

**SPAIN'S TREATMENT OF INDIANS IN
COLONIAL AMERICA: CONTEXTUALISING
THE IDEAS OF BARTOLOME DE
LAS CASAS, VITORIA AND SEPULVEDA**

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Master of Philosophy

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CERTIFICATE

Certified that the dissertation entitled **SPAIN'S TREATMENT OF INDIANS IN COLONIAL AMERICA: CONTEXTUALISING THE IDEAS OF BARTOLOME DE LAS CASAS, VITORIA AND SEPULVEDA**, submitted by **Harikrishnan G.** in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** has not been previously submitted for any other degree of this or any other University. This is his own work. We recommend that this dissertation may be placed before the examiners for evaluation.

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PROLOGUE

The sixteenth century Spanish historian Francisco Lopez de Gomara had described the discovery of the New World as the greatest event since the coming of Christ.¹ For contemporary historians the discovery and subsequent colonisation of America are significant because it became the subject of philosophical debates and legal interpretations of world wide scope which threw up the most complex theoretical problems that continued to boil and simmer in the cauldron of European thought ever since 1492.

The Europeans of the fifteenth century had assumed their knowledge of the world to be exact but the sudden discovery of a vast unknown continent across the seas, inhabited by strange creatures had shaken their confidence in themselves. Their initial response to come to terms with the discovery of America had relied upon the wealth of ideas, legends and myths developed during the middle ages. Europe's encounter with America was certainly not its first with non-Christian peoples. It had accumulated experiences of relations with non-Christian peoples during the slow frontier expansion of medieval times. The peoples of Africa and Asia had also come to be known to Europe, by the end of the fifteenth century, through the considerable body of travel literature made popular through the power of the printing press. By contrast America was of little interest to Europe.

¹ Lewis Hanke, Aristotle and the American Indians (Chicago, 1959), pp.2-3.

But as the empires of Mexico and Peru were brought under Spanish rule and as the Spaniards from many walks of life took part in the conquests, the true significance of America came to be understood. The Spaniards who actually saw America not only became tremendously excited and stimulated but they tended to look at the New World through medieval spectacles. They developed an urge to somehow relate the world they knew to the new unknown world. And as a result the natives of the new world became the centre of speculation. Who were they? What was their nature? What relationship would be right one for the Spaniards to establish with them? Can they be christianised and brought to a civilised life? How shall this be attempted, by war or by peaceful persuasion? To answer these questions the Spaniards had to logically determine the nature and capacity of the Indians before they could legitimately pursue either conquest or christianisation. This they did by resorting to Aristotlean ideas, for at the time of discovery, his authority remained so strong among European Christian thinkers that some eminent Spaniards did not hesitate to apply his doctrine of natural slavery to the Indians.

As the conquerors and clerics moved forward into America with the double purpose of political dominion and religious conversion, stubborn facts and theological convictions clashed resoundingly. The voices of individuals and of different factions – ecclesiastics, soldiers, colonists and royal officials in America as well as men of action and thought in Spain – rose continually during the sixteenth century in a loud chorus of conflicting advices to the Spanish kings. Each man and each faction held a profound conviction about the nature of the Indians and all generalised about them as

though they were a single race. What follows in this dissertation is study of how FRANCISCO DE VITORIA, a theologian at the Salamanca University, BARTOLOME DE LAS CASAS, a missionary and JUAN GINES DE SEPULVEDA, a polemicist representing the colonists' cause had helped to contribute to the character of the debate on the nature and status of American Indians?

The Question of Method

On the subject of the practice of human sacrifice Sepulveda says,

“Opening up the human breasts they pulled out the hearts and offered them on their heinous altars. And believing that they made a ritual sacrifice with which to placate their gods, they themselves ate the flesh of the victims. These are crimes that are considered by the philosophers to be among the most ferocious and abominable perversions, exceeding all human iniquity. As for the fact that some nations, according to reports, completely lack religion and knowledge of god what else is this than to deny the existence of God and to live like beasts? In my judgement this crime is the most serious, infamous and unnatural.”²

For sixteenth century Spain this was a most common place view. On the other hand, Las Casas boldly defends the Indians by arguing that the practice reveals genuine devotion to their gods, for more devout the people the greater their sacrifice.³ It would appear, on a simple reading of Las Casas text that he was justifying the practice. But his aim was not to justify human sacrifice per se, for he was speaking with a polemical intent while trying to rationalise the aberrant social behaviour of the

² Charles Gibson, The Spanish Tradition in America (New York: Harper & Row, 1968), pp.119-120.

³ Anthony Pagden, The Fall of Natural Man (Cambridge, 1982), p.144.

Indians. The apparent justification put forward by Las Casas is the locutionary meaning of the text and what he speaks with an intended force (his polemical intent) is the illocutionary meaning.⁴

To discover the locutionary meaning of an argument it has to be located in the ideological context. The ideological context is provided by the collection of texts written in the same period addressing the same or similar issues and possessing a shared vocabulary, principles, assumptions and so on. Once an argument is situated thus, we know how the author was 'accepting and endorsing or questioning and repudiating or perhaps even polemically ignoring the prevailing assumptions and conventions of the debate'.⁵

If like Las Casas an author was repudiating accepted views i.e. 'manipulating the available ideological conventions'⁶ what was his point in doing so. The illocutionary meaning can be understood only in the practical context for an ideological manoeuvre is in turn a political manoeuvre. 'Political life' i.e. practical context sets the main problems for the political theorist causing a certain range of issues to appear problematic and a corresponding range of questions to become the leading subjects of debate'.⁷ Therefore by 'contextualising' is meant to locate the

⁴ James Tully, ed., Meaning and Context: Quentin Skinner and His Critics (Cambridge: Polity Press, 1988), pp.2-3.

⁵ Quentin Skinner, The Foundations of Modern Political Thought (Cambridge, 1978), p.viii.

⁶ Ibid.

⁷ Ibid.

arguments of the actors of the debate in the appropriate practical and ideological contexts. The structure of the dissertation is as follows: Chapter I traces the origin of the debate on the nature and status of American Indians. The following chapter attempts to locate the arguments of Vitoria within the intellectual context of the universities. Chapter III posits the views of Las Casas and Sepulveda within the socio-economic context from which they arose.

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CHAPTER I

FROM PAPAL BULLS TO THE NATURE AND STATUS OF THE INDIANS: 1493-1512

The Spanish monarchs in the wake of the emerging international European rivalry justified their rights of possession of territory in America by virtue of Pope Alexander VI's bulls of donation of 1493. However in the wake of protests by missionaries over the manner in which the Spaniards were treating the Indians, there arose a debate in Spain on the question of legitimacy of Spanish occupation of America. This chapter traces the debate from 1493 to the summoning of the Burgos junta in 1512.

Initial Justification for the Conquest of America

When Ferdinand and Isabelle appeared as the king and queen of the numerous kingdoms of Spain, their (the Spanish Kingdoms) relationship with Portugal was one of competition and strife. Columbus' discovery of the New World had added a further element to the long standing Iberian rivalry. The revelation of what appeared to be new islands and new peoples raised important questions about titles to the land and the treatment of the islanders. Despite the fact that a justification on grounds of being first occupiers – a right recognised by Roman Law – would have sufficed, the crown of Castile turned to the papacy to legitimise its authority in America, thus following the precedent set by the Portuguese.

Papal authority was based on the claim that the papacy possessed both temporal and spiritual authority over Christians and pagans as well. From the Valencian Pope Alexander VI, the crown of Castile obtained similar rights that the Pope Nicholas V had bestowed upon Afonso V, the king of Portugal by virtue of the papal bull *Romanus Pontifex* dated 8 June 1455. This bull had referred to the inhabitants of Africa as pagans and enemies of Christ and therefore conceded to Portugal the right to reduce to perpetual slavery the natives of the Portuguese possessions in Africa. By the terms of the bull *EXIMIE DEVOTIONIS* dated 3 May 1493, the pope had thus granted to Spain all the graces and privileges, exemptions, liberties, facilities and immunities granted by the bull *Romanus Pontifex*. Thus in the context of the Iberian imperialist rivalry, Castile's authority in America was justified through the existence of the transcendental metaphysical system – the Christian system – which provided an inexhaustible source of ideological expression.

Yet despite the authority the crown possessed over the lands and peoples of America by virtue of the bulls of Alexander VI, Spain was not entirely certain about its rights to enslave the Indians. For the bull *INTER CAETERA* of 3 May 1494 had stated that "... (the Indians) should receive the catholic religion save that you never inflict upon them hardships or dangers".¹ In 1495, Columbus had sent back to Spain a number of Indian captives, which he had hoped to sell in the slave markets of Seville. Isabelle, however, intervened and stopped the sale as she wanted to be

¹ Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge, 1982), p.29.

informed by the civil lawyers, canonists and theologians whether the sale of Indians could be conducted with a good conscience. The verdict of the Queen's advisors was probably unfavourable because a year later she ordered all the Indian slaves to be sent back to America. Ideas about slavery at that time were based on the Roman notion, where slavery could be justified on grounds of possession in good faith since time immemorial of legitimately effected purchase and or capture in battle of 'barbarians' a term by which christendom came to denote infidels. None of these grounds could be shown as justification in another instance of Indians sent home by Columbus to be sold in Andalusia and this was the reason for the judicial order issued to manumit them in 1500.

Evolving Nature of the Debate on the Treatment of Indians

The problem that the Spanish monarchs faced initially was on ways to govern the relations of the colonists with the Indians; i.e. how to confine their behaviour – their instinct to exploit the Indians – within the limits of christian imperialism. To this end Ferdinand and Isabella issued a lengthy statement to Columbus about four months before his departure on the second voyage in 1493, a part of which was concerned with his obligations towards the Indians. This Royal Order Concerning Indians pronounced:

“...their highnesses, desiring that our holy faith be enlarged and increased, order and charge the said admiral, viceroy and governor in all ways possible to seek and work for the conversion of the inhabitants of the said islands and mainland to our holy catholic faith.... The said admiral is to try to make sure that all who go on it or are to go on it treat the said Indians very well and lovingly, without

any injury, seeking to maintain much communication and familiarity between them and doing the best that they can."²

The document explicitly stated that the Indians were to be converted to Christianity and that they were to be well treated. This was a position from which no Spanish monarch ever departed in principle. From this point of view, however, Columbus was an unsatisfactory governor in Hispaniola. Although he was sufficiently Christian, he was unable to control the affairs there.

Among subsequent governors it was on Nicolas Ovando's shoulders that the instructions in the tradition of responsible Christian polity squarely fell. Ovando was informed that the conversion of the natives was the "greatest good", which the monarchs wished:

"We desire that the Indians be converted to our holy catholic faith and that their souls be saved... and for this you are to take great care in ensuring that the clergy inform them and admonish them with much love and without using force, so that they may be converted as rapidly as possible.... Also you are to make certain that the Indians are well treated... that no one uses force against them or robs them or does them any other evil or damage.... Also because in order to secure gold and to do the other tasks that we are ordering to be done it will be necessary to employ the service of Indians; you are to compel them to work in the affairs of our service, paying each one the salary that you feel justly should be paid."³

² Charles Gibson, The Spanish Tradition in America (New York: Harper & Row, 1968), pp.40-41.

³ *Ibid.*, pp.56-57.

These Royal Instructions to Ovando like so many other assertions of royal policy put religion and conversion of the Indians first. The requirement that Ovando was to compel Indians to labour marked the beginning of a dilemma that was never completely resolved: How to ensure the good treatment of the Indians and simultaneously profit from their labour?

The Spaniards had come to America primarily for gold and to this end their objective had been to establish in the Indies entrepots for trade in gold on the Portuguese mode of the 'FEITORIA'. A feitoria or factory consisted of a small garrison of soldiers fortifying a trading post with a minimum of settlers. This style of expansion allowed to dispense with large scale conquest and settlement as well as penetration into the continental hinterland. Any mode of expansion was determined by the ease of occupation and the resources to be exploited. As the quantity of gold was not forthcoming through trade with the Indians and burdened by the efforts to justify the investments in the early voyages, the Spaniards in the Caribbean islands had little to choose from the remainder options of setting down roots or raiding the Indian population.

The earliest of Spanish-Indian encounters took place in the West Indies. The West Indian natives were sedentary agriculturists, distributed in small or medium-sized communities with social classes, priests, a developed religion, warfare, a canoe-borne commerce and local, hereditary or elected rulers. The first island to become important in the West Indies was Hispaniola where Indians of all classes were

captured, enslaved and put to work in farming, mining, carrying, construction and related tasks. Agriculture in the form of sugar and cotton cultivation and allied activities like cattle raising emerged as new forms of economic activity in the Caribbean and Circum – Caribbean regions. Despite the decline of gold barter economy, there was hope that more might be obtained from the rivers and mines. Such activities necessitated an enormous labour supply and around 1497, the Spaniards began employing forced labour in the islands. The earliest colonial mining, placering and pit excavation for gold in the Antilles before 1500 was performed by Indians distributed to the Spanish settlers in an early and harsh forms of encomienda. Enslaved natives of the lesser Antilles were quickly added. Legal and illegal enslavement of Indians for purposes of labour occurred primarily in the West Indies. Enslavement was justified on these Indians captured in a just Christian war. There is lack of reliable information on the coercion, the disruption of families, the illnesses, the mortality and the economic dislocations of Indian societies in the West Indies. But it is virtually certain that all these were present to an extreme degree and the precipitous population decline in the Caribbean region occurred at an early date. Within a span of two generations the entire Indian population in the Caribbean was wiped out. Forced labour had a tremendous effect on the population which witnessed a staggering decline due to the trauma produced by the efforts of the intruders to force its way into the lives of the Indians in a manner hitherto unprecedented. War and disease were no less responsible for the fall in population. Another activity which provided easy wealth to the Spaniards was slave-trading: supplying the European markets with legitimate slaves. In the early years of the second decade of the

sixteenth century, in a desperate attempt to address the dwindling labour supply in Hispaniola, the Spaniards began moving out in bands of RANCHOEDORES (Robbers/Raiders) hunting for slaves. Slave raiding probably began much earlier and definitely continued for years later, but around 1512 the Spaniards entered the Bahamas to deport its local Lucayo population of mainland America, Florida, the Gulf of Honduras, the Coast of Yucatan and in densely populated regions of lacustrine Nicaragua.

As the colonists subjugated the Indians in compulsory labour and attacked them in outright wars, the problem of the use of force in Spanish-Indian relations became progressively compelling. When murmurs of protests became louder, at the manner in which the Spaniards were treating the Indians, they felt the need for a more particular justification and the result was the REQUERIMIENTO a document designed to be read to the enemy Indians before the battle. Its complex message, even if delivered audibly and in a language intelligible to Indians - conditions that were rarely achieved - pointed out to one conclusion: that the ensuing battle and subjugation, enslavement, death and robbery were the fault of the Indians not of the Spaniards.

On a Sunday before Christmas in 1511, a Dominican friar Antonio de Montesinos, delivered a sermon which was till that date the most outspoken and scandalous indictment of the Spaniards' treatment of the Indians. He condemned the colonists' behaviour towards the Indians, the abuse of their position and at the cruel

and horrible servitude to which they had reduced the Indian population. He urged them to mend their ways or otherwise be prepared to accept a similar fate that befell the Turks and the Moors. Montesinos's object of protests were not the relatively small number of Indian slaves but the substantial population of free Indians living in virtual slavery under forced labour conditions. Not once however did he question the legitimacy of Spanish occupation of America.

Following the Dominican friar Montesinos' outbursts and the persistent Spanish fear of an Indian uprising Ferdinand I, summoned a junta at Burgos in 1512. For centuries since the middle ages, whenever the crown was faced with an ethical dilemma, a junta was called into session, often to legitimate the acts of the crown. Members of the junta were often associated in some way or the other with the law and theology faculties of the universities. The origin of the debate over the Spanish occupation of America was the product of this process of ritual legitimation which monarchs in Spain and elsewhere in Europe often carried out to meet their immediate political ends. One such junta was summoned earlier by Ferdinand I in 1504 to discuss Spain's legitimacy in America. Was he moved by the plight of the Indians in the Caribbean or was he prompted by the Iberian rivalry – the reasons are unclear. The junta of 1504 had clung to Pope Alexander VI's bulls of 1493 to justify the conquest and enslavement of the inhabitants of the Antilles and concluded that the action of the Spaniards were in accordance with human and divine law.

Montesinos's outbursts were scandalous because it had effectively made possible for potential critics of Ferdinand's policies to raise fundamental questions concerning the nature and limits of the spiritual and temporal sovereignty of both the emperor and the pope. The critics pointed out by quoting Thomas Aquinas' classification of pagans that the Indians had no knowledge of Christ and therefore they cannot be convincingly described as INIMICOS CHRISTI⁴ and consequently they retained their natural rights. Thus the conventional justification offered by Christian princes for their territorial ambitions in non-Christian lands were, here in the American case, insufficient.

The Issue of Debate Since 1512

Clearly therefore some other argument, one that avoided the troubled area of the temporal authority of the pope was needed. Such an argument was found by the members of the Burgos junta in a statement made by John Mair, a Scottish theologian and historian who was a member of the College de Montaigu at Paris in 1510: "The inhabitants of the Antilles live like beasts on either side of the equator and this has now been demonstrated by experience, wherefore the first person to conquer them, justly rules over them because they are by nature slaves. As Aristotle says in the third and fourth chapters of the first book of POLITICS, it is clear that some men are by nature slaves, others by nature free."⁵ Mair had thus established that the Christian claims to sovereignty over certain pagans could be said to rest on the nature of the

⁴ Latin term for enemies of Christ.

⁵ no.1, p.38.

people being conquered instead of on the supposed juridical rights of the conquerors. He thus avoided the inevitable and alarming deduction to be drawn from an application of arguments which denied to either pope or emperor the right to seize lands where they could make no claim to possess. And Mair had achieved this sleight-of-hand by drawing an argument from no less an authority than Aristotle, for Aristotle's theory provided an explanation for the aberrant social behaviour of the Indians.

The Burgos junta's conclusion based on John Mair's arguments could hold because, the earliest Spanish perceptions of the Indians in the Caribbean corresponded to the pre-discovery European images of the barbarian. From biblical times, the notion of barbarism was associated with the idea of wildness – the desert, forest, jungle and mountains – those parts of the physical world that had not yet been domesticated or marked out for domestication. The notion of barbarian do not so much refer to a thing, place or condition but is a dictate of a particular attitude governing a relationship between a lived reality and some area of problematical existence that cannot be accommodated easily to conventional conceptions of the normal or familiar. Terms such as 'wildness', 'savagery', 'barbarism' are used to convey the value of its dialectical antithesis 'civilization', 'sanity' and 'orthodoxy'. In the Christian middle ages the barbarian was the distillation of the specific anxieties underlying the three securities supposedly provided by the specifically Christian institutions of civilised life: the securities of sex, as organised by the institution of the family, sustenance as provided by the political, social and economic institutions

and salvation as provided by the church. The barbarian enjoys none of these advantages of civilization – regularised social existence or institutionalized grace. The effect of these terms was to show a distinction in the nature of an opposition between a normal humanity – gentle, intelligent, decorous and white and an abnormal one – obstinate, gay, free and red. This opposition categorises Indians into an ontological ‘other’ as against ‘normal’ men and consequently into a ‘thing’ to be done with as need, conscience or desire required.

Most of the intellectuals, academicians, jurists and theologians in Spain of the sixteenth century, were self-declared Aristotleans, and they understood the word ‘barbarian’ to mean what Aristotle and his commentators, in particular Aquinas understood it to mean. For the Greeks the term ‘barbaros’ was merely a babbler, someone who could not speak Greek. An inability to speak Greek was regarded not merely as a linguistic shortcoming, for a close association in the Greek mind between intelligible speech and reason made it possible to take the view that those devoid of logos in one sense might also be devoid of it in another. For the Greeks, the ability to use language along with the ability to form civil societies – since these were the clearest indications of man’s power of reason – were also things that distinguished man from other animals. Barbarians were considered to have failed significantly in respect of both these capacities. Non-Greek speakers by definition were outside the Greek family of man – OIKUMENE; and the Greeks’ failure to recognise the barbarians amounted to in effect to the denial of their humanity. Most societies feel a need to distinguish between themselves and their neighbours in radical terms. De-

humanisation is perhaps the simplest method of dealing with all that is culturally unfamiliar.

For Aristotle there were many degrees of humanity. A man may sacrifice his right to be called a man by behaving in cruel and savage ways that are characteristic of the barbarians, who among other things, have a penchant for cutting heads and eating the human foetus. Cruelty and ferocity, the marks of unrestraint were from the beginning the distinguishing features of a barbarous nature. A man becomes a real man by actualising what is potential within him, by learning through reason to control his animal nature. The Greeks and subsequently the Christians subscribed to a teleological view of nature, which allowed for the existence of a scale of humanity going from the bestial at one end to the god-like at the other. The barbarian lived somewhere at the lower end of the scale.

The definition of the word 'barbarian' in terms that were primarily cultural rather than racial made its translation into the Christian world easy. Unlike the Greek OIKUMENE Christendom was not a closed world. The Christian myth of a single progenitor of all mankind and the Christian belief in the perfection of God's design for the natural world made a belief in the unity of genus Homo Sapiens. Only when the spiritual and cultural world of man reached the same degree of perfection and unification as the biological world, would man finally be able to achieve his telos and earn release from his earthly labours. It was therefore crucial that non-Christians

should be granted access to the Christian community and indeed cajoled or forced into entering it.

For Christians and Greeks, the barbarian was a specific cultural type who could be characterised in terms of an anti-thesis to the supposed features of the civil community. Whereas the Christians lived in harmony and concord with each other and ruled their lives according to an established code of law, the barbarian spent all their days in ceaseless aggression and neither recognised nor observed any laws or rules of conduct whatsoever. The true social community was made possible through the persuasive power of language. Barbarians have no access either to language or to laws. The barbarian was thought to live in a world where men failed to recognise the force of the bonds which held them to the community, where the language of social exchange itself was devoid of meaning. Barbarians were creatures who were thought to live in the woods and the mountains far removed from the activities of rational men. The cities where rational men lived were seen as outposts of order and reason in a world that was felt to be volatile and potentially hostile.

Thus from the end of the twelfth century until the beginning of the sixteenth century, the term barbarian came to mean two closely related meanings. As a term of classification it applied broadly to all non-Christian peoples and more loosely to describe any race which behaved in savage or uncivil ways. In both cases the word implied that any creature so described was somehow an important being. By and large, the term barbarian was a word reserved for those who neither subscribed to the

European religious views nor lived their lives according to European social norms. Such notions of the barbarian were akin to the cannibalistic Caribs and Arawaks of the Caribbean region.

Twenty years after the discovery of America the Spanish monarchy issued its first systematic legal code to govern the conduct of colonists in America. The Burgos legislation followed upon criticism of the colonists' behaviour and its central focus was the institution of *encomienda* in which Indians were assigned to Spaniards as labourers and wards. The crown sought to specify in detail the *encomenderos'* obligations towards the care of the Indians. However the ameliorative provisions of the laws of Burgos were never enforced or obeyed.

It was at Burgos in 1512, that for the first time, Aristotle's theory of natural slavery was employed in Spain. From the perspective of the debate, what is particularly significant about the discussions of the Burgos junta and in the years that followed, is that in response to the question of whether or not the Indians might be legitimately conquered and enslaved, lay not anymore in a juridical continuity based on papal bulls but in the nature of the Indians. Thus, since 1512, the nature and status of the Amerindians became the crucial issue on the subject of the affairs of the Indies.

CHAPTER II

FROM NATURE'S SLAVES TO NATURE'S CHILDREN: 1519-1539

What was discussed in Spain until 1519 on the question of legitimacy of occupation of the Indies centered around the nature of the Indians. The Indian was viewed as a subhuman creature to suit the needs of the Spanish colonists. With the discovery of Mexico and Peru, and the revival of Thomist thought in the universities of Spain, the first shift in the debate occurred.

First Shift in the Debate: The Ideas of Francisco de Vitoria

In 1512 at the time of the Burgos junta, the Spaniards occupied only a handful of islands in the Caribbean – Hispaniola, Cuba, Jamaica, Puerto Rico and some scattered locations on the mainland. The tribes of the Circum-Caribbean region lived for most parts in loose knit communities with no technology, no personal property and frequently no clothes. The Spaniards who encountered them found it difficult to take them seriously as human beings whose social presence and personal appearance were so strikingly unfamiliar. However the conquests of Hernan Cortes in 1519-22 in Mexico and of Francisco Pizarro in 1531-2 in Peru revealed to Europeans for the first time the existence of highly developed native American cultures and in European eyes these were far superior compared to the primitive worlds of the Caribbean. With these conquests in the mainland the situation began to change. As more information was made available about the inhabitants of the Indies, the political consequences and

possible injustices of the conquests of the new lands became a subject of increasing public interest.

The Mexican and the Inca empires were recognisable polities. They were ruled by a nobility and seemed to have an economy with markets, a merchant class and even means of exchange. Their citizens fought organised wars against their neighbours, collected revenues from their dependencies and possessed a structured and ritualistic form of religion. Here were communities which were evidently the works of true men and perhaps even worthy of a close and detailed examination.

Between ecclesiastics and civilian Spanish colonists significant disputes developed over the nature of the Indians. Clerics argued that the Indians were men possessing souls and thus capable of embracing Christianity. Encomenderos and others treated them as if they were beasts and some times defended themselves with the assertion that the Indian was indeed some form of subhuman creature. The belief that the Indians were beasts fitted and reinforced some of the anti-Indian attitudes and justifications for Spanish behaviour. But if there were doubts about the precise position occupied by the Indians in the scale between animals and men i.e.; if the Indians were subhuman and lacked souls, then the entire missionary programme was called into question. The matter was officially settled by Pope Paul III through the bull *Sublimus Deus Sic Dilexit* of 1537.

“We seek with all our might to bring those sheep of his flock who are outside, into the fold, committed to our charge. Consider however, that the Indians are truly men and that they are not only capable of

understanding the catholic faith but according to our information, they desire exceedingly to receive it. Desiring to provide ample remedy for the evils of the Indian societies we define and declare that notwithstanding whatever may have been or may be said to the contrary, the said Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ, and that they may and should, truly and legitimately, enjoy their liberty and the possession of their property; nor should they be in anyway enslaved. Should the contrary happen, it shall be null and of no effect.”¹

But while this resolved the matter intellectually it was what everyone would have expected the pope to say and it hardly sufficed to control the abuses of Indians by white Christians of the colony.

The very size of the Spanish empire after 1532, the huge number of Indians now officially vassals of the Castilian crown and the growing excesses of the Spanish colonists’ raised doubts in the minds of many thinking men sensitive to the possible rights of non-European peoples, the question of illegality of Spanish conquests.

And as the debate raged, there occurred in Spain around 1530 a new wave of intellectual speculation on the subject of the nature and status of the Indians. This was the result of the 16th century revival of Thomist thought which occurred at the University of Paris with the publication of a commentary on the last section of SUMMA THEOLOGICA by Fleming Peter Croakaert in association with Francisco de Vitoria.

¹ Charles Gibson, The Spanish Tradition in America (New York: Harper and Row, 1968), p.105.

Francisco de Vitoria entered the Dominican order in 1504 and later went to Paris to pursue his studies at College de Saint Jacques. When he returned to Spain in 1532, he came with a wide knowledge of the theology of the Paris schools and injected his learning into the theology faculties of the Spanish universities providing it with both its creative energy and intellectual cohesion. He occupied the prime chair of theology at the University of Salamanca from 1529 until his death in 1546. These years saw the birth of a new movement in theology, logic and law, whose creators have come to be known as 'Secunda Scholastica' or more parochially as the 'School of Salamanca'. Their learning was immense and their interests ranged from economic theory to the laws of motion and was practically unlimited. But it was in theology, jurisprudence and moral philosophy that their achievements were the most far reaching. Vitoria is best remembered as the founder of this movement.

Vitoria acknowledged the need to extend the scope of theological inquiry which was to be achieved by turning attention away from narrow theological problems to the ethical concerns affecting everyday lives of the people through greater emphasis on moral philosophy.

In 1534, evidently angered by the news of the massacre at Cajamarca and the subsequent imprisonment and execution of the Inca Atahualpa, Vitoria wrote to Miguel de Arcos, the Dominican provincial in Andalusia – "As for the case of Peru... no business shocks me or embarrasses me more than the corrupt profits and affairs of

the Indies. This very mention freezes the blood in my veins.”² Compelled by the turn of events in Peru and following Pope Paul III’s bull *SUBLIMUS DEUS* of 1537, the ‘Affairs of the Indies’, as Vitoria described the situation in America, was becoming once again an issue of topical concern in the universities of Spain.

In 1539, Vitoria delivered a lecture at the University of Salamanca on the question ‘Whether it is lawful to baptize the children of unbelievers against the wishes of their parents?’³ For him ‘this whole dispute and ‘relection’ has arisen again because of these barbarians in the New World commonly called Indians, who came under the power of the Spaniards some forty years ago, having been previously unknown to our world’.⁴

‘Relections’ have their origin in the intellectual milieu of the lecture halls in Spanish universities. These were special lectures delivered at the end of the academic year on a particular topic to an audience comprising of both students and peers and were different from lectures on texts. Topics were often of some current moral or political concern. The question of the moral justice of the conquest of America produced his famous ‘*Relectio De Indis*’. Vitoria’s works never written by him and never published during his lifetime were printed from the notes of his pupils. Of his

² Vitoria, *Political Writings*, ed., Anthony Pagden and Jeremy Lawrance (Cambridge, 1992), p.331. It is here that Vitoria first uses the phrase ‘affairs of the Indies’ to refer to the debate and the events taking place in America.

³ *Ibid.*, p.233.

⁴ *Ibid.*

works, the ones that have gained most attention are 'Relectio De Indis' and 'De Indis Relectio Posterior sive de jure belli' (On the Law of War), both of which were on the affairs of the Indies. Vitoria's relections were demonstrative i.e. undertaken not to argue about the truth but to explain it.⁵ But they also belonged to the tradition of ritual legitimation, disputations of the kind properly called deliberative.

Vitoria states at the outset of his 'Relectio De Indis' that the purpose of this lecture was to resolve the question 'By what right were the barbarians subject to Spanish rule?'⁶ 'Vitoria maintained that the issues under examination here were more fundamental than the validity of Pope Alexander VI's bulls of donation and that the issues related to the affairs of the Indies were no longer a legal question but a theological one. For theology was concerned not with essentials and its prime business was the analysis and explanation of reality.

The situation in America possessed, for Vitoria, a self evident reality and the question of legitimacy of Spanish conquests depended on the nature of the Indians. If the barbarians were men like the Europeans then how can their unstructured and aberrant behaviour be explained? If they were not humans then it was a challenge to the Thomist view that all men whether Christian or not were human beings. The Thomist notion of *Humanitas* concerned both the Christian *Homo Reratus* and the non-Christian *Homo Naturalis*. Thus the Indian problem was at the base a problem of

⁵ Ibid., p.238.

⁶ Ibid., p.233.

the nature of the relations between different groups of men – Europeans and Indians. It was a question of the nature of the Indian man and his proper place in the metaphysics of social order. Therefore Vitoria believed that the condition of the Indians cannot be considered under human law but only under divine law. And only theologians not jurists were equipped to discuss divine law, concluded Vitoria.

Vitoria's Arguments in Favour of the Indians' Civility

As mentioned earlier, the Castilian crown's principal claim to dominion in America rested on the papal bulls of donation made by Alexander VI in 1493. However, the power to make such donations rested upon those kinds of papal claims which Vitoria rejected in his relection 'On the power of the church'.⁷ For Vitoria the papacy had civil jurisdiction only in cases where the spiritual goods of Christians are endangered and certainly cannot confer upon its Christian subjects, rights over pagans. Similarly he denies the emperor's claims to exercise sovereignty or dominion over those peoples who lie outside the jurisdiction of the former Roman empire. In his relectio 'De Indis' which is his most extended and final statement on the subject of the affairs of the Indis, Vitoria rejected the power of the papacy⁸ once again, and concluded that there are only four possible grounds for the Castilian crown's implicit claim that they enjoy dominium in America. Vitoria begins by saying that if the Indians were to be denied their natural rights and be enslaved, they had to be either sinners, infidels, animals, or madmen/irrational beings.

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⁷ Ibid., pp.82-90.

⁸ Ibid., pp.258-64.

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The first of these grounds invoked the Lutheran supposition that rights depended not upon God's laws but upon God's grace. Vitoria like other Thomists was part of the Counter-Reformation and hence it was imperative for him to refute the Lutheran heresies. Man, argued Vitoria, is a rational creature and he cannot lose that characteristic of himself through sin any more than he can willingly renounce his natural rights. The second may be discarded as inapplicable since the Indians were clearly in a state of invincible ignorance before the arrival of the Spaniards. They were not animals because unlike, say lions, they can be said to suffer injury.⁹ The reason that they were madmen did not have direct bearing on the case of the Indians since the mad were a special case altogether. Nor were the Indians irrationals because they clearly do have the use of reason. They possessed a certain rational order in their affairs, an order which is similar to that observed by other men and which finds expression in the following things: they had properly organised cities, a recognisable form of marriage, magistrates, rulers, laws, industry, commerce and religion all of which require the use of reason. They could construct stone buildings which were evidently more advanced than those who lived in the adobe huts in the Caribbean and this was evidence of a high level of material culture.

First and most obviously, there was in Mexico and Peru cities built by the Indians. The belief that the city was a necessary condition of civilised life had a

⁹ Anthony Pagden, ed., The Languages of Political Theory in Early Modern Europe (Cambridge, 1987), p.84.

powerful base. For Vitoria and for Aristotle,¹⁰ the city was the metonym for the entire human community – the largest, the most perfect unit of society. It was the place where the practice of virtue and the pursuit of happiness are at all possible. A human group becomes ‘civic’ once it begins to live an organised political life. Men have not always lived in cities and some men, the barbarians still do not do so. As the city is the natural mode of habitation for men, those who live outside it of their own free will are beasts.

The other signs of civility – the existence of families, the rule by an elite, the presence of laws and judiciary, followed inevitably from this supposed ability to create cities. The family was, of course, regarded as the basis for every social group. Every civil society was created from an aggregation of progressively larger units of which the family was the first and the city the last stage in the continuum. Without such things there would be no channel through which the institution of the community as a whole could be translated and promulgated as commands. For as Vitoria said citing Aristotle ‘the end of the city is peace and the laws that are necessary for good life.’¹¹

Laws must exist for the purpose of making men into good citizens – mindful and diligent. The advanced Indian societies were hierarchical as they ought to be

¹⁰ Anthony Pagden, The Fall of Natural Man: The American Indian and the Origin of Comparative Ethnology (Cambridge, 1982), p.71.

¹¹ Ibid., p.72.

according to Aristotle. The societies had achieved a certain ordering, ruled from above by an elected monarch who was rigidly separated from the mass of the people and attended with ceremony, which Europeans recognised as the mark of kingship. The Indian social world is articulated in a formal manner and is controlled by the same means as the civil communities in Europe, by kings and their legal officers.

Industry, commerce and religion are evidence of the power of man's speculative intellect. Reason is the instrument which allows man alone, among God's creatures to exploit the natural world. Industry and commerce are both 'mechanical arts', things created whose purpose is to adapt the environment to meet man's very special needs. The Indian groups of Mexico and Peru possessed developed imitative and speculative skills. They were gifted as any race in both the mechanical and liberal arts.

Exchange and trade possessed for Vitoria and his Thomist followers more than a simple economic function. The exchange of goods was conceived as a further dimension of the civil association between men. The Indians were able to communicate in the widest possible sense with their fellow men through trade and through properly modulated linguistic expressions. The Aztecs and the Incas did trade among themselves and possessed markets of considerable size organized according to strict rules of law.

On Vitoria's list the most vital of all requirements for civility was religion. Religion belonged to the world of invention, since the understanding of the truths about God was part of the understanding of the natural world. Religious observances and social practices were intermeshed and inseparable. The Indian societies in Mexico and Peru had all things that Christians understood by religion: a cult, places of worship and a priesthood. The very size of Indian religious structures, the devotion of the Indian priests, the presence of 'vestal virgins' and of monasteries demanded the most strict adherence to a rule of sobriety and sexual abstinence – all of these things were proof of the Indian's greater judgement and power of reasoning.

With such a list of positive attributes, Vitoria was arguing that the Indians lived in a society which fulfilled all the basic requirements of civil life and on the basis of empirical evidence they cannot be barbarians and therefore could not be deprived of their rights or be enslaved. He claimed that there is an equal capacity in all men whether or not they are Christians to establish political societies in their own ways. He concluded that even if the Christian faith has been announced to the barbarians with complete and sufficient arguments and they still refused to receive it, this rarely constituted a reason for making war on them and despoiling them of their goods. The same is true in the case of the Indians refusing to recognise the power of the pope, for he in fact possesses no power to grant the emperor sovereignty over pagan peoples. Thus Vitoria's 'heretical' arguments were advancing dangerously close to denying the emperor the rights to his empire.

Vitoria's Justifications of the Conquest

Although Vitoria provided sufficient evidence for believing that the Indians were not irrationals or madmen/simpletons, he had not yet excluded the possibility that they might yet belong to some third category as yet unspecified. For the presence of the aforementioned social forms says nothing about their quality. Therefore Vitoria in the latter part of the 'De Indies' offered contra arguments not on the positive features of the Indian world but on the negative ones, not on what the Indian societies possessed but on what they did not.

The Indians, Vitoria goes on to say, have neither laws nor magistrates that are adequate nor are they capable of governing the household satisfactorily.¹² There were significant failures. The laws which the Indians created and the judiciary they had trained to administer them were to Vitoria's mind unsatisfactory, because they failed to make those who observed them into good citizens and hence into virtuous men. Any code which fails to achieve these ends is a violation of the law of nature and would be the work of an unsound mind. Vitoria's contention was that the Indian laws were inadequate to eliminate the twin horrors of many Indian societies – Cannibalism and Human Sacrifice.¹³

¹² No.2, p.290.

¹³ Ibid., p.291.

Cannibalism contributed to de-humanisation, because men who ate other men were never thought to be quite human. Eating human flesh is abominable to all nations which live civilised lives. Since all men 'have held this custom to be vile'¹⁴ cannibalism satisfies the condition of an appeal to consensus. Cannibalism involves homicide as it violates the sixth commandment and poses a threat to the community as a whole. For Christian Europe cannibalism and acts of revenge which involve the cutting up and scattering or eating pieces of a dead man, judicial burning and so on, all reflect in their different ways, an ambiguous and always disconcerting preoccupation with the physical presence of the body, in a religion which insists, both theologically and sacramentally, on the transcendence of the soul.

For Vitoria, cannibalism¹⁵ was a failure to distinguish what is fitting as food from what is not. Dietary norms were a precise measure of a man's power of reason, his ability to conduct himself like a man. Unselective consumption revealed the inability to recognise the divisions between species in the natural world and the proper purpose of each one. The quality of the thing being eaten reflects the quality of the eater. The better a man, the better and the more complex will be the things over which he has authority—the food he eats, the house he lives in and so on. The food of the civilised man had therefore to be not only natural but also appropriate to his status. Cannibals were guilty, not merely of committing a radical category mistake. When eating one another cannibals were not only committing the sin of

¹⁴ Ibid., p.207.

¹⁵ Ibid., pp.208-212.

ferocity by breaking the law of nature which forbade the killing of innocent man, they were also violating the hierarchical divisions of creation. For in the nature of things, no man may possess another so absolutely that he may make use of him as a foodstuff. 'Man is clearly not a food for man'.¹⁶ By thus failing to perceive that for all living creatures food stuffs are confined to organisms which live on lower levels than that of the consumer, the cannibals were clearly behaving in an unnatural way. Cannibalism and the consumption of any food that is no better in quality nor better prepared than that of wild beasts provided evidence of the inability of the Indians to see the world as it really was.

On human sacrifice¹⁷ Vitoria argued that God provided animals for sacrifice though by definition lower than man, they were far more pleasing as objects of sacrifice, precisely because the creator had no wish to see the destruction of his creations. Human beings 'belong' only to God and it is in no man's power to destroy what is not his, even in pursuit of a higher good. The practice of human sacrifice by Indians once again indicated that they possessed only a blurred vision of reality and on crucial matters, they had failed to interpret correctly the primary principles of the law of nature.

Reason and from reason the ability to create and use language, were the two things which had raised man from barbarism to civility. The absence among the

¹⁶ no.2, p.86.

¹⁷Ibid., pp.212-217.

Indian tribes of 'arts and letters' was for Vitoria proof that like the wild beasts, the Indian lived only in order to go on living. They had yet to arrive at that stage in man's development where they would be able to create for themselves a second world, in which the members of the quasi-mystical body politic are endowed with the ability to work in harmony with one another for the purpose of the higher good. Arts and in particular, the use of letters, which in effect meant the ability to record and hence to analyse the world of experience were an integral part of that much vaunted modern notion of "dignitas hominum".

The other essentials for any civilised environment are the existence of a stable food supply, the presence of tools and a labouring class capable of using them in the creation of the good that make life endurable. The ability to make things, in particular, the tools men require to tame their natural environment was a further distinction between civilised man and the barbarian. What the Indians so obviously lacked was iron. For it was the ability to mine and smelt the hard metals that had made the weapons and machines of European culture possible. Without access to such metals the Indians were permanently thwarted in any natural inclination they might have had towards progress. The absence of proper means for the creation of a material culture in the Indian societies had resulted in the non-existence of the artisan class whose presence Aristotle had made clear was essential for any civil community. It was this class which was doubtless responsible for the creation of certain unspecified things essential for human life.

Despite the absence of these essentials in Indian societies, it were crimes such as human sacrifice and cannibalism that were the clear indications of the Indian's mental world being, in significant respects a defective one. More so because these acts were sanctioned by the laws of the Indian societies.

From Nature's Slaves to Nature's Children¹⁸

If the Indians were irrationals or simpletons what could account for their civil and religious administration, their cities and so on? But if they were rational men how could one explain their cannibalism, their human sacrifices, their primitive agricultural techniques and the imitative nature of their arts? In answer to these questions Vitoria says that if the Indian was fully capable of performing some rational acts but incapable of performing others then his mind must of necessity have been in a frozen state of becoming. He attributes their frequently unnatural behaviour thus: Nothing is inherently wrong with the composition of the Indian mind but it is the influences to which it has been subjected that are at fault. If they appear foolish this comes from their poor and barbarous education.¹⁹ Nor is it because they belong to an inferior species or are natural slaves. The Indians have demonstrated so many man – like attributes and hence cannot be natural slaves. The natural slave is incapable of participating in a state of happiness and is also incapable of achieving his proper end as a man. Since nature never creates anything which is incapable of accomplishing its ends, the natural slave cannot be a man.

¹⁸ no.2, p.57.

¹⁹ Ibid., p.97.

Further Vitoria goes on to say that the issue can be resolved by taking recourse to the formal structure of the universe. The properties of all matter is dependent on their essential parts, as Thomists would say.²⁰ The essence of man is reason. And like all matter man contains within himself both potentiality and actuality – i.e. both potential reason and actual reason.²¹ Vitoria reasoned that if God created a creature which has no eyes, no ears, no legs we would still have to call it a man if it displayed evidence of possessing a rational mind. Therefore in order to be a man in the first place the Indian must be in possession of a faculty of reason and that faculty must be capable of achieving a full state of actuality through moral education.

By education Vitoria meant not the simple schooling given to the child but what Aristotle called habituation (*ethismos*)²² – the training of the speculative intellect. The Indian mind was as complete as that of his master, the Spaniard, but because it had remained for so long in the darkness of infidelity and under the sway of a brutal and diabolic religion – its rational faculties were still immature. Therefore the Indians were like children or adolescents, as long as their reason remained in a state of becoming.²³ Hence the Indian was not a free agent and his relationship with his master could only be construed as paternalistic. The Indians like children of other

²⁰ *Ibid.*, p.95.

²¹ *Ibid.*, pp.93-94.

²² *Ibid.*, p.99.

²³ *Ibid.*, pp.290-291.

racés will one day grow into a free and independent citizen of the true polis. Until then he must for his own benefit remain in just tutelage under the king of Spain, his status now slave like but not slavish. The status of the Indians were compared by Vitoria to the labouring people of Europe, the peasants.

By insisting that it was education that was responsible for the Indian's behaviour Vitoria had effectively liberated him from a timeless void of semi-rationality and set him into an historical space where he could be subject to the same laws of intellectual change, progress and decline as other men are, be they Christian or non-Christian, European or non-European.

From the initial position of being previously close to denying Castile, the titles of dominion in America, Vitoria proceeds to provide justification for the conquest. The supposed cannibalism of the Indians conferred upon the emperor the right of coercion because such crimes against nature 'are harmful to our neighbours'²⁴ and the defence of our neighbours 'is the rightful concern of each of us'.²⁵ According to Vitoria, Indians have potential reason which permitted the Castilian crown to claim a right to hold the Indians and their lands in tutelage until they reached the age of reason. Such an argument could be supported by the requirements of charity, since the barbarians 'are our neighbours and we are obliged to take care of their goods'.²⁶

²⁴ no.2, pp.289-90.

²⁵ Ibid.

²⁶ Ibid.

Under the 'law of nations'²⁷ the Spaniards possessed the right of what Vitoria called 'natural partnership and communication'.²⁸ Sea shores and harbours are necessary to man's survival as a civil being and they have therefore been, by the common accord of all men been exempted from the original divisions of property. This right to travel the 'ius peregrinandi' gave the Spaniards the right of access to the Indies.

Trade between peoples was a means of establishing what Vitoria called the 'vitae communication', the channels along which knowledge was transmitted from one group to another. The right to keep these channels open was a right of natural law, partly because human communities can only exist by exchanging things of which they have a surplus, for things which they need. At a deeper level trade is a part of communication between men, which is the necessary cause of the highest human virtue – friendship.

By refusing to 'receive' the Spaniards the Indians were attempting to close those natural lines of communication. And in doing so they had revealed the full extent of their barbarism. Through the denial of the right of access to the lands in America, the Indians were refusing to be loved and hence were violating the law of nature.

²⁷ The development of this argument for the legitimation of the Spanish invasion of America earned Vitoria the title of being the 'father of international law'.

²⁸ Ibid., pp.278-284.

Significance of Vitoria

What Vitoria provided in 'De Indis' were arguments to refute the belief that the Indians were not true men but some variety of fully grown children whose rational faculties are complete, but still potential than actual. Hence they have to be trained to perceive what other men perceive without effort, to accept what other men regard as axiomatic and follow without prior reflection. Vitoria's suggestion that the Indian was nature's child was not a novel one. But his hypothesis being as it was grounded in a theory²⁹ about the way in which all men came to understand the law of nature, provided a reasoned explanation for an assumption that others had reached intuitively.

After Vitoria's analysis it was clear to all his contemporaries that as a paradigm, the natural-slave theory failed dismally to satisfy the evidence it was intended to explain. The barbarian, by definition an outsider, had now been brought 'in', but at the lowest possible social and human levels. Socially as a peasant, a brutish creature living outside the discrete web of affiliations, patterns of behaviour, modes of speech and of expression, which made up the life of the civil man. Psychologically as a child, unreflective passion-dominated, half reasoned being. The 'Relectio De Indis' effectively destroyed the credibility of the theory of natural slavery as a means to explain the deviant behaviour of the Indians, and thus came to have a lasting impact on every subsequent discussion on the affairs of the Indies.

²⁹ Aristotlean Psychology.

According to Vitoria, the 'barbarism' of the Indians conferred on the Spaniards political rights, but on the condition that it was exercised in favour of the Indians. For so long as the Indians remained as children the Spaniards had a duty to take charge of them. However, Vitoria's arguments had undermined the justification for the Spanish rule in the Indies on the basis of papal donation and on the alleged rights of discovery as well as the unwillingness of the Indians to accept the Catholic faith. His arguments were a grave embarrassment to the emperor at a time when other European states were challenging Castilian claims to exclusive American dominion. Under such circumstances it was not surprising that a stern rebuke was issued by Charles V in 1539 against "those theologians who have called in question, through sermon or lecture our right to the Indies..."³⁰ From the emperor's point of view Vitoria's theories were extremely 'dangerous' and the royal order prohibiting further debate to avoid the scandal caused by the Castilian crown's titles being openly disputed in Salamanca was probably drafted with Vitoria in mind. This might explain why the 'Relectiones' were published as late as 1557 in France.³¹

Vitoria's influence on the history of European thought is significant because it was strictly theoretical. His originality lies in his attempt to create a moral philosophy which incorporated an interpretation of the Roman Law texts within the discourse of natural law. His innovation was the assertion of the prerogatives of

³⁰ J.H. Elliot, "Spain and America in the 16th and 17th Centuries" in Leslie Bethell, ed., The Cambridge History of Latin America, Vol.I, (Cambridge, 1984), p.304.

³¹ Pope Sixtus V went so far as to put the works of Vitoria on the Index of Prohibited Books, on the grounds that they impugned the direct temporal power of the papacy.

nation states and the refusal to acknowledge the universal power of the emperor and the power of the pope over temporal things which was a negation of the medieval power of Christendom.³² Vitoria substituted this framework which governed European inter-state relations for so long with the idea of 'ius gentium' – a notion embracing all men and appertaining to the states in their relations with one another and governed by a system of co-existence.³³ Attitudes of this nature produced by the interaction of Thomist, Humanist and Stoic influences endow the ideas of Vitoria with modern characteristics alien to both papal and imperial universalisms.

³² Mario Gongora, Studies in the Colonial History of Spanish America, Richard Southern trans. (Cambridge, 1975), p.56.

³³ Refer no.27.

CHAPTER III
FROM THE NEW LAWS TO THE VALLADOLID DEBATE:
1542-1550

Within the limits of the academies, the works of Vitoria and his successors were evidently regarded as conclusive. But the debate over the nature and status of the Indian was also being conducted in other less ordered places than the halls of the great universities.

The New Laws – Its promulgation and repeal

Ever since the 1520s the royal authorities were listening to a flood of conflicting opinions on the mental status and capabilities of the Indians and on proper ways to govern them. During these years the missionaries' struggle to secure humane treatment for the Indians was tending to erupt into open warfare. The agitation concerning the well-being of the Indians reached a climax in 1541 catalysed by the reports of the factional struggles among the colonists in Peru which helped create a climate leading to a radical rethinking of royal policy in America. The councillors of the Indies, suspected of being in the pay of the encomenderos were not to be trusted, and the emperor, turned to a special junta to advise him on the encomienda question. It was this junta which produced the New Laws of 1542.

The antecedents of the encomienda system in the New World may be traced to medieval Castile where the notions of military defence concurred with jurisdiction over given territories including the right of exaction of tributes. The commanders of

the military orders received grants of *encomienda* in perpetuity. In America the *encomienda* was the most important secular institution governing the relations between the Indians and the Spaniards thus providing the framework for the emerging colonial society.

Encomiendas were established in Hispaniola as early as 1499, but in a harsh and unstructured form. The *encomienda* system in the Caribbean regions in its early years was merely a covering institution for continued armed raids of Indian villages and capture of slaves as well as other enslavement practices. In these regions, especially in the West Indies the *encomienda* came to an end within two generations through the extinction of the native population.

The institution of the *encomienda* was structured initially by the statutory instruments decreed by the crown in May and December 1503 which provided for contracting Indian wage labour on a voluntary basis and the concentration of the Indians in the villages organised around urban localities with the stated fundamental purpose being to tutor the Indians in Christian values. The *encomienda* was restructured by the laws of Burgos of 1512. After which it was aimed at serving the dual purpose of providing substantial revenues to the *encomenderos* for their services rendered to the crown and simultaneously working towards the 'benefit' of the Indians who were to be inducted into the Christian cosmology. The *encomenderos* were to be the guardians of the native population entrusted in their care but in practice little was done to provide for their care, spiritual or otherwise, in the way required by

law. The practice of the encomienda system resulted in the dissolution of tribal unity and the groups' sense of social cohesion. Certain moves intended to fulfil the aims of the encomienda like crude attempts to impose such things as christian marriage, patrilocal residence and education on a people whose society was predominantly matrilineal and who may have had matrilocality contributed to the dramatic decline of native population. The severe conditions of labour also constituted as the direct cause of the demographic collapse. Critics have charged, probably accurately that the encomienda labour hardly differed from slavery and that the Indians continued to be overworked and mistreated as they had been during the initial phase of conquest.¹ Over centuries this has been the most devastating criticism of the encomienda.

That the Indians were being abused in the encomiendas was clear not only from the violent denunciations of the missionaries but also from the letters received by the crown sent by the royal authorities in Spain. Moreover the crown was becoming increasingly suspicious of the encomenderos as a class. The emperor was concerned by the internal challenge represented by the encomenderos as a potential feudal aristocracy owning Indian serfs. They threatened both his authority and, by their scandalous treatment of the Indians the evangelising mission that was the *raison d'être* of the Spanish rule. As the crown consistently balked at the formal perpetuation of the encomienda through inheritance, it felt the necessity to deprive the

¹ Leslie Bethell, ed., The Cambridge History of Latin America, Vol.II (Cambridge, 1986), p.401.

encomenderos of the certainty of succession in order to prevent the rise of a nobility class similar to the European aristocracy. Thus in 1542 in an attempt to bring some order into the affairs of the Indies the crown promulgated the famous New Laws which finally abolished the encomienda. Very briefly, the essentials of the New Laws² prohibited the inheritance of the encomienda beyond two natural lives i.e.; the encomendero and his dependent. It also attempted to abolish Indian slavery and obligatory personal service by the Indians. It contained provisions for the exemption of pregnant and married women from labour services, regulated wages, hours of work and so on.

However three years later, the emperor was forced to repeal many of the provisions of the New Laws in the face of a fierce rearguard action by the encomenderos and the practical impossibility of enforcing this highly unpopular legislation on the other side of the world. In April 1550, the crown responded to the storm of protests unleashed by the missionaries by ordering a temporary suspension of all further expeditions of conquest in the New World and by summoning a special meeting of theologians and councillors to consider the whole question of the conquest and conversion of the Indians. To give strength to their campaign against the New Laws the settlers' lobby worked hard to bribe and influence the royal councillors. For this they needed an effective publicist and found one in Gines de Sepulveda. The missionaries' position was best represented by Bartolome de Las Casas, often termed

² Charles Gibson, The Spanish Tradition in America (New York: Harper & Row, 1968), pp.109-112.

as the 'apostle of the Indians'.³ He had hurried back to Spain from his Mexican diocese of Chiapas in a desperate attempt to shore-up the anti-encomendero policy which he saw collapsing around him. Thus the loudest and most decisive contact between the theologians and the polemicists took place at the famous debate in Valladolid in August/September 1550 between Bartolome Las Casas and the Cordoban humanist Gines de Sepulveda.

Las Casas Versus Sepulveda: Debate at Valladolid

Las Casas (1484-1566) first visited the New World in 1502 where he began by following the brutal way of life lived by the colonists. But in 1504 he experienced a sudden revulsion against the treatment meted out to the Indians. After which he devoted the remaining part of his life to the defence of the Indians, battling against the shape of the evolving colonial system. He fought as a secular priest, as a friar and as a bishop, as a councillor at court, as a polemicist and as a historian and as a delegate for the Indians. Sepulveda (1490-1573) studied humanities and theology at Bologna and championed the cause of the Spanish colonists. His aim was to vindicate the Spaniards' legal and moral right to carry on their policy of enslaving the local Indian inhabitants.

The disputants at the debate of Valladolid among whom Las Casas and Sepulveda were the most prominent were directed to the specific issue: "Is it lawful for the king of Spain to wage war on the Indians before preaching the faith to them in

³ Lewis Hanke, Aristotle and the American Indians (Chicago, 1959), p.ii.

order to subject them to his rule, so that afterwards they may be more easily instructed in the faith?"⁴

Sepulveda set forth his position which he had previously developed in his work DEMOCRATES.⁵ This work was written in the form of a dialogue between Leopoldo, a mild mannered German considerably tainted with Lutheran errors, who believed the conquest to be unjust and Democrates, the mouthpiece of Sepulveda who convinces Leopoldo in the end of the complete justness of the wars against the Indians and the obligation of the king to wage them. In other words, Sepulveda was attempting to deal with the questions: What justifies war against the Indians? And how should this just war be waged?

The fundamental idea put forward by Sepulveda was that wars may be waged justly when their cause is just and when the authority carrying on the war is legitimate and conducts the war in the right spirit and the correct manner. This proposition was not an original idea, for Thomas Aquinas had laid it down centuries before him. Sepulveda applying this doctrine to the New World had declared it lawful and necessary to wage war against the natives. He had argued that the papal bulls of donation were a valid charter for the Spanish conquest. The Indians required tuition because they were culturally inferior and were so for the following reasons. The

⁴ Ibid., p.38.

⁵ Ibid., p.40.

Indians were not civil beings because of their idolatries and their sins against nature.⁶ Individuals may violate the law of nature but still retain their humanity. But if the consensus of the entire community was at fault then it was clear that this cannot have been arrived at by a collectivity of rational beings. The crimes committed against human nature by the Indians therefore had constituted grounds for a just war in which the vanquished might be deprived of all their rights including their liberty, since all property relations were products of civil society.⁷ God gave property to man for his use and not to be abused. The Indians had abused their property, for cannibalism and human sacrifice were the most grisly violations over their own bodies and precious metals were used for idolatorous ends. The Spaniards had a moral claim by having traded metals which had been useless in the ancient world for useful metals like iron. Any people who fail to utilise nature, which was an obligation, can have no claim against other more industrious nations who occupied and cultivated lands. Since rights existed only so long as they were exercised and as the Indians had not done so the Christians might take possession by private and public law of all Indian goods.⁸

Further Sepulveda had argued that as the Indians had not possessed any knowledge of the Christian faith, they could not have lived a life of genuine political liberty and human dignity. The Indians had no script to preserve their past deeds but

⁶ no.2, pp.113-120.

⁷ Anthony Pagden, ed., The Languages of Political Theory in Early Modern Europe (Cambridge, 1987), p.91.

⁸ Ibid.

had lived in obscure memory of certain deeds consigned to pictures. They lacked all written laws and hence had barbarous customs and institutions.

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Sepulveda derided the Indians' skill by comparing how certain small animals such as bees and spiders can make things which no human mind could devise. For Sepulveda the Indians' mechanical skills were merely a product of a mimetic faculty. Their practices of human sacrifice and cannibalism represented a diabolic mistake which deprived them of their natural rights. The Indians' status, he had argued, was to be regarded as one of natural rudeness and inferiority. He concluded therefore that it was proper to treat the Spanish conquests as an instance of just war against the infidels and to enslave the conquered inhabitants as an aid to converting them.

Such views were only conventional to sixteenth century Spain. What was new was the offensive rhetorical mode that Sepulveda had used to present the evidence for his contention. This is demonstrated in a number of linked passages where the contrast between the Indians and the Spaniards is worked into a climax.⁹ The acerbity of the language was probably the reason that despite conventionality the crown rejected his views.

In response to Sepulveda, Las Casas's struggle was an attempt to negotiate for the Indian a definitive and unassailable position in the human community as a civil and human being. His work *APOLOGETICA HISTORIA* was an attempt to

⁹ no.2.

demonstrate on the basis of a huge body of empirical and historical data that the pre-conquest Indian communities fulfilled all of Aristotle's requirements for a true civil society.

According to Las Casas the Indians may have been wild and merciless men acting against reason but the majority of them lived in a political and social manner and they had great cities, kings, judges and laws all within an organisation where commerce was practised.¹⁰ Had the Indians not been fully rational beings it was inconceivable that they would have been able to create such a polity in the first place and much less maintain it for any length of time. The Indian communities may have lacked the ability to write or the systems of knowledge that were possessed by other civil beings, but they were skilled in the mechanical arts. Though mechanical arts were lesser activities than the liberal arts, both were habits of the operative intellect which was to say that they require the use of deliberation, the faculty which natural slaves lack.¹¹ The Indians were quick to learn from the Europeans the things which were missing from their world. Once an Indian had been introduced to European cultural forms he immediately recognised their obvious superiority over his own.¹² Las Casas had insisted that the Indians' ability to assimilate European culture was proof of their innate intellectual capacity. If the Indians had responded well to training, it would seem only logical to attribute their previous unnatural behaviour to

¹⁰ Anthony Pagden, The Fall of Natural Man (Cambridge, 1982), p. 136.

¹¹ *Ibid.*, p. 138.

¹² *Ibid.*, p. 136.

the circumstances in which they had been reared. After thus offering proofs of the Indians' civility Las Casas goes on to defend their practices of cannibalism and human sacrifices, based on the milieu theory.¹³

According to Las Casas certain men were irrational and bestial under the influence of the physical environment rendering them exceedingly dull-witted; or this was due to the adherence to very perverse customs. The milieu theory maintained that all men's actions, their psychological make up and sometimes even their physique were determined by the climate and terrain in which they lived and by the conjunction of the stars under which their habitat happens to lie. Las Casas maintained that all men whatever their condition have a place in an historical scale which was the same for all peoples. Those who were near the bottom of the scale were simply younger than those further up it. The wisest people of the earth were literally the oldest. The Indians whose societies still retained features long since abandoned by more civilised peoples and whose social forms were evidently inchoate, were culturally still a young race.¹⁴ To Las Casas this view seemed not only in keeping with ancient and Christian historiography, it also promised an explanation of both cultural distance between the Indians and the peoples of Europe. This theory also provided justification for proselytization. If the Indian groups had reached the limit of their evolutionary potential as pagans, then the evangelisation of the Indians could be interpreted as historically inevitable.

¹³ Ibid., pp.137-145.

¹⁴ Ibid.

Las Casas's defence of the Indians forced him to justify the practice of human sacrifice as having revealed their genuine devotion to their gods. "The more devout the people, the closer they came to understanding the complexities of true religion, and hence greater were their sacrifices."¹⁵

Las Casas had initially defended the liberty of the natives, by basing his arguments on the Bulls, the will of Isabelle and the opinions of the jurists and the theologians. He had concluded from all these documents that the natives were under no obligation to serve private individuals and he asserted the ability of the natives to receive the catholic faith and to attain a reasonable standard of political organisation in contrast to the theory of natural slavery. He had put forward the idea of a peaceful penetration by missionaries supported from a distance by a few fortified strong points with a mere handful of settlers.

Las Casas had rejected conventional reasons employed as the basis of the Spanish titles in America, such as the greater geographical proximity of the Indies to Spain, idolatory and human sacrifice, unnatural vices among the Indians, the greater prudence of the Spaniards and, of course, Aristotle's theory of natural slavery.

For him the only legitimate title was the bulls of Alexander VI implying missionary obligation. On a free para-phrase of the bulls of 1493, he asserted the

¹⁵ Ibid., p.144.

obligation to evangelise, 'disregarding all dangers and travails what so ever and even more so private temporal interests.'¹⁶ But in addition he affirmed that the catholic sovereigns were the supreme governors over all the kings and princes and the realm of the Indies. Las Casas had untiringly affirmed that the sovereign imperial authority of the king of Castile was quite compatible with local sovereignty of the Indian monarchs which were in turn based on natural law which is common to all peoples, for the communities require some authority for governance and continuance. As both the Pope and the king of Spain had rights which were dependent on their obligation to evangelise, they may limit the exercise of political rights even those based on natural law and 'ius gentium'. For unity in the hierarchical order of rights and duties was restored by virtue of the medieval notion of a right exercised subject to the fulfillment of a duty.

The theories of Las Casas and the official Spanish view of full sovereignty based on papal donation, had both asserted the obligation to evangelise the Indians, but Las Casas had rejected the concept of the 'military mission'. Both the theories accepted Spain's rule, but the official view conceived of it as an outright monarchy, whereas Las Casas had wanted to transform it into a merely tutelary trust, vaguely 'imperialist' in conception, over Christian Indian realms and over Spanish colonies exercising no sovereignty over the Indians. The importance that Las Casas had

¹⁶ Mario Gongora, Studies in the Colonial History of Spanish America, Richard Southern, trans. (Cambridge, 1975), p.48.

attached to the papal bulls and to the concept of empire as a missionary enterprise made his outlook more 'medieval' than that of Vitoria.

Conclusion

The members of the junta at Valladolid were divided in their reactions, with the jurists apparently supporting Sepulveda and the theologians leaning towards Las Casas. Though the Sepulveda-Las Casas debate was superficially concerned with the justice of the military conquest, it really reflected two fundamentally opposed views of the native peoples of America. Within the Aristotlean framework in which the debate was conducted, proof of 'bestiality' or 'barbarism' would serve as justification for the subordination of the Indians to the Spaniards. It was this which made it so important for Las Casas to prove that the Indians were neither beasts nor barbarians. For all the violence of the disagreement, there was a certain unreality about it in the sense that Las Casas, even as he questioned the benefits conferred on Indians by the Spaniards, did not really doubt Spain's mission in the Indies. Where he differed from Sepulveda was in wanting that the mission be pursued by peaceful means rather than coercion, and by the crown and the missionaries, rather than the settlers. The stringent conditions laid down in Philip II's New Ordinances of 1573¹⁷ for the procedures to be followed in future conquests in America may also be seen as an expression of the crown's determination to prevent a repetition of the atrocities against the Indians. The royal regulations on future conquests in America appeared at a time when the real "age of conquest" was already past. They represent a late moral

¹⁷ Charles Gibson, Spain in America (New York: Harper & Row, 1967), p.38.

response to an accomplished reality. The ordinances suggest a kind of official nominalism, as if the evil might be exorcised by euphemism. Thus Las Casas probably lost the battle he most badly wanted to win – the battle to rescue the Indians from the clutches of the Spaniards.

EPILOGUE

A PERSPECTIVE ON THE DEBATE ON THE NATURE AND STATUS OF AMERICAN INDIANS

For long Spanish American historiography had been enthralled by the conflict of the "black legend" and "the golden legend". The debate on the nature and status of the Indians formed part of this larger debate between Spanish patriotism, which sought to destroy the "black legend of Spanish cruelty, and Spanish idealism which was enamoured by the golden legend of Spanish wisdom, accomplishment and sense of responsibility in the New World.

Why has a sixteenth century debate which was never formally resolved remained so exciting and controversial more than four centuries after it took place. Probably the significance lies in the fact that the debate dealt with the emotionally charged problem of the meeting of unlike races and one of these, the Spaniards, brought to the encounter both their strong preoccupation with justice and their military and religious ardour which had impelled them onto the long wars. Today it is becoming increasingly recognised that no other nation made so continuous or so passionate an attempt to discover what was the just treatment for the native peoples under its jurisdiction than the Spaniards.¹ For the first time a colonising nation organised a formal enquiry into the justice of the methods used to extend its empire. For the first time too in the modern world an attempt was made to stigmatize a

¹ Lewis Hanke, Aristotle and the American Indians (Chicago. 1959), p.107.

whole race as inferior – as natural slaves.

The debate on the nature and status of American Indians occurred at a crucial juncture in European history. It took place at a time when national monarchies were emerging in Europe, which marked the beginning of the age of absolutism. If the early years of the sixteenth century were dominated by the Lutherans, the middle decades witnessed the Thomist revival as part of the Counter-Reformation. In another but more important sense from the point of view of the debate, the sixteenth century was a turning point, for the medieval age was coming to a close and with it the dominant ideas of the period were on the wane. Although the enlightenment was more than a century away modern ideas were gradually gaining ground.

The views of the three actors discussed in this dissertation may be seen as a reflection of the changing times. If Sepulveda's highly chauvinistic ideas belonged to the darker middle ages, Vitoria's denunciations of both papal and monarchical power was modern in character. Las Casas marked the transition phase. His view that all human beings were born free and equal, in dignity and rights anticipates the ideas of modernity. But where he falls short is in his unquestioning acceptance of the power of both pope and emperor.

Quentin Skinner's method of contextualising helps in understanding why the three actors differed so much despite all of them being catholic Christian thinkers

and applying the common language of Political Aristotleanism. To categorise Vitoria as either a humanist or as an apologist for the crown would not give the true picture unless his views are located within the intellectual context of universities dominated by Thomist thought. Similarly, both Las Casas's and Sepulveda's views arose from the socio-economic context of the New World. If Las Casas was moved by the plight of the Indians being exploited by the Spanish colonists, Sepulveda being a rhetorician and polemicist could not but have argued on behalf of the colonists. Each one of the three actors represented the three most powerful factions influencing royal decisions in America – the University, the Church and the Colonist.

Since the sixteenth century and indeed until today, the problem of the basic nature of other peoples different from ourselves in colour, race, religion or customs has given rise to the most diverse and inflammatory opinions. It might be said that the idea of the unfitness of natives and their inferiority to the Europeans appeared in whichever far corners of the world the Europeans had reached. Thus the issue of race relations and the sixteenth century controversy epitomises the problem for generations of men and it has today a larger significance than ever before.

None of the three actors discussed in this dissertation was attempting consciously or unconsciously to grope his way through an intellectual miasma raised by prejudices of education, social background or ideological commitment towards a more complete, more objective image of reality. Those prejudices

constituted their world: to wish to abandon them would have seemed foolish, dangerous and possibly heretical. Their task as they saw it was not to arrive at an evaluation of Indian behaviour but to bring these men, with disturbing and aberrant social behaviour, within the grasp of a knowledge made authoritative by the fact that it ran back to the ancient Greeks.

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