

SIXTEENTH CENTURY SCHOLASTICISM AND THE COLONIZATION OF AMERICA: FRANCISCO DE VITORIA AND HIS INFLUENCE

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The ideas of FRANCISCO DE VITORIA exercised a powerful influence over those who advocated a more humane colonization of Spanish America. His students and colleagues were in the forefront of the struggle against the oppressive trends of the conquest. VITORIA's humanism was rooted in the general humanistic movement of the early sixteenth century and in the resurgence of Thomistic studies. His contact with both trends was made while he was a student at Paris between 1507 and 1523.¹ It was there that he met the humanist LEFÈVRE and JEROME ALEANDER whose knowledge of Greek attracted many students. But, the most enduring influence was the revival of Thomism which arose out of both the general dissatisfaction with the prevailing character of scholastic philosophy and the reform of the Dominican college at Paris.

Nominalism, which had arisen in the fourteenth century as a reaction against the excessive formality of scholastic philosophy, itself evolved into sophistry and mere argumentation, as the Spanish humanist, LUIS VIVES, so aptly described it. The intellectual preoccupation with logic made its adherents seem out of touch with the reality of the late fifteenth and early sixteenth century, a period that witnessed greater interest in moral questions. Thanks to the reforming zeal of JOHN STANDONCK, the college of Montaigu, which numbered among its students ERASMUS, VIVES and CALVIN, and had been the center of Nominalism, was now shaped by this new orientation.² The scholarly community was subjected to a more disciplined life. They had to attend to religious devotion more scrupulously, sweep floors and mend their own clothes. As for the curriculum, emphasis was placed on the Ethics and Politics of Aristotle.

This spirit of reform was taken to the Dominican college at Paris by PETER CROCKAERT, who had studied under his countryman, STANDONCK, at the college of Montaigu.³ CROCKAERT infused his students, among whom was FRANCISCO DE VITORIA, with enthusiasm for the philosophy of AQUINAS by using the *Summa Theologiae* as the basis of his teaching and training them to edit the texts of AQUINAS. In 1512, CROCKAERT, with the assistance of VITORIA, published the *Secunda Secundae*, an essentially moralistic work of AQUINAS. In the prologue, VITORIA accused the opponents of Thomism of abandoning the best authors and reminded them that, in following AQUINAS, they were not surrendering freedom of opinion.⁴ There was to be no return to a fundamentalist approach to the works of AQUINAS. Rather, the new Thomists found in his works certain key ideas that they found useful in understanding the troubled, transitional world of Western Europe at that time. This revival of Thomism was not a reaction against the general humanistic tendencies of the age, but a part of it. There was little that was rigid or obscurantist about these Thomists. In emphasizing the publication of texts, they were simply utilizing the invention

of printing in the West to reach a larger scholarly audience. Their objective was no different from those humanists who became editors and printers, like ALDO MANUTIUS and BEATUS RHENANUS, the editor of the works of ERASMUS. CROCKAERT thus succeeded in establishing a significant school of Thomistic studies at the Dominican college of Paris, an intellectual focus which VITORIA would take to the university of Salamanca. Paris was, of course, not the only center of Thomism. The classic commentator of Thomism, CAJETAN, lectured on the *Summa* at Pavia as early as 1497 and, in 1508, was the first to publish a complete commentary to it in Italy. In Cologne in 1512, CONRAD KOELLIN (1476–1536) published a commentary on the *Prima Secundae*.⁵ The revival of Thomism in Paris was therefore a part of the general resurgence of Thomism in Europe in the early sixteenth century.

VITORIA returned to Spain in 1523 to become professor of theology at Valladolid and then Salamanca, where, among those students who attended his classes, were several who went to America. At Salamanca, he replaced the *Sentences* of PETER LOMBARD with the *Summa Theologiae* of AQUINAS as the major text for his course. He found the Dominican convent of San Esteban in Salamanca, his residence for the last twenty years of his life, already involved in a spirit of reform. Due to the zeal of Fr. HURTADO DE MENDOZA, a burning commitment to the ideal Christian life and scholarship was beginning to shape the direction of Salamanca.⁶ VITORIA's reputation was so highly regarded that the king of Spain consulted him on a variety of pressing issues of the day, such as matters relating to the conquest of America, the papal or conciliar supremacy of the church, and the king of England's divorce from his Spanish wife. These questions were seriously debated in Europe and formed the topics for his courses at Salamanca.

The colonization of America had raised considerable discussion since FRAY ANTON DE MONTESINOS charged the colonists in Española with the oppression of the native population.⁷ Of course, the indefatigable LAS CASAS had left no political stone unturned to bring the issue on the stage of Spanish politics. Nurtured in the climate of renewed ethical considerations at Paris and Salamanca, VITORIA presented his view of Spanish colonization in his lectures in 1538. In formulating his idea of human liberty, he "opened the paths of a new thought that would definitively dominate Spanish culture and policy".⁸ More, from his deliberations on the conquest of America sprang a theory of international law, which GROTIUS would later develop.

In his treatise, *De Indis*, he set out to analyze the complex question of the conquest, and to define what the relationship between Spaniards and Indians of America ought to be. Earlier treatises had, of course, been written on Spain's legal title to the newly-discovered lands. The Scottish theologian, JOHN MAJOR, professor at Paris, had given his thoughts on the question of the relations between Christians and the Indians of America in 1510. Military conquest was necessary, he said, because the Indians, in their inability to understand Spanish, would not allow Christians to teach them. A defender of the Spanish conquest, he recommended that fortifications be established so that Spaniards would gradually have time to build an understanding with the

native people.⁹ For MAJOR, the object of conquest was the establishment of Christianity. The first systematic treatise, however, was written by PALACIOS RUBIOS (1450–1524) between 1512 and 1514.¹⁰

Professor of canon law at the universities of Salamanca and Valladolid, and adviser to the Crown for some twenty years, he was asked to give his opinion on the question of the government of the Indies. Not surprisingly, he defended the Spanish right of conquest of America. Basing his argument on the extensive power of the pope, he declared that “the supreme dominion, power, and jurisdiction over the islands in question pertains to the Church, which the entire world and everyone, including infidels, must recognize as their lord and master”.¹¹ The church was within its right when it transferred this to the Spanish Crown. He left no doubt that he believed that Spanish dominion over America was implicit in the donation of Pope ALEXANDER VI who “conceded and granted those islands with all their dominions, cities, castles, places, villages, rights jurisdictions, and all that pertained to them, to you and your heirs and successors, the monarchs of Castille and Leon, in perpetuity”.¹² By virtue of this right, the Crown could exact tribute and services from the inhabitants. In his attempt to justify the virtual enslavement of the Indians, PALACIOS RUBIOS had to reconcile a condition that was tantamount to slavery with the notion of Christian liberty. He admitted that “nature created, in a certain way, all men equal and free”, but, historically, slavery was “approved or confirmed by the law of nations, and canon and civil law”.¹³ That some men should rule and others obey was, as far as he was concerned, both necessary and useful. For example, he said, it was natural that men should rule women because the former were endowed with reason, the latter deprived of it. Those men who were more rational should rule; those who seemed to lack rationality were by nature slaves. Slavery, then, was defended on both natural and legal grounds.

He was quick to make the point, however, that if the natives consented to become Christian, they would retain their primitive liberty. Moreover, the Indian nobility would retain their status, liberty, and dominion over their property, once they were Christianized. Indeed, they had every right to defend themselves in a just war against the Spaniards if they were threatened with the confiscation of their lands and property simply because they were not Christian. However, were they not to recognize the Christian church as their lord and master, and refuse to accept its teachers, the Crown could justly make war against them and wrest dominion from them, “to remove them from infidelity, heresy, or their cruel rites and ceremonies.” PALACIOS RUBIOS indicated that a similar justification was behind the expulsion of the Jews in 1492: “For this reason, in my opinion, the Jews were expelled from these kingdoms by your Majesty and his dear wife, pious queen ISABEL, since Jewish perfidy, with their perverse will, stubbornness, and raging hatred, persecuted the Christian religion; contact with them, for many reasons, was dangerous for the faithful, especially since it was learnt that Jews had attracted many Christians to their depraved customs, rites and ceremonies, and, since the strong suspicion existed that they would continue to do so in

the future, they were deservedly expelled.”¹⁴ In this way, PALACIOS RUBIOS defended the highhanded and cruel treatment of the Indians of America and Jews by the Spanish Crown. The Church, which possessed the authority of God, could deprive non-Christian rulers of their dominion or jurisdiction because, by virtue of infidelity, they could not claim power in their own right but by the will of the Church: “God is the lord of the whole world, and so he who seeks to separate another from his dominion, as infidels do, who disturb the faithful, ought justly to lose the right that they exercise over them.”¹⁵

The main lines of the treatise of PALACIOS RUBIOS represented one of the many ideological positions the roots of which went back to the disputes over papal supremacy in the middle ages.¹⁶ Its main defenders were pope INNOCENT IV, HOSTENSIS, and DURANDUS. INNOCENT IV († 1254) held that Christ, as lord of the world, had the power to depose rulers, a power that was transferred to the pope. HOSTENSIS († 1271) distinguished between the temporal and spiritual jurisdictions of Christendom, both of which came from God. For him, the spiritual was greater. Indeed, the emperor received his dominion by the authority of the Church, which could depose him. DURANDUS (1237–1269) claimed that the pope had both spiritual and temporal power. What formed the ideological content of the early formulations of Spanish colonial policy was clearly the notion that the pope had broad temporal and spiritual powers to order Christendom in accordance with Christian values. Interestingly, the idea of Christendom was extended to include America. For PALACIOS RUBIOS, papal supremacy was an important principle in upholding the idea of the unity of Christendom. His views certainly influenced the regulations that were given to PEDRARIAS DÁVILA when he set out for Darien in 1513 to the effect that he had to explain to the Indians that “God created the heavens and the earth and the first human beings . . . that Christ entrusted to Peter that he should be the lord and master of all the peoples of the world, and that he should be the head of human lineage, wherever men should live, and over every law, sect, religion.”¹⁷ This practice was widely used as late as 1526, as the Spanish conquest extended to Mexico and Peru.

A similar defense of Spanish political dominion was articulated in 1512 by MATÍAS DE PAZ, professor of theology at the universities of Salamanca and Valladolid.¹⁸ He stated unequivocally that the king, armed with the authority of the pope, “could make war on infidels and submit their lands to the yoke of the redeemer because the entire world was given to Jesus Christ.”¹⁹ However, he urged that the Indians be told about Christianity before commencing war against them. If they rejected the teaching and returned to their own cults, it was permissible to reduce them to slavery. PAZ distinguished between “Jews, Saracens, Turks,” and the Indians of America. He admitted that he had heard that in America there were “gentle people, in no way greedy or evil, but to a great extent docile who could be easily directed to the faith, if treated with charity.” Despite exalting the power of the king to make war to expand Christian influence, he counselled that propagation of the faith be done by other means, if possible. He reiterated that Spanish dominion was legitimate only on religious grounds, “not for the caprice of

dominating nor the desire to get rich."²⁰ Certainly, the Indians should be ruled under royal jurisdiction, but never despotically. Once converted, their freedom should be restored, although it was permissible to demand some services from them, provided those services were consistent with Christian values and reason.

In his response to the question of the proper conduct towards those Indians who lived peacefully without molesting Christians, he declared that the Church could justly dispossess all infidel rulers from their dominion because "the Catholic Church has dominion over the whole world". Since no one could be saved outside the Church after the coming of Christ, the principal right of dominion rested with the Church. Yet, infidel rulers could be permitted to retain their dominion, if the Church or its representative recognized that dispossession through war would not advance the cause of Christianity. PAZ subtly made a distinction between dominion "for possession" and dominion for the teaching of Christianity.²¹ He conceded that the Church could not expropriate the temporal possessions of the Indians because infidelity did not nullify what they possessed by natural right. As for dominion to spread Christianity, infidelity was a legitimate cause of depriving Indian communities of power. As a consequence of this, the Christian ruler or priest should look after the welfare of his subjects, not for his own interests. His Indian subjects were to be converted to Christianity by persuasion, not by threats. PAZ felt that the infidelity of the Indians was different from that of Moslems and Jews who, in his opinion, had historically resisted or attacked Christianity. The Indians, though they were ignorant of Christianity, did not attack Christians. For PAZ, Christian dominion was quite compatible with Indian liberty. Enslavement and the harsh services they had to perform were the factors that caused them to abandon Christianity. They were reduced to such dire straits that Indian mothers aborted their babies rather than have them enslaved. "In the name of charity", he pleaded, "even if they were justly enslaved, they should be given their freedom... since their faith diminished further under slavery, but with liberty would grow."²² He recorded that the evidence of missionaries confirmed the truth of his conclusion that Christian influence would be stronger among the Indians if they were treated humanely and kindly, as free human beings living under the grace of Christ and not subjected to the weight of slavery.

PAZ used INNOCENT IV and HOSTENSIS as the major sources for this treatise, as PALACIOS RUBIOS had done. But he also took pains to explain the views of PETER LOMBARD, ST. THOMAS, DURANDUS, and THOMAS OF STRASSBURG on relations between Christians and non-Christians. Their defense of Christian imperialism and Indian liberty must have influenced the clarification of the laws of Burgos, promulgated in 1513, which stipulated that those Indians who were desirous of becoming Christians and were politically mature should be set free.

The abortive experiments in the Caribbean to determine whether the Indians could use liberty responsibly between 1516 and 1535 filled the pro-Indian advocates with despair.²³ The conquest of Mexico and Peru and

the consequent enlargement of Indian servitude made their concern for the Indians far more urgent. Under the prodding of LAS CASAS, the halls of the universities of Salamanca and Alcalá de Henares bristled with the colonial issue. Not surprisingly, the Indian problem was a burning question for the most celebrated theologian in Spain, FRANCISCO DE VITORIA. His condemnation of the war in Peru in 1534, and his declaration that the native people were "not foreigners, but true vassals of the king" indicated his growing interest in colonial matters. His contribution to the intellectual life of Spain was generally widespread and, on the Indian question, of crucial significance.

DOMINGO DE SOTO, VITORIA's student and, later, colleague at the Dominican college of San Esteban, lectured in 1534 on the question of Spanish dominion in America.²⁴ One could detect in his line of argumentation some differences from the earlier position of PALACIOS RUBIOS and MATÍAS DE PAZ on the colonial question. For SOTO, neither the pope nor the emperor had direct temporal dominion over the world.²⁵ Sure, Christians had every right to preach everywhere and could defend themselves by force, if prevented. But, in no way was this right of defense to be used to confiscate the property of the Indians or subject them as slaves to Christian rule. Christianity was to be taught, and persuasion used, in complete liberty.

VITORIA's relectio on the Indian question was believed to have been given at the end of 1538.²⁶ In his treatise, he proposed to discuss the legal and moral titles by which Spain come to dominate the inhabitants of America. He did not dispute the claim that the Crown had acted in good conscience in matters relating to the conquest. But, he felt that the frequent reports of "so many massacres, so many plunderings of otherwise innocent men, so many princes evicted from their possessions and stripped from their rule" justified doubts entertained over Spanish policy.²⁷ It was his sensitivity to the deteriorating conditions in America that prompted his inquiry into the legal and moral foundations of the indigenous peoples' rights to property and the colonists' seizure of it. The colonists had used as their defense ARISTOTLE's statement that some people were by nature slaves and better suited to serve than rule. They argued that the natives did not have "sufficient reason to govern even themselves" and were little different "from brute animals and are utterly incapable of governing". VITORIA contended that the natives were in peaceable possession of their goods, both publicly and privately, and "must be treated as owners and not be disturbed in their possession unless cause be shown".

VITORIA then turned his attention to those who justified the conquest and dispossession on religious grounds. Their proponents argued that since it was God's grace that conferred dominion, the native people could not exercise dominion because they "were in mortal sin". VITORIA rejected this line of argumentation which he traced back to the Waldenses, JOHN WYCLIFFE, and ARMACHANUS. For him, sin was not an impediment to true dominion. Recalling biblical history, he pointed out that David did not lose his kingdom because he had sinned. From a spiritual point of view, natural dominion represented the gift of "reasoning powers" to man, and sin did not abrogate these

powers. In addition, civil dominion pertained more to civil law, and its rights most assuredly could not be nullified by sin. Neither could unbelief constitute a just cause for loss of dominion. VITORIA cited AQUINAS to support his conclusion that ownership was based on either natural or civil law and could not be removed by lack of faith.²⁸ Consequently, Christians were not entitled to seize the lands and goods of the native population.

Turning to the argument whether irrationality or unsoundness of mind vitiated the right of ownership. VITORIA reasoned that it did. He armed himself with the argument advanced by AQUINAS that only rational beings possessed true dominion because only they had the right of choice. If power alone was sufficient, a thief would have dominion over his victim because he had the power to kill him. But, he contended, Indians were neither irrational nor of unsound mind because they had the use of reason. This was apparent from the study of their social and political customs. It was not their fault that they seemed outside the pale of salvation. If they seemed unintelligent, it was only because they were uneducated, like the peasantry in Christendom. Therefore, Spaniards had no right to take lands from Indian princes and private persons alike.²⁹

Referring to those who cited ARISTOTLE to propound that the Indians were by nature slaves and therefore incapable of self-government, VITORIA questioned their interpretation of ARISTOTLE. What ARISTOTLE meant, he insisted, was that it was better for the more intelligent in a society to rule over the weakminded. In no way did this mean that those who ruled had the right to confiscate the possessions of the ruled. Even if it could be proved that the Indians were inept, dominion could not be denied them. In any case, nature had endowed them as human beings with the capacity for self-government.

Having established that the indigenous population had true dominion over their lands, VITORIA went on to discuss the illegitimate grounds on which they could be dispossessed. To the rationalization that the Christian emperor superseded in jurisdiction the native rulers in that he was the ruler of the world, he argued that the emperor was not the ruler of the whole earth.³⁰ According to natural law, man was free and so no one had dominion over the world. The matter of dominion was the province of human law. Nor could it be proved that emperors received this title by divine law. While AQUINAS had stated that the Romans were entrusted with empire by God because of their justice and laws, their sovereignty was not derived by divine grant but from wars. Although the argument could be made after the coming of Christ, it was still inadmissible. The kingdom referred to was a spiritual one. VITORIA reiterated that the emperor was never the lord of the world. But, even if he were the lord of the world, as some insisted, he could not "seize the provinces of the Indian natives, establish new lords there, and remove the former ones, or take taxes". The proponents of imperial supremacy did not claim that "he was lord in ownership, but only in jurisdiction". VITORIA argued that this right did not give him the power to convert provinces for his own use or to give away towns and even states, at his pleasure.

To those who based the Spanish conquest on the authority of the pope, VITORIA insisted that the pope was not the temporal ruler of the world.³¹ In the medieval struggle between pope and emperor over jurisdiction of Christendom, papal defenders like HOSTENSIS and ANCONITANUS had defended the supremacy of the pope. PALACIOS RUBIOS and MATÍAS DE PAZ had cleverly used the authority of these writers to assert the power of the pope to make the king of Spain ruler over the Indians. In their minds, refusal to accept this constituted justification for waging war against the Indians and seizing their lands. VITORIA argued that the pope's temporal power was never fully accepted. Among those who held contrary opinions were TORQUEMADA, JOANNES ANDREAE, and S. BERNARD. It also seemed contrary to the teachings of the Scriptures. For VITORIA, the power of the apostles was not to be "lords over God's heritage, but examples to the flock". Clearly, the power given to popes was spiritual. Even if Christ had spiritual power over the whole world, such power was not transferred to popes. Consequently, popes did not have such power over non-Christians as to excommunicate them or invalidate their marriages. Of course, the pope had temporal power only to advance spiritual matters. But, he had no spiritual power over the Indians. Indian rejection of papal jurisdiction did not constitute grounds for making war on them and seizing their property. Moreover, they could not be compelled to accept Christianity. After all, Moslems living among Christians did not have to give up their property. Therefore, Christians did not have a just cause of war and, at the time of the first voyages to America, "they took with them no right to occupy the lands of the indigenous population".

Equally illegitimate was the title of right of discovery. Indeed, the law of nations allowed those who discovered and occupied deserted lands to claim them as their own. But, this claim was ill-founded because the Indians were "true owners, both from the public and private standpoint".

Next, VITORIA took up the matter of Indian refusal to accept Christianity.³² His opponents had argued that the pope in his spiritual capacity had the power to compel the Indians to accept Christianity and, in the last resort, to make war on them because of their unbelief and blasphemy. VITORIA reasoned that the natives could in no way be accused of unbelief if they had not heard of Christ. Ignorance was simply not a sin. If they lived a good life in accordance with the law of nature, "God will illuminate them regarding the name of Christ". Neither could the natives be condemned for not accepting Christianity simply because it was announced to them that Christianity was the true religion "without miracle or any other proof or persuasion". Citing CAJETAN, VITORIA felt it would be rash to expect them to accept Christianity unless it was taught by men worthy of belief, "a thing which the indigenous Indians do not know". In no way should war be waged against them. Since no wrong had been done by the Indians, there was no just cause of war. However, VITORIA admitted that the Indians would be guilty of mortal sin if they rejected Christianity presented to them "with demonstrable and reasonable arguments" by men who lived an "upright life, well ordered according to the law of nature". He hastened to add that these

criteria had not yet been met. On the contrary, he had heard that "scandals, crimes, and acts of impiety" were the order of the day, despite the efforts of many who had approached their civilizing task diligently and sincerely. Given the manner in which the conquest proceeded, the Indians were not bound to accept Christianity. Even if Christianity had been presented to the people appropriately, it still was not permissible to make war against them. AQUINAS himself had argued against compulsory conversion. Faith was an operation of the will; freedom, not fear, was, in his opinion, the precondition for the acceptance of Christianity. Citing arguments drawn from canon law, the council of Toledo, and history, VITORIA concluded that war was "no argument for the truth of the Christian faith". In the case of the indigenous people of America, then, the conditions for a just war and the seizure of their lands simply did not exist.

VITORIA also opposed the apologists for the military conquest of America who based their justification on certain Indian practices like cannibalism, incest, and sodomy.³³ They had argued that these acts contradicted the natural order and consequently the Indians could be forced by war to desist from them. The implication was that the pope exercised universal punitive jurisdiction in moral matters. VITORIA responded that such a right, if accepted, could be expanded to include fornication, theft, and homicide. True, S. PAUL had inveighed against fornication and idolatry, but both he and Aquinas believed that the right of moral correction was to be exercised "over those only who have submitted themselves to the faith". He added that it was obviously not easy to determine what sins were contrary to the laws of nature. Further, the pope could not make war against nor seize the lands of Christian fornicators and sodomites. If he could, "there would be daily changes of kingdoms". Indeed, those acts were more objectionable among Christians who accepted them as sins than among those who did not. Referring to the Old Testament, he cited the example of Israel which never seized the land of unbelievers "because they were unbelievers or idolaters . . . or guilty of other sins of nature".

To those who claimed that Spain's sovereignty was based on the title given them by some Indian rulers, VITORIA was skeptical. Free choice was the indispensable condition for the transfer of a title. Confronted by the Spanish army in battle array, the Indian rulers more than likely made the offer under fear. For him, then, this argument was "utterly inadequate and unlawful for seizing and retaining the provinces in question". He could not accept the reasoning of those who took a prophetic view that God in his judgment had condemned all the Indians and delivered them into the hands of the Spaniards as the Canaanites to the Jews. Even if it were true, the perpetrators would not escape blame "anymore than the kings of Babylon who led their army against Jerusalem and carried away the children of Israel into captivity were blameless". To those who used Christian moral values to judge the native people, VITORIA retorted: "Would . . . that there might be no greater sins in morals among certain Christians than there are among those barbarians."

Turning his attention to the conditions for legitimate relations between Spain and Amercia, he believed firmly that Spaniards had every right to travel to America according to international law.³⁴ Defining international law as "what natural reason has established among all nations", he argued that international law gave one the right to travel to and even stay in a foreign country, provided he did not mistreat the local population. The Indians therefore did not have the right to prevent the Spaniards from traveling to their country any more than the French had to prevent Spaniards from traveling to or living in France. Citing biblical, classical, and church texts, VITORIA stressed magnificently the common nature of all human beings, whatever their religion, nationality, or race, and argued for the naturalness and rationality of interdependence and mutual respect. Friendship and hospitality were rooted in the law of nature, and the seas were common to all. So, freedom to travel and to use what was common property was implicit in nature. What VITORIA was suggesting was that international law was derived from the law of nature. This rational and humane conception was well illustrated by his reference to a text by S. AUGUSTINE: "When it is said 'love thy neighbor', it is clear that every man is our neighbor."

For VITORIA, international law also established the right of individuals and nations to trade freely with each other. No ruler, be he Indian or Spaniard, could prevent his subjects from trading with other peoples. The Spaniards then could lawfully carry on trade with the natives provided they did them no harm. Mutual benefit could be derived in that scarce commodities could be imported to America in exchange for gold and silver which they had in abundance. VITORIA obviously considered free trade as operating under just economic laws. It must be pointed out also that the benefits of trade with Spain were in his opinion to accrue to the Indians. This statement was clearly made to criticize the economic system which was then benefiting Spaniards in Spain and the colonists in America. The basis of his argument was the notion of the brotherhood of all men. It was against natural law for one man to disassociate himself from another without good reason. He quoted OVID: "Man is not a wolf to his fellow man, but a man." VITORIA continually stressed that these rights of trade and even digging for gold or fishing for pearls should not bring injury to the native population.

On the question of citizenship, he insisted that Spaniards born in America automatically became citizens of that Indian state while those who sought naturalization were entitled to this provided they submitted to the same responsibilities as the Indians.³⁵ If these rights were challenged by the Indians, the Spaniards should first try to persuade them rationally that they intended no harm, but wanted to live in peace with them. If the Indians rejected this appeal and prepared to make war against them, the colonists could then use force to defend themselves. Citing AQUINAS, VITORIA asserted that "warding off and avenging a wrong" was a just cause of war because the Indians would be denying the Spaniards their rights under international law.

Mindful of the cultural differences between the Indians and Spaniards, VITORIA conceded that the Indians could have been motivated by their

understandable fear of such awesome strangers to expel the Spaniards. However, while the Spaniards were justified in defending themselves by war, it was not right for them to enforce other rights of war as confiscating their goods or seizing their cities. In such a case, war was just on both sides. When the means of rational persuasion were exhausted to no avail, it was permissible for Spaniards to seize their lands and reduce the natives to subjection to enjoy the rights sanctioned by international law.³⁶ For this statement, he cited S. AUGUSTINE that "peace and safety are the end and aim of war". It was lawful then to wage both a defensive and offensive war to secure the ends of peace. To add to this controversial point, he felt that international law permitted victors to seize as their own what was captured in war. To be sure, the argument of free trade and travel as a justification of war was somewhat weak. VITORIA in a subtle way tied it to another idea that had deep roots in the history of civilization. Ambassadors, he said, were inviolable in international law; the Spaniards were the ambassadors of Christian civilization. Therefore, the Indians were bound to receive them hospitably. Moreover, Christians possessed the right to preach the Gospel: "If the Spaniards have a right to travel and trade among the Indians, they can teach the truth to those willing to hear them." There is little doubt that for VITORIA Christianity was the path to truth for everyone. If the Indians could be excused before the European discovery, they were not after it. Spaniards therefore had the moral responsibility to teach Christian values to the native population. Removal of the barriers to this was implicit in this responsibility. If recourse to war had to be taken to advance this cause, so be it, he seemed to imply. Brotherly correction, he said, was as important in natural law as brotherly love.

But why should the Spaniards be the teachers of Christian civilization in America? VITORIA supported their claim on the grounds that it was granted to them by the pope and, further, by the fact that it was the Spanish Crown which financed the voyages. He had, however, to explain this position in view of his earlier statement that the pope was not the temporal ruler of the world. His reasoning was that although the pope's juridical power was in the domain of spiritual affairs, he nevertheless possessed temporal power in matters that had a spiritual objective. Twisting almost painfully between arguments derived from international, natural, and religious law, VITORIA supported the pope's power to grant to Spain the exclusive right of colonizing America. The conquest was to be spiritual; hence, the pope's power and Spain's right of colonization were defensible. Replying to the possible question why Spain alone, and not other Christian nations, should be entrusted with this mission, he contended that such an action would prevent the development of quarrels that would undermine the process of conversion to Christianity. Clearly, the religious turmoil that was dividing European Christendom was the background for this apparently self-serving conclusion. Spain, then, possessed the right to colonize America. But, this right meant the responsibility to create and sustain political order and peace

necessary for the teaching of Christianity. VITORIA emphasized that, while they did not have the right to prevent the teaching of Christianity, the indigenous peoples were free to accept or reject it. The coercive power of Spain was therefore limited to providing the conditions for the propagation of Christianity. This power could also be justifiably used against Indian rulers who prevented their subjects from converting to Christianity or who inflicted punishments on those who were converted. For VITORIA, coercion must be balanced by "moderation and proportion, so as to go no further than necessity demands". VITORIA urged his students to be mindful particularly of the paramountcy of the spiritual objectives of colonization. Although wars might be justified in international law, they sometimes led to massacres and inhumane acts which soured relations between peoples of different cultures and made the values of Christianity unacceptable. Persuasion, restraint, and moderation were oftener better methods of achieving a spiritual goal than coercion and war. He confessed that, in his understanding of the events in America, the Spaniards "were bound to employ force and arms" to continue their work there, but these measures were undertaken "in excess of what is allowed by human and divine law". VITORIA was in no doubt about the value of the spiritual ends of Spanish colonization, but he was equally insistent on the proper means of advancing those ends. Admitting that the means were often dictated by the particular circumstances of events, he urged as an operating principle alongside legal rights the reference to the mission of teaching Christian civilization in deciding what means were to be used in specific situations, "lest what in itself is lawful be made in the circumstances wrong".

As VITORIA used the argument of expediency in imploring the Spanish authorities to be wary of waging war when they had the legal right to do so, so he urged a similar expediency in suggesting that, in areas where large numbers of Indians were converted, the native rulers could be deposed and the Christian Indian community brought under the jurisdiction of a Christian ruler to protect their new way of life. By giving the pope the ultimate responsibility for such an action, he hoped to forestall the capricious interpretation of this by secular rulers whose primary interest might be graspingly materialistic.

Returning to the question of the ritual of human sacrifice practiced by some native cultures, he stated that Spaniards did not need papal authority to intervene to stop the practice. Everyone had the right to rescue innocent people from an unjust death. It did not matter whether all the Indians accepted this ritual and rejected the Spaniards' offer of assistance to put an end to it. The right of intervention to protect human rights was rooted in the universal moral order. How did he square this justification of intervention with his earlier condemnation of it? Intervention was to be condemned if it led to the seizure of Indian territory, but approved if motivated by the consideration of safeguarding the human rights of individuals.

Spanish political supremacy was permissible if the majority of inhabitants freely chose a Spanish ruler over a native one. This political conception was

in keeping with the development of political thought in Western Europe from the Middle Ages. AQUINAS had held that the principle of political authority was derived from the community. A ruler must use this power for the good of the community and, if he used it tyrannically, he could be deposed. VITORIA cited the example of the Franks who deposed CHILDERIC and put in his place PEPIN, the father of CHARLEMAGNE. The final formal title by which the Spaniards could establish sovereignty over America was by virtue of their support of Indian allies. Drawing on the precedent of the case of the Tlaxcaltecs who had allied themselves with the Spaniards against the Aztecs, VITORIA asserted that it was lawful for Spaniards to offer their support as an ally in a civil war to the side that had suffered a wrong in return for the promise of sharing the fruits of victory. The cause of allies and friends was, in his opinion, a just cause of war. He saw the legal grounds of the expansion of the ancient Roman empire, approved by S. AUGUSTINE and AQUINAS, as being on this principle.

There was left only one title for VITORIA to treat, namely, imperial trusteeship. Some had argued that since the Indians were incapable of conducting the business of government properly, Spain should undertake to administer their country for them: "Accordingly, they have no proper laws nor magistrates, and are not even capable of controlling their family affairs; they are without any literature or arts, not only the liberal arts, but the mechanical arts also; they have no careful agriculture and no artisans; and they lack many other conveniences, yea necessities, of human life."⁸⁷ VITORIA neither affirmed nor denied it. He contended, however, that the argument would have merit if the claims were true. Whatever its merits, he added, prime consideration must be given to the welfare and interests of the Indians, not merely for the profit of the Spaniards.

Finally, he stated that if Spain's supremacy could not be justified in any of the legal titles he had enunciated, it did not mean that Spain should withdraw from America, thereby suffering economic losses. Trade could continue, despite the loss of political hegemony, and the government in Spain could recover its revenue by a tax on imports from America. He cited the example of Portugal which had benefited economically from trade in Asia without reducing the native peoples to subjection. Further, there were so many Christian converts among the American Indians that "it would be neither expedient nor lawful for our sovereign to wash his hands entirely of the administration of the lands".

The doctrine of Indian liberty so majestically initiated by VITORIA was elaborated in the lectures given in 1539 by BARTOLOMÉ CARRANZA at the college of San Gregorio in Valladolid.⁸⁸ He rejected the notion of papal or imperial power over the Indians and stated that, though they could not prevent the preaching of Christianity, the Indians could not be forced to accept it. To the question whether Spaniards had the right to enslave Indians after the conquest, he replied that they did not have the right to retain them just as they had no right to conquer and place them in subjection in the first place. The pope could appoint a Christian ruler to look after the spiritual life of

those Indians who were converted to Christianity, but in no way could he keep them as his subjects. The Indians had the right to life and human dignity given to people of all races and they could not be deprived of this right either by the king or church. Moreover, if the Indian community agreed not to listen to the ideas of another religion or follow laws which were different from their own, they could not be forced to do so. What CARRANZA was arguing for was the acceptance of the idea that Indians had the right to form their own society. This right was based, he thought, in natural law which operated equally for all people. Acceptance of this principle led him to the radical assertion that in America it was not illegal for Christians to be subjects of non-Christian rulers because Indian dominion over their lands was legitimate. In this respect, he went beyond the position of VITORIA who, in accordance with the view of AQUINAS, had argued against such a position because it would constitute a danger to Christianity. More, if Christians waged an unjust war against the Indians, CARRANZA concluded that Indians could make Christians their prisoners and acquire true dominion over them in accordance with international law. Faithful to the vision of both scholastic and humanistic trends of the sixteenth century, CARRANZA conceived of the Indian communities of America within the general international community, bound by the same ideals.

The general theological support of the most important theologians for the pro-Indian cause as well as the political and diplomatic triumphs of BARTOLOMÉ DE LAS CASAS prodded the emperor CHARLES V to issue the momentous New Laws in 1542. These laws revealed the spirit of the ideas of LAS CASAS, VITORIA, SOTO, and CARRANZA; the Indians were vassals of the Crown and had the right to life, safety, and self-preservation; they could freely dispose themselves and their property; they should be educated and instructed in Christian values; and they had the right to demand justice against the injuries done to them by the Spaniards.³⁹

It was, however, too much to expect that such a remarkably humane piece of legislation would be accepted. Resentment among the colonists in America and critics in Spain found an able spokesman in the Spanish humanist, GINÉS DE SEPÚLVEDA.⁴⁰ His treatise, *Democrates alter*, composed in 1544 sparked an intense controversy in Spain for several years. To be sure, his militant imperialism was a restatement of earlier ideals on colonization, articulated by PALACIOS RUBIOS and MATÍAS DE PAZ. But, the teaching of VITORIA and political activity by LAS CASAS has made too great an impact on the intellectual scene in Spain to allow SEPÚLVEDA's thesis to go unchallenged.

For SEPÚLVEDA, the interests of civilization demanded that the inferior, backward and weak be subservient to the superior, advanced, and strong. Clearly using sources drawn from ARISTOTLE and history, he attempted to show that hierarchy based upon civilized values, not equality, was the natural order of the universe. In his opinion, Spain was justified in making war against the Indians of America to create the political conditions for the propagation of Christian civilization. Herein lay Spain's historic civilizing mission, that was, to redirect the world towards enlightenment. The Ameri-

can Indians were inferior to Spaniards in intelligence and every kind of virtue and human feelings. Compared to Spaniards, they were like "children to adults, women to men, . . . and monkeys to human beings".⁴¹

As was the order of the day, SEPÚLVEDA sought permission from the royal commission of the Indies to have his treatise published, but it was withheld owing to the controversial nature of its thesis. It was sent to the university of Salamanca and Alcala to be studied in 1547. However, in July 1548 the university of Salamanca, the bastion of VITORIA's vision, rejected the request for publication. SEPÚLVEDA's treatise was already circulating in manuscript form, winning the approval of men like FERNANDO DE VALDEZ, later Grand Inquisitor of Spain. What emerged was a struggle between the contending theses of VITORIA and SEPÚLVEDA for ideological supremacy over the colonization of America.

It is against this background that one can understand the acrimonious debates that followed. LAS CASAS accused SEPÚLVEDA of condoning cruelty and slavery; SEPÚLVEDA replied that a scorpion was not more poisonous than LAS CASAS. FRAY MELCHIOR CANO, who had succeeded his master VITORIA in the prime chair of theology at Salamanca upon his death in 1546, then took up his intellectual cudgels against SEPÚLVEDA.⁴² In 1546, he gave a series of lectures on the question of Spain's sovereignty in America which must have carried not a little weight in the refusal to have SEPÚLVEDA's treatise published. In response to the arguments of SEPÚLVEDA, he affirmed that, in accordance with international law, the Indians possessed true dominion over their land, a right that could not be nullified by their infidelity or alleged backwardness. No one was by nature a slave or subject of another human being. In natural law, there was no "difference between human beings because all were born equal". Sure, the Aristotelian notion of hierarchy based upon intelligence had some merit. But, this was a matter of personal choice. Greater wisdom and a superior political system did not give any state the authority to conquer another state. He criticized the defense of conquest as operating for the greater usefulness of the natives. The desire to improve the conditions of other people was a matter of charity, not of justice, and could not, therefore be accompanied by coercion. To SEPÚLVEDA's claim that the superior political system of the Roman empire was the historical precedent for Spain's militant imperialism, CANO contended that, while the Romans conquered some provinces justly, they gained others because of greed and ambition, just as "Spain conquered for the gold that they took" from America. Judea, he recalled, was not invaded because they did not have a political system. Indeed, theirs was superior to the Romans because they received it from God.

Neither was idolatry a cause for enslavement. As for crimes against nature, it was permissible to defend the innocent, whether they were practiced by Indians or by Christians. This did not mean that it constituted grounds for making war against the Indians. The right of intervention to protect the innocent was defensive: "Consequently, we should not go further than is necessary for this end. If, therefore, we can remove them from these crimes

by persuasion, in no way should we do it by force or coercion."⁴³ Most certainly, this did not justify the excessive tribute that the Spaniards levied on the Indians. This practice was nothing less than "shameful robbery".

For CANO, the variety of sovereign kingdoms in history was proof that the emperor was not the ruler of the world. He could not have possessed this power by natural law because there would obviously be a contradiction between that idea and another notion, also rooted in natural law, that no one was by nature the political subject of another. Like VITORIA, CANO rejected the notion that the pope had dominion over the world by virtue of the superiority of his spiritual power. True, he had a certain spiritual jurisdiction over Christians and could ask Christian rulers to defend the rights of Christians. But, the pope did not possess any power over the Indians. To be sure, he had the responsibility to protect the preaching of Christian culture, but this authority pertained to the domain of charity. The idea of charity in international politics was the central theme of CANO's treatise. Continuing, he said that the obligation of charity did not carry with it any coercive force, unlike justice, which was acquired by force. The dynamic of charity and other spiritual virtues pointed towards equality, and were more hindered by violence than helped by it.

What then were the legitimate bases for the intervention in America? CANO argued that all nations shared a natural kinship and right of communication. International law permitted every man to travel wherever he wanted, provided he did not do any harm. However, if the Indians seemed to resent the Spaniards, it was because the Spaniards had gone to America "not as pilgrims, but as invaders, unless one can call Alexander a pilgrim". Secondly, one could intervene to preach Christianity. However, the Indians were free to accept it or reject it. If tyrannical rulers tried to prevent their people from being exposed to Christian teaching, theoretically force could be used. But, CANO pointed out that it was to be used solely to defend the innocent, not to convert them to Christianity. The desire of the majority of Indian communities to have the emperor as their ruler and support for the group that had justice on its side in a civil war were other grounds for Spanish intervention. No sooner had CANO formulated the titles for intervention than he reprimanded those who plundered the wealth of America for the good of Spain and the colonists, as if to say that the actual conquest was not motivated by the ideas he had elaborated.

DIEGO DE COVARRUBIAS was another member of the commission to decide upon SEPÚLVEDA's book.⁴⁴ In 1548, he presented his lectures on the colonial issue.⁴⁵ Structuring his thesis in such a way as to refute SEPÚLVEDA's ideas, he articulated his own thesis defending the liberty of the American Indians. He first tried to reconcile the contradiction between the natural liberty of all human beings with the historical existence of slavery. Using texts drawn from Greek philosophy, Roman law, sacred scripture, AQUINAS, and TORQUEMADA, he asserted that the principle of natural liberty was incontrovertible. By natural law all men were born equally free. The imperative of liberty was at the heart of existence. From the beginning of time, nature had as its objective

the good of the cosmos, the human race, and the state. However, as history developed, some men abused this liberty, disturbing the general order. Through the consent of all nations, wars were introduced to preserve justice by punishing the wicked. Prisoners were made slaves to save them from a deserved death. Slavery then was the law imposed by history to repress collective crimes and preserve peace. There was no such thing, then, as natural slavery. He admitted the idea that civilized nations could intervene in communities where the people were more like animals than men. But, he doubted that this was the character of the American Indians. The principle of intervention was the general good of all humanity by assisting those who did have the means for dignified self-preservation.

Focusing the light of these principles on the Indian communities, he boldly asserted the natural law of liberty. They had the right of sovereignty and independence; their rulers possessed true dominion over their towns, and could demand respect for their basic rights. Not only could they justly prohibit Spaniards from extracting gold from their territory and fishing for pearls in their public rivers, but they could also deny them entry to their lands. Extending the concept of sovereignty further than VITORIA, he declared that the Indians had the right to prohibit the immigration of Spaniards who were interested only in commerce because, once admitted, those Spaniards, more clever, stronger, and better armed, would only bring ruin to their lands. Neither the pope nor the emperor could authorize a war to compel the Indians to accept Christianity because the Indians possessed justly their property and territory. Wars of religion, then, must be condemned. He added that such a holy cause did not justify the enormous cruelty and barbarity that took place.

Yet, he felt that there were legitimate reasons for intervention. Spaniards had the right to preach Christianity in America, a right, he stressed, that should have been pursued by means of persuasion and an enthusiasm characterized by respect for Indian rights, unattended by the desire for dominion. More specifically, armed intervention was justifiable in certain situations to assist and protect the innocent who were sacrificed every year. All people belonged to one international community and were brothers. The same reasoning justified intervention to assist an oppressed party in its war against tyrannical rulers. In addition, as Christians, they had the responsibility to intervene to protect those Christians whose lives were threatened by non-Christians.

COVARRUBIAS sought a synthesis of the idea of the individual rights of the Indians on the one hand and the rights of the international and Christian community on the other. Theoretically, they were not incompatible. As long as peaceful means were used, conflicts and differences could be resolved. In practice, however, force was the order of the day. That was why COVARRUBIAS emphasized the importance of Indian rights and the sovereignty of Indian communities. Where violence was perpetrated unjustly by the Indians, he likewise did not hesitate to state those situations in which Spaniards could

justly intervene, not to enslave, but to defend and protect the liberty of the oppressed. The spirit of his work was the antithesis of SEPÚLVEDA's.

In 1550, CHARLES V convened a meeting of fourteen theologians and jurists at Valladolid to study the colonial question. LAS CASAS and SEPÚLVEDA presented their opposing views of the conquest in a debate that was characterized by mutual recriminations. The debate, however, was inconclusive. AS DOMINGO DE SOTO put it in his summation: "DR. SEPÚLVEDA affirmed that the war against the Indians was not only legitimate but expedient; LAS CASAS contended that the war was neither legitimate nor expedient."⁴⁶ What was significant was the importance attached to the papal directives of ALEXANDER VI which guaranteed the right of intervention in America by the Crown of Spain to spread Christianity. The central question was the power of the pope to invest temporal power over the Indians. The theologians at the conference generally followed VITORIA in rejecting the temporal power of the pope. The jurists, on the other hand, tended to support the notion, arguing from history that, in the wars against the Moslems, the pope had granted temporal power to Christian rulers to advance the cause of Christianity. That SEPÚLVEDA's book was not published was a sort of triumph for the VITORIAN view of the conquest. But, the ideological struggle was far from over. In 1555, the president of the council of the Indies, GREGORIO DE LÓPEZ, attacked the thesis of VITORIA in his commentary on the *Partidas*.⁴⁷ For him, the pope had the right to punish idolatrous pagans and to transfer this right to Christian rulers. War against them was just if they persisted in their customary sinful ways. According to SEPÚLVEDA, all the canonists in the council supported "the legitimacy of the conquest to eradicate idolatry and establish Christianity".

The support for the Sepulvedan thesis by an influential sector of the Spanish intellectual community was obviously the stimulus for the lectures on the conquest of America given by JUAN DE LA PEÑA between 1559 and 1563.⁴⁸ A student of CANO and CARRANZA and a friend of LAS CASAS, JUAN DE LA PEÑA had observed the course of the debate on the conquest from the beginning of its new turn under VITORIA in the 1530's. As an advocate of VITORIA's position, he viewed with alarm the influence of SEPÚLVEDA. What was at stake, in his opinion, was Spain's civilizing mission. On the question of the origin of Spain's dominion in America, he restated the position of the theologians that neither the pope nor the emperor possessed temporal power over the Indians. He insisted that the right of intervention given by pope ALEXANDER VI to the Spanish Crown did not constitute the right of conquest, but the right to oversee the Christianization of America by peaceful means.⁴⁹ He disputed SEPÚLVEDA's contention that the Spaniards waged a just war against the Indians because of idolatry. Since faith was a supernatural gift, no one could be forced to receive it. To do this was tantamount to tyranny. Christ was the head of all human beings. If Christians were already members of his body, those who were not Christian were potential members who, endowed with free will, must freely be persuaded of the truth of Christianity.

PEÑA then analyzed with some depth the notion of barbarism.⁵⁰ It was the magical term used by men like SEPÚLVEDA to define the nature of the

American Indian and to justify war against them. SEPÚLVEDA found his source in ARISTOTLE's statement that it was natural that the intelligent should rule over the unintelligent. For him, Spanish dominion and Indian subjection were the natural conditions for the advancement of Christian civilization in America. Referring to the Portuguese enslavement of Africans, SEPÚLVEDA wrote that the condition of Africans was better under slavery, to prove his point about his recommendations for the American Indian. PEÑA understood the term to mean a cultural situation in which the laws of a society were not rational and where all kinds of unnatural crimes were practiced, or where there was not even a rudimentary semblance of a political system. Sure, in such cases, a case could conceivably be made for armed intervention. But, he contended, he did not know of any society that fitted that definition. Certainly not the Indians of America. PEÑA rejected the use of the notion of superior and inferior civilizations, as he sought to demystify the politically charged term, barbarism. To accept this principle, in his opinion, would mean that any society that thought itself superior had the right to wage war against those nations it considered inferior. He could not accept SEPÚLVEDA's citation of the conquests of the Roman empire as being motivated by this principle. For him, greed, ambition, and force of arms were the motives in most cases. To illustrate his point, he asked whether the king of Spain had the right to intervene in France if he felt Spaniards were superior in intelligence.

In his treatment of those situations where Spain had the right to intervene militarily, he followed the analytical line drawn by VITORIA, CARRANZA, CANO, and COVARRUBIAS. The most serious cause was the defense of innocent sacrificial victims. War was, of course, to be the last resort, and one must take into consideration whether the war would cause a greater loss of life than the religious rituals. He recalled the story told by PLUTARCH of a Roman general who was sent to a city to punish its citizens for human sacrifice. On learning that it was an ancient custom, the general "pardoned the past and prohibited the practice in the future". Wars that were undertaken justly were defensive, and once the objectives were achieved. Spaniards were to restore to the native people all that they had taken.

The theoretical underpinning of Spanish imperialism in America took on a different character in the 1530's, thanks to the influence of FRANCISCO DE VITORIA. The early militant imperialism, defended by PALACIOS RUBIOS and MATÍAS DE PAZ, was superseded by a conception that sought to give colonization the foundation of justice. Nurtured by men like LAS CASAS, ANTÓN DE MONTESINOS, and ALONSO DE ZORITA, and the religious orders, this concept was defined brilliantly by VITORIA and developed by his students and followers. In truth, its genesis occurred in the late fifteenth century, a period that brought a general tendency towards institutional reform. In that turbulent century, when European feudalism was giving way to commercial capitalism, Europeans on the one hand were more assertive and adventurous; on the other hand, their anxiety prodded them to seek reform in institutions that had become frozen in old practices and abuses. What was surprising was that

some would go back to the scholastic philosophy of AQUINAS as they sought humane solutions to new problems. But, intellectual life in the fifteenth century was characterized by a certain sterility.⁵¹ The breakdown of the medieval synthesis of reason and revelation had left Christendom intellectually adrift. The Protestant Reformation offered one solution to the ensuing spiritual vacuum. Scholasticism, especially the ideas of AQUINAS, provided the foundation for those who desired modernization and reform within the traditional structure of Christendom, a trend that led to the council of Trent.

The conquest of America began the process of the European domination of the world, certainly one of the most significant aspects of modern history. The problems that it raised, like the right of domination and the rights of subject peoples, brought answers that still raise controversy today. In the sixteenth century, in the face of increasing dependence on the wealth of the Indies, despite encountering a native population whose culture was markedly different from theirs, some Spaniards in America and in Spain struggled to make the defense of the American Indian the official policy of their government. The value of their support for Indian human rights and the sovereignty of Indian communities, their belief in the equality of all communities, regardless of race, culture, and religion, within an international community, sharing similar ideals, surely transcended their historical context. One can question their implicit belief in the superiority of Christianity and European culture. But, in this, they were rooted in their own times. This presumption of superiority, one must hasten to add, has been held by other religions and cultures. Did VITORIA's view of the mission of Spain triumph over SEPÚLVEDA's? On the official governmental level, the influence of VITORIA and his followers was instrumental in getting considerable legislation passed to protect the Indians. The peaceful conquest of northern Mexico and the Philippines must be credited to the pro-Indian movement. But SEPÚLVEDA's position was more in tune with those in Spain and Europe, not to mention the colonists in America, who had benefited economically from the conquest, especially after the opening up of the silver mines in Mexico and Peru in 1546. The reconciliation of the theme of the struggle to win human and civil rights for the American Indians with that of their social and cultural catastrophe remains elusive.

¹ Born around 1486, FRANCISCO DE VITORIA entered the Dominican convent of San Esteban in Burgos while still young. He left for Paris in 1507 for his arts course, later graduating to the study of theology in 1513. He commenced lecturing at Paris in 1516. In 1522 he received his licentiate and doctorate in theology, returning to Spain the following year. See RICARDO G. VILLOSLADA, *La Universidad de Paris durante los estudios de Francisco de Vitoria*, (Analecta Gregoriana, XIV), Rome, 1938; V. BELTRAN DE HEREDIA, *Los manuscritos del Fray Francisco de Vitoria. Su vida, su doctrina e influencia*, Madrid, 1930; VENANCIO D. CARRO, *La Teología y los teólogos-juristas españoles ante la conquista de América*, 2 vols., Madrid, 1944.

² STANDONCK (1443–1504) studied at Gouda with the Brethren of the Common Life and at Louvain before coming to Paris in 1470 where he received his M. A. at the college of Ste. Barbe in 1477. He taught at the college of Montaigu from 1477, becoming principal in 1483. See VILLOSLADA, *op. cit.*, 61–63; A. RENAUDET, *Jean Standonck, un réformateur catholique avant la Réforme*, in: *Bulletin de la Soc. de l'Histoire du Protestantisme français* LVII (1908) 5–18; A. HYMA, *The Christian Renaissance. A History of the Devotio Moderna*, New York, 1924, 236–250.

³ PETER CROCKAERT (Petrus Bruخلensis) came to Paris in the last decade of the 15th century, enrolling in the college of Montaigu. See VILLOSLADA, *op. cit.*, 230ff; J. QUETIF-ÉCHARD, *Scriptores ordinis Fratrum Praedicatorum*, Paris, 1719–21, II, 29; H. DENIFLE, *Quel livre servait de base à l'enseignement des maîtres en théologie dans l'université de Paris*, in: *Revue Thomiste* 2 (1894) 149–162.

⁴ VILLOSLADA, *op. cit.*, 279.

⁵ *Ibid.*, 291–301.

⁶ V. BELTRÁN DE HEREDIA, *Historia de la Reforma de la Provincia de España (1450–1550)*, Rome, 1939, 143ff.

⁷ See L. HANKE, *La lucha de la justicia en la conquista de América*, Buenos Aires, 1949; BARTOLOMÉ DE LAS CASAS, *Apologética historia de las Indias*, Madrid, 1909.

⁸ LUCIANO PEREÑA VICENTE, *Misión de España en América*, Madrid, 1956, 7–10; –, *La Universidad de Salamanca, forja del pensamiento español en el siglo XVI*, Madrid, 1954, 164.

⁹ P. LETURIA, *Maíor y Vitoria ante la conquista de América*, in: *Analecta Gregoriana* 101 (1959) 259–298.

¹⁰ For some twenty years PALACIOS RUBIOS was adviser to the Crown of Spain and President of the council of the Mesta. A lawyer of considerable repute, he took an active part in the preparation of the laws of Toro (1505). His *De iustitia et iure obtentionis ac retentionis regni Navarrae*, published in 1514 or 1515, gave an important clue to his position on the Spanish conquest. He argued that the Spanish conquest of Navarre in 1512 after the excommunication of the rulers of Navarre by Pope JULIUS II was a holy war and thus justified. See the introduction of S. ZAVALA in his edition of *De las islas del mar océano* by Palacios Rubios, XXII–XXVII; also, E. BULLÓN, *Un colaborador de los Reyes Católicos. El Doctor Palacios Rubios y sus obras*, Madrid, 1927.

¹¹ PALACIOS RUBIOS, *De las islas del mar océano*, ed. by S. ZAVALA, Mexico, 1954, 128.

¹² *Ibid.*, 128. For a discussion of the Bulls of Pope ALEXANDER VI in 1493, see P. LETURIA, *Las grandes bulas misionales de Alejandro VI, 1493*, in: *Bibliotheca Hispana Missionum* (1930) 213–232.

¹³ “Por tanto, la naturaleza créó en cierto modo a todos los hombres iguales y libres . . . fueron las guerras las que originaron la esclavitud”: PALACIOS RUBIOS, 27.

¹⁴ *Ibid.*, 57.

¹⁵ “Ahora bien: Dios es el señor de todo, y por consiguiente el que intenta separar a alguien de su dominio, como hacen los infieles, que perturban al fiel o cristiano, deben justamente perder el derecho que sobre ellos ejercen”: *Ibid.*, 117.

¹⁶ See J. N. FIGGIS, *Studies of political thought from Gerson to Grotius, 1414–1625*, Cambridge, 1931; F. J. C. HEARNshaw, *The social and political ideas of some great medieval thinkers*, London, 1923; R. W. and A. J. CARLYLE, *A history of medieval political theory in the West*, Edinburgh, 1936.

¹⁷ M. SERRANO SANZ, *Orígenes de la dominación española en América*, Madrid, 1918, 279.

¹⁸ Born between 1468 and 1470, MATÍAS DE PAZ studied in Paris from 1490–1496. He was professor of theology at the university of Valladolid and in 1513 obtained the chair of Scripture at the university of Salamanca. He died in 1519. See BELTRAN DE HEREDIA, *Un precursor del maestro Vitoria, el P. Matías de Paz y su tratado 'de Dominio Regum Hispaniae*

super Indos, in: *La Ciencia Tomista*, XI (1929) 173–190; BARTOLOMÉ DE LAS CASAS, *Historia de las Indias*, bk. 3, ch. 7.

¹⁹ MATÍAS DE PAZ, *De Dominio Regum Hispaniae super Indos*, ed. by S. ZAVALA, Mexico, 1954, 215.

²⁰ *Ibid.*, 222.

²¹ *Ibid.*, 244.

²² *Ibid.*, 255.

²³ See L. HANKE, *The first social experiments in America*, Cambridge, Mass., 1935; S. ZAVALA, *La Encomienda Indiana*, Madrid, 1935; L. B. SIMPSON, *The Encomienda in New Spain*, California, 1929.

²⁴ Born in 1495, DOMINGO DE SOTO was a student at the university of Alcalá before continuing his studies at the university of Paris where he was influenced by FRANCISCO DE VITORIA. He returned to Alcalá as professor in 1519–1520, developing a reputation as an outstanding theologian. He was a firm defender of the Vitorian view of the colonization of America. See BELTRÁN DE HEREDIA, *Domingo de Soto. Estudio biográfico documentado*, Madrid, 1961; —, *El maestro Domingo de Soto*, in: *La Ciencia Tomista*, 133 (1932).

²⁵ *Ibid.*, 255ff. See also BELTRÁN DE HEREDIA, *Los manuscritos del maestro Fray Francisco de Vitoria*, Madrid, 1928, 151, 235–239.

²⁶ FRANCISCUS DE VITORIA, *Relectio de Indis et De Iure Belli relectiones*, ed. by ERNEST NYS, Washington, Carnegie Institution of Washington, 1917, 9–100; see also J. BAUMEL, *Les leçons de Francisco de Vitoria sur les problèmes de la colonisation et de la guerre*, Montpellier, 1936, 57–88.

²⁷ VITORIA, *Relectio de Indis*, 119.

²⁸ Cajetan, *Quest.* 66, art. 8; See also L. G. A. GETINO, *El maestro Fray Francisco de Vitoria y el renacimiento filosófico-teológico del siglo XVI*, Madrid, 1914.

²⁹ VITORIA, *op. cit.*, 126.

³⁰ On the notion of the political supremacy of the emperor, see C. BARCIA TRELLES, *La autoridad universal del emperador*, in: *Anuario de la Asociación Francisco de Vitoria*, 1 (1931), 197–213; M. TORRES, in: *Idea de la monarquía universal hasta Francisco de Vitoria*, *Ibid.*, II, 147ff.

³¹ VITORIA, *Relectio de Indis*, 138.

³² *Ibid.*, 139.

³³ *Ibid.*, 146.

³⁴ *Ibid.*, 151ff; for a discussion of VITORIA's contribution to the notion of international law, see J. BROWN SCOTT, *The Spanish origin of international law. Francisco de Vitoria and his Law of Nations*, Oxford, 1934; C. BARCIA TRELLES, *Francisco de Vitoria, fundador del Derecho Internacional moderno*, Valladolid, 1928; E. NYS, *Le Droit de la Guerre et les précurseurs de Grotius*, Brussels, 1882.

³⁵ *Ibid.*, 154.

³⁶ *Ibid.*, 155; VITORIA discussed the notion of a just war in a separate relectio, *De Iure Belli*, 165–187.

³⁷ *Ibid.*, 161.

³⁸ Professor at the college of San Gregorio in Valladolid, BARTOLOMÉ DE CARRANZA was invited by the emperor to attend the council of Trent in 1545. He was one of the closest advisers to PHILLIP II. His influence later waned and in 1559 he was placed in the Inquisition's jail in Valladolid on charges of heresy. In 1576 he was formally condemned by Pope GREGORY XIII and ordered to recant sixteen heretical opinions in his catechism. A few months later, he died. See PEREÑA, *Misión de España en América*, 27–37.

³⁹ BARTOLOMÉ DE CARRANZA, *Ratione Fidei Potest Caesar debellare et tenere Indos Novi Orbis*, in PEREÑA, *Misión de España en América*, 38–57.

⁴⁰ GINÉS SEPÚLVEDA, *Democrates segundo*, ed by A. LOSADA, Madrid, 1951, 33; see also T. ANDRÉS MARCOS, *Los imperialismos de Juan Ginés de Sepúlveda*, Madrid, 1947; A. F. G. BELL, *Juan Ginés de Sepúlveda*, Oxford, 1925.

⁴¹ BELL, *op. cit.*, 90–91, n. 69.

⁴² Born in 1509 in Cuenca, MELCHIOR CANO was a student at the university of Salamanca and joined the Dominican convent in 1523. From 1527–1531, he was a student of VITORIA. After completing his studies there, he went to the college of San Gregorio in Valladolid where he had BARTOLOMÉ CARRANZA among his professors. In 1534 he was made Master of Philosophy and, two years later, professor of theology at Valladolid. He gave a course on the Indies in 1539–1540. He taught at the university of Alcalá from 1543. In 1551 he was invited by the emperor to attend the council of Trent. See PEREÑA, 61–89; see also BELTRÁN DE HEREDIA, *Melchor Cano en la universidad de Salamanca*, in: *La Ciencia Tomista* 143 (1933) 178–268.

⁴³ “Quare non possunt extendi amplius quam ad hunc finem necessarium sit. Si enim verbi possent ab hoc scelere abduci, non possumus ab illo quemquam eripere per vim aut coactionem”: MELCHIOR CANO, *De Dominio Indorum*, in: PEREÑA, *op. cit.*, 109.

⁴⁴ Born in 1512, DIEGO DE COVARRUBIAS entered the university of Salamanca in 1522, receiving his bachelor's degree in law in 1534. At this time he came under the influence of VITORIA and DOMINGO DE SOTO. He received his doctorate in 1539 and obtained the chair of canon law the following year. In 1547 he was named to the commission to investigate the propriety of SEPÚLVEDA's book, *Democrates segundo*. See PEREÑA, *op. cit.*, 151–182.

⁴⁵ DIEGO DE COVARRUBIAS, *De Justitia belli adversus Indos*, in: PEREÑA, 184–231.

⁴⁶ BELTRÁN DE HEREDIA, *Domingo de Soto*, 237–274; —, *El maestro Domingo de Soto en la controversia con Sepúlveda*, in: *La Ciencia Tomista*, 45 (1932) 35–49, 177–193.

⁴⁷ GREGORIO LÓPEZ, *Las Siete Partidas del sabio rey Alfonso nono*, Salamanca, 1555, partida II, tit. 23, ley 2.

⁴⁸ Born in 1513, JUAN DE LA PEÑA studied at the college of San Gregorio in Valladolid where he had as masters BARTOLOMÉ CARRANZA and MELCHIOR CANO. He began teaching at Salamanca in 1559 when he explicated the *Secunda Secundae* of AQUINAS. He died in 1565. See PEREÑA, 235–267; BELTRÁN DE HEREDIA, *El maestro Juan de la Peña*, in: *La Ciencia Tomista* 51 (1933) 40–60, 145–178.

⁴⁹ JUAN DE LA PEÑA, *An sit iustum bellum adversus insulanos*, in: PEREÑA, 270–305.

⁵⁰ *Ibid.*, 298–301.

⁵¹ See S. OZMENT (ed.), *The Reformation in medieval perspective*, Chicago, 1971, 3–11; E. GILSON, *History of Christian Philosophy in the Middle Ages*, New York, 1955, 438, 464–65; FRANCIS RAPP, *L'église et la vie religieuse en occident à la fin du moyen âge*, Paris, 1971, 251–366.