, judicial and executive powers that insures the conservation of the common good.⁸

A further note of the perfect community is its independence, by which it is free of subjection to any other state, is not a part of any other republic. Although Vitoria envisages the state as a part of the international community, this fact does not destroy the sovereignty of individual states.⁹ In the international community of the Holy Roman Empire, Vitoria considers the several states as sovereign and independent, with the right to wage war even without the consent of the Emperor.¹⁰ The Emperor does not have dominion and jurisdiction over the whole world, neither by divine, nor natural, nor human law.¹¹

⁸*De Iure Belli*, n. 7.

⁹*Ibid*: "Est ergo perfecta respublica aut communitas quae est per se totum, id est, quae non est alterius reipublicae pars, sed quae habet proprias leges, proprium concilium, et proprios magistratus."

¹⁰*Comm. in II-II*, q. 105, a. 5, ed. Heredia, V, p. 213, n. 2.

¹¹*De Potestate Civili*, n. 5.

⁸*De Iure Belli*, nn. 7, 19; *De Pot. Civ.*, n. 15.

⁹*De Pot. Civ.*, n. 21.

¹⁰*De Iure Belli*, q. 8: "Nec enim obstat, quin sint plures principatus et respublicae perfectae sub uno principe . . . Sed ex hoc ipso dubitari merito potest, an si plures huiusmodi respublicae aut principes habeant unum dominum aut principem, an possint per se inferre bellum, sine auctoritate superioris principis. Et respondeo, quod sine dubio possunt; ut reges, qui sunt subiecti imperatori, possunt invicem bellare, non expectata auctoritate imperatoris, quia (ut dictum est) respublica debet sibi esse sufficiens, nec sufficeret sibi sine tali facultate.

¹¹*De Indis*, sec. II, q. 1.

The perfect community, then, necessarily has the right of waging war to preserve its independence. It must have the power of "vindicating injuries, recovering its possessions, and punishing its enemies."¹²

All states, great and small, as perfect communities, are juridically equal. Vitoria applies the principles of the perfect community to show that even the barbarian communities of the Indies were republics in the real sense, and consequently, the equal of the civilized states of Europe.¹³

The perfect community, according to the Vitorian concept, is a sovereign state, intrinsically complete and self-sufficient, extrinsically independent of any other community.¹⁴

In the abstract, the essence of the perfect political community consists in unity, the ordination to the common good.¹⁵ The unity of society is effected in the concrete by public authority, for it is by authority that the citizens are actually directed to the common good.

Vitoria conceives of public power as an essential property flowing from the essence of the community already constituted in the abstract. He makes a distinction between power (*potestas*) and potency (*potentia*). Power adds a new note to the notion of potency, "a certain preeminence and authority."¹⁶ Matter, the senses, the intellect and will are called *potentiae*, but magistracy, priesthood and kingship are properly called *po-*

in II-II, ed. cit., p. 281, n. 4: ". . . respublica debet esse sibi sufficiens. Unde illa quae habet potestatem facienda illa tria, illa est respublica."

¹³*De Indis*, sec. 1, n. 23: "Habent (barbari) ordinem aliquem in rebus suis, post quam habent civitates, quae ordine constant, et habent matrimonia distincta, magistratus, dominos, leges, officia, commutationes."

¹⁴Cf. H. Wright, *Vitoria and the State* (Address commemorating the fourth centenary of the lectures *De Indis* and *De Iure Belli*), Washington, 1932, p. 30: "The state of Vitoria comprised all the elements considered by modern writers as essential, namely, a group of human beings, a more or less definite territory upon which they reside, internal sovereignty and independence from foreign control, and a political organization or agency through which the collective will of the population is expressed and enforced."

¹⁵Comm. in II-II, q. 42, a. 2; ed. cit., p. 299, n. 1: "Unitas est tantum bonum, quod sine eo civitas consistere non potest."

¹⁶*De Potestate Ecclesiae*, I, sec. II, n. 2: "Neque enim omnino idem videtur esse potestas quod potentia ---- videtur potestas praeter potentiam ad actionem dicere praecminentiam quandam et auctoritatem;"

testates. Power presupposes an active potency and adds to it the moral and juridical notion of right.

Vitoria divides power into dominion of ownership and dominion of authority.¹⁷ Whereas dominion of ownership may be perfect dominion, perfect right over the use and disposition of material goods, dominion of authority is an imperfect dominative right over persons, which cannot be exercised except with proper regard for the natural rights of men as individuals.

Dominion of authority is either public or private.¹⁸ Private authority is that which is proper to conjugal and familial society, dominative power in the strict sense.¹⁹ Public power, the power of jurisdiction, is that which is proper to a perfect society, and is defined by Vitoria as "the faculty, authority or right of governing the civil republic."²⁰

Vitoria is insistent on the point that authority is absolutely necessary to any society, and where there is no authority, the community would perish.²¹ Authority is a necessary means to the attainment of the end of society; therefore, in the order of nature, at least, it presupposes society already constituted in its formal essence, with an end already determined. A society does not received its specification from the authority inherent in it, but rather authority takes its form from the end of the society to which it pertains.

Authority, therefore, has the nature of a property consequent upon the essence of society.²² God, says Vitoria, has created man of such a nature and disposition that he must live in society. Society, however, cannot exist without authority. Therefore, just as society is from divine and natural law, so authority must be traced to the same source, "for who gives the species

i7*De Indis*, sec. I, n. 4.

isjpe *Pot. Civ.*, n. 2.

iaIbid. n. 24.

z0*Ibid.* n. 10: "Potestas publica est facultas, autoritas, sive ius gubernandi rempublicam civilem."

zIIbid., nn. 5, 8, 10.

zzIbid., n. 6.

or the form, as Aristotle says, gives to that species or form its consequences."²³

Public power is a necessary consequence of man's nature, not as he is an individual, but as he is a social and political animal; and authority comes into being only when men have actualized their social inclination by uniting in a perfect community.

Authority is the principle that conserves, governs and directs the community to its end. Even without a prince, the republic, of itself, has unity, because man is a social and political animal.²⁴ The act of congregation in a political community establishes the first bond of unity among men in the new society, a unity which reduces the aggregate of individuals to a moral whole.

We can distinguish in Vitoria's idea of the perfect society a double perfection: its fundamental and essential unity, and its operation for the common good. The first perfection is effected by the union of intellects and wills ordained to the common good. Once men join together in this common purpose, they are no longer an amorphous mass of individuals, but become an organized unit, the *corpus mysticum* of the medieval theologians.

But a further perfection is required, a principle of operation which directs the community in its actual striving to attain the common end. That principle is public authority.²⁵ The intention of the end alone is not sufficient to attain it. Authority is the executive faculty which coordinates the activities of the citizens and directs them to a harmonious striving for the com-

²³*Loc. cit.*, "Si ergo Deus necessitatem istam atque inclinationem hominibus dedit, ut in societate et sub alia potestate regente degere non possent, hoc ipsum Deo auctori acceptum referre necesse est. Quae enim apud omnes naturalia sunt, a Deo naturaliter sine dubio sunt; qui enim dat speciem, seu formam: ut idem Aristoteles ait: dat ad speciem seu formam consequentia."

²⁴*Comm. in II-II*, q. 47, a. 10, *ed. cit.*, II, p. 368.

²⁵*De Pot. Cio.*, n. 5: "Sicut corpus humanum in sua integritate conservari non posset, nisi esset aliqua vis ordinatrix, quae singula membra in usus aliorum membrorum, maxime in commodum totius hominis, componeret: sane ita in civitate contingere necesse esset, si unusquisque civis publicum bonum negligeret."

mon goal. It is in this sense that Vitoria likens authority to a *vis ordinatrix*.

Some students of Vitoria, proceeding from the notion of power as the immanent form of the state, attribute to him the organic theory of the perfect community and state personality. They conceive power as a vital force, an energy which informs the social body and gives it an activity and a personality distinct from that of the members.²⁶

But Vitoria does not conceive of society as an organism and a person in the univocal sense. The unity which pertains to the political body is only analogous to the unity of the human body. Whereas man is a substantial unity, *unum per se*, the social body is merely an accidental union, a unity of order, which, in the words of St. Thomas, is "the least of unities."²⁷

Vitoria expressly follows the doctrine of St. Thomas on this point:

As Aristotle says, parables and analogies ought not, nor cannot, be similar in an things: otherwise it would not be a parable, but the very thing itself. And therefore, as St. Thomas says in the *Third Part*, although the natural body and the mystical body have many similarities, yet they are not entirely the same, and differ in many ways."²⁸

The organic unity and the personality of the state, as a mystical body, are no more than analogous, indeed, metaphorical concepts. The community, considered as a moral person cannot possess a substantial unity nor a personality in the proper sense.

26Cf. J. T. Delos, O.P., *La société internationale et les principes du droit public*, (Paris, 1929), pp. 204-211; p. 251: "Ainsi au terme de cette analyse, nous ne craignons pas de dire que l'homme et l'Etat sont tous deux, très exactement, et très rigoureusement, des Personnes." Cf. also Naszályi, *op. cit.*, p. 223: "Huic corpori agere, jamvero agere est personae, quae quidem debet esse independens et in se completa, nam communitas perfecta non gerit res suas cum alia quacumque."

27Con. *Gen.*, IV, c. 35: "Fit autem unum ex multis, uno quidem modo, secundum ordinem tantum: sicut ex multis domibus fit civitas." *Ibid.*, II, c. 58: "Esse unum secundum ordinem non est esse unum simpliciter: cum unitas ordinis sit minima unitatum."

28De *Pot. Ecc.*, II, sec. 1, n. 4: "Sicut Arisot. dicit, parabola et analogia non oportet nec potest per omnia esse similis: alias iam non parabola sed ipsa eadem res esset. Et ideo, ut dicit S. Tho. 3 parte, licet corpus naturale et mysticum multa habeant similia, non tamen omnia, sed differunt non paucis."

Chapter II

THE ORIGIN OF CIVIL SOCIETY

Vitoria, following the teachings of Aristotle and St. Thomas, traces the origin of civil society to the natural sociability of man.²⁹ Proceeding in a logically ascending order, he shows that man's nature, corporeal, spiritual and moral, imposes upon him the natural necessity of living in society.

On the physical side, nature leaves man the most destitute of all the animals. Other animals are generously provided by nature with means necessary *to* self preservation: for protection against the elements, a natural covering; for defense against enemies, natural weapons, or velocity in fleeing dangers. Man, although endowed with the highest gifts of reason, wisdom and speech, is left by nature weak, needy and destitute. The physical needs of man can be adequately supplied only by living in a community.³⁰

Man's spiritual nature also argues for his natural sociability. Only through learning and experience can man's intellectual capacities be developed and perfected, and this would be impossible in a solitary state. The gift of speech would be a useless faculty outside the society of other men.³¹

Finally, the human will, "whose ornaments are justice and friendship," would be distorted without human society. For the virtue of justice can be exercised only in social life, and friendship, without communication among men, would perish.³²

Man's whole nature, therefore, can find its complete perfection only in the society of men. Society, therefore, is not an

²⁹Cf. *Pol.*, I, c. 1; *Ethic*, I lect. 1, n. 4; *De Reg. Prin.*, I, c. 1; *Summa Theol.*, I, q. 96, a. 4; I-II, q. 72, a. 4; etc.

³⁰*De Pot. Civ.* n. 4.

³¹*Loc. cit.*

³²*Loc. cit.*

artificial invention, but has its roots in nature. Man is impelled to join with his fellow men in society by a natural inclination, motivated by a desire to satisfy his necessities and to develop to the full his spiritual and moral capacities.”

The existence of this natural inclination and moral necessity to form a civil community does not, of itself, fully explain the origin of society. This inclination must be reduced to act, and the actualization of this propensity is the proximate efficient cause of society as it exists in the concrete.

The political community has its origin in a pact of association and subjection, by which men form an organized society and elect their rulers. This appears in Vitoria's doctrine on the first division of goods among men.⁸⁴ Permanent dominion over these goods by individual men could be acquired in either of two ways: by a voluntary transfer on the part of the possessor, or by an act of public authority on the part of the ruler.⁸⁵

In the beginning, Adam could have made the first division of property on his own authority as head of the family, or with the consent of his sons.⁸⁶ It is a question here of goods already accumulated by the family, in which case Adam could make the division as an act of private dominion. Vitoria does not attribute princely power to Adam, but his position as head of the human race gives him preeminence over the rest of men.

By reason of his singular position, Adam had dominion over all things, and had the authority to divide them among his sons. The same was not true of Noe. After the flood, Noe made the distribution of goods among his sons in virtue of public authority, for he was the ruler of the political community.⁸⁷

The first division of property in particular primitive societies was made by a ruler elected by the common consent of the

33Op. cit., n. 5: “Patet ergo fontem et originem civitatum rerumque publicarum non inventum esse hominum, neque inter artificia numerandum, sed tamquam a natura profectum, quae ad mortalium tutelam et conservationem hanc rationem mortalibus suggestit.

34Cf. Naszályi, op. cit., pp. 138-140.

35In II-II. 4. 62, 2.1, ed. cit., III, p. 81, n. 27.

36Ibid., III, p. 78, n. 21.

37Loc. cit.: “Et ita etiam Noe post diluvium potuisset facere divisionem filiis suis; habebat enim auctoritatem principis.”

people.³⁸ The election of the prince is the first foundation of the political society in the concrete. The civil community is not a mere extension and evolution of the familial society, but the two are specifically distinct. Political society is built on the family; although founded in nature, it is proximately constituted by human law.³⁹

The political community has its origin in the common consent of the people, uniting in a pact of association and electing their ruler.⁴⁰

Although Vitoria admits that some communities had their origin through tyrannical usurpation of power,⁴¹ he does not admit the legitimacy of the tyrant's title except by the consent of the people.⁴²

Vitoria does not clearly distinguish between the pact of association, by which men form a political group, and the pact of subjection, by which they choose a prince to rule them. The formation of civil society appears to coincide in time with the choice of a political regime. By one and the same act, society is born and the prince elected. But we can distinguish two logical moments in this single act. The institution of the body politic precedes, in the order of nature, the election of the prince. For "the prince has all his authority from the republic."⁴³ But in order for the prince to receive his power from the republic, the latter must already exist and possess the power.

³⁸In *II-II*, q. 62, a. 1, ed. cit., III, n. 21, p. 78: "Secundo . . . quia homines ex consensu omnium potuerunt eligere principem, nam statim in principio fuerunt principes post diluvium, ut patet de Nembrot filio Noe et aliis. Fateor tamen quadringentos annos forte manserunt omnia communia; sed post ex consensu omnium, potuerunt eligere principem qui dividere et appropriare potuit illis res omnes."

³⁹De *Indis*, see. II, n. 1: "Duplex est potestas. Una familiaris . . . et haec est naturalis. Alia est civilis, quae licet a natura quidem habet ortum, non tamen natura, sed lege constituta est."

⁴⁰Zoc. cit.: "Certe post Noe orbis fuit divisus in diversas provincias et regna . . . sive convenientibus in unum aliquibus in imam rempublicam, ex consensu communi sibi constituerunt principem."

⁴¹Loc. cit.: "In aliquibus regionibus primo inceperint esse domini per tyrannidem."

⁴²De *pot. Civ.*, n. 23: "Certe videtur quod leges, quae sunt convenientes reipublicae obligent, etiamsi ferantur a tyranno: non quidem quia a tyranno latae, sed ex consensu reipublicae."

⁴³Zn *II-II*, q. 62, a. 1, ed. cit., III, p. 81, n. 27.

Chapter III

THE ORIGIN OF CIVIL AUTHORITY

The question of the origin of civil authority must be considered under two aspects: first, in its abstract essence, and secondly, in the concrete, as it is realized in a determined subject.⁴⁴

Having established the necessity of public power and its end, Vitoria proceeds to the consideration of its efficient cause, and reasserts the Catholic doctrine that public power is from God, and cannot be the creation of men.⁴⁵

The proof of the divine origin of civil power is based on the fact that this power has its roots in the natural law. Authority is absolutely essential to the conservation of society, and since society has its origin in the law of nature, authority likewise must have the same source.⁴⁶ Since God alone is the author of the natural law, He alone is the immediate efficient cause of public power.⁴⁷

Vitoria then goes on to explain the mode in which God is the immediate cause of civil authority. Since God is the author of

⁴⁴Cf. Crahay, *La politique de Saint Thomas d'Aquin*, (Louvain, 1896), p. 45: "Elle vise d'abord l'autorité considérée abstraitement, c'est-à-dire l'institution, la chose; elle vise ensuite les pouvoirs concrètement réalisés, c'est-à-dire l'autorité considérée dans les personnes qui en sont revêtues."

⁴⁵*De Pot. Cio.*, n. 6: "Manifestum evadit potestatem publicam a Deo esse, nec hominum conditione, aut iure aliquo positivo contineri."

⁴⁶*Loc. cit.*: "Et si respublicae societatesque iure divino seu naturali sunt constitutae, potestates eiam, sine quibus respublicae stare non possent."

⁴⁷*Loc. cit.*: "Si enim publicam potestatem ordinemus constitutam iure naturali, ius autem naturale Deum solum auctorem cognoscit: manifestum evadit potestatem publicam a Deo esse, nec hominum conditione, aut iure aliquo positivo contineri"

man's natural inclination to live in society, He must also be the cause of all the consequences which naturally and necessarily result from the institution of society, "for he who gives the form, gives the consequences of the form." Therefore, since authority is naturally necessary to the conservation of the community, it is a natural consequence of man's social nature, and thus has the same natural, and therefore, divine source.

A further proof of the divine origin of public power lies in its transcendence over private authority. The prince has the power of binding his subjects in conscience, a power that he cannot receive from men, but only in virtue of divine ordination.⁴⁸ The laws of the prince can also establish the just mean of certain virtues.⁴⁹ Finally, the republic has the power of life and death over malefactors, a power which belongs to no private individual. Therefore, the state has this power by divine law.⁶⁰

Since public power is constituted in its essence by God alone, it follows as a logical consequence that its existence in the concrete order, in a determined subject, depends also upon the divine will. The power of all princes is derived from God Himself.⁶¹ On this basis, the doctrine of the divine right of kings was evolved. Since God alone is the efficient cause of power, He alone can confer it on a ruler, and the king, having received his power from God, is responsible to Him alone, and not to his subjects. This doctrine of royal absolutism was held by King

⁴⁸*De Pot. Civ.*, n. 15: "Principum leges et constitutiones ita obligant, ut transgressores in foro conscientiae culpa rei sunt"

⁴⁹*Ibid.*, n. 16: "Conveniunt autem in hoc, quod lex divina constituit aliquid in esse et genere virtutis aut vitii --- Ita etiam lex humana habet vim constituendi aliquid in esse virtutis, et eius contrarium in esse vitii."

⁵⁰*Ibid.*, n. 7: "Homini privato non licet occidere hominem, quamvis criminis; ergo aliquam auctoritatem habet respublica occidendi hominem, quam non habet privatus homo: et illa non potest esse iure positivo, ergo iure divino."

⁵¹*Ibid.*, n. 8: "Ideo nos cum sapientibus melius dicimus, monarchiam sive regiam potestatem non solum iustam esse et legitimam, sed dico reges etiam a iure divino et naturali habere potestatem, et non ab ipsa republica, aut prorsus ab hominibus."

James I of England, and also by the kings of France, with strong support from Bossuet and the Sorbonne.⁸²

The origin of civil power was hotly debated during the conflict between the Popes and the Emperors over the right of investiture. On the principle that Church and Empire were united in the one body of Christendom, and that the spiritual power has primacy over the temporal, Pope Gregory VII claimed supreme authority in both spiritual and temporal affairs. Consequently, the Emperor does not receive his power directly from God, but through the Church.⁸³ This opinion was supported by theologians generally during this period.⁸⁴

The early scholastic opinion recognizes the people as the natural subject of political power, which they receive immediately from God. The power of the prince is derived from the people by way of translation or transference.⁸⁵

Some modern scholastics, seeking a middle course between the teaching of the early schoolmen and the contractual theories of Hobbes and Rousseau, concede to the people only the right

«Bossuet J. B., *Politique tirée de l'Écriture Sainte*, (Paris, 1709), L. IV, a. k autorité royale est absolue » . . . Sans cette autorité absolue, il ne peut ni faire le bien, ne reprimer le mal.

n Io JS63 file So;bo)ne approved royal absolutism. Cf. *DTC*, XII, p. II, col. 2760: « Doctrinam facultatis esse quod. subditi fidem et obedientiam régi Christianissimo ita debent, ut ab iis nullo pretexta dispensari possint.

53S. Gregory VII, *Registrant*, Lib. II, *Dictatus Papae*, PL, CXLVIII, col. 408.

S4Cf. Hugh of St Victor, *De Sacramentis*, Lib. II, c. 4, PL CLXXVI, col. 418; Vincent of Beauvais, *Speculum Doctrinale*, (Duaci, 1624), Lib. VII, c. 32, col. 579; John of Salisbury, *Polycraticus*, L. IV, c. 3, PL, CXCIX, col. 516.

«Cf. Cajetan, *Comm*, in II-JJ, q. 50, a. 1: "Regimen autem regum a populi quidem electione dependet qui vota sua et potestatem in eum transtulerunt; et propterea vices populi gerere dicitur."

Cf. also Soto, *De iustitia et iure* (Salamanca, 1562), I. q. 1, a. 3: "Reges ac principes a populo creati sunt in quos suum transtulit imperium et potestatem"; Banez, *Decisiones de iure et iustitia* (Venice, 1595), q. 62: "Cum autem creat (respublica) talem gubernatorem vel gubernatores, transfert in illum vel in illos suam potestatem."

This doctrine was adopted and developed by Suarez and St. Robert Bellarmine. Cf. Suarez, *De legibus*, (Lyons, 1619); *De opere sex dierum*, (Lyons, 1635); *Defensio Fidei Catholicae*, (Naples, 1872). Bellarmine, *De laids*; *De S. Pontif*, in *Omnia Opera*, (Naples, 1857).

of designating the concrete subject of authority, upon whom God immediately confers the power.⁶⁶

Many of the modern scholastics adhere to the theory of historico-natural right, according to which the subject of political power is determined by a certain natural right belonging to a particular individual by reason of some historical fact or circumstance.⁶⁷

These authors admit a multiple title to authority: title arising from a just war, title by right of property, title by right of natural talent and preeminence of one individual over the rest of the community, and especially, the title founded on the pre-existing right of domestic authority. As the family is the seed of the political community, so the paternal authority is the foundation of civil power, and as the family naturally and spontaneously evolves into a perfect society, so domestic authority spontaneously evolves into civil authority. The civil community, then, is not the original and natural subject of power, and does not transfer authority to its rulers. There is no free pact of subjection on the part of the people. Authority, being of divine origin, is granted to the prince directly by God in accordance with the natural law.

The variety of opinions, even among the scholastics, indicates the importance and the difficulty of the problem of the origin of power in the concrete. Where does Vitoria stand on the question? Although he has asserted the divine authorship of power, he gives to men, nevertheless, a role in determining the subject of power in the concrete. Power naturally results in an organized civil community, but the proximate efficient cause of the community is the consent of men. By forming the political body, men may be said to intervene in the bestowal of

⁶⁶Cf. Zigliara, *Summa philosophica*, (Rome, 1878), vol. III, p. 194; Billot, *De Ecclesia Christi* (Prato, 1909), pp. 495 seq; Schwalm, *Leçons de philosophie sociale*, (Paris, 1911), vol II, p. 505.

⁶⁷Cf. Cathrefn, *Philosophia moralis*, (Barcelona, 1945), p. 401; Liberatore, *Institutiones Philosophicae*, (Naples, 1871), vol. III, p. 275; Meyer, *Institutiones iuris naturalis*, (Friburg, 1906), p. 341; Schiffini, *Disputationes philosophiae moralis*, (Turin, 1891), vol. II, p. 424.

power by disposing the matter, or the subject capable of power.⁵⁸ This does not prejudice the teaching of the immediate divine causality of power, for men have no part in its creation. Once the political community is formed, power is immediately present, not by a new and direct intervention on the part of God, but as a property necessarily inhering in the society.⁵⁹ Not only has the human will no part in the creation of power, but it is absolutely unable to impede or destroy that power without destroying society itself.⁶⁰

⁵⁸Cf. Urdánoz, *op cit.*, p. 280.

⁵⁹*De Pot. Civ.*, n. 6.

MIbid., n. 8: "Constitutata est enim in republica omnibus etiam civibus invitatis potestas seipsam ministrandi." *Ibid.*, n. 10: "Si cives omnes in hoc convenirent, ut omnes has potestates ammitterent, ut nullis tenerentur legibus, nulli imparerent, pactum esset nullum et invalidum, utpote contra ius naturale."

Chapter IV

THE SUBJECT OF CIVIL AUTHORITY

After consideration of the efficient cause of civil authority, Vitoria proceeds to the determination of its material cause, that is, the subject in which it resides by divine and natural law. That subject, Vitoria says, is the republic itself, which has the power to "govern and administer itself and direct all its power to the common good."⁶¹

This conclusion is deduced from the premises of the natural necessity of power to the community and the natural freedom of man. If natural law places this power in the community, it must determine also the natural and original depositary of that power. But natural law does not single out any individual as the subject of power, for by natural law all men are born politically free.⁶² Therefore, the community itself must be the first and the natural subject of power.

If we lay aside all human positive law, no man is entitled to civil authority in preference to another. Before men united in a social body, none was superior in authority to another; consequently, there is no reason why, in the organized political society, anyone should arrogate this power to himself. Such a

⁶¹*Ibid.*, n. 7: "Constitutione ergo divina, respublica hanc potestatem habet: cause vero materialis in qua huiusmodi potestas residet iure naturali et divino est ipsa respublica, cui de se competit gubernare seipsum, et administrare, et omnes potestates suas in commune bonum dirigere."

⁶²*De Indis*, sec. II, n. 1: "In iure naturali homines liberi sunt, excepto dominio paterno et maritali." In *II-II*, q. 47, a. 10, ed. cit., II, p. 368: "De iure naturali nullus sit rex nec praepositus aliis, quia de iure naturali libera nata sunt."

procedure Vitoria considers as unjust force, and may be resisted with force.⁸³

Some authors disagree with Vitoria's reasoning. Vitoria argues that, in the absence of any dominative power of one individual over another, nature assigns the title to authority to the community itself. The dissenting authors, however, conclude from this that there is no naturally determined subject of civil authority.⁸⁴

Vitoria holds, however, that given a natural right, there must be given a natural subject of that right; accidents do not exist without a subject. The theory of the constitutive right of designation or election eliminates a natural subject of power, for the prince elect would be the subject of power in virtue of "positive and human law." Nor would the patriarchal authority constitute a natural title to civil authority, for the patriarchal society is specifically distinct from the political society.⁸⁵

For those who hold for the theory of designation, no perfect society can exist without a determined mode of regime. But in the Vitorian notion, we have seen, there is a double perfection attributed to the political society, and two logical moments in its complete formation: the initial constitution of society in its essential perfection, and the choice of a regime and a ruler, which constitutes the society in its full perfection. In the order of nature, at least, the existence of the perfect society in its

⁸³*De Pot. Civ.*, n. 7: "Nam cum de iure naturali et divino est aliqua potestas gubernandi rempublicam, et sublato communi iure positivo et humano, non sit maior ratio ut potestas illa sit in uno quam in alteri, necesse est ut ipsa communitas sit sibi sufficiens et habet potestatem gubernandi se. Si enim prius quam in civitatem homines convenirent, nemo erat aliis superior, non est aliqua ratio cur in ipso coetu seu conventu civili quisque sibi super alios potestatem vindicaret: maxime cum quilibet homo iure naturali habet potestatem et ius defendendi se, nihilque sit magis naturale quam vim vi repellere."

⁸⁴Cf. Bo, "Il pensiero di S. Tommaso d'Aquino sull' origine della sovranità," *La Scuola Cattolica*, XVI, p. 403: "La divina institutione della sovranità non è solo indiretta ma diretta e immediata; che . . . v'ha in senso assoluto, un solo necessario detentore della sovranità, l'Autore della natura e nella convivenza umana manca un qualunque depositario (individuale o collettivo, società o singolo individuo), per diritto naturale, dei potere che promana di Dio"

Cf also Zigliara, *op cit.*, p. 194; Billot, *De Ecclesia Christi* (Prato, 1909), p. 495.

⁸⁵Cf. *De Indis*, sec. II, a 1.

essential unity is presupposed to the choice of a ruler. And since society cannot exist even for a moment without its essential property of authority, that authority must belong from the beginning to the community as a whole.

Does the Vitorian notion of initial popular sovereignty conclude to a natural, initial democratic society?⁶⁶ This question must be answered in the negative, for Vitoria establishes the foundation of all determined forms of power to be in virtue of positive law.⁶⁷ Natural law determines no more than that the multitude, constituted in a perfect society and considered as a moral whole, enjoys the sovereign power of governing itself. The mode of that regime and the particular individuals who exercise its functions are left to the choice of the people.⁶⁸ A democratic society, as such, is not the immediate subject of power, but rather the multitude organized in society, a society as yet indifferent to any form of regime. This is the proper sense of Vitoria's use of the term "republic" as the material cause of power.⁶⁹

Political authority, as such, pertains to the first perfection of the political community, its substantial unity; authority as quali-

eeCf. P. Leon, "L'évolution de l'idée de la souveraineté avant Rousseau," in *Archives de philosophie du droit et de sociologie juridique*, (Paris, 1937), VI, p. 165. Leon asserts that the medieval idea of the mixed regime seems to disappear, and "Vitoria lui substitue une démocratie initiale, orientée vers une individualisme égalitaire."

e7*De Indis*, sec. II, n. 1: "Alia (potestas) est civilis, quae licet a natura habetur . . . non tamen natura, sed lege constituta est."

ß81*η II-II*, q. 104, a. 1, *ed cit.*, V., p. 203, n. 2: "In qua republica necessarium est quod sint aliqui superiores . . . quia respublica nullo modo posset gubernari, si non esset aliquis superior. Et sic totum hoc est de iure naturali; non quod habeat iste vel ille hanc superioritatem."

e9We can distinguish three senses of the term "republic" in Vitoria's writings. He uses it to signify:

1) An organized multitude, previous to the election of the prince. Cf. *De Pot. Civ.*, n. 14: "Major pars reipublicae regem supra totam rempublicam constituere potest." Also, *De Iure Belli*, n. 6, *In II-II*, q. 104, a. 5, etc.

2) A political society in general, abstracting from any particular mode of regime. Cf. *De Pot. Civ.*, n. 13: "cum una respublica sit pars totius orbis:" *De Pot. Ecc.*, I, sec. VI, n. 9.

3) The people taken collectively. Cf. *De Pot. Civ.*, n. 14: "In regio principatu rex est non solum supra singulos, sed etiam supra totam rempublicam, id est, etiam supra omnes."

fied by a specific form of government pertains to its second perfection, the actual operation toward its goal. Only if the multitude chooses to exercise the functions of government itself will it be a democratic regime.⁷⁰

The Vitorian notion of public power as being initially invested in the people leads to the concept of the immanence of power to the social body.⁷¹ Public power is a natural concomitant of civil society, necessary to, and inseparable from, the body politic. It is not the creation of men, and it is not in the power of men to abolish it or dispense with it.⁷²

From Vitoria's conception of the immanence of power to the community arises the most controversial issue in the whole Vitorian philosophy of authority, the problem of the translation of power. If the community is the natural and primary subject of power, how does this power come to reside in kings, princes and assemblies? If power is immanent to the community, how can it be alienated? Do the people retain their power and transfer only its exercise? Or do they renounce their sovereignty completely? "A crucial point in the theory of the state," says Delos,⁷³ a point which we shall attempt to clarify in the following section.

⁷⁰Compare Cajetan, in II-II, q. 50, a. 1: 'Ordine generationis . . . regimen popolare secundum actum electionis est prius regimine regis . . . sed si diligenter consideretur quod electio regiminis non est pars regiminis, sed praeivium ad omnem speciem regiminis, ad electionem siquidem populi spectat, secundum naturale ius, an popolare an optimatum an regale sit futurum regimen; manifeste patet quod nec etiam secundum ordinem generationis ordinem regalis Principatus dependet a populari, qui in littera populus vocatur; magis autem istinguendum est de populi significatione. Quandoque enim sumitur populus pro regimine populari; quandoque autem pro ipso populo. Regimen autem regium a populo quidem electione dependet, qui vota sua et potestatem in eum transtulerunt: et propterea vices populi gerere dicitur. Non dependet autem a regimine populari, sed e contra, ut in littera dicitur; nec vices illius gerit.'

^uCf. Delos, *op. cit.*, p. 206; NaszAlyi, *op. cit.*, p. 203; Urdánoz, *op. dt.*, p. 298.

iWe Pot. Cio, nn. 8, 10.

⁷³*Op. cit.*, p. 207.

THE TRANSLATION OF POWER

Having determined that political power is intrinsic to the perfect community and that it resides in the community immediately in virtue of natural law, Vitoria now turns to the problem of how this power originates in a particular subject other than the community itself, under a specifically determined mode of regime. He excludes a discussion of aristocratic and democratic forms of government, and limits himself to a consideration of the origin of royal power. The reason for this approach is that the same principles are applicable to all legitimate forms of government, but the most common form of regime in Vitoria's day was that of monarchy.⁷⁴ A further urgent reason for a special discussion of royal power was the position held by some, "even among Christians, who not only deny that royal power is from God, but assert that all kings, dukes and princes are tyrants and robbers of liberty."⁷⁵ The only dominion these recognize is that of the republic.

Vitoria's Solution and Its Interpretations

Vitoria states his conclusion that royal power is not only just and legitimate, but that kings have their power by divine and natural law, and not from the republic.⁷⁶

⁷⁴*De Pot. Civ.*, n. 7: "Et quia haec potestas principaliter est in regibus, quibus respublica commisit vices suas, de regio principatu et potestate disputandum est."

⁷⁵*Loc. cit.*: "De qua non desunt aliqui, etiam de numero Christianorum, qui non solum negant regiam potestatem esse a Deo, sed etiam omnes reges, duces, principes dicunt esse tyrannos, et huius libertatis esse praedones, adeo insensum sunt omnibus dominationibus et potestatibus, una dumtaxat respublica excepta."

⁷⁶*De Pot. Civ.*, n. 8: "Ideo nos cum omnibus sapientibus melius dicimus monarchiam sive regiam potestatem non solum iustam esse et legitimam, sed dico reges etiam a iure divino et naturali habere potestatem, et non ab ipsa republica, aut prorsus ab hominibus."

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He proves this conclusion from the authority of Holy Scripture and from historical tradition. His rational proof proceeds from the premise that the republic has power over its members, but cannot conveniently exercise that power. It is necessary, therefore, that the administration of that power should be committed to a single person or to a group of persons who can more readily exercise the functions of authority. Since this power is the very same as that of the republic, it follows that, in the case of a monarchy, "the royal power is not from the republic, but from God Himself, according to the opinion of Catholic doctors."⁷⁷

This text, in itself and in relation to other texts, offers several difficulties, and consequently has been interpreted in various ways.

Although Vitoria has assigned the community as the immediate subject of power, he now says that the power of kings is of divine and natural law, which seems to exclude the community as the natural subject of power. On the other hand, Vitoria has stated that all men are born free, and no one has political dominion over another; yet, he says, kings have power by natural law. How is the apparent contradiction to be reconciled?

Cardinal Zigliara finds the solution in the theory of mediate divine right, according to which Vitoria would make the community the subject of power only in the abstract order.⁷⁸ The community is not the depositary of power in itself, but rather enjoys a constitutive right to determine the form of government and to designate, by direct or indirect election, the person of

it Loe. *cit.*: "Quia cum respublica potestatem habet in reipublicae partes, haec autem potestas per ipsam multitudinem exerceri non potest (non enim commode posset leges condere, atque edicta proponere, lites derimere et transgressores punire) necesse ergo fuit ut potestatis administratio alicui, aut aliquibus, commendaretur, qui huiusmodi curam gererent: et nihil refert uni aut pluribus commendetur: ergo potuit commendari potestas, quae eadem est, quae reipublicae --- Videtur ergo quod regia potestas sit non a republica, sed ab ipso Deo, ut Catholici doctores sentiunt."

TSZigliara, *op. cit.*, p. 196: Consideraverunt ergo ipsi (Vitoria et veteres scholastici) societatem in abstracto, et consequenter individua in abstracto, et in abstracto auctoritatem ipsam."

the ruler.⁷⁹ As soon as he is designated by the people, the ruler receives his power directly from God.⁸⁰

On the other hand, the Vitorian concept of the immanence of public power to the social body and the organic construction of the state has given foundation to a theory directly opposed to that of Zigliara. According to the organic theory, defended by Delos and Naszâlyi, the community is the subject of power in the concrete, not merely in the abstract order. But since this power is a *vis-ordinatrix* immanent to the community, it is inalienable and cannot be transferred to any other subject.⁸¹ Rulers are nothing more than the organs of the personalized social body, ministers of the people, administrators of the public power, which is the power of the people.⁸² The essence of power remains with the people, and only its exercise is transferred to the prince.

A third interpretation of Vitoria's doctrine makes the community the subject of power in the concrete, but considers this power to be an alienable right which the people transfer to the prince by a true donation.⁸³

n Loc. cit.: "In multitudine igitur ut in subjecto non est potestas; et tamen auctor (Vitoria) addit quod creat respublica non potestatem sed regem, nempe determinatam subjectum. Vult ergo in multitudine non esse potestatem determinatam, ut in subjecto, sed potestatem determinandi subjectum politicae auctoritatis."

⁸⁰Ibid., p. 197. Cf. Fabre, "L'origin du pouvoir, scholastiques anciens et modérés," *Revue Augustinienne*, XVII, p. 702: "La communauté n'a joué qu'un rôle: elle a désigné, et en designant a confié un titre a l'autorité mais pas plus, le pouvoir est venu de Dieu --- Le Peuple n'est pas plus un canal, dans ce cas."

⁸¹Cf. Delos, *op. cit.*, p. 209: "Ce pouvoir—potestas—ne peut donc être donné, aliéné, transféré, comme le pensera Suarez."

Naszâlyi, *op. cit.*, p. 204: "Haec potestas alteri proprie donari, id est sensu vero et stricto transferri, propriissime alienari nequit. Ibid., p. 208: "Non potest (populus) in eum ipsam suam potestatem transferre, quia ipsa inalienabilis est"

⁸²Delos, *op. cit.*, p. 208: "En réalité, il n'y a qu'une seule Puissance, un seul Pouvoir: celui du corps social . . . qui s'exerce par des organes."

Naszâlyi, *op. cit.*, p. 211: "Princeps est organum status seu potestatis civilis. Jam, quando primo affirmat Magister, exercitium potestatis per multitudinem fieri non posse, loquitur de potestatis "administratione." Exinde jam deduci potest, quod ille, qui hoc facit, qui curam gerit administrationis, aliquo modo ministeriale officium implet"

MSoto, *loc. cit.*: Bafiez, *loc. cit.*; Urdânoz, *op. cit.*, pp. 304-315.

The theory of mediate divine right is not a true reflection of the mind of Vitoria. There is no doubt that Vitoria intends the people to be the subject of power, not only in the abstract order, but also in a concrete, organized, perfect community. This is evident from the very opening sentence of the discussion of the subject of power.

By divine constitution, therefore, the republic, (in the abstract) has this power: but the material cause in which this power resides, by divine and natural law, is the republic itself (in the concrete).⁸⁴

And Vitoria goes on to say that it belongs to the republic of itself, to govern and administer itself, and direct its powers to the common good.⁸⁸

Furthermore, the republic commits to the king the very same power that it possesses.⁸⁹ Consequently, there are not two distinct powers, one of the king and another of the republic, but a single power, which, in virtue of an act of translation from the people, now resides in a new subject and is denominated royal power.⁸⁷ Vitoria's terminology patently refers to the concrete, real order: the republic commends,⁸⁸ gives,⁸⁹ concedes,⁹⁰ transfers,⁹¹ retains⁹² its power.

Finally, the subject of civil power is distinguished from the subject of ecclesiastical power by reason of the fact that civil

«De Pot. Cio.» n. 7. Parentheses mine.

⁸⁵Loc. cit. Compare St. Thomas, *Summa Theologiae*, I-II q. 90, a. 3: "Ordinare autem aliquid in bonum commune est vel totius multitudinis, vel alicuius gerentis vicem totius multitudinis."

Pot. Cio., n. 11: "Potuit commendari potestas quae eadem est quae reipublicae."

«*Ibid.*, n. 9.

@@Loc. cit.

⁸⁸In II-II, q. 104, a. 5, ed. cit., V., p. 212, n. 2.

wLoc. cit.

«De Pot. Cio., n. 8.

«De Pot. Ecc., II, sec. 1, n. 1.

power is *per se* immediately in the community, while ecclesiastical power is not subjected in the whole Church, but in certain individuals. The civil power can be retained by the whole community, or committed to others, totally or partially, but the power of the Church was committed by Christ directly to certain individuals.⁹³

Power, then, resides immediately in the community as its natural subject. How must we explain Vitoria's assertion that royal power is not from the republic, but "of divine and natural law?" It is evident, from the preceding argument, that Vitoria does not mean that God directly intervenes by a positive act of donation of power to the king, or that the king, from the very nature of things, is the subject of power.

The solution lies in the presentation of the problem. Vitoria is arguing against those who deny the divine origin of royal power and classify kings and princes as tyrants and usurpers. Vitoria is defending the legitimacy of the monarchical regime, and he bases his proof on the proposition that royal power is the selfsame power as that of the republic. In fact, the power of any legitimate regime is nothing more than the identical power of the republic as it now resides in a new subject.⁹⁴ Consequently, since the power of the republic has its source in God, (which Vitoria's adversaries admit), the power of kings, being nothing more than the power of the republic, is from God.

When Vitoria says that kings have their power from God, he is speaking of the creation of power, not its translation or

⁹³Loc. cit.: "Ante omnia ergo quaeritur: an potestas Ecclesiae sit per se in tota Ecclesia, distinguendo Ecclesiam universalem a singularibus personis eo modo quo concedunt tum philosophi tum theologi, et verum est, quod civilis potestas est immediate in tota republica."

Ibid., n. 4: "Quod autem ipse non dederit immediate et primo Ecclesiae, sed certis suppositis et personis . . . Signum apertum est hanc potestatem (spiritualem) non residere immediate et primo apud Ecclesiam, quod Ecclesia non potest sibi retinere, nec duobus aut tribus committere, quod tamen posset respublica ad administrationem civilium, vel retinere sibi regimen, vel creare consules, vel tribunos etiam supra potestatem regiam, sicut erant Ephori apud Lacedaemonios, et senatores supra principem apud Venetos."

«De Pot. Cio., n. 8: "Et nihil refert uni aut pluribus (potestas) commendetur: ergo potuit commendari potestas, quae eadem est quae reipublicae."

direct donation. The power of the king is the creation of God, not the work of men. This is clear from Vitoria's final argument, in which he declares that if men or the republic did not have power from God, but agreed, for the common good, to constitute a supreme power over themselves, that power would be of human, not divine, institution." But such is not the case. The human will plays no part in the creation of power, for power would belong to the community even if all the citizens were unwilling to have it"

Royal power, *qua* royal, is not immediately from God: insofar as power is specified by royalty, it depends upon the will of the people, "for the republic creates the king." The power of the king, considered in itself, is of immediate divine origin; as it resides in the king as in a concrete subject, power is from God through the people. For God immediately creates power, and immediately confers it on the community; the community, by transferring that same God-given power to the king, is the proximate cause of royal power. God and nature determine only that there should be power in the community; it is left to the discretion of the community whether to retain the power or to transfer it to others."

The Organic Theory

The organic theory, according to which power, because of its immanent quality, cannot be alienated but remains permanently in the people as in its only subject, is an exaggerated interpretation of Vitoria's concept of the state as an organic body. The notion of the state as an organism is merely a metaphorical con-

"*Ibid.*, n. 8: "Quod si homines vel respublica non haberent potestatem a Deo sed ex conducto omnes convenirent, et pro bono publico vellent potestatem contra se constituere, illa quidem esset ab hominibus.

"*Loc. cit.*: "Non ita vero est: constituta est enim in republica, omnibus civibus invitis, potestas seipsam ministrandi.

"*Loc. cit.*: "Creat enim respublica regem."

*In II-II, q. 104, a. 1, ed. cit., V., p. 203.

cept; the properties of physical bodies cannot be predicated univocally of moral bodies. Nowhere in his writing is Vitoria an advocate of the doctrine of state personality. His "republic" which is the subject of power, which can administer and govern itself, is an organized multitude, the "mystical body" which remains nothing more than an accidental union, a union of order, "the least of all unities."

That Vitoria considers the power of the people to be an alienable right is already evident, for not only do they possess the power, but actually transfer it to the king. In fact, there is a moral necessity that they relinquish their power to someone who can more conveniently direct the community to the common good.¹⁰⁹

But if power is immanent to the community, how can it be at the same time an alienable right, to be transferred to another? The defenders of the theory of inalienability find confirmation of this view in the Vitorian text in which he draws an analogy between public power and man's natural right of defending himself. Just as the right to self-defense is an inalienable right, so public power, which is intrinsic to the community, is also inalienable and under no conditions transferable.¹¹⁰

From the context of the passage, however, it is evident that Vitoria is concerned, not with the translation of power, but with its abrogation: power is inherent to the community by natural necessity, and men cannot abolish it. This is the thesis that Vitoria is defending, that civil power "cannot be abrogated by the consent of men."¹¹¹ He concludes with the statement that if all the citizens of a community agreed to abolish public power so

"*De Pot. Civ.*, n. 9.

Ibid., n. 10: "Si enim homo cedere non potest iuri et facultati se defendendi, propriisque membris ex commode suo utendi: ergo nec etiam potestati, cum hoc illi naturali et divino iure competat. Itidem etiam respublica nullo modo potest privari huiusmodi potestate tuendi se, et administrandi adversus Muriam et suorum et exteriorum, quod sine publicis potestatibus facere non potest."

¹¹⁰*Loc. cit.*

that they would be subject to no laws, that pact would be null and void, as being contrary to the natural law.¹⁰² Certainly it is not the mind of Vitoria that the translation of power is contrary to natural law; indeed, it is morally necessary to transfer this power in order that the end of society be attained.¹⁰³

But how can we explain the paradox that power, even though alienated by the people, remains immanent to the community? Vitoria does not mean that the people transfer their power to a person who is, and afterwards remains, outside the community, thus establishing a supreme power which is not only above them, but against them. The king, according to Vitoria, although in a certain sense above the community, remains a part of it.¹⁰⁴ The king is above the community because he has been constituted by the community as such.¹⁰⁵ He has the power to enact laws and exact obedience on his own authority. On the other hand, he is part of the republic, because the republic is a whole, integrally composed of members who are divided into rulers and subjects. The ruler, as part of the community, is bound to the observance of the laws.¹⁰⁰

The translation of power from the people to the king, therefore, in no way destroys its immanence to the community, for power is still subjected in a member of the community. Where power formerly was dispersed, it becomes, upon translation,

¹⁰²Loc. cit.: "Atque ita si cives omnes in hoc convenirent, ut omnes has potestates ammitterent, ut nullis tenerentur legibus, nulli imperarent, pactum esset nullum et invalidum, utpote contra ius naturale."

¹⁰³The transfer of power does not involve the renunciation of the right of self-defense on the part of the citizens, individually or collectively, for this right is natural and inalienable. But the people do transfer the right of providing for the common defense.

¹⁰⁴*De Pot. Ecc.*, I, sec. II, n. 10: "Nam regia potestas continet omnem potestatem civilem: hoc enim importat rex, quod sit unus super omnes in republica."

De Pot. Cio., n. 14: "In regio principatu rex est non solwn, supra singulos, sed etiam supra totam rempublicam; id est, supra omnes simul."

Ibid., n. 21: "Ipse (legislator) est pars reipublicae."

De Pot. Pap. et Con., n. 7: "Princeps non est a lege solutus --- cum ipse princeps sit membrum reipublicae."

¹⁰⁵*De Pot. Cio.*, n. 14: "Item respublica potest dare potestatem alicui, non solum supra singulos, sed etiam supra omnes simul, et ule haberet potestatem regiam."

n. 21: *De Pot. Pap. et Con.*, n. 7.

concentrated in a single member, thus remaining inherent in the community.¹⁰⁷

In another sense, also, it may be said that power remains immanent to the whole community, for even in the case of a total transfer of power, it remains radically in the hands of the people.¹⁰⁸ If a legitimately constituted king becomes a tyrant, he loses the right to authority, and his laws (even though they may be just in themselves) have no binding force, except by reason of the consent of the people.¹⁰⁹ Radically, then, power, even after total translation, remains immanent to the community as a whole.

It cannot be denied that Vitoria considers the rulers of states as the ministers of the people. He asserts that the administration of power is committed to princes, and that kings are constituted in the office of administering the affairs of the republic.¹¹⁰ These texts are brought forward as a further confirmation of the organic theory, that kings and rulers are the organs of the social body, functionaries of the state, fulfilling only a ministerial capacity. The people retain the substance of power, transferring to the prince only its exercise.¹¹¹

But this idea is far from Vitoria's mind. He expressly holds that royal power contains all civil power, that the king is above

¹⁰⁷Cf. Delos, *op. cit.*, p. 208: "Il y a concentration du pouvoir, immanent au corps politique, en la personne des gouvernants."

¹⁰⁸Cf. Urdânoz, *op. cit.*, p. 313.

¹⁰⁹De *Pot. Civ.*, n. 23: "Certe videtur quod leges quae sunt convenientes reipublicae obligent, etiamsi ferantur a tyranno: non quidem quia a tyranno latae, sed ex consensu reipublicae."

¹¹⁰De *Pot. Civ.*, n. 8: "Necesse ergo fuit ut potestatis administratio alicui aut aliquibus commendaretur . . . Constituta est enim in republica . . . potestas seipsam administrandi, in quo officio civiles reges constituti sunt."

¹¹¹Naszâlyi, *op. cit.*, p. 211: "Princeps est organum status. Jam, quando primo affirmat Magister, exercitium potestatis per multitudinem fieri non posse, loquitur de potestatis "administratione." Exinde jam deduci potest quod ille, qui hoc facit, qui curam gerit administrationis, aliquo modo ministeriale officium implet."

Cf. also Delos, *op. cit.*, p. 208. Leon, *op. cit.*, p. 165, although not expressly holding the organic theory, asserts that, according to Vitoria, the people retain the substance of power (*majestas reads*), while the king has merely the exercise of power, (*majestas personalis*).

the whole republic, that legitimate princes have the plentiude of authority, both in war and in peace.¹¹²

If kings, princes and other rulers were merely the ministers of the people, and enjoyed only the exercise of the functions of authority, we are forced to conclude that their power would be no more than a delegated power. The legitimate exercise of any function presupposes the right and the power of exercise, which, if it is not ordinary, must be merely delegated. But since the king is a legislator in his own right, and can pass laws which bind the citizens in conscience, and inflict punishment on transgressors, it is evident that he has the ordinary power of jurisdiction. For, if the people retained the power and merely delegated its administration to the prince, it would be ridiculous to suppose that they, as having the superior power, would be bound by the laws of their own delegate. By the mere revocation of the delegated power, or by popular veto of the king's law, the people could effectively dispense with any and all legislation. A public power which is always subject to the discretion or the caprices of the multitude was certainly never envisaged by Vitoria.¹¹³

The power of the king is the same as the power of the republic, not only specifically, but also numerically. In the case of a total transfer of power, the power ceases entirely to be in the community, and resides, numerically the same, in the king. Since, then, there are not two powers, but only one, and since

¹¹²*De Pot. Ecc.*, I, sec. II, n. 10: "Nam regia potestas continet omnem potestatem civilem."

De Pot. Cio, n. 14: "Rex est supra totam rempublicam."

De Iure Belli, n. 6: "Princeps non est nisi ex electione reipublicae, ergo gerit vices et auctoritatem illius: imo iam ubi sunt legitimi principes in reipublica, tota auctoritas resident penes principes, neque sine illis aliquid publice aut bello aut pace geri potest."¹¹³

¹¹³Cf. Urdânó, *op. cit.*, p. 311: "Pero esa interpretación que tiende a concebir el poder civil como un simple mandato revocable en todo momento por el pueblo, sujeto a los caprichos de la multitud y a su control constante, no parece reflejar bien la mente de Vitoria."

that single power has its origin in God, kings are called ministers of God rather than ministers of the people.¹¹⁴

Princes and rulers can be called "ministers of the people," or "public servants," for they do not have perfect dominion over their power, and cannot use it for personal advantage, but for the utility of the whole community. The royal authority is not absolute and unlimited, but is restricted by the preestablished end of all civil authority, the common good.¹¹⁵ Since kings are created by the people, and since their power is not absolute, but circumscribed by the exigencies of the common good, they are responsible to the people for good government, and truly must be the "ministers of the people." ¹¹⁶

Our conclusion, therefore, in regard to Vitoria's concept of the state as an organism is that this notion is not to be taken univocally, but in a metaphorical sense. The rulers of the community, although they may be called "organs" of the social body, enjoy the ordinary power of jurisdiction, not merely delegated power.

The People as the Subject of Power

From the foregoing criticisms, it is clear that Vitoria's doctrine must be interpreted according to the third theory proposed above. To sum up Vitoria's teaching, civil power, first of all, has its origin in God. The people are the original and natural subject of power, which they receive immediately from God, the

Pot. Civ., n. 8: "Atque ideo sicut potestatem reipublicae a Deo et iure naturali constitutam esse dicimus, idem prorsus de regia potestate dicamus necesse est, quod satis consonum Scripturae videtur consuetudinique, quae principes Dei, non ministros reipublicae appellât."

115De Iure Belli, n. 12: "Nam princeps debet et bellum et pacem ordinare ad bonum commune reipublicae, nec publicos redditus pro propria gloria aut commodo erogare, et multo minus cives suos periculos exponere. Hoc enim interest inter regem legitimum et tyrannum, quod tyrannus ordinat regimen ad proprium quaestum et commodum; rex autem ad bonum publicum . . . Item habet auctoritatem a reipublica, ergo debet uti illa ad bonum reipublicae."

«Cf. St Thomas, in II Sent., d. 44. q. 1, a. 3, ad Im: "Subditi ad bonum praepositi non ordinantur, sed e converso regimen praepositi ad bonum subditorum; unde non incongrue se eorum servos appellant."

author of nature. But because it is morally impossible for the multitude as a whole to exercise this power, it is necessary to transfer it to a person or a group who can more conveniently direct and govern the community. The people have the right to choose any mode of regime they wish, and may alienate their power totally, or retain part of it for themselves. The power of rulers, then, is nothing more than the power of the republic itself, and as such, is of divine origin. The rulers receive their power directly from the people, who first receive it immediately from God.

However, this interpretation of Vitoria's doctrine is called into doubt on the strength of a greatly disputed passage, in which Vitoria seems to deny that the power of the people is transferred to the king. In the tract on the constitution of royal power, Vitoria says:

It is apparent, therefore, that royal power is not from the republic, but from God Himself, according to the opinion of Catholic doctors. For, although it is constituted by the republic (for the republic creates the king), nevertheless the republic transfers to the king, not the power, but its own proper authority; nor are there two powers, one of the king, the other of the community.¹¹⁸

The difficulty revolves about the distinction between power and authority. These two words are often used interchangeably to signify the same thing, and Vitoria himself uses them indiscriminately.

Urddnoz, recalling the identification of the two words in the same passage, would find no hidden meaning behind the terms.¹¹⁸ Yet, the disjunction of the terms in the same sentence

For. Civ., n. 8: "Videtur ergo quod regia potestas sit non a repulica, sed ab ipso Deo, ut Catholici doctores sentiunt. Quamvis enim a republica constituatur (creat enim respublica regem), non potestatem, sed propriam auctoritatem in regem transfert; nec sunt duae potestates, una regia, altera communis."

usUrdânoz, *op. cit.*, p. 291: "Si bien en otro pasaje controvertido Vitoria distingue ambas voces, no parece tenga ningún misterioso sentido tal diferencia verbal, pues in realidad alii mismo les identifica."

indicates a distinction between them. And so, the same author concludes that these words signify the separation of the idea of public power from the concept of force.¹¹⁹

The validity of this distinction is admissible, but does not seem to be applicable according to the context. Vitoria is speaking of the transfer of a power to which the community has a right. No one has a right to unjust violence, nor is able to confer that right on someone else.

Zigliara sees in the disputed passage the doctrine of immediate divine causality in the bestowal of power upon the king. The people do not transfer the power, because they never possessed it; they merely designate the ruler, upon whom God bestows the power.¹²⁰

Again, this does not seem to be Vitoria's mind. We have established that the community is the immediate subject of power in the Vitorian teaching, and that kings have their power directly from the people.

Delos follows Vitoria's distinction between potency and power. Potency is a generic term, to which power adds the idea of a moral right, in this case, the right to oblige free men. This power (*potestas*) cannot be alienated, says Delos, since it is the very life of the social body.¹²¹ Public officials are invested, not with power (which is the vital energy of the social body), but with authority, which is nothing more than a "qualification of right, a spiritual note" of psychological power, by which an

p. 292: "El sentido profundo que tiene esto en el maestro salmantino es de separar la idea del poder publico del concepto de fuerza bruta, como previendo el peligro de las modernas teorías quoe identifican el poder y el derecho con la posesión de la fuerza bruta."

isoZigliara, *op. cit.*, p. 196.

iziDelos, *op. cit.*, p. 209: "La 'potestas' le pouvoir, precise a l'idée de pure puissance en celle de pouvoir moral . . . a la notion de puissance, le mot 'pouvoir' ajoute l'idée de Droit. C'est l'An vu, non une puissance quelconque, asCEKt J«as

individual becomes "the interpreter and minister of the common good."¹²²

This distinction between power and authority seems to be a consequence of the attempt to reconcile this text of Vitoria to conform to the concept of the state as an organism. The distinction between potency and power is the distinction of St. Thomas and Vitoria. But to conceive of authority as the simple right to interpret the collective will of the social body is to distort the meaning of the word. Certainly ecclesiastical authority, conjugal authority, parental authority, import something more than the right to interpret the will of the faithful, the spouse, or the family.

Further, the conception of power as a "psychological energy," the "vouloir-vivre" of the social body is nothing more than an analogous notion. The author himself asserts that power is a moral right of inducing an obligation. As such, it belongs to the category of relation, and consists in a relation between a superior and an inferior, by which the superior can morally oblige the inferior in regard to certain actions.¹²³ And it is certain, in the Vitorian doctrine, that this power of obliging the citizens rests, not with the community, (except in a popular regime), but with the lawfully constituted rulers.

Naszalyi departs from Delos slightly, retaining the notion of power as a psychological energy, but making of authority a preeminent note or property of power, which signifies the right

¹²²*Ibid.*, p. 209: "Le pouvoir d'obliger les membres du corps social, et donc de créer du Droit à leur égard, reside dans le corps social et ne peut cesser d'y demeurer."

Ibid., p. 210: "De quoi donc est investi l'individu que le corps social prépose à son service? De l'autorité—*auctoritas*—non pas d'un pouvoir psychologique réel, de l'énergie volontaire que les associés ou membres de l'Etat portent en eux et qui ne les peut abandonner, étant le vouloir-vivre social lui-même—mais d'une qualification du droit, d'une note spirituelle. Elle résulte de la designation volontaire d'un individu privé comme interprète et ministre de Bien commun, de la 'commission' qui l'institue organe du corps social."

¹²³Cf. *De Pot. Eco.*, I, sec. II, n. 13: "Nam ut ipse Arist. (I PoL) expedire ait, in omni multitudine recte composita, ut aliquis praeciperetur, caeteri pareant, in quo consistit ratio potestatis."

Ibid., sec. VI, n. 9: "Maneret aliquis ordo principatus et subditorum, sine quo non esset propria respublica."

of inducing obligation. The people transfer to the prince this authority, the right of obliging, but retain the intrinsic *vis ordinatrix* which is the essence of power.¹²⁴

This does not appear to be a happy distinction, based as it is on the univocal notion of power as a social energy. Vitoria calls civil power "the faculty, authority or right of governing the civil republic."¹²⁵ As such, power belongs to the category of relation, and consists in the moral faculty of inducing an obligation. Superiors are thus distinguished from inferiors; the superior is a principle of action in relation to the inferiors, who are morally bound to obey. To say, then, that the people transfer to the prince the power of obliging them is to admit that they transfer the very essence of power, and in this sense, power and authority are identical terms.

The explanation of Vitoria's distinction must be sought elsewhere, and it is St. Thomas who provides the answer. According to the Angelic Doctor, authority is distinguished from power as principal cause from instrumental cause. Speaking of the power of Christ to forgive sins, St. Thomas says:

The Son of Man has power on earth to forgive sins, not in virtue of His human nature, but of His divine nature; in which divine nature exists the power of forgiving sins through authority; but in His human nature, it exists instrumentally and ministerially.¹²⁶

¹²⁴Naszályi, *op. cit.*, p. 208: "Respublica possidet potestatem, scilicet facultatem cum illa praeeminentia, quae jus vel auctoritas vocari potest . . . Sed potestas civilis non est tantum quaedam facultas psychologica seu physica, est enim insuper quaedam praeeminetia, quoddam jus seu facultas moralis, quaedam competentia ad aliquid temporale. Haec praeeminetia non est ipsa potestas, sed ejus nota vel proprietas includens quamdam superioritatem ad aliquid, quae est idea juridica, in primis enim significat jus obligandi . . . Sic potestas civilis, in quantum est jus obligandi, transfertur in regem, non tamen potestas ipsa, vis intrinseca, ordinatrix Status. Respublica commit curam suam regi, eo ipso in eum transfert 'auctoritatem' sed non potest in eum ipsam suam potestatem transferre, quia ipsa inalienabilis est."

¹²⁵*Summa Pot. Cio.*, n. 10: "Potestas publica est facultas, auctoritas, sive ius gubernandi rempublicam civilem."

¹²⁶*Summa*, III, q. 16, a. II, ad 2: "Filius hominis habet in terra potestatem dimittendi peccata, non virtute humanae naturae, sed divinae: in qua quidem divina natura consistit potestas dimittendi peccata per auctoritatem; in humana autem natura consistit instrumentaliter et per ministerium."

Again, in the question of Christ's causality in regard to the interior effects of the Sacraments, he says:

Christ operates in the interior effects of the sacraments both as God and as Man, but in different ways. As God, he operates in the sacraments through authority. But as He is Man, He operates in the interior effects of the sacraments meritoriously and efficiently, but instrumentally.¹²⁷

Power and authority are thus clearly distinguished. Power is a generic term, signifying an active potency with a certain preeminence.¹²⁸ This preeminence, in the moral order, consists in a right, the right of inducing an obligation. This power, according to St. Thomas, is either the power of authority, which is exercised by an agent in the manner of a principal cause, or a ministerial power, which is exercised by an agent acting as an instrument of the principal cause.¹²⁹

St. Thomas' distinction between authority and power is the same distinction that Vitoria uses, transferred from the order of physical causality to the order of moral causality. The community transfers to the king not a mere instrumental or ministerial power, but its own proper authority, its right to govern itself as a principal and independent agent.

But how can we be certain that Vitoria, by the word "power" means ministerial power? He uses the generic term without any qualification. However, this is not an extraordinary usage. St. Thomas uses the word "power" in the qualified sense of instrumental power, when he says that the bishop has power in the conferring of the sacrament of Orders, but does not have

W Ibid., III, q. 64, a. 3: "Respondeo dicendum quod interiorem sacramentorum effectum operatur Christus et secundum quod est Deus, et secundum quod est homo: aliter tamen et aliter. Nam secundum quod est Deus, operatur in sacramentis per auctoritatem. Secundum autem quod est homo, operatur ad interiores effectus sacramentorum meritorie et efficaciter, sed instrumentaliter."

¹²⁸St. Thomas in IV Sent., d. 24, q. 1, a. 1, q1. 2, and 3: "Potestas autem proprie nominat potentiam activam cum aliqua praeeminentia."

¹²⁹Cf. *Summa*, III, q. 64, a. 1: "Nam eadem ratio est *ministri et instrumenti*."

authority.¹³⁰ But the power of ministers of the sacraments is an instrumental power.

The appropriation of the generic name to the imperfect species is common, and in conformity with logical usage.

In those things in which something is the most perfect, the common name of the genus is appropriated to those things which defect from the most perfect, but some other special name is adapted for the most perfect, as is dear in logic? 1

There is ample justification, then to interpret Vitoria's distinction between authority and power in terms of principal and ministerial power. It is a distinction common to theologians, and it is the only distinction between power and authority which is found in St. Thomas. Further, it is the only distinction that gives a logical interpretation to the disputed passage in Vitoria, both in the passage itself and in relation to Vitoria's doctrine in general. The examination of the text in the light of this distinction clarifies the whole difficulty, and this text, instead of being a stumbling-block, proves to be the key to the whole of Vitoria's doctrine on secular power; it conforms, we think, with our interpretation of Vitoria's teaching on the subject of power and its alienation.

The distinction occurs, as we have seen, in the tract in which Vitoria proves the divine origin of royal power. The particular point which he wishes to establish is this: that even though the republic is in some way the cause of the king's power, it does not create that power, but simply transfers it.

An examination of Vitoria's text shows that the Thomistic distinction between power and authority is not only logically suitable to the text, but essential to the proof of the proposition.

¹³⁰In *IV Sent.*, d. 44, q. 1, a. 1, s. 4, ad 1: "Quamvis enim in Episcopo qui est minister huius sacramenti, non sit auctoritas respectu collationis huius sacramenti, tamen habet aliquam potestatem respectu potestatis ordinis que confertur per ipsum, in quantum a sua potestate derivatur."

isi/n *Summa*, II-II, q. 0, a. 2: "In his autem in quibus aliquid est perfectissimum, none commune generis appropriatin' his quae deficiunt a perfectissimo., ipsi autem perfectissimo adaptatur aliud speciale nomen: ut patet in logicis."

1) "*It is apparent, therefore, that royal power is not from the republic, but from God Himself.*"¹³²

As we demonstrated above, Vitoria is arguing concerning the origin of power in itself. Such power has its source in divine and natural law, and as such cannot come "directly from men." Royal power, being nothing more than a qualified form of public power, has its source in God and cannot have a human origin, since it flows as a natural consequence from a constituted perfect society.

2) "*Although royal power is constituted by the republic (for the republic creates the king) . . .*"^m

Vitoria here explains the role of the human will in the constitution of royal power. The people are the cause of royal power by the very fact that they create a king. They do not create the power of the king, but rather the qualification of power which is royalty. Power, as it resides immediately in the community, is indifferent to any mode of regime. All modes of regime are of human origin. By transferring their power to a king, the people add to the notion of power the particular qualification of royalty. They may just as well have created an aristocratic or a democratic mode of regime. The people may be said to be the cause of royal power *qua* royal.

3) "*(The republic) transfers to the king, not power, but its own proper authority.*"¹³³

The republic does not commit to the king a mere ministerial function, but gives to him the very power which it has received directly from God, the power to direct and govern the community *sui furis* as a principal and independent agent, subject to no other human power.

¹³²De Pot. Civ., n. 8: "Videtur ergo quod regia potestas sit non a republica, sed ab ipso Deo."

¹³³Loc. cit.: "Quamvis enim a republica constituatur (creat enim respublica regem)."

¹³⁴Loc. cit.: ". . . non potestatem, sed propriam auctoritatem in regem transfert."

That this is the proper interpretation of the text is confirmed in the light of the whole context. Royal power is the creation of God alone. Yet, (in answer to the authors adversaries) it must be admitted that the republic has something to do with the establishment of royal power, for the republic creates the power of the king. And why? Because the republic transfers to the king its own God-given authority, and not a ministerial power. A royal power, distinct from, subordinate to, and caused by, the republic, would not be of divine, but of human origin. To be of divine origin, says Vitoria, royal power must be identical with the power of the community, the authority of the republic.

4) *"Nor are there two powers, one of the king, the other of the community."*TM

There not two powers, because there is a total alienation of power on the part of the people. There is only one authority—that of the republic—which, upon transfer to the king, ceases to be in the people and resides in a new subject, and is denominated royal power.

The defenders of the organic theory interpret this text to mean that there is only one power—that of the community—which remains subjected in the community, but is exercised by the king as an organ *of* the social body. The king is an instrument of the people, dependent upon them at every moment for his power.

This interpretation appears to be the exact opposite of Vitoria's thesis. Vitoria would invest the king with all the prerogatives that formerly belonged to the community, and the king replaces the community as the supreme legislator and governor, and acts for the community on his own authority as principal agent in the direction of the political body in the pursuit of the common good. For Vitoria, authority is the essence of power, and not its mere exercise. He expressly distinguishes between

Loc. cit.. Nec sunt duae potestates, una regia, altera communitatis."

the authority of power and the exercise of power. The Pope, he says, does not have temporal power, neither as to exercise nor as to authority.¹⁸⁰

The Vitorian teaching of a true translation of power is reflected in the writings of one of his most famous disciples, Dominic Soto.¹⁸⁷

5) *Therefore, just as we say that the power of the republic is constituted by God and the natural law, so we must necessarily say the same of royal power.*¹⁸⁸

This is Vitoria's conclusion to the argument. Royal power has its source in God because it is nothing more than the power of the republic, which has been transferred from the people to the king. For this reason, longs are properly called "ministers of God, not of the republic."

Vitoria then presents a final confirmation of his argument. If men did not have power from God, if power were not inherent in the perfect community, then men, for the common good, could constitute a power above themselves. This power would then be the creation of man. But such is not the case. Power inheres in the perfect community regardless of the willingness

13eDe Pot. Ecc., I, sec. VI, n. 5: "Dico Papain non habere hanc potestatem, non solum quantum ad usum et executionem, sed nec quantum ad auctoritatem. Qui enim sunt defensores temporalis potestatis in Papa, fatentur quidem Papam non habere usum et executionem ordinariam huius potestatis, sed hoc non defectu auctoritatis, sed quia ipse dedit et transtulit potestatem et usum eius in principes. Ego vero dico ipsum nec habere usum nec potestatem."

137Soto, *De Jure et Justitia*, I, q. I, a. 3: "Reges ac principes a populo creati sunt, in quos suum transtulit imperium ac potestatem . . . Unde verbum illud apud sapientem ex Proverb: 'Per me reges regunt,' etc., non aliter intelligendum est quam quod ab ipso, tamquam naturalis juris autore, donatum mortalibus est, ut unaquaeque respublica seipsam regendi habeat arbitrium; ac subinde, ubi Tatio, quae spiramen etiam est divini numinis, postulaverit, in alium suam transmittit potestatem, cuius legibus providentius gubernetur."

Ibid., III, q. 6, a. 4: "Rex enim non tamquam dispensator, sed tamquam ipsa eadem respublica reputandus est. Enim vero non est aestimandus tamquam reipublicae vicarius, sicuti Venetorum Dux, qui semper est a republica dependens, sed tamquam plenissimam habens potestatem reipublicae, eandem scilicet quam ipsa habebat . . . Itaque regnum est suum sicut cuiusve civis sua, est domus: atque adeo quaecumque facultas et ius reipublicae penes ipsum est."

138De Pot. Civ., n. 8: "Atque ideo sicut potestatem reipublicae a Deo et a iure naturali constitutam esse dicimus, idem prorsus de regia potestate dicamus necesse est."

or unwillingness of men, and it is this power which is given to the king?³⁹

The reality of a translation of power in the Vitorian teaching is now quite apparent. Vitoria's position is midway between the theory of mere designation of the person of the prince, in which the people have no claim to power, and the organic theory, in which the people are invested with inalienable, perpetual sovereignty?⁴⁰

The juridical act by which this translation of power is effected is a pact of subjection, either explicit or implicit. Vitoria attributes the political power of all rulers to the voluntary consent of the people?⁴¹ Although he considers other titles to power—colonization, tyranny, conquest in war—these titles must be legitimized by popular consent?⁴² Power is a natural right of the community, and the people can be deprived of it only by their own consent. And usurpation of authority can be rendered legal by a *post-factum* consent of the populace.

While admitting that many regimes had their origin in this manner, Vitoria teaches that the ideal expression of popular consent ought to be the election of the prince, decided by the will of the majority?⁴³ The majority represents the will of the moral body as a whole, and this, according to Vitoria, in virtue of the natural law and right reason?⁴⁴ For if the majority did not prevail, it would be detrimental to the welfare of the state.

issLoc. cit.: "Quod si homines vel respublica non haberent potestatem a Deo, sed ex conducto omnes convenirent, et pro bono publico vellent potestatem contra se constituere, illa quidem esset ab hominibus, sicut est quam religiosi tribuunt abbati. Non ita vero est: constituta est enim in republica, omnibus etiam civibus invitis, potestas seipsam administrandi, in quo officio reges constituti sunt."

¶Cf. Urdânöz, op. cit., p. 315.

i«In II-II, q. 104, a. 5, ed. cit., V, p. 212: "De potestate civili dico, quod omnis talis dependet a republica, id est, non habent magistratus civiles et rectores et principes majorem auctoritatem et potestatem quam illis dedit et concessit respublica."

i«2Cf. *De Indis*, see. II, n. 1.

usj*De lure Belli*, n. 6: "Princeps non est nisi ex electione reipublicae."

IMIn II-II, q. 62, a. 1, ed. cit., IU, p. 79: "Et patet, quia hoc est de iure naturae quod maior pars semper vincat in consilio. Et illud est necessarium ad pacem, quod praevaleat et superet. Et hoc est de iure naturale, quod etiam si nollent alii, quod maior pars dixit, illud teneatur."

Since unanimous consent is impossible in a large multitude, right reason dictates that the will of the majority should be followed.¹⁴⁵

Election by the majority, or the common consent of the multitude, is the juridical act by which a prince is constituted in power, and this act is equivalent to a pact of subjection. By transferring their power to the king, the people deprive themselves of the right of self-government, and subject themselves to the rule of the prince.

The pact of subjection is a quasi-contract, with obligations on the part of both the rulers and the people. The conditions of the pact, however, are not absolutely free, but are to a large extent predetermined by the natural law and the common good.

The power of the prince and the obligations of the citizens do have their origin by virtue of a mutual pact. The end of authority and the obligations of obedience are already predetermined by the nature of the political society. The pact determines the person of the ruler and effects a transfer of authority from people to prince.

The transfer of power does not have to be total and unconditional. On this part, the people are free to choose any kind of a legitimate regime. The people may limit the power of the ruler and retain part of it themselves.¹⁴⁶ Even though the powers granted to rulers in a non-monarchical form of government are limited, they cannot be abrogated, once given. A total transfer of its nature is irrevocable and absolute.¹⁴⁷

Pot. Cit., n. 14.

Pot. Ecc., II, sec. I, n. 4.

i«In II-II, q. 104, a. 5, *ed. dt.*, V, p. 213.

CONCLUSION

Francis de Vitoria is the principal representative of the traditional scholastic teaching on civil authority. Long before Suarez and Bellannine he evolved the solution of the problem from the principles of St. Thomas.

His philosophy of authority is based on the nature of man in relation to the finality of social life. The end of public power must conform to the end of society, the common good. The social nature of man imposes on him the necessity of authority. The source of authority, therefore, is traced to God, the author of nature.

Although authority comes immediately from God, Vitoria rejects the theory of the divine right of kings by proving that the political community itself is the primary and natural subject of power.

Yet, he does not thereby become the champion of inalienable popular sovereignty. The primacy of the common good, dominant in Vitoria's political philosophy, again asserts itself, and demands the transfer of power to particular organs. Kings and princes, then, have their power from God through the people. Although created by the people, rulers are not mere mandates or delegates, ever dependent on the capricious will of the multitude, but enjoy the sovereign power of the republic.

This is the classical scholastic doctrine, and Vitoria is justly called its first and foremost protagonist

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