

Communication as Common Property and Foundation of Global Democracy
Francisco de Vitoria's performative conception of the commons

The legal notion of the commons stems from Roman law. In the second book of the *institutiones* of Gaius, the commons are defined in a way that is – although with great restrictions – still fundamental today: „*Naturali iure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris.*“ – ‘By the law of nature, the air, fluent waters and the sea and its coastlines are common to all.’

Whilst in Roman Law, the commons are defined as a physical property of humanity qua Natural Law (*ius naturale*), to Francisco de Vitoria (1483-1546), the notion of the commons has further implications than that. Following Aristotle, he perceives the legal status of mankind as being connected to a series of behavioral prerequisites. Vitoria thus develops a performative conception of the commons along the following lines:

According to Aristotle, the human being is political animal (*zoon politikon*) and animal possessing language (*zoon logon echon*). In order to be human, humans necessarily have to possess what separates them from animals: Politics and communication. The notion of communication and the common that belongs to mankind are therefore inseparably connected. Because communication is the common denominator of what it is to be human, and *conditio sine qua non*, communication also must be accessible to every human being. According to this understanding of Aristotle, communication must be a common property of humanity.

To Vitoria, this line of thought culminates in his conception of the *ius communicationis*, a universal right to communicate. In the past, Vitoria became increasingly recognized for being the first who has systematically formulated a universal right of free migration, which his notion of *ius communicationis* does also imply. In this age of increasing significance of the legal structure of the common in communication technology, Vitoria's notion of the *ius communicationis* bears an even greater significance.

Following Vitoria, the question whether every human being has equal access to means of communication is much more than a humanitarian question, but the question for the anthropological condition of mankind itself. The common of humanity is what humans do commonly, i. e. politics and communication. If one thinks Vitoria's performative conception of the commons to its uttermost conclusion, only those are human who can communicate and participate in the political process that concerns humanity. „*Et si non est civis non est homo*“, as Dante's teacher Remigius de Girolami writes, drawing the same conclusions from Aristotle as Vitoria, – ‘who is not a citizen is not human’.

To Vitoria, the common property of communication isn't just something that humans share, but rather something, which to actively share means to be human. With great parts of the world's population being excluded from global communication, the common anthropological ground of humanity is in danger to erode. On the other hand, it seems more realistic than ever to demand a legal fixation of the common property of communication akin to Vitoria's *ius communicationis* – including the right to communicate freely and for free. Such a legal fixation would be the necessary

precondition for the installation of a democratic *res publica totius orbis* – ‘a republic of the whole world’, using the words of Vitoria. Although Vitoria himself today is considered to be the father of international law, these radical implications of his performative concept of the commons and his foundation of humanity in communication became nearly forgotten.