

# The Role of Colonialism in the Construction of Human Rights

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## Presentation

Although the history of human rights does not mention colonialism as a historical episode that has participated in its creation, there is no doubt that the discovery of America and the subsequent establishment of the European empires overseas raised important discussions in the old continent (among which can be highlighted the legitimacy of conquest), which are located at the base of the later development of human rights [1,2]. In this regard, the discussions of the Dominican Friar Francisco de Vitoria address these issues. These discussions analysed the performances of the conquistadors depending on their agreement (or not) of existing laws or the dominating status.

The “natural legal framework” was created from the commission of these injustices, considered as the first seeds of human rights. Due to his contributions in the field of Law, Francisco de Vitoria contributed to making constructive criticism and clarifying the problems of his time. It can be said that, initially and in general terms, Francisco de Vitoria considered the conquest as illegitimate, unjust and contrary to the “Law of peoples” [3]. To do this, the friar evidences the illegitimacy of the titles by which the New World territories came to depend on the Spanish Crown.

## Natural Law as a Framework Legitimizing Colonialism

Together with the above, F. de Vitoria developed a considerable body of doctrine, which was devoted to justifying the conquest, colonisation and domination of the Indians by the Spaniards. The core of the issue is to appeal to natural Law as a universal mechanism of interaction between communities belonging to different cultural systems. This means that in the Indian community, like the Spanish, are placed in the framework of the natural law, which is universal. However, in this framework, Indian practices are always considered to be unsuited to natural Law. They are poor practices, because the natural law is an imitation or reflection of European standards. Therefore, from the Victorian perspective, the recognition and incorporation of Indian people in the human family was problematic.

Natural law with its universal claims seems to be to equidistant between the two communities, however, it generates different effects, which are due to the existing asymmetries between Indians and Spaniards. It is therefore inevitable for the Indians to violate such natural law due to their specific identity, which is unique with their particular cultural practices. From the foregoing, it can be deduced that Victorian doctrine excluded non-European peoples, in this case, Indians, of enjoying natural law, in particular, it deprives them of sovereignty due to its constant violations to the natural order of things. And, if the Indians do not respect this right which is granted by the Spanish in their territories, then, they would be disrespecting natural law, which empowers the Spaniards to start a war and, in the event of victory, use the laws of war on them up to their final more inhuman consequences.

The decisive element introduced by F. de Vitoria is its “cultural deficiency”. The introduction of this factor make differences between the two communities appear as normal. On the basis of the differential elements, such as religion or the political stances that there are between the two communities, emerges a construction of two ideal opposite things. On the one hand, the civilised community with the perfect religion and, on the other, the community of the Indians with different practices, and therefore accentuated with strange features, if not savage acts. The starting point is –of course– that the Spanish community is the absolute reference to that which the indigenous community should resemble.

On the other hand, the difference between the two communities is interpreted as a deficiency or ineptitude by the Indians. This approach involves two fundamental consequences: a theoretical one and the other a practical one. The consideration of the cultural specificities of the Indian people to declare them deficient and inept constitutes a flagrant violation of the natural law. And it is here where the second consequence comes from, according to which, since the gap between the ideal Indian and the real Indian is established, it is now time to devise measures to regain the lost qualities in the course of time.

Who better than the Spanish to carry out such a mission? However, in order to fulfil this sacred mission, there is an essential condition, which consists in a suppression of the sovereignty of the Indians. And, as a result of the suspension or suppression of the sovereignty of the Indians, F. de Vitoria suggested that an administrative entity be established with the objective of bringing them to the virtues of civilisation. And, from this perspective, the Spaniards considered themselves as agents of natural law.

All in all, the building of the structure of the difference between the Spanish community and the indigenous community, in addition to excluding the full capacity of the Indians as a community to exercise their natural rights, justifies foreign intervention as a mission of benevolence that, depending on the circumstances, permits the use of force to meet its commitment. This Indian construction indicates how the natural law, by focusing on the notion of sovereignty in the cultural factor, acquires the capacity, at the same time, to incorporate and to exclude non-European peoples, in this case, the Indians. And, from there, the natural law integrates the “cultural issue”, which becomes a constitutive element of sovereignty.

Due to all the aforementioned and by way of conclusion, it can be said that the most important thing in the work of F. in Vitoria in relation with the conquest and colonisation of America by the Spanish Empire from the 16th century is the technique that he develops to justify the appropriation of land and property of the local population. The two key concepts in his reasoning are the sovereignty in relation to war and the transformation of the Indian people by the Spaniards. The idea of sovereignty is also linked to faith.

## References

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