

THE MORALITY OF HUMANITARIAN INTERVENTION ACCORDING TO FRANCISCO DE VITORIA'S JUST WAR

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Abstract

Salah satu kontroversi yang dominan pada dekade terakhir abad ke-20 ialah pertanyaan: "Apa yang harus dilakukan ketika sebuah negara tidak mau atau tidak dapat menghentikan pelanggaran HAM secara masif dan sistematis (misalnya: genosida) dalam wilayahnya?" Ada konsensus umum tentang pentingnya melaksanakan intervensi kemanusiaan untuk menghentikan pembantaian ini. Bagaimana moralitas intervensi kemanusiaan? Artikel ini mencoba mencari moralitas intervensi kemanusiaan menurut teori just war dari Francisco de Vitoria. Metode yang digunakan dalam artikel ini adalah studi pustaka. Berdasarkan teorinya, intervensi kemanusiaan adalah benar secara moral.

Keywords

Francisco de Vitoria, morality, humanitarian intervention, just war

INTRODUCTION

Humanitarian intervention is a military action taken by a state, or a group of states, or a regional organization (for example: NATO) in a target state, generally without that state's consent, for the purpose of stopping massive killings of a civilian population that shock the moral conscience of mankind (for example: genocide), and ideally with a UN mandate. For finding the morality of humanitarian intervention we need to learn from the just war tradition because military intervention is an act of war. This is the goal of this paper. War is one of the themes of Catholic teaching. "The Christian tradition possesses two ways to address conflict: nonviolence and just war," asserted by United States Conference of Catholic Bishops (hereafter USCCB) in the document *The Harvest of Justice is Sown in Peace* and, "They both share the common goal: to diminish violence in this world."¹ To stop the massive killings of a civilian population that shock the moral conscience of mankind, the position of non-violence way can not be chosen. The just war is the choice.

THE JUST WAR TRADITION

The just war tradition is a body of political-philosophical guides about when military action is justified.² There are several contemporary terminology of just war and they all refer to the same body of thought, i.e.: *just war tradition*, or *just war doctrine*, or *just war theory*, or

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¹ UNITED STATES CONFERENCES OF CATHOLIC BISHOPS, *The Harvest of Justice is Sown in Peace* (November 17, 1993), A reflection of the United States Conference of Catholic Bishops on the tenth anniversary of *The Challenge of Peace*, USCCB Publishing, Washington (DC) 2002³, 9.

² Cf. David L. CLOUGH – Brian STILTNER, *Faith and Force: A Christian Debate about War*, Georgetown University Press, Washington (DC) 2007, 6.

just war thinking.³ Michael Walzer, a famous writer on war, notes, “Just wars are limited wars.”⁴ Just war helps to limit war’s evils.

The the development of just war tradition has taken more than 20 centuries, and it has evolved substantially over time. The thinking about the ethics of war is evident in the Western tradition in Plato (429-347 BBC), Aristotle (384-322 BBC), Cicero (106-43 BC), but the most substantive history of the just war tradition, from a Christian point of view, begins with St. Augustine (354-431 AD), who serves as the best introduction to the tradition in ethical terms.⁵ He is known as the formulator of Christian theories on war.⁶ Later, St. Thomas Aquinas (1225–1274) explicated and organized the just war tradition of Augustine. Then it was developed by many thinkers till now, with key figures: Francisco de Vitoria (1492–1546), Francisco Suarez (1548–1617), Hugo Grotius (1583–1645), John Locke (1632–1704), Immanuel Kant (1724–1804), ... etc. and the contemporary thinker, Michael Walzer (born 1935).⁷

To discuss the morality of humanitarian intervention, we need the just war tradition because “the just war tradition provides the best framework for discussing the moral arguments for and against humanitarian intervention,” argued Coady.⁸ Among the above thinkers, only Francisco de Vitoria (Catholic) and Hugo Grotius (Protestant) who wrote on issues related to what we call now “humanitarian intervention”.⁹ Next we will discuss Francisco de Vitoria’s argument on “humanitarian intervention”.

FRANCISCO DE VITORIA

Francisco de Vitoria, OP (1486-1546) was a Spanish theologian, political theorist, member of the Order of St. Dominic (*Ordo Praedicatorum* or OP), noted especially for his contributions to the theory of just war and international law. For 20 years, Vitoria delivered a public address in which he discussed important current world problems at the beginning of each formal opening of the university. He did not publish these lectures himself. Later the notes of 12 of them were published and several have become famous. It was particularly upon the basis of the two *relectiones*, as they were called and delivered at 1539, *De Indis* (*On the American Indians*) and *De jure belli Hispanorum in barbarous* (*On the Law of War*), that Vitoria was later acclaimed as founder of modern international law. In *De Indis* he considered the true and false titles the Spaniards might advance to justify their domination in the New

³ Cf. Bill RHODES, *An Introduction to Military Ethics: A Reference Handbook*, ABC-CLIO, Inc., Santa Barbara (CA) et al. 2009, 23.

⁴ M. WALZER, *Just and Unjust War: A Moral Argument with Historical Illustrations*, Basic Books, New York (NY), 4th ed., 2006, 122.

⁵ Cf. B. RHODES, *op. cit.*, 23, 26.

⁶ Paul RAMSEY, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* Duke University Press, Durham (NC) 1961, 15.

⁷ Cf. B. RHODES, *op. cit.*, 26-44.

⁸ C. A. J. COADY, *The Ethics of Armed Humanitarian Intervention*, United States Institute of Peace, Washington (DC) 2002, 5.

⁹ See Terry NARDIN, “The Moral Basis of Humanitarian Intervention,” in *Ethics & International Affairs: A reader*, ed. by Joel H. Rosenthal and Christian Barry, Georgetown University Press, Washington (DC), 3rd ed., 2009, 88-96; see DANISH INSTITUTE OF INTERNATIONAL AFFAIRS, *Humanitarian Intervention. Legal and Political Aspects*, Danish Institute of International Affairs, Copenhagen 2000, 11; see Edmundo Vargas CARREÑO, “Humanitarian Intervention,” in *International Law on the Eve of the Twenty-first Century: View from International Law Commission*, United Nations Publication, New York (NY) 1997, 340; see C. A. J. COADY, *op. cit.*, 21.

World. This work was complemented by *De jure belli*. These two works constituted the first treatise of the law of peace and war.¹⁰

James Brown Scott notes that after the discovery of America by Columbus on the October 12th, 1492, the western adventure opened up a new world to the exploitation and immediately there sprang up rivalry between the seagoing nations of Europe in their eagerness to make discoveries of their own and thus subject the regions discovered beyond the seas to their colonization. This situation raised two basic questions. The first, what right did such a discovery give to the discoverer, and the second, the rules and regulations which the discoverer might impose upon the aborigines of the newly found territories. Because of the first question there might be and there was many a conflict between discoverers of different portions of the Western World. If the conflict was not settled by rule of law, it would ultimately be settled by the rule of force. Because of the second question, the European colonizers had to determine the right if any which the Europeans, on account of what they called their superior civilization could properly exercise over the “barbarian principalities,” to use an expression of their day: whether it should be the right of equals or the right of superiors. Therefore, the questions raised involved fundamental principles of international law (*ius gentium*).¹¹

What is *ius gentium* or “the law of nations” or “international law?” The *Institutes* (I. 2. 1) of Justinian: “What natural reason has established among all nation is called the *ius gentium*. (*Quod naturalis ratio inter omnes gentes constituit, vocatur ius gentium*). Upon consulting the *Institutes*, Vitoria has modified the statement in order to meet his purpose. The original wording is: “*Quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo jure omnes gentes utuntur.*” His purpose was to make *ius gentium* apply to nations, instead of merely to individuals, as appears not only from the shifting of the terms and the words omitted, but also from the statement immediately following, in the nature of a corollary, where the words *nationes* is used, indicating that Vitoria regarded *gentes* to be synonymous with *nationes* (nations). By doing this, he made an adequate definition of the law of nations.¹²

VITORIA ON HUMANITARIAN INTERVENTION

In his book *On the Law of War*, Francisco de Vitoria reflected the question “what are the permissible reasons and causes of just war” (Question 1, Article 3) or he thought about *just cause* for waging war. Vitoria rejected three propositions which could not be a cause of just war, they were: the difference of religions, the enlargement of empire, and the personal glory or convenience of a prince. Vitoria believed that “the sole and only just cause for waging war is when harm has been inflicted”; and even then, “not every or any injury gives sufficient grounds for waging war.”¹³ “*Iniuria accepta*” or “wrong done” is often quoted to support the modern view that self-defence is the sole legitimate pretext for traversing borders.¹⁴ But, in *De*

¹⁰ Cf. D. STEVENS, “Francisco de Vitoria,” in *New Catholic Encyclopedia*, Vol. 14 (Thi-Zwi), ed. by Thomas Carson and Joan Cerrito, Thomson/Gale, in association with The Catholic University of America, Farmington Hills (MI), 2nd ed., 2003, 570-571.

¹¹ Cf. James Brown SCOTT, *The Catholic Conception of International Law*, The Lawbook Exchange, Ltd., Clark, 2007, v.

¹² Cf. *Ibid.*, 18.

¹³ Francisco de VITORIA, “On the Law of War,” in *Vitoria Political Writings*, = Cambridge Texts in the History of Political Thought, ed. by Anthony Pagden and Jeremy Lawrence, Cambridge University Press, Cambridge et al. 2001, 303-304.

¹⁴ David FISHER, “Humanitarian Intervention” in *The Price of Peace. Just War in the Twenty-First Century*, ed. by Charles Reed and David Ryall, Cambridge University Press, Cambridge et al., 2007, 105.

Indis (On the American Indians) and in *On Dietary Laws, or Self-Restraint*, he stated the other *just cause* for waging war: it was what we know nowadays as humanitarian intervention.

Daniel Schwartz explains that human sacrifice and cannibalism were the most morally abhorrent practices among the Aztecs, the Caribs, and others encountered by the Spanish in conquering America. Therefore it was natural that the killing and eating of innocents would become a distinct topic within the broader discussion about the justice of the conquest of the Americas that occupied many Spanish intellectuals. Many Spanish just war theorists took part in this debate, among them: Francisco de Vitoria (1486–1546), Juan Ginés de Sepúlveda (1490–1573), Bartolomé de las Casas (1474–1566), Alfonso de Castro (1495–1588), Domingo de Soto (1495–1560), Alonso de la Veracruz (1507–1584), Melchor Cano (1509–1560), Diego Covarrubias y Leyva (1512–1577), Juan de la Peña (d. 1564), Martín de Rada (1533–1578), Bartolomé de Medina (1528–1580), Domingo Báñez (1528–1604), Francisco Toledo (1534–1596), Luis de Molina (1536–1600), José de Acosta (1540–1600), and Francisco Suárez (1548–1617). The list does not exhaust the theorists who discussed the justice of the conquest, but it includes the most influential contributors to the debate. In his research, Schwartz finds that virtually every one of the Spanish just war theorists accepted the initial plausibility of the claim that war against the Aztec rulers could be justified as a way of defending the innocent from human sacrifice, cannibalism and tyranny.¹⁵

Regarding humanitarian intervention, Francisco de Vitoria allowed defending the innocent from human sacrifice, cannibalism and tyranny as a just cause in his book *De Indis (On the American Indians)* and in *On Dietary Laws, or Self-Restraint*. He wrote in *On the American Indians*, Question 3: The just titles by which the barbarians of the New World passed under the rule of the Spaniards, Article 5: Fifth just title, in defence of the innocent against tyranny, as follows:¹⁶

The next could be either on account of the personal tyranny of the barbarians' masters towards their subjects, or because of their tyrannical and oppressive laws against the innocent, such as human sacrifice practised on innocent men or the killing of condemned criminals for cannibalism. I assert that *in lawful defence of the innocent from unjust death, even without the pope's authority, the Spaniards may prohibit the barbarians from practising any nefarious custom or rite*. The proof is that God gave commandment to each man concerning his neighbour (Ecclus. 17:14). The barbarians are all our neighbours, and therefore anyone, and especially princes, may defend them from such tyranny and oppression. A further proof is the saying: 'deliver them that are drawn unto death, and forbear not to deliver those that are ready to be slain' (Prov. 24: 11). This applies not only to the actual moment when they are being dragged to death; they may also force the barbarians to give up such rites altogether. If they refuse to do so, war may be declared upon them, and the laws of war enforced upon them and if there is no other means of putting an end to these sacrilegious rites, their masters may be changed and new princes set up. In this case, there is truth in the opinion held by Innocent IV and Antonino of Florence, that sinners against nature may be punished (2. 5 above). It makes no difference that all the barbarians consent to these kinds of rite and sacrifices, or that they refuse to accept the Spaniards as their liberators in the matter. This could therefore be the fifth legitimate title.

¹⁵ Cf. Daniel SCHWARTZ, "The Principle of the Defence of the Innocent and the Conquest of America: 'Save Those Dragged Towards Death'," in *Journal of the History of International Law* 9, Martinus Nijhoff Publisher, Leiden 2007, 263.

¹⁶ Francisco de VITORIA, "On the American Indians," in *Vitoria Political Writings*, = Cambridge Texts in the History of Political Thought, ed. by Anthony Pagden and Jeremy Lawrence, Cambridge University Press, Cambridge et al. 2001, 287-288.

And he wrote in *On Dietary Laws, or Self-Restraint*, Question 1, Article 5: Is it lawful to make war on the barbarians if they practice anthropophagy and human sacrifice?¹⁷

Having established that it is not lawful to feed on human flesh or to sacrifice humans, there arises a moral questions: if there is anyone who practises the sacrilegious custom of feeding on human flesh or makes these awful sacrifices, such as these barbarians discovered in the province of Yucatán (that is, in New Spain), *can Christian princes on their own authority use this reason to declare war on them?*

He answered this question in the fifth conclusion: Christian princes can declare war on the barbarians because they feed on human flesh and because they practice human sacrifice.¹⁸

The proof is as follows. First, if they eat or sacrifice innocent people, princes can defend the latter from harm, according to the passage: ‘Deliver them that are carried away unto death, and those that are ready to be slain see that thou hold back’ (Prov. 24: 11). They can defend themselves, therefore princes can defend them. It is no replay to argue that they neither seek nor wish this help; it is lawful to defend an innocent man even if he does not ask us to, or even if he refuses our help, especially when he is suffering injustice (*iniuria*) in a matter where he cannot renounce his rights, as in the present case. No one can give another the right to kill him, whether it be to eat him or to sacrifice him. Besides, it is certain that the victims of these practices are often unwilling, for example children. It is therefore lawful to defend them. Hence, since it is a fact that these barbarians kill innocent men, at least for sacrifice, princes may wage war on them to force them to give up these rituals. Even if they sacrifice criminals to eat, they still commit an injustice (*iniuria*), since there is a law of nation (*ius gentium*), indeed a natural law, that the bodies of the dead are exempt from this injustice.

It follows that the reason why the barbarians can be conquered is not that their anthropophagy and human sacrifices are against natural law, but because they involve injustice (*iniuria*) to other men. This is clear from the preceding arguments. Hostiensis in his commentary on the decretal *Quod super his* (X. 3. 34. 8) holds that unbelievers who do not recognize the dominion (*dominium*) of the Church may be lawfully invaded according to the passage ‘All power is given unto me in heaven and earth’ (Matt. 28:18); once they recognize it, and cease to act in a hostile manner towards Christian, they cannot be despoiled of their property. The reason he alleges is that Christ transferred His power to His vicar; he adduces the canon *Si de rebus* (*Decretum* C.23. 7. 2) with it gloss. This conclusion is supported by Angelo Carletti da Chivasso in his *Summa Angelica*. But Innocent IV, in his commentary on the same decretal (in X. 3. 34. 8), holds that it is only lawful if they are aggressive, or if they commit some other crime against natural law; he adduces the canon *Dispar* (*Decretum* C.23. 8. 11). Silvestro Mazzolini da Priero follows Innocent (*Summa Sylvestrina*, s.v. infidelis § 7); but it may be argued against Silvestro that he is contradicted by his previous admission, that the infidels are subject to the Church. If they are subjects but refuse to recognize the dominion (*dominium*) of their master, why can they not be compelled to recognize it, as Hostiensis asserts and Innocent denies?

In the *On the American Indians*, one of the seven just ‘titles’ to, or justifications for, the war on the Indians was, “the personal tyranny of the barbarians’ masters towards their subjects, or because of their tyrannical and oppressive laws against the innocent, such as human sacrifice practised on innocent men or the killing of condemned criminals for cannibalism”

¹⁷ Francisco de VITORIA, “On Dietary Laws, or Self-Restraint,” in *Vitoria Political Writings*, = Cambridge Texts in the History of Political Thought, ed. by Anthony Pagden and Jeremy Lawrence, Cambridge University Press, Cambridge et al. 2001, 217.

¹⁸ *Ibid.*, 225.

(Question 3, Article 5). Against this, he asserted that “in lawful defence of the innocent from unjust death, even without the pope’s authority, the Spaniards may prohibit the barbarians from practising any nefarious custom or rite.” Scott contends that “Vitoria considers intervention under such circumstances as a right based on human welfare, a right which authorizes the Spaniards, even without the pope’s authority.”¹⁹ This jurist considered that a humanitarian war was permissible in order to protect the innocent from unjust death by the tyranny of native leaders or laws. The just cause for humanitarian intervention was based on *the principle of the defence of the innocent against tyranny*.

What is the reason that this humanitarian intervention was lawful, even without the pope’s authority? Vitoria gave two proofs i.e.: (1) As the Parable of the Good Samaritan teaches, the Christian injunction to love our neighbour applies, wherever there is a neighbour who is suffering and in need of help. But who are our neighbour? The answer is from St. Augustine’s *De Doctrina Cristiana*: “When it is said ‘Love thy neighbour,’ it is clear that everyman is our neighbour.”²⁰ Thus Vitoria argued “The barbarians are all our neighbours, and therefore anyone, and especially princes, may defend them from such tyranny and oppression” (Ecclus. 17:14 of the *Nova Vulgata*)²¹; (2) One must “deliver them that are drawn unto death (Prov. 24:11). This applies not only to the actual moment when they are being dragged to death; they may also force the barbarians to give up such rites altogether.”²²

For Vitoria, the fact that the tyrants can be conquered is not because their anthropophagy and human sacrifices are against natural law, but because they involve injustice (*iniuria*) to other men.²³ Schwartz notes that “an alternative interpretation, explicitly held by Cano and Las Casas, and perhaps shared by others, understands the defence of the innocent as an act of mercy rather than an act of justice.”²⁴

Several theologians believed that cannibalism was a sin against the law of nature (such as incest with mothers and sisters, or sodomy) and may be punished. The barbarians were committing an offense against God, and may consequently be compelled not to offend Him further. These were the opinions of St Antonino of Florence (*Summa theologiae* III. 22. 5 §8), Agostino Trionfo (*Summa potestate ecclesiastica* I. 23. 4), Silvestro Mazzolini da Priero (*Summa Sylvestrina*, s.v. papa § 7), and Innocent IV in his commentary on the decretal *Quod super his* (X. 3. 34. 8). Innocent IV said: “I believe that if the gentiles break natural law, which is the only law they have, they may be punished by the pope.” He adduced to this purpose the fact that the Sodomites were punished by God (Gen 19); “since God’s judgement are examples to us, I do not see why the pope, who is the vicar of Christ, should not be empowered to do the same.” By this argument, on the pope’s authority, they might be punished by Christian princes.²⁵ But Vitoria had different thinking from these theologians. Vitoria held the opinion that the sins against the law of nature is not the reason for humanitarian intervention.²⁶

The humanitarian intervention was undertaken not only to stop the unjust death of the innocent, but also to force the barbarians to give up such rites altogether. If they refused to stop human sacrifice, cannibalism, or tyrannical and oppressive acts, war might be declared upon

¹⁹ J. B. SCOTT, *op. cit.*, 30.

²⁰ Cf. *Ibid.*, v.

²¹ F. VITORIA, “On the American Indians,” 287.

²² *Ibid.*

²³ F. VITORIA, “On Dietary Laws, or Self-Restraint,” 225.

²⁴ D. SCHWARTZ, *op. cit.*, 291.

²⁵ Cf. F. VITORIA, “On the American Indians,” 273.

²⁶ Cf. *Ibid.*, 273-275.

them. In Vitoria's view punishment, could justify wars of intervention. Then "their masters might be changed and new princes set up"²⁷; it meant a regime change. Regarding humanitarian intervention, Francisco de Vitoria suggested that it would be just to declare war on the Indians to protect the victims of human sacrifice and cannibalism. This is parallel to the cause pleaded in justification of the American invasion of Iraq in 2003: rescuing the victims of a tyrant and Saddam Husein regime change. The regime change was not as an end in itself but as a necessary means to end that tyranny.

CONCLUSION

From the just war tradition, Francisco de Vitoria wrote the morality of what we call now "humanitarian intervention." Francisco de Vitoria considered that the just cause for humanitarian intervention was based on the principle of the defence of the innocent against tyranny. Vitoria gave two proofs, i.e.: (1) As the Parable of the Good Samaritan teaches, the Christian injunction to love our neighbour applies, wherever there is a neighbour who is suffering and in need of help. "The barbarians are all our neighbours, and therefore anyone, and especially princes, may defend them from such tyranny and oppression" (Ecclus. 17:14 of the *Nova Vulgata*). (2) One must "deliver them that are drawn unto death" (Prov. 24:11). Francisco de Vitoria argued that humanitarian intervention is morally right.

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