

Chapitre 2

Le droit naturel des Modernes

Section 1 : La Scolastique espagnole : Vitoria et Suarez.

Sur la scolastique espagnole, en particulier : Villey, *Formation de la pensée juridique moderne*, p. 326 sq. ; J.-F. Courtine, « Vitoria, Suarez et la naissance du droit naturel moderne », A. Renaut (dir.), *Histoire de la philosophie politique*, t. 2, p. 127 sq.

C'est un moment essentiel de la fondation du droit naturel moderne. En tant que l'idée des « droits de l'homme » se fait jour. L'homme, en tant que tel, à raison de sa « nature » et de sa dignité propre, est sujet de droit. Cette idée, banale aujourd'hui, passe par la reconnaissance de ce que quelque chose de commun est en partage entre les hommes. Et, point essentiel qui lance la discussion du droit naturel sur des voies nouvelles, ce quelque chose de commun amène à penser une communauté politique de l'humanité, un bien commun universel : au-delà des nations, des cités, des États, il faut concevoir ce qu'on appellera la « civitas maxima », la cité universelle et donc un droit de cette cité universelle qui vaille parmi les cités particulières. Il faut penser un droit international, essentiellement fondé en raison et qui gouverne les rapports entre les cités, rapports conflictuels et rapports pacifiques, le *polemos* et le *commercium*. C'est pourquoi l'on voit généralement et non sans raisons dans ces auteurs, Vitoria et Suarez, les pères fondateurs du droit international. Mais l'on voit aussi combien ils ouvrent la voie aux doctrines du droit naturel le plus classiques, celles qui vont prendre la suite et discuter l'oeuvre majeure et totémique du droit naturel moderne, le *Droit de la guerre et de la paix* d'Hugo Grotius, publié pour la première fois à Paris en 1625. Mais attention : même s'il s'agit de penser les rapports juridiques entre nation et donc le droit international, la portée de la réflexion tant de la scolastique tardive que de Grotius va bien au-delà et reprend la question juridique dans toute son ampleur. 1625 : Suarez vient de mourir à Lisbonne, en 1617. Vitoria et Suarez préparent bien la modernité juridique même si l'arrière-plan de leur pensée – et ce n'est pas celui de Grotius – demeure la grande

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