

Rechtsgeschichte Legal History

www.rg.mpg.de

<http://www.rg-rechtsgeschichte.de/rg27>
Zitiervorschlag: Rechtsgeschichte – Legal History Rg 27 (2019)
<http://dx.doi.org/10.12946/rg27/338-340>

Rg **27** 2019 338–340

Daniel S. Allemann *

Re-reading Vitoria

* Faculty of History, University of Cambridge, dsa29@cam.ac.uk



Daniel S. Allemann

Re-reading Vitoria*

Francisco de Vitoria was born more than five centuries ago, but his life and work continues to intrigue. Within the field of international law, he holds a particularly special place. In the 1920s and 1930s, Vitoria was turned into the founding father of the discipline.¹ And for many, he remains closely associated with »the origins of modernity« and the »discovery of international law«.² The Dominican friar had a spectacular career and lived through times of major transformations. As Prime Chair of Theology at the renowned University of Salamanca, he thought through pressing contemporary issues, for in his view, theologians were uniquely qualified to tackle the most momentous questions of morality and human action. Accordingly, Vitoria engaged with the »heresies« of Reformed theology, the *comunero* revolt against Charles V, or the Spanish conquest of the New World. Most influential of all, then and now, were his annual public lectures that formed the pinnacle of the academic year. For the first time, these are now available in a complete critical edition.

In his *relectiones*, as these lectures were known, Vitoria elaborated on specific themes that grew out of his ordinary lecture courses on Aquinas's *Summa theologiae*.³ Despite their name, the *relectiones* were more than simple re-readings. Vitoria often used them as a platform to examine current affairs. Moreover, the *relectiones* were solemn occasions that attracted Salamanca's entire academic community. Between Christmas 1527 and the spring of 1543, Vitoria delivered fifteen of these special discourses. The thirteen that have been preserved constitute the core of the new Latin-Spanish edition.

As Antonio Osuna, the main editor of the volume, notes in one of the three introductory essays, there are two particular *relectiones* that have profoundly shaped the modern historiographical imagination of Vitoria: the *De indis* (*On the American Indians*) and the *De iure belli* (*On the Law of War*). They home in on the legal foundations of the Spanish conquest as well as on questions about the justice of war more broadly conceived. It is thus no coincidence that international legal scholars turned to precisely these lectures of Vitoria's when crafting the genealogy of their discipline in the early twentieth century. The numerous translations of *De indis* and *De iure belli* that were issued in this context made Vitoria famous once again.⁴ However, these were not his only topical *relectiones*. In fact, Vitoria had already voiced critical remarks about the rationale for Spanish intervention in the Americas in the earlier *De temperantia* (*On temperance*), a text that is often neglected by scholars today but which was explosive at the time (vol. II, 495). What is more, in his forceful lecture on the origin of political power (*De potestate civili*), Vitoria vindicated the Spanish monarchy against the republican demands of the rebelling *comuneros*. Even the *relection* on marriage was inspired by a contemporary controversy. In a personal letter, the Spanish empress Isabella prompted the professor to shine new light on the separation of Henry VIII and Catherine of Aragon – though in the end, Vitoria sidestepped the issue of divorce in *De matrimonio* (vol. I, 25–32).

In a way, the thirteen *relectiones* have long been published. In 1557, little more than a decade after Vitoria's death, the Frenchman Jacques Boyer pub-

* FRANCISCO DE VITORIA, O. P., *Relecciones jurídicas y teológicas*, 2 tomos, edición crítica usando los manuscritos y con nueva versión española dirigida por ANTONIO OSUNA FERNÁNDEZ-LARGO, con colaboración de JESÚS CORDERO PANDO et al., Salamanca: Editorial San Esteban 2017, 965 + 1029 p., ISBN 978-84-8260-332-9

1 IGNACIO DE LA RASILLA DEL MORAL, *In the Shadow of Vitoria: A History*

of International Law in Spain (1770–1953), Leiden 2018, 1–8, 196–205, see review of Carlos Petit in this issue.

2 The phrases are taken from the title of JOSÉ MARÍA BENYETO, JUSTO CORTI VARELA (eds.), *At the Origins of Modernity: Francisco de Vitoria and the Discovery of International Law*, New York 2017.

3 On the latter, see FRANCISCO DE VITORIA, *Comentarios a la Secunda secundae de Santo Tomás*, ed. by

VICENTE BELTRÁN DE HEREDIA, 6 vols, Salamanca 1932–52.

4 See the classic by JAMES BROWN SCOTT, *The Spanish Origins of International Law: Francisco de Vitoria and His Law of Nations*, Oxford 1934.

lished a complete edition of the lectures in Lyon.⁵ Soon after, a further edition appeared in Vitoria's native Salamanca, and six more followed over the course of the sixteenth and seventeenth centuries (vol. I, 35–37). We might thus ask: why do we need yet another one?

The problem with these early modern tomes, as Ramón Hernández explains in his introduction, is that they were all based on deficient sources – texts, that is, which had undergone major revisions and differed widely from Vitoria's own, original words. Rather than presenting yet another iteration of these textually problematic early prints – as numerous modern editions have done⁶ – the present volume takes a different path. It aims to provide a critical edition of the relections on the basis of the manuscripts that have been preserved, thus approaching Vitoria's genuine thought as closely as possible (vol. I, 46).

This is not a straightforward venture, as the manuscripts that have come down to us were all drawn up by scribes. Yet there is evidence that at least those penned during Vitoria's lifetime are faithful reproductions of the author's now-lost copy. Upon close inspection it becomes clear that they are almost identical word for word, which points to the existence of a common source (vol. I, 20). More importantly still, the most complete, well-preserved, and authoritative manuscript even makes an explicit reference to the »original« from which it was copied (vol. I, 48). Composed around 1540, this text is now held in the cathedral library of Palencia and forms the foundation for the new Latin-Spanish edition. It was first brought to the attention of a wider scholarly audience in the wake of the rediscovery of Vitoria in the previous century.⁷ Since then, the Palencia manuscript has serv-

ed as the basis for critical editions of the celebrated *De indis* and the *De iure belli*.⁸ More recently, Anthony Pagden and Jeremy Lawrance offered seven of Vitoria's lectures in a masterful English translation (though omitting the Latin text).⁹ It is only with the present volume, however, that we are finally presented with a comprehensive critical edition that features all of Vitoria's thirteen relections.

In two weighty tomes that amount to almost exactly 2,000 pages, these are rendered in the original Latin with a facing Spanish translation. Apart from the introductory essays mentioned above, each *relectio* comes with another short introduction that outlines its major themes, the broader historical context, as well as details on the state and use of the manuscripts. These prolegomena offer some helpful guidance not only for those unfamiliar with Vitoria's thought. The primary texts themselves include enlightening notes on Vitoria's references to classical, canonical, and contemporary authorities, which are often implicit or otherwise difficult to identify for modern readers.¹⁰ It is regrettable, however, that these notes are part of the Latin text rather than the facing translation. On the one hand, this thwarts the editors' efforts to make Vitoria's texts accessible for a Hispanophone audience. On the other, it also leads to a further problem; one for those interested in the Latin original. Since the footnotes are already taken up with comments on Vitoria's sources, the editors' excellent observations on textual variations between the different manuscripts and early prints go entirely unmentioned in the body of the text. The heart of the critical apparatus is wholly relegated to the footer of the page.

5 FRANCISCO DE VITORIA, *Relectiones theologicae* XII, 2 vols, Lyon 1557. An excellent digital edition is available at <https://www.salamanca.school/en/work.html?wid=W0013> (accessed 15 April 2019).

6 See e. g. the recent Latin-German edition, which is based on the Salamanca edition of 1565: FRANCISCO DE VITORIA, *Vorlesungen: Völkerrecht, Politik, Kirche*, trans. by JOACHIM STÜBEN with an introduction by ULRICH HORST, ed. by ULRICH HORST et al., 2 vols., Stuttgart 1995–97. See also the earlier Latin-Spanish edition, also based on the 1565 edi-

tion: FRANCISCO DE VITORIA, *Obras de Francisco de Vitoria: Relecciones teológicas*, trans. and ed. with an introduction by TEÓFILO URDÁNOZ, Madrid 1960.

7 The first seven relections of the Palencia MS are published in facsimile in FRANCISCO DE VITORIA, *Relecciones teológicas*, ed. and trans. with an introduction by LUIS ALONSO GETINO, 3 vols., Madrid 1933–36, I (1933). Note that Getino's Spanish translation was, however, based on early modern editions of the relections.

8 FRANCISCO DE VITORIA, *Relectio de indis o libertad de los indios*, ed. and

trans. by LUCIANO PEREÑA et al., Madrid 1967. FRANCISCO DE VITORIA, *Relectio de iure belli o Paz dinámica: Escuela Española de Paz (Primera generación 1526–1560)*, ed. and trans. by LUCIANO PEREÑA et al., Madrid 1981.

9 FRANCISCO DE VITORIA, *Political Writings*, ed. and trans. by ANTHONY PAGDEN and JEREMY LAWRENCE, Cambridge 1991.

10 The editors acknowledge their debts to Joachim Stüben, who put together outstanding notes on Vitoria's sources for the German edition of the *relectiones* (see above at note 6).

One of the most striking features of the present edition is that the thirteen relections were prepared and translated by no less than six different scholars. This collaborative spirit is remarkable and, perhaps, indeed necessary to cope with the sheer amount of Vitorian writing. Yet it also has noticeable consequences. If we compare the editors' prefatory remarks on the individual relections, for instance, a surprising extent of tacit disagreement comes to the fore. Consider the status of the manuscript preserved in Seville, which inter alia includes a central passage of the *De temperantia* that is missing in all other copies. In Mauro Mantovani's view, this manuscript is no doubt a direct duplicate of the Vitorian original (vol. I, 305–306). Jesús Cordero Pando (vol. I, 74–75) and Ángel Martínez (vol. II, 15), by contrast, maintain that it was copied from a later, posthumously revised version. And Antonio Osuna, the main editor, first agrees with the latter evaluation (vol. I, 619) before arguing the opposite elsewhere (vol. II, 177). This kind of internal inconsistency is striking and points to a lack of thorough editorial coordination.

Fortunately, however, things are different when it comes to the actual relections. The Latin text preserves the authentic language of the manuscripts. Furthermore, and despite the practical shortcomings mentioned above, the outstanding critical apparatus reveals the editors' meticulous work with a wide range of manuscripts. The Spanish translations are similarly deserving of praise. Key terms of Vitoria's theological and juridical vocabulary are rendered accurately and consistently throughout. A notable exception is the notion of *respublica*, which is routinely mistranslated as *república* (e.g. vol. I, 88–89, 502–503; vol. II, 578–579). For Vitoria, *respublica* denoted the commonwealth or »state« in general terms, whereas in modern Spanish, *república* has the much narrower sense of a republican government (i. e., an idea that Vitoria vehemently opposed).¹¹

But it must be emphasized that on the whole, all of the different translators manage the balancing act of staying true to the »strangeness« – from our point of view – of Vitoria's language, while making it intelligible to the modern reader. As such, the present edition is also a valuable resource for the (Spanish-speaking) classroom.

Most important of all, Antonio Osuna and his fellow editors provide us with the tools – the critical texts – to expand, pluralize, and revisit the histories we tell about Francisco de Vitoria. Here we find the most well-known relections assembled alongside virtually unknown writings. Take, for example, the lecture with the cumbersome title *De eo quod homo tenetur cum primum venit ad usum rationis*, which probes Aquinas's claim that humans, who have attained the use of reason, are bound to work towards God. In it, Vitoria negotiates the boundary between the human and the non-human in ways that are far more intricate and profound than his famous reflections on the humanity of the American Indians in *De indis*.¹² For a fuller appreciation of Vitoria's legal and political ideas, one might also turn to his musings on the scope and limits of ecclesiastical power (*De potestae ecclesiae I and II*), the matter of magic and witchcraft (*De arte magica*), or the fraught question of the ethics of homicide (*De homicidio*). All of these issues are crucially bound up with broader Vitorian themes, while simultaneously developing intriguing lines of thought that have been eclipsed in modern scholarship.

We must therefore congratulate the editors on a successful and important venture. Despite its editorial flaws,¹³ the new edition makes a major contribution to scholarship on the legal, intellectual, and religious history of the early modern period. Hopefully, its impact will not be limited to the Hispanophone world. For indeed, it is timely and topical to re-read Vitoria. ■

11 On Vitoria and other scholastics' engagement with republicanism, see BENJAMIN C. SLINGO, *Rule, Power and Dominion in Late Scholastic Political Thought, c. 1500–1620*, University of Cambridge 2017 (Ph.D. diss.).

12 This is discussed in ANNABEL S. BRETT, *Changes of State: Nature and the Limits of the City in Early Modern Natural Law*, Princeton 2011, Chapter 2.

13 Unfortunately, this also includes various editorial slips: e.g. »Stüven« instead of Stüben (vol. I, 65); »pertene«

instead of pertenece (vol. I, 569); »parece« instead of parecer (vol. II, 513); and most curiously, the Latin »utique« is included in brackets in the Spanish translation, but incorrectly rendered as »itaque« (vol. II, 422–423).