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The Thomism of Bartolomé de Las Casas and the Indians of the New World

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THE THOMISM OF BARTOLOMÉ DE LAS CASAS AND THE INDIANS OF
THE NEW WORLD

A Dissertation

Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Doctor of Philosophy

in

The Department of Political Science

by
Thomas Francis Xavier Varacalli
B.A., Belmont Abbey College, 2011
M.A., Louisiana State University, 2014
May 2016

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This dissertation is dedicated, humbly, to my parents

Joseph Anthony and Lillian Elizabeth Varacalli

and to my two alma maters

Belmont Abbey College and Louisiana State University

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ABSTRACT

This dissertation examines Bartolomé de Las Casas as a Thomistic political philosopher. It argues that Las Casas intentionally drew upon the philosophy of Thomas Aquinas in order to provide a robust philosophical anthropology that was able to defend Amerindian rationality and self-rule. He uses Thomas and the Classical tradition to disprove the notion that the Amerindians are natural slaves, to uphold the inherent goodness of politics, to protect Amerindian kingdoms from imperial claims and the direct power of the papacy, and to condemn the unjust wars of the Spanish Conquest of the Americas. Las Casas' Thomism is particularly important because he provides an alternative to his great contemporary, Francisco de Vitoria. Whereas Vitoria's Thomism defends certain aspects of the Conquest through the *ius gentium*, Las Casas' Thomism leads to a more comprehensive condemnation of the Conquest.

INTRODUCTION: POLITICAL PHILOSOPHY AND THE SPANISH CONQUEST OF THE AMERICAS

The purpose of this dissertation is to examine the political thought of Bartolomé de Las Casas (1484-1566), a Spanish Dominican who defended the self-rule of the Amerindians and condemned many aspects of the Conquest of the Americas. The central argument of this dissertation is that Las Casas used the philosophy of Saint Thomas Aquinas in order to provide an account of the human person, to explicate the relationship between God and humankind, to defend the goodness of politics, and to reiterate the importance of the constitutional principles of the consent of the governed and jurisdictional boundaries. His Thomistic philosophical anthropology equipped Las Casas with the necessary theoretical grounding to condemn many of the intellectual arguments that the Spanish used in support of the Conquest, such as Aristotelian natural slavery, the desire for a universal empire, the notion that *dominium* (dominion) comes only from grace or faith in Christ, the temporal power of the papacy, and a particular misunderstanding of the just war theory that allowed wars to be waged for conversion. Instead, Las Casas posited that the idea of Aristotelian natural slavery is incompatible with the goodness of God's creation, that the vision of universal empire threatens the common good of particular regimes, that *dominium* comes from nature, that the papacy has no temporal authority regarding worldly ends, and that the just war tradition cannot be used in order to legitimize the Conquest.

Although there is a significant amount of literature on Las Casas, scholars have not adequately addressed his political thought. Many commentators are often baffled by his perceived scholarly digressions on the importance of writing history, his stories of ancient Greek and Roman figures, his analysis of the nature of good governance, and his strong emphasis on the character of jurisdiction. Las Casas was well-versed in the writings of the ancient and medieval thinkers. His writings are full of citations to Aristotle, the Greek historians, Scripture,

the Church Fathers, the scholastics, canon law, and Thomas Aquinas. Las Casas invokes the tradition of Western thought not out of vanity or sophistry, but out of a sincere desire to address and to answer the great questions of political philosophy: What is justice? Why is politics necessary? Who should rule? What are the powers and limits of a just ruler? When is it right to wage war?

Las Casas approached these questions with significant exigency. It was not enough for these questions to be asked and debated casually in the friaries, monasteries, and university halls. Due to the high political stakes of the Spanish Conquest, these pivotal questions had to be answered. Deliberation and choice had to be made. Michael Oakeshott once argued that great political ideas and thinkers arise due to historical necessity: the collapse of the Greek *polis* sparked political philosophy, as the English Civil War incited the modernity of Hobbes.¹ With this idea in mind, the question of why political philosophers continue to ignore the Spanish Conquest arises, given that historians almost universally acknowledge the discovery of the Americas as one of the chief instigators of early modernity. A likely response is that the Conquest itself did not produce new ideas or new political systems. This argument is, admittedly, true. Many of the great controversies in the New World are continuations of medieval debates: whether *dominium* comes from nature or grace, whether either the intellect or will precedes the other, whether the pope has temporal authority, and whether Christians may wage war against infidels on behalf of religion, among many other questions. The fact that there is nothing particularly ‘new’ in the Conquest is an insufficient reason for ignoring the topic. After all, the ability of a philosophical tradition to be exported and applied in a different geographical, cultural, and historical setting is clearly worthy of consideration. It is not

¹ Michael Oakeshott, *Hobbes on Civil Association* (Indianapolis, IN: Liberty Fund, 1975), 7.

surprising, in this context, that Las Casas draws upon the philosophical tradition that most unabashedly appeals to nature: Thomism.

The revival of Thomism in the sixteenth century, of which Las Casas was a part, is also under-examined by political philosophers.² This neglect of both sixteenth-century Spanish Thomism and the Conquest is a result of various trends in the way the discipline studies the history of ideas. Since the 1950s, one of the most dominant and successful paradigms of viewing the history of ideas is Leo Strauss' ancient-modern divide. According to Strauss, ancient (and medieval) political thinkers sought to discover what is natural in order to differentiate the first things or principles that transcend mere convention. Classical natural right, therefore, posited that there was truth that was "trans-historical, trans-social, trans-moral, and trans-religious."³ This view was thoroughly challenged in the sixteenth century by Niccolò Machiavelli, who asserted that human initiative, not nature, was the root of political order. Nature, according to Machiavelli, ought not to act as a guide to human action. Nature, rather, had to be overcome. This Machiavellian belief is present in all subsequent philosophers, such as Francis Bacon, who believed that science could overcome nature, and Thomas Hobbes, who asserted that political order is an act of artifice. Coupled with Strauss' ancient-modern divide is a fairly explicit "great man" approach to the history of political thought. Few philosophers, according to Strauss, provide insights and ideas that are new.⁴ Consequently, Strauss does not focus on minor

² James Brown Scott, *Spanish Origins of International Law: Francisco de Vitoria and His Law of Nations* (Oxford: Clarendon Press, 1934); Eric Voegelin, *History of Political Ideas, Volume V: Religion and the Rise of Modernity*, ed. James L. Wiser (Columbia: University of Missouri Press, 1998), 108-133. Usually the revival of Thomism is discussed by political theorists due to its impact on the development of international law.

³ Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1965), 89.

⁴ See, for example, the organization of Leo Strauss and Joseph Cropsey, eds. *History of Political Philosophy*, 3rd edition (Chicago: University of Chicago Press, 1987).

thinkers.⁵ As a result, the Thomists of the sixteenth century, such as Las Casas, did not receive any significant attention by Strauss or thinkers particularly influenced by him.⁶

While many Straussians limit their study of the sixteenth century to a handful of thinkers (Machiavelli, Montaigne, and, occasionally, the Reformers), they nevertheless appreciate its sheer importance. Other students of political thought mitigate the importance of the sixteenth century by emphasizing either the late medieval period or the Enlightenment. Scholars with a particular theological bend sometimes assert that the seeds of modernity are embedded in the disagreements medieval philosophers had with Thomas Aquinas. Modernity, in this narrative, begins with the voluntarism of John Duns Scotus, the nominalism of William of Ockham, the conciliarism of Marsilius of Padua and Nicholas of Cusa, and the imperialism of Dante.⁷ Modernity, therefore, is a theological crisis; when human beings minimize the extent to which they can understand God, they consequently minimize the extent to which they can understand the natural world. Skepticism and individualism – hallmarks of modernity – result from this fundamental shift. The sixteenth century is simply the time period in which these ideas become more common through the emergence of Machiavellian politics, the Reformation, and the rise of the nation-state. Ironically, other thinkers consider the sixteenth century to be too medieval, and

⁵ Although Strauss does not explicitly write about minor thinkers, the footnotes in his work still show great knowledge of their respective corpuses. Strauss, for example, in *Natural Right and History*, does mention two Spanish Thomists: a passing reference to Domingo de Soto (on the pre-Hobbesian state of nature) and four citations to the last great thinker of the Iberian Thomistic tradition, Francisco Suárez, see: Strauss, *Natural Right*, 185n23, 222n83, 286n56, 295.

⁶ Michael Allen Gillespie, *The Theological Origins of Modernity* (Chicago: University of Chicago Press, 2008); Pierre Manent, *Metamorphoses of the City: On the Western Dynamic*, trans. Marc LePain (Cambridge: Harvard University Press, 2013).

⁷ John Neville Figgis, *Studies of Political Thought from Gerson to Grotius* (Cambridge: Cambridge University Press, 1931); Gillespie, *Theological Origins of Modernity*; Colin Morris, *The Discovery of the Individual* (Toronto: University of Toronto Press, 1987); Servais Pinckaers, O.P., “Moral Theology in the Late Middle Ages: The Nominalist Revolution,” in *The Sources of Christian Ethics*, trans. Sr. Mary Thomas Noble, O.P. (Washington, D.C.: Catholic University of America, 1993); Richard Weaver, *Ideas Have Consequences* (Chicago: University of Chicago Press, 1948).

they assert that modernity does not begin until the Enlightenment.⁸ Modernity, according to this view, is marked by freedom of speech, the separation of Church and State, the narrowing of reason to calculation, the advancement of science and mathematics, contempt of superstition, and the beginning of a more historical view of humanity's origins, among other factors.

The Cambridge School, a group of intellectual historians associated with Quentin Skinner, is the third group of scholars who address the sixteenth century. It is also the group that deals most closely and profoundly with the issues concerning the Spanish Conquest.⁹ In a certain regard, the Cambridge School counters the Straussian strand of political thought. Although this school acknowledges the importance of the sixteenth century, it traces the origins of modernity to the reemergence of Roman law in the early second millennium. In rejecting "the great man" theory, it pays particular attention to the development of political thought through the study of minor and nearly forgotten thinkers. As a result of this method, it produces impressively encyclopedic works on Renaissance philosophy. The Cambridge School asserts that the origin of modernity is the rekindling of liberty made possible by the decline of the Holy Roman Empire through the emergence of independent Italian city-states and the increased use of the subjective *ius* (right) in church and civil affairs.¹⁰ From the perspective of political

⁸ Guido de Ruggiero, *The History of European Liberalism*, trans. R.G. Collingwood (Boston: Beacon Press, 1957); Eric Voegelin, "Equivalences of Experience and Symbolization in History" *Published Essays, 1966-1985*, ed. Ellis Sandoz (Baton Rouge: Louisiana State University, 1990); Eric Voegelin, *From Enlightenment to Revolution*, ed. John H. Hallowell (Durham: Duke University, 1975).

⁹ Anthony Pagden and J.A. Fernandez-Santamaria are the two scholars in this group who most closely examine the Spanish Conquest. A partial list of their most important works includes: J.A. Fernandez-Santamaria, *The State, War, and Peace: Spanish Political Thought in the Renaissance, 1516-1559* (Cambridge: Cambridge University Press, 1977); Anthony Pagden, *The Fall of Natural Man* (Cambridge: Cambridge University Press, 1982); Anthony Pagden, *Spanish Imperialism and the Political Imagination* (New Haven: Yale University Press, 1990).

¹⁰ Annabel S. Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (Cambridge: Cambridge University Press, 1997); Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (New York: Cambridge University Press, 1978); Quentin Skinner, "Political Philosophy," in *The Cambridge History of Renaissance Philosophy*, ed. Charles B. Schmitt and Quentin Skinner (Cambridge: Cambridge University Press,

philosophy, while there is much to learn from the Cambridge School, there is a major philosophical limitation to their corpus. In their attempt to provide comprehensive histories, they often fail to understand the central importance of natural right in the history of ideas and how the concept of natural right changes in the sixteenth century.

This dissertation aims to study the Spanish Conquest in historical context, but without historicism. It frames the Conquest in the context of the great questions in political theory. It does not conflict with Strauss' ancient-modern distinction or his arguments concerning the inception of modernity. To a certain extent, it accepts one of Strauss' most important claims: that classical natural right (of which Thomas is a part) is still a viable alternative to the modern age.¹¹ This dissertation attempts to show how sixteenth century Spanish Thomism can be a case study for the strength of classical natural right. The Spanish Conquest provides a stress test by which to measure the merits of Thomism. As will be shown, Las Casas' Thomism is able to defend the dignity of each individual and the right of self-rule. Needless to say, the dignity of the individual and the right to self-rule are two ideals highly prized by almost all contemporary thinkers today.

The Spanish Conquest deserves to be taken seriously by political philosophers. Whether it is Machiavelli's self-congratulatory comparison to Columbus, Bacon's dream of a New Atlantis, or the Puritan migration to Massachusetts a century later, the great projects of modernity all express their radicalness by invoking the New World.¹² The Spanish Conquest

1988), 389-452; Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).

¹¹ Leo Strauss, *Natural Right and History*, 120-164; Leo Strauss, "What Is Political Philosophy?" in *What Is Political Philosophy? And Other Studies* (Glencoe, IL: Free Press, 1959), 27-40.

¹² Niccolo Machiavelli, *Discourses on Livy*, trans. Harvey Mansfield and Nathan Tarcov (Chicago: University of Chicago Press 1996), 5; Francis Bacon, *New Atlantis* (Wheeling, IL: Harlan Davidson, 1989); John Winthrop,

raised, at least as much as any other event, the question of what the nature and purpose of a human being is – the most foundational (and debated) question in political theory. This question was examined through several different topics: human equality, the jurisdictional spheres of temporal and spiritual affairs, the innate goodness of politics, the role of the individual nation and the consent of the governed, and the just war.

The Political Questions of the Spanish Conquest

The first topic that the Conquest addressed was human equality. The topic was raised in response to the prevalence of various shocking habits and customs of the Amerindians, such as human sacrifice, cannibalism, and the wearing of scant clothing. The strangeness of these customs was intensified by the unfamiliarity of the New World. There were new foods, plants, trees, and animals. This hitherto unknown world made Spanish heads spin with both awe and fear.¹³ As such, the first Europeans struggled to explain the customs of the Amerindians to their intrigued audiences. Christopher Columbus considered the natives to be meek and gentle; they were a people who could be converted to the faith with patient instruction.¹⁴ Amerigo Vespucci, however, emphasized the more lewd aspects of the natives. He wrote that the Amerindians walked around naked, engaged in incestuous sexual relations, and possessed no concept of property. Vespucci, at a loss to explain the culture, considered the inhabitants to be

“Model of Christian Charity,” The Winthrop Society http://winthropsociety.com/doc_charity.php (accessed January 3, 2016).

¹³ Katherine Anne Thompson, *Monsters in Paradise: The Representation of the Natural World in the Historias of Bartolomé de Las Casas and Gonzalo Fernandez de Oviedo* (PhD diss., University of Maryland, College Park, 2010), 1-34.

¹⁴ Christopher Columbus, *The Voyage of Christopher Columbus*, trans. John Cummins (New York: St. Martin’s Press, 1992), 93-96.

Epicureans.¹⁵ As interaction with the Amerindians proceeded, the natives increasingly began to be portrayed as cruel and vicious human beings. The cannibalism of a certain group, the Caribs, was characterized as a typical practice of all of the natives. By 1510, the nominalist Scholastic thinker John Major judged all Amerindians to be Aristotelian slaves-by-nature.

Aristotle's discussion on slavery occurs in Book I of the *Politics*, where he distinguishes between slavery by convention and natural slavery. The former results when the victors of a war enslave their opponents and label them barbarians. Aristotle does not simply condemn this form of slavery, but he recognizes that it is not in accordance with what is best because it allows men who are superior in virtue to be subordinate to morally inferior men. Such a situation, Aristotle notes, is deleterious for both the slave and the master given that "bad rule is disadvantageous for both."¹⁶ Aristotle, then, turns his attention to the second kind: natural slavery, or slavery in accordance with nature. This type of slavery derives from a reflection of the slave's actual nature, rather than happenstance. He writes, "Those who are as different from other men as the soul from the body or man from beast – and they are in this state if their work is the use of the body, and if this is the best that can come from them – are slaves by nature."¹⁷ A natural slave differs from the rest of his species because "he participates in reason only to the extent of perceiving it, but does not have it."¹⁸ By their very nature, natural slaves cannot participate in politics because political life, whether in managing a household or being able to rule in turn, is grounded in the exercise of the citizen's reason. A citizen needs to be able to deliberate and

¹⁵ Amerigo Vespucci, *Mundus Novus: Letter to Lorenzo Pietro di Medici*, trans. George Tyler Northup (Princeton: Princeton University Press, 1916), 6.

¹⁶ Aristotle, *Politics*, trans. Carnes Lord, 2nd Edition (Chicago: University of Chicago, 2013), 1.6.1255b9-10.

¹⁷ *Ibid.*, 1.5.1254b17-20.

¹⁸ *Ibid.*, 1.5.1254b21-24.

make choices; a natural slave would not be able to do these things. A natural slave can only be told what to do; hence, being ruled by a master is befitting for such a creature. Aristotle goes so far to state that between a natural slave and a master there is “even a friendship...for another.”¹⁹ The master looks out for what is good for the slave, while the slave is able to perceive the master’s intentions. It is important to note that Aristotle does not see natural slavery as a defect of the natural order. Nature does nothing in vain, and this kind of slavery provides some sort of good to humanity’s highest good: the city. Slavery allows the masters to have leisure and participate in political life.

John Major (1467-1550), a Scotsman teaching at the University of Paris, was the first European scholar to consider the Amerindians slaves by nature. Major was a luminary in the early sixteenth century, teaching figures as diverse as Vitoria, Vives, and Calvin. Major’s works, therefore, were widely read. As one of his latest commentators, Jeroen Willem Joseph Laemers, soberly notes, Major made his natural slave argument before the discovery of the Aztecs and Incas.²⁰ Hence, when he wrote, he lacked the information that Las Casas and even Vitoria would later possess. It is too speculative to claim that, if Major had written his treatise later, he would have argued differently. His argument was grounded upon a certain type of philosophical anthropology. According to Major, all human beings, regardless of their knowledge of Christ, were able to understand the principles of the Decalogue through the precepts of the natural law.²¹ The Amerindian crimes of cannibalism, human sacrifice, and idolatry were so wicked that it demonstrated that they failed to use the faculty of reason in a manner befitting fully rational

¹⁹ Ibid., 1.6.1255b13-15.

²⁰ Jeroen Willem Joseph Laemers, *Invincible Ignorance and the Discovery of the Americas: The History of an Idea from Scotus to Suárez* (PhD diss., University of Iowa, 2011), 168-169.

²¹ Ibid., 173.

human beings. In accordance with Aristotle's doctrine, some superior group, for the benefit of the natives, had to rule over them. Major writes:

These people [i.e. the Indians] live in a bestial manner...Wherefore, the first person to conquer them, justly rules over them, because these people, as is evident, are slaves by nature. As the Philosopher says in the [fourth and fifth] chapters of the *Politics*, it is manifest that some are natural slaves, others by nature free...And it is fitting that the one person rules, while the other, in accordance with his innate character, belongs to his master; wherefore he is to be dominated.²²

The notion that there are natural slaves and masters is strictly Aristotelian. Major interprets Aristotle in such a way that one civilization may actively search out for natural slaves and enslave them. He draws this interpretation from this particular line in Aristotle's *Politics*: "The art of war will also be in some sense a natural form of the acquisitive art; for one part of it is expertise in hunting, which should be used with a view both to beasts and *to those human beings who are naturally suited to be ruled but unwilling – this sort of war being by nature just.*"²³ Hence, if human beings have to wage war to enslave natural slaves, it is quite possible that there is an entire group – or continent – of such naturally dependent human beings.

Although Major was the first scholar to propose the natural slavery of the Amerindians, Juan Gines Sepúlveda (1489-1573) is the man most infamous for the defense of this position, due largely in part to his confrontation with Las Casas before Charles V in 1550 during the Valladolid debate. Sepúlveda's defense of the Conquest rested upon four arguments. First, Sepúlveda argues, consistent with Major, that the Amerindians are Aristotelian natural slaves. The Spanish, due to their superior culture, ought to rule over the Amerindians for their own

²² John Major, *In Secundum Librum Sententiarum*, q. 44, d.3, fol. 188v, quoted in Laemers, *Invincible Ignorance*, 248-249.

²³ Aristotle, *Politics*, 1.8.1256b25.

betterment. Second, the propensity of the Amerindians to commit actions against the natural law shows that they cannot govern themselves properly. Third, Spanish rule would restore natural right by putting an end to human sacrifice of innocents. Fourth, the Conquest would pave the way for the propagation and eventual evangelization of the Christian religion.²⁴ Sepúlveda attempts to balance his Aristotelianism with his Christianity. In his dialogue, he attempts to frame the wars against the Amerindians as just wars, despite the fact that the Christian just war tradition limits just wars to defensive wars. Sepúlveda's position failed to convince many Thomists.

The one issue that many commentators on Sepúlveda have failed to address concerning his use of natural slavery is his conflation with mastery and political rule. The mastery of slaves, even natural slaves, according to Aristotle, “has nothing great or dignified about it: the master must know how to command the things that the slave must know how to do.”²⁵ In other words, there is nothing praiseworthy about slave-owning because the master is forced to manage and to have knowledge concerning the menial tasks of a slave. To a certain extent, the master is concerned with the soul of the slave, but such concern is severely limited because the natural slave's soul does not possess reason. Ironically, it is the Christian aspect of the Conquest that glorifies natural slavery. The Catholic Spanish, the argument goes, conquered the Amerindians for the salvation of their souls – a concept foreign to Aristotle. The salvation of the natives' soul ennobles mastery because it provides the master with a task that is even more important than politics. Whereas in Aristotle the acquisition of slavery is subordinate to the good of the *polis*, in

²⁴ Juan Gines Sepúlveda, *Tratado sobre Las Justas Causas de la Guerra Contra los Indios* (Mexico: Fondo de Cultura Economica, 1979), 80-84, 112-122, 128-152, 154-178.

²⁵ Aristotle, *Politics*, 1.7.1255b35.

Sepúlveda the acquisition of slaves transcends the temporality of the polity. Spain is given a role unknown to Athens.

As the natural slavery argument did not gain traction until Major's treatise in 1510, it was not the predominant reason the Spanish employed in favor of the Conquest. Rather, the most infamous legitimization of the Conquest came from *Inter Caetera*, a papal bull promulgated by Alexander VI in 1493.²⁶ This bull laid the foundation of the second political topic of the Conquest: whether the pope's spiritual jurisdiction extended to the temporal sphere. The temporal power of the papacy was linked to the question of whether *dominium* came from nature or grace. If *dominium* came from grace, the pope, as Vicar of Christ, would be able to dictate who had dominion. The pope would be able to take away *dominium* from infidels or heretics, since they were not in a state of grace. If *dominium* came from nature, the jurisdiction of the pope's temporal authority was less certain, as it would allow infidels (i.e., those outside the Church) to possess property. The two most important canonists who addressed the topic in the thirteenth century were Pope Innocent IV (1195-1254) and his pupil Henry of Segusio (1200-1271), who is better known as Hostiensis.

Innocent IV recognized both the importance and the immediacy of the question due to the Mongol Invasions, in which Christianity was forced to interact with non-Christians other than Jews and Muslims. Innocent held that infidels had a right to *dominium*, but it was not an absolute right. The pope could dispense of the right because his power mirrored God's power. In his *Commentary on the Decretals*, Innocent writes, "We believe, that the pope, who is the Vicar of Christ, has the power not only over Christians, but also over all infidels, since Christ

²⁶ Alexander VI, "Inter Caetera," in *European Treaties Bearing on the History of the United States and Its Dependencies to 1648*, ed. Frances Gardiner Davenport (Washington DC: Carnegie Institution of Washington, 1917), 61-63.

had power over all men.”²⁷ Despite possessing control *de iure* over the whole world, Innocent somewhat restricted the grounds of papal interference. Innocent provided instances in which it would be wrong (or at least imprudent) for Christians to invade infidel lands if Christians had never previously ruled over those lands. The emperor, by the pope’s bidding, ought only to interfere with infidel countries that were once under Christian control; hence the legitimacy of the Crusades. Regardless of this distinction between a territory having once been controlled by Christians and a territory that had never been ruled by Christians, the pope could exercise temporal power if infidels, including those who had never heard of Christ, committed sins against natural law or inhibited Christians from preaching in their kingdom.²⁸

Innocent’s most famous student, Hostiensis, dissented from his teacher’s position. Hostiensis dismissed Innocent’s argument that infidels could have *dominium*: “It seems to me that in the advent of Christ all honor and all principality, all *dominium* and jurisdiction” belongs to the Church “from right and from just cause.”²⁹ The Church, by right, owned all lands because everything belongs to God. As such, the only type of infidel who could possibly have *dominium* were those who recognized that it came from the Church. Hostiensis posited that since the pope was universal Vicar of Christ, the pope had full authority over infidels. Thus, for Hostiensis, it

²⁷ “Credimus, quod papa, qui est Christi vicarius, potestem habet non tantum super Christianos, sed etiam super omnes infideles, cum enim Christus habuerit super omnes potestatem” quoted in Walter Ullman, *Medieval Papalism* (London: Methuen & Co, 1949), 119.

²⁸ James Muldoon, “John Wyclif and the Rights of the Infidels: The *Requerimiento* Re-Examined,” *The Americas* 36, no. 3 (1980): 304-305; Ullman, *Medieval Papalism*, 119-128.

²⁹ “...mihi tamen videtur quod in adventu Christi omnis honor et omnis principatus et omne dominium et iurisdictio de iure et ex causa iusta,” quoted in Muldoon, “John Wyclif” 305.

was in accordance with justice for the property and jurisdiction of heathens to be handed over to faithful Christians.³⁰

The bull *Inter Caetera* was read by the Spanish through the lens of this debate between Innocent and Hostiensis. Although Hostiensis fell out of favor in the fifteenth century because some of his opinions were nearly synonymous with John Wyclif (1324-1384), both Las Casas and Vitoria believed that the Spanish Crown were legitimizing the Conquest on arguments similar to the canonist. Las Casas, for example, believed that the Crown's most trusted canon lawyer, Juan Lopez de Palacios Rubios, was influenced by Hostiensis.³¹ Palacios Rubios wrote the *Requerimiento*, an injunction that conquistadors read out loud in order to explain to the natives that they were now subjects of the Spanish Crown due to the papal donation. Vitoria, in his *De Indis*, writes that the Spanish Crown was influenced by the ideas of John Wyclif – a veiled criticism of Hostiensis.³² Vitoria used great tact by attacking Wyclif rather than Hostiensis, for whereas parts of Hostiensis' corpus were still admired and used by canonists, Wyclif's theology was condemned as heretical at the Council of Constance (1414-1418). Since Wyclif and Hostiensis had similar views on the nature of *dominium*, Vitoria's attacks on Wyclif's theology were also criticisms of Hostiensis' work.³³

While an interpretation of *Inter Caetera* through the lens of Hostiensis would have certainly defended the Conquest, even Innocent's more "moderate" position gives credence to

³⁰ Silvio Zavala. *The Political Philosophy of the Conquest of America*, trans. Teener Hall (Mexico, D.F.: Editorial Cultura, 1953), 25-26.

³¹ Bartolomé de Las Casas, *History of the Indies*, trans. Andree Collard (New York: Harper & Row, 1971), 194.

³² Francisco de Vitoria, "De Indis" in *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrence (New York: Cambridge University Press, 1991), 240.

³³ Muldoon, "John Wyclif," 305-306, 312 n33.

certain aspects of the Conquest. Innocent had argued that the pope could take away the *dominium* of infidels who were sinning egregiously against the natural law. The cannibalism, human sacrifice, idolatry, and sodomy of the Amerindians provided the Spanish with a moral claim to conquer the Indians in order for these sins to be eradicated.³⁴

The Neo-Thomists of the sixteenth century, however, limited the power of the papacy even further than Innocent. They taught that, though the spiritual end is greater than the temporal end, both ends are just and distinct. The pope, therefore, could never exert temporal authority for worldly ends; on rare occasion, however, he could exercise temporal authority for a spiritual purpose if a king's edicts threatened the spiritual good. The Neo-Thomists emphasized that the pope's jurisdiction was limited only to the Church; infidels were outside its jurisdiction. The Church could only attack infidels if they were prohibiting and hindering the propagation of the faith. This Neo-Thomistic perspective on creating strict lines of demarcation between spiritual and temporal ends, however, was far from universally accepted by medieval thinkers.³⁵

This disagreement about the jurisdiction between the spiritual and temporal spheres forged the third political topic addressed in the Conquest: whether politics is good in itself. The Franciscan missionaries in the New World, for example, came from a different theological tradition than Thomism. Many Franciscan missionaries saw little value in Amerindian self-governance because they viewed the natives' system of government as an impediment to their conversion of Christianity. Moreover, the natives' governments perpetuated sinful practices, such as polygamy and cannibalism. As such, the Franciscans wanted to put an end to native self-

³⁴ Ibid., "John Wyclif and the Rights of the Indians," 312. James Muldoon, in a convincing revisionist interpretation of the *Requerimiento*, even argues that Palacios Rubios was influenced by Innocent, not Hostiensis. Muldoon's interpretation shows, at the very least, how similar their positions can be.

³⁵ For a fuller explanation of the *indirecta potestas* theory, see p.278-293 of this dissertation.

governance in order to eradicate such sins. The friars, wishing to build a heavenly kingdom in the New World more pure than the sinful polities of Europe, believed that they ought to rule over the Amerindians. They destroyed Amerindian villages and forced them to migrate to new towns created by the friars themselves. They replaced their political institutions with apolitical, religious, and quasi-monastic institutions in which the Franciscans ruled over the natives as if the latter were their spiritual children.³⁶ The Franciscan project, from an Aristotelian-Thomistic standpoint, was apolitical: no longer were the natives *citizens* to a king, but *servants* to the friars. Politics, according to this Franciscan view, was not good in-and-of-itself; any political body ought to exist solely for spiritual ends. The political body of Spain was necessary only insofar as it protected the friars from being attacked by the natives.

The Conquest was legitimized by the Alexandrian bull, the belief that *dominium* came from grace, and brute force, but it was further strengthened by the fourth great political topic of the Conquest: the relationship between empire and the nation. The theme of empire was ever-present in the medieval period, whether through disputes with kings or popes. Although the autonomy of the city-state from the Holy Roman Empire was one of the key themes of Italian Renaissance thought, the propensity of city-states to succumb to tyranny and faction in the late fifteenth century led some humanist thinkers to repudiate republicanism for the Platonic concept of the philosopher-king. In other words, humanists began to see a powerful monarchy, not the Aristotelian mixed government, as the perfect regime.³⁷ This belief in the supremacy of the rule of one opened up an opportunity for empire. Courtiers of Charles V, such as Miguel de

³⁶ John Leddy Phelan, *The Millennial Kingdom of the Franciscans in the New World*, 2nd Edition, Revised (Berkeley: University of California Press, 1970), 46-58.

³⁷ Skinner, "Political Philosophy," 428-430.

Ulzurum, considered Charles to be the Emperor of the World. Hence, it was posited that Charles had a right to rule the Amerindians.³⁸

Aristotelian natural slavery, the Alexandrian bull, the boundaries between the spiritual and the political, and the desire for empire were four reasons that were used, to varying extents, in defense of the Spanish Conquest. All four of these political topics converge on the fifth and final political question: the nature of the just war. Proponents of the Conquest believed that their ideas provided a sufficient just cause for the use of military force against the Amerindians. Yet, their arguments, whether natural slavery or the temporal power of the papacy, were based upon a variety of debatable assumptions about human nature. If their arguments proved untrue – if the Amerindians were not natural slaves, if the pope did not have temporal authority over the New World – than the perceived justice of the New World had to be called into question. If the answers the Spanish had provided to these political questions were wrong and unjust, the Spanish, not the Amerindians, were the main violators of natural right. The Salamanca School and Las Casas argued that the Spanish were positing incorrect answers to these political questions. The Neo-Thomists of the sixteenth century, to varying extents, defended the Amerindians against the claims of natural slavery, the temporal power of the papacy, political apocalyptic exigency, and empire.

Thomism and the Defense of the Amerindians

Thomism, the name posterity has assigned to the philosophy of Saint Thomas Aquinas and his disciples, is a comprehensive way of thinking and understanding the world. Thomas believed that revelatory faith and reason, though distinct, were fundamentally compatible. He flatly rejected, against the claims of his contemporary Siger of Brabant, that there was double

³⁸ David Luper, *Romans in a New World: Classical Models in Sixteenth-Century Spanish America* (Ann Arbor: University of Michigan, 2006), 72.

truth, i.e. that faith and reason lead to two different truths. For Thomas, faith and reason complement and enlighten each other; together they illuminate the world harmoniously.³⁹ Thomas' emphasis on natural reason came from his close reading of Aristotle, various Roman authors, the Church Fathers, and previous scholastic thinkers. His reading of the pagans, especially Aristotle, demonstrated to Thomas the power of reason. He drew upon the Aristotelian metaphysics of being, essence, and cause. Like the Church Fathers, he also adopted the Stoic tradition of natural law. Despite over one thousand years of development, the natural law tradition contained several ambiguities. Cicero's *On the Laws* exposed the confusion of whether natural law comes from the gods or nature.⁴⁰ The canonists often conflated natural law with the divine law. Thomas' achievement was to clearly define and distinguish the natural law from the divine law.⁴¹ Thomas identifies four laws: the eternal, the natural, the human, and the divine. Eternal law is the wisdom of God and natural law is humanity's imperfect participation in the eternal law. Natural law is known naturally to human beings through the exercise of practical reason, while divine law comes to human beings through revelation. From natural law, human beings are able to differentiate between good and evil. Human law is positive law that reflects the good attained from the natural law. Since humanity's comprehension of natural law is not perfect, God also provides divine law, the fourth and final type of law, which illuminates

³⁹ G.K. Chesterton, "Saint Thomas Aquinas" in *The Collected Works of G.K. Chesterton: Volume II* (San Francisco: Ignatius Press, 1986), 473-474.

⁴⁰ Cicero, *On the Commonwealth and On the Laws*, trans. James E.G. Zetzel. (New York: Cambridge University Press, 1999), 111-121. In this section, the lead character, Marcus, flip flops on whether natural law comes from nature or the gods. At the root of this ambiguity is whether the gods create nature or are subject to nature.

⁴¹ Paul E. Sigmund, *Natural Law in Political Thought* (Lanham, MD: University Press of America, 1971), 36-46.

truths that cannot be known solely through nature. Although natural and divine law may bring to light different truths concerning creation, they never contradict each other.⁴²

In addition to providing a universal account of human nature, Thomistic natural law had three important political implications. First, Thomas taught that government was natural. Government was a good in-and-of-itself and necessary for human prosperity. Following Aristotle, Thomas posited that all human beings are naturally political animals who need to live in political community in order to fulfill their end. Since princes ruled by nature, non-Christian governments were also legitimate. Although Thomas was not the only Christian thinker to assert the naturalness of politics, other Christian thinkers did not necessarily concur with his position. Augustine, for example, taught that government, though capable of justice, was a necessary product of the Fall. Hence, government is natural only insofar as it is what is best for human beings in a fallen world. For Augustine, government would not have existed before the Fall; for Thomas, government would have existed, regardless of the Fall. At first glance, such a difference would appear to be theological hairsplitting, as the Fall for both of them was an unquestionable reality. Yet, once an idea is acted upon, it eventually has a political implication. The Augustine-Thomas debate does matter because it affected the Franciscan missionaries in the world. The latter followed Augustine's position on government and fused apocalyptic theological beliefs with a progressive understanding of history in which the consequences of the Fall would eventually be reversed. This belief, all of a sudden, made the Augustine-Thomas debate politically relevant, because if the Franciscans could reverse the effects of the Fall, government would no longer be necessary. Hence, Amerindian government would not be

⁴² Thomas Aquinas, *Summa Theologica*. 2nd Edition. Translated by the Fathers of the Dominican Providence. New Advent. <http://www.newadvent.org/summa/> I-II Q. 91 a. 1-5.

necessary. The Thomists, however, rejected this claim since government is always necessary. As such, the Thomists understood the value of Amerindian government.⁴³

The second political effect of Thomistic natural law was that it led to limited government. Natural law limited the power of princes and rulers because they were subject to a standard that transcended the realm of social convention. As this standard was known, at least in its most elementary form, to all human beings, Thomas argues that rulers do not have indiscriminate power. He even posits that governments derive from the consent of the governed: “Now to order anything to the common good belongs either to the whole people or to someone who is vicegerent of the whole people. And therefore the making of law belongs either to the whole people or to a public personage who has care of the whole people.”⁴⁴ The prince, therefore, is the caretaker of the whole people. Although government is natural, Thomas, following Aristotle, argues that there are a variety of legitimate regimes, though he himself favors either monarchy or the mixed regime. Regardless of the type of regime, all just laws have to be in accordance with natural law. Thomas and his disciples, therefore, rejected absolutism and provided checks against the offices of the ruler, such as the belief that an unjust law was no law at all. The prince was expected to submit himself in obedience to the natural law and its objective standards. The prince also needed to respect the domains of other leaders, who also ruled by natural law.⁴⁵

The prince’s subservience to natural law, the consent of the governed, and the responsibility of the prince to respect the domains of other legitimate governments provides

⁴³ Augustine, *City of God*, trans. Henry Bettenson (New York: Penguin Books, 2003), 19.15; Aquinas, *Summa Theologica*, I Q. 96 a. 4.

⁴⁴ Aquinas, *Summa Theologica*, I-II Q. 90 a. 3.

⁴⁵ Aquinas *Summa Theologica* I-II Q. 95 a. 1, 5; Thomas Aquinas, *De Regno: On Kingship to the King of Cyrus*, trans. Gerald B. Phelan (Veritatis Splendor Publications, 2012), chs., 7, 13.

Thomism with an innate check against empire. Thomas himself rarely mentions empire in his political writings. His sixteenth century disciples, however, use Thomistic principles to condemn the notion that Charles was emperor of the world. Vitoria and Soto argue that empire was not instituted by natural law or revealed by divine law. They further claim that human law cannot legitimize empire because, following the Thomistic tradition of the consent of the governed, the world's populace never consented to empire. Hence, the Thomistic tradition provides a tremendously important argument against empire.⁴⁶

The third political effect of Thomistic natural law was a noticeable mitigation of papal temporal power. The pope, according to Thomas, was the Vicar of Christ and the leader of the Church. The pope was the inheritor of the spiritual jurisdiction that Jesus gave to his apostle, Peter. The pope's power, therefore, could neither be greater than the authority of Jesus or Peter. There is, then, an inherent limit to papal power. Christ gave Peter the spiritual authority of the Church, not temporal power over the world. Hence, the pope could not have temporal authority over the world. Thomas held that *dominium* comes from nature; consequently, a human ruler, regardless of whether he is in a state of mortal sin, can have *dominium* over land because the ruler is fulfilling a necessary function of human life, i.e. political life.⁴⁷

Followers of Saint Thomas, such as Torquemada and Vitoria, built upon Thomas' argument in order to form the *indirecta potestas* theory of the papacy. This theory would later find its fullest articulation in the writings of Robert Bellarmine, almost fifty years after the moral controversy concerning the Indies had lost its political importance.⁴⁸ Torquemada and Vitoria

⁴⁶ Domingo de Soto, *De Iustitia et Iure* (Lugdoni, 1582), 4.4.2; Vitoria, "De Indis," 252-258.

⁴⁷ Aquinas, *Summa Theologica*, II-II Q. 10 a. 8-10.

⁴⁸ Robert Bellarmine, "On the Temporal Power of the Pope. Against William Barclay" in *On Temporal and Spiritual Authority*, trans. Stefania Tutino (Indianapolis: Liberty Fund, 2012), 121-405.

follow Thomas in arguing that spiritual and temporal power are distinct. Although the end of the spiritual power (i.e. beatitude with God) is greater than the end of the temporal power (i.e. the common good of the citizenry), the spiritual power can only interfere with the temporal power insofar as the latter threatens the work of the former.

These three political implications, therefore, provide important and pertinent criticisms of the Spanish imperial project. Thomism inherently provides arguments against three out of the five major issues of the Conquest – the Franciscan apoliticism, the quest for empire-building, and the temporal power of the papacy. On a superficial level, Thomism seems quite modern in its conclusions (e.g. anti-empire and anti-temporal power of the papacy). Yet, Thomas comes to these positions, not from any modern perspective, but from Aristotelianism and Church teachings. He grounds his arguments in appeals to nature. Thomas' appeals to nature are metaphysical and essentialist.

In the sixteenth century, Thomism was not the dominant philosophy in Spain or Christian Europe. Thomism not only had to battle the Spanish imperial project, but the work of late-thirteenth, fourteenth, and fifteenth philosophical thought, much of which was critical of Saint Thomas and his appeal to nature. Scotus divorced the will from any intrinsic desire to seek happiness, Ockham denied the existence of universals, Dante asserted the greatness of empire, Marsilius, Jean Gerson, and Nicholas of Cusa posited conciliarist theories of the papacy, Pietro Pompanazzi denied that the immortality of the soul could be demonstrated without revelation, and, in the early sixteenth century, Luther challenged transubstantiation and other pivotal Catholic doctrines.⁴⁹

⁴⁹ Emile Brehier, *The Middle Ages and the Renaissance*, trans. Wade Baskin (Chicago: University of Chicago Press, 1965), 183-258.

Thomism was revived in the quest to find order amidst the philosophical chaos of the late medieval period and Renaissance. Its resurgence began in the city Thomas himself had once taught: Paris. Thomism was rediscovered in response to the perceived inadequacies of philosophical nominalism and, after the advent of Luther, the rise of Protestantism. The two leading Thomists who are responsible for this rediscovery of Thomism were Cardinal Cajetan and Peter Crockaert. Cajetan wrote in-depth commentaries of Thomas' *Summa*, which he published in 1511 and 1517. Crockaert produced a new edition of the *Secunda Secundae* with his favorite and most promising student, Vitoria. Vitoria brought Thomism back to the Spanish University of Salamanca, where he later replaced the traditional medieval textbook, Peter Lombard's *Sentences*, with Thomas Aquinas' *Summa*. Hence, the revival of Spanish Thomism is often considered the Salamanca School.⁵⁰

The Salamanca School, however, was not always in complete agreement with Thomas. The sixteenth century Thomists were attracted to his emphasis on virtue and natural right, but they lacked detailed attention to Thomas' metaphysics. Stephen Brett convincingly argues that the Neo-Thomists were influenced by the nominalists in four ways. First, whereas Thomas writes of relations analogously (a slave belongs to a master as a part belongs to the whole),⁵¹ the Neo-Thomists speak of univocal right. Second, whereas Thomas' thought is deeply indebted to teleology and, consequently, to an analysis of the finality of acts and agents, the Neo-Thomists employed a more legalistic framework of legal titles. Vitoria in his *De Indis*, for example, examines the legitimate and illegitimate *titles* of the Spanish Crown. Third, whereas Thomas'

⁵⁰ Skinner, *Foundations*, II: 135-136; Jared Wicks, S.J. "Introduction," in *Cajetan Responds: A Reader in Reformation Controversy*, ed. Jared Wicks, S.J. (Washington D.C.: Catholic University of America Press, 1978), 8.

⁵¹ This particular analogy is found in Thomas Aquinas, *Commentary on Aristotle's Politics*, trans. Richard J. Regan (Indianapolis, Hackett, 2007), 24.

political thought is always grounded on a person's relation to the common good, the Neo-Thomists follow the nominalists in emphasizing the subjective power of the individual. Thomas' political thought lacks any significant notion of a subjective *ius* (right), though certain passages in the *Summa* are sometimes seen as precursors to the idea.⁵² The Salamanca School, however, uses the subjective *ius* quite often in their theological works. By emphasizing the subjective *ius*, they add a more individualistic dimension to human affairs without denying the objective reality of natural right. Lastly, Thomas' political thought is always grounded in the inviolability of eternal law, while the Neo-Thomist emphasis is more concerned with the *jus positivium* (positive right).⁵³

The Uniqueness of Bartolomé de Las Casas

Las Casas' Thomism is unique because he did not learn Thomism from the university system. He never studied at Paris or Salamanca. Instead, he received his Thomistic training in a Dominican friary. Although Las Casas read Vitoria and corresponded with several Neo-Thomists, he was never directly affected by the nuances of the Salamanca School. Instead, as a philosopher free from the allegiance to any particular type of school, Las Casas articulates a new type of Thomism. Like the Salamanca School, Las Casas does not slavishly follow Thomas on every point. From his reading of other nominalists and canon lawyers, he also incorporates a heavy emphasis on the subjective rights of the individual. Yet, unlike the other Neo-Thomists, Las Casas also draws heavily upon Thomas' metaphysics and epistemology. He retains Thomas's emphasis on analogous relation, the finality of acts and agents, the relation to the

⁵² For example, Aquinas, *Summa Theologica*, II-II Q. 104 a. 5 mentions argues that subjects are not bound to obey their superiors in all things. An overview of the debate is provided in Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta: Scholars Press, 1997), 274-276.

⁵³ Stephen Brett, S.S.J. "The Justification of Slavery: A Comparative Study of the Use of the Concepts of *Jus* and *Dominium* by Thomas Aquinas, Francisco de Vitoria, and Domingo de Soto in Relationship to Slavery" (PhD diss., Catholic University of America, 1987), 214-215.

common good, and the inviolability of the eternal law. Whereas the Neo-Thomists mostly deal with questions of morality and human action, Las Casas addresses moral issues in the context of creation more fully than his contemporaries. As will be argued in the third chapter, his reflections on God's perfect design allows Las Casas to condemn the idea of natural slavery more robustly than did the Salamanca School. His emphasis on Thomistic epistemology provides Las Casas with a more compassionate understanding of why the Amerindians practice human sacrifice and cannibalism. His analysis of the soul, for example, explains that human sacrifice and cannibalism, though evil, are products of probable error. They committed these crimes not because of a lack of reason, but because of a miscalculation of reason. Moreover, his emphasis on metaphysical epistemology provides him with a humanistic defense of the use of persuasion in conversion. He condemned forcible conversion because of its failure to persuade the human mind; the Salamanca School, on the other hand, did not univocally condemn the use of force.⁵⁴

The second unique aspect of Las Casas is the character of his writing. Few scholars have treated Las Casas' Thomistic theology seriously. Part of this neglect is the result of an implicit prejudice that only academic theologians are genuine theologians. Whereas the writings of Vitoria and Soto are systematic, polished, and employ the medieval vocabulary of the scholastics, Las Casas' writings are often polemical, unfocused, undisciplined, brash, redundant, and, at times, exaggeratory. Las Casas' writings reflect the exigency of the moment. His writings always concerned the Amerindians and the New World. The Salamanca School, on the other hand, took the affair of the Indies seriously, but it never consumed their corpus; they were

⁵⁴ Bartolomé de Las Casas, *The Only Way*, trans. Francis Patrick Sullivan, S.J. (Mahwah, NJ: Paulist Press, 1992), 68-116; On Vitoria's defense of occasional force, see: Francisco de Vitoria, "Lecture on the Evangelization of Unbelievers," *Political Writings* (New York: Cambridge University Press, 1991), 341-351.

concerned with other theological and philosophical issues, ranging from scientific experiments to the Council of Trent.

The differences between the Salamanca School and Las Casas bore fruit. Although both the Salamanca School and Las Casas agreed that there were unjust and invalid aspects of the Conquest, Vitoria and Soto believed that certain aspects of the Conquest were just. Vitoria and Soto rejected *certain* Spanish claims to the New World, such as arguments made from empire. Yet, they also accepted certain Spanish claims to the New World based on their understanding of the *ius gentium* and the just war theory.⁵⁵ Las Casas rejected any argument legitimizing the Conquest on the *ius gentium* and the just war theory. Their differences stemmed from how they read Thomas. Although Thomas provided a robust way of thinking about politics, there were certain ambiguities in his thought. This dissertation will examine the consequences of two of these unclear aspects of Thomas' thought.

The first ambiguity in Thomism is the law of nations (*ius gentium*). According to Thomas, the law of nations is a type of positive law; its principles derive from natural law, but the *ius gentium* is not equivalent to natural law.⁵⁶ Frustratingly, Thomas does not go into great detail about the practical consequences of the law of nations. As such, the Neo-Thomists of the sixteenth century, in order to provide a more robust understanding of the *ius gentium*, added concepts that are not found in Thomas' corpus. Vitoria, for example, argues that if the Amerindians violated the *ius gentium*, the Spanish have a right to wage war against the natives. The tension within Vitoria's thought is that, though the *ius gentium* is positive human law, he insists that the *ius gentium* needs to be imposed as if it was as self-evident as natural law. The

⁵⁵ See Chapter 2 of this Dissertation, especially p. 95-109.

⁵⁶ Aquinas, *Summa Theologica*, I-II Q. 95 a. 4 r.1.

problem with this interpretation is obvious: the *ius gentium* is, by his own admission, not self-evident. When Vitoria legitimizes part of the conquest due to the Amerindians' supposed violation of the *ius gentium*, he is defending the conquest on principles that Saint Thomas would not require the Amerindians to know.⁵⁷ In contradistinction to Vitoria, Las Casas defends the *particular* rights of the Amerindians by drawing more exclusively on Thomas' other ideas, such as the relationship between human and natural law, the consent of the governed, concern for the public good, and the just war. From this perspective, the Spanish have no authority to conquer the Amerindian nations because the conquest violates the consent of the Amerindians, is not directed toward the good of the natives, and is in violation of just war theory.⁵⁸

The second important ambiguity that Las Casas handles concerns the political role of the papacy. Although Thomas did not share the views of conservative canonists such as Hostiensis, who believed that the papacy has direct temporal power, Thomas' ideas did not align fully with the doctrine of the *indirecta potestas*, which became articulated throughout the sixteenth and seventeenth century by his disciples, Vitoria, Bellarmine, and Suárez. Rather, in *Summa Theologica* II-II Q. 10 a. 10, Thomas mentions that the papacy has the authority to depose infidel leaders:

...the Church could by right take away the right of dominion of rule which unbelieving rulers have over Christians because, by reason of their unbelief, they deserve to lose their power over the faithful who are transformed into children of God. Yet it tolerates them in order to avoid scandal.

⁵⁷ Vitoria, "De Indis," 278. The ambiguity surrounding the origin of the law of nations is important because, at some times, Vitoria appeals to the customs of all nations – good customs which would appear to be human laws in accordance with the natural law – while other times he appeals to "the consent of the greatest part of the world" (281).

⁵⁸ Bartolomé de Las Casas, *In Defense of the Indians*, trans. Stafford Poole, C.M. (DeKalb: Northern Illinois University Press, 1974), 338; Las Casas, *History of the Indies*, 234, 195.

The ideas within this passage seem to conflict with Thomas' belief that government is based upon nature and not grace. Wanting their positions to be legitimized by Thomas, several thinkers, including Sepúlveda, attempted to use Thomas' position in favor of the Conquest over the Indies. Las Casas, however, uses this very passage to defend his own position. Thomas, Las Casas argues, cannot be used to legitimize the Conquest because a) he deals with pagan rulers in majority-Christian nations and b) he admits that the deposing of the leader would cause great scandal.⁵⁹

Thomas' unadulterated thought, therefore, does not provide a clear-cut defense of the Amerindians. In fact, due to his ambiguities concerning the *ius gentium* and the temporal power of the papacy, aspects of his thought were used to legitimize the Conquest. Las Casas believed, however, that such interpretations cherry-picked Thomas' work. Las Casas argues that the foundational ideas of Thomas – the belief that all human beings are able to understand the natural law, that *dominium* comes from nature, that government and politics is necessary and good for human beings – actually lead to a philosophically-informed defense of the Amerindians. Moreover, though aspects of Thomas' and Las Casas' thought are theologically-informed by Christianity, the core of their arguments consists of an appeal to nature and philosophy.

The Structure of the Dissertation

In order to thoroughly examine Las Casas' argument, this dissertation is divided into six chapters and a conclusion. The first chapter provides biographical notes, historical context, and a review of literature on the last one hundred years of studies on Las Casas. The second chapter outlines in detail how Thomistic scholars addressed the topic of the Amerindians before Las Casas. It pays attention to four major thinkers – Cardinal Cajetan, the reform-minded Pope Paul

⁵⁹ Las Casas, *In Defense of the Indians*, 119, 170.

III, Francisco de Vitoria, and Domingo de Soto. The last four chapters are composed of in-depth textual analysis of Las Casas' writings.

The third chapter surveys Las Casas' philosophical anthropology. It examines Las Casas' reflections on the relationship between God's distributive justice and creation, his articulation of the natural law, and his understanding of the rational soul. The chapter concludes with an important overview of Las Casas' theology of preaching. Here he asserts that, since all human beings are rational animals infused with the *imago Dei*, interaction with the Amerindians must be marked by persuasion and friendship as opposed to force and coercion.

The fourth chapter analyzes Las Casas' defense of Amerindian government through his use of both Aristotelian philosophy and Thomistic theology. Las Casas compares Amerindian regimes to Aristotle's understanding of the *polis*. Against the contemporaries of his day, Las Casas asserts that all Amerindians lived in political communities similar to that of the *polis*. He flatly rejects the analysis of Vespucci and Palacios Rubios, who considered the Amerindians to have existed without government. Las Casas demonstrates the sophistication of the Amerindian kingdoms by showing that they participated in the six professions that Aristotle posited were necessary for a *polis*. The second part of the chapter examines how Las Casas uses Thomas' emphasis on the consent of the governed and jurisdiction to protect the Amerindians from Spanish claims.

The fifth chapter is the climax of the dissertation. It explores the just war theory. It begins by tracing the development of the just war tradition from Augustine and Thomas. It then proceeds to explicate how Vitoria and Sepúlveda employed the tradition in their arguments. Whereas Vitoria uses the tradition to posit a moderate defense of the Conquest, Sepúlveda asserts boldly that the just war tradition supports the Conquest. Las Casas passionately disagrees

with both Sepúlveda and Vitoria. Las Casas claims that the Spanish are the violators of the just war tradition for discarding Amerindian self-rule, harming and killing innocent people, and destroying entire groups of people through deceit, coercion, and slavery.

The sixth chapter provides a brief overview on Las Casas' thought on the relationship between the spiritual and temporal powers. The chapter, in particular, focuses on how Las Casas wrestles with certain ambiguous passages concerning the papacy in *Summa Theologica* II-II Q.10. Here both Vitoria and Las Casas criticize Thomas' leniency regarding the exercise of papal power. It also sheds light on how both men use aspects of Thomas' work on papal authority to develop a more moderate position than Thomas had intended: the *indirecta potestas* tradition. The chapter concludes with how Las Casas uses the *indirecta potestas* to show the injustice of Spanish aggression.

The dissertation concludes with a reflection on why the appeal to nature is necessary in defending the Amerindians. A brief comparison to Montaigne's political thought is made in order to show that natural law, as opposed to skepticism, provides the most robust case for Amerindian self-rule.

CHAPTER 1: BARTOLOMÉ DE LAS CASAS IN SOCIO-HISTORICAL CONTEXT

The remarkable life of Bartolomé de Las Casas is entwined so irrevocably with the course of Spanish history that it is necessary to examine their development simultaneously. Few men of thought had such an impact on framing the intellectual underpinnings of the Spanish Conquest as he. Las Casas was born on November 11, 1484 to a small noble family in the town of Seville.¹ His father descended from *conversos*, Jews who had converted to Christianity.² Las Casas was only eight years old in the momentous year of 1492 when Spain achieved its centuries-old dream of driving out the Moors from the Iberian Peninsula. Unbeknownst at the time, the historical importance of the *Reconquista* was to be overshadowed by a young Italian sailor named Christopher Columbus, who was commissioned to discover a trade route to the Indies.

Almost everything of what is currently known about Columbus' first voyage comes from Las Casas; his copy of Columbus' first voyage, which he had used to write his *History of the Indies*, is the only one that is intact.³ Las Casas' judgment of Columbus is surprisingly positive. In his *History*, Las Casas praises Columbus for the very things for which most modern scholars criticize him: his mathematics and sea-craft, his magnanimity and virtue, his knowledge of the Bible and the Church Fathers, his fidelity to Isabella and Ferdinand, and his original noble intentions. Yet, Las Casas criticizes Columbus for allowing and contributing to the mistreatment

¹ Helen Rand Parish and Harold E. Weidman, "The Correct Birthdate of Bartolomé de Las Casas," *Hispanic American Historical Review* 56, no. 3 (1976): 385-403. As there is no intact birth certificate for Las Casas, his year and date of birth were the subject of great scholarly debate. For centuries, the far majority of scholars believed that he had been born in 1474. Archival work by Helen Rand Parish has challenged this claim. Her explanation for the date is accepted generally by most scholars.

² Manuel Giménez Fernández, "Fray Bartolomé de Las Casas: A Biographical Sketch," in *Bartolomé de Las Casas in History*, ed. Juan Friede and Benjamin Keen (DeKalb: Northern Illinois Press, 1971), 67.

³ John Cummins, "1492: An End and a Beginning," in *The Voyage of Christopher Columbus: Columbus' Own Journal of Discovery Newly Restored and Translated* (New York: St. Martin's Press, 1992), 4.

of the Amerindians, his acceptance of slavery, and the lack of control he had over his crew and sailors. Las Casas pinpoints the first Spanish atrocities not on Columbus, but on the unsavoriness of his crew. In such a vacuum of virtue, Columbus (with the notable exception of Queen Isabella) was best of the first Spaniards.⁴

Las Casas' treatment of Columbus is noticeable, particularly because of the close interaction his family had with the man. Las Casas' uncle, Juan de Peñalosa, helped to finance two of Columbus' ships: the *Niña* and the *Pinta*. Las Casas' own father traveled with Columbus on his second voyage in 1493.⁵ When his father returned in 1499, he entrusted the young Las Casas with an Amerindian slave that Columbus had given to him. The teenager had the slave for only a short time because Isabella reprimanded Columbus severely for having the audacity of enslaving men and women she claimed to be her subjects. She demanded the return of the Amerindian slaves to their native homeland upon pain of death.⁶ Thus was Las Casas' first engagement with an Amerindian.

The Queen's condemnation of Columbus' enslavement of her 'vassals' exposes the general confusion on the question of *dominium* that plagued Spain well into the late sixteenth century. There were three different medieval sources upon which Spain addressed the question of *dominium*. As will be shown, all three of these ideas had several ambiguities. The first influence upon the Crown's mind was the donation of Alexander VI, a Spanish pope. The opening paragraph of *Inter Caetera* stated that "among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the

⁴ Las Casas, *History of the Indies*, 15-18, 34-36.

⁵ Lawrence A. Clayton, *Bartolomé de Las Casas: A Biography* (Cambridge: Cambridge University Press, 2012), 13-14.

⁶ *Ibid.*, 19, 41.

Catholic faith and the Christian religion be exalted and everywhere increased and spread, that the health of souls be cared for and *that barbarous nations be overthrown and brought to the faith itself.*⁷ Alexander continued by lauding Spain for driving out the Moors, by praising the faith of Isabella and Ferdinand, and by exhorting the king and queen to continue the promulgation of the faith. He instructed the Crown “to lead the peoples dwelling in those islands to embrace the Christian profession.”⁸ Then, the actual donation of the land took place: the pope gave, granted, and assigned “forever to you and to your heirs and successors, kings of Castile and Leon, all and singular the aforementioned countries and islands thus unknown and hitherto discovered by your envoys and to be discovered hereafter, provided however they at no time have been in actual temporal possession of any Christian owner, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances of the same.”⁹ The pope concluded by naming Isabella and Ferdinand lords of the islands with all necessary jurisdiction. He emphasized that they appoint God-fearing men to the islands so that Christianity could be better promulgated. On threat of excommunication, he banned other countries from taking these lands from Spain. Thus, the tenor of the bull came down to this proposition: in order to promulgate the faith, Spain has exclusive privileges and jurisdiction over these newly discovered lands.¹⁰

When viewed historically, *Inter Caetera* was not a unique document. As James Muldoon argues, the papacy had a long-standing tradition of deciding cases and disputes among Christian

⁷ Alexander VI, “Inter Caetera,” 61, emphasis added.

⁸ *Ibid.*, 62.

⁹ *Ibid.*, 62.

¹⁰ *Ibid.*, 63.

nations when infidel lands were either claimed or discovered.¹¹ The Amerindians, according to *Inter Caetera*, were now under the protection of the Spanish, though little was directly stated about what the protection entailed. The bull was used by the Spanish to legitimize a whole host of practices concerning the Amerindians, such as the *encomienda* (the plantation-esque economic system that the Spanish imposed on the natives), slavery, forced relocation of land, and the eradication of previous Amerindian sovereignty. Thomists, such as Vitoria and Las Casas, challenged this interpretation of *Inter Caetera*. They believed that the donation in-and-of-itself did not give the Spanish the right to colonize and subject the Amerindians to Spanish rule. The pope, according to the Thomistic understanding of the *indirecta potestas*, did not have temporal authority, except in severe cases in which the papacy had to intervene for a distinctly spiritual purpose. Vitoria and Las Casas believed that the pope did not have the authority to dictate the temporal affairs of the Amerindians, since they were outside the jurisdiction of the Church. No one, not even the pope, could exercise power outside of one's jurisdiction.¹² The pope only had the authority to instruct Christians on how to preach to the Amerindians. As a consequence, both Vitoria and Las Casas believed that the pope was in his jurisdiction to regulate the evangelization of the Amerindians. The Alexandrian bull's talk of jurisdiction and rights was, therefore, interpreted by Vitoria and Las Casas to give the Spanish exclusive *spiritual* authority to preach to the Amerindians. Due to their unique interpretation, they never questioned the legitimacy of

¹¹ James Muldoon, "Papal Responsibility for the Infidel: Another Look at Alexander VI's *Inter Caetera*" *Catholic Historical Review* 64, no. 2 (Apr., 1978): 181-184.

¹² Thomas' ideas about the limits of the papacy derive from his question on faith: Aquinas, *Summa Theologica*, II-II Q. 10 a. 1-12; Francisco de Vitoria, "De Indis," in *Political Writings*, ed. Anthony Pagden and Jeremy Lawrence (New York: Cambridge University Press, 1992), 256-264; Las Casas examines the subject when arguing against Augustine of Ancona in Las Casas, *In Defense of the Indians*, 141-150.

the bull.¹³ Their arguments, however, are based on highly selective interpretations of the text.¹⁴ The Thomistic interpretation of the Alexandrine bull remains plausible, but it does seem to go against the spirit of the text. For this reason, Thomas Izbicki emphasizes the novelty (and, hence, the perceived revisionism) of the Thomistic interpretation of the Alexandrine bull.¹⁵

The second Spanish influence on the nature of the Conquest was Spanish law, particularly the *Siete Partidas*, an encyclopedic code of law promulgated by Alfonso X during the *Reconquista* of Spain. The *Siete Partidas* is important in the history of Spanish legal history because it marks the introduction of Justinian law in Castile. Its previous laws were a mixture of Visigothic, Roman (pre-Justinian), and pre-Roman Celtic-Iberian law. The *Siete Partidas*, therefore, consisted of a strange mix of Justinian law and other customs unique to Spain.¹⁶ According to the laws, there were three causes of a just war: “to enlarge the faith and destroy those who opposed it; to serve, honor, and protect one’s lord; to defend, enlarge, and honor one’s homeland.”¹⁷ The law, then, allowed wars to be waged in order to spread the message of Christianity. This position placed it at odds with the traditional Augustinian-Thomistic understanding of just war in a fundamental way. According to Augustine and Thomas, a just war is always a response to an unjust offense. A just war can never be an offensive war. The *Siete Partidas*, however, permitted offensive war for the simple desire for enlargement of homeland.

¹³ Vitoria, “De Indis,” 284-286; Las Casas, *In Defense of the Indians*, 349-362.

¹⁴ Glen Carman, “On the Pope’s Original Intent: Las Casas Reads the Papal Bulls of 1493,” *Colonial Latin American Review* 7, no. 2 (1998): 193-204.

¹⁵ Thomas M. Izbicki, “An Argument from Authority in the Indies Debate,” *The Americas* 34, no. 3 (1978): 400. Vitoria interprets the bull “in the most innocuous possible manner” (400).

¹⁶ Eelco Nicolaas van Kleffens, *Hispanic Law until the End of the Middle Ages* (Edinburgh: Edinburgh University Press, 1968), 171.

¹⁷ *Siete Partidas*, quoted in Rolena Adorno, *The Polemics of Possession in the Spanish American Narrative* (New Haven: Yale University Press, 2007), 180, 356 n23.

Vitoria and Las Casas, following Thomas, argued against this reason for war.¹⁸ The difference between the *Siete Partidas* and the Augustinian-Thomistic position is significant. Both Hernando Cortes and Bernal Díaz de Castillo drew upon Castilian medieval law in order to defend their actions in the New World by exposing the continuity of the Conquest of America with the *Reconquista*.¹⁹

The third Spanish influence upon the Conquest was the method, or lack thereof, through which the Spanish claimed their land. On this point, there is debate among scholars. On the one hand, Patricia Seed argues that, unlike the French and English, whose later forms of colonization were based upon contract, possession, and consent of the governed, the Spanish claimed their newly discovered islands through solemn ritual and the force of arms. When Columbus claimed the newly discovered Indies, he named the places solemnly in an act that was supposedly analogous to baptism. The right to rule, in other words, “was established by language and ceremony.”²⁰ Seed goes on to argue that the intellectual heritage of this idea came from Spain’s unique medieval experience. In claiming land, Spain adopted the militaristic version of Islamic *jihad*, in which a messenger would ask for submission to Islam. The simple act of announcing the jihadist (or in Spain’s version, the crusading) spirit was enough to make the pending war just.²¹ The obvious disconnect between this practice and the Christian just war theory led the

¹⁸ Francisco de Vitoria, “On the Law of War,” in *Political Writings*, ed. Anthony Pagden and Jeremy Lawrence (New York: Cambridge University Press, 1992), 303; Las Casas, *The Only Way*, 165.

¹⁹ Zavala, *The Political Philosophy of the Conquest of America*, 24.

²⁰ Patricia Seed, “Taking Possession and Reading Texts: Establishing the Authority of Overseas Empires,” in *Early Images of the Americas: Transfer and Invention*, ed. Jerry M. Williams and Robert E. Lewis (Tucson: University of Arizona Press, 1993), 111.

²¹ Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World, 1492-1640* (New York: Cambridge University Press, 1995), 70-77.

rest of Europe to criticize and sometimes to dismiss Spanish claims.²² On the other hand, Lauren Benton and Benjamin Straumann criticize Seed's neat interpretation of symbolism. They argue that "Europeans...had no clear-cut reading of the doctrines to draw on" for their claim to possession.²³ Explorers claimed land on whatever little amount of law they knew. Some explorers, for example, tried to base their claim on the Roman law principle of *res nullius* – that what they found and claimed had originally belonged to no one. The Spanish, the argument goes, had a right to take unclaimed land. Thomists such as Vitoria and Soto, however, believed that *res nullius* was more effective in denying European sovereignty than supporting it.²⁴ Regardless of whether Seed or Benton and Straumann are correct, the overarching case about Spanish claims of possession remains the same. The Spanish dismissed the rights of the Amerindians. They denied the natives' self-rule and their right to hold their previous property. They did not even respect the previous names of places and things.

It was in this intellectual environment that Las Casas was raised. As a young man, Las Casas, like almost all Spaniards, did not question the legitimacy of the Conquest. After being educated in the cathedral school of San Miguel, where he mastered Latin, he traveled to the Indies with his father in 1502. Most of the knowledge about Las Casas from 1502 to 1514 comes from his own writings, particularly his *History*, in which he wrote of himself – often – in the third person. There are two important events that occur during these twelve years. First, he

²²Seed, "Taking Possession," 118-119, 121. The English, for example, based their concept of dominion on residence of the land. For them, possession and property were nearly synonymous. Thus, the English rejected the belief among the Spanish and Portuguese that signs, pillars, and there mere invocation of words claimed dominion. For this reason, Elizabeth justified Francis Drake's ventures into territory claimed by Spain because Elizabeth held to a principle of medieval English law: "A man cannot by prescription [that is, by declaration or decree] make title to land" (121).

²³ Lauren Benton and Benjamin Straumann, "Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice," *Law and History Review* 28, no. 1 (Feb., 2010): 37.

²⁴ *Ibid.*, 20-29.

was ordained a secular priest (i.e. a priest who is not in a religious order), probably during a brief trip back to Europe, while accompanying Diego Columbus, the son of Christopher, in 1507.²⁵ Second, Las Casas came into possession of an *encomienda* with several Amerindians under his dominion.²⁶

The *encomienda*, on paper, was not synonymous with slavery, though in practice it sometimes amounted to it. The *encomienda* was based upon medieval serfdom in which serfs received protection and certain rights as a result of their service to the lord. To a certain extent, the *encomienda* mirrored how newly conquered lands had been distributed among the soldiers and nobles during the *Reconquista*.²⁷ In theory, the Amerindians were to serve their appointed lords like serfs. The lords were supposed to provide their underlings with protection and to instruct them in the elements of the Christian faith. In the Indies, forced Amerindian labor began with Columbus. To justify the labor, Columbus used an argument that many colonists would also employ: without Amerindian forced labor, the Spanish would not be able to survive. The papal Bull of Donation only strengthened this claim. After the death of Isabella, Ferdinand oversaw the formal establishment of both the *encomienda* and slavery. Nicholas de Ovando, the first substantive governor of the Indies, personally directed the formal institution of the *encomienda*, in which Amerindians were forced to mine for gold or tend to a plantation.²⁸ Later

²⁵ Clayton, 49-50. Clayton challenges an important claim in older literature – the belief that Las Casas was the first priest consecrated in the New World. An example of this original position is: George Sanderlin, “Introduction,” *Bartolomé de Las Casas: A Selection of His Writings*, ed. George Sanderlin (New York: Knopf, 1971), 7.

²⁶ Clayton, 46-50.

²⁷ Robert Stoner Chamberlain, “Castilian Background to the Repartimiento-Encomienda” *Contributions to American Anthropology and History* 5 (1939): 33-45.

²⁸ Lesley Byrd Simpson, *The Encomienda in New Spain: The Beginning of Spanish Mexico* Revised Edition (Berkeley and Los Angeles: University of California Press, 1982), 1-28; J.H. Parry, *The Spanish Seaborne Empire* (London: Hutchinson, 1966), 100.

in life, Las Casas wrote in his *History* that there were only two kinds of Spaniards. The first were “very cruel and pitiless, whose goal was to squeeze that last drop of Indian blood in order to get rich” and the second type who were “less cruel, who must have felt sorry for the Indians.”²⁹ Nevertheless, both groups were at fault since “they placed their own interests above the health and salvation of those poor people.”³⁰ Among the atrocities of the *encomenderos* were rape, starvation, work exhaustion, slavery, the dividing of families, negligence in teaching the Christian faith, and murder. Las Casas himself was an *encomendero* (the owner of an *encomienda*) for several years, though he considered himself later in life to be a less evil one than his contemporaries.

The wealth the colonies brought to Spain led to the development of local government. In 1507, seven incorporated towns were created with local jurisdiction. In 1511, the first internal court in the New World, the *Audiencia*, was established in Santo Domingo. It was composed of school-trained civilians.³¹ Nevertheless, these local governments failed to protect the Amerindians. As such, the initial catalyst that challenged the local authorities was the Dominican Order. Originally sent by Cajetan, these Dominican missionaries, led by Pedro de Córdoba, came from the orthodox Convent of Saint Stephen in Salamanca. The convent, fueled by internal reform, emphasized traditional Dominican spirituality, especially contemplation and poverty.³² The Dominicans were horrified by the actions of the colonists. On the fourth Sunday of Advent 1511, Father Antonio Montesinos, before many local leaders, including Diego

²⁹ Las Casas, *History of the Indies*, 182.

³⁰ *Ibid.*, 182.

³¹ Parry, *The Spanish Seaborne Empire*, 59.

³² Gustavo Gutiérrez, *Las Casas: In Search of the Poor of Jesus Christ*, trans. Robert R. Barr (Maryknoll, NY: Orbis, 1993), 27.

Columbus, condemned the Spanish treatment of the Amerindians. Montesinos stated that he and his fellow friars would deny absolution to any colonist who participated in the *encomienda*. This policy caused tremendous fear among the Spanish. According to Catholic theology, without absolution, any Catholic who dies in a state of mortal sin is in danger of hell. Despite this position, the Spanish did not give up their *encomiendas*. Even Las Casas, who was at the time a secular priest, was denied absolution from a Dominican priest.³³ The event did not cause Las Casas to give up his *encomienda* immediately.

The decimation of the aboriginal population caused Ferdinand to promulgate the 1512 Law of Burgos, which attempted to regulate Spanish interactions with the Amerindians. The Amerindians were to be uprooted from their original villages in order to live near the Spanish. They were to be provided with huts and gardens. Their old dwellings were to be destroyed. (Article 1). This transferal was to be done “with the least possible harm to the Indians”³⁴ (Article 2). The law demanded that each village was to have a church and that the natives were to be taught and to recite daily the *Ave Maria*, *Pater Noster*, *Credo*, and *Salve Regina*. *Encomenderos* were to oversee their religious education (Article 3, 4). The Amerindians were to be obliged to mine for gold five months a year, but then rest for forty days, unless they were a slave (Article 13). The law also banned *encomenderos* from trading or taking another’s Amerindian workers (Article 21). Beating and verbal abuse were to be avoided (Article 24). The liberty of the Amerindians, therefore, was denied by these laws. Nevertheless, they represented an improvement in how the Spanish had treated the natives.³⁵

³³ Las Casas, *History of the Indies*, 208.

³⁴ Simpson, *The Encomienda*, 32.

³⁵ *Ibid.*, 32-34.

In addition to the Laws of Burgos, the Spanish Crown authorized the infamous *Requerimiento*, a long injunction read aloud by the Spanish to the Amerindians. Its purpose was to explain to the natives the rights of the Spanish in colonizing and subjecting them. It was written by Juan López de Palacios Rubios, a disciple of Hostiensis, a thirteenth-century canonist who, against Thomas, denied that infidels could have *dominium*.³⁶ The *Requerimiento* consisted of four parts: a brief historical overview from creation to the papal donation of the New World, an explanation of Spanish claims to the land, a statement on the necessity of the Amerindians to submit to the Spanish Crown, and the immediate threat of war if they did not submit to the Crown.³⁷ The Spanish conquistador himself was in charge of the affair and a notary had to be present to record that the injunction was read. The *Requerimiento* is so important it deserves to be quoted at length:

In the name of King Ferdinand and Juana, his daughter, Queen of Castile and Leon, etc., conquerors of barbarian nations, we notify you as best we can that our Lord God Eternal created Heaven and earth and a man and woman from who we all descend for all times and all over the world...

The late Pope gave these islands and mainland of the ocean and the contents thereof to the above-mentioned King and Queen, as is certified in writing and you may see the documents if you so desire. Therefore, Their Highnesses are lords and masters of this land; they were acknowledged...

Therefore we request that you understand this text, deliberate on its contents within a reasonable time, and recognize the Church and its highest priest, the Pope, as rulers of the universe, and in their name the King and Queen of Spain as rulers of this land, allowing the religious fathers to preach our holy Faith to you. You owe compliance as a duty to the King and we in his name will receive you with love and charity, respecting your freedom and that of your wives and sons and your rights of possession, and we shall not compel you to baptism unless you,

³⁶ Las Casas, *History of the Indies*, 194.

³⁷ An overview of the text is provided in Paja Faudree, "How to Say Things with Wars: Performativity and Discursive Rupture in the *Requerimiento* of the Spanish Conquest," *Journal of Linguistic Anthropology* 22, no. 3 (2013): 185-186.

informed of the Truth, wish to convert to our holy Catholic Faith as almost all your neighbors have done in other islands, in exchange for which Their Highnesses [will] bestow many privileges and exemptions upon you. *Should you fail to comply, or delay maliciously in so doing, we assure you that with the help of God we shall use force against you, declaring war upon you from all sides and with all possible means, and we shall bind you to the yoke of the Church and of Their Highnesses; we shall enslave your persons, wives and sons, sell you or dispose of you as the King sees fit; we shall seize your possessions and harm you as much as we can as disobedient vassals. And we declare you guilty of resulting deaths and injuries, exempting Their Highness of such guilt as well as ourselves and the gentlemen who accompany us.* We hereby request that legal signatures be affixed to this text and pray those present to bear witness for us, etc.³⁸

Worst of all, the *Requerimiento* was read in Spanish, often without a native interpreter, and was sometimes read over empty huts or when the Amerindians were sleeping.³⁹ The *Requerimiento*, consequently, was – and continues to be – mocked. Sir Walter Raleigh, in his *History of the World* (1600), refuted it on theological grounds, Enlightenment thinker Corneille de Pauw believed it to be indicative of the darkness of the sixteenth century, and the great nineteenth-century historian, Hubert Bancroft, believed it to be “absurd in theory.”⁴⁰

Las Casas also, after his conversion to the Amerindian cause, thought it was theologically incorrect and patently absurd, but not exactly for the same reasons. There could hardly have been a document more antithetical and philosophically opposed to Las Casas’ Thomism than the *Requerimiento*. The *Requerimiento* did not have a correct understanding of the consent of the governed, papal temporal authority, and the law of nations. For Las Casas, the most fundamental problem with the injunction was its view of the human person. Despite pretending to give the

³⁸ *Requerimiento*, quoted in Las Casas, *History of the Indies*, 192-193.

³⁹ Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949), 33-34.

⁴⁰ Lewis Hanke, “The ‘Requerimiento’ and Its Interpreters” *Revista de Historia de América* 1 (Mar., 1938): 29, 30, 32.

Amerindians time for deliberation, the document did not allow for genuine persuasion or conversion. Its real appeal was to force. As such, it did not appeal to reason, which distinguishes human beings from the other animals.

Neither the Law of Burgos nor the *Requerimiento* prompted Las Casas' conversion to the Amerindian cause. It was a slow process spurred by other factors. Part of his conversion may have occurred as a result of witnessing a horrendous massacre of innocent Amerindians while participating in the colonization of Cuba.⁴¹ However, the most tangible reason for Las Casas' conversion was the presence of the Dominican Order in the Indies. After Montesinos' Advent homily, a Dominican had refused to give Las Casas absolution. As a priest cannot absolve himself, the denial of this important sacrament had a tremendous impact upon him.⁴² Inner turmoil resulted from this denial. Las Casas recounts, in his *History of the Indies*, the decisive moment in which he came to realize the injustices he had perpetuated. While praying, he came across the following Biblical passage from Ecclesiasticus: "Unclean is the offering sacrificed by an oppressor. Such mockeries of the unjust are not pleasing to God" (36:18). Upon reading this passage, the "darkness lifted from his eyes" and he forfeited, to the surprise of all, his *encomienda*.⁴³ Scripture, then, incited his conversion. Las Casas mentions, however, that he was influenced also by the fact that he had "never read a book in Latin or Spanish...in which he did not find either an argument or a text to prove and corroborate the justice of these Indian peoples and to condemn the injustices, wrongs, and injuries done them."⁴⁴ Like the famous

⁴¹ Henry Raup Wagner and Helen Rand Parish, *The Life and Writings of Bartolomé de Las Casas* (Albuquerque: University of New Mexico, 1967), 6.

⁴² Clayton, *Bartolomé de Las Casas*, 61.

⁴³ Las Casas, *History of the Indies*, 209.

⁴⁴ Las Casas, *History of the Indies*, quoted in Sanderlin, *Bartolomé de Las Casas*, 88.

conversion of Augustine, the passage betrays a sense of inner turmoil that must have bothered Las Casas for a long time. Thus, it was the illumination of both revelation and reason that led him to abandon his *encomienda*, to condemn the atrocities being committed to the Amerindians, and to demand a halt to further conquests.

For the next ten years, Las Casas lobbied on behalf of the Amerindians in the Spanish Court and in the Indies. He gained the attention and respect of several influential courtiers, including Adrian of Utrecht (the future short-reigned Renaissance Pope, Adrian VI) and Fray Cardinal Francisco Ximénez Cisneros. In 1516, he composed in Latin (for Adrian) and in Spanish (for Cisneros) his *Memorial of Remedies for the Indies* (1516). The *Memorial* was Las Casas' first major and comprehensive attempt to address the Amerindian Question. The *Memorial* represents the ideas of "the early Las Casas." The early Las Casas is quite different from the "later Las Casas." The early Las Casas (1514-1524) was a primarily utopian thinker whose ideas lacked prudence and pragmatism. The early Las Casas questioned the method, not the legitimacy, of the Conquest. Moreover, because he does not join the Dominican Order until 1524, he shows no particular reliance on St. Thomas, the Church Fathers, and the canon lawyers. According to his 1516 quixotic plan, the Spanish should *continue* to colonize the parts of the Indies that were already occupied. More colonists, from all over Spain, ought to be brought to the New World. These Spanish colonists were necessary because Las Casas, upon seeing the decimation of the Amerindians, thought that the natives should be excused from manual labor in order to reorder their society and to repopulate. Although he calls for the end of the *encomienda* and inter-island forced Amerindian travel, Las Casas still believed that the Spanish, particularly priests, should regulate the activities of the Amerindians. The *caciques*, or local leaders, of the Amerindians were to serve as the natives' overseers. The *caciques*, then, retained only a

semblance of the authority that they once had before Spanish colonization. A fundamentally idiosyncratic work, the *Memorial* called for colonists to live in groups of one thousand. Las Casas even tried to regulate how many doctors, shepherds, miners, pigmen, and butchers, among other professions, ought to live in each community. Victor N. Baptiste goes so far to argue that, though many of Las Casas' suggestions were rejected by the Court, the *Memorial* did have two practical consequences. First, it influenced the writing of Thomas More's *Utopia*.⁴⁵ Second, Las Casas called for the importation of African slaves in order for the Amerindians to recover from such drastic depopulation. Later in life, he repented and greatly lamented the invocation of more African slavery.⁴⁶

Las Casas won two initial victories with Adrian and Cardinal Cisneros' support. First, they organized an independent commission, led by priests of the Order of Saint Jerome, to examine the justice of the *encomienda*. Second, he won the right to travel and to preach on the coast of Tierra Firme. Las Casas attempted to found an ideal community near Cumaná in order to convert the Amerindians. Although the government promised no interference with Las Casas' community, Spanish pearl raiders assaulted the nearby Amerindians, causing the natives to distrust Las Casas. His mission ended horribly.⁴⁷

⁴⁵ Victor N. Baptiste, *Bartolomé de Las Casas and Thomas More's Utopia: Connections and Similarities. A Translation and Study* (Culver City, CA: Labyrinthos, 1990), 1-2, 5, 8, 62-63. The argument is as follows: Erasmus, one of Thomas More's friends, had received an early copy of Las Casas' *Memorial* due to his influence in Charles' Flemish court. Erasmus gave the copy to More. More's fictional character, Raphael Hythloday, is Las Casas. Baptiste provides a list of thirty-three similarities between the *Memorial* and *Utopia* (70-72). However, he remains silent on whether More and Erasmus had respect for the proposed plan.

⁴⁶Rolena Adorno, "The Intellectual Life of Bartolomé de Las Casas: Framing the Literature Classroom," *Approaches to Teaching the Writings of Bartolomé de Las Casas*, ed. Santa Arias and Eyda M. Merediz. (New York: Modern Language Association of America, 2008), 24-25. Las Casas has also wrongly been accused of being the first Spaniard to propose the idea of African slavery. The practice in the American Indies had been established a decade before the *Memorial*.

⁴⁷ Clayton, *Bartolomé de Las Casas*, 103, 109, 116, 151, 166, 192.

Frustrated with a variety of factors – the obstinacy and the self-interestedness of the Spanish colonists, the lukewarm response of the Royal Court to the Amerindian crisis, and the apathy of many clerics – Las Casas entered the novitiate of the Dominican Order in 1523. From 1523-1526, Las Casas went through the vigorous educational system of the Dominicans: he studied Scripture, the Church Fathers, ancient pagan philosophy, canon law, and scholastic philosophy.⁴⁸ This extensive period of study greatly influenced and changed his thought. Most noticeably, he read Thomas’s *Summa Theologica* with Cajetan’s adjoining commentaries.⁴⁹ This fact is doubly significant. It not only exposed him to the original text, but Cajetan’s commentaries also showed him how to examine contemporary questions within a Thomistic framework. Cajetan’s commentaries provided him with a template on how to disagree with Thomas while still being faithful to the Angelic Doctor’s project. In the quiet of his convent, he began to write his *History of the Indies*, which he would work on for the majority of his life. From his time of his Dominican novitiate to the end of his life, the theology of Saint Thomas had a tremendous impact on all his major philosophical works, in varying degrees, from his handbook concerning missionary work, *The Only True Way*, to his magisterial defense of Amerindian rationality in his *In Defense of the Indians*.

As Las Casas labored in missionary work and then entered the Dominican Order, the character of Spain fundamentally changed. When Charles I, the king of Spain, was elected Holy Roman Emperor as Charles V in 1519, he came in possession of one of the largest empires, *de jure*, in human history. Several Spanish contemporaries began to compare Spain to the ancient Roman Empire. Miguel de Ulzurum’s *Catholicum opus imperiale regiminis mundi* (1525)

⁴⁸ Ibid., 214-215.

⁴⁹ Helen Rand Parish, “Introduction,” in *The Only Way*, trans. F.P. Sullivan (Mahweh: Paulist Press, 1992), 29.

claimed that the old Roman Empire had *dominium* over the entire world. Ulzurrum, consequently, argued that Charles V had complete authority over the world, including the lands recently discovered. This position gave further credence to the Spanish Conquest.⁵⁰ The idea became so prevalent throughout Spain that, when Vitoria examined the unjust titles justifying the Conquest in his *De Indis*, the Dominican spent a tremendous amount of ink debunking this claim.⁵¹ Domingo de Soto, in his *Relección De Dominium*, also felt the need to debunk the idea that the emperor was lord of the world.⁵² Las Casas responds to it in his *De Thesauris* and *De Regia Potestate*.⁵³

As this desire for empire gained traction in Spain, significant changes also occurred in the New World. Hernan Cortes, after outsmarting the governor of Cuba, Diego Velázquez, into giving him a small army, disobeyed the latter's orders and embarked on an expedition into the mainland of Mexico, which led to the destruction of the Aztec Empire. Although modern research shows that the Aztecs were not an empire, but rather a series of cities which paid tribute to Montezuma's city of Tenochtitlan, the conquest of the Aztecs is still a remarkable achievement.⁵⁴ With the possible exception of Peru, it was the most powerful Mesoamerican civilization. It took Cortes months to conquer Tenochtitlan, which at the time was larger than

⁵⁰ Luper, *Romans in a New World*, 46-49.

⁵¹ Vitoria, "De Indis," 252-258.

⁵² Domingo de Soto, *Relección De Dominio* in *Relecciones y Opusculos: Volume 1*, ed. Jaime Brufau Prats. (Salamanca: Editorial San Esteban, 1995), 162. Here he argues that if the emperor was the lord of the world, he would have had to be elected by the whole world.

⁵³ Bartolomé de las Casas, *De Regia Potestate*, ed. by Luciano Perena et al. Madrid: Instituto de Cultura Hispánica, 1969, 24; Bartolomé de Las Casas, *Tesoros del Peru*, ed. Angel Losada Garcia. Madrid: Consejo Superior de Investigaciones Científicas, 1963, 317-318.

⁵⁴ Inga Clendinnen, "Fierce and Unnatural Cruelty: Cortés and the Conquest of Mexico," *Representations* 33 (Winter, 1991): 78.

any other European city. So fierce was the defense of the city that Cortes, to his great dismay, had to destroy and level the city in order to conquer it.⁵⁵ Cortes was responsible for the expansion of the *encomienda* system onto the continent.⁵⁶ Thus, the development of Spanish rule on the mainland continued to be patterned on Castilian feudal society. Towns were governed by *cabildos*, an oligarchy of old conquistadors. Amerindians were forced to relocate around the Spanish towns so that they could work for the Spanish.⁵⁷

Then, in 1534, Francisco Pizarro conquered the Incan Empire through deception and force. It was an especially ruthless conquest. An incited Vitoria claimed that details about it caused his blood to freeze out of horror.⁵⁸ It also led Las Casas to embark from his Dominican studies, where, armed with Thomas and the canonists, he began a new robust defense of the Amerindians. His political ideas became less utopian. Instead, he grounded his ideas on the natural law, Amerindian sovereignty, the consent of the governed, the importance of good human law, the law of nations, and justice grounded on natural right.

By the early 1530s, Las Casas again became active in religious and political affairs. Las Casas may have been tangentially influential in the passage of an antislavery law promulgated in 1530. The law, however, was later repealed by the Spanish Crown in 1534. Las Casas also engaged in a very public and polemical debate with a fellow Dominican, Domingo de Betanzos, who argued for the repeal of the aforementioned antislavery law.⁵⁹ Another political victory for

⁵⁵ *Ibid.*, 90.

⁵⁶ Simpson, *The Encomienda in New Spain*, 58-72.

⁵⁷ Parry, *Spanish Seaborne Empire*, 101, 108-109.

⁵⁸ Francisco de Vitoria, "Letter to Miguel de Arcos, OP, 8 November 1534" *Political Writings* (New York: Cambridge University Press, 1992), 331.

⁵⁹ Clayton, *Bartolomé de Las Casas*, 225.

Las Casas was the promulgation of the Burgos Laws of 1542 (also known as the New Laws), which, in a dramatic change in public policy, called for the eradication of the *encomienda*. The laws outlawing the *encomienda*, however, were renounced in 1545, due to a unanimous backlash by the colonists of the New World. Their entire livelihood was threatened and the laws, consequently, were never enforced.⁶⁰ Las Casas writes that the behavior of the Spanish colonists showed them to be “true outlaws” to the Spanish Crown.⁶¹ Las Casas again began to advocate for renewed missions to Tierra Firme and was later appointed the first bishop of the poor diocese of Chiapa, which encompasses present-day southern Mexico and Guatemala. His time as bishop was incredibly controversial. Because he denied confession to all the Spanish colonists who were engaged with the *encomienda*, Las Casas won few Spanish supporters. After a few years, he resigned his bishopric and returned to Spain.⁶²

In Spain, Las Casas’ attention turned to his most famous rival, Juan Gines de Sepúlveda. Sepúlveda, the former tutor to Prince Philip (later remembered in history for the failed armada of 1588) and Charles’ court historian, composed a treatise, *Democrates Secundus* (in some editions *Democrates Alter*), which defended the Conquest on four different grounds: 1) the Amerindians were barbarous and Aristotelian natural slaves; 2) the natives committed numerous crimes against the natural law; 3) their human sacrifice needed to be stopped; 4) war could be waged in order to make way the path for the Christian faith.⁶³ Las Casas believed that Sepúlveda’s book

⁶⁰ Clayton, *Bartolomé de Las Casas*, 270-284; Giménez Fernández, “Fray Bartolomé,” 101-103.

⁶¹ Bartolomé de Las Casas, *A Short Account of the Destruction of the Indies*, trans. Nigel Griffin (New York: Penguin Books, 1992), 129.

⁶² Clayton, *Bartolomé de Las Casas*, 285, 315, 321, 325.

⁶³ The entirety of Las Casas’ *In Defense of the Indians* addresses these four points. A good summary of Sepúlveda’s positions is in Lewis Hanke, *All Mankind Is One: A Study on the Disputation between Bartolomé de Las Casas and Juan Gines de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the Amerindian Indians* (DeKalb: Northern Illinois University Press, 1974), 82-98.

was dangerous, not because it presented a new argument, but because it combined several old ideas into a single package. The book supported Aristotelian natural slavery, the theme of empire, and papal temporal authority. Moreover, Sepúlveda cited the whole gamut of the Western tradition, quoting Aristotle, Cicero, the Gospels, Paul, Augustine, Gregory, Thomas Aquinas, and the canonists. In order to attack Sepúlveda, several Dominicans, most likely Las Casas and a fellow Thomist, Melchior Cano, led a successful campaign to block and to censor the book from being published in Spain.⁶⁴ In order to resolve the issue, Charles ordered a temporary pause to all new conquests in order to hear the arguments of Las Casas and Sepúlveda at Valladolid in 1550. Charles appointed his confessor, Soto, as the head of the jury. Other jury members included two Thomists, Melchior Cano and Bartolomé de Miranda, and various other members of the Court.⁶⁵ The debate did not have a clear winner. Both sides claimed victory. Sepúlveda's book still was not granted the right to be published, but eventually the conquests continued in Peru, as did the *encomienda*.⁶⁶

After the Valladolid debate, some scholars argue that Las Casas became even more radical.⁶⁷ He soon saw that his call to end further conquests and the *encomienda* was not enough. He began to emphasize more forcibly the theme of restitution to the Amerindians and he claimed that Spain ought to abandon its colonies, with some religious remaining in order to continue conversion.⁶⁸ It is true that Las Casas' final requests were politically unrealistic,

⁶⁴ Lupher, *Romans in a New World*, 120.

⁶⁵ G. Scott Davis, "Humanist Ethics and Political Justice: Soto, Sepúlveda, and the 'Affair of the Indies'," *Annual of the Society of Christian Ethics* 19 (1999): 195.

⁶⁶ Adorno, *Polemics*, 83; Hanke, *All Mankind Is One*, 113-122.

⁶⁷ Adorno, *Polemics*, 83-88; Sanderlin, "Introduction," 20.

⁶⁸ Adorno, *Polemics*, 86-88.

especially because, even if the Crown had announced such a plan, the colonists would have revolted against it. A fair criticism of Las Casas is that he did not understand, or at least address in his writings, the limits of the Crown's power in redressing problems. Although Las Casas' call for restitution and colonial abandonment are politically imprudent, they are, in principle, in line with the understanding of justice in both Thomas and canon law.

Until his death in 1566, Las Casas remained in Spain. Too old to travel, he finished writing his *History of the Indies* and *Apologetic History* and composed a treatise on the limits of political power, *De Civili Potestate*, and a defense of Incan sovereignty, *Tesoros del Peru*. The last years of his life were dedicated to writing, not only because of his age, but because Philip II, who assumed the throne in 1556, did not share his father's occasional doubts about the legitimacy of the Conquest. Philip, instead, saw the New World as a vehicle for increasing the Crown's revenues.⁶⁹ Thus, Las Casas died seeing the government turn against his ideas. All of Las Casas' initial political victories (the Jeronymite examination of the Indies in the late 1510s, the antislavery law of 1530, the New Laws of 1542, the Valladolid hearing) were either overturned or did not bear fruit. His only resounding success lay in orchestrating a new way to convert the Amerindians.⁷⁰

The sheer complexity of Las Casas' life, the successes and complexities of his life, the chaos of colonial policy, and the shifty ambiguity of Charles make it hard for scholars and commentators to arrive at a coherent interpretation of Las Casas' legacy. Yet, it appears that the bedrock of Las Casas' thought, from his time of his Dominican novitiate to his death almost

⁶⁹ Benjamin Keen, "The Black Legend Revisited: Assumptions and Realities" *Essays in the Intellectual History of Colonial Latin America* (Boulder: Westview, 1998), 71.

⁷⁰ Lewis Hanke, *Aristotle and the American Indians* (Chicago: Henry Regnery, 1959), 88-95.

forty years later, is the central importance of Thomas Aquinas' theology and philosophy. Almost everyone who writes about Las Casas draws some attention to it, whether in a line or a paragraph. Yet, few scholars ever elaborate on the point. Las Casas' Thomism – what it is, what its merits are, what its deficiencies are, how it is different from his contemporaries – has still not been addressed adequately. Indeed, as the following review of literature will show, Las Casas is among the most misunderstood historical figures in contemporary scholarship.

The Review of Literature: The Many Interpretations of Las Casas

Various interpretations of Las Casas abound due to the complexity of his character and the particular interests of the scholar. Entire careers have been dedicated to the study of his historiography, theology, rhetoric, canonistic training, and diplomatic skills.⁷¹ Anthony Pagden even credits him with beginning the study of comparative ethnology.⁷² The methods of examining Las Casas range from comprehensive biographies to studies that examine only one or two of his works. Despite the tremendous amount of material on Las Casas, scholars not only have different opinions of his life and work, but some positions are flatly contradictory. Some credit him as a hero against colonialism, while others label him a colonist. Some consider Las Casas to be a liar and fabricator of facts, while others portray him a defender of justice responding to a near-impossible situation. Some picture Las Casas to be a hodgepodge polemicist who collected citations simply for the rhetorical whim of his audience, while others examine Las Casas as a thoughtful and intentional thinker.

⁷¹ Notable examples that are worth mentioning but will not be quoted elsewhere in the review of literature are: Hanke, *Bartolomé de Las Casas, Historian: An Essay in Spanish History* (Gainesville: University of Florida Press, 1952); Arthur Helps, *The Life of Las Casas: The Apostle of the Indies* (London: Bell and Daldy, 1868); Henry Raup Wagner and Helen Rand Parish, *The Life and Writings of Bartolomé de las Casas* (Albuquerque: University of New Mexico Press, 1967).

⁷² Pagden, *The Fall of Natural Man*, 119-145.

In order to sift through the diversity and complexity of the subject, the review of literature begins, as if emerging from Plato's cave, with the weakest arguments about Las Casas and then ends with the strongest. The weakest argument in the literature is a well-cited one-dimensional character analysis of the Dominican. Ramón Menéndez Pidal's *El Padre Las Casas: Su doble personalidad* is a visceral critique of Las Casas' character. As his subtitle suggests, Menéndez Pidal argued that Las Casas had a double personality because he was paranoiac. In a noticeable passage in his work, he provides a long diatribe against Las Casas' personality. He writes that Las Casas was guilty of the following:

Anti-Christian, austere and vehement exaggerator, conceited egotism, presumptuous vanity, ostentatious megalomania...childish vanity, delirium of grandeur, tendentious inaccuracies, eccentric whimses...systematic delirium, intemperate impetuosity, arrogant truculence, pleasure in describing bestialities, furious language, shocking imprudence in speech, and irresistible pathological tendency, a staggering magnification, an irrepressible habit of tremendous overstatement, maniacal preoccupation, unconscious victim of his own incriminating delirium, toleration prejudice, medieval canonist, backwards...⁷³

His list goes on for another page. Menéndez Pidal's criticism, however, is a consequence of his own personal defense of the Spanish Conquest. In fact, he considered Las Casas' position to be "inhuman" because his thought "made all colonization impossible."⁷⁴ Menéndez Pidal's work represents a certain strain of Spanish scholarship that is defensive of the Conquest. As a result, Menéndez Pidal sought to minimize Las Casas' arguments by attacking the Dominican's personality.

⁷³ Ramón Menéndez Pidal, *El Padre Las Casas. Su doble personalidad* (Madrid: Espasa-Calpe, 1963), quoted in Lewis Hanke, *All Mankind Is One*, 140.

⁷⁴ Ramón Menéndez Pidal, *The Spaniards In Their History*, trans. Walter Starkie (London: Hollis & Carter, 1950), 149.

While scholars generally regard Menéndez Pidal's list as excessive, if not unprofessional, Las Casas is guilty of some of his charges.⁷⁵ The most important charge against Las Casas is that he exaggerated certain facts and figures about the Conquest through rhetoric. Las Casas is indeed guilty of this charge, though scholars are unsure about whether they were intentional. As a consequence of this fault, Las Casas scholars associate him with mainstreaming the idea of the natural savage and the Black Legend. Las Casas is considered important in the creation of the natural savage because of his descriptions of the Amerindians.⁷⁶ Here is just one example of Las Casas' romantic portrayal of them: "Never quarrelsome or belligerent or boisterous, they harbor no grudges and do not seek to settle old scores; indeed, the notions of revenge, rancor, and hatred are quite foreign to them...they are innocent and pure in mind and have a lively intelligence."⁷⁷ Scholarship shows that Enlightenment thinkers, who emphasized the natural savage, did read Las Casas. The claim, therefore, is at least partially legitimate.

If Las Casas, however, is a promoter of the natural savage, an immediate cause of concern arises. In political philosophy, the natural savage is identified most closely with Voltaire and Jean-Jacques Rousseau – men diametrically opposed to Thomism. In particular, the political implications of Rousseau's natural savage are enormous because it posits that human society and government are unnatural, it dethrones reason and elevates pity and sentiment, and it argues that virtue and vice, even good and evil, are created by the social construction of reality. Rousseau's historicism is antithetical to any Classical notion of natural right. George Sanderlin,

⁷⁵ Benjamin Keen, "Introduction: Approaches to Las Casas, 1535-1970," *Bartolomé de Las Casas in History* (DeKalb: Northern Illinois University Press, 1971), 3; An entire examination of responses to Menendez Pidal is found in: Juan Comas, "Historical Reality and the Detractors" *Bartolomé de Las Casas in History* (DeKalb: Northern Illinois University Press, 1971), 518-528.

⁷⁶ Tzvetan Todorov, *The Conquest of America*, trans. Richard Howard (New York: Harper & Row, 1982), 164.

⁷⁷ Las Casas, *A Short Account*, 10.

one of Las Casas' mid-century translators, even goes so far to argue that Las Casas occupies an intermediate position between St. Thomas Aquinas and Jean Jacques Rousseau: "For Aquinas, natural man was an unalterable substance...For Las Casas, however, natural man, who seemed to be typified by the Indian, was more of an entity in transition – a voyager on the sea of history."⁷⁸ Sanderlin's position directly challenges the claim that Las Casas was a Thomist, precisely because the linchpin of Thomistic philosophical anthropology is a consistent view of human nature. Sanderlin, however, is wrong. Las Casas' gentle Amerindian is very different than Rousseau's natural savage. First, Las Casas' gentle Amerindian is already in a polity. As Las Casas emphasizes consistently, Amerindians are citizens of their governments. Their lives are directed by good laws, sociability, and friendship. The specifically *political* aspect of Amerindian life is one of Las Casas' most important arguments in defending their rationality, sovereignty, and moral propensity. It differs dramatically, then, from Rousseau's natural savage. According to Rousseau, by the time a human being lives in such a political situation, he is *far* from being a natural savage. Second, Las Casas' gentle Amerindian is not a sinless creature; in fact, the Amerindian is *aware* of sin. While Las Casas sometimes indulges in comparisons to the Garden of Eden, he is not partaking in Rousseuian (or Joachimite) imagery, but simply making a rhetorical flourish in order to express the nobleness of the Amerindians. He uses this imagery because he does believe that certain dispositions of the Amerindians are more refined than Europeans. These dispositions, however, come from their exercise of virtue and restraint, not the absence of political or social life. He also uses excessive imagery in order to counter the excessive rhetorical devices of those who claim that the Amerindians are natural slaves.

⁷⁸ Sanderlin, *Bartolomé de Las Casas*, 112.

The argument that Las Casas originated the Black Legend is not as consequential to political philosophy, but it is still worth mentioning because many conservative Spanish intellectuals portray Las Casas as a liberal revolutionary. The very term ‘Black Legend’ originated from an early twentieth-century conservative Spaniard, Julián Juderías, who used the term to describe the perceived undue distortions of Spanish cruelties in the Conquest.⁷⁹ The origin of this narrative is attributed to Las Casas’ most polemical work, *A Short Account of the Destruction of the Indies*. In this brief work, Las Casas lists, often in graphic detail, the horrible crimes of greedy and blood-thirsty conquistadors. He recounts how the Amerindians were tortured to death, enslaved, ransomed, worked to the point of exhaustion in the mines, and fell victim to the violence of greedy pearl-fishers and gold-hunters.⁸⁰ In one point in the book, Las Casas even calls the Spanish reprobates, a term in Thomistic language which implies that one has chosen to fall away from grace.⁸¹ Las Casas’ *A Short Account* was published in several different languages and it was used, especially by Protestants, in order to lambast Catholic Spain.⁸² For this reason, Las Casas was not published widely in Spain until the twentieth century. Even then, scholars like the aforementioned Ramón Menéndez Pidal dismissed Las Casas, among other things, as an anti-Spaniard. Spanish criticism of Las Casas, however, often misses the larger picture. While it is true that the other countries in Europe used Las Casas in order to caricature Catholic Spain, Las Casas himself wrote his work in order to challenge his own countrymen to condemn and to come to terms with the evil that the conquistadors had committed to an innocent

⁷⁹ Keen, “The Black Legend Revisited,” 72.

⁸⁰ Las Casas, *Short Account*, 15, 24, 50, 76-77, 93, 98, 112-113.

⁸¹ Las Casas, *Short Account*, 69-70; for Thomas on reprobate mind, Aquinas, *Summa Theologica*, I Q. 23 a. 3.

⁸² Jeremy Lawrence, *Spanish Conquest, Protestant Prejudice: Las Casas and the Black Legend* (Nottingham: Monographs in Post-Conflict Cultures, 2009).

people. Las Casas never denies the Alexandrian bull and, therefore, he always believed that it was the responsibility of Spain to convert the Amerindians.⁸³ Thus, it was not Las Casas who started the Black Legend; it was the other countries of Europe.⁸⁴

Despite Las Casas' condemnation of many Spanish colonial policies, there is now new scholarship that views the Dominican as a *cultural* imperialist. These scholars acknowledge that, while Las Casas often challenged the Spanish Crown and defended certain Amerindian rights, he nevertheless imposed his values upon the Amerindians. Although there is a widening literature on the subject, two books will suffice to examine this position. The first is Daniel Castro's *Another Face of Empire: Bartolomé de Las Casas, Indigenous Rights, and Ecclesiastical Imperialism*. Castro's Las Casas has certain admirable qualities, such his acknowledgement of Amerindian rationality and his condemnation of Spanish atrocities against the natives. Castro, however, has two major complaints against Las Casas. First, in condemning the atrocities of the conquistadors and *encomenderos*, Las Casas' ministry fostered an increase in royal intervention and centralization that furthered Spanish imperialism.⁸⁵ This criticism has some merit, but it fails to present any other reasonable alternative that could have resulted from Las Casas' intervention. Second, Castro severely chastises Las Casas for the Dominican's belief in the legitimacy of *Inter Caetera*'s exhortation to convert the Amerindians. He writes:

We must see the Dominican friar as the incarnation of a more benevolent, paternalistic form of ecclesiastical, political, cultural, and economic imperialism rather than as a unique paradigmatic figure. In this context, he must be reevaluated as a representative of another face of Spanish ecclesiastical

⁸³ Las Casas, *Short Account*, 6.

⁸⁴ Other examinations of the Black Legend include: Comas, 524-528; David F. Slade and Karen Stolley, "On the Brevisima Relación's Black Legends: Eighteenth Century Texts and Contexts," *Approaches to Teaching the Writings of Bartolomé de Las Casas*, ed. Santa Arias and Eyda M. Merediz (New York: Modern Language Association of America, 2008), 92-98.

⁸⁵ Daniel Castro, *Another Face of Empire: Bartolomé de Las Casas, Indigenous Rights, and Ecclesiastical Imperialism* (Durham: Duke University Press, 2007), 9, 133.

imperialism, albeit a more benevolent form of imperialism than the one offered by the traditional colonists.⁸⁶

There is a grain of truth to Castro's second argument. As will be elaborated in further detail in the fifth chapter, Las Casas' solution to the Spanish occupation in the New World evolves throughout his life. The early and pre-Thomistic Las Casas (1513-1523), who believed that the ills of the Conquest could be remedied through a reformation of Spanish character and institutions, certainly participated in another and more benevolent type of imperialism. Castro's argument, however, shortchanges the later Las Casas (1550-1566), who, influenced by Thomism and canon law, argues that the Spanish ought to vacate their lands and provide restitution to the natives. The later Las Casas, after all, argues that the only Spaniards who ought to stay are devout Christians to convert the natives; any settlements necessary for this purpose would have to be minimal. Castro, however, skims over this development in his book. He fails to address in depth, Las Casas' two most important works after the Valladolid debate, *De Regia Potestate* and *De Thesuaris in Peru*. These two treatises are anti-imperial, questioning the very legitimacy of all Spanish claims in America.⁸⁷

The second book that examines Las Casas as a cultural imperialist is Daniel R. Brunstetter's *Tensions of Modernity: Las Casas and His Legacy in the French Enlightenment* (2012). This bold and innovative book argues that Las Casas' defense of the Amerindians was a progenitor for one of the greatest tensions within modern political thought: the tension between moral egalitarianism and alterity. On the one hand, the basis of Las Casas' thought is egalitarianism, the existence of universal human rights, and a common rationality. On the other

⁸⁶ Ibid., 8.

⁸⁷ Ibid., 135-149; The period of 1550-1566 and discussion of Las Casas' two important works, *De Regia Potestate* and *De Thesauris in Peru*, are given a mere fifteen pages.

hand, these foundational concepts create an Other: those human beings that do not acknowledge or live up to this universal standard. Thus, universal standards “rationalize the exclusion of the Other” from having rights.⁸⁸ For Brunstetter, this tension in Las Casas’ thought occurs because, despite upholding Amerindian rationality, his defense centers on the belief that the Amerindians will later become European. This tension is a “legitimized illiberalism” with the purpose of “cultural othercide, or the targeted killing of the Other’s identity by imposing via assimilation, a new identity set within the Western constellation of values.”⁸⁹ In Las Casas’ case, Thomistic natural law provides a cultural imperialism over the Amerindians because it imposes values that the Amerindians had not accepted.

Brunstetter’s monograph is interesting, but fundamentally flawed. The postmodern ideas upon which the book is based fail to address Thomistic thought on its own terms. His imposition of modern concepts, such as egalitarianism and alterity, do not illuminate Las Casas’ thought because they are terms that are foreign to Las Casas’ moral vocabulary and mindset. Las Casas’ thinking was profoundly shaped by his medieval heritage, such as canon law and Christian political thought, but most profoundly, by Thomism. The concepts of moral egalitarianism and alterity do not neatly fit with Thomism. The Thomistic position that natural law is accessible to all human beings, including pagans, does *not* necessarily presume egalitarianism. Moreover, there is a danger with the concept of alterity and cultural othercide. In Thomism, all cultures and political systems derive from the first principles of the natural law and any differences among political orders is based either upon customs in accordance with nature or upon the confusion that derives from sin. The concept of cultural othercide, then, is not compatible with Thomism

⁸⁸ Daniel R. Brunstetter, *Tensions of Modernity: Las Casas and His Legacy in the French Enlightenment* (New York: Rutledge, 2012), 2.

⁸⁹ *Ibid.*, 2, 5.

because, as all culture derives from the same first principles, a Thomist could only wish to eradicate those parts of a culture that not in accordance with the natural law. No culture could be so depraved that the entirety of a culture needed to change. For Las Casas, Amerindian society and culture were legitimate. The only things that needed to change were its customs of cannibalism, human sacrifice, idolatry, sodomy, and a handful of other sins. All of these sins, Las Casas stresses, were not unique to the Amerindian experience; every other pre-Christian society was also guilty of them to various extents. Brunstetter is wrong in assuming that Las Casas wanted to Europeanize them. His error stems from relativistic and historicist underpinnings that are incompatible with Thomism. Thus, by not sufficiently employing the language of Thomism, Brunstetter exaggerates Las Casas' views of human equality and the necessity of assimilation.

One of the most significant scholarly limits of all the aforementioned authors is their neglect of Las Casas' theology. Las Casas was a moral theologian and a practicing Catholic. When he speaks of religion and its corresponding system of ethics, he is not invoking God and the Gospels for rhetorical flourish, but because he believes that the problem of the Conquest is rooted in theology. Out of all the books written in the twentieth century, Gustavo Gutiérrez's *Las Casas: In Search of the Poor of Christ* is the most serious examination of Las Casas' theology. Gutiérrez sees Las Casas, first and foremost, as a theologian. He writes, "The point of departure, for Las Casas, is the conviction that in the Indian, as the poor and oppressed one, Christ is present, buffeted, and scourged."⁹⁰ Many interesting implications derive from this claim. First, Gutiérrez downplays the supposed modernity attributed to Las Casas. Second, and more importantly, Gutiérrez aims to show that Thomism and canonist thought were not the

⁹⁰ Gutiérrez, *Las Casas*, 18.

foundational concepts for Las Casas. Instead, Thomism and canonist thought were used only to supplement the Christocentric message of the Gospel. To prove this, Gutiérrez makes lengthy and erudite comparisons among Las Casas and a variety of thinkers, such as Thomas Aquinas, Vitoria, Soto, and Sepúlveda. He shows correctly that, though Las Casas was influenced by Thomas, there were disagreements between the two men. As a result, Gutiérrez is one of the few scholars to hammer out the differences between Las Casas and the other sixteenth-century neo-Thomists.

In demonstrating Las Casas' originality, however, Gutiérrez underemphasizes how Thomistic Las Casas really was. Gutiérrez is guilty of creating a false dichotomy between natural law thinking and the Gospel. This fault is partly a result of some reservations he has about Thomism, especially because he stresses the differences between Thomism and his more liberal interpretation of the Second Vatican Council.⁹¹ By deemphasizing the Thomism of Las Casas, Gutiérrez perverts Las Casas and makes him into a quasi-liberation theologian (despite stating early in his book that Las Casas should not be considered as one).⁹² In fact, Gutiérrez, whether consciously or not, changes Las Casas' vocabulary. Both Thomas and Las Casas emphasized the *intellect*. Gutiérrez, however, refrains from using the term *intellect* and instead elects to use the word *intuition*. He praises, for example, "Las Casas' basic intuitions."⁹³ The problem with this substitute is that it is a word alien from the Thomistic (and Lascasian) corpus. For Thomas, the *intellect* is synonymous with the grasping of first principles done through reason. *Intuition*, however, is something extra-rational. Due to the looseness of the term, it

⁹¹ *Ibid.*, 187, 269-271.

⁹² *Ibid.*, 8.

⁹³ *Ibid.*, 68.

refers to feelings, sentiments, or divine inspiration, rather than reason. The substitution of terms is significant because it replaces the Aristotelian-Thomistic framework of Las Casas' philosophical anthropology with a more mystical framework. Feelings and sentiments do not decipher what is good and evil; reason does. A second example of Gutiérrez' modern terminology is his unnecessary substitution of the word 'nature' with 'ecological balance.'⁹⁴ The problem with this substitution of terms is that the latter owes more to the modern theories of the social construction of reality than to the classical essentialism of Aristotle or Aquinas. Nature is tied to teleology; the term 'ecological balance' derives more from a framework that is not necessarily teleological.

Whereas Gutiérrez does not consider Las Casas to be a modern liberation theologian, Erik Camayd-Freixas tries to make Las Casas conform to the two basic tenets of liberation theology: a rejection of essentialist metaphysics and its demand for radical structural changes in society. The problem with Camayd-Freixas' interpretation is simple: Las Casas does not reject essentialist metaphysics. Camayd-Freixas' error stems from conflating Classical and Christian metaphysics simply with what he considers to be the Platonic and Augustinian dualism of the spiritual and the material. He then sets up a false dichotomy between Platonic dualism and historicism, which limits its scope to the material. Absent, then, from his discussion is the moderation of Aristotle and Thomas, who are neither Platonic dualists nor modern historicists. Both Aristotle and Thomas acknowledge the importance of the sensual world (as all knowledge starts originally in the senses), but locate morality in the intellect. This failure to acknowledge this third alternative leads Camayd-Freixas to argue incorrectly that Las Casas was a historicist. While it is most certainly true that Las Casas understood the importance of historicity (as his

⁹⁴ Ibid., 78.

histories demonstrably show), Las Casas was not a historicist. He was a Thomist, who recognized the nuances of particular moments (through human law), but always understood it to be judged through eternal principles that transcended particular period of times (through natural law). Camayd-Freixas is, admittedly, on stronger ground when he claims correctly that Las Casas wanted radical change. But to want radical change does not necessary make one a liberation theologian. Without the first tenet, the second alone does not make it liberation theology. Moreover, Las Casas does not subscribe to any intrinsic notion of conflict theory or class conflict. The radicalness of Las Casas' project is, to use an Aristotelian word, *accidental* and it is fundamentally tied to a Classical and Christian philosophical anthropology.⁹⁵

Las Casas mentions metaphysics only when the occasion demanded it. Admittedly, he did not speak at length about being and cause, but he grounded his political thought in the presupposition that they existed. Silvio Zavala recognized this principle in his unjustly forgotten *The Political Philosophy of the Conquest of America*. Zavala, challenging the perception that Las Casas was primarily a historicist, argued that, for the Spanish Dominican, the “anthropology of the New World is relegated to a secondary place, where the a-priori idea of rational human nature is brought to the fore.”⁹⁶ Las Casas *begins* with a metaphysical conception of reason and *then* interprets the world.

Las Casas' political philosophy is sometimes called into question because of the commentator's belief that Las Casas was not a comprehensive thinker. He either lacked the intellectual rigor of Vitoria or he was not as politically prudent as Sepúlveda. Thus, in his debate

⁹⁵ Erik Camayd-Freixas, “Teaching Liberation Theology: The Legacy of Las Casas,” in *Approaches to Teaching the Writings of Bartolomé de Las Casas*, ed. Santa Arias and Eyda M. Merediz (New York: Modern Association of America, 2008), 187-195.

⁹⁶ Zavala, *The Political Philosophy of the Conquest of America*, 76-77.

with Sepúlveda, Las Casas is designated as the moral theologian, while Sepúlveda is a political philosopher.⁹⁷ “Sepúlveda,” the argument goes, “proves more solid and coherent as far as the theory is concerned, [while] Las Casas demonstrates greater sensitivity and deeper knowledge of human frailty and its dangers.”⁹⁸ While this narrative does not deny the role of natural law in Las Casas’ thinking, it often relegates the difference between Las Casas and Sepúlveda to a matter of style or approach than of substance. This interpretation does great injustice to Las Casas because his statements about the universality of human nature, the importance of sovereignty, and the role of a natural standard of justice are not purely rhetorical flourishes to win over an audience, but a thoughtful attempt to base just government on a correct interpretation of human nature.

Those scholars who take Las Casas’ political philosophy seriously can be divided into three loose camps. The first camp frames him as a “modern thinker” or, at least, as a precursor to one. Usually, this narrative is based upon Las Casas’ view of justice, in which the Spanish Dominican appears as a critic of the imperialistic and inquisitionist Spanish. In contradistinction to Daniel Castro’s claim that Las Casas furthered Western imperialism, George Mariscal argues that Las Casas’ defense of the individual’s reason to accept truth without coercion was a stunning indictment against the imperialism characteristic of Sepúlveda. Instead, Las Casas’ intellectual formation is based on a truth “having less to do with institutional doctrine than with the radical idea of justice.”⁹⁹ Hence, he is modern because he is ahead of his time. Edmundo

⁹⁷ See the title, for example, of: Eduardo Andujar, “Bartolomé de Las Casas and Juan Gines de Sepúlveda: Moral Theology versus Political Philosophy,” in *Hispanic Philosophy in the Age of Discovery*, edited by Kevin White. (Washington DC: Catholic University of America, 1997).

⁹⁸ Rafael Alvira and Alfredo Cruz, “The Controversy between Las Casas and Sepúlveda at Valladolid” in *Hispanic Philosophy in the Age of Discovery*, edited by Kevin White. (Washington DC: Catholic University of America, 1997), 94.

⁹⁹ George Mariscal, “Bartolomé de Las Casas on Imperial Ethics and the Use of Force” in *Reason and Its Others: Italy, Spain, and the New World*, ed. David R. Castillo and Massimo Lollini. (Nashville: Vanderbilt University Press, 2006), 260.

O’Gorman, on the other hand, considered Las Casas to be modern because of his emphasis on reason. O’Gorman believed that Las Casas was a forerunner of the Enlightenment because his notion of equality was “not linked to the metaphysical plane of the divine but to the physical realm of the natural.”¹⁰⁰ While O’Gorman is correct in seeing the bifurcation of the divine and natural as a product of the Enlightenment, he neglects to mention Thomas’ differentiation between natural and divine law. Thomas’ distinction between the two is not mere medieval hair-splitting. It is meant to show that human beings learn from nature. Revelation supplements what cannot be known by nature. As a consequence, not all knowledge comes from revelation. Therefore, O’Gorman’s claim of Las Casas’ supposed modernity comes from his caricature of medieval philosophy.

In Latin American countries, scholars commonly view Las Casas as a modern thinker because of his emphasis on subjective rights.¹⁰¹ This particular claim, however, is unfounded. The enthusiasm many scholars have in originating modern ideas with the Spanish Thomist are often a result of a limited knowledge of both Thomism, which addresses the theme of the consent of the governed without being modern, and the tradition of medieval canon law, from whence the idea of subjective rights sprung.

¹⁰⁰ Edmundo O’Gorman, “Lewis Hanke and the Spanish Struggle for Justice in the Conquest of America,” *The Hispanic American Historical Review* 29, no. 4 (Nov., 1949): 568.

¹⁰¹ Raul Marrero-Fente, “Human Rights and Academic Discourse: Teaching the Las Casas- Sepúlveda Debate at the Time of the Iraq War” *Hispanic Issues On Line* 4:1 (2009): 250, 255; Paolo Wright-Carozza, “From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights” *Human Rights Quarterly* 25:2 (2003): 281-313. For examples of scholars claiming that Las Casas originated the ideas of universal suffrage or of the Declaration of Independence, see: Angel Losada, “La ‘Apologia’ obra inedita de Fray Bartolomé de Las Casas: actualidad de su contenido,” *Boletín de la Real Academia de la Historia* CLXII, no. 2 (1968): 243, quoted in Hanke, *All Mankind Is One*, 103-104.

The second camp that takes Las Casas' political philosophy seriously consists of a talented and erudite group of medievalists, who ably and definitively show that Las Casas' thought was grounded upon Roman civil law and Catholic canon law. They provide the most serious challenge in arguing that Las Casas was a Thomist. In a very influential and provocative essay, Kenneth Pennington, one of the leading canonist scholars in the English language, argues that "Las Casas was not a pragmatic activist or a Thomist, but...a jurist whose ideas were based on medieval juridical theory."¹⁰² Pennington argues that canon law provided Las Casas with a firmer foundation for his defense of the Amerindians because, whereas Thomas in the *Summa Theologica* II-II Q. 10 a. 10 had argued that infidels could lose their *dominium* due to their infidelity,¹⁰³ the canonist Innocent IV, whom Las Casas quotes often, had argued that unbelief was not sufficient grounds for questioning the *dominium* of infidels. Pennington frames Las Casas' work as a response to the debate raging among the late medieval canonists between those who believed that infidels had *dominium* (Innocent IV and his followers) and those who denied the claim (Hostiensis and his followers). Since Pennington considers the question of the legitimacy of Amerindian *dominium* to be decided in the Thomistic tradition only by Vitoria, Pennington claims that Las Casas' foundational concept is not necessarily natural law, but the Roman law claim of *quod omnes tangit debet ab omnibus approbari*.¹⁰⁴ Pennington correctly understands the role of canon law within Las Casas' thought, but the limitation of his work is that he draws mostly from the Spaniard's last work, *De Thesauris in Peru*. Absent from his

¹⁰² Kenneth Pennington, "Bartolomé de Las Casas and the Tradition of Medieval Law" *Church History* 39:2 (1970): 151.

¹⁰³ Pennington does not mention that Las Casas is able to salvage Thomas' argument. See Las Casas, *In Defense of the Indians*, 119.

¹⁰⁴ "What touches all ought to be decided by all." My translation.

discussion is the Thomism that forms the basis of his other post-1522 works, ranging from his theological works to his debate in Valladolid against Sepúlveda.¹⁰⁵ Pennington, as a result, misses the significance of Las Casas' philosophical anthropology, especially the importance of human reason.

Like Pennington, Brian Tierney acknowledges that Las Casas was highly influenced by judicial thought and pays close attention to *De Thesauris*. However, Tierney does consider Las Casas to be working within a Thomistic framework. Instead of looking at Las Casas as an “either/or” figure, Tierney argues that the Spanish Dominican’s “essential achievement, on a theoretical level, was to graft, quite consciously, a juridical doctrine of natural rights onto Aquinas’ teaching on natural law.”¹⁰⁶ Las Casas’ originality lies with his integration of two different medieval traditions. On the one hand, against the claims of the nominalists, Las Casas posits a universal nature accessible to all men. On the other hand, he successfully adds subjective rights, a claim alien (but perhaps not unknown) to Saint Thomas, providing human beings with things that are owed to them. For this reason, Paolo Wright-Carozza, building off Tierney, calls Las Casas “the midwife of modern human rights talk.”¹⁰⁷

David Orique follows Tierney’s conciliarist approach of acknowledging the importance of both the judicial and Thomistic elements. Whereas Tierney focused primarily on the *De Thesauris*, an obviously judicial text, Orique carefully demonstrates that both judicial and Thomistic thought is present in Las Casas most well-known work, *A Short Account of the Destruction of the Indies*. Orique dismantles the highly prevalent and almost-taken-for-granted

¹⁰⁵ Pennington, “Bartolomé de Las Casas,” 149-161; Pennington also adds upon this in *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* (University of California, 1993), 272-273.

¹⁰⁶ Tierney, *The Idea of Natural Rights*, 276.

¹⁰⁷ Wright-Carozza, “From Conquests to Constitutions,” 289.

notion that Las Casas' *Short Account* was simply a polemical and rhetorical retelling of Spanish atrocities. Instead, Orique examines the *Short Account* in its historical context and, through careful exegesis, shows that it encompasses Thomas' division of law, various judicial concepts of Bartolus, a defense of the consent of the governed, and a scathing critique of the *encomienda* system.¹⁰⁸ Despite recognizing the role of both Thomas and the judicial thinkers, he eventually argues that the latter's role was more influential for Las Casas. Orique writes, "While Las Casas' thought was certainly rich with the canonistic-philosophical-theological thought of Aquinas, he used that thought to augment or substantiate his judicial arguments."¹⁰⁹ Orique's conclusion, however, is a result of emphasizing, like Pennington, only one of Las Casas' books.

The third and final camp that takes Las Casas' political thought seriously are those who examine his Thomistic natural law. Interestingly there are a few scholars who, emphasizing the Classical influence of the sixteenth century, consider Las Casas' natural law thought as a combination of Christian and Stoic thought without mentioning Thomas substantively.¹¹⁰ Silvio Zavala is the scholar who most articulately represents this position. Zavala portrayed the debate concerning the Conquest to be divided along two sides. On the one side stood some scholastic thinkers influenced by the Renaissance, who "accepted the classical theory of the relation of the wise man to the barbarian" and consequently preached the natural servitude of Amerindians. Opposed to this robust Renaissance position were scholastics of "Stoic and Christian derivation, which affirmed the liberty of the natives and interpreted the mission of the colonizers in

¹⁰⁸ David Thomas Orique, "The Unheard Voice of Law in Bartolomé de Las Casas' *Brevisima Relacion de la Destruccion de Las Indias*" (PhD Dissertation, University of Oregon, 2011), 58, 126, 240.

¹⁰⁹ *Ibid.*, 125.

¹¹⁰ J.A. Fernández-Santamaria, *Natural Law, Constitutionalism, Reason of State, and War: Counter-Reformation Spanish Political Thought, Volume 1* (New York: Peter Lang, 2005), 171; Zavala, *Political Philosophy*, 21.

accordance with the principles of a civilizing trusteeship.”¹¹¹ By identifying the integration of Stoicism and Christianity as the intellectual foundation of the defense of the Amerindians, Zavala’s description comes as close to describing Thomism without using the name.

In many of the studies on sixteenth-century Thomism, Las Casas is mentioned, but a robust analysis of how Las Casas employs Thomism is missing.¹¹² The latest example of this trend is Luis Cortest’s excellent monograph, *The Disfigured Face*, which recognizes that Las Casas was working in a Thomistic vein. Cortest recognizes the brilliance of Las Casas and notices, unlike many other commentators, that Las Casas boldly challenged the Aristotelianism of Sepúlveda, the leading translator of Aristotle in the sixteenth century. Cortest’s study of the revival of Thomism, however, places most of the originality of sixteenth-century Thomism with Vitoria and Soto.¹¹³

The most influential argument about the tangential nature of Las Casas’ Thomism, however, comes from Venancio Carro, arguably the most esteemed twentieth-century Spanish scholar on Thomism. Carro acknowledges a philosophical aspect to Las Casas’ writings, but he denies any originality in his thought. Instead, he argues that Las Casas based his Thomism on the writings of his two Spanish contemporaries, Vitoria and Soto. Two problems, however, arise from this interpretation. First, Carro does not elaborate on how Las Casas would have read Vitoria and Soto, especially since Las Casas was largely self-taught and never studied under them. Second, even though Carro acknowledges important differences between both Vitoria and

¹¹¹ Zavala, *Political Philosophy*, 21.

¹¹² Examples include one of the best books written on sixteenth century Spanish political thought, Bernice Hamilton, *Political Thought in Sixteenth-Century Spain: A Study of Vitoria, De Soto, Suárez, and Molina* (Oxford: Clarendon Press, 1963) and a worthwhile article, Thomas F. O’Meara, “The Dominican School of Salamanca and the Spanish Conquest of America: Some Bibliographical Notes” *The Thomist* 56: 555-582.

¹¹³ Luis Cortest, *The Disfigured Face: Traditional Natural Law and Its Encounter with Modernity* (New York: Fordham University Press, 2008), 30-49, esp. 36.

Soto, Carro does not provide a good explanation about how Las Casas developed his different positions. For Carro, an orthodox Catholic, Vitoria and Soto were *the* standards of sixteenth-century interpretations of the Angelic Doctor. Thus if Las Casas disagreed, it was Las Casas who was wrong. Carro's Las Casas is an honorable man and a talented polemicist, but ultimately a second-rate philosopher who used the dominant ideas of his time to create an impassioned defense of the Amerindians.¹¹⁴ Notably, Manuel Martinez criticizes Carro's position harshly: "Writers on juridical-theological themes commonly reject the positions of Las Casas when he disagrees with Soto and Vitoria, principally on the grounds of the old, discredited aphorism, 'Magister dixit, ergo ita est.'"¹¹⁵

Angel Losada, who rejuvenated the study of Las Casas by translating most of Las Casas' works from Latin into Spanish after the Second World War, gives more credence to the Dominican's originality. Losada admits that many of Las Casas' positions – such as his disavowal of total war and forced conversion – were in line with the patristic and medieval Christian tradition. Unlike Carro, however, Losada emphasizes the intentional differences between Las Casas and the various members of the Salamanca School. In particular, Losada argues that Las Casas differed from Vitoria on various issues concerning the just war, not because Las Casas was a second-rate philosopher who misinterpreted Saint Thomas, but because he disagreed deliberately with Vitoria.¹¹⁶

¹¹⁴ Venancio D. Carro, "The Spanish Theological-Juridical Renaissance and the Ideology of Bartolomé de Las Casas," *Bartolomé de Las Casas in History: Toward an Understanding of the Man and His Work*, eds. Juan Friede and Benjamin Keen (DeKalb: Northern Illinois University Press, 1971) 248-49, 267, 270, 274.

¹¹⁵ Manuel M. Martínez, "Las Casas on the Conquest of America," *Bartolomé de Las Casas in History: Toward an Understanding of the Man and His Work*, eds. Juan Friede and Benjamin Keen (DeKalb: Northern Illinois University Press, 1971), 320.

¹¹⁶ Angel Losada, "The Controversy between Sepúlveda and Las Casas in the Junta of Valladolid," *Bartolomé de Las Casas in History: Toward an Understanding of the Man and His Work*, eds. Juan Friede and Benjamin Keen (DeKalb: Northern Illinois University Press, 1971), 283, 297-298, 304.

Losada's perceptive interpretation of Las Casas comes closest to the argument of this dissertation. As Losada, Martinez, Gutiérrez, and even Carro admit, there are noticeable policy differences between Vitoria, Soto, and Las Casas. These differences are significant because they had tremendously practical consequences. It is the thesis of this dissertation that Las Casas turned primarily, but not exclusively, to Thomas for answers. In a letter Las Casas wrote to the friars of Chiapas, he noticed that many men "lacked the preparation to get to the heart of the problems of law, because St. Thomas does not expressly deal with the questions. *Yet every one of my propositions, rigorous and harsh though they may seem, I prove with principles taken from that doctrine.*"¹¹⁷ This particular quotation illuminates many important points. First, the quotation demonstrates that Las Casas saw himself as a philosopher, who more or less worked within the range of Thomistic thought. Second, Las Casas acknowledges both strengths and limits to Thomas. On the one hand, Thomas did not foresee anything like the discovery of America. There is no easy and immediate Thomistic solution to the Conquest. It is, then, a stretch, as Carro presumes, to consider Vitoria and Soto as the 'correct' modern interpretations of sixteenth-century Thomism. On the other hand, Thomas' philosophy provides a rich and relatively complete philosophical framework. Thomas discusses, at length, about what human nature is, what a just government should be, how virtue is exercised, and how God interacts continually with His Creation.

Since Vitoria and Soto were all Thomists, they agreed on a number of things. They all defended the Amerindians against the charge of natural slavery. They acknowledged the legitimacy of Amerindian government and their right to *dominium*. They condemned the actions

¹¹⁷ Las Casas, quoted in Martinez, "Las Casas on the Conquest of America," 318, emphasis added.

of the conquistadors as unjust. Yet, Vitoria argued that, in the name of the *ius gentium*, the Spanish could wage war justly against the Amerindians in order to protect the innocent from human sacrifice and to protect Catholic converts from infidel kings. Soto believed that, in certain situations, coercion could be used in the instruction of the faith. Las Casas disagreed. Las Casas, by drawing upon the limits of jurisdiction, the relationship between human and natural law, and the just war theory, condemned waging wars for the reasons Vitoria gave. Las Casas, drawing upon an Aristotelian-Thomistic understanding of persuasion and ignorance, argued against Soto's position on forced preaching. In essence, Las Casas drew upon Thomas to criticize the great Neo-Thomistic thinkers of the sixteenth century.

Conclusion

As the review of literature suggests, this dissertation aims to challenge many long-standing scholarly arguments and silly caricatures. It dismisses the notion that Las Casas was a merely polemical writer who, out of vanity and pride, sought to use any argument to his advantage. Instead, it asserts that Las Casas intentionally drew upon the classics of Western canon and, in particular, the theology and philosophy of Thomas Aquinas. Although Las Casas' writings are somewhat disorganized, he employs a comprehensive and consistent Thomistic philosophical anthropology that provides him with the necessary tools to defend Amerindian rationality and self-government against the arguments of certain conquistadors, colonists, courtiers, canonists, friars, and imperial advocates.

Las Casas' Thomism is ignored because the Spanish Thomism of the sixteenth century is often exclusively identified with the School of Salamanca and its founder, Francisco de Vitoria. The praise and attention this school receives is well-deserved, but it ought not to be considered the only version of sixteenth-century Spanish Thomism. Freed from certain prejudices of the

Salamanca School, such as its reluctance in using Thomas' metaphysics, Las Casas developed a Thomistic outlook that condemned Aristotelian natural slavery and empire, while also defending the legitimacy of Amerindian self-government, *dominium*, and culture. It is not surprising, then, that there are certain differences between the Salamanca School and Las Casas. Instead of presuming, as does Venancio Carro, that these differences prove Las Casas' intellectual inferiority, this dissertation seeks to portray Las Casas in dialogue with the Salamanca School and its greatest master, Vitoria.

CHAPTER 2: THE THOMISTIC RESPONSE TO THE AMERINDIAN QUESTION BEFORE LAS CASAS

“I love the University of Salamanca; for when the Spaniards were in doubt as to the lawfulness of their conquering America, the University of Salamanca gave it as their opinion that it was not lawful.”¹

Dr. Johnson’s judgment is one among many intellectuals and scholars who have praised the School of Salamanca. The University of Salamanca was the epicenter of Spain’s Thomistic revival. Led by Francisco de Vitoria, who replaced Peter Lombard’s *Sentences* with Thomas Aquinas’ *Summa Theologica* as the school’s main text, Salamanca housed many great Thomistic thinkers, including Domingo de Soto, Melchior Cano, and Bartolomé Carranza de Miranda.² Many of Vitoria’s pupils went on to receive the most prominent chairs of theology throughout Spain. Salamanca’s political muscle came from its close relationship with Charles V. Vitoria was one of his most trusted theologians, and both Carranza de Miranda and Soto had served as his spiritual advisors. The trust that Charles placed in Salamanca is particularly notable, not only because he seemed to favor it over the nominalist-leaning University of Alcalá, but because, as Dr. Johnson’s statement recognized, many members of the School of Salamanca spoke out, in some way or form, against the atrocities of the Spanish Conquest. While their criticisms of the Spanish Conquest varied amongst each other, they were united by their use of Thomas’ *Summa Theologica* in defending the Amerindians. Their use of Thomas made them the most ardent critics of the Spanish Conquest.

Thomism in the fourteenth and fifteenth century was not a particularly dominant force in medieval culture. Thomas was studied by the Dominicans and had some notable fourteenth and fifteenth century followers, but the majority of the universities favored the philosophies opposed

¹ James Boswell, *The Life of Samuel Johnson* (Boston: Carter, Hendee, and Co., 1832), 203.

² Andre Azevedo Alves and Jose Manuel Moreira, *The Salamanca School* (New York: Continuum, 2010), 3.

to his thought: the voluntarism of John Duns Scotus and the nominalism of William of Ockham.³

A resurgence of Thomism began in the first and second decades of the sixteenth century at the University of Paris, where Thomas himself had once taught. Pierre Crockaert became dissatisfied with the prevailing nominalism of his university and his professor, John Major. In 1512, Crockaert, with his favorite student, the young Vitoria, edited a volume of Thomas' *Secunda Secundae*. It was "an event of great significance in the history of Catholic theology."⁴ It was from Crockaert's teaching that Vitoria had learned to replace Lombard with Aquinas.⁵

Increased interest in Thomas began as a response to nominalism, but two other factors furthered catapulted its growth. The first was the detailed commentaries of Tommaso de Vio, known more colloquially as Cardinal Cajetan. The second factor was the Protestant Reformation, especially because some Catholic intellectuals believed that Ockham's thought had influenced Luther. Thomists rejected several political ideas prevalent within Lutheranism. They disagreed firmly with the contention that due to fallen nature, humanity "cannot hope to apprehend the will of the *Deus Absconditus* and in this way produce a reflection of God's justice in the arrangement of their lives."⁶ The traditional Thomistic response to this contention was that, though human beings do know the eternal law of God, they nevertheless are able to participate in the eternal law by apprehending first principles through the use of their intellect. Hence, human beings are able to arrange their lives in accordance with God's justice, though not perfectly. This Thomistic argument laid the groundwork for the further rejection of two other principles. The first was Luther's denial that man possessed any inherent justice. For Thomists,

³ David Knowles, *The Evolution of Medieval Thought* (New York: Vintage Books, 1962), 300-340.

⁴ Carlos G. Noreña, *Studies in Spanish Renaissance Thought* (The Hague: Martinus Nijhoff, 1973), 46.

⁵ Alves and Moreira, *The Salamanca School*, 30; Skinner, *The Foundations of Modern Political Thought*, 135.

⁶ Skinner, *Foundations of Modern Political Thought*, 139.

Luther's claim distorted human nature because all human beings naturally aim to seek the good. The second Lutheran claim that Thomists rejected was that the dictates of an ungodly prince are not binding on conscience. The Thomistic position is, indeed, different: justice comes from the goodness of law, not the goodness of the prince.⁷

Thomists worried about the political implications of Lutheran theology. If human beings possessed little or no inherent justice, on what ground could the Amerindians have sovereignty or *dominium* over their lands? If the dictates of an ungodly prince are not binding on the conscience, on what grounds are the Amerindian governments legitimate? Why would a European, who at least knows the Christian God, have to respect the institutions of those who do not know God? In this way, Lutheran thought led to conclusions similar to Hostiensis and John Wyclif, who denied non-Christians *dominium*. In this vein, Vitoria's efforts in his *De Indis* to denounce Wyclif make sense when one views them as not-so-subtle criticisms of Luther.⁸ Indeed, the secret implication of Vitoria's thought seems to be that the conquistadors and the Crown were justifying their claims on Lutheran-esque principles. Quentin Skinner also recognizes the Thomistic fear of Lutheranism in pro-Conquest writings, especially those of Sepúlveda. As Skinner points out, Sepúlveda's proposition that political order must be based upon godliness appeared to many Thomists to be quasi-Lutheran. Indeed, three Thomists – Melchior Cano, Bartolomé Carranza, and Diego de Covarrubias – denied Sepúlveda the right and license to publish his *Democrates Secundus* in Spain.⁹

⁷ Ibid., 139-140.

⁸ The odd thing about Vitoria's *De Indis* is that he debunks Wyclif. Wyclif, however, was not invoked by any of the conquistadors because he was declared a heretic at the Council of Constance.

⁹ Alves and Moreira, *The Salamanca School*, 98; Skinner, *Foundations of Modern Political Thought*, 142.

The Elements of Thomism

The simplest definition of Thomism is a bit redundant: Thomism is philosophy that is grounded in the analysis and theoretical framework of Thomas Aquinas. A Thomistic thinker is not bound to agree with all the conclusions of Saint Thomas. Several disciples of Thomas departed from him on various issues. Moreover, there are many debates among scholars about interpreting Thomas. When compared to other Catholic theological systems (such those proposed by Scotus and Ockham), however, there are distinctive Thomistic positions on several topics in theology and philosophy, ranging from the sacraments and angels to the differentiation between essence and existence. In the context of the Amerindian debate, the political implications of Thomism are particularly cogent in three specific areas: the supremacy of the intellect over the will, Thomas' distinctive interpretation of natural law and its relationship with human laws, and the role of grace.

The most important aspect of Thomism is the primacy of the intellect over the will because it serves as the philosophical linchpin of his discourse on the natural law. The relationship between the intellect and the will was among the most highly contested debates in the late medieval period. It was one of the most important philosophical differences between Thomas and his good friend Bonaventure.¹⁰ For Thomas, the will is an inclination to do the good and seek happiness, whereas the intellect is that which apprehends what is good.¹¹ In other words, the intellect presents to the will what is good, and the will acts upon it. Thomas,

¹⁰ Servais Pinckaers, "Aquinas on Nature and the Supernatural" in *The Pinckaers Reader*, eds. John Berkman and Craig Steven Titus (Washington, DC: Catholic University of America Press, 2005), 364.

¹¹ Aquinas, *Summa Theologica*, I Q. 82 a. 1; Also in I Q. 82 a. 4 Thomas explains the interaction between the intellect and will as follows: "A thing is said to move in two ways: First, as an end; for instance, when we say that the end moves the agent. In this way the intellect moves the will, because the good understood is the object of the will, and moves it as an end. Secondly, a thing is said to move an agent, as what alters moves what is altered, and what impels moves what is impelled. In this way the will moves the intellect and all the powers of the soul."

following Aristotle, posits that the intellect is passive in that it does not create objects. The intellect is passive because it receives its information from sense perception. Using the active intellect, it then interprets the senses through abstraction. The intellect, therefore, has primacy over the will, in that in order for the will's inclination to be good, it must be informed by right reasoning from the intellect.¹²

The relationship between intellect and will has two significant implications. The first concerns the nature of God, while the second concerns the dignity of man. In contrast to Duns Scotus' voluntarism and Ockham's nominalism, Thomas argues that God's goodness does not derive purely from his will, but from his wisdom. Hence, the eternal law of God (and the natural law, which is humanity's participation in the eternal law) is a result of God's wisdom. Goodness is not simply a result of God's appetite, but of his knowledge of his own creation. Although the debate between whether goodness comes from God's will or wisdom is often regarded as a tedious academic debate, it can have severe political implications. For example, the positing of the will over the intellect often leads to a simplistic divine command theory. William of Ockham argued that, since morality comes from the will, it is within in the power of God to change the foundations of morality. Ockham's charge, though it was primarily theoretical, poses many moral and political problems. If God can change the foundations of morality, human beings ought not to look to nature for what is good and evil, but only to the commands of God. The role of reason in understanding nature becomes diminished. Skepticism about the world increases. As doubt increases about the natural world, so does skepticism about the merits of non-

¹² Ibid., I Q. 79 a. 2, 3, 8.

Christians because they do not have access to God's revelation. Doubt about the Amerindians' rationality is anchored in such epistemological skepticism.¹³

Thomistic natural law gives credence to the capabilities of non-Christians. It starts with the proposition that God will never do evil, not simply because he is omniscient, but because he is also perfect. A perfect being is one marked, not by the ability to do anything, but by the ability to do everything well (i.e. in accordance with the good). God ordains goodness through laws. God, out of His love and well-orderedness, governs the world through laws. Since laws are dictates of reason, the eternal law (i.e. God's wisdom) is governed by divine reason.¹⁴ Human beings can neither know nor understand the entirety of the eternal law due to the natural limitations of their faculties. However, since they are distinct from other animals through the possession of reason, they are inclined to understand its basic premises. The "divine light" of the eternal law shines within human beings "in the most excellent way," providing human beings with "a share of the eternal reason, whereby it has a natural inclination to its proper act and end."¹⁵ This human participation with the eternal law is the natural law. Human beings, through the exercise of their reason, are inclined to act in accordance with God's goodness. The first precept that comes from the natural law is that "good is to be done and ensued, and evil is to be avoided."¹⁶ This doing and ensuing of good inclines human beings to preserve human life, to have and to educate children, to love and know God, and to live in community. Since human

¹³ Brehier, *The Middle Ages*, 194-203.

¹⁴ Aquinas, *Summa Theologica*, I-II Q. 90 a. 1; Q. 91, a. 1.

¹⁵ *Ibid.*, I-II Q. 91, a. 2.

¹⁶ *Ibid.*, I-II Q. 94, a. 2.

beings have rational souls, they are also inclined to act virtuously. Virtue, therefore, is prescribed by the natural law. The first principles of the natural law are unchangeable.¹⁷

Noticeably, the Thomistic understanding of natural law is different from how the canonists define the term.¹⁸ This point is particularly pertinent in order to counter the claims of those scholars who argue that Las Casas was primarily a canonist. Roman and canon law did not have a clear definition of the term. Ulpian had defined natural law as “that which nature has taught to all animals; for it is not a law specific to mankind but is common to all animals.”¹⁹ Two problems emerge from Ulpian’s definition. The first is that, from a Thomistic standpoint, the definition is incomplete. For Thomas, while all created things are in accordance with nature, only human beings can understand and act in accordance with (or against) the natural law. Only human beings are able to use their intellect to interpret first principles. Thus, Ulpian’s definition fails to address the special way in which human beings participate in the natural law. The second problem with Ulpian’s definition and with the subsequent canonist thinkers who employ it is that it conflates natural law with unthinking instinct. For Thomas, natural law is not instinct because the former comes from the exercise of one’s reason, while the latter derives from naturalistic impulse.²⁰

A second canonist definition of natural law claimed, in the words of Guido de Baysio, that “natural law is divine law.”²¹ In this definition, natural and divine law became synonymous.

¹⁷ Ibid., I-II Q. 94 a. 2, a. 3, a. 5.

¹⁸ On the differences between Thomas and the canonists, Ullman, *Medieval Papalism*, 47-49. A good overview of the different definitions of the natural law among the canonists is Michael Bertram Crowe, *The Changing Profile of the Natural Law* (The Hague: Nijhoff, 1977), 88-91.

¹⁹ Justinian, *The Digest of Justinian*, ed. Alan Watson (Philadelphia: University of Pennsylvania, 2009), 1.1.

²⁰ Ullman, *Medieval Papalism*, 49.

²¹ “Jus naturale, id est, jus divinum” Guido de Baysio, quoted in Ibid., 40.

Rufinus posited that “natural law is contained in the books of the New and Old Testaments.”²² This definition, from a Thomistic perspective, is more unclear than Ulpian’s. For Thomas, the divine and natural law are separate, even though they do not conflict with each other. Thomas teaches that natural law is learned through the exercise of one’s intellect, while divine law aids in providing the knowledge that cannot be learned only from reason through revelation. The practical danger of Guido’s and Rufinus’ definition is that it rejects the universality of natural law. If, as Saint Paul states, Jews and Gentiles are ignorant of the law of Christ, then they are also ignorant of the natural law, as natural and divine law are the same. As Walter Ullmann comments on this definition, “natural law itself admitted that it did not apply to every nation.”²³ Hence, in the context of the New World, this definition of the natural law would not suffice in protecting the rights of the Amerindians, since it would be unclear to the extent to which the natives would be able to understand the natural law.

The third definition of natural law, found in Gratian, states that “natural law is common to all nations because it exists everything through natural instinct, not because of any enactment.”²⁴ Gratian, like Thomas, finds that the union of man and woman and the procreation of children are in accordance with natural law. Yet, Gratian’s definition lacks of a philosophical grounding. Natural law derives from instinct, not practical reason. There is no concern for how human beings understand nature and first principles. It is a definition that can easily deflate. In the context of the discovery of America, Gratian’s definition fails to protect the Amerindians. For they participated in things (such as cannibalism and human sacrifice) that were believed to

²² “Jus natural in libris Novi et Veteris Testamenti continetur.” Rufinus, quoted in *Ibid.*, 40.

²³ *Ibid.*, 48.

²⁴ Gratian, *The Treatise on Laws and the Ordinary Gloss*, trans. Augustine Thompson, O.P. and James Gordey (Washington D.C.: Catholic University of America Press, 1993), D. 1 c. 7.

be banned by all the civilized nations. Gratian's definition of natural law, therefore, would have made the Amerindian cannibalism and human sacrifice too much of an unexplainable anomaly.

Thomas Aquinas' definition of natural law, then, does have more clarity than the canonists.

The great role Thomas attributes to the natural law, in no way, hinders the important role grace has in his thought. The major Thomistic tenet concerning grace is that grace does not destroy nature, but perfects it. Without grace, Thomas argues, human beings can learn truths, but not all truths.²⁵ An Amerindian, then, who never received grace in his life will still be able to have knowledge and understand basic moral truths. Without grace, however, human beings cannot merit salvation; they are dependent upon grace.²⁶ The great urgency of Las Casas' preaching is often fueled by the orthodox belief that without grace there can be no salvation. Due to his adherence to the Aristotelian principle that not all ignorance is culpable, Thomas believed that unbelief is not in itself a sin. No one can be punished justly for something they did not know and could not have known. Punishment for the unbeliever is still possible because most human beings commit mortal sins that they know are wrong due to the allure of concupiscence. Theoretically, at least, pagans who commit mortal sins ought to have known to avoid the evil act.²⁷

Thomas' position on grace is politically significant because, due to the great role of reason and persuasion in his thought, he condemns the baptizing of anyone who does not wish to receive the sacrament.²⁸ The baptizing of the unwilling, on the other hand, was defended by

²⁵ Aquinas, *Summa Theologica*, I-II Q. 109, a. 1.

²⁶ *Ibid.*, I-II Q. 109 a. 5.

²⁷ *Ibid.*, II-II Q. 10 a. 1; III Q. 69 a. 4 r. 2.

²⁸ *Ibid.*, II-II Q. 10 a. 8.

Thomas' lead rival, John Duns Scotus. Whereas Thomas drew upon Aristotle's emphasis on voluntary action to condemn such baptisms, Scotus used Aristotle's "mixed action" to defend the baptizing of the unwilling. A mixed action, according to Aristotle, is a combination of voluntary and involuntary action. Aristotle provided the example of a ship captain who throws away cargo during a storm; although the storm is involuntary, the way in which the captain handles the storm is a voluntary action.²⁹ Scotus argues that coerced baptism is also a mixed action. The unwillingness to be baptized is not the same as being unable to avoid baptism. Unless a person quite clearly and consistently shows the utmost disgust about being baptized, the person ought to receive the sacrament. Moreover, Scotus argues that the sacrament is binding upon the person who does not explicitly wish to be baptized. Even more controversially, Scotus argues in favor of baptizing Jewish children against the wishes of their parents. Although he acknowledges that such a situation is not ideal, it is more beneficial to the faith to have non-believers baptized than for them to remain outside the Church.³⁰ Thomas, on the other hand, condemns the baptism of Jewish children against the wishes of their parents, since such an action violates the natural authority of parents over children.³¹ Notably, Thomas' condemnation of forced baptism is grounded upon nature and the primacy of the intellect over the will.

The importance of these three principles of Thomism – intellect over the will, the natural law, and grace – are pivotal in Las Casas' political thought. As the following review of Cajetan, Paul III, Vitoria, and Soto will show, these themes are also present, to varying degrees, in their discussion on the nature of the Amerindians, too.

²⁹ Aristotle, *Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (Chicago: University of Chicago Press, 2011), 3.1.1110a10.

³⁰ Marcia L. Cornish, *Faith, Fiction, and Force in Medieval Baptismal Debates* (Washington DC: Catholic University of America Press, 2014), 303-305.

³¹ Aquinas, *Summa Theologica*, II-II Q. 10 a. 12.

Tommaso de Vio, Cardinal Cajetan

Tommaso de Vio (1469-1534), also known as Cardinal Cajetan, was one of the most important leaders of the Thomistic revival. After entering into the Dominican Order in 1484, he became a passionate disciple of Thomas Aquinas and often engaged in controversies against the disciples of John Duns Scotus. He served as Master General of the Dominican Order from 1508-1518. As general of the Dominicans he urged members of his order to missionize the New World; he gave specific allowance for them to bring their theology books with them.³² When he became Master General, he embarked on a reform of the order, including an emphasis on Dominicans living together in *vita communis*. During this time, he began writings his commentaries on the *Summa Theologica*, publishing expositions of I-II and II-II in 1511 and 1517. These commentaries enriched the study of Thomas to such an extent that, in the famous Leonine reissuing of Thomas' *Summa* in the late nineteenth century, Leo XIII had Cajetan's commentaries accompany the text. A staunch defender of Catholic orthodoxy, Cajetan was made a cardinal in 1517 and, then, a year later, he was the pope's representative in the first papal confrontation with Luther. He was also influential in the election of Adrian VI and later served as theological advisor to Clement VII.³³

Cajetan was also the first Dominican to address the topic of the Amerindians from a distinctly Thomistic perspective. Although he mentions the topic briefly in his commentary on *Summa Theologica* II-II Q. 66 a.8, the citation is cited favorably by Vitoria, who had become a priest with Cajetan's approval as Master General of the Dominicans. Cajetan's commentary is

³² O'Meara, "The Dominican School of Salamanca," 557, 560.

³³ Wicks, "Introduction," 1-8, 32, 33.

invoked by Las Casas several times as well.³⁴ Cajetan's commentary is also noteworthy because it provides an example of how a Thomist can work in a Thomistic framework while changing and adding to Thomas' original ideas. Cajetan addresses the Amerindians in the question "Whether robbery may be committed without sin?" Cajetan uses the opportunity to explore the Conquest within the context of robbery and sin. He uses this question to make a tripartite distinction that Thomas does not make.

Cajetan distinguishes between three types of unbelievers: unbelievers who are both *de facto* and *de jure* under Christian princes, unbelievers who are *de jure* but not *de facto*, and unbelievers who are neither *de jure* nor *de facto*.³⁵ The first class consists of Jews, Muslims, and heretics who lived under Christian land. Cajetan defends their right to own property and quotes the fifty-fourth distinction of the *Decretals* in defense of his argument. The second class consists of "infidels occupying Christian lands." The Church, he argues, has the right to reclaim these lands because they belong to Christendom *de jure*, but not *de facto*. Former Christian leaders or their heirs, by right, have the authority to reclaim these lands. War against this second class of infidels is legitimate, because the infidels have stolen land from Christians; thus, Christians are not guilty of theft (*furtum*). Cajetan claims this right, not because they are infidels, but because they "are enemies of Christians."³⁶ Thus, a legitimate prince or heir, or one approved by the Apostolic See, "is able, by communal wish, *however quiet*, of the Christian people to wage war,

³⁴ Cajetan's commentary is quoted: Las Casas, *In Defense of the Indians*, 263; Vitoria, "De Indis," 246. For Cajetan's approval of Vitoria's ordination, see Noreña, *Studies in Spanish Renaissance Thought*, 45

³⁵ Cajetan, "Commentaria Cardinalis Caietani ST II-II Q.66 a.8" in *Sancti Thomae Aquinatis: Opera Omnia, Iussu Impensaue Leonis XIII, P.M. Edita*, Vol. 9 (Rome: Romae Typographia Polyglotta, 1882), 94-95 <https://archive.org/details/operaomniaiussui09thom> (accessed July 8, 2015).

³⁶ *Ibid.*, 94: "Et hi non solum sunt infidels, sed hostes Christianorum."

and to possess licitly that which will be obtained.”³⁷ He warns, however, that if another Christian prince attempts to wage war against land to which another prince or heir has rightful claim, the aggressive prince owes restitution to the rightful heir.³⁸ Amerindians do not fall under this category of infidel, however, because they were never *de jure* or *de facto* ruled by Christian princes.

The third class of infidels consists of those who are neither *de iure* nor *de facto* under Christian jurisdiction. Although Cajetan does not explicitly mention the Amerindians in this passage, it is all but implied:

There are certain infidels subject neither *de iure* nor *de facto* according to the temporal jurisdiction of Christian princes: such as if they found pagans who were never subjects to the Roman Empire, lands in which there was never a name for Christians. Of these lords, however unfaithful, they have legitimate dominion...Against these things no king, no Emperor, nor the Roman Church is able to wage war to occupy lands or subject them temporarily: because there is no case for just war, when Jesus Christ, the king of kings, to whom was given all the powers in heaven and in earth, was sent to capture the possession of the world not with armed soldiers, but with holy preachers, as sheep among wolves.³⁹

Cajetan concludes by arguing that, if Christians take land from infidels who are not under their jurisdiction, they will have committed a “great robbery” (*magna latrocinia*).⁴⁰ Thus, *the Christians* are the ones who are in danger of great sin. Cajetan greatly affected Las Casas by

³⁷ Ibid., 94: “...quilibet christianus princeps habens auctoritatem indicendi bellum pro republica propria, potest, ex communi voto, *quamvis tacito*, christiani populi, praedictis inferre bellum, et licite possidere quae obtinebit.”

³⁸ Ibid., 94.

³⁹ Ibid., 94: “Quidam autem infidels nec de iure nec de facto subsunt secundum temporalem iurisdictionem principibus christianis: ut si inveniuntur pagani qui nunquam imperio Romano subditi fuerunt, terras inhabitantes in quibus christianum nunquam fuit nomen. Horum namque domini, quamvis infidels, legitimi domini sunt...contra hos nullus rex, nullus imperator, nec Ecclesia Romana potest movere bellum ad occupandas terras eorum aut subiiciendum eos temporaliter: quia nulla subest causa iusti belli, cum eos temporaliter: quia nulla subest causa iusti belli, cum Iesus Christus, Rex regum, cui data est omnis potestas in caelo et in terra, miserit ad capiendam possessionem mundi non milites armatae militiae, sed sanctos praedicatores, sicut oves inter lupos.”

⁴⁰ Ibid., 94.

framing the question of the injustice of the conquest in terms of *furtum*, or theft, because it, consequently, revealed the importance – acknowledged in both Thomism and Roman law – of private property, liberty, and justice. Taken together, Cajetan’s threefold division is quite remarkably similar to several of Las Casas’ positions: Christians have no rightful jurisdiction over the Amerindians, the Amerindians have *dominium* by nature, their governments are legitimate, Christian preaching must be done through persuasion and not coercion, and the papacy cannot demand the conquest of lands outside its jurisdiction. In this short but remarkable commentary, Cajetan’s position became the benchmark for all sixteenth-century Thomists who addressed the topic. As impressive as Cajetan’s commentary is, however, it does not provide answers to all the problems associated with the Conquest. It does not address conclusively the differences that would divide Las Casas and Vitoria (and Soto) on waging war in order to stop human sacrifice and aid fellow Christian converts. It also does not address the parameters of legitimate Spanish interaction with the Amerindians due to the Alexandrian bull. This said, by no means should the limits of Cajetan’s commentary be considered an indictment against him; he was addressing one particular issue in a specific section of the *Summa*. Cajetan, after all, did not even have to mention the Conquest. Las Casas never criticized Cajetan.

In the third book of his *History of the Indies*, Las Casas retells a conversation between a friar, Pedro de Cordoba, and Cajetan. Cajetan, horrified by the atrocities retold to him, bluntly asks the friar, “And do you doubt that your king is in hell?”⁴¹ Cajetan, Las Casas claims, had come to his opinion due his reading and writing on Thomas’ sixty-sixth question. Las Casas goes on to state that Cajetan “had no doubt that the king was in hell for consenting and

⁴¹ Bartolomé de Las Casas, *Historia de las Indias*, 3 vols, ed. Agustín Millares Carlo (Mexico: Fondo de Cultura Economica, 1951), 3.38: “respondió el Gaetano: *Et tu dubitas regem tuum esse in inferno?*”

permitting so many inhumane injustices.”⁴² Las Casas’ story about Cajetan is important because Sepúlveda attempted to use Cajetan in his defense for Spanish imperialism. Sepúlveda, who had friendly relations with Cajetan during the latter’s stay in Rome during the 1520s, believed that idolatry was a sufficient loophole in Cajetan’s commentary in order to conquer the Amerindians. To support his claim, Sepúlveda drew upon the Jews’ war against the idolatrous Canaanites.⁴³ Sepúlveda’s argument was simple: the Old Testament shows that the Jews waged war against the Canaanites simply because they were idolaters; if the Jews could wage such a war, the Spanish could do the same. Las Casas, having recognized that Sepúlveda misinterpreted Cajetan, dedicates an entire chapter to the refutation of this argument in his *In Defense of the Indians*.⁴⁴ Against Sepúlveda’s Canaanite claim, Las Casas responds that war was waged by the Jews not against all idolaters but “only those dwelling in the Promised Land.”⁴⁵ The idolatry of the Canaanites, therefore, was only accidental to the Jewish war; the primary reason was that they occupied the land God had given them.

Paul III

As Catholic schoolmen, Spanish courtiers, and European intellectuals debated the legitimacy of the Spanish Conquest and the nature of the Amerindians, the papacy was relatively quiet on the matter. It had a number of distractions, ranging from the rise of Protestantism, the sack of Rome, the constant fear of Islamic encroachment, and various forms of political intrigue in the Italian city-states. These powerful movements aside, the papacy was noticeably hesitant,

⁴² Ibid., 3.38: “que no había duda estar el rey en el infierno, por consentir o permitir tan inhumanas injusticias.”

⁴³ Thomas M. Izbicki, “Cajetan on the Acquisition of Stolen Goods in the Old and New Worlds,” *Revista di storia del Cristianesimo* 4, no. 2 (2007): 507.

⁴⁴ Las Casas, *In Defense of the Indians*, 263. Las Casas writes: “those who slander the Indians have not understood the distinctions drawn by this very learned man.”

⁴⁵ Ibid., 264.

if not tightlipped, about the Conquest. The very fact that it took the Vatican almost forty years to make a public statement about the humanity and treatment of the Amerindians shows how prevalent the prejudice against the Amerindians was at the time.

Despite tension between Spain and the papacy due to the Sack of Rome by Charles V's troops in 1527, several members of the Spanish ecclesiastical hierarchy began to press the pope for an official declaration. Paul III was a complex man. Born into the powerful Farnese family, he spent most of his life as a career cleric and cardinal. On the one hand, he had the humanist inclinations of his predecessors; he was a worldly man, loved art, and was far from celibate. On the other hand, he was the first pope of the Counter-Reformation and genuinely pious. The Society of Jesus was officially recognized during his reign and he convoked the Council of Trent.⁴⁶ Although he was admittedly not a Thomist, his writings on the Amerindians are tinged with Thomistic thought. As Lawrence Clayton has argued, there is good reason to believe that Las Casas' theological treatise, *The Only Way*, helped shaped Paul III's encyclical, *Sublimis Deus*.⁴⁷

In 1537, the Dominican Bernardino de Minaya returned to Spain to lobby for the Amerindians. Upon his arrival to Rome, he was greeted warmly by Paul III. Paul was deeply moved by Minaya's horrifying accounts of slavery, the gross misconduct of *encomenderos*, the bloody conquests, and various other forms of misconduct by Christians. He issued four brief, but important documents: *Pastorale Officium*, *Altitudo Divini Consilii*, *Veritas Ipsa*, and the

⁴⁶ James Loughlin, "Pope Paul III." *The Catholic Encyclopedia*. Vol. 11. (New York: Robert Appleton Company, 1911) <http://www.newadvent.org/cathen/11579a.htm> (accessed August 22, 2015).

⁴⁷ Clayton, *Bartolomé de Las Casas*, 237.

encyclical *Sublimis Deus*.⁴⁸ There is a tremendous amount of overlap to these four documents, but it is worth exploring briefly the arguments of each document.

The first document, *Pastorale Officium*, promulgated on May 29, 1537, was addressed to Cardinal Juan de Tavera, Archbishop of Toledo. First, the bull defended the right of pagans to have property. This statement is particularly significant because the views of Hostiensis, though unnamed in the bull, are rejected. The Amerindians, Paul III writes, ought not to be deprived “of their freedom or the ownership of their goods, for they are men and, therefore, capable of faith and salvation.”⁴⁹ These words are quite powerful. Here Paul posits that human beings, by their very nature, are free. Belief in God is not prerequisite to the right to hold property. Property can be held by pagans. Most important of all, however, is his brief comment on human nature. Human beings are endowed with reason and, as such, they have the innate capability to come to the Christian faith through their reason. This position follows Thomas. The second noticeable thing about *Pastorale Officium* is the pope’s condemnation of Amerindian slavery. Quite strikingly, he commands the Archbishop of Seville to excommunicate any Spaniard who attempts to enslave the Amerindians “or to despoil them of their goods.”⁵⁰ The threat of excommunication showcases how seriously the pope took the crimes of the Spaniards to be. The gravity of the situation derived, in part, from the grave violation that slavery causes to the natural freedom of the human being. Moreover, slavery endangers the souls of the natives, lest their situation exposes them to Christian scandal. The pope, like Las Casas, feared that the

⁴⁸ Hanke, *All Mankind Is One*, 18-20.

⁴⁹ Paul III, “Pastorale officium” in *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, eds. Heinrich Denzinger, Robert Fastiggi, Anne Englund Nash, 43th Edition. (San Francisco: Ignatius Press, 2012), 368.

⁵⁰ *Ibid.*, 368.

Amerindians would become “hardened against embracing the faith of Christ.”⁵¹ The Alexandrian bull, after all, had specifically argued that Spain’s main purpose was to bring the Amerindians to the Christian faith. Through their actions, the Spanish were neglecting the only legitimate reason for their physical presence. A few days later, on June 2, 1537, Paul III stated the same claims in the bull *Veritas Ipsa*. The bull is significant, for whereas *Pastorale Officium* was addressed only to the Archbishop of Toledo, *Veritas Ipsa* was addressed “to the universal faithful of Christ.”⁵² *Veritas Ipsa* affirmed again the natural freedom of the Amerindians and their right to possess property. It also condemned the slave trade and the maltreatment of the Indians. Although it lacked the mention of excommunication, it asserted that the Amerindians ought to be “invited to the faith of Christ through preaching of the word of God and the example of a good life.”⁵³

Paul’s third document, *Altitudo Divini Consilii*, is an important document because it gives an example of how the papacy attempted to orchestrate missionary activity. Addressed specifically to the territories of the West Indies, the constitution expresses the pope’s guidelines on how to handle a serious sin common among the Amerindians: polygamy. Most Amerindians, understandably, did not want to give up all their wives. This posed a significant problem for missionaries, because whereas idolatry can be kept in secret, polygamy cannot so easily be hidden. The pope instructed:

...that those who before conversion had several wives, in accordance with their customs, and do not remember which one they took first should, when converted to the faith, take one from among them, whichever they will, and should contract

⁵¹ Ibid., 368.

⁵² Paul III, “Veritas Ipsa,” in *Kirke und Sklaveri seit der Entdeckung Amerika*, ed. J. Margraf (Tubingen: Laupp & Seibeck, 1865), 219: “universis Christi fidelibus.”

⁵³ Paul, “Veritas Ipsa,” 220: “iposoque Indos et alias gentes verbi Dei praedictione et exemplo bonae vitae ad dictam fidem Christi invitandos fore.”

a marriage with her using words related to the present in the usual way; but those who remember whom they took first should retain that one and send away the others.⁵⁴

The pope's decision was practical. On the one hand, it demanded that baptized Christians conform to the traditional understanding of marriage as between two people in accordance with natural law. On the other hand, it gave some flexibility to the tough question of which wife a husband ought to keep.

The reason why Paul III is lumped in this discussion of Thomism is that the last, and by far the most comprehensive, of his four papal documents, *Sublimis Deus*, promulgated on June 2, 1537, was probably influenced by the Thomism in Las Casas' *The Only Way*.⁵⁵ Admittedly, *Sublimis Deus* has, with the exception of one Gospel verse, no citations. There is no appeal to the Church Fathers or no explicit quotation from the canonists, Thomas, or the other schoolmen. Had the pope cited Thomas directly, it may have caused disquiet among scholars of competing philosophical systems. Regardless of the lack of citation, it is grounded on solidly teleological principles. The first paragraph argues that, since Jesus Christ commanded his Apostles to convert all nations, all human beings have the rational capabilities to be able to receive, understand, and accept Christian doctrine. The universality of the exercise of reason is stressed: “[Jesus Christ] said all [human beings], *without exception*, for all are capable of receiving the doctrines of the faith.”⁵⁶ This pope's claim, however, was not without controversy. For example, John Duns Scotus and many Franciscan missionaries believed in the legitimacy of

⁵⁴ Paul III, “Altitudo divini consilii,” in *Compendium of Creeds, Definitions, and Declarations on Matters of Faith and Morals*, ed. Heinrich Denzinger, Robert Fastiggi, Anne Englund Nash, 43th Edition. (San Francisco: Ignatius Press, 2012), 368.

⁵⁵ Clayton, *Bartolomé de Las Casas*, 237.

⁵⁶ Paul III, *Sublimis Dei*, New Advent, paragraph 1 http://www.newadvent.org/library/docs_pa03sd.htm (accessed July 4, 2015).

forced baptism. Scotus argued that it was better for one to be baptized against one's will than for the person to remain unbaptized because of the strong likelihood that the descendants of the coerced would later become good Christians. The pope's position in this encyclical, however, seems to reject Scotus.⁵⁷

After positing that all human beings are capable of receiving the faith, he turns to the subject of rationality. Although Aristotle's doctrine of natural slavery is not directly mentioned in the encyclical, it is clearly alluded to and condemned as an idea posited by Satan himself. Paul argues that the notion that the Amerindians should be treated as "dumb brutes created for our service" comes from the cunningness of "the enemy of the human race" and "his satellites."⁵⁸ Here the pope minces no words. His identification of the doctrine of natural slavery with Satan is neither symbolic nor hyperbole. The wretched idea of natural slavery represents a tangible instance of the battle between good and evil present in the world. The idea divides the unity which God had established for the world. It also endangers the souls of both the Spanish, who are acting upon such a horrible idea, and the Amerindians, who because they are not being treated with the seriousness and respect they deserve, are in danger of not learning about Christ.

The third paragraph has the most in common with Thomistic and Lascasian thought. Both Thomas and Las Casas argue that property and legitimate government come from human law informed by right reason, not grace. As a consequence, even pagan leaders have legitimate ownership over their land; it cannot be taken on account of their disbelief in Christianity. Paul bluntly states:

...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 possession of their property,

⁵⁷ For Scotus' position, see: Cornish, *Faith, Fiction, and Force*, 303-305.

⁵⁸ Paul III, *Sublimis Dei*, paragraph 2.

even though they be outside the faith of Jesus Christ; and that they may or should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they in any way be enslaved; should the contrary happen, it should be null and have no effect.⁵⁹

The paragraph, in many ways, is extraordinary. It protects both the liberty and property of the Amerindians and it tacitly acknowledges the interdependence of liberty and property. Moreover, by claiming that the enslavement of the Amerindians is null and void, Paul is drawing upon the Thomistic version of *indirecta potestas*, which allows papal interference in temporal affairs for spiritual purposes.

The encyclical concludes with a very brief exhortation for the nonviolent preaching of the Gospel. It states: “the said Indians and other peoples should be converted to the faith of Jesus Christ by preaching the word of God and by the examples of good and holy living.”⁶⁰ *Sublimis Dei*, though brief, would be used by Las Casas repeatedly throughout the rest of his career. He considered it to be proof of the justice of his cause.⁶¹

Like Cajetan’s commentary, however, the encyclical did not address all the political questions about the Conquest. Although the encyclical defends the rights of Amerindians to have liberty and property, it does not condemn explicitly Spanish imperialism. It remains quiet about whether the Amerindians have the right to self-determination through the consent of the governed. Although one may argue that the Amerindians’ right to self-determination is embedded in protecting liberty and property, the lack of an explicit statement leaves the thorny question of the legitimacy of Spanish rule open. Despite these problems, Las Casas never criticized the encyclical. He used it whenever he could to his advantage.

⁵⁹ Ibid., paragraph 3.

⁶⁰ Ibid., paragraph 4.

⁶¹ Las Casas, *The Only Way*, 114-116.

After these bulls were pronounced, Minaya began to send copies of the bulls throughout Spain and the New World without the consent of Charles V and the Council of the Indies. Charles did not approve of Paul's bulls and demanded that they be recanted. He had felt that the call for excommunication against slave traders encroached upon his political power. Likewise, the Dominicans imprisoned Minaya for two years. The pope, then, was put into a very difficult position. Politically, he needed Charles as an ally against the Lutheran uprisings in Germany and in defense against the Ottomans. On June 19, 1538, a year after the promulgation of the briefs and bulls, Paul caved to demands of Charles. Although Charles and his court believed that Paul's brief recanted all the aforementioned documents, an examination of the particular Latin text shows that only *Pastorale Officium*, the first brief written specifically to the Archbishop of Seville, was recanted. *Sublimis Dei* and *Veritas Ipsa*, therefore, remained active Church documents. Many defenders of Amerindian rationality and government quoted the bulls quite freely throughout the colonial period.⁶²

Francisco de Vitoria

Francisco de Vitoria (1486-1546) is commonly considered, with the possible exception of Francisco Suárez, as the most brilliant master of the Salamanca School. During his tenure, he served as Prima Chair of Philosophy. Dominic Bañez, another Thomist and confessor to St. Teresa of Avila, considered Vitoria to be no other than "a second Socrates."⁶³ Like Socrates, Vitoria did not publish any of his writings. Most of his writings that survive come from his students. Vitoria dedicated his entire energies to teaching. He intentionally spoke slowly in

⁶² Lewis Hanke, "Pope Paul III and the American Indians," *Harvard Theological Review* 30, no. 2 (Apr., 1937), 86-92. Hanke provides the Latin text on 87-88.

⁶³ Bañez, "Commentaria in Iam 2ae, Q. 1, art VII," quoted in Honorio Muñoz, *Vitoria and the Conquest of America: A Study on the First Reading on the Indians "De Indies Prior,"* 2nd Edition. (Manila: University of Santo Tomas Press, 1938), 35.

order that his students could write their notes simultaneously. The effect created “a rare blend of the scholastic ideal of orderly rational sequence and the rhetorical pursuit of persuasive communication.”⁶⁴ Despite not publishing his works, various works either from his hand or his students not only circulated Spain, but other parts of Europe as well.⁶⁵

Vitoria brought a new freshness to the study of Thomas in Spain, but Vitoria’s thought is not a blind carbon copy of Thomas’ work. One of the most interesting aspects of Vitoria’s Thomism is the relative lack of emphasis it places on Thomistic epistemology and metaphysics. Comparatively, for the one year he spent lecturing on *Prima Secundae*, he spent *six* years on *Secunda Secundae*.⁶⁶ Thus, Vitoria preferred speaking of Thomas’ discourse on the virtues rather than his views on human nature. As a result, he spends more attention on practical questions of morality and politics instead of religion.⁶⁷

Vitoria discusses the Amerindian question in several works, including *De Indis* (On the American Indians) and its sequel *De Indis Relectio Posterior, sive de iure belli* (On the Law of War). Among contemporary scholars, there is tremendous disagreement about the implications of Vitoria’s work. Some scholars consider Vitoria to be very anti-imperialistic. This group tends to applaud the limitations Vitoria places on the temporal power of the papacy, to extol the role Vitoria gives the state in international affairs, and to picture Vitoria as the originator of an internationalism based upon humanitarian values. As a consequence, some consider Vitoria, as

⁶⁴ Noreña, *Studies in Spanish Renaissance Thought*, 72.

⁶⁵ Hamilton, *Political Thought*, 7.

⁶⁶ Noreña, *Studies in Spanish Renaissance Thought* 47, 59.

⁶⁷ *Ibid.*, 69.

opposed to Grotius, to be the founder of international law.⁶⁸ Over the last thirty years, however, scholars have become more hesitant in aggrandizing Vitoria's reputation. Increased attention has been given to Vitoria's inconsistencies. He is portrayed as a cunning diplomat, willing to appease the Crown's imperialism. Some even think that Vitoria's position is closer to Sepúlveda than Las Casas.⁶⁹ The truth lies somewhere in the middle of these two camps. Vitoria tried to orchestrate a system of international law that was based upon something common to *man qua man*, but his positions on the papacy show that he was not a modern as others would like him to be.

In the introduction to *De Indis*, Vitoria begins with a small reflection on whether a theologian such as himself would be overstepping his bounds in questioning the legitimacy of the Spanish subjection of the Indians. He responds to his own question in the negative because of his firm conviction that the justice of the conquest was not immediately self-evident.⁷⁰ Already, there is a noticeable difference between Vitoria and Las Casas. The former claims that the justice of the Conquest is not immediately self-evident, while for Las Casas it is evident that the conquest was wrong. Vitoria goes on to claim in his introduction that "as far as I am aware, no theologian of note or worthy of respect in a matter of such importance has ever been called upon to study this question and provide a solution."⁷¹ Vitoria, therefore, sees himself as the instigator

⁶⁸ The most significant work in this camp was written by James Brown Scott, an assistant to Elihu Root and a staunch believer in international arbitration. His classic work is: Scott, *The Spanish Origins of International Law*. Other works in this camp include: Muñoz, *Vitoria and the Conquest of America*, 45: "He was an incorrigible anti-imperialist." Phelan, *The Millennial Kingdom*, 6: "Vitoria revealed himself as the spokesman of modern internationalism, not Christian universalism."

⁶⁹ Adorno, *Polemics of Possession*, 118; Brunstetter, *Tensions of Modernity*, 33-34, 46; Pagden, *The Fall of Natural Man*, 111.

⁷⁰ Vitoria, "De Indis," 237.

⁷¹ *Ibid.*, 238.

of the question. It is a bold claim precisely because it attacks, without mentioning his name, Juan López de Palacios Rubios, the distinguished canon lawyer, who wrote the *Requerimiento*. It is also probably an attack on Las Casas.

Vitoria's *De Indis* is composed of three scholastic questions. The first question seeks to answer whether the Amerindians have *dominium*. Vitoria answers the question in the affirmative, claiming that "before the arrival of the Spaniards these barbarians possessed true dominion, both in public and private affairs."⁷² Vitoria argues that all human beings, due to their rationality and the *imago Dei*, have *dominium*. The question of *dominium*, however, was highly debated in late medieval thought and several theologians and canonists, most of whom were not Thomists, believed that *dominium* could be lost for four reasons: by being a sinner, an unbeliever, a madman, or insensate.⁷³ With the exception of madness, the Thomistic Vitoria believed that even sinners, unbelievers, and children retained their *dominium*. Thus, although the Amerindians, or as he called them "the barbarians," were both sinners and unbelievers, they still, according to Vitoria, had *dominium*. His philosophical defense of this position is important: for against the claims of John Wyclif, who believed that dominion comes from *grace* and thus could be lost due to sin, Vitoria argues that the foundation of *dominium* is *nature*. For Vitoria, "every dominion exists by God's authority."⁷⁴ Sin and unbelief, while antithetical to God's authority, does not remove *dominium*. The *imago Dei*, Vitoria states, cannot be erased. Vitoria's emphasis on nature is especially significant because it appeals to the universality of all human beings,

⁷² Ibid., 251.

⁷³ Ibid., 240.

⁷⁴ Ibid., 241.

rather than the particular gifts of the Almighty to an individual. Nature is something that can be studied by both the Christian and the infidel; grace does not destroy nature, but perfects it.

After affirming the legitimacy of Amerindian *dominium*, Vitoria turns his attention to an examination of the unjust and just titles of Spanish rule. First, Vitoria rejects emphatically the claim that Emperor Charles V is the master of the world. The claim that the emperor is lord of the world had many supporters throughout the late medieval period, the most important of which was the canonist Bartolus. Bartolus posited that the emperor was lord of the world and that everything belonged to him. He went so far to claim that, “if someone says that the emperor is not lord and king of the whole world, he is a heretic.”⁷⁵ Vitoria argues against Bartolus. Vitoria rejects that notion that Charles V is the master of the world because there is no natural, divine, or human law that commands there to be an emperor.⁷⁶

Second, against the claims of several canonists such as Silvestro Mazzolini da Priero, Vitoria, like Las Casas, rejects any justification of the Conquest based on the pope’s temporal authority. Vitoria, drawing upon Torquemada’s proto-theory of the papacy’s indirect power of the papacy, argues that the pope “has temporal power only insofar as it concerns spiritual matters.”⁷⁷ The pope’s spiritual jurisdiction is limited to those who are in Church. Thus, the pope can have no temporal power over the Amerindians.⁷⁸ The papal donation in-and-of-itself could only instigate the conversion of the Amerindians. Vitoria’s argument against the direct

⁷⁵ Bartolus, Cod. I, Hostes: “et si quis diceret imperatorem non esse dominum et monarcam totius orbis, forte esset hereticus,” quoted in Muñoz, *Vitoria*, 55.

⁷⁶ Vitoria, “De Indis,” 253-257.

⁷⁷ *Ibid.*, 261.

⁷⁸ *Ibid.*, 261.

temporal power of the papacy is bold, because he was arguing against the conquistadors, Palacios Rubios, and the emperor himself.⁷⁹

Vitoria dismisses the third unjust title, that the Spanish may possess the lands by right of discovery. Here his dismissal is brief, because, based on his aforementioned arguments, he reaffirms that the barbarians have true public and private *dominium*. More noteworthy is Vitoria's rejection of the fourth and fifth titles – that the Spanish conquest is legitimate because of their reluctance to accept the Catholic faith and on account of the Amerindians high prevalence to commit the bestial crimes of cannibalism and human sacrifice. Vitoria defends the Amerindians against the charge of their slow conversion by arguing that Christian missionaries have lacked miracles and signs and that no one is required to believe an announcement (such as those of the missionaries) without proper reflection.⁸⁰ Without mentioning its name, Vitoria argues against the legitimacy of the *Requerimiento* because it was an announcement that the Spanish expected the natives to accept without proper reflection. Vitoria argues, following Thomas, that unbelief which stems from unawareness of Christ's existence, is not a sin.⁸¹ Although Vitoria affirms that the Amerindians are in a state of mortal sin and damned, he denies, against the claims of Pope Hadrian, that those in a mortal state of sin are completely unaware of the natural law. Rather, the Amerindians have some knowledge of first principles, though Vitoria states “that not all sins against natural law can be demonstrated to be so by evidence, at least to the satisfaction of all men.”⁸² This claim touches upon the limits of natural law – limits

⁷⁹ Thomas M. Izbicki, “An Argument from Authority in the Indies Debate,” *The Americas* 34, no. 3 (1978): 400-401.

⁸⁰ Vitoria, “De Indis,” 267-271.

⁸¹ *Ibid.*, 266, Aquinas, *Summa Theologica*, II-II Q. 10 a. 1.

⁸² *Ibid.*, 274.

of which Thomas himself was aware. Although all human beings understand the first precepts of the natural law, the secondary and tertiary precepts of the natural law are not as clear to the rational mind unaided by grace. Vitoria, in pondering the limits of what is known naturally, admits that Christians are more likely than pagans to recognize more clearly what a sin is. Thus, the revelation of Christianity illuminates the intellect in such a way that secular thought does not. This raises another question: what happens when a group of pagans who need Christianity to help further illuminate their understanding of nature do not wish to receive it?

Vitoria partially answers the question in his examination of the sixth false title, by the voluntary choice of the barbarians. Through the use of rituals, such as the *Requerimiento*, many Spaniards believed that the Amerindians were voluntarily accepting the Emperor and Christ. Vitoria disputes this claim. Like Las Casas, Vitoria argues that “the choice [to accept the Emperor] ought not to have been made in fear and ignorance, *factors which vitiate any freedom of election* but which played a leading part in this particular choice and acceptance.”⁸³ Here Vitoria draws upon an Aristotelian-Thomistic anthropology in which voluntary choice must be a free act of the will. He also draws upon the Thomistic conception of the consent of the governed in which the people voluntarily give their authority to the king. It is a bond that cannot be broken unless for the utmost serious reason. Therefore, both the king and the people would have to accept Spanish rule, since Christianity alone is not a sufficient reason to change rulers. Lastly, Vitoria dismisses the final unjust title, that the Spanish were given the New World by special gift of God. He finds no reason to accept such a claim.⁸⁴

⁸³ Ibid., 276.

⁸⁴ Ibid., 276-277.

After outlining the unjust titles, Vitoria examines the just titles by which the Amerindians could be subjected to the Spanish. The first and longest title that the Spanish master examines is based on the *ius gentium* (law of nations). According to the *ius gentium*, the Spanish have a right to trade with the Amerindians, to travel, to have access to clean water, to claim any gold and pearls that did not previously belong to anyone, and to take as their own any land that did not previously belong to anyone through the principle of *res nullius*. *Res Nullius* was a Roman law concept that claimed that unoccupied land could be claimed by the first taker. Thus, any land not inhabited or used by the Amerindians could belong to the Spanish, once a Spaniard claimed the land. Although this principle could possibly be abused, Vitoria's reliance on *res nullius* demonstrates his anti-imperial basis, since any land taken by the Spanish would be by virtue of the first occupant's presence and not by an imperial claim to rule the whole world. Vitoria goes on to argue that the Spanish have the right to defend these claims by war, if the Amerindians did not recognize Spanish rights. Since, according to the *ius gentium*, "everything captured in war belongs to the victor," Vitoria provides the Spanish with a theoretical claim to the possession of Amerindian land after the war.⁸⁵ Vitoria rests his argument mostly upon Scripture, the customs of European warfare, and canon law. He also suggests that the Amerindians themselves "admit of all sorts of other barbarians from elsewhere, and would therefore do wrong if they did not admit the Spanish."⁸⁶ Thus, according to Vitoria, the way in which the Amerindians have relations with each other demonstrate that they have knowledge of the law of nations.

Vitoria, therefore, provides the Spanish with a significant foothold to claims in the New World. Yet, close scrutiny of the text suggests that the basis of Vitoria's claim – the law of

⁸⁵ Ibid., 283.

⁸⁶ Ibid., 279.

nations – is not clearly defined. Vitoria begins by stating that the law of nations “either is or derives from natural law.”⁸⁷ This particular definition is surprising because it is not synonymous with Thomas’ understanding. For Thomas, the law of nations is distinct from natural law, though, since it is a conclusion of the natural law, human beings naturally agree to it; in other words, it is a form of human law that is the same among nations.⁸⁸ The definition that Vitoria assigns to the *ius gentium* creates a tremendous ambiguity throughout his discussion of the just title. At some times, Vitoria appeals to the customs of *all* nations – good customs in accordance with the natural law – while other times he appeals to “the consent of the greatest part of the world.”⁸⁹ The latter definition theoretically allows for convention and not nature to dictate political action, paving the way for Christian nations to impose certain customs upon the Amerindians. If the law of nations is reduced to what the greatest part of the world claims it is, the law of nations can turn easily into the rule of the stronger over the weaker.

The second just title Vitoria invokes in order to defend the Spanish conquest was the spreading of the Christian religion. As stated previously, Vitoria argues against conquering the Amerindians for their unbelief because fear and ignorance impede the voluntary consent necessary in making a choice. Nevertheless, Vitoria provides an important exception that differentiates himself from Las Casas. If the Amerindians purposefully *obstruct* the missionary work of the Christians by purposefully provoking the Spanish, Vitoria states that the Spaniards “*may preach and work for the conversion of that people even against their will*, and may if necessary take up arms and declare war on them, insofar as this provides the safety and

⁸⁷ Ibid., 278.

⁸⁸ Aquinas, *Summa Theologica*, I-II Q. 96 a. 4, r. 1.

⁸⁹ Vitoria, “De Indis,” 281.

opportunity to preach the Gospel.”⁹⁰ Here coercion is permissible. Vitoria did not see this as a contradiction. For when the natives are purposefully obstructing the preaching of the faith, the Amerindians themselves are doing the injustice. Christians have a right to preach the faith. To obstruct the teaching of the Christian faith is irrational. The right of preachers, therefore, is being violated by irrational Amerindian aggression. The Christians have a right to respond through a just war out of defensiveness. As a consequence of the victory of their just war, they may forcibly teach the natives so that the egregious affront does not happen a second time.⁹¹

The third just title, which is closely linked to the second, is that the Spanish may protect converts. Since pagan princes may try to harm, torture, and kill Amerindian converts, the Spanish have a right to defend their fellow Catholics. Here Vitoria’s internationalism is manifest, but it is not solely for pietistic purposes. Vitoria argues, “this third title may be advanced not only on grounds of religion, but on grounds of human amity (*amicitia*) and partnership (*societas*).”⁹² Vitoria’s interventionism, therefore, is grounded not only in utilitarianism, but on a common understanding of human nature. The role of interventionism is also present in the fourth just title, in which the pope may depose an infidel king who governs a large body of Christians, even if the Amerindian converts do not request it. Such force would be provided by the Spanish. At first glance, the ability of the pope to interfere in pagan government seems to be in line with the direct temporal power of the papacy presented in the works of Bartolus, Hostiensis, and Palacios Rubios. However, as Muñoz argues, Vitoria is actually consistent. His position is in line with the *indirect power* of the papacy, which gives the pope

⁹⁰ Ibid., 285, emphasis within book.

⁹¹ Ibid., 285-286; see also Muñoz, *Vitoria and the Conquest of America*, 161.

⁹² Ibid., 286.

temporal authority only for spiritual reasons. Vitoria even quotes Thomas's very important question: *Summa Theologica* II-II 10.10. Here Vitoria's concern is making sure that converts to the Christian faith do not become apostates. He also wishes to protect Christians from infidel kings who may persecute them.⁹³

Another particularly important just title – the fifth title – concerns the defense of the innocent against nefarious Amerindian customs, such as human sacrifice and cannibalism. The Amerindians, according to Vitoria, are now the neighbors of the Spanish and, since it is in accordance with justice to help one's neighbor, it is just to end the human sacrifice and cannibalism of the Amerindians. "This applies," Vitoria states, "not only to the actual moment when they are dragged to death; they may also force the barbarians to give up such rites altogether."⁹⁴ If the occasion demands, war and the deposing of the Amerindian leaders are acceptable mediums to reach the end.

The sixth just title, like the sixth unjust title, addresses the question of the consent of the governed. Vitoria argues that it is permissible for a Christian Amerindian majority to abandon their infidel leader and elect a new prince. Through this form of medieval consent of the governed, the Amerindians could decide to accept Charles as their king and emperor. Likewise, the seventh just title states that the Spanish can come to the aid of their Amerindian allies, if they are in danger. Vitoria gives the example of the Spanish alliance with the Tlaxcaltes against the Aztecs, thus, in part, legitimizing the conquest of Hernan Cortes.⁹⁵ As such, the Spanish could gain control over the property of those they have defeated, thus giving the Spanish a very strong

⁹³ Ibid., 287; Muñoz, *Vitoria and the Conquest of America*, 168.

⁹⁴ Ibid., 288.

⁹⁵ Ibid., 289.

foothold in the New World. Las Casas, on the other hand, as will be shown later, casts a significant amount of doubt on this title, precisely because Spanish treaties with Amerindians were forged with little knowledge about which Amerindians tribes were just or unjust.⁹⁶

The most vexing and frustrating part of the *De Indis* is a little appendix in which Vitoria addresses a *possible* just title for the Conquest – “the mental incapacity of the barbarians.”⁹⁷ Vitoria, in the first part of his work, defended the *dominium* of the Amerindians by showing that they were not irrational. This possible just title, however, seems to be in blatant contradiction to what he had argued previously. Vitoria states intentionally that this title is “for the sake of the argument” and is “certainly not asserted with confidence.”⁹⁸ Nevertheless, Vitoria goes on to answer the theoretical question. He first portrays what it would be necessary for an entire continent to be full of barbarians with mental incapacities: they would not be able to administer a commonwealth, they would not have good laws, and they would lack letters, arts, agriculture, and manufacturing. Vitoria then proceeds to give a solution to this hypothetical scenario. He argues that it would just for the Spanish to be their guardians “for the benefit and good of the barbarians, and not merely for the profit of the Spaniards.”⁹⁹

Many commentators, following the lead of Vitoria’s translator Anthony Pagden, have concluded that Vitoria’s possible eighth title implied that the Dominican was open to the possibility that the Amerindians were in need of tutors.¹⁰⁰ J.S. Davidson, who comes to the same

⁹⁶ Las Casas, *History of the Indies*, 241.

⁹⁷ Vitoria, “De Indis,” 290.

⁹⁸ *Ibid.*, 290.

⁹⁹ *Ibid.*, 291.

¹⁰⁰ Pagden, “Introduction,” xxvi.

conclusion without quoting Pagden, claims that: “Vitoria concludes that the assumption of Spanish tutelage over the Indians would not only be desirable, but would also be a duty, ‘just as if the natives were infants.’”¹⁰¹ The case for tutelage is often associated with a corresponding, unempirical claim that Vitoria wrote the eighth title because he did not want to upset the Emperor.¹⁰² The views of Pagden and Davidson, however, are wrong. Vitoria did not believe that an entire continent could be full of mentally incapacitated people, because, in other parts of his treatise, he asserts that the Amerindians participated in things that proved their rationality: laws, government, agriculture, manufacturing, and arts and crafts. Thus, Vitoria employs the same tactic Plato uses in the fifth book of the *Republic*; he presents a situation that is purposefully ridiculous in order to show the implications of an argument.¹⁰³ Vitoria, then, remains a defender of Amerindian rationality.

Even if Vitoria had attempted to cave to the opinions of the court, the Dominican would have been tremendously disappointed by the emperor’s response. Charles, upon hearing of the lecture, condemned the work. In a letter dated November 1539 to the prior of the Dominican Monastery of San Estaban, where Vitoria resided, the Emperor demanded that “You shall command the [clerics and teachers] in question to refrain, now and at all future times, from engaging in discussion, sermons, or debates, without Our express permission, regarding the topics above mentioned, and likewise from causing any composition on those topics to be printed.”¹⁰⁴ The Emperor does not mention Vitoria by name, perhaps as a courtesy, but the

¹⁰¹ J.S. Davidson, “The Rights of Indigenous Peoples in Early International Law,” *The Canterbury Law Review* 5, 1994, 407.

¹⁰² *Ibid.*, 408.

¹⁰³ Vitoria, 290-291; Plato, *Republic*, trans. Allan Bloom (New York: Basic Books, 1991), 449a-480a.

¹⁰⁴ Scott, *The Spanish Origins of International Law*, 85.

message was clear. A few years after the condemnation, Charles' temper seemed to have cooled. In 1541, the Emperor asked Vitoria and the School of Salamanca for advice concerning the question of forced baptism – a very pertinent question concerning the New World.¹⁰⁵ Indeed, Charles had asked Vitoria the question, precisely because Las Casas was lobbying the king to condemn forced baptism.¹⁰⁶

In response to the request, Charles received a signed letter from several members of the faculty, of which Vitoria's name appears second only after the rector of the school. Soto's name appears fourth. Due to the fact that several prominent names of the University of Salamanca appeared on the document, it is safe to conclude that this letter represents the majority opinion of the School of Salamanca on the question of forced baptism. After stating that they have an unanimous opinion on the matter, they argue against forced baptism. They write, "The infidels are not to be baptized beforehand until they are to be instructed sufficiently, not only in faith, but also in Christian morals."¹⁰⁷ In order to defend their point, they draw upon Thomas' understanding of the sacrament of baptism in *Summa Theologica* III Q.68 a.4. In addition to Thomas, they ground their argument upon the traditions of the early Church, drawing upon Saint Paul, Pope Clement, Tertullian, Origen, and Augustine. They stress that the early practices of the Church, such as the rite of the catechumenate, show that adult Christians must be taught in

¹⁰⁵ Ibid., 86.

¹⁰⁶ Lewis Hanke, "Bartolomé de Las Casas, an Essay in Hagiography and Historiography," *The Hispanic American Historical Review* 33, no. 1 (Feb., 1953), 140, esp. n9.

¹⁰⁷ *Parecer de los teólogos de la Universidad de Salamanca sobre el bautismo de los Indios* ["Opinion of the Theologians of the University of Salamanca about the Baptism of the Indians] in *Colección de Documentos Inéditos Relativos al Descubrimiento Conquista y Colonización De Las Posesiones Española en América y Oceanía, Sacados, En Su Mayor Parte del Real Archivo de Indias*. Tomo III. Edited by Joaquin F. Pacheco, Francisco de Cárdenas, and Luis Torres de Mendoza (Madrid, 1865), III: 545: "Infideles non autea sunt baptizandi, quam sint sufficienter instructi, non solum in fide, sed etiam in moribus christianis..."

the doctrine of the faith (e.g., Christ's divinity and humanity) and Christian morals (e.g. teachings on sexual mores). They conclude arguing that "when we are in a hurry to have many baptized, we have few true Christians, not only about morals, but also about faith."¹⁰⁸

Two other important interactions occurred between Vitoria and Charles in 1542. First, Charles (and the pope) asked Vitoria to attend the Council of Trent. Vitoria, due to his health declined the invitation to attend the Council, and his pupil and colleague, Domingo de Soto, was sent in his stead.¹⁰⁹ However, the most remarkable post-reprimand interaction between Vitoria and Charles occurred in 1542, while Charles was revising the Laws of Burgos. During the revision, Las Casas was in Charles' Court, where he was campaigning for the end of the *encomienda*. Las Casas achieved this goal, but, according to a previously neglected document written by a fellow Dominican, Las Casas also attempted to convince the Emperor to withdraw Spain entirely from the continent. Charles apparently contemplated the decision, but was dissuaded from doing so by Vitoria. Vitoria was against the Spanish withdrawal of the New World because he believed that "Christendom would be lost."¹¹⁰ Vitoria believed that if the Spanish left, the Amerindians would not listen to the Spanish. Little else is mentioned in this passage, but it definitively shows a substantive and momentously important policy difference between Vitoria and Las Casas. The event suggests that Vitoria *did* believe in the seven legitimate titles of the Crown. Vitoria would not have violated his conscience if he did not

¹⁰⁸ *Parecer de los teólogos*, 552: "...dum quam plurimos festinamus habere baptizatos, paucos habeamus vere christianos, non solum quo ad mores, sed etiam quo ad fidem."

¹⁰⁹ Scott, *The Spanish Origins of International Law*, 86-87.

¹¹⁰ *Parecer de Yucay*, quoted in Gutiérrez, *Las Casas*, 402. The document, known as the *Yucay Opinion (Parecer de Yucay)* is dated 1571. It was probably written by García de Toledo, a Dominican. In the document, the Dominican states that he was once a disciple of Las Casas until he came to Peru, where he was disillusioned by the Incas.

genuinely believe in at least the partial justice of the Conquest. Thus, despite the reprimand in 1539, Vitoria seems to have had a good relationship with Charles.

Domingo de Soto

Born in 1495, Domingo de Soto studied philosophy at the University of Alcalá in 1513, where he studied under St. Thomas of Villanueva, and then in 1517 at the University of Paris due to his attraction to nominalism under Juan de Celaya and John Major. Soto turned away from nominalism however, due to his introduction to Vitoria. Later, he entered the Dominican Order in 1524, where he began his teaching career as Vitoria's teaching assistant. Soto's career rivals his teacher. In 1545, he took Vitoria's place as a Spanish delegate to the Council of Trent with his fellow Dominican Thomist, Bartolomé Carranza de Miranda. Three years later, he became the confessor to Charles V. As a result, he developed a correspondence with Las Casas, who had a strategy since the 1510s of appealing his cause to the king's confessor. Soto was the chair of the Valladolid disputation between Las Casas and Sepúlveda. He was responsible for providing an overview of the disputation, but the court never issued a complete verdict on the matter.¹¹¹

In the literature of the Amerindian question, Soto is not as often studied as Vitoria. This neglect is particularly undeserved, because Soto wrote about the legitimacy of the Conquest before Vitoria. Four years before Vitoria's *De Indis*, Soto wrote his *Relection De Dominio*, a discourse on the nature of *dominium*. One of the most striking aspects about his treatise is how he addresses, attacks, and debunks the idea that one man can be emperor of the entire world. For Soto, this was a particularly relevant topic, as some Spanish intellectuals at the time were

¹¹¹ Ramón Hernandez, "The Internationalization of Francisco de Vitoria and Domingo de Soto," *Fordham International Law Journal* 15, no. 4 (1991): 1049-1059. It should be noted, as an aside, that Soto had a great interest in science. William A. Wallace argues that some of Soto's scientific experiments predated some of Galileo's findings. See William A. Wallace, "Domingo de Soto and the Iberian Roots of Galileo's Science," *Hispanic Philosophy in the Age of Discovery*, ed. Kevin White (Washington DC: Catholic University of America), 113-129.

considering Charles to be emperor of the world. The fact that Soto argues against this position and, fourteen years later, becomes the king's confessor without changing his opinion is a testament to the Emperor's magnanimity and tolerance. Soto's critique against empire is important in the history of ideas because there is a subtle critique against Augustine's more favorable view of the Roman Empire.¹¹² According to Soto, the Romans, by the admonition of their own authors, had "right in their arms" – which is contrary to justice.¹¹³ In other words, Roman expansion was based upon brute force, not justice. Thus, justice could not come from mimicking the Romans.

His philosophical argument against empire is rooted in philosophical anthropology. Soto begins with the proposition that all human beings by natural right are equal. Natural law teaches that "no one is the lord of another."¹¹⁴ In order to protect this freedom, a republic cannot become too large. Drawing upon Aristotle's seventh book of the *Politics*, he argues that a republic "ought not to grow without limit" and that a city should be ruled by one and in turns.¹¹⁵ Soto, like Aristotle, protects particularism and the division of the world into separate nations because it is in accord with the protection of human freedom. Soto then turns to a deductive argument. As Vitoria would later argue in his *De Indis*, Soto posits that if a man were to rule the entire world, he would either have to receive the commission from divine, natural, or human right. No one,

¹¹² Augustine, in the *City of God*, seems to have somewhat contradictory opinions of the Roman Empire. On the one hand, he seems to have a providential role for the Roman Empire (Book 5, Chapter 12, 15). In Book 5, Chapter 17, he writes the Romans "deserved to receive it as a kind of reward for such virtues." On the one hand, he considers the Empire to be a great highway robbery. The relationship between Augustine and Soto is also in Luper, *Romans in a New World*, 64-65.

¹¹³ Soto, *Relección De Dominio*, 164: "Sed tamen non intelligo quod ius habuerent romani ad terras quas debellarunt, quibus, ut ex eorum historicis comperimus, ius erat in armis."

¹¹⁴ Ibid., "nullus est aliorum dominus."

¹¹⁵ Ibid., 158: "nec debet sine termino crescere."

however, was ever by divine right elected by God to be lord of the world, and the concept is also against nature because “a republic has by natural right its own power.”¹¹⁶ Republics are legitimate governments based upon the consent of the governed. If one man ever ruled the world in its entirety, it would have to be through the consent of the governed: “but civil power is in whatever republic by natural right; therefore, if anyone was lord of the world, he was so through the election of the whole world and not by natural right or divine right.”¹¹⁷ As such, as an election has never taken place, there is no lord of the world. So far Soto is in agreement with the position that Vitoria would argue four years later.

He then turns his attention to the Conquest of the Amerindians. Although his discussion is brief, Soto drops a bombshell: “We hold therefore that the Emperor in no way has authority over the whole world. By what right do we occupy the land that has been found overseas? *On this truly, I do not know.*”¹¹⁸ Whereas Vitoria, like Soto, dismissed the idea of universal empire, he nevertheless provided seven legitimate titles for the Conquest. In this passage, there are no such legitimate titles. Soto argues that the Gospel provides followers of Christ with the *ius praedicandi* (the right of preaching), which also gives them the *ius defendi* (the right of defense).¹¹⁹ Like Vitoria, Soto recognizes that Christians can defend themselves while preaching. However, the *ius defendi* is not the same as Vitoria’s legitimate title in which Christians can overtake regimes that purposefully obstruct the teaching of the Christian religion.

¹¹⁶ Ibid., 160: “...respublica habet iure naturae potestatem sui.”

¹¹⁷ Ibid., 162: “...sed potestas civilis est in quacumque republica iure naturae; ergo, si aliquis esset dominus orbis, esset per electionem totius orbis et non iure naturae vel iure divino.”

¹¹⁸ Ibid., 176: “Habemus ergo quod Imperator nulla via habet Imperium in toto orbe. Quo ergo iure obtinemus Imperium quod modo reperitur ultramarinum? *Re vera ego nescio.*”

¹¹⁹ Ibid., 176.

Soto continues, “but to accept anything beyond these good things or to subject them to our authority, I do not see how we have such a right.”¹²⁰ Christ, he argues, warns his disciples about cities that do not accept them; he never commands his disciples to do violence to them. Thus Soto, like Cajetan, Paul III, and Las Casas, emphasizes that conversion cannot be violent.

Whereas Soto’s *De Dominio* was written fifteen years before he was the lead judge of the Las Casas-Sepúlveda debate, he wrote his most famous work, *De Iustitia et Iure* (1553), three years after the debate. The interesting thing to note is the philosophical consistency between the two works. Soto again defends the principle that all human beings are made free, that no one is greater than another by natural right, and that no one could be lord of the world unless he was elected by the whole world.¹²¹ In the second article of the fourth question in the fourth book of *De Iustitia et Iure*, Soto sharpens his critique against some of the emperor’s claims. He begins by stating that when the Holy Roman Emperor was established eight hundred years after Christ, it was limited to a small piece of land, not the entire world. Thus, if Charlemagne, the original Holy Roman Emperor, did not have control over the whole world, neither does Charles.

Charles could not have used the title of Emperor in order to legitimize the Conquest. Soto, then, turns his attention to the Spanish treatment of the Amerindians. He bluntly asks, “In what way by the right of nature was the emperor not able to appoint the Indians and others in the regions the authority of [the affair of the Indies]?”¹²² Here Soto questions the Emperor’s right of taking away the authority of previous Amerindian governments. He does not deny the authority

¹²⁰ Ibid., 176: “...sed accipere ultra hoc bona illorum aut subiicere imperio nostro, non video unde habeamus tale ius.”

¹²¹ Soto, *De Iustitia et Iure*, 4.4.2.108b: “omnes enim nascuntur liberi”; “nullus iure naturae erat reliquis superior legali dominio”; “ergo si aliquis est dominus orbis, is creates est auctoritate & concessu repipublice.”

¹²² Ibid., 4.4.2.109: “Quare iure reclamante naturae non potuit illa Antipodibus reliquisque regionibus imperato rem praeficere.”

of the pope and the Alexandrian bull in providing Spain with spiritual authority over the Amerindians, but he does question the extent of Charles' temporal authority. His examination of the Amerindian question is brief and lacking in concrete detail about what the temporal authority in the New World ought to be. Nevertheless, he mentions the injustice of the Emperor in claiming dominion over Amerindians who are "so many miles away from the Emperor."¹²³ The distance makes consent harder to achieve. He also points out the contradiction between claiming sovereignty over the whole world and discovering, all of a sudden, new lands. Soto pins the problem on the political thought of Bartolus, who believed that the emperor had control over the whole world. Soto concludes his discussion by showing that this imperial claim contradicts the thirteenth chapter of the Book of Romans.¹²⁴

It is evident from these two books that Soto and Las Casas had much in common. They both believed in the peaceful conversion of the Amerindians and granted the Amerindians at least some sort of jurisdiction. In this way, Soto is closer to Las Casas than Vitoria. In a letter Las Casas wrote to Soto in 1549, he called upon the king's confessor to do two things: "the first is to eliminate the iniquitous conquests that are a disgrace and infamy for the faith...The second is that your Majesty fully receive all the Indians under his Crown, destroying and eradicating the *repartimiento*."¹²⁵ The letter, written one year before the Valladolid debate, highlights two of Las Casas' major concerns. Soto, the chair of the Valladolid jury, nevertheless, critiqued Las Casas in his summary of the debate. Soto's criticism of both Las Casas and Sepúlveda is evident in his summary of their respective opinions:

¹²³ Ibid., 4.4.2.109b: "tot miliaribus a se."

¹²⁴ Ibid.

¹²⁵ Las Casas, "Carta a Fray Domingo de Soto," quoted in Carlos A. Jáuregui, *The Conquest on Trial: Carvajal's Complaint of the Indians in the Court of Death* (Penn State University Press, 2008), 40.

The point into which your lordships and graces are to inquire here, is, in general, to examine and to establish the forms and laws required in which to preach and promulgate our Catholic Faith in these new lands, that God has discovered for us, as would be most fitting for His holy service, and to examine the manner of treating the peoples, subjects of His Majesty the Emperor, without injury to the royal conscience, and in conformity with the Bull of Pope Alexander. *However, these contending lords have not addressed the problem in this manner, in general, and in the form of consultation; in particular, rather, they have argued and discussed another question, i.e., whether it is licit of His Majesty to wage war on those Indians before they have been preached the faith, in order to subject them to his Empire, and that, once subjected, they can more easily be taught and enlightened by the Gospel of their errors and of the Christian truth.*¹²⁶

Besides reprimanding Las Casas and Sepúlveda for not answering the question at hand, there are two important points to draw from this statement. First, for Soto, there is no doubt that the Amerindians are subjects of the Spanish Crown. The bull of Alexander, after all, did use the term ‘subject’ to describe the status of the Amerindians to the Crown. Here the disagreement between Las Casas and Soto begins to show. Las Casas waffles on whether the Amerindians are subjects of the Crown from the 1530s-1550s. On the one hand, he emphasizes that the Conquest is incompatible with the consent of the governed. On the other hand, Las Casas, when before Charles, stresses the king’s duty to his subjects. Toward the end of his career, Las Casas’ waffling tilts toward complete Spanish restitution to the Amerindians. Soto, on the other hand, does not question that the Amerindians are subjects to the Crown. Second, Soto seems to suggest that the bull of Alexander, against the interpretation of Vitoria and Las Casas, did make the Amerindians subject to the Spanish Crown. Thus, his interpretation of the *indirecta potestas* differs from Las Casas.

Soto believed that Spain’s presence in the Indies was just. He did not defend it, as the *De Dominio* shows, on the argument of empire building or the popular idea of the emperor as lord of

¹²⁶ Domingo de Soto, quoted in Hernández, “The Internationalization,” 1055.

the world. The sole legitimizing factor for Spain's presence in the Indies was for the conversion of the Amerindians to the Christian faith, as outlined by the Alexandrian bull. Notably, the bull's language gave Spain control over the New World in perpetuity, not simply until the time of Amerindian conversion. Thus, for Soto, the real political question was the manner in which the Spanish were to preach. As was mentioned earlier, Soto and Vitoria condemned forcible baptism in their 1542 response to Charles. Soto, therefore, was against forcible baptism, but he was not against forced preaching. In his summary of Las Casas' position at Valladolid, Soto briefly mentions his opinion: "It seems to me that, unless I am mistaken, my Lord Bishop is in error here. After all, it is one thing for it to be licit to exercise force in order to be allowed to preach, which is the opinion of many doctors; and another thing again for it to be permitted to compel persons to come to our sermons, which seems less probable."¹²⁷ Christians, therefore, can use force in order to preach in an open area (e.g. the town hall), but they cannot use force to have the Amerindians attend church.

Conclusion

This overview of the various positions of Cajetan, Paul, Vitoria, and Soto highlights their similarities and differences. First, they all acknowledged that the Amerindians were rational beings who were able to understand the precepts of the Christian faith, if they were properly taught. Thus, as Vitoria and Soto's joint letter shows, they are against forced *baptism*. Second, they defended the right of the Amerindians to have *dominium* and property. Third, they recognized, albeit with varying degrees of emphasis, that the Amerindians had legitimate governments and, consequently, were political animals. Fourth, they acknowledged the legitimacy of the Alexandrian bull to convert the Amerindians, but they also recognized limits to

¹²⁷ Soto, quoted in Gutiérrez, *Las Casas*, 130.

papal authority. These four positions, which they all share with Las Casas, demonstrate clearly why scholars like Dr. Johnson have praised the School of Salamanca for their fortitude in challenging many aspects of the Conquest.

Yet, these four Catholics do not advocate that the Spanish retreat and abandon the Indies. As Vitoria stated to Charles, such a retreat would have endangered the souls of the Amerindians from not accepting the faith. Yet, the promulgation of the faith is not the only reason why some of the Thomists advocated Spain to stay in America. Vitoria and, to a certain extent, Soto believed that the Amerindians had committed injustices to the Spanish. Vitoria provided several reasons, ranging from not obeying the *ius gentium* to committing large-scale human sacrifice. For Soto, the fact that some Amerindians willingly *obstructed* the right of preaching furthered Spain's legitimate right to defend missionaries. Hence, for Vitoria and Soto, the Spanish had a right to wage war against the Amerindians.

Several differences arise when one compares the positions of Vitoria and Soto with Las Casas' Thomism. The first is the use of force in converting. Vitoria and Soto are against forcible baptism, but they are not against forced preaching, if the Amerindians are violently obstinate in Christianity. The second difference, which is more specifically between Vitoria and Las Casas, is their view on pagan governments. Though they both recognize that government comes from nature, Las Casas provides a more robust analysis of the merits of pagan government, by drawing upon Aristotle's *Politics*. The fourth chapter will examine how Las Casas utilizes the six professions that Aristotle believes are necessary for a city to have. The third difference is their view of the just war, a topic which will be examined in the fifth chapter. Vitoria's *De Indis* provides a few avenues in which Spain can declare war on the Amerindians.

Las Casas, however, thinks that it is the *Amerindians* who have the cause for just war. The fourth difference is their interpretations on the *indirecta potestas*, the subject of the sixth chapter.

The different opinions of these Thomists disprove the claim, in many of the older works, that Las Casas' political philosophy, including his sweeping defense of the Amerindians in Valladolid, was due to Vitoria's thought. Las Casas, though he is certainly a disciple of Thomas, is not a follower of Vitoria.¹²⁸ Although Vitoria is often an ally, Las Casas has important disagreements with him. These differences result from Las Casas' more robust use of Thomas' *Prima Pars* of the *Summa*, from which he draws his philosophical anthropology.

¹²⁸ This view was put forth by Carro, "The Spanish Theological-Juridical Renaissance," 248-49, 267, 270, 274; Muñoz, *Vitoria and the Conquest of America*, 59

CHAPTER 3: LAS CASAS' PHILOSOPHICAL ANTHROPOLOGY

When Columbus came to the island of Hispaniola, he described the Amerindians as a “naked” and “poor” people with a “gentle” temperament.¹ On the very eve of his first interaction, he wrote enthusiastically, “I could see that they were people who would be more easily converted to our Holy Faith by love than by coercion.”² In a matter of years, the Spanish imagination morphed the Amerindians from a gentle people into uncivilized barbarians with rudimentary arts. These negative feelings were amplified by the natives’ perceived weak body constitutions and Spanish interaction with the cannibalistic Caribs. The discovery of the Mexican mainland and Aztec civilization forced Spain to come to grips with more sophisticated and technologically-advanced societies. Bernal Diaz, a subordinate of Cortes, praised the great cities he witnessed and the advancement of their cultures.³ Cortes certainly extolled the glories of the Aztec Empire, but did so in order to glorify and justify his unauthorized march into Mexico, not necessarily to give an objective account.⁴ After the Conquest of Mexico, however, the Spanish did not treat the conquered mainland inhabitants differently from the island natives. The mainland natives were forced to serve in the *encomienda*, they were coerced to relocate their villages to be near their *encomendero*’s property, and their previous governments and property rights were not recognized. The three major mendicant orders – the Dominicans, Franciscans,

¹ Columbus, *The Voyage of Christopher Columbus*, 93, 94, 96.

² *Ibid.*, 94.

³ Bernal Diaz del Castillo, *Conquest of New Spain*, trans. J.M. Cohen (New York: Penguin, 1963), 18, 216-219. In the beginning of his narrative, Diaz notes that his company thought the inhabitants of the mainland were more sophisticated than the Cubans because the former had clothes of cotton, while the “Cubans” were naked. Diaz’ wonder and amazement about the achievements of the Amerindians continually progresses when he visits the cities of the New World.

⁴ Hernan Cortes, *Letters of Cortes: The Five Letters of Relation from Fernando Cortes to the Emperor Charles V*, trans. Francis Augustus MacNutt (New York: G.P. Putnam Sons, 1908).

and Augustinians – pushed entire villages to relocate and, in certain cases, to live in communities similar to those of European friaries and monasteries. These missionaries uprooted and redirected many different aspects of Amerindian culture. Under the tutelage of the missionaries, the Amerindians had to destroy their idols and learn both the fundamentals of Christianity and the Spanish language. Sometimes the missionaries forced them to work in new professions (e.g. working in hospitals) and to dissolve polygamous marriages.⁵

In order to defend these new institutions, various men of letters attempted to criticize Amerindian government, culture, society, and even their rationality. Gonzalo Fernandez de Oviedo, a colonist, a historian, and a contemporary of Las Casas, wrote that the natives were “naturally lazy and vicious, cowardly, and, as a whole, a lying irresolute people.”⁶ Most missionaries did not have Oviedo’s dismal and cruel interpretation of the Amerindians. The Franciscan missionary Toribio de Benavente Motolinía, for example, praised the natives for their genuine faith and the mental agility in learning Latin and Spanish quickly.⁷ Yet, Motolinía, like many other Franciscan missionaries, did not believe that the Amerindians should rule themselves. Motolinía believed that the Spanish king ought to give the New World, “a prince to rule and ennoble it and give it prosperity, both spiritual and temporal.”⁸ Motolinía’s pupil, Geronimo Mendieta, another great Franciscan missionary, went even further than his predecessor

⁵ Robert Ricard, *The Spiritual Conquest of Mexico: An Essay on the Apostolate and the Evangelizing Methods of the Mendicant Orders in New Spain: 1523-1572*, trans. Lesley Byrd Simpson (Berkeley and Los Angeles: University of California, 1966), 4, 36, 108, 112, 156-157, 286-287.

⁶ Gonzalo Fernandez de Oviedo, *La historia general y natural de las Indias*, Part I, Lib. II, Cap. VI, quoted in Justus M. von der Kroef, “Francisco de Vitoria and the Nature of Colonial Policy,” *The Catholic Historical Review* 35, no. 2 (Jul., 1949): 133.

⁷ Toribio de Motolinía, *History of the Indians of New Spain*, trans. Francis Borgia Steck, O.F.M. (Washington DC: Academy of American Franciscan History, 1951) 218, 295.

⁸ Motolinía, quoted in Phelan, *Millennial Kingdom*, 30.

by even claiming that the mendicant orders ought to have political jurisdiction over the Amerindians in order to ensure their salvation.⁹ The political project of the Franciscans will be discussed in further detail in the fourth chapter.

The most notorious argument against the Amerindians, however, was not published until the mid-1540s, when the leading Aristotelian scholar in Spain, Juan Gines de Sepúlveda, composed the dialogue *Democrates Secundus*. Drawing upon the historical accounts of Oviedo, Sepúlveda argued that the Amerindians were Aristotle's slaves-by-nature. Aristotle defined a natural slave in the *Politics* as one that "participates in reason only to the extent of perceiving it, but does not have it."¹⁰ Sepúlveda, drawing upon this passage, posited that the Amerindians were such slaves and that "they ought to submit to others."¹¹ Aristotle does suggest, though briefly, in the *Politics* that an entire group of people could be natural slaves; the Stagirite considers the waging of war to enslave natural slaves to be a just war.¹² Admittedly, Aristotle is unclear about the extent of how many natural slaves, without possessing reason, could live together and survive before the conquest. It should be emphasized, however, that natural slavery is not based on racial characteristics in the same way as American chattel slavery.¹³ Rather, it appears from Aristotle's account that natural slaves can be Greek.

Las Casas believed that both Oviedo's characterizations of the Amerindians and Sepúlveda's natural slavery argument were false. They were based on a great misunderstanding

⁹ Phelan, *Millennial Kingdom*, 58.

¹⁰ Aristotle, *Politics*, 1.5.1254b20-25.

¹¹ Sepúlveda, *Tratado Sobre Las Justas Causas De Las Guerras Contra Los Indios*, 80: "ut aliis parere debeant."

¹² Aristotle, *Politics*, 1.8.1256b25-26.

¹³ In the *Politics*, Aristotle does mention that climate affects temperament, but he does not claim that climate makes one a natural slave. Aristotle, *Politics*, 7.7.1327b20-35.

of human nature. As many scholars have noted, Las Casas uses his own personal experiences to debunk both claims. Yet, beneath Las Casas' vignettes and powerful rhetoric, there is a philosophical understanding of what a human being is. His understanding of human nature is consistent in his writings, though it is admittedly interspersed throughout his corpus. His thought is grounded in Thomism. Las Casas' philosophical anthropology first begins by exposing the loving relationship God has with his creation. Las Casas follows faithfully the Thomistic principle that God, out of his justice, provides what is necessary for the perfection of his creation. He argues that God has given human beings a rational soul in order to achieve its end. The rational soul is common to all human beings. Following Thomas' discussion on practical reason, Las Casas, then, addresses how human beings come to different opinions. He concludes with a defense of human liberty. This philosophical anthropology forms the basis of his theology of preaching.

Justice and Creation

In the *Summa*, Thomas tackles the question of whether God is just. Following Aristotle, he divides justice into two separate types: commutative and distributive. God does not participate in commutative justice, which is concerned with intercourse and exchange, because he is self-sufficient. He does partake, however, in distributive justice by providing what is due to his creation. Thomas writes, "It is also due to a created thing that it should possess what is ordered to it; thus it is due to man to have hands, and that other animals should serve him."¹⁴ God creates always in accordance with the good. In God, there is a perfect harmony between the intellect and the will, for "it is impossible for God to will anything but what His wisdom

¹⁴ Aquinas, *Summa Theologica*, I Q. 21 a. 1 r. 3.

approves.”¹⁵ Consequently, God gives what is necessary for the betterment of human beings. He gives to his creation not only out of love, but because the sheer grandeur of his distributive justice befits his own nature. Since God is truly perfect, he does not neglect what he has created. God’s justice is accompanied by the exercise of his mercy, which provides human beings with even more than what is simply just. Thomas writes that it is characteristic of God to “bestow upon creatures what is due to them *more bountifully than is proportionate to their deserts.*”¹⁶ No earthly creature receives more from God than do human beings.

God perpetuates this distributive justice to all human beings and at all times because God governs the world. Thomas identifies two ways to demonstrate that God governs the world: through the observation of nature itself and from a consideration of God’s goodness. First, Thomas argues that God’s governance is shown through the observation of nature. Thomas writes, “For we observe that in nature things happen always or nearly always for the best; which would not be the case unless some sort of providence directed nature toward good as an end; which is to govern.”¹⁷ Careful observation of nature shows that it is ordered and that it has an *end*. Thomas’ argument is teleological. God created nature in such a way that human beings can interpret moral claims from nature. Human beings after the Fall, even without the benefit of Christian revelation, have the ability to understand the basic truths of the world. Revelation, though it illuminates the study of nature, does not contradict it.

The second way in which it is evident that God governs the world is through a consideration of God’s goodness. Thomas writes, “It is not fitting that the supreme goodness of

¹⁵ Ibid., I Q. 21 a. 1, r.3.

¹⁶ Ibid., I Q. 21 a. 4.

¹⁷ Ibid., I Q. 103 a. 1.

God should produce things without giving them their perfection. Now a thing's ultimate perfection consists in the attainment of its end. Therefore, it belongs to the Divine goodness...to lead them to their end; and this is to govern."¹⁸ God's justice, which is furthered by his mercy, provides human beings with what is necessary for their end (such as the aforementioned hands and dominion over animals). By providing human beings with what is necessary for their *end*, God's design allows every creature to seek its own perfection. Human beings, through the exercise of the reason, aim to have God as their end by perfecting themselves through acts of goodness.¹⁹

As Thomas' discussion on God's governance of the world asserts, good governance consists in bringing one's subjects to fulfill their end. Human government mimics God's governance to the extent that it leads its citizens to fulfill their temporal end: happiness. The exercise of human happiness includes the practice of moral virtue, especially justice. As justice always concerns itself with relations of at least two people, human beings need to live in political and social community in order to imitate God's justice to the extent that they are able. It is part of God's distributive justice that human beings are not autonomous individuals who live by themselves. Rather, political and social life is an intricate part of God's justice because human beings, by nature, must live with each other for a variety of reasons, ranging from basic survival to the exercise of virtue.²⁰ The political and social life of human beings is so natural that it would have existed even before the Fall.²¹

¹⁸ Ibid., I Q 103 a. 1.

¹⁹ Ibid., I Q 44 a.4; I Q 103 a. 4.

²⁰ Ibid., I-II Q. 94 a. 2.

²¹ Ibid., I Q. 96 a. 4.

Las Casas viewed Aristotelian natural slavery as incompatible with the justice, mercy, orderliness, and governance of God's creation. Las Casas sums up his position nicely: "if we believe that such a huge part of mankind is barbaric, it would follow that God's design has for the most part been ineffective with so many thousands of men deprived of the natural light that is common to all people."²² To state that a whole race or nation is mentally deformed and lacking in the ability to govern is a sin against the beauty of God's creation. Las Casas believes that the claim of widespread natural slavery is contrary to Thomas' position that God provides all human beings with what is necessary to attain their end (i.e. reason) because it is contrary to God's nature to make many things imperfect. Las Casas writes, "Hence it necessarily follows that a rational nature, receiving its power from the Creator alone, should include men who, as a rule, are endowed with the best gifts of their nature and are rarely slow witted or barbarous."²³ Las Casas, like Thomas, admits that there are a *few* men who are slow-witted and barbarous, but Las Casas takes Thomas' caveat to mean that those few slow-witted or barbarous men would be interspersed thinly throughout various nations.²⁴ In this way, God's distributive justice would not be impeded because, since human beings are political and social animals by nature, the slow-witted would be taken care of by their fellow men in a political community. Such an opportunity allows the citizenry to grow in virtue. Las Casas did not believe that Thomas' caveat for the existence of the slow witted translated into the possibility that an entire continent could be populated by such deficient human beings.²⁵

²² Las Casas, *In Defense of the Indians*, 36.

²³ *Ibid.*, 35.

²⁴ *Ibid.*; While making this point, Las Casas quotes two sources of Thomas: *Summa Theologica*, I Q. 28, a. 3, ad 3um and *De Veritate*, q. 18, a. 6.

²⁵ *Ibid.*, 36.

Although Las Casas uses Thomas' metaphysical theology of creation to condemn natural slavery, he also seems to cherry-pick Thomas' corpus. For while Thomas, in the *Summa*, considers slavery to be a matter of convention, the Angelic Doctor does not condemn natural slavery in his *Commentary on Aristotle's Politics*. In his commentary, Thomas favorably quotes the line from Aristotle that Sepúlveda himself uses in defending the Conquest. Thomas writes:

Therefore, the acquisition by which one acquires such things as belong to the necessities of life is natural. And part of this consists of taking spoils, which one needs to do regarding animals, which are by nature subject to human beings, *and regarding foreigners, who are by nature slaves, as he [i.e. Aristotle] has said before [chap. 4, nn. 7-9], as if this should be the original naturally just war.*²⁶

Thomas does *not* proceed to condemn the idea of subjecting natural slaves; in fact, his silence seems to suggest that he supports it, since it is for the benefit of the natural slave to have a master. Whether or not Thomas actually believed in natural slavery is still debated by present-day scholars.²⁷ Yet, it is quite possible that Thomas uses the term 'natural slavery' in a more moderate way than Aristotle. In another section of his commentary, Thomas writes:

Those who lack reason, by which we define human beings, seem absolutely foreign to the human race, and so we call those who lack reason foreigners in an absolute sense. They lack reason either because they happen to live in a climate so intemperate that it causes most of them to be dim-witted, or because there is an evil custom in certain lands whereby human beings are rendered irrational and brutish, as it were.²⁸

To a certain extent, Thomas' passage invokes Aristotle's discussion of the relationship between culture and climate in the seventh book of the *Politics*. Aristotle, for example, argues that political associations in cold climates are marked by spiritedness, but lack thought and art,

²⁶ Aquinas, *Commentary on Aristotle's Politics*, 47, emphasis added.

²⁷ Joseph E. Capizzi, "The Children of God: Natural Slavery in the Thought of Aquinas and Vitoria" *Theological Studies* 63 (2002): 31-52; Hector Zegal, "Aquinas on Slavery: An Aristotelian Puzzle" *Congresso Tomista Internazionale* (2003) <http://www.e-aquinas.net/pdf/zagal.pdf> (accessed January 29, 2016).

²⁸ Aquinas, *Commentary on Aristotle's Politics*, 12.

whereas the nations of Asia excel in the arts, but lack spiritedness.²⁹ Although Aristotle does argue that the climate affects the character of a regime, he does not argue that climate makes entire peoples to be natural slaves. Thomas, in other words, changes the meaning of natural slave by broadening the boundaries of the term. Thomas' two reasons for natural slavery – climate and lack of education – are accidental (i.e. non-essential). They are conditions that can be changed, either by moving to a different environment or receiving a better education. There is undoubtedly a difference between Las Casas and Thomas in that the Angelic Doctor, in this passage, seems to suggest more than his sixteenth-century disciple that the natural law can be hindered more easily by customs and environment. The difference between the two men also shows how Las Casas was able to use Thomistic arguments without fully agreeing with Thomas. Despite this noticeable difference, the two Dominicans share the conviction that, due to human nature, human beings can be persuaded to change their opinions due to the existence of the human intellect, which is common to all human beings.

In addition to natural slavery, Las Casas had to address another argument that threatened the plausibility of his Thomistic understanding of God's relationship with the world. Some Spanish contemporaries believed that, since the Gospel had not been revealed to the Amerindians for fifteen hundred years, the natives of the New World were not favored by God. Many Christians at the time, drawing upon a literal interpretation of Christ's command to preach to all nations, believed incorrectly that the Apostles and disciples had visited most of the nations of the world. Hence, the medieval stories about the evangelization of Saint James in Spain or Saint

²⁹ Aristotle, *Politics*, 7.7.1327b20-35.

Mary Magdalene in France.³⁰ With the exception of the legends about Saint Thomas the Apostle visiting the Amerindians while preaching in Asia, most Christians understood that the Apostles had not visited the New World.³¹ As such, some Europeans believed that the Amerindians were somehow different from and inferior to other human beings. In the beginning of his *History*, Las Casas poses the question that many sixteenth-century Europeans had asked about the discovery of the New World: how could God allow an entire continent to be unknown to the Christian world for fifteen hundred years? Las Casas responds to the question with a theological answer rooted in teleology:

As for the mass of people, original sin has caused it to suffer cruelly and to experience misery by devious ways in order to merit goodness...It is unreasonable, then, to ask questions like *Why now and not before?* Or *Why so late?* It must not be thought that, because a nation is discovered later than another, its Maker denied it His support, for He ordained things as He pleased. If a nation is unknown, it is to help some and edify everyone that they are to blame if it is not in a state of grace, and that they should not attribute it to themselves if that nation basks in divine grace, but must attribute it instead to the benevolence of the Lord.”³²

Although Las Casas does not specifically quote Thomas in this passage, his argument is rooted in the Angelic Doctor’s understanding of why there are differences among human beings. The imperfect, the unbaptized, the disbelievers, and the widespread existence of sin exist to show how wondrous and magnificent perfection, baptism, belief, and goodness are. It provides the Christian with an opportunity to be “an aroma of Christ” to God’s creation.³³ It allows the

³⁰ The legend of Saint James the Apostle’s visit to Spain is well known. For the legend of Saint Mary Magdalene (and Saints Mary and Martha) in France, see: Jacobus de Voragine, *The Golden Legend*, trans. Christopher Stance (New York: Penguin, 1998) 165-172.

³¹ Louis-Andre Vigneras, “Saint Thomas, Apostle of America” *Hispanic American Historical Review* 57, no. 1 (Feb., 1977): 82-90.

³² Las Casas, *History of the Indies*, 14-15.

³³ Thomas Aquinas, *Commentary on the Second Epistle to the Corinthians*, trans. Fabian Larcher, O.P. Dominican House of Studies, 72, 74 <http://dhspriority.org/thomas/SS2Cor.htm#23> (accessed February 1, 2016).

Christian to honor God in a very special way. In this case, the discovery of the Amerindians provides Christians with the opportunity not only to convert the Amerindians but to reevaluate the blessings God has given them. Christians are *not* supposed to use the discovery of the New World into order to pervert it or, worse, attribute to it false understandings of human nature, such as Aristotelian natural slavery. Rather, Las Casas frames the question again in the context of God's distributive justice: the existence of unbelievers allows Christians to be, as the Bible teaches, fishers of men.³⁴

***Imago Dei* and the Natural Law**

In order to defend the Amerindians against the detractors of their rationality and sovereignty, Las Casas drew upon the traditional Christian doctrine of *imago Dei* and a Thomistic philosophical anthropology rooted in natural law. The Christian doctrine of *imago Dei* is rooted in the Genesis narrative, where it is stated: "God created mankind in his image: in the image of God he created them: male and female he created them" (Gen. 1:28). Genesis provides no exception to the verse: all human beings are made in the image and likeness of God. Las Casas made the *imago Dei* a foundational aspect of his political thought. He took it as evidence for the universality of human nature. Since the *imago Dei* was a widely accepted belief in Christianity, many adamant proponents of the Conquest did not deny that the Amerindians were made in God's image. They simply believed that the doctrine alone provided neither evidence for Amerindian rationality nor legitimacy for the natives' right to self-governance and self-determination. The doctrine of the *imago Dei* did not in-and-of-itself present a clear solution to the Amerindian problem. Theology and philosophy had to accompany and to support the doctrine in order to draw out its significance for the Amerindian question.

³⁴ Las Casas, *History of the Indies*, 14-15, 36.

In order to use the *imago Dei* to buttress the merits of his argument, Las Casas reflected upon the nature of God. As the previous section indicated, Las Casas' understanding of the justice, mercy, and governance of God was influenced strongly by Thomas. In Thomistic fashion, Las Casas emphasizes the rationality of God and gives God the title of Supreme Intellect.³⁵ Las Casas' argument is simple: if God is the Supreme Intellect and if the human being is made in God's image, then the human being is an image of the Supreme Intellect. The human being, therefore, can interpret the world, is capable of abstract thought, and can understand the distinction between good and evil. A human being's capacity to do these things does not make him or her equal to God's perfection. A human being, after all, cannot possess complete knowledge of the eternal law of God, due to humanity's natural limitations and the subsequent consequences of the Fall. Yet, by being made *imago Dei*, human beings have the capacity to know God to the extent of which the human soul is capable.³⁶

Las Casas stresses that being made in the *imago Dei* is a fundamental characteristic in defining human beings as a species. He claims that "both the Scriptures and *our experience* tell us [that] all men were created in God's image, although the Fall of our first fathers caused men to have to battle with their natural surroundings, as can be seen by the ferocity, rebellion, and distress from which we sometimes suffer."³⁷ While most Christians certainly believe that the doctrine of the *imago Dei* is contained within Scripture, Las Casas insists that it can also be learned through experience. This argument is thoroughly Thomistic: for if the *imago Dei* illuminates human reason, then it is present through the good use of one's intellect. Even

³⁵ Las Casas, *In Defense of the Indians*, 34.

³⁶ *Ibid.*, 34-35.

³⁷ Las Casas, *History of the Indies*, 13.

without revelation, human beings can come to know the tangible effects of being made in God's image, such as their ability to understand the precepts of the natural law that was discussed in the second chapter. His belief in the universality of human nature also leads him to dismiss arguments about any perceived natural deficiency of the Amerindians. The dysfunctional qualities he mentions – ferocity, rebellion, and distress – are a result of the Fall. They are not unique to the Amerindians. Cannibalism and human sacrifice are also a result of the Fall insofar as the arguments that legitimized those customs derived from a misapprehension of natural law precepts known through practical reason. In order to make his case, Las Casas turns to the ancient historian Strabo, who recorded instances of the pre-Roman inhabitants of Spain participating in human sacrifice. Las Casas' argument is clever: if the Amerindians are natural slaves for participating in this crime, then so were the ancestors of the Spanish.³⁸ Las Casas uses Strabo's account in order to demonstrate that participation in sacrifice is a result of the misapprehension of the natural law instead of a rational deficiency.

Despite its utmost seriousness, the Fall neither destroyed the *imago Dei* nor the intellect of the human being. The reflection of the *imago Dei* on the intellect distinguishes human being from other animals. In order to illuminate what is natural to human beings, Thomas differentiates between speculative reason and practical reason. Speculative reason is “concerned with what is necessary, that is, with those things which cannot be other than they are” while practical reason is “concerned with contingent matters, such as human actions, even though there be some necessary truth in the common principles, yet the more we descend to what is particular and peculiar, the more deviations we find.”³⁹ Speculative reason is the same for all human

³⁸ Las Casas, *In Defense of the Indians*, 224.

³⁹ Aquinas, *Summa Theologica*, I Q. 94 a. 2.

beings, but it may not be known equally to all. Practical reason, which draws upon the axioms derived from speculative reason, differs among human beings. It is from the exercise of practical reason that the differences among human laws arise.⁴⁰

Thomas states that “being” is the first thing understood from speculative knowledge, while “the good” is the first thing understood from practical reason.⁴¹ This distinction does not mean that what is good is grounded in subjective relativism; it simply means that “good” is the first thing that is apprehended by the practical reason from the speculative reason. According to Thomas, the first precept of the natural law – “Good is to be done and ensued, and evil is to be avoided” – comes from practical reason. From this precept derives three others: that human beings seek their preservation, that they procreate and educate their offspring, and that human beings desire to know God and to live in society.⁴² Since this major precept and three corollaries come from practical reason, all human beings are able to understand the immutable principles behind those claims, but, as a consequence of sin, education, and/or ignorance, they may interpret differently how these precepts are to be implemented. Some of the differences that derive from practical reason are legitimate. For example, monarchy, aristocracy, and polities, though different forms of government, are all legitimate. Other differences are illegitimate. Thomas writes “the more we descend to matters of detail, the more frequently we encounter defects.”⁴³ For example, though one initially may come to the conclusion that eating or

⁴⁰ Ibid., I Q. 94 a. 4.

⁴¹ Ibid., I Q. 94 a. 2.

⁴² Ibid., I Q. 94 a. 2.

⁴³ Ibid., I Q. 94 a. 4.

sacrificing human flesh is good through practical reason, it is still objectively contrary to the natural law to do so. One of the great problems, therefore, is the fallibility of practical reason.

From both his Thomism and personal experience in the Indies, Las Casas asserted that the Amerindians understood the major precept and the minor corollaries of the natural law. Las Casas concluded that it was self-evident that *the Amerindians aimed to do good and shunned evil*.⁴⁴ They also exemplified the three major premises of the first precept. First, they *sought their own preservation*. The defense of their homeland, in short, demonstrates the exercise of their reason. As will be discussed in the fifth chapter, Las Casas praises the Amerindians for defending themselves and attacking the Spanish conquistadors. Las Casas believed that the Amerindians, not the Spanish, were waging a just war. In addition to their physical preservation, the Amerindians also sought their eternal preservation. Las Casas provides many examples of how the Amerindians came easily to accept and to embrace the tenets of Christianity.⁴⁵ Second, Las Casas notes that *they procreate and educate their children*. The Amerindians live in families. They take care of, educate, and love their children. Moreover, they are good moral educators, precisely because they are not as prone as Europeans to certain vices, such as greed and lust.⁴⁶ Finally, Las Casas believed that the Amerindians exemplified the last precept: *to love God and to live in community*. Regarding the former, Las Casas is often astounded at how similar certain aspects of the Amerindian religion were to Christianity. He believed that their religion was directed to worship the true God, even though, due to the lack of revelation, they did not know the story of Christ. In the latter, Las Casas emphasizes the achievements of their

⁴⁴ Las Casas, *History of the Indies*, 35-36, 55-56, 166.

⁴⁵ Examples of physical preservation are found, among others, in: Las Casas, *History of the Indies*, 51-53, 92, 101, 247-256; On their conversion, see: Las Casas, *History of the Indies*, 55-56; Las Casas, *Short Account*, 10, 75-78.

⁴⁶ Las Casas, *History of the Indies*, 63-66.

political order. The Amerindians – whether it be the island inhabitants of Hispaniola or the inhabitants of the mainland – had properly organized states and good laws. They participated in friendships, built cities, and aimed for justice, the greatest of the moral virtues. He particularly praises their skill in the practical and decorative arts, arguing that in many of those arts the Amerindians surpassed the glories of Athens and Rome. All these examples, then, showed that the Amerindians participated fully in a social and political life. If they were able to participate in political life, then, they could not be slaves by nature.⁴⁷

The Rational Soul and the Senses

Thomas draws from two major Aristotelian principles. First, human beings are rational creatures. Second, human beings attain knowledge from the senses. Thus, it is important to emphasize that Thomas, like Aristotle, differentiates between *reason* and the *senses*. The senses are common to all animals, whereas reason is only common to human beings. The rationality of the human soul does not prevent it, however, from being able to enjoy the senses. The senses, rather, are necessary for there to be reason, as all knowledge comes first from the senses but is then interpreted through the use of the intellect. Thomas locates sensuality in the lower part of the appetitive part of the soul. The inclinations that derive from the appetitive part of the soul – the desire to want or to despise things – are a reflection of the character of the soul itself. Although both animals and human beings partake in the appetitive part of the soul, human beings, through their reason, will desire different things from animals, such as living by choice – as opposed to by mere instinct – in political community.⁴⁸

⁴⁷ Las Casas, *Short Account*, 18-25, 57-64, 107-115.

⁴⁸ Etienne Gilson, *The Christian Philosophy of St. Thomas Aquinas*, trans. L.K. Shook (New York: Random House, 1966), 236-242.

Thomas divides sensuality into two parts: the concupiscible and the irascible. The concupiscible and the irascible differ by their ends. The concupiscible regard those things that deal with sensible good.⁴⁹ The concupiscible passions include love, joy, desire, hatred, sadness, and aversion. For example, the love one has for one's spouse and the hatred one has towards war are cases of well-ordered concupiscible passions. Thomas writes: "Since in men the concupiscible power is naturally governed by reason, the act of concupiscence is so far natural to men, as it is in accord with the order of reason; while in so far as it trespasses beyond the bounds of reason, it is, for a man, contrary to reason."⁵⁰ In other words, the concupiscible faculty does not determine what is right or wrong. What is right or wrong is determined and perceived by the intellectual faculty. Passions or feelings about what is good and right do not determine the justice of an act; they only express it. Whereas the concupiscible passions respond to what the soul perceives to be good, the irascible passions are those that protect and defend the concupiscible passions. Thomas writes, "The irascible is, as it were, the champion and defender of the concupiscible when it rises up against what hinders the acquisition of suitable things which the concupiscible desires, or against what inflicts harm, from which the concupiscible flies."⁵¹ As such, the irascible, unlike concupiscence, are not ends in themselves. The irascible passions – hope, despair, anger, courage, and fear – both begin and find their completion in the concupiscible passions. For example, the *courage* of a soldier and the *hope* of success (irascible passions) are results of the soldier's *love* of his country and will lead, hopefully, to the *joy* of victory (concupiscible passions).

⁴⁹ Aquinas, *Summa Theologica*, I Q. 81 a. 2; II-II Q. 23 a. 1.

⁵⁰ *Ibid.*, I-II Q. 82 a. 3.

⁵¹ *Ibid.*, I-II Q. 81 a. 2.

The interaction between the concupiscible and the irascible faculties and their relationship with human reason points to the complexity of human nature. Although Thomas states that the concupiscible and the irascible are most perfect when they are in harmony with reason, he acknowledges that sometimes they are in tension. Thomas is concerned with the Classical problem of a well-ordered soul articulated in Socrates' image of the charioteer in Plato's *Phaedrus*. In order to explain the soul to the pleasure-and-story-loving Phaedrus, Socrates compares the soul to a charioteer and two horses. The charioteer represents reason. It is the responsibility of reason to direct and to control the two horses, *eros* and *thumos* – Greek terms which are closely synonymous with Thomas' concupiscence and irascibility. When reason manages *eros* and *thumos* well, the charioteer and the horses are in harmony; the soul is well-ordered. Yet, Plato acknowledges that *thumos* and *eros* can break away from the control of reason, leading the soul into division and chaos.⁵²

Las Casas recognizes, like Thomas, that sometimes the concupiscible and irascible passions do not act in accordance with reason. He understands that sometimes they are led astray by poor education, ignorance, sin, the lack of Christian revelation, or a mixture of more than one. Las Casas uses Thomas' understanding of the soul in order to reconcile how the Amerindians could commit several significant errors, such as polytheistic idolatry, human sacrifice, and cannibalism, while still upholding the tenet that human beings aim for the good. Las Casas begins by defining his terms:

The faculty of reason offers some knowledge of God (although it may be very confused); that is, it teaches that there is a God to whom we should subject ourselves and all we have as to a lord and superior. The concupiscible faculty makes man want to seek and know God as the source for conceiving joy and sweetness for the mind. And the irascible faculty inclines, teaches, and impels man to show subjection and honor to God as befits man's nature, as well as to use

⁵² Plato, *Phaedrus*, trans. R. Hackforth (Cambridge: Cambridge University Press, 1987), 246a-247c; 253c-256e.

some sensible objects as an offering to God, which serves as a sign of due subjection and honor in the same way as those who offer things to their masters indicate a recognition of the latter's dominion.⁵³

In defining these human faculties, Las Casas posits several things. First and foremost, he affirms the universality of human nature. All human beings have the same basic well-ordered desire to know, praise, and subject themselves to God. It is woven into the fabric of the human soul. Thus, differences among human beings are a result, not of their natures, but of how they decided to implement what they perceived through the exercise of their practical reason. Second, following Plato and Thomas, Las Casas posits the supremacy of reason over concupiscence and irascibility, but without diminishing their importance to human happiness. Third, by expounding the role of the various faculties, Las Casas also shows the limitations of reason. Without the support of revelation, the Amerindians are bound to have a confused understanding of God.

Las Casas uses this tripartite structure to explain – not to defend – why the Amerindians participated in human sacrifice and cannibalism. Since the Amerindians, through their reason, “are naturally led to the worship of God, or of what they believe to be God, as well as to love true or false goodness,” they have, through the irascible and concupiscible faculty, a desire to offer “sacrifices and divine honors to the true God or to an imaginary god.”⁵⁴ The Amerindians used their reason to the best of their ability. They understood, in accordance with Thomas’ natural law precept, that God is to be worshipped and loved. Their failing lies not primarily with the exercise of their reason, but with the lack of revelation.

Las Casas’ explanation of the prevalence of these two nefarious practices was the most controversial part of his defense of the Amerindians. It was also one of the hardest things for

⁵³ Las Casas, *In Defense of the Indians*, 74-75.

⁵⁴ *Ibid.*, 75.

him to explain, precisely because he himself viewed such acts as unacceptable practices. Due to the complexity of the matter, his argument occurs in different levels. First, Las Casas states that the practices of their religion are the result of probable error. Probable error, a term he attributes to Aristotle, results when men follow the opinions of the wisest men due to their virtue.⁵⁵ In other words, it occurs when human beings follow some activity for a reasonable purpose. Since the culture and religion of the Amerindians allowed these practices to flourish, Christians ought not to condemn the Amerindians unilaterally because human beings are limited to what they have experienced. Las Casas stresses that these sins were not committed solely by the Amerindians. He uses his knowledge of classical sources to mention that the same sins were committed by the tribes of western India, the Carthaginians, the French Gauls, the Scythians, and the Scytho-Tauran peoples of Germany, and were also present in the mythic tales of the Roman god Jupiter and in Aeschylus' retelling of the sacrifice of Iphigenia.⁵⁶

Second, due to the effects of probable error, Las Casas stresses that one should not expect the Amerindians to change their mind easily. The belief that human beings should be sacrificed and ritualistically eaten is grounded not simply in human convention, but upon a distortion of a timeless principle: that human beings ought to sacrifice to God. The Amerindians naturally know that they need to give God what is truly best. They also naturally know that what is best is human

⁵⁵ Ibid., 221-222; Las Casas cites the first book of Aristotle's *Topics*, but he does not provide a direct quote. I think he is referring to this line: Aristotle, "Topics" *Collected Works of Aristotle*, trans. W.A. Pickard-Cambridge (New York: Modern Library, 2011), 1.10.104a8-15, emphasis added: "Now a dialectical proposition consists in asking something that is held by all men or by most men or by the philosophers, i.e. either by all, or by most, or by the most notable of these, provided it be not contrary to the general opinion; for a man would probably assent to the view of the philosophers, if it be not contrary to the opinions of most men." In other words, the opinion of the wise need to be followed by the populace. When the wise hold and teach a position that is erroneous, the people, through their adherence to the wise, are following probable error. In present-day terms, they are following 'the best guess' or 'the most likely option.'

⁵⁶ Las Casas, *In Defense of the Indians*, 222-225.

flesh. Thus, if Amerindians want to give God what is best – namely, the human being – the joint custom of human sacrifice and ritualistic cannibalism may initially seem in accordance with natural law.⁵⁷ The major error of the Amerindians is their confusion of the worthy enterprise of homage and sacrifice with the nefarious sins of human sacrifice and cannibalism. Instead of sacrificing bodies, the Amerindians ought to have sacrificed their souls through good works to God. Hence, Las Casas believed himself to be in line with the first question of the *Summa*: by reason alone, a human being can come to an understanding of God, though it will be marked with severe imperfections.⁵⁸ The Amerindians are a testament to this proposition. Without Christian revelation and sacramental grace, they were able to come up with a partially reasonable idea of God, though they could not come up with a perfect conception. Behind Las Casas’ defense of the Amerindians is the old Classical and Christian idea that all human beings aim to seek the good, though they may lack the full knowledge actually to do good.⁵⁹

The third rung of Las Casas’ argument concerns the interplay between natural and human law. He argues, “Even if something may generally be of the natural law, the disposition and arrangement of when and how it should be done is positive; that is, a certain determination of the natural law is laid down by the ruler or the state.”⁶⁰ Human sacrifice and cannibalism were bad *human* laws. The existence of unjust human laws does not necessarily mean that the creation of the law was based on a complete failure to interpret the natural law. Unjust laws, which need not be followed, are sometimes based upon error and not maliciousness. Natural law claims that

⁵⁷ It should be noted that human sacrifice (and cannibalism) are not in accordance with natural law because they are contrary to the previous precept, *to seek preservation*.

⁵⁸ Aquinas, *Summa Theologica*, I Q. 1 a. 1; Las Casas, *In Defense of the Indians*, 128.

⁵⁹ Aristotle, *Nicomachean Ethics*, 1.1.1094a.

⁶⁰ Las Casas, *In Defense of the Indians*, 231.

God deserves worship and *latria* from human beings; the Amerindians, therefore, understood the most basic premises of natural law. It was their implementation of the natural law precept to worship God into human law that was unjust.

Following Aristotle and Thomas, Las Casas comes to the conclusion that ignorance should not be punished. Sins, by definition, are always voluntarily done for an evil purpose. Legitimate ignorance, on the other hand, is involuntary.⁶¹ Paraphrasing Saint Thomas, Las Casas mentions that “when men do not perceive something by natural light alone, they need grace and doctrine, which unbelievers do not have.”⁶² In order to persuade and convert, human beings need to be taken where they are. Las Casas argues that ignorance is not easily eradicated. Simply telling the truth to another does not necessarily end the ignorance of the other. Rather, in order to truly end the ignorance of the Amerindians, they must be *persuaded* of the truth. Persuasion is an appeal to reason; hence, Christians need to appeal to the Amerindians’ reason. As persuasion often takes time, Las Casas believed that it was unrealistic to expect that the Amerindians would convert to Christianity upon hearing the Gospel for the first time. This proposition is what separates Las Casas from the *Requerimiento* addressed in the first chapter. Las Casas argues that conversion, with some noticeable exceptions, is slow because the human being must contemplate and examine the merits of the faith.

Las Casas was one of the few Spaniards to take this view. In order to appreciate the novelty of his position, it is important to contrast it with the predominant idea against which he was contending. The most prevalent idea concerning the origins of the Amerindian vices, especially human sacrifice and cannibalism, was that the practice derived from demonic origins.

⁶¹ Ibid., 127.

⁶² Ibid., 236; Aquinas, *Summa Theologica*, I Q. 1, a. 1.

This argument was especially prevalent among Franciscan missionaries, such as Motolinía, Andrés de Olmos, Bernardino de Sahagún, and Gerónimo de Mendieta.⁶³ These Franciscans were simply following the tradition set by the Church Fathers, such as Augustine, who believed that demons were quite active in the Roman religion.⁶⁴ Las Casas made a conscious decision to de-demonize the Amerindian religion. When composing his histories, Las Casas drew upon Motolinía's history of the Amerindians, especially his detailed description of human sacrifice. Comparative study of the histories of Motolinía and Las Casas indicates, however, that though Las Casas quoted the Franciscan closely, he intentionally removed the Franciscan's demonic imagery of "inhuman ceremony", "the minister of the demon," and "unfortunate victim," with a more moderate vocabulary. By not attributing these practices directly to demons, Las Casas posited that they were rituals made by human beings who erroneously but genuinely believed that they were worshipping a transcendent power.⁶⁵

The Naturalness of Human Liberty

Genuine freedom, Las Casas writes, "is intrinsically linked to knowledge, to a mind not clouded by prejudice born of the passions."⁶⁶ Las Casas is aware that, through poor decision-making or sophistic persuasion, concupiscence and irascibility are able to overwhelm reason, leading the individual to imperfect half-truths, incorrect opinions, or even to outright falsehood.

⁶³ Viviana Díaz Balsera, "On Barbarism, Demons, and Natural Reason: Las Casas' Rhetoric of Human Sacrifices in Pre-Hispanic Mexico," in *Approaches to Teaching the Writings of Bartolomé de Las Casas*, ed. Santa Arias and Eyda M. Merediz (New York: Modern Language Association of America, 2008), 162.

⁶⁴ Augustine, *City of God*, trans. Henry Bettenson (New York: Penguin, 2003), 58, emphasis added: "Yet, the malignant devils, which these people regard as gods, are willing that stories of enormities which they have not committed should be told about them."

⁶⁵ Díaz Balsera, "On Barbarism," 161-163.

⁶⁶ Las Casas, *The Only Way*, 120.

Liberty, therefore, is never divorced from right reason, for without *recta ratio* there can be no freedom. The mind would be enslaved to passion and error if not guided by right reason.

Las Casas' understanding of human liberty is a rich synthesis of two medieval traditions. The first influence comes from canonist thought. The canonists, who often drew upon the intellectual heritage of Roman thought, emphasized the natural freedom of the human being. The Roman jurist Florentinus, for example defined freedom as "one's natural power of doing what one pleases, save insofar as it is ruled out either by coercion or by law."⁶⁷ This emphasis on the natural freedom of the human being is a consistent theme in Roman political thought and, as a consequence, medieval jurisprudence.⁶⁸ Las Casas quotes positively the definition of liberty in Baldus de Ubaldis' *Commentary on the Institutes*. Baldus defines liberty as "the faculty from natural right providing [the individual] of doing whatever he pleases, unless it is prohibited by the law of nations or civil law."⁶⁹ According to this definition of liberty, a human being is free to do anything that is not reasonably constrained by positive law. The definition assumes the natural freedom of human beings. Following the general tenor of the canonists, Las Casas writes, "from the beginning of the human race, every man, every place, and everything was free by natural right. The first peoples were subjected to no servitude."⁷⁰ Liberty, then, is not a concept created by convention or by government. Government does not give one liberty. Instead, it protects the liberty that is intrinsic to the human person, regardless of regime. For as

⁶⁷ Justinian, *Digest*, 1.5.4.

⁶⁸ Okko Behrends, "The Natural Freedom of the Human Person and the Rule of Law in the Perspective of the Classical Roman Legal Theory" *The Tulane European and Civil Law Forum* 26 (2011): 1-32.

⁶⁹ Las Casas, *De Regia Potestate*, 19, n62: "Libertas est facultas a naturali iure proveniens quicquid placuerit faciendi, nisi iure gentium vel civili prohibeatur."

⁷⁰ Las Casas, *De Regia Potestate*, 16: "A principio generis humani, omnis homo, et omnis terra, et omnis res, de iura naturali et gentium primaevo fuit libera et allodalis, id est, franca, nulli subiecta servituti."

no just government is able to make laws contrary to natural right, arbitrary subjection and servitude are fundamentally antithetical to liberty. Thus, due to the very essence of human nature, it is befitting for a human being to be able to have freedom.

The second source, which qualifies Baldus' definition, comes from Aristotle's and Thomas' teachings on right reason. Aristotle, Thomas, and Las Casas teach that the rule of the passions divorced from right reason is a form of self-tyranny. Actions ought not to be committed solely for the sake of doing them, but for the sake of doing them *well*.⁷¹ This distinction trims Baldus' definition by limiting human action to what is good for the soul. The Aristotelian good life is never divorced from Las Casas' concept of liberty.

The synthesis of these two traditions produces a rich understanding of what human freedom is. Like Thomas, Las Casas stresses the importance of human free will. Las Casas bluntly states that the "the free man is he who is of his own free will, according to Aristotle. From whence free men have the faculty of managing their own person and things, as they wish."⁷² As a consequence, freedom does not exist simply because a human wants to be free, but because freedom is an intrinsic reflection of the faculty of free will. If human beings are able to commit voluntary actions and to interpret reality through their sensory perception, coercion outside the rightful domains of just law cannot be used against an individual. Unjust and unnecessary coercion is contrary to human free will. Persuasion, not coercion, is necessary to bring about consensus. Ultimately, since a rational creature is born with a free will, humankind "must be treated as free, must be drawn, led, moved toward what is good gently, without

⁷¹ Aristotle, *Nicomachean Ethics*, 1.8.1098b30.

⁷² Las Casas, *De Regia Potestate*, 19: "...liber homo qui est sui arbitrii, secundum Aristotelem (1 metaphysica; lex finalis ff. De domine libero exhibendo). Unde habent facultatem libere de personis propriis et rebus disponendis, prout volunt."

pressure, delicately.”⁷³ As will be shown later, Las Casas argues that liberty is necessary to truly believe the essentials of the Catholic faith, for without liberty there can be no persuasion. The fear induced by coercion affects only external objects; it does not persuade the soul that what is being coerced is true.⁷⁴

If liberty, the ability to freely choose the good, is natural, then slavery is not natural. Not only does slavery hinder the ability of human beings to act freely, but it can hinder one from doing the good. In holding this view, Las Casas’ views on slavery are similar to those of Thomas. Thomas, like Las Casas, does not completely oppose conventional slavery. The institution of slavery, like the origin of private possession, was not created by nature but devised by human law according to Thomas. Following the canonists, Thomas wrote that nature has “the possession of all things in common and universal freedom.”⁷⁵ He argues, moreover, that slavery could not have existed in man’s natural state before the Fall. Such dominion, Thomas argued, “implies a necessity of pain” because “every man’s proper good is desirable to himself, and consequently it is a grievous matter to anyone to yield to another what ought to be one’s own.”⁷⁶ Although he argues that slavery could not have existed before the Fall, he *does* argue that civil society would still have existed. Thus, civil society is more natural than slavery. Slavery is only natural insofar as it benefits fallen humankind.

Thomas views slavery as an acceptable practice, one that was not part of nature originally but not fundamentally opposed to it. Thomas’ acceptance of slavery is grounded,

⁷³ Las Casas, *The Only Way*, 118.

⁷⁴ *Ibid.*, 147-148.

⁷⁵ Aquinas, *Summa Theologica*, II Q. 94 a. 5 r. 2.

⁷⁶ *Ibid.*, I Q. 96 a. 4.

above all, on utility. He writes, “Considered absolutely, *the fact that this particular man should be a slave rather than another man, is based, not on natural reason, but on some resultant utility*, in that it is useful to this man to be ruled by a wiser man, and to the latter to be helped by the former, as the Philosopher states (Politics I, 2).”⁷⁷ This quote also suggests, indirectly, that there can be severe problems that emerge from the institution of slavery. Thomas states that the wise should rule over the unwise, but it is possible for the opposite to be the case. The institution of conventional slavery, therefore, may not produce what is best for the souls of both the slaveholder and the slave. Although Thomas does not mention it explicitly, there is some groundwork for the abolition of slavery in the Angelic Doctor’s work because, if the basis of slavery is utility and if the slave is a better man than the slaveholder, the usefulness of slavery can severely be called into doubt. Moreover, as Stephen F. Brett notes in his analysis of St. Thomas’ position on slavery, Thomas does not give the slaveholder complete control over the conscience of the slave: “In matters touching the internal movement of the will, man is not bound to obey his fellow-man, but God alone.”⁷⁸ Slavery clearly has its limits in Thomas’ thought.⁷⁹

Las Casas follows Thomas’ position when he argues that, “Slavery is accidental, having fastened human beings by chance and by fortune, each one follows the species according to that which is according to its own nature, not that which is through accident because *those things which are through accident are outside the reason of the species. This, however, we say, to be*

⁷⁷ Ibid., II-II Q. 57 a. 3 r. 2, emphasis added.

⁷⁸ Ibid., II-II Q. 104 a. 5.

⁷⁹ Brett, “The Justification of Slavery,” 76-80. His subtitle for his section, “The Repugnance of Slavery to Natural Law” overstates the case.

through accident because it is besides the intention of nature.”⁸⁰ By using the Aristotelian term ‘accident’ to describe slavery, Las Casas defines his position even more clearly than Thomas; it provides clear proof against the position of a few scholars that Las Casas did not draw upon Aristotelian metaphysics intentionally. An ‘accident,’ understood in its classical terminology, is something that is not essential to the subject, but is still natural. It does *not* have the modern colloquial connotation of “something that was not supposed to happen.” Thus, since slavery is accidental to the human being, its existence sheds no light on what constitutes the *nature* of a human being.

Toward a Theology of Preaching: Christian Evangelization Befitting Human Nature

Las Casas’ philosophical anthropology is the foundation for Las Casas’ theology of preaching. It was the theme of his first book, *The Only Way to Draw All People to a Living Faith*, which influenced the writing of Paul III’s encyclical *Sublimis Deus*.⁸¹ The theme of preaching may initially seem apolitical, but in the sixteenth century, the conversion of the Amerindians was a fundamentally politically topic. The exclusive rights given to Spain by the papacy were granted for the very purpose of Christianizing a hitherto unknown people. The missionary role of Spain was one of the most important legitimating factors of the Spanish Conquest. The method through which these Amerindians were to be converted was not simply a question for Christian missionaries, but for all the Spanish colonists, conquistadors, the Crown, and, above all, the Amerindians themselves.

⁸⁰ Las Casas, *De Regia Potestate*, 17: “Servitus autem est accidentalis, iniuncta hominibus a casu et a fortuna, unumquodque autem consequitur speciem secundum illud quod est per se, non secundum illud quod est per accidens: quia ea quae sunt per accidens, sunt extra rationem speciei. Hoc autem dicimus per accidens esse quod est praeter intentionem naturae, ut patet Aristotele (2 Physicorum) et secundum Thomam (1.2, quaest. 72, art. 1, c.)”

⁸¹ Parish, “Introduction,” 4, 38.

In response to the abuses of Spain, Las Casas articulated a method through which to convert the Amerindians based on his Thomistic understanding of God's interaction with creation, the nature of the human being's rational soul, and his notion of intrinsic freedom. Indeed, his theology of preaching shows that he was, at heart, more of theologian than a canonist. In following Saint Thomas, distinctions between different peoples, regions, and religions are not grounded on any intrinsic differences of mind or body. Rather, legitimate differences are a result of custom and positive law, while illegitimate differences derive from sin and ignorance. Las Casas, therefore, begins this theology of preaching by stressing that the Amerindians are equals to the Spanish. If the Spanish are to be successful in their mission, they need to treat the Amerindians as equals. In some of his more impassioned moments, Las Casas writes that the achievements of the Amerindians are even more impressive than that of the Greeks and Romans. The evidence of the Amerindians' rationality is proof to Las Casas that they can be converted.⁸²

Following Thomas, Las Casas argues that the universality of the human race is a reflection of the universality of God's creation. He writes, "It was due to the will and work of Christ, the head of the Church, that God's chosen should be called...from every race, every tribe, every language, every corner of the world. Thus, no race, no nation on this entire globe would be left totally untouched by the free gift of divine grace."⁸³ God does not compartmentalize his creation. He gives freely to all. This combination of justice and mercy has two particular consequences. On the one hand, the gifts of God are unearned. No one merits the things God gives to them. On the other hand, since these gifts are undeserved and they are given freely to

⁸² Bartolomé de Las Casas, "Apologetic History of the Indies," *Introduction to Contemporary Civilization in the West*. (New York: Columbia University Press, 1961), Ch. 127, <http://www.columbia.edu/acis/ets/CCREAD/lascasas.htm> (accessed March 7, 2016).

⁸³ Las Casas, *Only Way*, 63.

everyone, there is an equality in that no one group is intrinsically more deserving than another. Rather, every one – regardless of race, tribe, language, or place – receives God’s mercy.

In order to convince his audience about the good character of the Amerindians, Las Casas compares them to the Europeans favorably. He argues, “Their rites and customs differ but they all have in common the traits of simplicity, peacefulness, gentleness, humility, generosity, and of all the sons of Adam, they are the most patient. In addition, they are immediately ready to be brought to the knowledge of their Creator and to their Father.”⁸⁴ The virtues that Las Casas associates with the Amerindians are telling. Gentleness and generosity, for example, are classic Aristotelian virtues. Notably, however, Las Casas associates the Amerindians with a characteristically Christian virtue: humility. Humility was not a virtue honored by any great Western pagan civilization. In fact, it was not considered a virtue at all; Christians had to invent the term.⁸⁵ Consequently, in interacting with the Amerindians, the Spanish were engaging a pagan people who possessed a Christian virtue. Humility, however, has always been one of the virtues that is mocked and lambasted by countless critics, even by some Christians. This virtue helps explain why crass conquistadors were so easily able to attack and to conquer the Amerindians. If the conquistadors had not acted with Christian charity in Spain, they certainly would not have restraint in the New World. If they themselves scorned humility in the Old World, then, it was inevitable that they would mistreat a humble native people.

After establishing that the Amerindians are rational beings who have a propensity to virtue, Las Casas’ theology of preaching next tackles the thorny epistemological question of how

⁸⁴ Las Casas, *History of the Indies*, 35-36.

⁸⁵ Joseph Rickaby, S.J., *Four-Square, or The Cardinal Virtues* (New York: Joseph F. Wagner, 1908), Ch. 11, <https://www3.nd.edu/~maritain/jmc/etext/foursq11.htm> (accessed February 2, 2016).

a human being can know about God. Drawing upon Thomas, Las Casas admits that, without revelation, knowledge about God – while still possible – is imperfect. Thomas teaches in the *Summa* that philosophy alone is not sufficient in understanding most of the truths concerning God. He bases his argument on the nature of what is self-evident. There are two types of self-evidence: one that is self-evident in itself though not immediately to the person and one that is self-evident in itself and to the person. Thomas argues that “because we do not know the essence of God, the proposition [i.e. God’s existence is self-evident] is not self-evident to us; but needs to be demonstrated by things that are more known to us, though less known in their nature – namely, by effects.”⁸⁶ Thomas’ five proofs about the existence of God come from a profound reflection on His effects. Thomas’ proofs are grounded in the exercise of reason. They are not self-evident insofar as the proofs need to be discovered through contemplation. They do not come from any form of divine revelation. A human being can come to knowledge of a transcendent power by reason alone, but needs revelation and grace to come to the knowledge of the Judeo-Christian God. Thus, Thomas writes that one can by nature alone know of God, but only with many errors.⁸⁷

In the case of the Amerindians, Las Casas uses Thomas in arguing that, since God’s existence is not an immediately self-evident truth, the Amerindians cannot be punished or reprimanded for not believing in a monotheistic God, let alone the Christian God. Las Casas’ reasoning follows Thomas’ understanding of practical reason. The desire to love God is a precept of the natural law; however, since this precept is interpreted by *practical* reason, human

⁸⁶ Aquinas, *Summa Theologica*, I Q. 2 a. 1.

⁸⁷ *Ibid.*, I Q. 2 a. 2; I Q. 1 a. 1.

beings can err earnestly in the desire to know God.⁸⁸ Las Casas writes, “a common knowledge of God is naturally implanted in the minds of men, but it is a very vague and universal and shows only that there is someone who puts order in things that we see functioning according to some order.”⁸⁹ This ability to understand the existence of something transcendent is for both Las Casas and the Thomistic tradition a result of intellectual activity. It is not a ‘feeling’ or an inspired emotion.

Las Casas asserts that one of the greatest attributes given to humanity through creation is the power of the mind. “[Human] minds,” he argues, “are very quick, alive, capable, [and] clear. This mind comes to them primarily from the will of God who wished to make them so.”⁹⁰ In order for a human being to fulfill his or her end, the exercise of reason is needed. Reason is, after all, the means through which one interprets and comes to understand creation. For this reason, the role of persuasion in converting the Amerindians is a consistent theme in Las Casas’ writings.

Preaching, for Las Casas, is an act of persuasion. Since persuasion deals with the conversion of one’s mind, preaching inevitably is concerned with the appeal to reason. Las Casas portrays Jesus and the Apostles as peaceful and gentle preachers who instruct both Jews and Gentiles by appealing to their audience’s reason. Even the Apostles, according to Las Casas, had to persuade. He writes,

The Apostles had to give reasons to explain the kingdom of heaven, whichever way it is to be understood. So their hearers could understand their works and grasp their teaching and be brought to repentance....so that they could judge that it was good and useful to yield to the words and teachings of the Apostles.⁹¹

⁸⁸ Ibid., I-II Q. 94 a. 2.

⁸⁹ Las Casas, *In Defense of the Indians*, 131.

⁹⁰ Las Casas, *Only Way*, 63.

⁹¹ Ibid., 72.

Christian faith is not acquired through magic. Conversion is an arduous process that requires the full attention and consent of the individual. As such, genuine conversion is rarely instantaneous. It is a process that requires the preacher to give reasons *and* to provide the audience time for reflection. Las Casas' emphasis on reflection is a consequence of the Thomistic belief in the supremacy of the intellect, which stresses contemplation, rather than the supremacy of the will, which is appetitive. The intention of the preacher is not sufficient in preaching; otherwise, the forced baptism of Amerindians, made in good intention, would be an acceptable practice. Rather, the good intention of the missionary must be integrated with a method of preaching consistent with human nature.

The role of persuasion in preaching is even evidenced in the Gospels. For example, the very fact that Jesus told parables and stories demonstrates that faith can be learned through thinking and analogy. The telling of parables, after all, assumes that human beings have the capability to learn about the Kingdom of Heaven, to reflect upon their life, to realize what is beneficial for them, and to reject and to repent of old sins. Even more important, all human beings have some knowledge of good and, through that basic knowledge, have the potential to grow in their knowledge of goodness. No human being is so malleable or such a blank slate that he or she cannot comprehend goodness. Thus, the Apostles were able to preach to both Jews and Gentiles. If a Jew or Gentile rejected Christ, it was not because they were are incapable of accepting him, but because they chose not to do so.⁹²

If preaching the Gospel comes primarily from teaching, the exercise of one's reason becomes the primary way through which human beings come to know God. Following both Aristotle and Thomas, Las Casas writes, "Among creatures, the rational creature is higher [than

⁹² Ibid., 69-83.

other creatures and] of more worth than the rest....So Divine Wisdom leads the rational creature, the human, to fulfill its rational purpose in a gentle, coaxing, gracious way.”⁹³ The question, therefore, arises of how the Amerindians – or any human being – can begin to know the Judeo-Christian God through their reason. Las Casas’ answers are surprisingly naturalistic in that man begins to have knowledge of God through reflection upon the effects of the natural order.

Las Casas, following Thomas, posits that all knowledge about the world is filtered through sensory information. From the senses, knowledge of good and evil is determined by an immaterial intellect. Therefore, people learn through sight (the seeing of good acts), hearing (the preaching of the Good News), and from physically touching tangible things (the importance of statues). The Apostles, for example, converted both Jews and Gentiles through tangible things. For example, the miracles of Jesus and the Apostles – and the fact they were done freely - were clear signs of both goodwill and love. The doctrines, rules, guidelines, and commands of Christianity were accepted by the early Christians because they saw that they lead to happiness. Those pagans and Jews became Christians because they saw that it made their family members, friends, and neighbors more virtuous. The attractiveness of Christianity was only intensified by observing the Apostles’ and disciples’ good morals.⁹⁴ To a certain extent, Las Casas’ interpretation of early Christians’ coming to Christianity is based upon utility and practicality: “It is useless to preach the people the kingdom of God, of heaven, to preach repentance and eternal life without giving people both a map and directions to get there.”⁹⁵ This argument of utility, however, is not based on the principles of sterile modern utilitarianism, but upon Aristotelian

⁹³ Ibid., 68.

⁹⁴ Ibid., 84-92.

⁹⁵ Ibid., 73.

utility, which, without conflating utility and goodness, nevertheless emphasizes that what is useful can be – and ought to be – used to live the good life (as opposed to a merely pleasant life).⁹⁶

If the early Christians accepted the faith through persuasion, so must the Amerindians. In other words, coercion ought to be avoided. Coercion is contrary to human nature. Since it is unnatural, it does not produce good fruit: “violence cannot coerce the human will into doing good.”⁹⁷ Drawing upon the third book of Thomas’ *Against the Gentiles*, Las Casas notes that genuine worship of God needs both peace and quiet. “People cannot pay any attention to worshipping God in the conditions of panic, anxiety, unrest, and alarm – conditions that go with war.”⁹⁸ Moreover, the war-like conditions of coercion do not produce charity, which is the queen of the theological virtues and the most important characteristic of Christian life. Instead, coercion produces tyranny, even if it is disguised in sheep’s clothes.⁹⁹

Due to his rejection of coercion, Las Casas condemns the destruction of Amerindian idols. His condemnation is notable since it goes against a tradition of idol destruction both prevalent and applauded in late antiquity and the early medieval period.¹⁰⁰ He writes that the destruction of idols “is one of the nonsensical mistakes of many: without prior indoctrination

⁹⁶ For Aristotle, human beings have a final end (*telos*). This final end leads to happiness, which is sought for his own sake. Happiness is both good and useful. It is useful, however, not solely due to bodily pleasure, but because it is good for the soul. Happiness is “a certain activity in the soul in accord with virtue.” Aristotle, *Nicomachean Ethics*, 1.13.1102a5.

⁹⁷ Las Casas, *The Only Way*, 96.

⁹⁸ *Ibid.*, 97.

⁹⁹ *Ibid.*, 142, 143, 153.

¹⁰⁰ Arguably, the most famous account is Saint Boniface’s destruction of a sacred German oak tree. See: Willibald, “The Life of Saint Boniface,” trans. C.H. Talbot in *Soldiers of Christ: Saints and Saints’ Lives from Late Antiquity and the Early Middle Ages*, eds. Thomas F.X. Noble and Thomas Head (University Park, PA: Pennsylvania State University Press, 1995), 126-127.

over a long period of time, it is madness to destroy idols against the wishes of the idolaters. No one can abandon of his own accord what he believes in his God...without first understanding that what is being transmuted into his God is the true God.”¹⁰¹ Like Thomas, Las Casas understands that, since human beings learn through their senses, people naturally come to their religion through the customs of their people. The Amerindian religion was learned at their “mother’s breast” and “was authorized by [their elders].”¹⁰² The destruction of idols, therefore, does not provide a method that persuades people away from idol worship. Rather, it only creates unnecessary hatred to Christianity. It leads the Amerindian mind to prejudice and resentment to Christianity. For this reason, Las Casas does not blame the Amerindians for their distrust of Christianity. Instead of charity and goodwill, the Amerindians saw coercion and disrespect for everything that they held dear. What the conquistadors misunderstood about the destruction of the idols is simple. It was not the merely the idol to which the Amerindian was attached, but the mind’s attachment to the idol. In other words, the destruction of the idol does not disprove the legitimacy of the idol. The only way in which to destroy truly the power of idol worship was through an appeal to Amerindian reason. Without persuasion *and* the reflection necessary to contemplate the validity of the Christian faith, it was useless for Christians to destroy idols.¹⁰³

One of things modern commentators have neglected to mention in their work is Las Casas’ reliance on Aristotle’s *Rhetoric*, a work which he quotes openly. Aristotle, in the first book, states that the three elements of speech-making are the speaker, the subject, and the person

¹⁰¹ Las Casas, *History of the Indies*, 231-232.

¹⁰² *Ibid.*, 232.

¹⁰³ *Ibid.*

addressed.¹⁰⁴ Las Casas' theology emphasizes all three. Whereas the *Requerimiento* focused mostly on the subject, Las Casas is concerned with the addressed person (the Amerindian audience), the subject (Christianity), and the speaker (preacher). Las Casas was especially attentive to the role of the speaker. In accordance with one of the most important points in the *Rhetoric*, Las Casas states that one of the greatest vehicles of persuasion is the character of the persuader.¹⁰⁵ Las Casas firmly believed that the most likely way in which the Amerindians would be converted was through witnessing immense Christian charity, especially since he realized that miracles are uncommon and that human beings cannot be forced by men to be inspired by the Holy Spirit. If all knowledge came from the senses, then the Amerindians would be able to accept Christianity as true only if they saw Christians themselves acting good. The character of the preacher, then, was of immediate importance to Las Casas.

In his *Only Way*, Las Casas provided a checklist of the necessary characteristics for a good preacher. First and foremost, the preacher ought not to have the desire for power over another. Drawing upon both John Chrysostom and Saint Paul, Las Casas stresses that a preacher cannot be a seducer who uses his ministry to gain control over people. A preacher has to mimic the meekness, gentleness, and humility of Christ. Second, the preacher ought not to have a desire for wealth. Poverty dispels suspicion and frees one from worldly concerns. The Amerindians, who already have a right to distrust the Spanish, need to know that preachers are not usurpers and liars. Third, the preacher needs to address everyone with modesty and respect so that they can listen and study the Gospel in peace and quiet and not in fear. Fourth, the preacher needs to exemplify charity. If the preacher does not possess charity, then he lacks the

¹⁰⁴ Aristotle, "Rhetoric," in *The Basic Works of Aristotle*, trans. W. Rhys Roberts (New York: Modern Library, 2001), 1.3.1358a35-1358b5.

¹⁰⁵ Aristotle, "Rhetoric," 1.2.1356a5; Las Casas, *Only Way*, 103-112.

crown of all Christian virtues. The uniqueness of the Christian religion would not be self-evident to the Amerindian. Here Las Casas draws upon several famous passages of the Bible that address the theme: “Love is patient, it is kind, it suffers all things, it bears all things...” (1 Corinthians 13:4,7) and “Greater love than this no one has that he lay down his life for his friends” (John 15:13). The preacher must uphold the standard of charity as laid down by Saint Paul and Saint John the Beloved. A preacher, in other words, needs to be striving for genuine saintliness. Fifth, a preacher must live a virtuous life. He must harm no one and live as faultlessly as possible. He uses a quote from one of John Chrysostom’s homilies on the 1 Corinthians to claim that pagans often do not become Christians because of the latter’s bad behavior and witness.¹⁰⁶

The importance of peaceful preaching is especially present in a story Las Casas tells about Hatuey. Hatuey was a *cacique* (ruler) of Hispaniola who fled to Cuba to escape the Spanish. There he attempted to warn the free natives of Cuba about the Spanish atrocities that would await them if the Spanish decided to conquer the island. Hatuey, therefore, urged the natives of Cuba to make homage to the Christian God in order to avoid an invasion. Las Casas recounts: “He had beside him, as he spoke, a basket filled with gold jewelry and he said: ‘Here is the God of the Christians. If you agree, we will do *areitos* [i.e. a traditional dance] in honor of this God and it may be that we shall please Him and He will order the Christians to leave us unharmed.’”¹⁰⁷ The ritual failed to appease the Christian God and the Spanish inevitably invaded Cuba and captured Hatuey, who was sentenced to death by fire. A Franciscan friar told Hatuey, before being burned to death, about the Christian God. Hatuey was intrigued, but upon hearing

¹⁰⁶ Las Casas, *The Only Way*, 103-112.

¹⁰⁷ Las Casas, *Short Account*, 27-28.

that Christians are in heaven, the Amerindian *cacique* was reported to have told the friar that he would rather go to hell “to ensure that he would never again have to cast eyes on those cruel brutes.”¹⁰⁸ The tale is chilling, especially because, though it is a true story, Las Casas obviously moralized the affair. Las Casas uses this story as a parable for Christian missionary activities. Simply put, though the Spanish used the propagation of the faith as the justification for the *encomienda*, the affair shows that, in reality, the God of Abraham, Isaac, and Jacob was never taught to Hatuey and countless other Amerindians. The only thing the Amerindians learned about the Christian God was that the deity loves and adores gold. Hatuey obviously never learned the core teachings, devotionals, and teachings of the Christian faith. He did not even know, until the moment of his death, that the Christian God preached mercy and love. The Gospel was unknown to him. The moral lesson of the story is resounding: the Spanish themselves are not acting in accordance with the law and spirit of their religion. In Las Casas’ final analysis, it was an accurate analogy because the Spanish *were* worshipping gold.

The story of Hatuey emphasizes the poor catechesis and callous mistreatment of the natives by the Spanish. Las Casas, however, provides a counterweight story that demonstrates the fragility of good Christian preaching. In 1534, Franciscan missionaries, who abhorred violence and wished to convert the Amerindians through means of persuasion, made an agreement with Spanish authorities that allowed the Order of St. Francis to convert peacefully a part of unoccupied Mexico without the help of soldiers. Spanish authorities accepted the agreement, believing that the natives would not convert. Las Casas, however, claims that the Franciscans were warmly welcomed, as hospitality was the Amerindian custom. It took only forty days for the Amerindians to accept the Christian religion. The local chiefs apparently

¹⁰⁸ Ibid., 28-29.

handed over voluntarily all their formal idols to be burned. Churches were built and peoples from local communities travelled far and wide to hear the Franciscans preach. After the successful conversion of many souls, the Spanish authorities broke their agreement with the Franciscans. Las Casas asserts that, one day, a group of Spanish soldiers rode into a village with the idols of other tribes. Those Spanish soldiers demanded that the newly converted Christians worship those foreign gods under the threat of death. The Amerindians, taken back, began to blame the Franciscan friars for this ordeal. They believed the Franciscans were part of a hoax. Thus, the newly converted turned away from the Christian religion. The Franciscans had to flee the village, since some natives wished to do harm to them. With the Franciscans gone, there were no true witnesses to the Christian faith. The elements of Las Casas' theology of conversion – persuasion, good works, charity, goodwill, virtue – were no longer present in the natives' lives and they soon rejected Christianity. After this great betrayal, it became hard for the missionaries to convert the natives of that region.¹⁰⁹ There are many moral lessons here. Las Casas uses the story as an example of successful preaching, but he asserts that such preaching cannot be regarded as a mere phase or short term endeavor. Christianity must be continuously propagated; it is an active religion. The story also points to why Las Casas was such an anti-colonialist: from experience and hearsay, he concluded that he could not trust the Spanish to set aside their greed and personal interests for the perceived common good of the propagation of the faith.

From a distinctly spiritual perspective, the Spanish Conquest was a disaster, precisely because so many Amerindians never witnessed Christian charity. In order for the conversion of the Amerindians to occur genuinely, the conquistadors and colonists either had to leave or pay

¹⁰⁹ Ibid., 75-78.

some form of restitution.¹¹⁰ Las Casas believed that the Spanish who were to stay had to be genuine Christ-like preachers and missionaries. The Christian faith, he argues, needs only to be taught primarily with a few basic premises of Christian doctrine and a visibly good Christian life. “In this way,” he writes, “anybody has the opportunity to be a holy Apostle, should he also receive such grace from above as to be content with helping to harvest the spiritual riches of these lands, since the universal Indian nations are so simple, so gentle, and so eminently ready to receive the Faith.”¹¹¹ The possibility of anyone teaching the Faith sounds inspiring, but it also comes with a burden perhaps too heavy for political community: the need for all its citizens to be both virtuous and to be exemplars of Christian charity. The problem with Las Casas’ call for a political order based upon charity is simple: such a political community has never really existed, even in Christian Europe. As will be discussed in the fifth chapter, Las Casas does not find a true political solution to the problem.

Conclusion

Las Casas’ teleological understanding of creation, natural law, practical reason, the senses, natural freedom, and his theology of preaching all point to a genuine concern for the good of the individual. Las Casas is not a promoter of modern individualism, which posits that a human being is autonomous and free to choose casually what is good and evil with the pretension that his or her choices have little effect on the community. Las Casas’ respect for the individual stems from the Classical-Christian tradition which acknowledges that the individual is

¹¹⁰ Bartolomé de Las Casas. “Confesionario: Avisos y Reglas Para Confesores.” Translated by David Thomas Orique, O.P. in *Confesionario: A Translation and Introduction to Its Historical Context and Legal Training* (master’s thesis, Dominican School of Theology, Berkeley, 2001), 5-6.

¹¹¹ Las Casas, *History of the Indies*, 36.

both free *and* responsible to choose the good. In this tradition, freedom is never divorced from right reason.

Although the Classical-Christian tradition recognized the dignity of the individual (though they would not have used that particular phrase), it believed that the *polis* (for Plato and Aristotle) or the *civitas* (for Aquinas) was the most important political unit. For Las Casas, the defense of Amerindian rationality was only half the battle. He needed also to defend the legitimacy of Amerindian commonwealths. In protecting the right of Amerindian self-government, Las Casas had to face even more formidable opponents, for while many Spaniards recognized the rationality of the Amerindians, many of them dismissed the legitimacy of native government. Some dismissed Amerindian claims on the mere ground that *dominium* derives from divine law and grace, not nature. Many missionaries – especially the Franciscans – believed that they ought to rule the Amerindians for the natives' own benefit. Even his fellow Thomist, Vitoria, in his *De Indis*, had provided the Spanish with several reasons based on the *ius gentium* to conquer the Amerindians. As the next chapter will show, in responding to these interlocutors, Las Casas drew upon Thomas' political thought and Aristotle's *Politics* to demonstrate the legitimacy of Amerindian government.

CHAPTER 4: THE LEGITIMACY OF AMERINDIAN GOVERNMENT

The city, according to Aristotle, is the most perfect form of political community. The city enables its citizens to reach their perfection through participation in ruling and being ruled in turn. Aristotle asserted the superiority of the city in an age in which the majority of the world's inhabitants did not live in one. Those human beings who lived in the alternatives to the city, namely the tribe or the empire, were capable of exercising reason, but, in the words of Pierre Manent, "they [were] without doubt less accomplished since the framework for the deployment of their *logos* is less favorable."¹ A tribe or empire, therefore, was not conducive to leading a human being to the same perfection. The political thought of Thomas Aquinas draws upon Aristotle's conception of the city. Thomas uses the term, *civitas*, the Latin equivalent of the Greek word for city, *polis*. In employing the term, Thomas expands the definition of a *civitas* to signify a political form larger in territory and population than what Aristotle had envisioned. Thomas' *civitas* could be used to describe the city-state of Venice or the proto-nation-state of St. Louis IX's France. Despite this notable difference between Aristotle and Thomas, there is a more important similarity: the city, or *civitas*, remains distinct from the empire and the tribe. Neither the Holy Roman Empire nor the Mongol hordes constitute a city.

Las Casas draws upon the Aristotelian-Thomistic tradition of the city. He employs the tradition in two notable ways. First, he argues that the Amerindians participated in city life. He asserts that the majority of Amerindians lived in political associations more advanced than the tribe. The Amerindians, in other words, lived in more sophisticated associations than most of pagan antiquity (e.g. the Celts, the Thracians). Las Casas posits that the political development of the Amerindians was equal to that of the Greeks and Romans, demonstrating that they exercised

¹ Manent, *Metamorphoses of the City*, 135.

their reason to the highest capacity. In his analysis of Amerindian city life, Las Casas examines how the Amerindians participate in the six professions that Aristotle deemed necessary for political life. Las Casas also highlights, in his histories, their use of prudence, which, according to Aristotle, is the most important political virtue.

Second, Las Casas applies the Aristotelian-Thomistic framework of the city in order to emphasize the limits of Spanish political power. The city, the Dominican argues, leads to political particularism; unlike an empire, which seeks totality over the world, the city recognizes limits to its jurisdiction. Although the character of the city depends primarily upon the nature of the regime, the city takes pride in the consent of the governed, the justice of its laws, and the various parameters it consciously sets against its own rulers. By emphasizing the natural limits of the city, Las Casas condemns the Conquest. The Spanish, he argues, overreached their jurisdiction and, in their interactions with the natives of the New World, violated the legitimate political arrangements of the Amerindians.

There were three competing conceptions of government that challenged Las Casas' Classical conception of the city. The first was the feudalistic *encomienda* in which Amerindians, due to the Alexandrian bull and subsequent developments such as the *Requerimiento*, were considered to be vassals of the Spanish Crown. The second derived from Franciscan friars who, failing to acknowledge the intrinsic importance of politics, believed that their duty was to become tutors to the natives. The third and most important political argument against Amerindian sovereignty was based upon the imperatives of empire and Charles' perceived claim that he was emperor of the world. Before delving into Las Casas' thought, it is necessary, following scholastic fashion, to examine first the alternatives to the Aristotelian conception of the city and the Thomistic tenet of limited government.

The Alternative Conceptions

Alternative #1: The Feudalism of the *Encomienda*

The *encomienda*, as mentioned in the first chapter, was the economic system in which the Amerindians worked a parcel of land in return for the protection and catechetical instruction of a Spanish *encomendero*. Both the Crown and the colonists saw the *encomienda* as a continuation of a feudal medieval tradition. The *encomienda* tradition had developed as a reward system for Spanish knights and soldiers who had conquered (or, in the Spanish mind, *reconquered*) lands from the Moors. These knights and soldiers were granted territories for the safekeeping of their king. The very term *encomienda* comes from the Latin verb *commendo*, which implies that an object has been received for safekeeping. To a certain extent, the rewarding of colonists and conquistadors in the New World with an *encomienda* was consistent with medieval tradition. It differed from the *Reconquista*, however, in that Columbus and his latter replacement, Ovando, established the system with very little direct instruction from the Crown.² Cortes shamelessly transplanted the system to the mainland against a direct order of Charles.³

The lack of royal participation and intervention in the *encomienda*'s development in the Indies and New Spain explains, in large part, how the Crown and the colonists perceived the *encomienda* differently. From the perspective of the Crown, the *encomienda* did not do away completely with Amerindian government. The Amerindians were viewed as vassals of the Crown and possessed the corresponding rights and privileges of vassals. Amerindians were to retain their leaders, though their *caciques* would have to obey the dictates of the Spanish

² Luis Weckmann, *The Medieval Heritage of Mexico*, trans. Frances M. Lopez-Morillas (New York: Fordham University Press, 1992), 352.

³ Simpson, *The Encomienda*, 66.

representative, such as the *encomendero*. The Crown saw the *encomendero* of the New World not as the owner of land, but as the overseer of the Crown's jurisdiction. Thus, the Crown believed that the Amerindians retained their freedom, except in those cases in which the Crown had to explicitly intervene, such as in the Law of Burgos. The *encomendero*, on the other hand, did not consider the Amerindians to be sovereign or to possess civil rights. They saw themselves as the possessors of the land and the natives as their own vassals or, worse, their property. Unfortunately, the claims of the *encomendero* helped the idea of slavery to grow.⁴

Las Casas, after his conversion to Thomism in the mid-1510s, condemned the *encomienda*. He had even successfully convinced Charles to condemn the institution in the New Laws of 1542, until Charles, under economic and political pressure, retracted the law four years later. For Las Casas, even the most charitable understanding of the *encomienda*, i.e. the Crown's position, perpetuated a grave sin. According to the Crown's position, the *encomienda* system still protected, to use a term of Isaiah Berlin, "the negative liberty" of the Amerindians, i.e., that the natives were able to be free insofar as they did not violate its laws.⁵ Yet, reflection upon the Crown's laws, especially the tremendous reach of the Laws of Burgos, indicates quite clearly that the Crown believed that it could fundamentally intervene and reorganize the livelihood of the natives. These laws granted, among other things, the colonists to forcibly move Amerindians from their ancestral homes, to relocate them around new Spanish settlements, and to instruct coercively rigorous catechetical instruction.⁶

⁴ Weckmann, *The Medieval Heritage of Mexico*, 353-357.

⁵ Isaiah Berlin, "Two Concepts of Liberty," *Four Essays on Liberty* (New York: Oxford University Press, 1969), 122.

⁶ Simpson, *The Encomienda*, 32-34.

Las Casas believed that that the *encomienda* was unjust for two reasons. The first concerned the consent of the governed, a theme implicit in both Thomas and canon law. The *encomienda*, according to Las Casas, was not consensually agreed upon by the Amerindians. It was a foreign encroachment of power imposed upon an innocent and hitherto free people who had no immediate reason to accept Spanish authority. Second, as passages from his *De Regia Potestate* suggest, even if the Spanish Crown could rightfully claim to rule the New World and its inhabitants, the structure of the *encomienda* – with its forced migration and the diminution of Amerindian sovereignty to mere native overseers – violated the legitimate jurisdiction of Amerindian kings and the *dominium* of their fellow subjects. It was clear to Las Casas that the Crown was asking the Amerindians to accept conditions to which its Spanish subjects would never accept. The Spanish king, for example, could not lawfully require his Spanish subjects to migrate from their homes or to micromanage aspects of their daily lives. Las Casas did not doubt that a Spanish king or the Holy Roman Emperor could become the ruler of the New World, but he believed earnestly that the Amerindians would have to consent to such authority first through persuasion. As will be explained in the second half of this chapter, Las Casas argued that *both* the Amerindian king and the people would have to agree mutually to be Charles' subjects. His rejection of the *encomienda* stemmed from his constitutionalism: just as an Amerindian king would violate his jurisdiction if he sold or relinquished his authority to the Spanish without the consent of the people, so would the people mortally sin if they handed themselves over to the Spanish without the king's approval.⁷ Concern for the issues of consent and jurisdiction, therefore, are the basis of his criticism of the *encomienda*.

⁷ Las Casas, *De Regia Potestate*, 33-34, 58; Las Casas, *History of the Indies*, 128

Alternative #2: The Franciscans

The second challenge to Amerindian sovereignty came from the Franciscan friars. In the late fifteenth and early sixteenth century, a rebirth of progressive and apocalyptic spirituality had spread throughout the friaries of the Spanish Franciscans. Reports of the New World enflamed interest in Joachim of Fiore, among others, who had prophesized that a great conversion would occur, ushering forth the final phase of human history: the Age of the Holy Spirit.⁸ These apocalyptic beliefs produced important political effects. Many Spaniards, including Columbus, who was familiar with the writings of both Joachim and his disciples, hoped that the gold gained from the New World would be used to finance the conquest of Jerusalem and the conversion of the Turks.⁹ The conversion of the Amerindians began to be seen both in political and spiritual terms. The Franciscan friar Geronimo de Mendieta went so far as to compare Cortes to Moses for leading the Spanish people to a new spiritual homeland. Nevertheless, many Franciscans quickly began to be disappointed by the brutality and sinful nature of the colonists. As a result, the friars attempted to protect the Amerindians from other corrupt Spanish colonists, including secular clergy (i.e., clergy not belonging to a specific religious order) whom they perceived to be accomplices to the destruction of the native inhabitants. Mendieta and other Franciscan missionaries believed that they ought to have political jurisdiction over the Amerindians in order to create, in the words of John Leddy Phelan, “a territorial paradise where a whole race of man would be consecrated to evangelical purity.”¹⁰

⁸ Luis Weckmann argues for a very moderate influence of Joachimism: “The influence of Joachimism in New Spain...was not direct but came from the Peninsula, and was a very distant one (211).” Weckmann, *The Medieval Heritage of Mexico*, 211; Delno C. West “Medieval Ideas of Apocalyptic Mission and the Early Franciscans in Mexico,” *The Americas* 45 no. 3 (Jan., 1989): 294-297.

⁹ Phelan, *The Millennial Kingdom*, 19, 22.

¹⁰ *Ibid.*, 58.

Absent from this Franciscan perspective is any respect for the Aristotelian and Thomistic belief in the intrinsic good of politics. The city and the citizen are replaced by the monastery and the monastic. From an Aristotelian perspective, the great fault of these Franciscan missionaries is their conflation of paternal authority and political power.¹¹ The Franciscan missionaries tended to believe that all that was necessary for a good life was paternal authority, albeit a spiritualized paternalism unknown to Aristotle. Politics was seen as too corrupting for the God-fearing man because it, at best, is a distraction from prayer. As a result, this Franciscan view neglected to recognize the significant difference between being a servant of a paternal household or village and a citizen of a city. The relationship between father and son or a master and a servant – even if it is between a spiritual father and master and a spiritual son and servant – does not create equality. As such, the Amerindians were hindered from achieving their perfection, since they could not achieve the dictum of ruling and being ruled in turn. In wishing to impose an apolitical solution to the New World, the Franciscans also became anti-political. As such, the Franciscans were not attentive to the consent of the governed, *dominium* and property rights, and the proper administration of law and custom.

The Franciscans were never able to establish Mendieta's dream of an entire race of apolitical monastics. Yet, they were able to exercise a tremendous amount of power in the New World. In 1522, the pope promulgated the bull *Exponi Nobis Fecisiti*. Addressed to Bishop Zumarraga, a Franciscan, the bull authorized that all mendicants who were at least a two days' journey away from their bishop possessed all necessary forms of episcopal authority. The bull granted tremendous liberty to the Franciscans. The mendicant friars were not immediately responsible to a higher religious authority; they only needed to follow the specific dictates of the

¹¹ Aristotle, *Politics*, 1.7.1255b16-20.

pope and the general of their order. It gave the friars the opportunity to preach and to missionize without much institutional interference and provided the friars with tremendous discretion. Historian Inga Clendinnen writes that the Franciscans “worked within a context of coercion.”¹² The Franciscans, in a similar manner to the *encomenderos*, actively intervened and redirected the lives of the Amerindians. It was common for them to force Amerindians to abandon their ancestral towns and to relocate among planned towns near the Franciscan cloister.¹³ There are even reports that sometimes the friars would burn down the natives’ villages in order to ensure their migration.¹⁴ In contrast to the Thomistic-Dominican position, they baptized adult natives without the benefit of sufficient religious instruction.¹⁵ They forced the native children to attend religious schools. In order to expedite their conversion, it was common for the friars to collect and to destroy idols. The Franciscan Bishop Zumarraga claimed that under his direction over 500 temples and 20,000 idols had been destroyed in Mexico City alone.¹⁶ There are even instances of the Franciscans setting up tribunals and torturing the natives in order to stamp out the old religion.¹⁷ The active role that the Franciscans played in the reformation of Amerindian life, however, often led to open conflict with the Spanish colonists. Although the Franciscans

¹² Inga Clendinnen, *Ambivalent Conquests: Maya and Spaniard in Yucatan, 1517-1570*, 2nd Edition (New York: Cambridge University Press, 2003), 47.

¹³ Ricard, *Spiritual Conquest of Mexico*, 136. Ricard also notes that some Dominicans made the same request. The Augustinians were as active as the Franciscans in resettling the Amerindians; the Augustinians actively tried to make the towns into quasi-monasteries. On the Augustinians, see Ricard, *Spiritual Conquest*, 108.

¹⁴ Clendinnen, *Ambivalent Conquests*, 59.

¹⁵ The issue of whether adult Amerindians were coerced to be baptized is heated in the literature. Clendinnen’s language is a little ambiguous on the matter. On the one hand, she writes “those natives in authority were compelled to accept baptism,” while other time she shies away from the term ‘coercion’ by also adding that they received some sort of preliminary education, see *Ibid.*, 48, 50.

¹⁶ Weckmann, *The Medieval Heritage of Mexico*, 227.

¹⁷ Clendinnen, *Ambivalent Conquests*, 74.

were sometimes dependent upon the colonists for protection, they often battled with them for control over everyday structures of Amerindian life. The Franciscans saw themselves as benevolent advocates and intercessors for Amerindian interests. There are accounts of the friars defending the natives from unfair taxes and false accusations from *encomenderos*. The Franciscans often taught the children of the old noble Amerindian families Spanish and Latin, though some Franciscans did not wish to teach the natives Spanish, lest the natives would follow other undue and unholy influences.¹⁸

The most famous Franciscan missionary of the sixteenth century was Fray Toribio de Motolinía, one of the first Franciscan missionaries in New Spain. His life and writings inadvertently represent the tension between the Franciscan ideal of temporal jurisdiction and the actual political limitations of the friars. On the one hand, his *History* records some of the successes of the Franciscans. For example, Motolinía was responsible for the establishment and planning of a new city, Puebla, for the Amerindians.¹⁹ Throughout his account, he takes great pride in the successful conversion of an estimated four million natives by the friars. He praises the sincere piety of many Amerindians and lauds the zealous friars who take it upon themselves to destroy idols without the permission of the natives. Motolinía's *History* has a triumphalist tone. Amerindian hesitancy in accepting the faith and complaints about their forced relocation is absent from his narrative. Rather, he claims that the hardest obstacle that the Amerindians had to overcome was their renunciation of polygamy.²⁰ On the other hand, Motolinía laments that Spanish colonists interfered too often with missionary work. Motolinía literally considers many

¹⁸ *Ibid.*, 51-56.

¹⁹ Francis Borgia Steck, "Introduction" in Toribio de Motolinía, *History of the Indians of New Spain*, trans. Francis Borgia Steck, O.F.M. (Washington DC: Academy of American Franciscan History, 1951), 18.

²⁰ Motolinía, *History*, 179, 215, 246, 316.

actions of the colonists to have created Exodus-like plagues upon the innocent people of New Spain. Among the man-made plagues levied against the Amerindians were taxes, the cruelty of Spanish overseers, and the perpetuation of slave-like work in the mines.²¹ He also criticizes the decadence and indecency of the Spanish colonists whose witness endangered the faith and salvation of the Amerindians and Spanish alike.²² Motolinía explicitly admits that the Spanish are a detriment to the conversion of the Amerindians.

Despite Motolinía's complaints about the Spanish colonists, Motolinía acknowledges that their presence was necessary in New Spain. He also recognizes that the colonists and the Franciscans had a common enemy: Las Casas. In a letter addressed to Charles V dated in 1555, Motolinía lists three perceived failings of the Dominican. First, Motolinía criticizes Las Casas' *Confesionario*, which denied Spanish colonists absolution until they gave up their *encomienda*. The complaint highlights the disagreement between the two men on the nature of the Conquest. Whereas for Las Casas the Conquest was unjust, Motolinía does not condemn the Conquest *per se*. Instead, Motolinía simply laments the base actions of certain individual conquistadors. Motolinía rejects Las Casas' argument because it would threaten the entirety of the Spanish Conquest, including the Franciscan project. He, therefore, tries to engineer a wedge between Charles and Las Casas:

[Las Casas] says that they [the Spaniards] have always tyrannized and today are still tyrannizing over the Indians. He also says that all the tributes of the Indians are and have been taken unjustly and tyrannically. *If such is the case your Majesty's conscience were in a pretty [dangerous] state, for your Majesty has half of the majority of all the more important provinces and towns of New Spain,*

²¹ Ibid., 87-94.

²² Ibid., 150, 191.

*and the encomenderos and conquerors have only what your Majesty will give them.”*²³

Truly Motolinía was as sly as he was pious! Motolinía follows Las Casas’ position on the Conquest to a controversial conclusion. He argues that Las Casas’ condemnation of the Conquest is also a condemnation of Charles. If the Conquest is unjust, then Charles and his subjects are committing many grave sins, such as usurpation and hubris. As no one likes to be told that one is committing a grave sin, Motolinía is hoping that Charles will reject Las Casas’ position. Yet, his appeal to Charles also suggests that Motolinía himself was angered and perhaps threatened by Las Casas. To Motolinía, the thought that he was doing something impious or unjust was absurd. Behind his argument is the tacit belief that the propagation of the faith trumps any concern for the Amerindian right to self-rule. As a consequence, despite the apolitical solution of the Franciscans, Motolinía recognized that the Franciscans were ultimately dependent upon the political power of the Spanish. Their coercive religious tactics were dependent upon Spanish political force.

Motolinía’s second complaint against Las Casas concerned baptism. Motolinía retells the story of how he personally witnessed Las Casas deny baptism to an adult Amerindian, who, in the Franciscan’s opinion, “was well prepared” to receive the sacrament.²⁴ Here another key disagreement between Motolinía and Las Casas emerges: the former believed that baptism could be administered only after a little instruction, while Las Casas demanded that Amerindians not only be persuaded of the faith but also be thoroughly educated in the faith before receiving it.

²³ Toribio de Motolinía, “Father Fray Toribio de Motolinía to Charles V, January 2, 1555,” in Lesley Byrd Simpson, *The Encomienda in New Spain: The Beginning of Spanish Mexico* (Berkeley: University of California Press, 1966), 235.

²⁴ *Ibid.*, 237.

Motolinía believed that Las Casas' willingness to deny the sacrament placed the unbaptized soul in unnecessary peril.

Motolinía's third and final criticism of Las Casas involved the issue of the Dominican's general character. Motolinía disapproved of Las Casas' attributes, such his constant traveling from Spain and the New World, his failure to learn the native Amerindian languages (unlike the Franciscans who took great pride in their intimate knowledge of the native tongues), his use of Amerindian carriers (natives who carried his books and possessions), and his excessive denunciation of Spanish atrocities.²⁵ Motolinía perceived that Las Casas' traveling and politicizing was contrary to how a mendicant ought to live. The Franciscans believed, after all, that friars ought to dedicate themselves to their continuous ministry and attention to the spiritual needs of the Amerindians. Motolinía's criticism exposes another disagreement: their conflicting views on what the genuine crisis of the Conquest was. For Motolinía, the crisis was the high number of unbaptized souls in the New World. Religious education and the imposition of the Franciscan way of life upon the natives was Motolinía's ultimate solution to the problem. For Las Casas, the real problem was the Conquest itself, which caused the loss of Amerindian sovereignty and self-rule and allowed the perpetuation of horrible Spanish atrocities to innocent natives. Here their differences boil down, again, to the difference between household mastery and political power. The Franciscan project limits all social action to the mastery of a religious village. There is no civil equality between the master and the servant. Las Casas, on the other hand, follows Thomas in asserting the existence of both a spiritual *and* a temporal end of humankind. As such, the city and citizenship best lead human beings to fulfill their end because the city allows them the freedom and equality to act for their perfection. Before turning to a

²⁵ Ibid., 237-243.

rigorous discussion on Las Casas' understanding of city life, it is necessary to examine the last alternative: empire.

Alternative #3: Empire

The most formidable Classical opponent to the Greek *polis* was empire. The flourishing of the Greek *polis*, especially in Athens, began immediately after the Greek victory over the Persian Empire and ended, less than one century later, with the conquest by Philip of Macedonia and the consequent empire forged by his son Alexander. The absence of discussion on empire in Aristotle's *Politics* has often baffled scholars, especially in light of the high likelihood that the treatise was written after Philip's rise to prominence in Greece and the Philosopher's personal relationship as tutor to Alexander.²⁶ Whereas Leo Strauss believed that empire was merely an example of Aristotle's absolute kingship, Pierre Manent, drawing upon the work of Eric Voegelin, argues that empire does not neatly fit into Aristotle's six regime paradigm. For Manent, modern empire was a particularly Roman development. The Roman experience brought with it a new conception of the citizen. In the Greek *polis*, all citizens were able to rule and be ruled in turn. Rome, however, was too large for all citizens to participate in ruling and being ruled. Instead, the citizen was represented by a magistrate. "This magistrate," Manent argues, "is elevated at the same time the private individual is abased, or, more precisely, the citizen is reduced to the condition of the private individual."²⁷ The problem with empire is not that it creates inequality among citizens, for such inequality existed in the Greek *polis*. The real

²⁶ Lord, "Introduction," in Aristotle's *Politics*, 2nd ed. (Chicago: University of Chicago Press 2013), xiii-xv; Manent, *Metamorphoses of the City*, 113-114, 335n25. Interestingly, Lord is open to the possibility that Aristotle could have been sympathetic to Phillip's project, but not Alexander. Manent suggests that Aristotle was ultimately hostile to empire. Both scholars discount as inauthentic Plutarch's *On the Fortune of Alexander*, where Aristotle gives advice to Alexander on how to rule his empire.

²⁷ Manent, *Metamorphoses of the City*, 138.

problem that emerges is the inequality between the magistrate and the subject. No longer is a citizen marked by participation in ruling and being ruled; a citizen is simply ruled.

When the pope crowned Charlemagne on Christmas day in 800 AD, the Roman conception of empire was resurrected, transformed, and baptized into the Holy Roman Empire. Although there are various defenses of empire, the most important and influential in medieval political thought is Dante's *Monarchy*. Dante's treatise is a defense of the Holy Roman Emperor against the complaints of both regional kings and the temporal claims of the papacy. It is also an attempt to dialogue with Aristotle. Dante's political project is to divorce Aristotle's metaphysics from the Philosopher's politics. Dante accepts Aristotle (and Thomas') teleological principles: that all men aim for happiness, that human nature ought to aim for perfection, that the highest form of political rule ought to be self-sufficient, that leaders are necessary for directing order and human flourishing, that it is just for those of superior intellect to rule over those with an inferior intellect, that concupiscence is an obstacle to true justice, and that political order must aim for concord.²⁸ He differs from Aristotle in not accepting the city as the highest and most self-sufficient form of politics. Instead, Dante adds two other political associations more extensive and more perfect than the city: the kingdom and the empire.

There are two important implications to Dante's paradigm. In Dante's formulation, the city is no longer identifiable with Aristotle's *polis*. The city is reduced to a place with a large population, such as modern-day New York City or Paris. Although Dante admits that cities (and particular kingdoms) need their own administrative laws, the city is no longer self-sufficient and self-governing with a citizenry that rules and is ruled in turn. Second, Dante makes empire the only true self-sufficient form of government. Empire, Dante argues, is "a single Command

²⁸ Dante, *Monarchy*, trans. Donald Nicholl (New York: Noonday Press, 1954), 8, 9, 10, 12, 13, 16, 19, 24.

exercised over all persons in time, or at least in those matters which are subject to time.”²⁹ An empire is the most self-sufficient form of political association because it best mirrors the unity of nature. As nature dictates that there ought to be a director for every end, the emperor is the final and most perfect director of temporal affairs. The emperor stands above the cupidity of competing kingdoms and cities. The emperor is able to rule with justice because he has nothing to desire; the entire world is already his jurisdiction. As such, he is able to bring order and concord to the nations of the world.³⁰ Without an emperor, the world is subject to petty rivalries and squabbles. The emperor allows politics to rise above “the many storms” and “the many shipwrecks” of human affairs.³¹ It follows, according to Dante, that empire “is necessary for the wellbeing of the world.”³²

The election of Charles as the Holy Roman Emperor in 1519 had a tremendously important political effect on the Spanish Conquest. Charles’ predecessors, Isabella and Ferdinand, were simply the monarchs of Castile, Aragon, and Leon. Hence, the philosophical substance of the *Requerimiento*, promulgated in 1512, was grounded primarily on the Alexandrian bull; it lacked an argument rooted in empire. Once Charles was emperor, Dante’s political project was revived. Courtiers and conquistadors claimed that Charles was the emperor of the world. When many conquistadors returned to Charles’ court to recount their exploits, they insisted that, when addressing the natives and their *caciques*, they had presented Charles as “the

²⁹ Ibid., 4.

³⁰ Ibid., 10, 13, 16, 17, 19, 25.

³¹ Ibid., 26.

³² Ibid., 12.

Lord of the World.”³³ Whether in court or in correspondence, it was commonplace to call Charles his “Caesarean majesty.”³⁴

Among those defenders of empire was Sepúlveda, the court historian and sometime tutor to Philip II. In his writings, Sepúlveda, like Dante, attempts to integrate Aristotle with empire by keeping Aristotelian metaphysics and teleology, but discarding Aristotle’s political preference for the city. Sepúlveda follows Aristotle in asserting natural slavery, the existence of natural right, the difference between the household and the city, the role of reason as the distinguishing factor of human beings, the exercise of the moral virtues, and the importance of prudence in political affairs.³⁵ Sepúlveda’s selective employment of Aristotle’s corpus is a result of the influx of Stoicism in his thought. Stoicism, as Manent argues, develops in Classical civilization “detached from cities.”³⁶ Stoicism, in other words, is compatible with empire insofar as Stoicism’s tendency to explain the world in universal terms is akin to the ‘oneness’ of empire. J.A. Fernandez-Santamaria argues that this combination of Aristotelianism and Stoicism is the foundation of two important aspects in Sepúlveda’s political thought: “first, that each man has his appointed place in the hierarchy of a worldwide society; and second, that man’s brotherhood is actualized when, regardless of political divisions, everyone fulfills his moral duties.”³⁷ Sepúlveda’s Stoicism, therefore, erases the boundaries between nations by subjecting them to only one political power, in a similar way to the political (but not necessarily religious) ends of

³³ Weckmann, *Medieval Heritage*, 330; As examples see, Cortes, *Letters*, II:229; Diaz, *Conquest*, 32.

³⁴ Weckmann, *Medieval Heritage*, 330. As an example, Motolinía calls Charles his “Sacred Caesarean Catholic Majesty” in Motolinía, “Father Fray Toribio de Motolinía to Charles V,” 234.

³⁵ Sepúlveda, *Tratado sobre Las Justas Causas*, 76, 80, 82, 172, 56.

³⁶ Manent, *Metamorphoses of the City*, 135.

³⁷ J.A. Fernandez-Santamaria, *The State, War, and Peace*, 171.

the Roman Empire. Since adherence to the dictates of nature is greater and more important than the particularism inherent in any Classical defense of the city, Sepúlveda, therefore, finds that the conquest of the Amerindians is in accordance with justice because through it the superior rules over the inferior, as in accordance with nature.³⁸

As was mentioned in the second chapter, the neo-Thomists of the sixteenth century believed that empire was contrary to justice. Vitoria and Soto denied that the Holy Roman Emperor had dominion over the world because empire is contrary to the consent of the governed. There is also no divine, natural, and human law that demands the existence of empire. The city, according to Soto, is superior to the empire because only the former provides genuine freedom. Las Casas agrees with and expands the Thomistic tradition.³⁹ However, Vitoria and Soto's defense of the city does not adequately address all of Sepúlveda's arguments for empire. They do not, for example, provide a robust answer to Sepúlveda's argument that 'the less' (the Amerindians) ought to submit themselves to 'the greater' (the Spanish). Las Casas responds to this argument within the same framework by invoking the Aristotelian principle of first act. In the *De Anima*, Aristotle distinguishes between first and second act. The first act is the possession of a power, while the second act concerns how to exercise the power.⁴⁰ Sepúlveda, according to Las Casas, violates the distinction between first act and second act. Las Casas argues that, in politics, the creation of a regime is a first act. As the city comes from nature, it is natural for there to be a multiplicity of cities. As not all cities are equal, there are bound to be significant differences between the cities.⁴¹

³⁸ Sepúlveda, *Tratado sobre Las Justas Causas*, 80.

³⁹ Soto, *De Iustitia et Iure*, 4.4.2; Vitoria, "De Indis," 252-258.

⁴⁰ Aristotle, *On the Soul*, trans. Joe Sachs (Santa Fe, NM: Green Lion Press, 2004), 2.1.412a-413a.

⁴¹ Las Casas, *In Defense of the Indians*, 48.

The administration of the city, on the other hand, is a second act. Thus, Sepúlveda's dictum that 'the less should yield to the perfect' is a second act whose applicability can only exist within the domain of the first act (i.e. the establishment of the regime). Consequently, Las Casas argues that it is in accordance with justice for 'the less' of the Spanish to submit themselves to 'the greater' of the Spanish and the 'the less' of the Amerindians to submit themselves to 'the greater' of the Amerindians. Yet, Sepúlveda's argument, according to Las Casas, does not acknowledge the primacy of the establishment of the city. The difference between Sepúlveda and Las Casas is stark. Whereas Sepúlveda's dictum, in its most unadulterated form, leads to an expansive empire based upon claims of perceived cultural superiority, Las Casas defends the rights of particular regimes to exist freely and without hindrance from other nations, in accordance with natural law.⁴²

Las Casas and the Classical Tradition of the City

Human beings, according to Aristotle, are political animals who participate in speech and reason. The best form of union among human beings occurs when they, through their unique use of speech and reason, communicate with each other about what is just and unjust. The most perfect association of human beings is the city because it alone aims at "the most authoritative good," i.e. happiness, and "exists for the sake of living well."⁴³ In order that justice is secured, the city is governed by the rule of law, which protects and furthers the common good of its citizens. The rule of law is pivotal to the success of the regime, because its alternative, the rule of man, leads often to arbitrary and tyrannical rule.⁴⁴ Law is "intellect without appetite" and it

⁴² Ibid., 48.

⁴³ Aristotle, *Politics*, 1.1.1252a5, 1.3.1252b30.

⁴⁴ Ibid., 3.16.1287a-1287b35.

seeks an impartiality that cannot exist in the rule of man.⁴⁵ Laws, he argues further, ought not to change easily, as they are enforced through the exercise of habit. The health of the city and its laws, therefore, needs to be buttressed by proper education and noble and virtuous habits.⁴⁶ As a city is dependent upon virtuous citizens, good laws, and universal education, Aristotle argues that there is a natural limit to the size of a city: “it is difficult – perhaps impossible – for a city that is too populous to be well-managed...an overly excessive number is incapable of partaking in order.”⁴⁷ Here Aristotle is not simply defending the size of the *polis*. He also providing an argument against empire. Empires are too big for citizens to partake in deliberative office, to ensure the propagation of virtue and universal education, and to administer the laws. Moreover, the size of empires allows too many different factions to emerge.

The character of the city is fundamentally tied to the quality of its regime. For Aristotle, there are six different types of regimes: kingship, aristocracy, polity, democracy, oligarchy, and tyranny. The first three are healthy regimes, while the latter three are perversions of the former. Monarchy is nominally the best regime (though as Manent notes, few Greek city-states were monarchies)⁴⁸ and tyranny is the worst regime. Democracy is the best of the worse regimes. Each regime is a reflection of the character of its citizens and its citizens are a reflection of the regime. For example, democracy is the rule of the poor, while oligarchy is the rule of the rich. Due to human nature, Aristotle comments that polities and monarchies (at least in Greece) are rare, while most Greek regimes are either oligarchies, in which the few rule over the many, or democracies, in which the many rule of the few. As there are innumerable ways for the tensions

⁴⁵ Ibid., 3.16.1287a32.

⁴⁶ Ibid., 2.8.1269a20, 4.11.1295a40, 8.1.1337a20.

⁴⁷ Ibid., 7.4.1326a25.

⁴⁸ Manent, *Metamorphoses of the City*, 24.

of ‘the few’ and ‘the many’ to arise, Aristotle admits that there are many variations of oligarchies and democracies. For example, democracies ruled by farmers are nobler than those that are ruled by the mob. All cities fall into some regime category. Therefore, tribes, nations, and empires are not, properly speaking, regimes.⁴⁹

Aristotle’s reflection on life outside the *polis* appears in the *Politics* only insofar as it illuminates the character of the city. Discussion on pre-city life, therefore, is scattered throughout his treatise. The first place it is present is in the first book, where he differentiates the city from the household and the village. The village is a collection of households, while the city is a collection of villages. There is a danger, then, of over-historicizing Aristotle’s first book because the household and the village are coeval with the city, and their continuance is necessary for the city’s functioning. Even Athens was a combination of tribes, as Socrates was a member of a tribe.⁵⁰ As important as the household and village are, only the city leads human beings to fulfill its final end. The city differs from the household or village in that it is not grounded solely on ancestral custom (such as the arbitrary dictates of a king) or the transience of an alliance. Aristotle emphasizes that the management of a household or village is not equal to political rule. Whereas the mastery found in household management – such as that of the master over the slave or of the male over the female – is unequal, political rule is “over free and equal persons.”⁵¹ The mark of a citizen, as opposed to a villager, is that he be “entitled to share in an office involving deliberation or decision” and that he have “the capacity to rule and be ruled.”⁵² The city – unlike

⁴⁹ Ibid., 3.1.1274b35-1275a, 3.6.1279a18-20, 3.8.1279b40-3.9.1281a, 4.2.1289a35-1294a30.

⁵⁰ Plato, “The Apology of Socrates” in *Four Texts on Socrates*, trans. Thomas G. West and Grace Starry West, Revised Edition (Ithaca: Cornell University Press, 1998), 32b.

⁵¹ Ibid., 1.7.1255b19.

⁵² Ibid., 3.1.1275b20, 3.4.1277a25-30.

the household or village – needs to be in a single space. It cannot wander from place to place, like the German barbarians of the fourth and fifth century A.D. The city, Aristotle himself notes while mentioning Homer’s description of the Cyclopes, is a historical development because human beings originally were once scattered around the world.⁵³ Moreover, a city is fundamentally characterized by the differences among men. Despite his harsh words about conventional slavery, slavery seems to be an intrinsic part of the city. There is hierarchy even among the citizens, because the various professions of the city are not equal, regardless of how essential they may be to the city.

Aristotle suggests that the transition from a village to a city occurs when the paternal power of the village transforms, over time, into a form of kingship that, depending upon the quality of the ruler, can easily devolve into a form of tyranny.⁵⁴ Carnes Lord argues persuasively that this early kingship “is not a form of political rule either in the sense of being a regime of the *polis* or in the sense of exercising true state authority.”⁵⁵ Consequently, there is some sort of unnamed political association that is not a self-sufficient *polis*, but has a higher level of sophistication than a collection of villages. For example, Aristotle sometimes refers to the word ‘nation’ – a term that does not have the connotation of contemporary nation-states. A nation, for example, could be more populous and expansive than a city, but it would not be more self-sufficient or perfect. A nation, due to its size, would not be able for its citizens to rule and be ruled in turn and the common good would be much harder to ensure due to the diversity of its

⁵³ Ibid., 1.2.1252b23.

⁵⁴ Ibid., 1.2.1252b20.

⁵⁵ Carnes Lord, “Aristotle’s Anthropology,” *Essays on the Foundations of Aristotelian Political Science* (Berkeley: University of California Press, 1991), 68.

factions.⁵⁶ In a famous passage in the seventh book of the *Politics*, Aristotle mentions that the climate often affects the character of political associations. The nations of Europe, due to the coldness of the region, produce spiritedness but no art, causing Europeans to be freer but lacking proper political governance. The nations of Asia, on the other hand, excel in the arts but lack spiritedness, causing them to possess characteristics ideal for a slave. The Greeks, according to Aristotle, hold “the middle in terms of location” and they possess a proper balance between spiritedness and the arts. This combination allows them to remain both free and capable of good governance, as is evidenced by the *polis*.⁵⁷

One criticism sometimes leveled against Aristotle was that he was simply imposing the Greek *polis* as the only natural form of political community. As a result, his praise of city life is, at best, the result of his historical condition or, at worst, an expression of ugly xenophobic ethnocentrism.⁵⁸ Careful consideration of the text, however, indicates otherwise. Aristotle criticizes various aspects of the Greek *polis* from Athens to Sparta. He also notes, with approval, the achievements of non-Greeks. He praises Carthage’s aristocracy and notes that the Egyptians, not the Greeks, were the first to develop laws.⁵⁹ Nevertheless, there remains some ambiguity in Aristotle’s *Politics* about the status of the non-Greek. Aristotle, after all, argues that a human being who lives outside the city is either “a beast or a god.”⁶⁰ Are those non-Greeks who live in

⁵⁶ Carnes Lord comments, in a footnote in his second edition of Aristotle’s *Politics*, that “nations (*ethne*) were communities organized on a tribal basis and lacking major urban centers – though often occupying more territory than an average polis.” Aristotle, *Politics*, 3 n10.

⁵⁷ Aristotle, *Politics*, 7.7.1327b20-35.

⁵⁸ Leo Strauss, *The City and Man* (Chicago: University of Chicago Press, 1964), 30.

⁵⁹ Aristotle, *Politics*, 4.8.1293b15, 7.10.1329b25-35; Strauss, *City and Man*, 30.

⁶⁰ Aristotle, *Politics*, 1.2.1253a29.

nations or tribes beasts? Pierre Manent and Carnes Lord both answer in the negative. In their respective analyses, they both turn to Aristotle's discussion of monarchy.⁶¹ Lord argues, as previously mentioned, that Aristotle's conception of barbarian kingship is not a *polis* in its strictest sense.⁶² Yet, in lumping barbarian kingship with his discussion of the *polis*, he seems to provide an example of a legitimate non-*polis* political association that is more advanced than a collection of villages. Barbarian kingships, he argues, are often stable because they are grounded on a mixture of law and hereditary customs, though they are often in danger of becoming tyrannies insofar as they follow the dictates of their king slavishly.⁶³ Barbarian kingship, therefore, suggests that those who live in legitimate non-*polis* political associations do not act like beasts, though they are barbarians.

The Greeks, however, were ambiguous concerning the term 'barbarian.' Sometimes, a barbarian is defined simply as a non-Greek, while other times it is defined as brutishness and savagery. The latter definition suggests that even a Greek citizen could be a barbarian through manifesting brutishness. In adopting the term 'barbarian,' Christian thinkers furthered the ambiguity of the term. At times, a barbarian was simply a non-Christian, while at other times a barbarian was one who failed to participate in political life and, consequently, justice.⁶⁴ Thomas Aquinas, recognizing this important problem, attempted to find a solution in his *Commentary on Aristotle's Politics*, where he distinguishes between *barbarians absolutely* and *barbarians in relation*. *Barbarians in relation* is the term he gives for foreigners who cannot communicate

⁶¹ Manent, *Metamorphoses of the City*, 135, 119-126.

⁶² Lord, "Aristotle's Anthropology," 68.

⁶³ Aristotle, *Politics*, 3.14.1285a20.

⁶⁴ Pagden, *The Fall of the Natural Man*, 15-24.

with each other. *Barbarians absolutely*, however, are those who seem foreign to the human race.

Thomas writes:

For we understand the Greek word for non-Greek [*barbaros*] to mean something foreign, and we can call human beings foreigners [*aliquis homo extraneus*] either absolutely or in relation to someone. Those who lack reason, by which we define human beings, seem absolutely foreign to the human race, and so we call those who lack reason foreigners in an absolute sense. They lack reason either because they happen to live in a climate so intemperate that it causes most of them to be dim-witted, or because there is an evil custom in certain lands whereby human beings are rendered irrational and brutish, as it were. And it clearly comes from the power of reason that reasonable laws govern human beings, and that human beings are practiced in the art of writing. And so the fact that human beings do not establish laws, or establish unreasonable laws, and the fact that some peoples have no literary practices are signs that appropriately manifest barbarism.⁶⁵

Therefore, a barbarian, in the truest sense of the world, is someone who does not participate in that which is common to human beings, namely a political community orchestrated by human law in accordance with right reason. Although Thomas more clearly delineates the distinction between *barbarians in relation* and *barbarians absolutely*, the distinction is also present in Aristotle's *Politics*. The Philosopher, after all, does not doubt that barbarians, i.e. non-Greeks, have political communities.

In the context of this dissertation, discussion concerning the ambiguity of the term 'barbarian' is important because several European thinkers claimed that the Amerindians were barbarians without *dominium*. This view began with Amerigo Vespucci. Vespucci writes, "They live together without a king, without government, and each is his own master. They marry as many wives as they please; and sons cohabit with mother, brother with sister, male cousin with female, and any man with the first woman he meets."⁶⁶ The absence of families or

⁶⁵ Thomas Aquinas, *Commentary on Aristotle's Politics*, 12.

⁶⁶ Vespucci, *Mundus Novus*, 6.

households led Vespucci to believe that the Amerindians participated in an inferior political association. As they live “according to nature” like the Epicureans, the Amerindians have no concept of property.⁶⁷ Everything is in common. Vespucci’s caricature deeply influenced the European imagination. The jurist Palacios Rubios, the author of the *Requerimiento*, claimed that the natives lived in a single hut, thus failing to distinguish the different social statuses required for political life. Moreover, the Amerindian inclination to polygamy and everything in common was antithetical to the nature of the family and the household.⁶⁸ In addition to failing to meet even the most basic Aristotelian guideline of social life, Europeans portrayed the Amerindians as an idle people. Oviedo, the first author living in the New World to write a history of the Amerindians, asserted that the Amerindians were “naturally lazy and vicious, cowardly and, as a whole, a lying irresolute people.”⁶⁹ Even their physical conditions were different and grotesque: “These Indians...have skulls four times thicker than those of Christians. Consequently, those who make war on them and come into hand-to-hand combat should be forewarned not to strike in their head because we have seen many swords break.”⁷⁰ As a consequence of their lack of civilization, certain Europeans began to see the Amerindians as natural slaves. The first scholar to label the Amerindians in this way was John Major who admittedly never saw an Amerindian. Yet, even some Spaniards who had interaction with the Amerindians considered them natural

⁶⁷ Ibid.

⁶⁸ Pagden, *The Fall of Natural Man*, 52-53.

⁶⁹ Oviedo, *Historia general*, Part. I, Lib. II, Cap. VI, quoted in Justus M. von der Kroef, “Francisco de Vitoria and the Nature of Colonial Policy” *The Catholic Historical Review* 35, no. 2 (Jul., 1949): 133.

⁷⁰ Oviedo, *Historia general*, quoted in Jose Rabasa, *Writing Violence on the Northern Frontier: The Historiography of Sixteenth-Century New Mexico and Florida and the Legacy of Conquest* (Durham: Duke University Press, 2000), 169.

slaves. The most important example is Fray Juan Queveda, the first bishop of Darien.⁷¹ From an Aristotelian perspective, these predominant descriptions of the Amerindians were quite damning. By not living in close community, the Amerindians, in the words of historian Anthony Pagden, did not live in a “community at all but a mere horde.”⁷²

Las Casas defended the Amerindians against two claims: 1) that barbarians did not have legitimate government; 2) that the Amerindians did not live in political communities more sophisticated and complex than villages. Responding to the first claim, Las Casas expanded upon Thomas’ distinction between *barbarians in relation*, barbarians capable of political community, and *barbarians absolutely*, barbarians incapable of political community. Las Casas further differentiates “three or four kind of barbarians” which he bases explicitly on his readings of “the Philosopher in Books 1 and 3 of the *Politics* and in Book 7 of the *Ethics*, and according to Saint Thomas and other doctors in various places.”⁷³ The first type, which he bases on Aristotle’s second chapter of the first book of the *Politics*, consists of “any cruel, inhuman, wild, and merciless man acting against human reason out of anger or native disposition, so that, putting aside decency, meekness, and humane moderation, he becomes hard, severe, quarrelsome, unbearable [and] cruel.”⁷⁴ These barbarians consist of those who have become wicked through habit, voluntary action, and choice. They are barbarians within the regime, though they commit atrocious crimes. As examples, he provides Nicanor, the ruthless tyrant from the Second Book of Maccabees, and the courtiers of Theodoric, the Ostrogoth tyrant, who

⁷¹ Adorno, *The Polemics of Possession*, 102-103.

⁷² Pagden, *The Fall of Natural Man*, 53.

⁷³ Las Casas, *In Defense of the Indians*, 28.

⁷⁴ *Ibid.*, 29.

imprisoned Boethius. This sort of barbarian is possessed by what Plato calls the *eros tryannos*. Las Casas begins with this example in order to demonstrate that one's neighbor or, worse, political leader could be a barbarian.

The second type of barbarian can also be found within the city, though a less refined city. This type of barbarian is one who does not have a written language. Such an individual is not savage because he is capable of moral virtue, prudence, and political order. Las Casas explicitly states that this second group of barbarians consists of the contemporaries about whom the Greeks wrote (e.g. the Celts). This sort of barbarian has legitimate political communities and are "not barbarians literally but by circumstance."⁷⁵ Through education and the written word, they are capable of becoming civilized.

The third group, which Las Casas considers to be the most genuine definition of barbarian, are those "not governed by law or right, do not cultivate friendship, and have no state or politically organized community."⁷⁶ As such, these barbarians do not participate fully in what a human being ought to do. Without the ability to interpret right, their actions are disordered and they are not able to actualize Thomas' dictum of doing good and avoiding evil. Without friendship, they have no kinship with the human race. Without law and the state, they are isolated individuals who live like beasts. Las Casas admits that these barbarians are slaves by nature but, in accordance with his Thomistic metaphysics outlined in the third chapter, he emphasizes that "barbarians of this kind are rarely found in any part of the world and are few in

⁷⁵ Ibid., 31.

⁷⁶ Ibid., 32.

number when compared with the rest of mankind.”⁷⁷ Las Casas does not believe that there can be an entire continent full of such creatures.

The final and fourth type of barbarian consists of those who are not Christians. All non-Christians are barbarians, but their governments are legitimate. Las Casas writes, “for no matter how well governed a people may be or how philosophical a man, they are subject to complete barbarism, specifically, the barbarism of vice, if they are not imbued with the mysteries of Christian philosophy.”⁷⁸ He argues that, without Christian revelation, human beings have a propensity to fall into error and vice, faults which lead to skewing the proper exercise of prudence and justice. According to this definition, Las Casas admits that the Amerindians are, in fact, barbarians. They have a propensity to engage in some vices, partake in horrendous forms of superstition, and lack complete prudence and justice. In arguing this position, Las Casas emphasizes that these faults are not particular to the Amerindians, but to all pagan societies. Drawing on Saint Augustine, Las Casas states that both the Romans and Greeks were barbarians. In an age in which the European intelligentsia (including many of the defenders of the Conquest of the Americas) were looking to the ancient pagans for wisdom and learning that they believed to be lacking in the writings of the medieval scholastics, Las Casas’ argument is quite striking. He wants to underscore to his audience that European scholars are looking to a group of barbarian writers for wisdom. As such, Las Casas is not condemning the Renaissance. His own writings betray a genuine love and admiration for the philosophy, histories, glories, and achievements of Classical antiquity.⁷⁹ Rather, Las Casas is trying to make the case that the high

⁷⁷ Ibid., 34.

⁷⁸ Ibid., 49.

⁷⁹ Las Casas was particularly enamored by Classical historians, see Las Casas, *History*, 3-4; Hanke, *Bartolomé de Las Casas: Historian*, 72-76.

civilizations of the Amerindians have the same level of political legitimacy as those of Ancient Greece and Rome. In other words, most Amerindians were not guilty of the first three forms of barbarism. At worst, some Amerindians could be considered the second type of barbarian due to their lack of written language; as Las Casas emphasizes, however, this circumstance did not preclude them from having the right to rule themselves. In truth, the Amerindians, like the Greeks and Romans, were only accidentally barbaric in that they had no control over the circumstances in which they were born.

After de-mystifying the status of Amerindian barbarism, Las Casas had to demonstrate that the Amerindians lived in a legitimate political community, i.e. one more sophisticated than a village. It was a well-established conviction, even by the most rabid defenders of the Conquest, that there were different levels of civilization among the Amerindians. The Mexicans and Incas, for example, had cities and great architectural achievements, while the inhabitants of the islands lacked such achievements.⁸⁰ Whereas the Mayans had a written language, the Caribbean Amerindians lacked letters and, consequently, there is very little reliable sources about the Arawaks, among others. Las Casas, therefore, embarked to show that even the most underdeveloped of the Amerindians had legitimate forms of government. He was particularly well-suited to accomplish this intellectual task, as he himself lived during and participated in the conquest of the regions about which he wrote. It is no wonder that Las Casas' histories provide the most detailed description of their cultures and governments.⁸¹

⁸⁰ Pagden, *The Fall of Natural Man*, 71-73.

⁸¹ For example, in his discussion on the kingdom of Magua, he mentions that he had met the vassals of the king, Guarionex: "I met some of these men myself." Las Casas, *Short Account*, 19.

According to Las Casas, there were five *kingdoms* on Hispaniola – Magua, Marien, Maguana, Xaragua, and Higuey. Las Casas describes them in this manner: “On Hispaniola there were five main kingdoms, each very extensive and each with its own king; most of the infinite number of local nobles paid allegiance to one or other of these five powerful leaders, although there were a few backwoodsmen who recognized no authority above and beyond their own.”⁸²

The last part of this quotation makes an important distinction between those in political community and those few barbarians who are aware that they are not in political community. The Amerindian kingdoms are complex: they are divided into provinces ruled by *vassals* and there are kingly courts full of nobles and great lords. The term ‘vassal’ is used by Las Casas purposefully. It is meant to convey that the vassals possessed certain rights owed to them from their king. The vassals were free men who were not subjugated in a tyranny. Las Casas’ description of these kingdoms is supposed to remind his audience of a just type of feudalism, not the arbitrary power relation of the *encomienda*. Admittedly, one of the most significant limitations of Las Casas’ analysis, perhaps as a result of a dearth of information, is that there is no adequate description and analysis of their laws. It is clear from his account, however, that they participated in *homonoia* (like-mindedness) and not merely the familial ties of kinship; their kingdoms were too large for parochialism. The kingdoms of Hispaniola, in the framework of Aristotelian political development, appear to be a very advanced pre-political society. They are more sophisticated than a group of mere villages but they are short of the sophistication of the *polis*. Although Las Casas does not make the explicit connection, the constitution of these native kingdoms seems to be similar to Aristotelian kingship. During Aristotle’s time, such conditions were also quite prevalent outside of Greece. Thus, if the kingdoms of Hispaniola are among the

⁸² Ibid., 18-25.

least developed in the New World, Amerindian government is quite stable and not different from the political landscape of pagan European antiquity.

Las Casas tacitly argues that the manner in which the Spanish perpetuated their atrocities betrayed a keen awareness of the sophistication of Amerindian life. The Spanish, after all, had recognized immediately that there was a ruling class and noticed the authority that the kings and queens had over their subjects. Las Casas provides two examples of how the Spanish tried to use the kings and queens to their advantage. The first concerns Guarionex, king of the Magua, who by Las Casas' own account accepted Spanish rule for the safety of his people. When the Spanish ordered him to instruct his people to work in the gold mines – a task that was virtually unknown to his people – Guarionex asked the Spanish if his people could instead till the soil. He was reprimanded for suggesting the alternative and, then, an unnamed Spaniard raped his wife. He decided to abdicate his throne (something a mere master of an extended household could not do) to live in exile. The Spanish, however, hunted him down and imprisoned him, out of an awareness of the political dangers that could arise from an exiled king.⁸³ A second example involves King Behechio and his sister, Anacaona, of the Xaragua kingdom. Behechio, like Guarionex, accepted Spanish rule for the safety of his people and, according to Las Casas, was faithful to the Spanish. After his death, Anacaona became the ruler of the kingdom. The Spanish governor feigned to pay a visit to Anacaona at a ceremony, only to use the event to kill three hundred local dignitaries of the kingdom. Again, the brutality of the actions betrays the sophistication of the Xaragua kingdom: in order to take control of the island, they had to wipe out the kingdom's entire royalty and nobility.⁸⁴

⁸³ Ibid., 19-20. Las Casas later writes that the king dies as a prisoner in a shipwreck *en route* to Spain.

⁸⁴ Ibid., 21-22.

When Las Casas attends to his description of the mainland regimes of the Amerindians, he explicitly draws upon the conditions of what constitutes a city in Aristotle's *Politics*. He writes:

Then too there exist extraordinary kingdoms among our Indians who live in the regions west and south from us. There are large groupings of human beings who live according to a political and social order. There are large cities, there are kings, judges, laws, all within civilizations where commerce occurs, buying and selling and lending all the other dealings proper to the law of nations. That is to say, their republics are properly set up, they are seriously run according to a fine body of law, there is religion, there are institutions. And our Indians cultivate friendship and they live in lifegiving ways in large cities. They manage their affairs in them with goodness and equity, affairs of peace as well as war.”⁸⁵

In other words, it was quite common for the regimes of the mainland to possess the requirements for city life. The mainland natives had (a) large cities, (b) a system of laws and judges, and (c) a sophisticated system of commerce, which implies some form of international cooperation.

Las Casas took great pains in describing the cities of the Amerindians for a few different reasons. First, following Aristotle, he needed to demonstrate that the Amerindians lived in the highest form of political association. The city, after all, furthered the common good of the citizenry, leading to happiness. Second, he needed to show, against the narrative of some of the early colonists, that the Amerindians lived in political associations. In order to disprove the claims of the colonists, Las Casas commented on the variety and number of the cities throughout the mainland. He intentionally used Aristotle's categorization of the six different types of professions necessary to the city: farmers, craftsmen, warriors, men of wealth, priests, and judges

⁸⁵ Las Casas, *The Only Way*, 64.

and governors.⁸⁶ The bulk of his *Apologetic History* is dedicated to outlining how Amerindian cities employed all six of these occupations in his writings.⁸⁷

The first necessary requirement for a city was that it consisted of farmers. Aristotle claimed in his *Politics* that, though farmers ought not to have much power in the best regimes, they were the best citizens to run democracies because their combination of hard-work and poverty limited the negative effects of the rule of the majority. Moreover, due to their isolation and distance from the city, they were less likely to rebel or create powerful factions.⁸⁸ In his *Oeconomicus*, Aristotle considers the life of the farmer as “the most honest” of all manual occupations and praises the farmer’s tendency to not be tied to possessions.⁸⁹ Las Casas notes that many Amerindians were farmers and, consistent with Aristotle, praises their talents.⁹⁰ Amerindian farming, for example, was praised in his discussion on the Province of Nicaragua. He writes: “the sheer number and size of the towns in the area was truly astonishing: it was often three and four leagues from one end of a town to the other, *and the quality and abundance of the local produce was sufficient to support a huge population.*”⁹¹ The cities within Nicaragua were able to become so populous because of their achievements in agricultural production. Thus, the

⁸⁶ Aristotle, *Politics*, 4.4.1290b40-1291a40, 7.8.1328b5-15.

⁸⁷ Sanderlin, *Bartolomé de Las Casas*, 111. As George Sanderlin notes, Las Casas outlined his *Apologetic History* according to Aristotle’s six classes of citizens.

⁸⁸ Aristotle, *Politics*, 6.4.1318b6-25.

⁸⁹ Aristotle, *Oeconomicus*, trans. by G.C. Armstrong. (Cambridge: Harvard University Press, 1935), 1343a-b, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0048%3Abook%3D1%3Asection%3D1343a> (accessed November 28, 2015).

⁹⁰ Bartolomé de Las Casas, *Apologetica Historia: Obras Escogidas de Fray Bartolomé de Las Casas Tomo III* (Madrid: Atlas Ediciones, 1958), 220.

⁹¹ Las Casas, *Short Account*, 37, emphasis added.

cities of Nicaragua, by having both city folk and agricultural factions, participated successfully in city life.

The second group of citizens was craftsmen. Las Casas believed that the high level of Amerindian craftsmanship – from their architectural achievements such as the Great Causeway of Tenochtitlan to the intricacies of their metalwork – demonstrated the sophistication of their civilization. Craftwork was important to both Aristotle and Las Casas because it was an art. Art imitates nature. In order to imitate nature, the craftsman needed to use reason. Las Casas, quoting Aristotle states, “for a mechanical art is an operative habit of the intellect that is usually defined as ‘the right way to make things, directing the acts of the reason, through which the artisan proceeds in orderly fashion, easily, and unerringly in the very act of reason.’”⁹² In city life, the arts have a dual purpose. On the one hand, there are certain arts that are essential. For example, the construction of buildings is necessary for city life, though the manner in which it is accomplished represents the quality of political development. Las Casas believed, for example, that many Amerindian buildings were beautiful and finely made. In his discussion of the city of Cempoal, a city that had to pay tribute to the Aztecs, Las Casas wrote that the city was inhabited by over thirty thousand people, “with great stone buildings surrounded by water and gardens like Eden on Earth.”⁹³ The use of *stone*, as opposed to mere clay or wood, demonstrated an advanced art that was employed for the common advantage of the city.

In addition to necessary arts (such as housebuilding), the Amerindians also excelled in arts that were pursued for their own intrinsic good. As Aristotle argues, those arts pursued for

⁹² Las Casas, *In Defense of the Indians*, 44; Las Casas cites Aristotle’s first book of the *Posterior Analytics*, though erroneously.

⁹³ Las Casas, *History of the Indies*, 242.

their own good are the most noble of all. Their craftwork, in other words, demonstrated that Amerindian culture aimed for humanity's highest good: happiness. Las Casas was particularly enamored of feather work, an art uncommon in Europe. Through their feather work, the Amerindians displayed the ingenuity of the intellect by imitating things of nature (trees, flowers), animals, and human beings. Las Casas did not hesitate to mention that the Amerindians used their feather work to decorate the vestments of priests, altar-pieces, processions, and other holy things. They were employing their intellect in order to praise God. In addition to their feather work, the Amerindians were great silversmiths. They had developed the technology necessary to melt metals and to change their form through casts. These intricacies of these casts, Las Casas wrote, "astonishes our craftsmen" because they were often in the shape of animals.⁹⁴ In other words, the Amerindians had developed a certain technique in metal work that was unknown to Spanish smiths. Las Casas boasted that some of the achievements of Amerindian art surpassed those of Greece and Rome. Like their feather work, their metalwork was often done for the sake of the Christian religion, in which they created crosses, chalices, and monstrances.⁹⁵

The third group of citizens necessary for a city was the warrior class. Las Casas spends very little time discussing the Amerindian warrior, partly because the subject did not align neatly with his narrative concerning the natural meekness and peacefulness of the Amerindians. He even begins his section on Amerindian warriors by attacking European nations, which "more than any other nations, are the most unequal and bellicose."⁹⁶ Of the three chapters that Las Casas dedicates to warfare in his *Apologetic History*, he limits his discussion primarily to the

⁹⁴ Las Casas, *Apologetic History*, quoted in Sanderlin, *Bartolomé de Las Casas*, 131.

⁹⁵ *Ibid.*, 127-132.

⁹⁶ Las Casas, *Apologetica Historia*, 220: "...la Europa, las cuales, mas que ningunas otras, inquietas son y belicosas."

Aztecs and Incas. The Aztecs usually waged war for the expansion of their religion, while the Incas waged war as a result of disagreements among their provinces.⁹⁷ Las Casas does not necessarily praise the wars of the Aztecs and Incas; rather, he uses them solely as examples of the fact that the Amerindians had warriors and participated, when needed, in the art of warfare. In his other works, Las Casas praises Amerindian warriors for defending themselves against Spanish atrocities.⁹⁸ In particular, he praises a young *cacique*, Enriquillo, for staging a successful revolt against Spanish colonists; this particular episode will be discussed in more detail in the fifth chapter.⁹⁹

The fourth group of citizens were men of wealth. To illustrate this category, Las Casas provides the example of the old Aztec marketplace of Mexico City. The marketplace provided both necessities and frivolities: “All the crafts and products there can be, throughout New Spain, are found there. There is no lack of goods to supply the natural needs, nor of things for unusual taste.”¹⁰⁰ So large was the marketplace that Las Casas claimed that 100,000 people were present there five days a week. If true, there would have hardly been a rival marketplace in Europe. Of particular importance, however, was the existence of money among the Amerindians. Although bartering was the most common form of exchange in the Aztec market, Las Casas noticed that there existed a form of currency, which was made of cacao beans. It is currency, he claims, which creates inequality.¹⁰¹ Las Casas’ close attention to currency aligns itself with Aristotle’s

⁹⁷ Las Casas, *Apologetica Historia*, 220, 228.

⁹⁸ Las Casas, *History of the Indies*, 52, 92, 94, 101.

⁹⁹ Las Casas, *History of the Indies*, 246-256.

¹⁰⁰ Las Casas, *Apologetic History*, quoted in Sanderlin, *Bartolomé de Las Casas*, 133.

¹⁰¹ *Ibid.* 135.

understanding of justice in Book V of the *Ethics*: exchange is a necessary part of political community. Moreover, the invention of money, because it exists by convention and law (*nomos*), is proof of a well-structured society.¹⁰²

The fifth group of citizens are priests and religious. One of the most striking aspects of his *Apologetic History* is his careful, albeit tedious, examination of the Amerindian gods. Ironically, out of the six different professions mentioned in the *Politics*, Aristotle hardly spends any attention to the role of priests and religious.¹⁰³ Las Casas' main concern was to show that Amerindian religion benefitted political life. In order to accomplish the feat, he had to tread carefully. On the one hand, he had to demonstrate that there were positive aspects of the Amerindian religion. On the other hand, he certainly did not attempt to claim that the Amerindian religion was equal to Christianity. In describing the relationship of religion to the city, Las Casas claimed that their religion produced "fear, love, affection, devotion, and reverence" while also having "less ugliness and absurdities" than the Romans in their ceremonies and sacrifices.¹⁰⁴ Las Casas believed that, though the Amerindian religion involved gross errors, such as the notion that the gods desired human blood, it lacked the hedonistic and blatantly immoral tendencies of the Greek and Roman gods.¹⁰⁵ For Las Casas, the value of the Amerindian religion was best measured by how quickly and eagerly they converted to the Christian faith. The Amerindians seemed more willing to enter the faith than the pagans of

¹⁰² Aristotle, *Nicomachean Ethics*, trans. Robert C. Bartlett and Susan D. Collins (Chicago: University of Chicago Press, 2011), 5.5.1133a20-1133b20.

¹⁰³ As Carnes Lord comments in a footnote, Aristotle provides a list of the six classes of citizens twice. In the first list, the office of the priesthood is missing. In the second list (the one that Las Casas seems to be using), the priesthood is mentioned only briefly. See: Lord, *Aristotle's Politics*, 104 n21, 201.

¹⁰⁴ Las Casas, *Apologetica Historia*, 236: "el temor, amor, afeccion, devocion y reverencia, y aun en menos fealdades y absurdidades que mezclaron los romanos en sus cerimonias y sacrificios."

¹⁰⁵ Las Casas, *Apologetic History of the Indies*, ch. 127.

antiquity. Throughout his writings there are many stories of Amerindians coming to accept the truths of Christianity after little instruction, since their native religions had predisposed them to teachings about good and evil, heaven and hell, prophecy, and the role of a hierarchical religion, among other things.¹⁰⁶

For Aristotle and Las Casas, the last group necessary for a city were governors. In his history of the Incas, Las Casas outlines, admittedly from myth and word of mouth, the development of the Incan Empire. Las Casas often compares the Incas to the Romans in that both had similar strengths (a history of courage and good leadership) and weaknesses (similar founding myths and an overemphasis on war).¹⁰⁷ Although he admits that it is unclear whether certain wars originated “with just cause or from injustice,” he praises the heroic Pachacuti for his defense of the city of Cuzco in “having liberated them from the tyranny” of the Chancas.¹⁰⁸ In other words, the Amerindians understood the difference between tyranny and just government. Las Casas goes so far to attribute to certain Amerindians a firm commitment to the consent of the governed. For example, when Montezuma was imprisoned by Cortes, the Aztecs began to stop following his orders. The leniency and overt hospitality that Montezuma had shown the Spanish led the Aztecs to believe that he was a weak leader. Las Casas writes that widespread among them “was a feeling that they should elect another lord in Montezuma’s place who would be able and willing to lead them in battle.”¹⁰⁹ The Aztecs did elect a new leader who drove Cortes and

¹⁰⁶ Las Casas, *History of the Indies*, 55, 171, among others; Ricard also notes that the Aztec religion already believed in eternal life, heaven and hell, and the immortal soul. See Ricard, *Spiritual Conquest of Mexico*, 31.

¹⁰⁷ Sabine MacCormack, *On the Wings of Time: Rome, the Incas, Spain, and Peru* (Princeton: Princeton University Press, 2007), 55-56, esp. 56n76.

¹⁰⁸ Bartolomé de Las Casas, *Apologetica Historia: Obras Escogidas de Fray Bartolomé de Las Casas, Tomo IV*: “o con causa justa o con injusticia” “porque los habia libertado de la tirania,” 395, 396.

¹⁰⁹ Las Casas, *Short Account*, 51.

the Spanish out of Tenochtitlan. During the battle, the insurgent Aztec army killed Montezuma.¹¹⁰

In sum, though Las Casas acknowledged some differences between the Amerindians of the islands and the mainland, he believed that all forms of Amerindian government were legitimate. The fact that the Amerindians were barbarians insofar as they were non-Christian did not prevent them from having legitimate government. He uses Aristotelian political thought in order to show that the inhabitants of the islands and the mainland participated fully in political life. To further buttress his argument, Las Casas draws upon the medieval constitutionalism implicit in Thomism and civil law.

Thomism, Law, and the Limits of Jurisdiction

Thomas, following Aristotle, believed that a just regime must be based on a proper understanding of human nature. In accordance with the Philosopher, Thomas asserts the superiority of the rule of law over the rule of man. Yet, there are noticeable differences between the two men. Thomas adds to Aristotle's constitutionalism a more robust analysis of the relationship between God and law. Thomas often speaks of the natural law, a term that Aristotle uses only once in his corpus (in the *Rhetoric*).¹¹¹ Thomistic natural law and Aristotelian natural right both believe that nature is intelligible by examining the end, or *telos*, of a thing. Yet, they are not synonymous and have one key difference. Thomistic natural law suggests that all individuals are capable of understanding the basic elements of good and evil. It makes the study of nature more egalitarian; it claims that there are certain things that all human beings cannot fail to know because they are made in the image and likeness of God. Aristotelian natural right, on

¹¹⁰ Diaz, *The Conquest of New Spain*, 294.

¹¹¹ Aristotle, "Rhetoric," 1.12.1373a5: "Universal law is the law of nature."

the other hand, argues that what is natural can be hidden and, in certain cases, actually change. Thomas interprets any changes in natural law as additions or subtractions. Aristotle, on the other hand, does not necessarily limit changes in natural right to additions and subtractions.¹¹²

The unique political implication from Thomas' thought is that human law needs to be grounded in the natural law. Thomistic human law reflects, to a certain extent, the divine cosmos. This mirroring of the divine is possible because Thomas provides a more robust theology than Aristotle. God, according to Thomas, has a more active role in human affairs because of the love he has for his own creation. When compared to Aristotle, Thomas' theology, arguably, minimizes his attention to regime types. Aristotle spends about half of his *Politics* detailing how the different regimes affect the laws, and vice versa. Thomas also acknowledges the mutual interplay between law and regime, but it is not as an important topic to him in his *Treatise on Law or De Regno* as it is in Aristotle's *Politics*.¹¹³ The reason for this difference of emphasis between the two men is Thomas' theologically-informed understanding of human law: regardless of regime, there are *some* human laws informed by natural law because no one can completely expel the natural law from one's heart. Even a tyrant cannot eradicate completely his inclination to do good.

Since human law is a result of practical reason, Thomas admits that, even when laws are derived from the natural law, there are noticeable variations and discrepancies among legitimate political bodies. The election of leaders, the payment of taxes, the existence of slavery, the

¹¹² Aristotle, *Ethics*, 5.7.1134b29-30: "among us there is in fact something that is just by nature, though it is altogether changeable." Thomas' understanding of natural law limits change to addition and subtraction; see Aquinas, *Summa Theologica*, I-II Q. 94 a. 5.

¹¹³ Thomas' *De Regno*, due to his audience, the King of Cyrus, is mostly concerned with monarchy and tyranny. Thomas' *Commentary on Aristotle's Politics* abruptly ends with Book III, section 6, which categorizes the different types of regimes. It, therefore, misses Aristotle's systematic and insightful examination of the regimes from Books III-VI. In the *Summa*, his discussion on regimes is limited to *Summa Theologica*, I-II Q. 95 a. 4, Q. 105 a. 1.

division of power, and local customs need not be the same for all nations. Embedded in Thomas' understanding of human law is a significant amount of flexibility and respect for the unique nuances of different regimes. Part of this flexibility is a result of the Christian regime's relationship with the Church. Whereas in Aristotle the Greek *polis* is a complete and comprehensive institution, the Christian *civitas* was influenced by the Church, which was supra-political. The other reason why Thomas' political thought was more flexible on the differences between regimes is due to his understanding of human law. Regardless of regime, human law must act in accordance with natural justice. Thus, human law must always be directed to the common good, instead of the private good. It must repress the vices that most specifically deal with politics, because laws ought to promote virtue. Lawmakers, however, need to be prudent enough to realize that it cannot repress all vice. In order for justice to prevail, all citizens, even the king, are subject to the law. The laws must be followed according to the motive of the lawgiver, rather than strict abidance to the letter of the law.¹¹⁴

Las Casas, as a follower of Saint Thomas, draws heavily upon the Angelic Doctor's understanding of natural and human law. Since the natural law is engrained in the hearts of every human being, the positive law of the Amerindians is based upon their application of the first principles of the natural law. Amerindian positive laws and temporal rulers cannot simply be discounted because they are pagan and polytheistic. To believe such a claim would lead to two conclusions that are fundamentally opposed to Thomistic teaching. First, it would discount the legitimacy of all the major empires, nations, and tribes that had existed before Christ. Second, it would debase the role of reason in the human being. Las Casas, assuredly, does not believe that all the laws of the Amerindians were in accordance with natural law. As was

¹¹⁴ Aquinas, *Summa Theologica*, I-II Q. 96 a. 1-6.

discussed in the third chapter, their practice of cannibalism and human sacrifice attest to the fact that they did not understand natural law correctly.

A small but noticeable ambiguity in Thomas' thinking revolves around the origin of government and the natural law. On the one hand, Thomas asserts that the institution of government is in accordance with the natural law. On the other hand, Thomas follows the canonists in asserting some sort of pre-political state of nature.¹¹⁵ This ambiguity, in part, is similar to Aristotle's underdeveloped understanding of pre-political life. Las Casas tries to integrate these two seemingly contradictory opinions. Las Casas argues that "from the beginning every thing, and every people were free."¹¹⁶ Subjugation, slavery, and unequal burdens (*onus unquam*) did not exist among men. For Las Casas, the people (*populus*) existed prior to the establishment of their government. It is the people who instituted their leaders. Government, therefore, derives from the consent of the governed. All kings, princes, and other forms of magistrates receive their authority and power from the people.

The idea of the consent of the governed is present in Thomas' treatise on law: "Now to order anything to the common good belongs either to the whole people or to someone who is vicegerent of the whole people. And therefore the making of law belongs either to the whole people or to a public personage who has care of the whole people."¹¹⁷ As such, unjust laws need not be followed because they are violations of the purpose of law, i.e. the common good. Thomas, following Aristotle's understanding of the city, asserts that "all should take in some

¹¹⁵ Ibid., I Q. 94 a. 5: "In this sense, 'the possession of all things in common and universal freedom' are said to be of the natural law because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life."

¹¹⁶ Las Casas, *De Regia Potestate*, 33: "Ab initio omnis res, omnis populus fuit liber."

¹¹⁷ Aquinas, *Summa Theologica*, I Q. 90 a. 3.

share of the government, for this form of constitution ensures peace among the people, commends itself to all, and is most enduring.”¹¹⁸

Las Casas uses Aristotle’s metaphysical vocabulary to solidify the legitimacy of the consent of governed. According to Las Casas, the people are the “effective or efficient and final cause” of government leaders.¹¹⁹ An efficient cause, according to Aristotle, is the cause through which something comes to be. In political terms, then, the government is created by the people. For Aristotle, though, the most important cause was the final cause because it determined the end and purpose of the object. Since the people are also the final end of government, it follows – in accordance with the sentiments of the American Declaration of Independence – that government is created by the people for the people. In Aristotelian and Thomistic terms, the common good is the end (*telos*) of government. Leaders, therefore, cannot rule for themselves; their office needs to be directed to the common good.

Las Casas’ understanding of the consent of the governed can easily be confused with a more modern conception. Las Casas’ version of the consent of the governed does not rest upon direct voting. Consent arises from two things. First, consent comes from the adherence to the original agreement that the people’s ancestors made with the ancestors of the king. This arrangement places importance on custom and constitutionalism. Second, consent also derives from not rebelling. Thus, the people do not have to directly elect every new king or leader. The consent of the people is tacit, so long as the king does not become a tyrant. As a consequence, the king only has jurisdiction, not possession, over the realm. The kingdom remains united when the king dies. Hence, the kingdom cannot be divided between the sons of the king, as was the

¹¹⁸ Ibid., Q. I-II Q. 105 a. 1.

¹¹⁹ Las Casas, *De Regia Potestate*, 33: “Ergo si populus fuit causa effective seu efficiens, et finalis.”

custom in Merovingian France.¹²⁰ If the king dies without an heir, Las Casas, following medieval constitutionalism, argues that “the right of choosing a new king belongs to the people.”¹²¹

It is also worth emphasizing that the consent of the governed comes from natural right. In other words, the consent of the governed is legitimate, not because it is an opinion of self-interested individuals to form a community, but because it is befitting for human beings to live in community, regardless of whether one wants to or not. A citizen is not an autonomous individual. He is a political animal who is expected to follow any human law that is in accordance with the natural law. Whether pagan or Christian, kings, princes, and judges are the guardians of natural law.¹²² They have a responsibility to make sure that their subjects act in accordance with the basic tenets of the natural law. As natural law leads human beings to love the common good, a citizen ought to love the common good more than his own private good. Las Casas writes, “since the citizen is a part of the whole state and his happiness or welfare depends on the welfare and good of the state, he is obliged to love the common welfare and good more than his private welfare, and therefore, in order to preserve the common welfare, he is obliged by the natural law to do and suffer all he can, even by sacrificing his life.”¹²³

Following Aristotle and Thomas, Las Casas argues that, in a just regime, its citizens are ruled by laws and not by men.¹²⁴ The distinction between the rule of law and the rule of men is

¹²⁰ Ibid., 94.

¹²¹ Las Casas, *In Defense of the Indians*, 338.

¹²² Ibid., 158.

¹²³ Ibid., 238.

¹²⁴ Las Casas, *De Regia Potestate*, 37.

firmly posited by Las Casas because, throughout his political discourse, he asserts that reason, not force, is the foundation of legitimate government. The laws of the realm are legitimate, not only because they serve the common good of the people, but because, when the government was instituted, the forefathers of the realm carefully defined the parameters of the regal rights (*iura regalia*).¹²⁵ These laws, in order to be legitimate, must be for the common good.

Las Casas was a staunch advocate of a limited monarchy and a limited principality. The basis of this view of government comes from his definition of jurisdiction. Jurisdiction derives from the consent of the governed, whereby citizens voluntarily follow a just leader. A ruler is not a lord (*dominus*) or owner over the land of his kingdom, “for the people do not transfer it to him for the sake of abuse...but for the sake of protection.”¹²⁶ The ruler, instead, is a guardian. In keeping with the Thomistic and canonist tradition of the rule of law, a ruler does not have indiscriminate power. The king is subject to the law, as he is subject to the rule of God.

The jurisdiction of the ruler, Las Casas writes, is limited to protecting the lands of his subjects. The prince or emperor does not own the property of his subjects. The ruler is merely the guardian of the land. The citizens, in other words, retain their *dominium* to the land. This understanding of jurisdiction, therefore, provides an important bulwark against the tyrannical misuse of property. It limits the opportunity for the ruler to use his office to promulgate laws for his own selfish private good. As such, Las Casas argues that neither emperors nor princes can sell or donate jurisdiction to another. The donating or selling of land violates the agreement between subject and ruler because neither originally agreed to the possibility of such transactions. Moreover, since the ruler does not own the land, he would, in essence, be selling or

¹²⁵ Ibid., 36.

¹²⁶ Ibid., 65 “...nec populus eam in eum transtulit ad abutendum illa, sed...ad protegendum.”

donating nothing but thin air.¹²⁷ The subjects would have no reason to pay allegiance to the proposed buyer (*emptor*) of the jurisdiction, as they did not consent to his rule. Las Casas writes, with cold fury, that both “the prince who sells the land (*donatarius*) and the one to whom he sells the land (*emptor*) sins mortally, nor are they able to be saved.”¹²⁸ The royal abuse that comes from transgressing against citizens’ property leads the ruler, literally, straight to hell.

Las Casas argues against the belief that that Amerindian kings should have voluntarily handed themselves over to the Spanish. He writes, “if their natural kings turned themselves over to the Castilian king, the people would have a right to depose them.”¹²⁹ Kings are products of the people, and, as was argued tirelessly in Las Casas’ *De Regia Potestate*, a king cannot sell any form of jurisdiction through donation or transfer of authority to anyone (such as the Spanish). Had a pagan king done such a thing, he would have sinned gravely, because his action was against natural right, a term which Las Casas inherited from both his study of Thomas and the canonists. Natural right dictates that the people consent to their leaders. Thus, any transfer of authority to the Spanish would be void. Likewise, it is in accordance with natural right that the citizens obey their leaders. Las Casas continues, “and if the people pledged allegiance to a foreign King without the consent of their rulers, they would be traitors and would be punished.”¹³⁰ The people, though they consent to their leaders, cannot decide to abandon their leader simply on the grounds of the leaders’ religion. Political leaders rule by nature not by grace. The personal sins of the ruler do not discredit his office; only his crimes against the

¹²⁷ Ibid., 37-38.

¹²⁸ Ibid., 58, “...et donatarius aut emptor peccat etiam mortaliter, nec salvari poterit.”

¹²⁹ Las Casas, *History of the Indies*, 128.

¹³⁰ Ibid., 128.

people would be a legitimate reason for his removal. In other words, unless a ruler is a tyrant, the people are bound to follow their political leader.

According to Las Casas, neither the ruler nor the people could forfeit their government to the Spanish. Both king and people would have to mutually agree to such a transaction. With this in mind, it is necessary to turn to Las Casas' discussion of the Alexandrian bull. The most traditional reading of the document – and the way in which all Spanish imperialists interpreted the decree – was that Isabella and Ferdinand were awarded the territory as their property by the pope. The Amerindians were perceived to be their immediate subjects. This claim, therefore, directly conflicted with Las Casas' understanding of government in several ways. The papal donation violated the right of the Amerindians to choose their own leader. After all, no donation of land could be given to another person without the full consent of those whom it would affect. After all, both the donor and the recipient of the donation would be in a state of mortal sin for violating the natural liberty of the person.

Las Casas was, therefore, in a tremendous conundrum. If he drew on this common interpretation of the Alexandrian bull, he would be criticizing both the pope and the Holy Roman Emperor. In essence, he would be condemning both men to hell. His position made him vulnerable to charges of heresy. This problem brought Las Casas back to the actual text with fresh eyes. He came up with a different interpretation of the treaty. His reading of the text limited the authority of the Spanish king, while retaining Spain's exclusive right to preach the Gospel. He interpreted the treaty to argue that the Spanish were to finance the conversion of the Amerindians. He denied that the treaty gave the crown political dominion over the natives, unless the Amerindians voluntarily accepted Spanish dominion.¹³¹

¹³¹ Carman, "On the Pope's Original Intent," 193-204.

Las Casas is fundamentally consistent in his insistence on the legitimacy of Amerindian government, the necessity of the consent of the governed, and his condemnation of any forceful conversion. The Spanish violated all three of these principles. In his *Only Way*, Las Casas demands that the Spanish provide complete restitution to the Amerindians for their lost property and government. He demands that Spanish conquistadors leave the continent; only priests and devout settlers would be able to stay.¹³² Taken in this context alone, he seems to defend the *indefinite* rule of the Amerindians. At Valladolid, before Charles and a jury of sympathetic but different-minded neo-Thomists, such as Cano and Soto, Las Casas' argument is noticeably different in tone:

The [Spanish] kings are commanded to have as their purpose leading the Indians to the faith. It is granted that subjection to their rule is fitting and helpful for attaining this purpose; still it must be proportionate and suited to that purpose, which is specifically the spread of the glory of the divine name and the conversion of those people. But war is not a suitable means for spreading Christ's glory and the truth of the gospel, but rather for making the Christian name hateful and detestable to those who suffer the disasters of war. So war against the Indians, which we call in Spanish *conquistas*, is evil and essentially anti-Christian¹³³

At first glance, Las Casas' support for Spanish subjection at Valladolid seems to contradict his call for restitution and Spanish withdrawal from the continent. How can these two positions be reconciled? One possible answer is that Las Casas argued contradictory opinions to different audiences in order to maximize his influence and following. Yet, this explanation seems to be contrary to the character of Las Casas. A second possible answer is that Las Casas' opinions shift over time. As the fifth chapter will show, Las Casas' opinions do, in fact, change over time. Yet, the call for restitution and withdrawal can be compatible with his support for Charles' claim

¹³² Las Casas, *Only Way*, 171-177.

¹³³ Las Casas, *In Defense of the Indians*, 355.

over the New World if it is viewed within the context of constitutionalism. Las Casas accepts that Charles has a claim to the New World through the indirect power of the papacy (discussed in the sixth chapter). Yet, as his position on the consent of the governed shows, Charles cannot act upon his jurisdiction until his subjects consent to him as their leader. Without consent, there is no legitimate government. Charles would be nothing more than a usurper of power without it. Moreover, even when Charles is accepted as their emperor, Charles cannot overstep the boundaries of his own jurisdiction. Charles and his subjects have no authority to take away property since jurisdiction does not give the emperor ownership of the lands and property that he is entrusted to protect. Consequently, any war waged by the conquistadors is unjust, regardless of whether the Amerindians have consented to the Crown. If they have not consented, then the Spanish are stealing from an independent and sovereign authority. If they have consented, then the Spanish are stealing from their own fellow subjects.

Las Casas' position is clarified further in his *Short Account of the Destruction of the Indies*, a work dedicated to Charles' heir, Philip. In the prologue to the work, he states that the kingdoms of the New World were granted to the Spanish Crown for the conversion of the faith. He emphasizes this role so that Philip will intervene on behalf of the Amerindians against the conquistadors. Almost half-way through his work, Las Casas writes this stunning paragraph:

...when the [Amerindians] come to obey under duress this foreign overlord and publicly recognize his authority over them, simply because of their fear of what will happen to them if they do not, *such a recognition of suzerainty has no standing in law whatever, any such prerogative obtained by menaces from any people anywhere in the world being invalid.* In practice, the only rights these perfidious crusaders have earned which can be upheld in human, divine, or natural law are the right to eternal damnation and the right to answer for the offences and the harm they have done the Spanish Crown by utterly ruining every of these kingdoms and (as far as it is within their power) invalidating all claims the Spanish Crown may have to the territories of the New World.¹³⁴

¹³⁴ Las Casas, *Short Account*, 53-54.

The conquistadors invalidated the Spanish claim to rule insofar *as it was within their power*. In stating that the conquistadors have invalidated their claims, they once had a valid claim to be there. What, then, was the valid claim? How can one *partially* invalidate a claim? The conquistadors cannot completely invalidate the claim because the claim came from the pope and king, not the conquistadors. Yet, due to the *manner* in which the Spanish conquistadors acted (i.e. violent force instead of persuasion), the Amerindians may legitimately deny the offer to accept the rule of Christian Spain. The Amerindians are, after all, already in independent and legitimate political communities. The only manner in which Spain can justly act upon their claim to the New World is through consent. As mentioned earlier, the Spanish need the consent of both the Amerindian rulers and the people. Coercion does not provide legitimate consent. Thus, since the Amerindians did not voluntarily consent to Spanish rule, they are still free and independent people.

Las Casas' Response to the Franciscans and the Imperial Defenders

Las Casas draws upon two Classical traditions – Aristotelianism and Thomism – in order to defend the legitimacy of Amerindians kingdoms against his contemporary rivals. Las Casas' two great adversaries were missionaries, mostly Franciscan, who denied the right of the Amerindians to self-rule, and imperial defenders who claimed that Charles was lord of the world. The Franciscan friars, by discarding the sovereignty of the Amerindians, opened the question of whether politics itself was necessary. From an Aristotelian perspective, the friars had little concern for *the* political principle: that a citizen ought to rule and be ruled. Instead, by believing that the natives ought to be tutored by Christians, they asserted that the Amerindians ought to simply serve the friars. As such, there was no place for political life. They replaced political life

with paternal authority. They reduced the relationship between Christian and Amerindian to master and servant. As such, the Franciscans believed that the Amerindians ought only to be ruled, and not to rule themselves.

Las Casas viewed this spiritual paternalism as unjust. It was based upon an incorrect philosophical anthropology. Las Casas, as mentioned in the third chapter, synthesizes the Classical tradition. From the Romans, he argues that human beings are naturally free animals who ought to have the liberty to do what they wish. From Aristotle, he asserts that human beings best achieve their ends through political life. Political life allows human beings to develop virtue, possess property, and achieve happiness. Virtue, property, and happiness are things befitting human nature, regardless of religious belief. Although Las Casas assented wholeheartedly to Christianity and the proposition that the Gospel ought to illuminate political life, he viewed the relationship between nature and grace in the same as Thomas: grace perfects nature, it does not destroy it. Nature is common to all human beings, and, though grace is necessary due to the Fall, grace does not destroy the natural world. As a consequence, politics, which nature deems necessary for humankind, ought not to be destroyed on account of the grace within the Christian faith. Amerindian kingdoms cannot be destroyed. Their self-rule ought to be protected.

Empire was the other extreme that Las Casas had to face. These imperial advocates believed that peace and posterity ought to be achieved by creating a single government over the world in order to create a truly self-sufficient regime. The Neo-Thomists of the sixteenth century, such as Vitoria and Soto, rose to the occasion to condemn these imperial ambitions. Las Casas, however, responds to imperial advocates in a more systematic way in his later writings by turning to Thomistic constitutionalism and its emphasis on the consent of the governed. Las

Casas even suggests that the Amerindians also understand the principle of the consent of the governed. When the king fails to provide for his people, they have a right to revolt. The fact that human beings ought to consent to their government limits the power of the king. An emperor, therefore, can never be lord of the world because the world never consented to the existence of one leader. Las Casas' constitutionalism not only limits the authority of empire, but it promotes limited powers in all kingly regimes. Since the king rules for the people and not for himself, his authority is never absolute. The king, for example, does not own the land that he protects. As such, even if an Amerindian king assents to Spanish rule, his citizens would still retain the right to revolt against the king because he has no right to transfer their land. Las Casas' constitutionalism doubly protects the Amerindians: both the king and the people would have to agree simultaneously to accept Spanish rule.

Although Las Casas debunks both the positions of the Franciscans and the imperial advocates, he is still in favor of a limited Spanish presence in the New World. The modern reader cannot help but to notice a certain awkwardness to Las Casas' position. On the one hand, Las Casas accepts the Alexandrian bull and the Spanish claim to the New World. On the other hand, his concern for Amerindian jurisdiction and the consent of the governed undercuts the Crown's understanding of the bull. Instead of asserting the Spanish claim to the New World unilaterally, Las Casas portrays Spain's claim only as a *potential* one that cannot be actualized until the Amerindians consent to their rule. Las Casas' position is plausible, if one accepts the legitimacy of the Alexandrian bull and the medieval tradition of the consent of the governed. Yet, his position does not seem to align with how the Crown, the papacy, and the colonists viewed papal and temporal authority.

The awkwardness of Las Casas' position, therefore, is a result of his unique way of thinking. Las Casas' thought is not original, if one is looking for a new idea or system. His thought can be considered distinct, however, insofar as he draws upon the Western tradition in order to find answers to fundamental political questions. Las Casas' defense of Amerindian government provides himself with the philosophical foundation necessary to address his next important topic: the just war.

CHAPTER 5: THE JUST WAR AND THE LAW OF NATIONS

In defending both the rationality and the legitimacy of Amerindian government, Las Casas turned to the just war tradition in order to condemn the Spanish Conquest. He argued that the Spanish had waged an unjust war against the Amerindians, causing the invaders to violate the law of nations (*ius gentium*). To redress the conquests, Las Casas called upon the Spanish to give the Amerindians restitution. His demand, however, fell on deaf ears. Although many Spaniards recognized that the conquistadors and subsequent settlers were guilty of serious abuses, few Spaniards believed that they were guilty of an unjust war.

Two particular thinkers defended, to varying degrees, the Conquest. The first was Sepúlveda, who argued that the Conquest was completely legitimate because of the inferiority of Amerindian civilization and the natives' crimes against natural law. The Spanish had a duty, he claimed, to save innocent lives from the practice of human sacrifice and to provide a path for the propagation of the faith. Sepúlveda's arguments were highly regarded by many in Charles' Court and the Spanish *encomenderos* in the New World. The second was Vitoria, who gave seven possible legitimate titles to the Spanish in the New World (discussed in the second chapter). His defense of the Conquest was more moderate and conditional than Sepúlveda's account, but Vitoria's position challenged Las Casas precisely because Vitoria was considered the leading Thomist in Spain. Vitoria's position seemed to suggest that Thomism supported a moderate defense of the Conquest. Both Vitoria and Sepúlveda claimed that their arguments were within the boundaries of the just war tradition. Las Casas dissented from both of their views. In doing so, he restored the original parameters of the just war tradition.

The Development of the Just War Theory

Although Aristotle and Cicero both touch upon the nature of a just war, Saint Augustine of Hippo is considered the founder of the just war tradition.¹ This title is bestowed upon Augustine for two reasons. First, medieval and early modern authors, including Thomas and Las Casas, used Augustine as their primary reference point because he provided the most robust and articulate defense of a just war in antiquity. Second, Augustine was able to address the pacifist objections that many Church Fathers had to war on account of certain verses of the Bible. Confusion about the roles of force, violence, and war among early Christian thinkers had proliferated due to varying Biblical interpretations. On the one hand, there is minimal mention of war and great emphasis on peace and love in the New Testament. On the other hand, the Old Testament is full of warrior prophets and kings who went to battle sometimes at the direct command of God. In attempting to reconcile this seemingly contradictory position regarding violence and war, Augustine argues that “precepts and counsels and permissions may be changed, as different times require different arrangements.”² For instance, Jesus reprimands Peter for cutting off a Jewish guard’s ear in the Garden of Gethsemane, but as Augustine wittily remarks “doubtless it was mysterious that the Lord should require them to carry weapons, and forbid the use of them.”³ The virtue of prudence, therefore, is the philosophical foundation of his defense of the idea of just war and just acts of violence.

¹ Aristotle, *Politics*, 1.8.1256b25; Cicero, *De Officiis*, trans. Walter Miller (New York: MacMillan, 1913), Book 1.11-13

² Augustine, *Contra Faustum*, quoted in Augustine, *The Political Writings*, ed. Henry Paolucci (Washington DC: Regnery Publishing, 1962), 169.

³ Ibid.

Many scholars identify Augustine's understanding of the Fall and of human sin to be the linchpin of his articulation of the just war.⁴ War, in this regard, is a result of sin, pride, and disordered love. In emphasizing Augustine's focus on sin, however, scholars usually do not pay adequate attention to his Classical and teleological understanding of nature. Augustine writes, "*the natural order...seeks the peace of mankind.*"⁵ Injustice occurs, according to Augustine, when human beings disturb "*the natural order which the eternal law requires us to observe.*"⁶ Augustine's political thought is not mainly theological. It derives primarily from philosophical foundations. The true starting point of Augustine's articulation of the just war is not sin; rather, it is the exercise of virtue grounded in natural right.

The Augustinian just war is intimately tied to his understanding of justice. Augustine defines justice as "that virtue which assigns to everyone his due."⁷ Justice is fundamental to the proper administration of a republic. Following Cicero, Augustine argues that the Roman Republic never lived up to the true definition of a republic because of its various transgressions and abuses. As such, it was only a semblance of a republic. He writes, "Remove justice, and what are kingdoms but gangs of criminals on a large scale? What are criminal gangs but petty kingdoms?"⁸ Although Augustine realized that many republics fail to achieve true justice, justice itself was still intelligible to human beings and necessary for political life.

⁴ David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction* (Wilmington, DE: ISI, 2012); Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975).

⁵ Augustine, *Contra Faustum*, quoted in Augustine, *Political Writings*, 163, emphasis added.

⁶ *Ibid.*, 170, emphasis added.

⁷ Augustine, *City of God*, 19.21.

⁸ Augustine, *City of God*, 4.4.

It is not surprising, then, that the first condition for a just war is a just cause. A just war is always a response to a violence or wrong committed by another foreign republic. In the *City of God*, Augustine argues that the defense of one's life, liberty, and property from an invading force is an example of a just cause.⁹ In other words, the initiating commonwealth violates justice through unwarranted aggression. Just war is made possible by attempting to reinstate and reinforce justice among nations. For this reason, at the conclusion of the war, the just victor needs to instruct the vanquished in moral education "in order so the injurious person may learn from him whom he wronged what is the *true nature of things* for the sake of which he committed the wrong, and may be won back with sorrow for his sin to that concord."¹⁰ Justice is served in two ways. First, the purpose of the war is to reestablish the just natural order. Second, the just victor needs to educate and reorient the aggressor to virtue and moderation so as to avoid future war.

The second condition is proper authority. Augustine's belief in the legitimacy of secular authority does not stem solely from Paul's admonition to follow one's leaders. It is also rooted in his understanding of nature. Following Scipio's definition in Cicero's *Republic*, Augustine defines a commonwealth as "a multitude of men bound together by some bond of concord."¹¹ Political society is natural insofar as it is rooted in well-ordered love and the common good. Although Augustine does hold that government is a result of human sin (as opposed to Thomas' view that government would have existed without sin), he does believe in the necessity of a political ruler for the sake of order. He writes, "the natural order...ordains that a monarch should

⁹ Augustine, *City of God*, 3.10.

¹⁰ Augustine, *Letter 138*, quoted in Augustine, *Political Writings*, 175.

¹¹ *Ibid.*, 174.

have the power of undertaking war if he thinks it advisable.”¹² Only a proper authority has the power to declare a war. A private citizen or a lower ranking government official cannot declare war. As Corey and Charles adeptly argue, Augustine’s requirement of a proper authority significantly limits the number of possible wars.¹³

The third requirement for a just war is that it needs to be directed to peace and mercy. According to Augustine, all human beings desire peace. The soldiers who fight a just war are no different. They aim simply to rectify the wrong committed by the aggressor.¹⁴ Augustine, therefore, urges mercy in the aftermath of victory: “As violence is returned to one who rebels and resists, so should mercy be shown to one who has been conquered or captured, especially when there is no fear of disturbance of peace.”¹⁵ The centrality of peace and mercy is also the reason why war should be considered a last resort. It is also the foundation of the doctrine of proportionality, whereby the waging of the actual war cannot be more destructive than the injustice it seeks to eradicate.

Augustine’s thoughts on the topic are scattered throughout his writings, but he nevertheless provides a fairly systematic overview of the nature of a just war. Thomas Aquinas accepts Augustine’s views almost without qualification. Thomas’ only addition to the tradition is how he frames the just war in the context of charity. In *Summa Theologica* II-II Q. 40, war is examined in the midst of a litany of vices often opposed to charity, such as strife, discord, and scandal. Whereas Thomas unilaterally condemns most of the vices opposed to charity, his

¹² Augustine, *Contra Faustum*, quoted in Augustine, *Political Writings*, 163.

¹³ Corey and Charles, *Just War Tradition*, 61.

¹⁴ Augustine, *City of God*, 19.12.

¹⁵ Augustine, *Letter 189: To Boniface*, quoted in Corey and Charles, *Just War Tradition*, 62.

discussion on war is unique in that he claims that war is not necessarily antithetical to charity. Following Augustine, Thomas argues that a just war must be promulgated by a proper authority, since private individuals cannot declare war against each other. There also needs to be a just cause responding to some fault that needs to be remedied. Furthermore, this just cause must be in accordance with the common good of the citizenry, such as self-defense against an opposing nation. Third, there needs to be rightful intention; through war, good must be advanced and evil avoided.¹⁶

Rhetorical lamentations of the destructiveness of war are noticeably absent from Thomas' discussion on war. Rather, he limits his discussion of the just war to fairly technical theological concerns. In the second article, he argues that clerics and bishops cannot participate in the waging of war, even a just war. The role of the cleric in war is limited to spiritual needs, such as the administration of the sacraments and spiritual exhortation. In the third article, Thomas defends the use of ambushes by arguing that they are not contrary to justice. In the fourth article, Thomas defends the possibility, in times of special need, for Christians to wage war on holy days. As a doctor is allowed to see patients in order to bring healing, so may war be waged on a holy day in order to bring about order and justice.¹⁷ Thus ends Thomas' examination of the just war.

The brevity of Thomas' discussion should not lead one to presume that Thomas does not think war was a serious moral issue. Rather, the key to understanding Thomas' view of war is not within fortieth question, but in what he believes to charity to be. Charity, according to

¹⁶ Aquinas, *Summa Theologica*, II-II Q. 40, a. 1.

¹⁷ *Ibid.*, II-II Q. 40 a. 2-4.

Thomas, “is the friendship of man for God.”¹⁸ It is a virtue and a voluntary action that can continue to be perfected through habituation. Charity is the most perfect of all the virtues; indeed, no true virtue is possible without charity. Charity produces the interior acts of joy, peace, and mercy, and the exterior acts of beneficence, almsdeeds, and fraternal correction.¹⁹ Given that his discussion of war takes place within this context, a just war, then, needs to be in accordance with the interior and exterior acts of charity. Following Augustine, the ultimate goal of war must be peace and a just war must be waged with as much mercy as possible. As the just war is a result of a wrong, which implies the need for some form of restitution, a war must bring with it some form of fraternal correction. Although viewing the just war in terms of charity provides the just war with theological and philosophical underpinnings, it does not provide a robust practical or specific “nitty-gritty” collection of details of how a just war ought to be waged. Thomas’ decision not to elaborate further on the just war had one significant impact on the Amerindian question: it allowed Vitoria and Sepúlveda to use Thomas’ vocabulary, while also adding ideas, positions, and solutions that were alien to his thought.

The Just War and the Law of Nations in Vitoria and Sepúlveda

Vitoria follows the just war tradition in positing that war is not necessarily contrary to the Christian New Testament.²⁰ He also intentionally draws upon Augustine’s and Thomas’ conditions for a just war. First, Vitoria insists that a just war has to be a response to a just cause. Vitoria writes, “The sole and only just cause for waging war is when harm has been inflicted.”²¹

¹⁸ Ibid., II-II Q. 23 a. 1.

¹⁹ Ibid., II-II Q. 28-33.

²⁰ Vitoria’s defense of war is significant in historical context. Erasmus, Vives, and Luther all had somewhat different views on the subject, but they shared a skepticism and hesitancy to war.

²¹ Vitoria, “On the Law of War,” 303.

Following Augustine, a just war ought to be waged for the peace and security of the commonwealth. Just wars always aim for the restoration of the common good.²² He mentions specifically that wars waged due to difference of religion, enlargement of empire, personal glory and convenience are patently unjust.²³ He condemns forms of tyrannical behavior, such as when a king misuses his position to serve his private goods.²⁴ Vitoria follows the tradition in claiming that a just war can only be waged by a proper authority. Vitoria, however, adds something absent from the thought of Augustine and Thomas: he claims, quoting Aristotle, that before a prince can declare a war, he needs to consult wise men.²⁵ The consultation of wise men is necessary in order to minimize the chances of the prince entering into a war hastily.

In addition to the other important components of just war theory – such as rightful intention, last resort, and the attainment of peace – Vitoria emphasizes the doctrine of proportionality, whereby not all injuries are excuses for a war. A prince, for example, should avoid waging war if there is an expectation of heavy casualties and the destruction of several cities.²⁶ Since the purpose of the just war is to attain peace, Vitoria emphasizes that war cannot be waged without constraint. Innocents cannot be killed intentionally, since they have done no harm. Women, children, the elderly, travelers, visitors, clergy, and monks cannot be attacked. The goods and property of the innocents, however, may be taken in order to gain victory, but if the war can be won without plundering non-combatants, soldiers must restrain themselves from

²² Ibid. 305.

²³ Ibid., 302-303.

²⁴ Ibid., 303.

²⁵ Ibid., 307.

²⁶ Ibid., 314, 315-316.

such actions.²⁷ One of the most important rules in Vitoria's thought is that "the punishment should not exceed the crime. On the contrary, punishments should be diminished in favor of mercy. This rule is not only based on human law, but also on natural and divine law."²⁸ Fugitives should also be spared, tribute may be required of a defeated enemy, and defeated kings do not lose their throne automatically.²⁹ In accordance with the just war tradition of Augustine and Thomas, Vitoria believes that war has to be fought with the highest moral standards.

Vitoria provides a detailed examination of the just war. In being so comprehensive, Vitoria expands the just war tradition by integrating it with a concern for the law of nations (*ius gentium*). The just war, in Vitoria's formulation, develops a keen awareness of international relations. As a consequence, the just war can be implemented in cases other than the defense of a nation. For example, it can be waged in order to further some common international good (e.g. ending human sacrifice in the Indies).³⁰

Vitoria's position on the just war is entwined intimately with the *ius gentium*. While the term was widely used in medieval political thought, there was no settled definition of it. Thomas addresses the nature of the *ius gentium*, but he does not do so in great detail. According to Thomas, the *ius gentium* is a type of human law different than civil law. Although the law of nations is positive law, it "derives from the law of nature as conclusions from premises, e.g., just buyings and sellings, and the like, without which men cannot live together."³¹ The *ius gentium*,

²⁷ Ibid., 315, 317.

²⁸ Ibid., 326.

²⁹ Ibid., 321-326.

³⁰ Vitoria, "De Indis," 287-288.

³¹ Aquinas, *Summa Theologica*, I-II Q. 96 a. 4.

therefore, has a unique place in Thomas' thought. On the one hand, it is distinct from natural law. Its propositions are not as immediately known as are natural law's precepts. On the other hand, the *ius gentium* is made up of conclusions that derive directly from the natural law.

Thomas argues that since it is derivative of the natural law, human beings naturally agree to it.³²

Vitoria and Soto took Thomas' position further, arguing in their respective commentaries that the *ius gentium* is closer to the natural law than positive civil law.³³

In being more specific on the relationship between the natural law and the *ius gentium* than Thomas, Vitoria develops certain ideas about the *ius gentium* that are alien to Thomas' political thought. Vitoria asserts, "natural law cannot be served without the law of nations."³⁴ In highlighting this important assertion, Stephen Brett correctly notices the political nature of Vitoria's claim: without an international disposition to protect and honor the good, nations would be free to break the natural law.³⁵ There is, however, a deeper philosophical element to Vitoria's reasoning. It stems from the fact that (1) if human beings are naturally social and political animals and (2) if human beings can interpret the basic premises of natural law (and deduce from it the *ius gentium*), then the law of nations is important in protecting the community of nations, lest foreign affairs turns into a Hobbesian state of nature. Since the law of nations is a bulwark for the protection of the natural law, Vitoria argues that no single individual or polity can violate the *ius gentium*.³⁶ This position is considerably radical, because it creates an inviolable *human*

³² Ibid., I-II Q. 96 a. 4, r. 1.

³³ Brett, "The Justification of Slavery," 132, 180.

³⁴ Vitoria, *Commentary on Secunda Secundae*, Q.66 a.2, num.3: "ut non possit servari jus natural sine hoc jure gentium," Latin quoted in Ibid., 133.

³⁵ Ibid., 133-134.

³⁶ Ibid., 134.

law that all human beings are expected to follow. It assumes, moreover, that all human beings ought to be able to interpret the natural law in such a way that they can come to know the principles behind the *ius gentium*.

It is at this point that an incongruity develops in his thought, because Vitoria admits that sometimes in international affairs, a principle from the *ius gentium* may not be known:

And there are certainly many things which are clearly to be settled on the basis of the law of nations (*ius gentium*), whose derivation from natural law is manifestly sufficient to enable it to enforce binding rights. *But even on the occasions when it is not derived from natural law, the consent of the greater part of the world is enough to make it binding, especially when it is for the common good of all men.* If, after the dawn of creation or after the refashioning of the world following the Flood, the majority of men decided that the safety of ambassadors should everywhere be inviolable, that the sea should be common property, that prisoners of war should be enslaved, and likewise that would be inexpedient to drive strangers out of one's land, *then all these things certainly have the force of law, even if a minority disagree.*³⁷

Vitoria admits that not all human beings may agree on the *ius gentium*. This lack of unanimity, however, ought not to stop the majority of the world from enforcing it upon the minority for the common good. All human beings have the potential of understanding the *ius gentium*, but they may not adequately adhere to its principles. Hence, it is conceivable that a just war could be waged over principles that the enemy (i.e. those with a corrupted view of the *ius gentium*) may not accept or understand. In doing so, Vitoria places a significant amount of trust in the majority of humankind to interpret the *ius gentium*. Reflection upon the state of the *ius gentium* before Noah's flood, however, may provide a formidable challenge to Vitoria's position.

The aforementioned quotation of Vitoria also provides a clear litany of what is expected from adherence to the *ius gentium* – safety for ambassadors, the common property of the sea, and

³⁷ Vitoria, "De Indis," 280-281, emphasis added.

the enslavement (instead of the killing) of prisoners of war. In other sections of his *De Indis*, Vitoria provides a few additional principles of the *ius gentium* that proceed from natural law: the right to travel freely and trade peacefully, hospitality to strangers, and the principle of *res nullius* whereby something unclaimed belongs to the first taker.³⁸ Strikingly, Vitoria also considers the preaching of the Christian faith to be a protected right of the *ius gentium*, even though he does not protect the right of other religions to preach to Christians; here we have an example where Vitoria blatantly favors Christianity, despite formally positing human equality. Anthony Anghie considers Vitoria to be inconsistent on this point. However, viewed from the lens of Thomism, Vitoria was actually consistent, given that no one could claim a right to preach heresy. All other religions are heretical. In this regard, the subjective rights of an individual are always based on objective natural right.³⁹

Vitoria asserts that the Amerindians, as rational human beings with legitimate governments, are not exempt from the *ius gentium*. Indeed, he assumes that the Amerindians ought to be able to understand the basic principles of the *ius gentium*.⁴⁰ As such, Vitoria provides the Spanish with legitimate titles when the Amerindians violate the *ius gentium*. If the Amerindians, for example, deny the Spanish the right to trade, to have access to clean water, and to enter town and cities, the Spanish would have *just cause* to fight the natives. Even more

³⁸ Ibid., 278-280.

³⁹ Ibid., 284; Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005), 23.

⁴⁰ Anghie, *Imperialism, Sovereignty, and the Making of International Law*, 23, 29. Antony Anghie, an important recent commentator on Vitoria, incorrectly states that Vitoria denies the Indians sovereignty because they were pagan. His opinion stems from hyperpolarizing divine and natural law, which leads him to misunderstand the nature of human law (and the *ius gentium*) and human law's corresponding relationship with divine and natural law. He does correctly point, however, that Vitoria attempted to make the *ius gentium* serve the divine law and propagation of the faith.

controversially, if the Amerindians obstruct the propagation of the Catholic faith, the Spanish could wage just war upon them for not obeying the principles of *ius gentium*. Vitoria even goes so far as to state, “If all measures to secure safety from the barbarians besides conquering their communities and subjecting them have been exhausted, *the Spanish* may even take this measure [i.e. the conquering and subjecting of the natives].”⁴¹ As this quotation shows, the just cause condition expands drastically. It is no longer the Augustinian defense against invaders. The term, rather, has transformed to include acting against a nation that does not obey the dictates of the *ius gentium*. The condition of just cause is widened to include injuries that have little particular bearing on the defense of one’s nation. Also, in the case of the conquering of the Amerindians, Vitoria, at least in the *De Indis*, is eerily silent about whether the sovereign or the conquistador decides whether or not the Amerindians deserve to be attacked. In sum, despite Vitoria’s references to Augustine and Thomas, Vitoria expands the parameters that they had laid out for the just war tradition.

Although many commentators recognize that Vitoria’s development of the *ius gentium* was radical, they nevertheless disagree about its consequences. In the twentieth century, devout Catholics and Kantian-minded defenders of international arbitration greatly extolled Vitoria’s legacy. Horatio Muñoz claims that “above the narrow nationalism [of the time] stood his idea of the universal brotherhood of all the peoples of the earth.”⁴² Vitoria, he claims, did not write as a self-interested Spaniard, but was the first human being to look for order in the merging modern world. James Brown Scott argues that Vitoria, not Grotius, was the founder of international law, because Vitoria “proclaimed the existence of an international law no longer limited to

⁴¹ Vitoria, “De Indis,” 283.

⁴² Muñoz, *Victoria and the Conquest of America*, 131-132.

Christendom, but applying to all States, without reference to geography, creed, or race.”⁴³ These scholars also praise Vitoria for his supposed modernism by comparing him to other Classical authors. Scott argues insightfully that Vitoria challenged Aristotle’s conception of the *polis*. Whereas for Aristotle the polis is self-sufficient, Vitoria seems to suggest that no regime is self-sufficient, unless it partakes in the solidarity of the law of nations.⁴⁴ Muñoz points out that Vitoria intentionally changed the Roman civil law definition of *ius gentium* from *ius gentium est quod naturalis ratio inter omnes homines constituit* (“that which natural reason establishes among *all men*”) to *quod naturalis ratio inter omnes gentium constituit* (“that which natural reason establishes among *all nations*”). Vitoria’s switch from *homines* (men) to *gentes* (nations) is significant.⁴⁵ Vitoria’s concern for *gentes* has led some scholars to argue that he helped to make the nation-state the primary foundational unit of human affairs.⁴⁶

Sepúlveda’s conception of the just war is even more radical than Vitoria. In his dialogue, *Democrates Secundus*, the protagonist, Democrates, begins his discussion of war by referencing the Augustinian-Thomistic claim that a just war ought to be waged for the sake of peace: “War, Augustine wrote, ought to be necessary...for peace is not sought so that war may be cultivated but war is waged so that peace is obtained.”⁴⁷ Like Vitoria, Sepúlveda argues that a just war needs a just cause, must be promulgated by a legitimate authority, and needs to have an intention in accordance with right reason. He also rejects the possibility of total war; he affirms that, in a

⁴³ Scott, *Spanish Origins*, 10.

⁴⁴ *Ibid.*, 138.

⁴⁵ Muñoz, *Victoria and the Conquest of America*, 133.

⁴⁶ Fernandez-Santamaria, *The State*, 62; Muñoz, *Victoria and the Conquest of America*, 132.

⁴⁷ Sepúlveda, *Tratado*, 52, 54: “Bellum, inquit Augustinus, necessitatis esse debet...non enim pax quaeritur ut bellum exerceatur, sed bellum geritur ut pax adquiratur.”

war, the innocent, ambassadors, and religious clerics ought not to be injured.⁴⁸ Like Augustine and Thomas, Sepúlveda grounds his arguments not simply on divine revelation, but also on a teleological understanding of the nature of things. Sepúlveda, therefore, intentionally invokes a Thomistic philosophical anthropology: he quotes Thomas' definition of the natural law as humanity's participation of the eternal law, he argues that man comes to understand the natural law through reason, and he attributes the propensity for human beings to sin to disordered appetites.⁴⁹

For Sepúlveda, rationality and the ability to interpret the natural law are necessary in establishing a just government. This anthropology lays the groundwork for his defense of the Conquest. Sepúlveda claims that those whose natural condition does not allow them to fully participate in reason "ought to obey others."⁵⁰ To a certain extent, this argument aligns with the Classical tradition, especially with the proposition shared by Aristotle and Thomas that the perfect should rule over the imperfect. In following this tradition, Sepúlveda mentions that, for a virtuous human being, the appetite is habitually in accordance with reason. In human beings who are not wise, the appetite overwhelms reason, making them fools and depraved.⁵¹ He writes: "For Scripture in the book of Proverbs states: *he who is a fool will serve the wise*: and such are the barbarians and inhumane people averse to civil life and to gentle customs."⁵² Sepúlveda believes that the Amerindians are barbarians and that the Spanish have the human

⁴⁸ Ibid., 68, 72.

⁴⁹ Ibid., 66.

⁵⁰ Ibid., 80: "ut aliis parere debeant."

⁵¹ Ibid., 82, 84.

⁵² Ibid., 84: "Scriptum est enim in libro Proverbiorum: *qui stultus est serviet sapienti*: et tales esse barbaras et inhumanas gentes a vita civili et a mitioribus moribus abhorrentes."

responsibility to bring prudence and a fuller understanding of the truth to their laws, clemency to their customs, and excellence to their civilization.

Sepúlveda's four reasons for waging war against the Amerindians are outside the parameters of the Augustinian just war tradition. Sepúlveda attempts to sell his first reason – that the Spaniards are a superior civilization and that the Amerindians are natural slaves – as part of the tradition because it has a perceived just cause and noble intention (i.e., the civilizing of the Amerindians). The Spanish, in this regard, are restoring justice by giving the Amerindians what is due to them, namely, good government, laws, and education.⁵³ Sepúlveda's analysis lacks Augustine's emphasis on last resort and the inherent defensiveness of a just war (e.g. the protection of property). As Las Casas notes, Sepúlveda's argument challenges the naturalness of political community, which Spanish imperialism violates.⁵⁴ Even more seriously, Las Casas argues that Sepúlveda's natural slave argument disregards the distributive justice of God's creation, as mentioned in the third chapter.

Sepúlveda's second and closely related reason in favor of the Conquest is the propensity of the Amerindians to break the natural law. In order to convince his audience that the attempt to reinstate natural law was a just cause, Sepúlveda draws upon the Old Testament to show that the Jews fought the Canaanite pagans because the latter had broken the natural law.⁵⁵ Here he presents a popular argument, which claimed that the Canaanites were attacked by the Jews because they were pagan. The pagan beliefs of the Canaanites, Sepúlveda argues, are against natural law; hence, the Jews had a right to wage war against them. Although Sepúlveda quotes

⁵³ Ibid., 80-84.

⁵⁴ Las Casas, *In Defense of the Indians*, 48.

⁵⁵ Sepúlveda, *Tratado*, 112-122.

Thomas' definition of the natural law earlier in his work, he does not actually apply Thomas' definition. Instead, like some of the canonists, he limits natural law to that which is in the Old Testament. Not only does this definition of natural law conflate natural and divine law into the same thing, but it also implicitly denies the universality of natural law.⁵⁶ This argument forces Las Casas to tread carefully, since he has to protect the right of the Jews to wage war against the Canaanites, lest the Jews and the voice of God become aggressors in an unjust war. In the Valladolid debate, Las Casas argues that the Jews fought the Canaanites, not because they were pagan, but because they had to take back their land. For Las Casas, the Jewish wars were legitimate acts of defensiveness in accordance with the traditional just war position.⁵⁷ Sepúlveda, therefore, errs when he compares the Jews to the Spanish and the Canaanites to the Amerindians, because the Jewish wars were in accordance with the just war guidelines, while the Spanish Conquest was not.

Sepúlveda's third argument for the Conquest centers on stopping the human sacrifice of innocents. He bases his position on the assumptions of the previous first two reasons. He argues that human sacrifice proves that the Amerindians are members of an inferior civilization who do not understand the natural law.⁵⁸ Las Casas rejects this argument, again, because it is not a defensive war; consequently, it is unjust. Sepúlveda's fourth reason is that the Conquest paves the way for the propagation of the faith. Although he is noticeably against forced baptism because true conversion is necessarily voluntary, he believes, like Soto, that the Amerindians ought to be confronted by the truth of the Gospels. Christians ought to have the right to preach.

⁵⁶ Sepúlveda's definition follows the error of Guido de Baysio and Rufinus, discussed in the dissertation, p. 81.

⁵⁷ Las Casas, *In Defense of the Indians*, 105.

⁵⁸ Sepúlveda, *Tratado*, 128-152.

The Conquest, therefore, serves an important spiritual purpose: it provides the Amerindians a chance to enter the Church and, hopefully, receive eternal life.⁵⁹ From the perspective of the just war, however, he neglects the conditions of last resort and proportionality.

As many recent commentators have noted, some of Vitoria's and Sepúlveda's arguments are similar.⁶⁰ The opinion of these scholars challenges older views because usually Vitoria was praised as the founder of international law and as an upholder of human dignity, whereas Sepúlveda was defamed as some sort of monster. This new position is summed up nicely by Anthony Pagden who states that "Sepúlveda's reading of Aristotle turns out in the end to be not so very far from Vitoria's own; it is difficult to see what all the fuss was about."⁶¹ Indeed, there are certain similarities between the two scholars. Both men, after all, greatly expand the traditional boundaries of the just war theory by legitimizing offensive wars in the defense of the natural law and the *ius gentium*.

As Luis Cortest argues, however, this new assertion in the literature is exaggerated.⁶² There remain significant differences between the two men: Vitoria defends Amerindian *dominium*, Sepúlveda does not. Moreover, many modern commentators miss a crucially important point: the titles that Vitoria provides the Spanish king are conditional upon particular circumstances, whereas Sepúlveda's four reasons defending the Conquest are couched in universal terms.

⁵⁹ Ibid., 154-178.

⁶⁰ Adorno, *The Polemics of Possession*, 114-115, 119; Pagden, *Fall of Natural Man*, 111.

⁶¹ Pagden, *The Fall of Natural Man*, 111.

⁶² Cortest, *The Disfigured Face*, 47-49. It also worth mentioning that Gutiérrez cites, in a footnote, correspondence between the Thomist Melchior Cano and Juan de Sepúlveda in which Cano argued that Sepúlveda's position was contrary to Vitoria, and Sepúlveda, in response, admitted some disagreement with Vitoria: Gutiérrez, *Las Casas*, 520 n39.

With this distinction in mind, the differences between the two men become clearer. Both Vitoria and Sepúlveda believed the Spanish were a superior civilization, but only Sepúlveda thought this reason alone was a just cause for war. Both Vitoria and Sepúlveda were appalled by Amerindian customs against natural law. Sepúlveda believed that this reason justified the Conquest. Vitoria was more hesitant, believing that Spanish intervention in order to protect Amerindians from human sacrifice was possible only as a last resort. Sepúlveda believed that the propagation of the faith was a legitimizing reason for the Conquest, while Vitoria's belief in *dominium* greatly limited this argument. Vitoria believed that wars could be waged only for the propagation of the faith when foreign leaders were persecuting native Christians.

The overarching difference between the two scholars, however, is in their relationship to the just war tradition. Vitoria greatly expands the parameters of the just war past Augustine and Thomas, but he makes more of a visible attempt to keep his terminology aligned with the tradition's vocabulary. He frames everything as a just cause and the conditionality of his arguments shows that he has at least a nominal concern for last resort and proportionality. He also frames interference in Amerindian government by appealing to mercy and peace. While an argument can be made that Sepúlveda attempts to make his arguments conform to a just cause, there is not an adequate amount of attention to last resort and proportionality in his work. Thus, Sepúlveda's arguments are outside the Augustinian-Thomistic just war tradition. Rather, his concept of the just war comes from the less systematic accounts of the pre-Christian Aristotelian understanding of a just war, which allows for the possibility of superior civilization to attack inferior groups of people, such as natural slaves.⁶³

⁶³ Aristotle, *Politics*, 1.8.1256b25.

Las Casas responds to both Vitoria's broadening of the just war theory and Sepúlveda's discarding of it. Las Casas returns to a more moderate understanding of the Augustinian-Thomistic tradition. In drawing upon the tradition, Las Casas comes to the firm conclusion that the Spanish do not have a claim to wage a just war in the Americas. Instead, it is the Amerindians who have the right to wage war against the Spanish.

Las Casas' Restoration of the Just War Tradition

Las Casas restores the just war tradition by drawing upon both Augustine's guidelines for a just war and Thomas' integration of the role of charity in war. Las Casas' abundant use of Augustinian rhetoric and lamentations concerning the horrors of war have led a few scholars to claim erroneously that he was a pacifist and a disciple of Erasmus.⁶⁴ Scholars who make this claim overemphasize Las Casas' religious tracts, while neglecting his political writings. The problem with this interpretation is that when Las Casas condemns the waging of war, he is attacking it when made for the purpose of converting souls. He never condemns war *per se*. Nevertheless, embedded in his statements against war for conversion are arguments that expose and convey his belief in the natural limitations of even a just war.

The greatest limitation of war is that it does not mimic in the most perfect way the created order. Creation aims for unity. Violence is contrary to it. Las Casas writes, "*mindless* war is forbidden by natural law, because it contradicts the very way Divine Wisdom deals with all creation, contradicts especially the way established by Wisdom for drawing, for guiding rational beings toward goodness – by the mind."⁶⁵ Although a *just* war is not mindless, his point

⁶⁴ O'Gorman, "Lewis Hanke," 570; Gutiérrez comes close to denying Las Casas subscribed to the just war theory, Gutiérrez, 104.

⁶⁵ Las Casas, *The Only Way*, 158, emphasis added.

raises important questions about the very real limits of violence. The natural limitation for even a just war is that it does not emphasize persuasion. It does not partake in the worthiest and highest faculty of man: the exercise of reason. Las Casas sternly reminds his readers that, “The weapons of war are physical things. Their nature is not to conquer souls but bodies, booty, buildings, material things.”⁶⁶ The traditional answer laid out by Augustine and Vitoria was that the just victor has a responsibility to educate the conquered prince in virtue and to explain to him why the aggressor’s actions were not in accordance with justice.⁶⁷ It gives the victorious just prince the responsibility to make sure that his post-war actions lead to peace. Yet, Augustine did not provide specific guidelines on how this victorious prince was to achieve this goal, perhaps out of prudence. In attempting to lay out more clearly articulated specifics, Vitoria provides the victorious prince almost absolute authority in concluding the war, ranging from the authority to tax the foreign nation for the cost of war to forcing the defeated prince to abdicate.⁶⁸ Although Augustine’s solution attempts to persuade the prince through education, it is easy to doubt the extent to which such a solution could be implemented in practice. Thus, Las Casas’ doubts about war and persuasion remain valid.

The second limitation of war is its sheer destructiveness and the consequent impact it has on the innocent in the nations embroiled in the conflict. In this regard, even a just war creates material evil because it kills life, destroys buildings, and commandeers property. Although this material evil is defensible because it is directed to a good end (i.e., the restitution of what is owed), it nevertheless fills “here and there and everywhere with tears, with sobs.”⁶⁹ Las Casas,

⁶⁶ Ibid., 100.

⁶⁷ Augustine, *Letter 138*, quoted in Augustine, *Political Writings*, 175; Vitoria, “On the Law of War,” 325-326.

⁶⁸ Vitoria, “On the Law of War,” 325-326.

⁶⁹ Las Casas, *The Only Way*, 117.

writes almost as a moralist, “War brings with it cannon fire, surprise attacks, shore raids that are lawless and blind, violence, riots, scandals, corpses, carnage, butchery, robbery, looting, parent split from child, child from parent, slavery, the ruin of states and kingdoms, of lords and local rulers, the devastation of cities and towns and people without number.”⁷⁰ No matter how just the cause, the victims are bound to remember what they themselves witnessed. These experiences lead to the harboring of sorrow, anger, and possibly revenge. Thus, Las Casas hints that the just war tradition does not adequately provide a solution to the justified woes of the innocent.

Thus, Las Casas’ acceptance of the general principles of the just war tradition (just cause, proper authority, last resort, the exercise of charity and mercy) is integrated with his skepticism to war: “The punishment or the prevention of crimes is accepted as a kind of medication or a medicine for a disease. If, however, a medication increases the sickness of the body, it is poison rather than medication.”⁷¹ In other words, the mere applicability of the conditions of the just war in a particular decision does not mean that a war is automatically just or necessary. Here Las Casas is concerned with prudence and proportionality. A war can be just only if it has a chance of succeeding and is more likely to do good than harm. The safety of soldiers, the protection of innocents, the likelihood of a resolution, and the material devastation of land and property all need to be considered. Las Casas writes, “A lawful war results from the guilt of those against whom it is waged. But innocent and guiltless persons have deserved nothing like this, and so war against them has not been lawful.”⁷² Las Casas, therefore, emphasizes, in accordance with

⁷⁰ Ibid., 117.

⁷¹ Las Casas, *In Defense of the Indians*, 214.

⁷² Ibid., 205.

Augustine, that the *means* of how war is waged is of equal importance to the initial traditional conditions.

In his Valladolid defense, Las Casas pays particular attention to the killing of innocents. This concern stems from the atrocities of the Spanish, including the killing of unarmed men, women, and children. Las Casas stresses that all non-combatants are innocent, and it is a mortal sin to kill an innocent. Drawing upon the Holy Bible, Las Casas argues that it is the equivalent of Cain killing Abel. In this way, the killing of innocents is rooted in pride and fear.⁷³ Yet, in addressing the Spanish atrocities, Las Casas had to respond to the claim made by the conquistadors that “once a city has been condemned, all those within it are presumed to be enemies.”⁷⁴ Las Casas condemns this argument on the basis that wholesale violence against an entire city is unjust. The killing of innocents, he claimed, ought to happen only accidentally. This accidental killing of an innocent occurs when, during the climax of the siege, the innocent do not appear to be who they are. In order that a soldier may protect his own life at that particular moment, anyone who appears to be a threat may be killed, especially if the defenders are obstinate to the demands of the conquerors or if they participated in the siege. Non-combatants can only be put to death for their participation in military affairs. Las Casas unequivocally condemns the killing of women, children, priests and clergy, the elderly, and all unarmed civilians.⁷⁵

In defending the lives of the innocent, Las Casas, following the commentary of Saint Thomas, also tries to limit the damage the just side can do to the wicked. Las Casas draws upon

⁷³ Ibid., 205.

⁷⁴ Ibid., 200.

⁷⁵ Ibid., 201.

one of Jesus' most important parables: the stern warning that one should not uproot weeds, lest one also uproots wheat. The wheat represents the good. Saint Thomas and Las Casas take the passage to mean four things in the context of the just war theory: 1) the good must exercise patience; 2) those who are weeds may become wheat through grace; 3) "many people seem evil but lack evil intentions"; 4) "if some evil person is very powerful, he cannot be punished without a disturbance in all divine and human affairs."⁷⁶ War, at its very essence, is the ultimate way in which wheat (i.e. the innocent) is uprooted. Thus, in attempting to balance the wisdom of Scripture with practical wisdom, war must be limited to the context of charity. It ought to be rare.

Las Casas' Application of the Just War to the New World

Following the position of Augustine and Thomas, Las Casas argues that a just war needs to be a response to an injustice. In the case of the New World, Las Casas posits that the Spanish are guilty of several grave injustices, ranging from the stealing of property, the slaughtering, pillaging, and raping of innocents, the enslavement of peaceful people, and the disregarding of Amerindian sovereignty, among other things. The Amerindians, he believes, have an undoubted right to wage war against the Spanish because they are responding to the unjust atrocities committed against them.⁷⁷

In examining the application of the just war tradition to the New World, Las Casas tacitly draws upon Thomas' understanding of sin. According to Thomas, every sin – regardless of how small – harms the soul of the sinner, society, and creation.⁷⁸ By drawing upon this tripartite concern for the individual soul, society, and the order of creation, Las Casas provides a

⁷⁶ Ibid., 210.

⁷⁷ Las Casas, *History of the Indies*, 51-53.

⁷⁸ Aquinas, *Summa Theologica*, I-II Q. 75-89.

comprehensive understanding of how Spanish injustices came to be. One of the things that commentators often neglect in their work on Las Casas is his pastoral approach to the sins of the conquerors. Consistent with traditional Catholic Thomistic theology, Las Casas states in his *Short Account* that the various injustices caused by the Spanish were spurred by vice, especially the lust for gold. This sin was allowed to grow in the hearts of the early Spanish settlers and conquistadors due to their evil habits. The great majority of the original sailors and colonists were fundamentally corrupt. They did not possess the moral capacity to have authority over others because they had no control over themselves. They were able, therefore, to exploit the kindness and hospitality of the Amerindians. As mentioned in the third chapter, Las Casas believes that Amerindian meekness and humility explained partially how easy it was for the Spanish to conquer the Amerindian islands and, subsequently, most of Central and South America. As the New World was a fertile, beautiful land with large amounts of precious stone, gold, and pearls, the Spanish could have only been constrained by their good habits and moral character. As they were lacking in such habits, Las Casas claimed that it was not surprising that men prone to mortal sin would take advantage of such a situation. Las Casas laments, “Their insatiable greed and overweening ambition knew no bounds.”⁷⁹ The Spanish had no concern for the souls of the Amerindians because most of the original colonists did not have concern for their own souls. Saddest of all, Las Casas claims bluntly – with the all the authority that an empirical fact is supposed to convey – that the longer a Spaniard stayed in the New World, the crueler and

⁷⁹ Las Casas, *Short Account*, 13.

harsher the Spaniard became. The ability to do something wrong turned into the thirst do something wrong.⁸⁰

Las Casas' diagnosis of virtue and vice undoubtedly comes from an Aristotelian-Thomistic perspective. He, then, proceeds to add upon this philosophical foundation an important and very controversial theological concept. Las Casas argues that nearly all of the Spanish conquistadors and colonists have a reprobate mind. He writes, "the wretched Spaniards, having abandoned all Christian sense of right and wrong and had been totally given over to the reprobate mind, are utterly impervious both to the justice of the actions of the local inhabitants and to the rights of these people."⁸¹ Las Casas' use of reprobation is not some form of cheap low-level rhetoric. Rather, it is a serious theological issue addressed by Saint Thomas in his discussion on predestination. Reprobation, according to Saint Thomas, occurs when providence permits some human beings to fall away from the proper end of humankind, namely eternal life.⁸² Grace, therefore, is withheld from the person. As such, eternal damnation is likely to occur. At first, reprobation may seem to be incompatible with Thomas' and Las Casas' understanding of God's distributive justice and mercy, the natural law, and the belief that all rational beings can interpret first principles. Thomas, however, argues that reprobation is, in fact, in accordance with justice because it "does not take away anything from the power of the person reprobated" since "this or that particular sin comes from the use of his free will."⁸³

⁸⁰ Ibid., 25: "The longer they spent in the region the more ingenious were the torments, each crueler than the last, that they inflicted on their victims, as God finally abandoned them and left them to plummet headlong into a life of full-time crime and wickedness." See also Las Casas, *Short Account*, 42.

⁸¹ Las Casas, *Short Account*, 69-70.

⁸² Aquinas, *Summa Theologica*, I Q. 23 a. 3.

⁸³ Ibid., I Q. 23, a. 3, r. 3.

Although God has foreknowledge concerning human reprobation, human free will is still intact because the human being in question is still choosing to do the sin voluntarily. God is not forcing the human being to sin. As free will is still intact, Las Casas believes that the destruction of the Amerindians was not created by fate or destiny. Rather, as will be discussed later in the chapter, Las Casas hopes to remedy the injustices of the Spanish by appealing to the king to stop the conquests, by appealing to contrite conquistadors through the sacrament of confession with the corresponding and necessary penance of temporal restitution to the Amerindians, and by defending the right of the Amerindians to wage a just war against further Spanish invasion.

Las Casas' theological reliance on reprobation, however, has another political implication insofar as it has a direct relationship with tyranny. Reprobation causes one to struggle in deciphering between good and evil. The habitual nature of reprobation leads human beings to pursue their disordered loves with more passion. To a certain extent, the effects of reprobation are similar to Plato's and Aristotle's Classical diagnosis of tyranny – a fact that Las Casas himself was aware. Drawing upon the fifth book of Aristotle's *Politics*, Las Casas argues that tyrants “take advantage of discords when these exist, or otherwise they create them to divide people and subject them more easily, because they know it is more difficult, sometimes impossible, to subject a people united in conformity.”⁸⁴ Las Casas portrays the Spanish as devilishly cunning creators of discord. When an Amerindian tribe showed peace, the Spanish would use the peace to enslave, or often kill, their leader, throwing the tribe into disarray. Other times, the Spanish would take advantage of the Amerindians' own feuds. The most salient

⁸⁴ Las Casas, *History of the Indies*, 241.

example is the cunning of Hernando Cortes, who pretended to be befriend the enemies of the Aztecs, only to enslave both the Aztecs and his own allies.⁸⁵

Las Casas also follows the Classical authors in arguing that tyranny is distorted *eros*. Plato and Aristotle posit that the character of a tyrant directly affects the character of the people. As the tyrant abandons the common good for his own lustful private goods, so do the citizenry give up their concern for the common good, resorting to seek the pleasures of vice.⁸⁶ Las Casas, following the insight of these Classical authors, claims that the character of the leader is fundamentally tied to the constitution of the regime. Las Casas notices and laments that Spanish tyranny was producing the same adverse effects upon the Amerindians. The effects of Spanish tyranny were even more severe than what the Classical authors argued precisely because the Amerindians were treated more like slaves than citizens. The Amerindians, he writes, are “oppressed, afflicted, threatened, tormented, and mistreated in various ways,” which lead them to “forget their own humanity” because they were “unable to raise their thoughts above their bitter misery.”⁸⁷

Thus, in accordance with Thomas, Las Casas believes that individual sins (lust, greed, pride) always have political and societal effects. In addition to his cunning insights on the individual soul, Las Casas considers the injustice of the Spanish Conquest by examining its impact on society. In his *History*, Las Casas identifies what he perceives to be the first Spanish injustice against the Amerindians. It occurred on Wednesday, April 9, 1494, less than two years after Columbus’ first voyage.⁸⁸ He recounts how a *cacique* (Indian ruler) had freely ordered five

⁸⁵ Ibid., 241.

⁸⁶ Aristotle, *Politics*, 5.10.1310b10-1313a15; Plato, *Republic*, 571a-592b.

⁸⁷ Las Casas, *History of the Indians*, 81.

⁸⁸ Ibid., 51.

of his citizens to help three Spanish soldiers carry clothes along a river. It should be noted that the *cacique* did not give the Spanish his citizens as slaves. Rather, he sent his vassals out of charity and hospitality to his European visitors. As the five Amerindians were carrying clothes along the river, the Spanish claimed that the natives suddenly left the Spaniards stranded in the river, returning to their village with the Spaniards' clothes. The Amerindian *cacique*, for an unknown reason, did not punish his men, but instead took the clothes for himself. In response to this act, the cruel Alonso de Hojeda took four hundred Spanish soldiers inland and, without any attempt of diplomacy, took captive the Amerindian *cacique* and several of his family members. Upon arriving at the Spanish settlement, Hojeda ordered their beheading in the public square. The situation intensified even further when members of a nearby Amerindian tribe, hearing of the Spanish cruelty against their allies, tried to attack a few Christian soldiers. The small Amerindian army was repulsed by the Spanish, who wounded many and possibly killed other natives.⁸⁹

In this particular episode, Las Casas levels three charges against the Spanish, while finding the Amerindians faultless. All three of these charges are in accordance with arguments found in the just war tradition. The first charge, from which the other two derive, is the total lack of moderation and justice that Hojeda and his soldiers applied to the Amerindians. In terms of the just war tradition, the action lacked proportionality and an adequate just cause to use force. The stealing of the clothes did not merit the severe punishment of capture and death. The actions of Hojeda and the Spanish lacked justice because their innocence was never put to trial. Las Casas asks, "Besides, how could their innocence or guilt be proven? Hojeda captured them on

⁸⁹ Ibid., 51-53.

arrival and nobody knew their language.”⁹⁰ Hojeda and the Spanish violated another condition of the just war tradition: their actions were not a last resort. Instead of finding a peaceful solution to this minor problem, the Spanish used this event to use disproportionate force. Hojeda’s immoderation and injustice led also to yet another violation of the just war: the killing of several innocent people, including women, ambassadors, and government leaders who had done no harm to the Spanish. Las Casas, moreover, suggests that the Spanish took pleasure in their vices; he mentions that the Spanish had cut off the ears of one of the *cacique*’s vassals for no explainable reason.⁹¹

Las Casas’ second charge against Hojeda was his violation “of natural law as well as *ius gentium*.”⁹² Hojeda violated the natural law by unlawfully depriving the Amerindians of what is natural to them, namely, a government created by the consent of the people. By spurning the natural law, he violated also the law of nations through an act of unmitigated aggression. The Spaniard unlawfully entered into a foreign territory with armed men. His army disrespected a principle of the *ius gentium* by killing royalty and ambassadors who had done no harm to the Spanish. For Las Casas, their worst offense was “the capture of a King living peacefully in his own domain.”⁹³ It was the worst crime because government is natural to human beings and the king is the leader and symbol of order. By showing such utter disregard for his rights, the Spanish exposed their contempt for the entirety of Amerindian civilization.

⁹⁰ Ibid., 51.

⁹¹ Ibid., 51.

⁹² Ibid., 52.

⁹³ Ibid., 52.

The third charge Las Casas levels against the Spanish was their failure to understand the nature of justice itself. Justice, as Thomas argues, seeks to find what is right.⁹⁴ He defines it as the “habit whereby a man renders to each one his due by a constant and perpetual will.”⁹⁵ Justice, moreover, does not concern itself with the passions; it aims, rather, to find what is due between two people.⁹⁶ Although Hojeda was rightly upset about the taking of the clothes, his passions did not provide him with an excuse to attack and to terrorize the Amerindians without first attempting to seek peace with the *cacique*. By misunderstanding the nature of distributive justice, the Spanish committed a sin against the entirety of creation. In the case of Hojeda’s expedition, the Spanish failed to realize two things: 1) the Spanish did not have the right to use armed force, to supplant the king, and to despoil his kingdom for such a petty affair; 2) the consequent insurrection of the Amerindians was an act of just warfare against an invading army. Las Casas writes with great passion, “No man in his right mind would doubt that the *cacique* and his people had a right to declare a just war against the Christians.”⁹⁷ According to the standard of the just war theory, the Amerindians were on the side of justice because they were defending themselves from foreign encroachment. They did not instigate the war; they were simply responding to a tremendous abuse of power. The root of Spanish injustice was their blindness in failing to see the Amerindians as a legitimate political body.

Enriquillo: Las Casas’ Most Important Example of a Just War

Las Casas’ most famous example of an Amerindian just war occurs in his *History*, where he retells in great detail the uprising of Enriquillo. Enriquillo was a *cacique* from Hispaniola.

⁹⁴ Aquinas, *Summa Theologica*, II-II Q. 57 a. 1.

⁹⁵ *Ibid.*, II-II Q. 58 a. 1.

⁹⁶ *Ibid.*, II-II Q. 58 a. 9.

⁹⁷ Las Casas, *History of the Indies*, 52.

His father and grandfather had been lords of the Xaragua kingdom, which had been decimated by the Spanish. Due to the structure of the *encomienda*, Enriquillo, though still the nominal leader of the tribe, had to spend a certain period of time with his subjects working in the mines every year. As was befitting his noble blood, Enriquillo was well-educated because he had been taught by Franciscan missionaries to read, write, and accept Christianity. Enriquillo's Spanish employer, Valenzuela, took tremendous liberties with Enriquillo: he stole his property, beat him often, and later raped his wife. Outraged by the rape of his wife, Enriquillo tried to bring Valenzuela to the Spanish magistrates. When the Spanish did not give Enriquillo restitution, he decided to challenge the Spanish by refusing to allow his citizens to return to the *encomienda*.

Enriquillo's command caused great consternation among the Spanish. Many of the Spanish felt betrayed and hurt by Enriquillo's perceived obstinacy because many of them had known the *cacique* since his youth. Hence, the Spanish diminutive of *-illo* to his name. Las Casas criticizes poignantly the Spanish outrage: "Spaniards call this an act of insurrection when, to tell the truth, it is nothing more than escape from a cruel enemy, in the way cattle run from slaughter."⁹⁸ The Spanish Dominican, then, did *not* consider it to be an insurrection. For an insurrection to exist, one must revolt from a legitimate government. The Amerindians had all the conditions of a just war: just cause (the defense of their property), proper authority (Enriquillo was their leader by ancestral custom), last resort (Enriquillo's resistance occurs after a series of unrectified abuses), and the desire for peace (the Spanish, not the Amerindians, attack first).

Not content to see their seasonal slaves so easily abandon him, Valenzeula took eleven men to seize the tribe, but the Amerindians were armed and held them back. Valenzeula retreated and appealed to the local town of San Juan de la Maguana for assistance. The town

⁹⁸ Ibid., 247.

sent eighty armed men, but they were also repulsed by Enriquillo's army. As the fame of Enriquillo grew, hundreds of Amerindians fled from their nearby *encomiendas* and joined his new army. Enriquillo was like an Amerindian Spartacus. He trained his men to fight, and they re-elected him their leader. Enriquillo even developed an elaborate spy system and took great pains to keep the elderly, women, and children from the hazards of battle. Even during warfare, he developed a complex system of food distribution and the creation of housing.⁹⁹

Due to his keen political skills, Enriquillo was able to bargain with the Spanish, and he eventually attained his people's freedom for the rest of his life. He was able to make this bargain, in part, because the Spanish sent Las Casas and a Spanish commander, Francisco de Barrionuevo, to make peace. Although Barrionuevo led the negotiating, Las Casas was pivotal in persuading Enriquillo of the Spanish's good intentions. Enriquillo and his people were able to keep their freedom so long as he swore nominal fidelity to the Emperor.¹⁰⁰ He did, however, agree to return to the Spanish some former African slaves who were not originally members of his republic. He died in peace in the year 1535, sixteen years after the start of his successful revolt.¹⁰¹

Las Casas took great pains to defend the legitimacy of Enriquillo's actions. Explicitly drawing upon natural law's consent of the governed, he states, "Enrique and the handful of Indians who survived the cruelty and horrible tyranny of Spaniards had every right to pursue the Spaniards, destroy and punish them as their capital enemy, *who had destroyed all the great*

⁹⁹ The entirety of the Enriquillo account is found in *Ibid.*, 246-256.

¹⁰⁰ Wagner and Parish, *Life and Writings*, 76-78.

¹⁰¹ Ida Altman, "The Revolt of Enriquillo and the Historiography of Early Spanish America," *The Americas* 63, no.4 (Apr., 2007): 603, 608.

republics the Indians had established on this island."¹⁰² Las Casas argued that Enriquillo was the only legitimate leader on the island, since the Amerindians never consented to Spanish rule.¹⁰³ Yet, Las Casas, by his own account, admits that, in order to ensure the peace, Enriquillo nominally accepted the rule of the Emperor. This compromise, therefore, demonstrates that Las Casas did not always call for the Spanish to completely withdraw from the Americas. Rather, Las Casas, in this episode, seems to be guided by a certain type of prudence, in which he seeks the best likely outcome. As the next section will show, Las Casas' political solutions to the Spanish Conquest evolve over time. Yet, this brief history demonstrates that Las Casas sometimes lacked prudence.

Las Casas' Various Solutions to the Unjust Wars of the Spanish

Las Casas' support for Enriquillo, his citizens, and the other slaves who broke from their Spanish masters shows that the Spanish Dominican believed that the Amerindians could wage a just war against the Europeans. There is however, a lack of precise consistency in his writings concerning the ultimate solution to the unjust wars of the Spanish. While he supports Amerindian resistance to invading Spanish conquistadors and to the abuses of the *encomienda*, he does not encourage in his writings all of the Amerindians to revolt, as some American abolitionists demanded in the nineteenth century concerning chattel slavery. In accordance with the just war tradition, Las Casas only encourages the Amerindians to wage a war in response to a specific and current Spanish attack or violation. Although he laments the plight of the Amerindians, there remains a certain streak of realism in his thought. He recognizes that the Spanish are unlikely to give up their title to their land. Moreover, he tacitly acknowledges that

¹⁰² Las Casas, *History of the Indies*, 249.

¹⁰³ *Ibid.*, 249.

few Amerindian kingdoms are strong enough to resist Spanish attack. He even realizes that many of the conquered kingdoms, especially the island kingdoms in the Caribbean and the Gulf of Mexico, have such decimated populations that it would be practically impossible to restore their political authority. In seeking to find a solution to the unjust wars of the Spanish, Las Casas *by necessity* calls upon the conscience of the Spanish king and his advisors to restore justice to the Amerindians. Here Las Casas' actions expose one of the great problems of the just war tradition: it does not adequately address how justice can occur when the unjust conquerors are triumphant and unrepentant. Whereas the just war tradition argues that the just conquering prince has the authority to act as the judge of the conquered, Las Casas, in dealing with this extraordinary dilemma, tries to make the Spanish king act as a repentant judge for his own nation's actions.

Although Las Casas consistently appeals to the king's conscience for over fifty years, his various proposals differ greatly. If not viewed chronologically, they are contradictory. There are three different phases in his writings. Their progression exposes Las Casas' train of thought. His first attempt at a comprehensive solution occurred in his *Memorial of Remedies for the Indies* (1516), written just two years after his conversion to the Amerindian cause. As mentioned in the first chapter, his first proposal is fundamentally utopian. It was composed before his serious study of Christian political thought. Absent from his *Memorial* is his Thomism and its corresponding political ideas: the consent of the governed, the natural law known by all human beings, natural right, the just war theory, and a discussion of limited government and sovereignty.

His *Memorial* has three parts. The first consists of fourteen overarching remedies that the Spanish Crown needed to enforce. In this section, he calls for an end to forced Amerindian labor

and slavery, arguing that no native could belong to a Spaniard. However, the early Las Casas does not doubt the legitimacy of the Spanish Conquest. He calls for more colonists to come from Spain and for more orthodox priests to convert the natives.¹⁰⁴ It is clear from this *Memorial* that the early Las Casas did not believe that the conquered Amerindians had a right to rebel because the Spanish had the right to conquer their lands. Rather, the problem that the early Las Casas had with the Spanish was the savagery of their methods. On the one hand, he acknowledges that the Spanish caused great injustices against the Amerindians. On the other hand, he resolutely believes that the Spanish Crown can fix those problems. He seems also to think that the Amerindians will allow the Spanish to continue to rule over them without violence. The third remedy in the *Memorial*, for example, expresses the great hope he has for the Amerindians to act like vassals to the Crown.¹⁰⁵

After a brief second section in which Las Casas identifies the remedies for particular places, the last part of the *Memorial* focuses directly on his utopian project. With the Amerindian population decimated through disease, war, and toil, Las Casas had to formulate the creation of new communities and governments on territory that had become, in a sense, a *tabula rasa*. Las Casas saw an opportunity to create new policies that would hopefully stifle strife. He proposed the creation of communities of one thousand people and provided guidelines for how each community was to work. Each community was to have an administrator, a doctor, a surgeon, a pharmacist, an advocate, two ranchers, twenty miners, ten clerics, two hospital workers, four cowboys, six pigmen, two shepherds, two fishermen, two boatmen, and two

¹⁰⁴ Las Casas, "Memorial of Remedies for the Indies" in *Bartolomé de Las Casas and Thomas More's Utopia: Connections and Similarities. A Translation and Study*, trans. Victor N. Baptiste (Culver City, CA: Labyrinthos, 1990), 15-25.

¹⁰⁵ *Ibid.*, 21.

butchers.¹⁰⁶ These parameters are strikingly specific and strange. They represent an attempt to create order after twenty years of chaos, greed, and destruction. With such specific guidelines for how a community ought to be constructed, Las Casas hoped that the greed that had predominated the original Spanish settlers could be subjugated, in theory, by love of community and God. Nevertheless, as his call for the existence of several miners suggests, the mining of gold would continue to exist. This gold, however, would go to the Crown and not be used for selfish gain.

Although Las Casas' *Memorial* is an attempt to temper human passions and to redress Spanish injustices, the quixotic nature of the project made it unfeasible on two levels. First, Las Casas' *Memorial* has a very artificial view of the Amerindian. While Las Casas has an admirable amount of empathy for the natives, he provides them with no political agency. He does not seek the consent of the Amerindians. He assumes that the Amerindians will accept the project. He also assumes that his proposal – that all Amerindians have a respite from work in order to replenish their population – is an adequate restitution for the committed evils. Second, the *Memorial* has an equally artificial understanding of the Spanish colonist. There is no discussion of how the Spanish colonists will curb their greed. Here Las Casas places an inordinate amount of trust in colonists to follow the authority of the king without military coercion and enforcement. His project lacks the healthy skepticism regarding the Spanish colonists that mark his later writings. In essence, Las Casas' *Memorial* is based on an incorrect and artificial understanding of the human being.

After his intense study of the Christian tradition during his novitiate in the 1520s, Las Casas entered into a new phase of his thinking. The second phase of his intellectual

¹⁰⁶ Ibid., 55.

development on the just war occurs from 1532, with his publication of *The Only Way*, and ends with his disappointment regarding the resolutions (or lack thereof) during the aftermath of the Valladolid debate in 1550. Whereas his *Memorial* only condemns further conquests, Las Casas now bluntly acknowledges the injustice of all the Spanish conquests. However, as a political realist, he does not argue that the Spanish leave the islands, abandoning the Amerindians forever. Instead, Las Casas tries to appeal to conscience. He tries to appeal to the conquistadors and colonists through the sacrament of reconciliation and to Charles by calling upon the king to do his duty as a Christian leader.

Las Casas' first solution to the unjust wars deals with penance and the sacrament of reconciliation. In Catholic theology, a Catholic who is in a state of mortal sin needs to seek absolution through the sacrament of reconciliation from a priest who acts *in persona Christi*. After the confession of one's sins, the priest asks the confessed to perform an act of penance in order to habituate the person to live a virtuous life. Since Las Casas believed that the conquistadors had committed several mortal sins (ranging from theft to murder), he used sacramental confession to attempt to restore justice in the New World. He called for priests to refuse to absolve the sins of Spanish conquistadors and colonists unless they do a thorough act of penance, such as giving up their *encomienda* and/or redistributing their wealth back to the Amerindians.

As was mentioned in the first chapter, this use of sacramental confession had been employed by the Dominicans since 1510s. Before his conversion to the Amerindian cause, Las Casas himself was denied absolution because of his reluctance to give up his *encomienda*.¹⁰⁷ The unique aspect about Las Casas' application to this problem was his forty-page

¹⁰⁷ Las Casas, *History of the Indies*, 208.

Confesionario, a confessional manual that provided specific guidelines in how to minister to Spanish colonists and conquistadors. The *Confesionario* shows quite clearly that Las Casas believed that the sacraments could be used to restore political justice.

Las Casas was concerned with two things. First, he wanted to institute restitution for the Amerindians. Second, he wanted to make sure that the Spanish did not break their penances, lest the integrity of the sacrament become abused for personal profit. Las Casas begins his *Confesionario* by providing a unique institutional check against abuses to the sacrament. The Spanish penitent and the priest, before entering into the sacrament, had to call upon a royal scribe to witness before the actual confession that the penitent is freely claiming that he committed grave sins against the Amerindians, that he will give his property to the natives, and that he will not be able to bestow to his children and heirs anything he gained through unjust conquest.¹⁰⁸ If the penitent possesses slaves, he has to promise before a royal scribe that he will grant all slaves “irrevocable freedom, without limitation or condition.”¹⁰⁹ Moreover, the penitent must revoke any prior composed will or testament, must distribute his goods as the confessor commands, and must provide the Church with retributive power if he fails to keep his promise. Las Casas commands,

And if something should happen or is done counter to what is said above, in whole or in part, the penitent gives power to the bishop, his prelate and the ecclesiastic judiciary, and if necessary to secular judiciary, to assure that he is punished for perjury and compelled to complete all that is said [in this testament and will], omitting nothing. Afterwards he is divested of all his goods and transfers and subjects them to ecclesiastical jurisdiction, so as to constrain him to fulfill all that he agreed to. And he renounces any laws that may help him contest the above agreement.¹¹⁰

¹⁰⁸ Las Casas, *Confesionario*, 3.

¹⁰⁹ *Ibid.*, 4.

¹¹⁰ *Ibid.*, 5-6.

After the signing of the pledge and the making of the confession, an inventory of all the goods of the penitent needs to be made. Direct restitution has to be paid to any living Amerindian that was harmed (e.g. to a personal slave or to members of a tribe that he conquered or exploited). If those he harmed are dead, restitution ought to be given to other harmed natives.¹¹¹

Although Las Casas provides the strictest guidelines for conquistadors, he provides very similar guidelines for Spanish colonists and merchants in the New World. They are not exempt from blame precisely because they participated in the injustices that perpetuated the conquests by making money off the actions of the conquistadors. Although Las Casas does not specify that colonists and merchants must have a royal scribe to witness the pre-confession pledges, the Spanish Dominican does insist on the same amount of monetary sacrifice.¹¹²

Las Casas grounds his case for such stringent measures on two medieval foundations. In defense of the necessity of a royal scribe witnessing the pledge of the penitential conquistador to follow the dictates and decreed penances of the priest, he draws upon the right of priests to refuse absolution for kidnappers, arsonists, and transgressors of churches in the *Decretals*.¹¹³ In this regard, the use of a royal scribe is a prudential and merciful addition in order to protect the legitimacy of the confession, the soul of the penitent, and the justice due to the Amerindians. In addition to canon law, Las Casas grounds his argument, once again, on his Thomistic understanding of law. In condemning the actions of Spanish merchants, for example, Las Casas writes: “All this was against all natural law and the law of nations, and also against divine law.

¹¹¹ Ibid., 8.

¹¹² Ibid., 14-15.

¹¹³ Ibid., 22.

Therefore, [their profit] is entirely unjust, iniquitous, tyrannical and deserving of all eternal fire, and, consequently, null, invalid and without any value and weight from law. And since it was entirely null and invalid from law, they were not able to take justly from the Indians one single *maravedí* of tribute.”¹¹⁴ Las Casas, therefore, bases his policy on an appeal to nature. Although confession is a conduit of grace, it is a response to the penitent’s failure to live up to the standard that nature proscribes for all human beings. Theologically, Las Casas’ paradigm follows the Thomistic belief that grace does not destroy, but perfects nature.¹¹⁵

Las Casas mingles confession and politics in order to break through the widespread hardness of heart among the Spanish. When in Charles’ court, Las Casas used a similar tactic in which he appealed directly to the king. He appealed to Ferdinand days before his death and to Charles during the forging of the New Laws of 1542 and, then, again during the Valladolid debate. He even dedicated his *Short Account* to then-prince Philip. In the introduction of that work, Las Casas lays out his plan in appealing to the consciences of Spanish royalty. Kings, he argues, are “fathers and shepherds to their people and are, accordingly, the noblest and most virtuous of beings” and “entertain nothing save that which is morally unimpeachable.”¹¹⁶ By invoking the character of the office, Las Casas hoped to appeal to the character of the man. While such a strategy may seem antiquated and naïve to the modern reader, the appeal to the king’s conscience was Las Casas’ most successful political tool. Through it, he was able to convince Charles to ban the *encomienda* at least for four years and have the king entertain before

¹¹⁴ Ibid., 14.

¹¹⁵ Aquinas, *Summa Theologica*, Q. 1 a. 1, r. 2.

¹¹⁶ Las Casas, *Short Account*, 5.

a panel of experts the legitimacy of the Conquest. Despite its glimmers of success, however, his plan never quite succeeded.

The third and last phase of Las Casas' thought occurs during the last fifteen years of his life (1552-1566). During this period, the character of Spain changed significantly. Charles V resigned his office to live in a monastery, leaving his son Philip in charge of Spain and the Indies. Philip was apathetic to Las Casas' claims. His interest in the New World was purely monetary. Las Casas was disappointed in Philip and in his own failures. The Valladolid debate had failed to provide a concrete outcome to political questions surrounding the New World. Moreover, Las Casas had seen the failure of his sacramental solution. Spanish conquistadors and colonists, instead of admitting fault and giving up their *encomienda*, died without absolution. In his eyes, these conquistadors and colonists chose very clearly death and hell over justice and salvation.

Las Casas continued to assert the importance of restitution. Although he does not renounce his position on confession, he argues – as opposed to the first two phases – that the Spanish do not have political authority in the New World. In an important letter to Bartolomé Carranza de Miranda, Philip II's confessor and fellow Thomist, he states that the Spanish king can only have authority over the Amerindians when their leaders consent to the Crown. He boldly writes, in an indirect challenge to the new king, “that the king of Castile must be recognized in the new-found Indies as supreme prince and emperor over many kings *only after the kings and natural lords of those realms, and their subjects the Indians, have been converted to the faith and made Christians of their own will, and not through force or violence.*”¹¹⁷ The implication is that Philip does not currently have dominion over the New World. Moreover, it is

¹¹⁷ Las Casas, “Letter to Carranza,” in Sanderlin, *Bartolomé de Las Casas*, 194, emphasis added.

unlikely that Amerindian leaders will give him such authority. He even goes so far to state that Spanish presence in the New World has not provided the Amerindians with many blessings. He claims that in order “to restore the Indians to their human and temporal good way of life, not a single Spaniard would have to remain in the Indies. For who has disturbed, disordered, and completely annihilated the good way of the Indians – insofar as pagans are capable of a good way of life – but the Spaniards?”¹¹⁸ Despite the harshness of the rhetoric, Las Casas does not advocate the complete withdrawal of Spanish colonists from the New World. Later in the letter, he suggests a minimal presence of Spanish settlers and advocates the existence of only a few towns per province.¹¹⁹ Las Casas’ final political solution, then, boils down to this position: “let all the Indians be set free; and because of their joy over this they will serve the king with their blood.”¹²⁰ The Amerindians would, therefore, be free vassals of the Spanish Crown. Amerindian governments, institutions, and customs would be restored and the Spanish king would be able to consider himself their lord, albeit nominally.

In both his *Doce Dudas* and his *De Thesauris in Peru*, Las Casas follows the same argument in his Letter to Carranza: the Amerindians must consent to Spanish rule before Philip’s rule becomes legitimate. Therefore, he dedicates his last works to explaining the consequences of the Spanish presence in the New World without Amerindian consent. He begins with a position that is consistent throughout his ministry: “It is licit for no one to punish or to molest those people after their conversion through temporal or ecclesiastical punishment...or if they did

¹¹⁸ Ibid., 196.

¹¹⁹ Ibid., 197.

¹²⁰ Ibid., 198.

not wish to accept the papal injunction to accept our king.”¹²¹ Here Las Casas again argues that the title given by Pope Alexander to the Spanish king is legitimate only after the consent of the Amerindians. After reemphasizing this basis, Las Casas asserts that the Spanish are acting as thieves. He argues that any silver, gold, and precious stone taken from the New World was an act of “unjust usurpation and evil removal.”¹²² Yet, Las Casas goes even further. He argues that any buildings, tilled fields, or other alterations to the land developed by the Spanish are usurpations of Amerindian land and he calls upon the Spanish Crown and its governors to give the natives some form of restitution. As such, the Spanish cannot appoint barons, dukes, or other forms of title for these territories.¹²³

In outlining his final position, it is clear that Las Casas believed that the Conquest was unjust, but it is unclear whether he actually believed that the Spanish would ask the Amerindians for their consent and that the latter would accept the offer. Like his two other programs, his solution seems to rely on unrealistic expectations of magnanimity and charity from the Amerindians, genuine contriteness from the Crown, and humble obedience to the Crown from the Spanish conquistadors and settlers. The shiftiness of his views and his tendency to provide unrealistic demands are one of the most disappointing and ineffectual aspects of his political thought. The shiftiness is a significant problem because politics demands particular solutions. Las Casas often fails to achieve edifying political results. Rather, Las Casas’ writings provided more clarity and vision when he was criticizing the positions of others.

¹²¹ *De Thesauris in Peru*, 226: “Punire aut molestare gentes illas post earum conversionem per poenas temporales vel ecclesiasticas...vel papalem institutionem de regibus nostris acceptare noluerint, nemini licitum est.”

¹²² *Ibid.*, 356: “injuste usurpatum et male ablatum.”

¹²³ *Ibid.*, 362, 370.

Las Casas' Response to Vitoria and Sepúlveda

Having outlined Las Casas' solutions to the just war, it is now necessary to compare his position with Vitoria and Sepúlveda. Las Casas has certain similarities with Vitoria. They employ the terminology of the just war theory and assimilate it with the *ius gentium*. They acknowledge the *dominium* of the Amerindians and they condemn certain aspects of the Conquest. They both share in certain developments of sixteenth-century Thomism, such as their use of subjective rights (a concept alien to Thomas), provide a more robust understanding of the *ius gentium*, and emphasize particularly the *Secunda Secundae*.¹²⁴ Despite their similarities, however, there are some noticeable differences. Their disagreements are of two kinds. Sometimes they agree on the same principles, but disagree on the solution. Other times, there are severe differences of opinion.

Vitoria's first argument addresses the violation of the basic principles of the *ius gentium*. If the Amerindians refuse to allow the Spanish to travel, to have access to clear water, and to trade, among other things, the Spanish, according to Vitoria, have a just cause to wage war against the Amerindians for attempting to interfere with what is due to them.¹²⁵ Las Casas, noticeably, does not disagree with this argument. As is shown in Las Casas' recounting of Hojeda's massacre and in his *Confesionario*, the Amerindians do understand the principles of the *ius gentium*. In fact, their hospitality and meekness exemplify the *ius gentium*. Las Casas provides no example of any Amerindian mistreatment to the Spanish. Thus, the difference between the two men here occurs only in the application of a mutually shared idea.¹²⁶

¹²⁴ For these developments in sixteenth-century Thomism, see: Brett, "The Justification of Slavery," 132-134; Noreña, *Studies in Spanish Renaissance Thought*, 47.

¹²⁵ Vitoria, "De Indis," 278-281.

¹²⁶ Las Casas, *History of the Indies*, 52.

Vitoria's second argument is that, if the Amerindians purposefully *obstructed* the propagation of the faith (i.e. the killing of preachers, refusing the right to preach, etc.), the Spanish have a right to attack the Amerindians. For Vitoria, the right of preaching the faith is part of the *ius gentium*. By denying Christian preaching, the Amerindians are breaking the *ius gentium* and, hence, the Spanish could legitimately declare war upon them. This is also the opinion of Soto and is a key part of Sepúlveda's fourth argument.¹²⁷ Las Casas rejects Vitoria's argument on the grounds of his philosophical anthropology. Las Casas begins by arguing that true conversion occurs through persuasion, demonstration, and the living of an exemplary and holy life. On the surface, Vitoria concurs with Las Casas up to this point. Their difference lies here: for Las Casas, any show of force, whether it is forced preaching or the destruction of idols, would obstruct any openness the Amerindians would have to Christianity. Las Casas believes that force leads to the prevalence of scandal. As the Amerindians have a right to be suspicious of the Spanish, any form of scandal would be detrimental to the propagation of the faith.¹²⁸

While Las Casas' argument has persuasive elements, it does not address Vitoria's argument about the role of the *ius gentium* in the propagation of the faith. From Vitoria's perspective, it appears that Las Casas is favoring persuasion over the *ius gentium*'s command to teach the truths of the Christian faith. Las Casas responds to this argument when he addresses Vitoria's third and fifth titles for the Conquest – that the Spanish ought to protect converts of the faith and that the Spanish need to protect the Amerindians from the nefarious sins of human sacrifice and cannibalism. Las Casas' response to these claims is a little surprising. Following Thomas, he argues that in theory Christians do have the authority to intervene. Yet, in the case of

¹²⁷ Vitoria, "De Indis," 285-286; Soto quoted in Gutiérrez, *Las Casas*, 130; Sepúlveda, *Tratado*, 154-178.

¹²⁸ Las Casas, *In Defense of the Indians*, 216-217.

the New World, Las Casas adamantly claims that the Spanish should not intervene. To make this point, he draws upon the just war's doctrine of proportionality and, again, his concern centers on scandal. While Las Casas admits that human sacrifice is an atrocious violation of the natural order, he argues with the utmost vigor that the toll of war against the natives would be disastrous and brutal. Such a war would cause the destruction of too many innocent people. In other words, more evil would be done through the war ending human sacrifice than the evil committed by sacrifice. Moreover, as the Amerindians would not be immediately persuaded by the war, great confusion and scandal could occur.¹²⁹

Vitoria's last title argues that the Conquest could be legitimate by aiding and assisting Amerindian allies through military combat. He appeals to the authority of Cajetan who, in commentary on Aquinas' treatment on the just war, claims that that it is just to fight on behalf of allies and friends.¹³⁰ Vitoria uses the treaty Cortes makes with the Tlaxcaltes against the Aztecs. He writes that in this treaty the Tlaxcaltes "made a treaty with the Spaniards that they should help them to defeat the Mexicans, and promised them in return whatever they might win by the laws of war."¹³¹ The subsequent implication is that, since Cortes and his band of soldiers conquered the Aztecs, it is within the bounds of justice that the Spanish rule over what they had conquered. In making this claim, however, an explicit appeal to the major points of the just war is missing. Although it is safe to assume, due to his emphasis on the just war theory in several other parts of his writings, that Vitoria thought the conquest of the Aztec Empire was in line with the just war theory, he never proves that the Aztecs deserved to be conquered. He assumes that

¹²⁹ Ibid., 244-245, 248.

¹³⁰ Vitoria, "De Indis," 289.

¹³¹ Ibid., 289.

the Aztec Empire was unjust, that the cause of the Tlaxcaltes was just, and that the Spanish had the prudence and wisdom to determine whose side was just.

Las Casas makes no such assumptions in his *History of the Indies*. Las Casas admits that very little knowledge is known about the Amerindians who partook in the treaty of the Aztecs, except that they were forced to pay tribute to the Aztecs. The Spanish Dominican states quite bluntly “the Indians could have lied to him about Montezuma’s use of force to have them pay tribute; Montezuma could, after all, have been by right. To help one party was to place himself in a position to damn the other part unrightfully.”¹³² Here Las Casas’ reflections on human nature illuminate the complexity of Spanish-Amerindian interactions. Since all human beings are equally rational, even the Amerindians are prone to lie and to cajole the Spanish. Amerindians can be self-centered and pragmatic. By not adequately assessing the moral implications of their war against the Aztecs, the Spanish themselves promoted injustice. Even if the Amerindians were correct in complaining about Aztec atrocities, the failure of the Spanish to impartially study and determine the justice of the situation is irresponsible. It suggests that they waged war, not for justice, but for their own profit.

Due to certain similarities between Vitoria and Sepúlveda, two of Sepúlveda’s reasons justifying the Conquest – the third, the need to protect innocents from sacrifice, and the fourth, the Conquest provides an avenue for the propagation of the faith – have already been sufficiently addressed. Sepúlveda’s first argument was that the Amerindians were barbaric and primitive people who needed the Spanish to guard them. Sepúlveda’s argument was so broad that the entirety of Las Casas’ corpus seems to be dedicated to challenging this claim. Las Casas’ response essentially boils to this argument: the Amerindians are of equal rational capability to

¹³² Las Casas, *History of the Indies*, 241.

the Spanish. In fact, certain Amerindian qualities, ranging from certain moral habits in their culture to the wondrous achievements in mechanical and decorative arts, rival the wonders of Greece and Rome. They have legitimate political communities with good laws.¹³³

Sepúlveda's second claim that the Amerindians commit too many crimes against the natural law was dismissed by Las Casas' comparative study of the Amerindians with the classical pagan civilizations. The sins which the Amerindians were guilty of committing, such as human sacrifice, cannibalism, idolatry, and sodomy, were practiced by several other classical civilizations. All pre-Christian societies were guilty of at least one of these crimes, if not more. He notes that Strabo, a Roman author, mentioned that the pre-Roman Celtic inhabitants of Spain were guilty of human sacrifice. Thus, civilizations that practice sacrifice should not be considered automatically to be full of slaves by nature. Rather, it shows that they misinterpreted the natural law and that they can be educated to avoid those sins.¹³⁴

Conclusion

Las Casas' condemnation of the Spanish Conquest and his support for Amerindian rebellions are the direct result of his Thomistic philosophical anthropology and Classical understanding of the nature of government. Las Casas believed that the kingdoms of the pagan Amerindians were equal, at least in legitimacy, to the kingdoms of Christian Europe. This equality provided Las Casas the opportunity of using the Augustinian-Thomistic just war tradition to defend the Amerindians. His view of universal human rationality and the right to self-rule, therefore, undercut Sepúlveda's natural slavery argument.

¹³³ Sepúlveda, *Tratado*, 80-84; Las Casas, *In Defense of the Indians*, 17-53.

¹³⁴ Sepúlveda, *Tratado*, 112-128; Las Casas, *In Defense of the Indians*, 224.

Rather, the most sophisticated argument that Las Casas had to face was developed by his fellow Thomist, Vitoria. Vitoria, like Las Casas, adhered to Thomas' understanding of the natural law and the responsibility of human law to adhere to natural law. Vitoria's particular understanding of the *ius gentium* developed out of his frustration of seeing different political nations follow the natural law to varying extents. He was particularly disgusted with the Amerindian concept of sacrifice and cannibalism, particularly because it harmed innocent human beings. Vitoria's *ius gentium* was meant to be a check against bad rulers and unjust laws. Rulers who promulgate evil and laws that promote injustice, after all, commit a grave violence against the natural order of the world and endanger the souls of their subjects. Vitoria, therefore, believed that the Spanish ought to intervene in Amerindian kingdoms that committed human sacrifice, that denied Spanish visitors basic human rights (e.g. access to clean water), and that unjustly persecute Christians.¹³⁵

Las Casas understood that Vitoria had noble intentions, but he still disagreed fundamentally with his contemporary. In order to ground his arguments, Vitoria had greatly expanded the notion of the *ius gentium* past Thomas' short discussion on the subject. Las Casas, moreover, believed that Vitoria's *ius gentium* threatened national self-rule. Bluntly put, it was not the responsibility of one nation to oversee how another adheres to the natural law. Such international oversight was dangerous because it violated the jurisdictional boundaries of nations and the notion of the consent of the governed, discussed in the fourth chapter. Rather, Las Casas was wary of international intervention because it failed to understand the limits of human law.

¹³⁵ Vitoria, "De Indis," 278-284.

Human law, Las Casas claimed, cannot eradicate all evil. Some evil, though it is to be resisted within the nation through persuasion, needs to be tolerated.¹³⁶

The Augustinian just war theory, according to Las Casas, understood the limits of human law. It posited that only defensive wars are just wars; as such, only an injustice committed by one nation to another sufficed as a just reason to wage war. Although Vitoria attempted to frame his arguments in terms of the just war tradition, he fundamentally changes the parameters of the term ‘just cause.’ Whereas the just cause guideline to a war, according to Augustine, is framed in particular situations (i.e. the defense of one’s life and property from the aggression of another nation), Vitoria broadens the term just cause as a response to *any* crime against the *ius gentium*. Vitoria, in his *De Indis*, is also unclear about the other guidelines of the just war tradition – proper authority, proportionality, and last resort.

Las Casas restores the just war tradition to its original Augustinian-Thomistic framework. The Spanish lacked just cause because they were aggressors. They lacked proper authority because neither the Spanish king nor the Holy Roman Emperor had the right to declare a war without just cause. The conquistadors lacked proportionality and last resort. As such, the Amerindians – not the Spanish – have the right to declare a just war against their counterparts. Las Casas, additionally, limits the application of the *ius gentium* to its original Thomistic framework. The *ius gentium*, according to Las Casas, are human laws that come directly from the conclusions of natural law, such as laws concerning just buying and sellings. The *ius gentium*, according to Las Casas, cannot be used to instigate wars that do not directly concern the party at hand. Again, the Amerindians – not the Spanish – have the right to declare war against

¹³⁶ Las Casas, *In Defense of the Indians*, 190.

their counterparts for their violations of the *ius gentium*, such as knowingly disregarding Amerindian sovereignty.

Las Casas did not believe that the Spanish could invoke the just war tradition or the *ius gentium* to intervene in Amerindian politics. Las Casas, however, did provide one particular instance in which the Spanish could *theoretically* intervene. As the sixth chapter will show, the Spanish could intervene to save innocent Amerindians from human sacrifice if the pope, through his exercise of the *indirecta potestas*, called for such an action.

CHAPTER 6: THE SPIRITUAL AUTHORITY OF THE CHURCH AND THE TEMPORAL POWER OF THE PAPACY

Few institutions have had more of a political impact on the development of Western civilization than the Roman Catholic Church. The Catholic Church was privileged throughout the medieval period as the preeminent *trans*-political institution in Europe. Although it affected all Western polities individually, the Church also transcended purely territorial politics. The Church, through its theology, claimed that it was the only true church. This claim provided it with a unique position: whereas politics assumes that there is a plurality of regimes, the Catholic Church affirms that there is only one church. Christian sects that broke from Rome were schismatics. Muslims who did not worship the Triune God were infidels. The Creed, after all, boldly states that the Church is “*one, holy, catholic, and apostolic.*” Its claim to be the only church lay in these four marks. Although it was an institution directed by human beings prone to misjudgment, it claimed that it was divinely instituted by Christ through Saint Peter and the Apostolic tradition.

After Catholicism became closely entwined with politics in the fourth century AD, questions concerning the political implications of ecclesiology arose. Does the Church have authority over those outside the Church? If God leads the Church and if the whole world belongs to God, ought the Church to have jurisdiction over the whole world? Do there need to be political regimes if there is a Church? If politics is necessary, what are the jurisdictional boundaries between the temporal and spiritual spheres? It is outside the scope of this dissertation to address all of these questions, but in the sixteenth century they remained hotly contested. In fact, it is safe to say that many of these questions still have not been adequately answered to everyone’s satisfaction in the present day.

One of the most important writings on the jurisdiction of the Church was Pope Gelasius I's *Letter to Emperor Anastasius*. In the letter, Gelasius states that there are two powers: a sacred authority of the priests and a royal power. These powers are distinct from each other and have ends in themselves, but the sacred authority is the greater of the two powers. Consequently, Christian political leaders have a duty to follow the decrees of the sacred authority on matters of religion. Rulers, for example, are not free to make public ordinances concerning the practice of religion in the same way that the pagan Roman Emperors did regarding the worship of the gods. As the royal power is subject to the spiritual authority on matters concerning religion, so are priests and religious subject to the royal power on temporal affairs. The religious have to obey the positive laws of the temporal ruler. The Emperor Anastasius, Gelasius writes, has "a supremacy granted...from heaven in matters affecting the public order" and priests ought not to "obstruct the course of secular affairs by irrelevant considerations."¹ Priests, despite their higher calling, are still citizens of a particular regime. The existence of the Church, in other words, does not take away the role and purpose of politics.

It was common for medieval theologians and philosophers, such as Thomas, to argue that, though the spiritual and temporal ends are distinct, the spiritual end is of greater importance than the temporal. The political implications of the superiority of the spiritual end, however, were not always clear and obvious. In the case of the New World, the superiority of the spiritual end was used by the pope in *Inter Caetera* to grant Spain the right to preach the Gospels to the New World. Even Vitoria believed that the pope was correct in delegating one nation, Spain, with the task of converting the Amerindians, lest the natives be exposed to Christian division and

¹ Gelasius I, "Letter of Gelasius to Emperor Anastasius" in *Readings in European History*, trans. J.H. Robinson (Boston: Ginn, 1905), 72-73.

scandal.² The question concerning *Inter Caetera*, rather, hinged upon whether Spain could use force and colonization in order to best fulfill its mission of evangelization and whether the papacy had the authority to grant such means.

In order to address the question concerning the extent of papal temporal power, Vitoria and Las Casas turned to Thomas. Notably, both these Spanish Dominicans are in disagreement with certain aspects of Thomas' political thought. As will be shown, they believed that Thomas was too lenient regarding the exercise of papal temporal authority. Their critique of Thomas, however, is grounded upon other Thomistic principles – that *dominium* comes from nature, that there are limits to ecclesiastical jurisdiction, and that the temporal sphere cannot arbitrarily be trampled upon by the spiritual sphere. The *indirecta potestas* theory of the papacy, strongly influenced by Thomistic principles but not synonymous with Thomas, emerges in the writings of both Vitoria and Las Casas. They use the *indirecta potestas* theory in order to demonstrate the limitations of ecclesiastical jurisdiction and to debunk the belief in the direct power of the papacy.

St. Thomas

Thomas Aquinas does not have a treatise solely explicating the nature of the Church.³ His writings on the subject, like his notion of the *ius gentium*, are sporadic. In the *Summa*, Thomas provides something approaching a definition of the Church. He argues that “the whole Church is...one mystic body from its likeness to the natural body of man, which in diverse members has diverse acts.”⁴ The analogy of the Church to a human body is rich with meaning.

² Vitoria, “De Indis,” 284.

³ Hans Boersma, “*Ressourcement* of Mystery: The Ecclesiology of Thomas Aquinas and the Letter to the Romans,” in *Reading Romans with St. Thomas Aquinas: Ecumenical Explorations*, ed. Michael Dauphinais and Matthew Levering (Washington DC: Catholic University of America Press, 2012), 59.

⁴ Aquinas, *Summa Theologica*, III, Q. 8 a. 1.

Christ is the head of the Church, but he alone is not the entirety of the Church. The Church, rather, also consists of human beings who are subject to Christ. As a body is a concrete thing so is the mystical body of Christ, which mirrors the complexity of the human body. A body, as Thomas states, consists of “diverse members” and “diverse acts.”⁵ Thus, different parts have different functions. This analogy provides a defense of ecclesiastical hierarchy because the body itself has a natural hierarchy. Some body parts (such as priests in the mystical body of Christ) are more important than others, but all parts, regardless of function, are necessary for there to be a healthy body. Thomas states that Christ, as the head of the body, orders, perfects, and has power over his subjects. As such, Christ is able to provide grace to all members within the Church.⁶ In particular, gratuitous grace, which occurs when human beings collaborate together in order to be led to God, is particular to the Church. It is a type of grace that occurs through preaching and the persuasion of reason.⁷

The mystical body of Christ is different from what Thomas considers “the natural body of man.”⁸ While all human beings are part of the natural body of man, not all human beings are actually within the mystical body of Christ.

We must therefore consider the members of the mystical body not only as they are in act, but as they are in potentiality. Nevertheless, some are in potentiality who will never be reduced to act, and some are reduced at some time to act; and this according to the triple class, of which the first is by faith, the second by the charity of this life, the third by the fruition of the life to come. Hence we must say that if we take the whole time of the world in general, Christ is the Head of all men, but diversely. For, first and principally, He is the Head of such as are united to Him by glory; secondly, of those who are actually united to Him by charity; thirdly, of those who are actually united to Him by faith; fourthly, of those who

⁵ Ibid.

⁶ Ibid., III, Q. 8, a. 1.

⁷ Ibid., I-II Q. 111 a. 4; a. 5, r. 1.

⁸ Ibid., III Q. 8, a. 3.

are united to Him merely in potentiality, which is not yet reduced to act, yet will be reduced to act according to Divine predestination; fifthly, of those who are united to Him in potentiality, which will never be reduced to act; such are those men existing in the world, who are not predestined, who, however, on their departure from this world, wholly cease to be members of Christ, as being no longer in potentiality to be united to Christ.⁹

Two points about this long paragraph are in order. First, the distinction between *potentially* being a member in the Church and *actually* in the Church will have important repercussions in discussing the authority of the Church for both Vitoria and Las Casas on the Amerindian question (discussed later in this chapter). Thomas, however, does not clearly delineate what authority the Church can have over those who are only *potentially* in the faith. This point is significant because many non-Christians are *potentially* Christians; if the pope has some sort of authority over *potential* Christians, then he has a certain type of power over many souls. Second, although Thomas delineates the degrees to which one is in the Church, he still does not in this passage outline clearly the jurisdictional boundaries of the Church, i.e., over whom and what the Church has specific control. This ambiguity is addressed in other parts of the *Summa*, especially in the articles on faith. According to Thomas, the Church exercises spiritual authority over those who have voluntarily accepted the Catholic faith. For Thomas, the Church is synonymous with Catholicism and adherence to its doctrines.¹⁰ Once someone accepts the faith, the Church always has spiritual authority over the person. If a human being turns away from the Church, he or she is still subject to its authority. Hence, Thomas asserts that the secular authority can punish and, if necessary, execute heretics, though the Church ought to show preference for mercy and for the

⁹ Ibid., III, Q. 8 a. 3.

¹⁰ This position becomes clear as the argument develops in Ibid., II-II Q. 10.

penance of the heretic.¹¹ He also argues that Christian subjects are exempt from adhering to the dictates of an apostate king.¹²

In order to understand the institutional aspects of the Church, it is necessary to turn to Thomas' writings on the papacy. Thomas' position on the papacy is consistent with traditional Catholic theology. The pope, Thomas writes, is the Vicar of Christ. Thomas defends his position in two ways. In his *Contra Errores Graecorum* (Against the Errors of the Greeks), he appeals to the authority of Scripture, the Council of Chalcedon, and the patristic writings of John Chrysostom and Cyril of Jerusalem. Drawing upon these works, Thomas argues that Christ entrusted Peter with the "fullness of power over the whole Church of Christ."¹³ Peter was the leader of the Church by Christ's own demand (Mt. 18, Jn. 21:15) and was the first Christian to profess the faith perfectly when he stated, "You are the Christ" (Mt. 18). Thomas states further that this authority was passed on by Peter to his successors, the Roman Pontiffs. Thomas argues against the Greek position concerning the equality of the patriarchs by emphasizing that there must be only "one fold and one shepherd" (Jn. 10:16). Thomas adds that the Pontiff has the right of deciding what belongs and pertains to the faith and that adherence to the Pontiff is necessary for salvation.¹⁴

Thomas also defends the papacy through an argument based upon Aristotelian teleology. Following an argument from the *Ethics*, Thomas writes, "Wherever there are several authorities

¹¹ Ibid., II-II Q. 11 a. 3, 4.

¹² Ibid., II-II Q. 12 a. 2.

¹³ Thomas Aquinas, *Contra Errores Graecorum*, trans. Peter Damian Fehlner, F.I. and Joseph Kenny, O.P. Dominican House of Studies 2.32, <http://dhspriority.org/thomas/ContraErrGraecorum.htm#b32> (accessed December 29, 2015).

¹⁴ Ibid., 2.34, 2.36, 2.38.

directed to one purpose, there must needs be one universal authority over the particular authorities, because in all virtues and acts the order is according to the order of their ends.”¹⁵ The need for one universal authority brings about the need for one leader to rule over the Church. This ruler is the pope. The Church as a whole is one body, and, as bodies need a head, the papacy is the head of the Church. Thomas asserts that without a head, “there would be no cohesion toward the one object.”¹⁶ The papacy, therefore, brings order to the Church, lest the Church continually fracture into many sects, creating scandal. As important as Thomas’ teleological argument in favor of the papacy is, it nevertheless remains dependent upon the aforementioned arguments in the Bible, the Councils, and the Church Fathers.

Participation in the Church provides its members with special graces that illuminate human knowledge. As faith illuminates reason, so is a Christian leader provided with a better understanding of the moral virtues. A Christian king, according to Thomas, is “a minister of God.”¹⁷ Hence, as Thomas warns the king of Cyprus, a king ought to look to God alone for happiness. The administration of a kingdom requires “extraordinary virtue.”¹⁸ Although the Christian faith illuminates Christian governments, adherence to the faith is not a requirement for a just society. Thomas argues that *dominium* comes from nature, not grace. Unbelievers are without sanctifying grace, but they are still able to perceive nature and to understand goodness through the use of their practical reason. Unbelief often clouds human judgment, leading unbelievers to habituate themselves more easily to sin, but unbelief *per se* does not destroy

¹⁵ Aquinas, *Summa Theologica*, Supplemental, Q. 40 a. 6; Aristotle, *Ethics*, 1.2.1094a20.

¹⁶ *Ibid.*, Supplemental, Q. 40 a. 6.

¹⁷ Aquinas, *De Regno*, 1.9.

¹⁸ *Ibid.*, 1.10.

natural reason.¹⁹ The glories and achievements of pagan antiquity demonstrate how much reason unaided by grace can accomplish. Unbelievers are able to participate in legitimate governments, philosophy, high forms of art, and all that is necessary for political life. Without grace, however, unbelievers struggle to come to know God; though they can come to a monotheistic understanding of God, it is bound to be based on imperfect knowledge.²⁰

The deficiencies of pagan government, however, led some medieval thinkers to question whether unbelievers ought to rule. The canonist Hostiensis, as mentioned in the Introduction, believed that infidels could not have *dominium* unless they recognized that their authority to rule came from the Church, not nature. Thomas begins his analysis of *dominium* by first making a distinction between those unbelievers who had never received the faith and those who once had accepted the faith. Heathens and Jews were the quintessential example of the former, while heretics and schismatics consisted of the latter. Heretics, schismatics, and apostates can be compelled to return to the faith through the waging of war by a king or emperor chosen by the pope. Apostates and schismatics once made a voluntary vow of obligation to the Catholic faith; the pope, therefore, retains his spiritual authority over them. Heathens and Jews, on the other hand, cannot be compelled. Those unbelievers who had never received the faith ought *not* to be compelled to receive baptism because conversion has to be voluntary. Genuine belief can only be made by free consent of the will.²¹ Up until this point, the sixteenth-century Neo-Thomists are in agreement with Thomas. Thomas, however, makes a qualification to his twofold distinction. While the unbaptized cannot be forced into the faith, Thomas writes,

¹⁹ Aquinas, *Summa Theologica*, II-II Q. 10 a. 4 r. 3.

²⁰ *Ibid.*, I Q. 1 a. 1.

²¹ *Ibid.*, II-II Q. 10 a. 8.

Nevertheless, they [i.e. Heathens and Jews] should be compelled by the faithful, if it be possible to do so, so that they do not hinder the faith, by their blasphemies or by their evil persuasions, or even by their open persecutions. *It is for this reason that Christ's faithful often wage war with unbelievers, not indeed for the purpose of forcing them to believe, because even if they were to conquer them, and take them prisoners, they should leave them free to believe, if they will, but in order to prevent them from hindering the faith of Christ.*²²

Thomas' conclusion is quite shocking: though no one can be forcibly baptized, the territories of the unbaptized can be conquered by Christians in order to make sure that they do not hinder the propagation of the faith. This proposition seems to hold for all non-Christian regimes, regardless of whether there are Christians in them or not. Thomas' concern is not with how many Christians there are in a regime, but how non-Christians treat Christian missionaries. Las Casas, as will be shown later in this chapter, attempts to soften Thomas' argument by stating that, though Thomas admits the possibility of conquering peoples for the sake of eliminating 'blasphemies' and 'evil persuasions,' Thomas rarely argues that the waging of war for these reasons ought to happen. Regardless of Las Casas' conclusion, Thomas creates a surprising ambiguity in this passage because he makes no direct mention of the just war. Thomas suggests that the waging of war in order to stop blasphemies and the hindering of the faith corresponds to a just cause. The reason that the just war is not invoked in this passage is that such a war does not arise from the tensions that occur from the plurality of nations, but as a response to a special request from the pope. The pope, though technically a sovereign leader due to his possession of the Papal States, would not be calling the war as the leader of the Papal States but as the leader of the Church. In this regard, the pope stands above the just war tradition only insofar as the pontiff, the guardian of the spiritual end of man, needs to interfere in temporal affairs for the spiritual good.

²² Ibid., II-II Q. 10 a. 8.

At first glance, it may seem that the power of the pope to call for the conquest of an unbaptized people due to their crimes against the natural law could be used as a legitimization for the destruction of all infidel kingdoms. Thomas, however, does not call for such a political project. In *Summa Theologica* II-II Q.10 a.10, where Thomas examines whether Christians can be subject to pagans, Thomas argues that unbelievers are able to possess *dominium* (and hence legitimate political authority) because *dominium* does not derive from divine law. Thomas divides the infidel regimes into two types: those in which infidels have already ruled over Christians and those in which infidels rule over Christians for the first time. Christians in the second century of the Roman Empire constitute an example of the former, while Christians conquered by the Mongols or Moors exemplify the latter. If an infidel regime always exercised political control over Christians, then their *dominium* is legitimate. These infidels, in this case, are providing a necessary function for human flourishing: human government. As Thomas writes, “the distinction between faithful and unbelievers, considered in itself, does not do away with dominion and authority of unbelievers over the faithful.”²³ Thomas, however, argues that infidels who conquered a previous Christian regime do not have legitimate *dominium*. A Christian regime is supposed to further the spread of religion through the promulgation of good laws, customs, and moral virtue. Having a Christian regime revert to the hands of infidels would be unjust, “since it would provoke scandal and endanger the faith, for subjects are easily influenced by their superiors to comply with their commands, unless the subjects are of great virtue: moreover unbelievers hold the faith in contempt, if they see the faithful fall away.”²⁴ Thomas’ argument derives, in part, from the Classical relationship between the subject and the

²³ Ibid., II-II Q. 10 a. 10.

²⁴ Ibid.

ruler in which the character of the ruler affects the character of the subjects. The religion of the infidel ruler – whatever religion it would be – would have detrimental effects upon the citizenry through the promulgation of laws and customs that, at best, would be apathetic to Christianity and, at worst, detrimental to the faith. In such a scenario, the spiritual good of Christians would be endangered by a rival religion and its regime’s inferior temporal laws.

Thomas, then, propounds his most controversial claim: “the right of dominion or authority can be justly done away with by the sentence or ordination of the Church who has the authority of God: since unbelievers in virtue of their unbelief deserve to forfeit their power over the faithful who are converted into children of God. This the Church does sometimes, and sometimes not.”²⁵ This paragraph is particularly stunning because it gives the Church the authority to override the natural *dominium* of infidels. Moreover, the Church has an unquestionable authority to command this war. Thus, the real question-at-hand for Thomas concerns the manner in which the conquering ought to happen. Thomas states that the Church has an obligation to “avoid scandal.”²⁶ Thomas, following the Gospels (Mt. 17: 25-26), is very fearful of the mere possibility of scandal because it is always contrary to the witness of Christ. The avoidance of scandal is determined by the exercise of prudence, the virtue which Aristotle considered to be the most important for the ruler.²⁷ Thomas, therefore, is not advocating the indiscriminate conquest of all infidels; instead, he believes that the Church ought to examine the particulars of the situation. If the conquering of infidels were to cause grave scandal (i.e. sacrilege, contempt for Christianity, or the endangering of the laity or priests), the Church ought

²⁵ Ibid.

²⁶ Ibid.

²⁷ Aristotle, *Politics*, 3.4.1277a15.

to allow the infidels to retain their dominion. Thomas' argument in favor of heathen dominion rested primarily not on the subjective right of the infidel to possess land, but on the potential scandal that could emerge from such a religious and political conflict.

Disregarding temporarily whether the pope called for a conquest in *Inter Caetera*, the papacy never employed a theory of temporal power to demand the Conquest of the Indians. In fact, as was shown in the second chapter, the writings of Pope Paul III demonstrate that the pope believed that the Amerindians were rational beings with a right to own property, though he did not comment on the legal status of the natives. To a certain extent, the silence of the papacy helped the Neo-Thomists because they never had to argue against a specific edict besides *Inter Caetera*, which they interpreted merely in spiritual terms. The silence of the papacy further helped the Neo-Thomists because, had the papacy been more involved with the Conquest, they would have had to struggle publicly with the embarrassing fact that Thomas' political theology did not provide a clear-cut defense of the Amerindians. On the one hand, as Vitoria and Las Casas will emphasize, since the Amerindians were never Christian (and never transgressed a previous Christian regime), their political constitutions were legitimate. They ought not to be attacked simply because they are pagan. On the other hand, Thomas allowed for the possibility of Christian regimes attacking pagan regimes in order to stop violations against the natural law and the hindering of the faith, so long as scandal did not derive from the war. On this point, Vitoria and Las Casas differ. Vitoria's position is closer to Thomas' position. Vitoria grants the pope the authority to depose Amerindian kings who persecute Christians, in accordance with Thomas' position. Las Casas, however, denies the pope this right because the deposing of a pagan king is outside the pope's jurisdiction. In order to differentiate these positions more clearly, it is necessary to examine how they both define the Church and the pope's authority.

Vitoria and the *Indirecta Potestas*

Vitoria's ecclesiology is addressed in two lectures entitled *On the Power of the Church* (1532-1533). In these lectures, Vitoria articulates the Neo-Thomistic concept of the *indirecta potestas*, or the indirect power of the papacy. Vitoria hints, at various parts of his work, that his understanding of the jurisdictional differences of the spiritual and temporal spheres of human life is slightly different from that of the Angelic Doctor. Thomas, according to Vitoria, was "always most solicitous on behalf of papal authority."²⁸ The implication that Thomas provided too much authority to the papacy is further implicit a few paragraphs later, where Vitoria writes, "although [Thomas] was a zealous supporter of the papalist faction, he never attributed this sort of power [i.e. temporal power] to the pope."²⁹ Unfortunately, Vitoria does not pinpoint exactly where Thomas' 'zealous support' for the papacy is present in the *Summa*. *Summa Theologica* II-II Q.10 a.8-10 is probably the intended passage. Vitoria, however, probes the problem a little deeper by mentioning that some Thomists have interpreted Thomas as positing the temporal power of the papacy. In making this claim, Vitoria implicitly suggests – as does this dissertation – that Thomas himself was, at best, unclear concerning his demarcations of papal authority.

One of Vitoria's projects in *On the Power of the Church* is to make a coherent Thomistic position regarding the temporal power of the papacy: the *indirecta potestas* theory. As such, Vitoria is correcting the ambiguities present in Thomas' work, especially in *Summa Theologica* II-II Q.10 a.8, where the latter argues that Christians have the authority to conquer unbelievers in order to get them to prevent the hindering of the faith, and in *Summa Theologica* II-II Q.10 a.10, where he states that the Church can do away with the *dominium* of infidels. Vitoria begins his

²⁸ Vitoria, "On the Power of the Church," in *Political Writings*, 85.

²⁹ *Ibid.*, 88.

treatise by arguing, in accordance with Gelasius and Thomas, that the civil power and the ecclesiastical power have different ends. The civil power, according to Vitoria, is a good-in-itself because the temporal commonwealth is “self-sufficient (*perfecta*), and therefore cannot be subject to anyone outside itself.”³⁰ The ecclesiastical power, on the other hand, is supernatural and its purpose is to lead those within the Church to heaven. The civil power, since it is an earthly power, cannot interfere with the ecclesiastical power because the latter deals with a divine competence. The civil power comes from natural law, while the ecclesiastical power derives from divine law. The civil power belongs to the particular community, while the ecclesiastical power is transnational. The ecclesiastical end is greater than the civil, because beatitude with God is a greater good than public order. Despite its superiority, the ecclesiastical power cannot encroach upon the civil power. The distinctiveness of political life is proved through Scripture and the existence of legitimate pagan governments before the time of Christ.³¹

The ecclesiastical power, however, cannot be confused with the Church. The Church, according to Vitoria, comes from the word *ecclesia*, which translates from Greek to Latin as the congregation of the faithful. The Church, he writes, “is nothing other than the Christian commonwealth and religion” and “the community or commonwealth of the faithful.”³² Consequently, the Church is not limited to the ecclesiastical power because the civil power, if it is in a Christian regime, is also part of the Church. The civil power, after all, has a responsibility to the natural law and the virtue of its citizens. A Christian ruler has to make sure that his policies, both domestic and abroad, do not hinder the faith. Vitoria, for example, argues that if

³⁰ Ibid., 87.

³¹ Ibid., 50-58.

³² Ibid., 49, 50.

the domestic policy of Spain greatly harms the Christian faith in Africa, the Spanish monarch has an obligation to the faith to change the nation's policy. The Christian ruler is subject both to the good of the Christian faith and the natural law.³³

Despite the distinctiveness of civil life, Vitoria, like Thomas, does not support the separation of Church from civil life. A just regime ought to create laws in accordance with justice, prudence, and moral virtue. These virtues, however, find their completion in Christian teaching; put another way, Christian teaching further illuminates natural reason, allowing a regime imbued with Christianity to understand justice, prudence, and moral virtue in a more excellent way. Thus, when certain human practices, customs, or laws are prejudicial to the spiritual wellbeing of human beings – the supreme end of man – the ecclesiastical power has the right to intervene. This right to intervene is the *indirecta potestas*, the indirect power of the papacy.³⁴

In order to understand the nuances of Vitoria's position, it needs to be emphasized that he very explicitly wanted to "steer a middle course" between those who wanted the papacy to have full temporal authority and those who believed the papacy ought to have no authority.³⁵ The first group consisted of the canonists, such as Guido de Baysio, Nicolaus de Tudeschis, Agostino Trionfo d'Ancona, and Silvestro Mazzolini da Priero, who believed that the pope was lord of the world. Vitoria denied this position, arguing – as will Las Casas – that the pope has no dominion in the lands of the infidels. Moreover, with the notable exception of the lands that the pope owned through donation of the emperor, the pope did not have *dominium* over Christian lands, as

³³ Ibid., 90-91.

³⁴ Ibid., 90-101.

³⁵ Ibid., 83.

dominium comes from nature not grace.³⁶ Although Thomas did not share the canonist belief that the pope was lord of the world, he did believe that the Church, by the authorization of the pope, could invade the land of infidels who rule over Christians “since unbelievers in virtue of their unbelief deserve to forfeit their power over the faithful.”³⁷ Thomas, in other words, gives the pope an inordinate amount of temporal power (though he could have provided the pope even more robust authority, such as the canonist view of the pope as lord of the world).

Vitoria also rejects the other extreme of denying the papacy any coercive authority to punish sins against natural law. Vitoria counts William of Ockham and Jean Gerson as the leading two proponents of this theory.³⁸ He dismisses the argument briefly by quoting Saint Paul, but his argument against the two thinkers is not elaborate because it is outside the scope of his essay. Both Ockham and Gerson were conciliarists, Christian thinkers who believed that the definitive foundation of the Church ought to be based on the conclusions of relatively frequent councils. Conciliarism was denounced by the Fifth Lateran Council (1512-1517), and Vitoria did not want to reopen a discourse on the nature of papacy.³⁹

Vitoria believed that the ‘middle ground’ between the canonists and the conciliarists was a papacy that did not interfere with the temporal authority of rulers while also having the ability to defend the needs of the Church from undue temporal aggression. Vitoria, therefore, argues that “there exists in the Church *some* temporal power as regards *spiritual* ends.”⁴⁰ This use of

³⁶ Ibid., 82-88.

³⁷ Aquinas, *Summa Theologica*, II-II Q. 10 a. 10.

³⁸ Vitoria, “On the Power of the Church I,” 100.

³⁹ Vitoria provides a joint argument against conciliarism and Lutheranism in Vitoria, “On the Power of the Church II,” in *Political Writings*, 111-129.

⁴⁰ Vitoria, “On the Power of the Church I,” 92.

temporal power for spiritual ends can only be employed in cases of necessity. The negligence, mediocrity, or ill-will of a king is not a sufficient reason to depose a king. The pope, rather, only has the authority to interfere in politics if the king “threatens serious spiritual damage” to the people.⁴¹ Vitoria admits that such cases are very rare. He also briefly outlines the proper system in which the pope ought to address such a situation: if a king creates laws prejudicial to the spiritual end of human beings, jeopardizing the liberty of Christians to worship, the pope must first confront the king and ask him to change the law. If the king refuses, then the pope has the authority to do whatever is necessary for the well-being of Christians.⁴²

The *indirecta potestas* argument comes down to this principle: the pope cannot wield temporal authority for temporal ends, but he can wield temporal authority for spiritual ends in rare necessary cases so that a temporal ruler does not endanger the free practice of Catholicism. With this principle in mind, Vitoria’s position on the Amerindians in the *De Indis* becomes clearer. Vitoria, in accordance with the *indirecta potestas*, refutes the idea that the pope is a monarch of the whole world who is “empowered to constitute the kings of Spain as kings and lords of those lands [i.e. the New World].”⁴³ Rather, Vitoria asserts that the pope has no temporal power that can be used for temporal ends and that, even if he had such authority, he could not transfer such power to secular princes. Moreover, Vitoria reminds his audience that the pope does not possess temporal authority over unbelievers. He writes “even if the barbarians refuse to receive Christ as their lord, they cannot for that reason be attacked or harmed in any way.”⁴⁴ Here Vitoria rejects Thomas’ previous statement that unbelievers can be attacked so

⁴¹ Ibid., 94.

⁴² Ibid., 94.

⁴³ Vitoria, “De Indis,” 258.

⁴⁴ Ibid., 263.

long as scandal is avoided. Thomas is caught in a contradiction: on the one hand, he believes that the *dominium* of non-Christians is in accordance with nature, but, on the other hand, he also asserts that this *dominium* can be taken away by Christians in order to propagate the faith.

Vitoria recognizes the insufficiency of the problem and provides a more robust and complete defense of Amerindian *dominium* than Thomas. *Dominium*, the Spanish Dominican argues, comes from nature and it cannot be taken away on account of mortal sin or unbelief.

Vitoria's concept of the *indirecta potestas* does, however, provide the pope authority in the New World through two different ways. First, Vitoria argues, in accordance with *Inter Caetera*, that the pope may entrust the conversion of the Amerindians solely to the Spanish. The bull did not provide the Spanish with any temporal authority; it simply entrusts them with the responsibility to oversee and to protect missionaries. This preferential treatment to the Spanish was an act of prudence in order to avoid the scandal of various Christian nations fighting and squabbling publicly with each other over the Amerindians. Second, Vitoria argues in favor of papal authority in a certain particular scenario. The pope, according to Vitoria, could have the authority to depose infidel Amerindian kings if they threatened their Christian subjects. This argument, therefore, applies only to Amerindian governments that are still intact and that have a mixture of Christians and pagans coexisting within the regime. He writes, "the pope might have reasonable grounds for removing their infidel masters and giving them a Christian prince, whether or not they asked him to do."⁴⁵ The conditional tense implies that this right is not absolute, but is rather dependent upon the virtue of prudence and the particulars of the situation. The primary aim, rather, is what is "expedient for the preservation of the Christian faith," lest

⁴⁵ Ibid., 287.

infidel political leaders cause scandal or incite apostasy.⁴⁶ Now a criticism could be leveled against Vitoria that the potential claim of deposing an infidel Amerindian king violates the Spanish Dominican's other argument that the Church does not have jurisdiction over unbelievers. To which Vitoria replies that the pope can only possibly depose an unbelieving king if he has Christian subjects. In such a scenario, the pope's need to protect Christian subjects from persecution trumps the temporal claim of the king. The protection of Christian subjects, moreover, is being used for a *spiritual*, not temporal, purpose. The pope, in other words, is simply fulfilling the duties of his office.

Las Casas and Contentious Jurisdiction

There is no tangible evidence that Las Casas specifically read Vitoria's *On the Power of the Church*, though his Valladolid writings show that he was familiar with his *De Indis*. Nevertheless, Las Casas follows Vitoria's political theology by using Thomism in order to correct Thomas on the temporal power of the papacy. Whereas Vitoria mildly chastises Thomas as a zealous defender of papal claims, Las Casas attempts to reinterpret Thomas to fit his political needs. Las Casas does not shy away from Thomas' most troublesome article in the *Summa*. When he quotes *Summa Theologica* II-II Q.10 a.10 – the passage in which Thomas states that Christians have the right to take away from infidels due to their lack of belief – Las Casas immediately qualifies Thomas' position by adding the other Thomistic belief that the Church ought not to conquer infidels in order to avoid scandal. Las Casas' re-interpretation of Thomas minimizes the impact of the Angelic Doctor's controversial claim by insisting that such an occurrence rarely happens.⁴⁷

⁴⁶ Ibid., 287.

⁴⁷ Las Casas, *In Defense of the Indians*, 119.

Like Vitoria, Las Casas provides a thorough examination of ecclesiology. Las Casas defines the Church as “nothing other than the whole Christian people, strengthened in faith and united in the society and communion of the sacraments. And these sacraments are the borders or walls by which the Church is surrounded.”⁴⁸ The vocabulary Las Casas employs in his definition – ‘borders’ and ‘walls’ – show, at the very least, that there are many people outside the Church. Borders and walls, after all, convey a sense not merely of defensiveness, but clear demarcation. Baptism, according to Las Casas, is “the gate to this city (that is, the Church).”⁴⁹ This clear line of demarcation is not meant to create an “Other” to demean. Rather, Las Casas uses this definition in order to limit the temporal jurisdiction of the Church. Las Casas’ use of the allegory of the Church as a city is important. As a citizen consents to his or her city, so does a Christian consent to the Church. To become a Catholic, therefore, ought to be a voluntary decision. He writes: “The power of the Church and the Vicar of Christ extends only to those men who have voluntarily received sacred baptism, that is to all the faithful striving for eternal happiness.”⁵⁰ Although the Church has spread throughout the world, it does not follow that the Church has temporal authority over the whole world. As such, the pope can only exercise spiritual authority over those who are within the Church, i.e., those receiving the sacraments.⁵¹

In order to buttress his argument, Las Casas turns to Scripture: “I do not judge those who do not believe what I am saying” (Lk. 12:15). If Jesus did not judge unbelievers while on Earth, the Church and the papacy cannot have the authority to judge unbelievers, either. The

⁴⁸ Ibid., 80.

⁴⁹ Ibid., 80.

⁵⁰ Ibid., 60.

⁵¹ Ibid., 61.

jurisdiction of the Church, after all, cannot exceed the jurisdiction of Christ's ministry.⁵² Las Casas makes the comparison between a superior and inferior judge. God is the superior judge and he has reserved for himself the authority to judge pagans. The Church, however, is an inferior judge. The Church, therefore, only can decide upon cases and people within the jurisdiction that the superior judge has assigned. As Las Casas writes, "The theological reason is that no one may overstep the order that divine providence has established in all things."⁵³ He lists several patristic authors in order to defend this point, such as Saints Paul, Jerome, Dionysus, Chrysostom, and Augustine.⁵⁴

Las Casas writes passionately in favor of the Church's limited jurisdiction. Las Casas himself, however, acknowledged that his proposition – the Church can intervene only in the spiritual and temporal affairs of its own members – could not easily or perfectly be administered. For example, Jews, Moors, heretics, and schismatics – all of whom were outside the Church – also lived within the boundaries of Christendom. As Christian rulers have an obligation to enforce the Church's teachings, problems concerning the jurisdiction of the Church were still bound to occur. As such, there were situations in which, due to political particulars, the Church had to exercise some form of jurisdiction over unbelievers. Las Casas identifies two ways in which a Christian subject or the papacy could exercise jurisdiction over unbelievers. The first is when the unbeliever is subject to a Christian ruler. In accordance with Thomas, Las Casas argues that all heretics subject to a Christian prince can be "compelled to return to Christ's

⁵² Ibid., 71.

⁵³ Ibid., 73.

⁵⁴ Ibid., 71-74.

sheepfold.”⁵⁵ As for Jews and Moors, Las Casas again follows Thomas in arguing that the Church has authority over them insofar as it is able to pass laws against any forms of blasphemy.

The second way in which the Church can have jurisdiction over unbelievers is through contentious jurisdiction. Las Casas identifies six forms of contentious jurisdiction. First, the Church has authority over unbelievers if they despoil or conquer a Christian nation. This argument is consistent with Thomas’ position that infidels who conquered Christian lands ought to be reconquered by Christians. In accordance with Thomas, Las Casas argues that the former ought to be regained through war, bluntly stating, “No other way is open.”⁵⁶ Las Casas, however, moderates Thomas’ other conclusion, which claimed that the Church could also conquer infidels with legitimate *dominium*. Las Casas asserts that the Church has no right to take the legitimate *dominium* of the infidels. In the context of the New World, Las Casas’ argument provides Amerindian government with legitimacy. As they did not conquer or come to possess Christian lands, their governments, though pagan, are legitimate. Their governments fulfill nature’s purpose and the Spanish have to respect the Amerindians as their equals through the *ius gentium*.⁵⁷

The second way in which the Church can have jurisdiction is if pagans practice idolatry in lands that were formerly under Christian jurisdiction. Las Casas’ position again accords with Thomas’ belief that the Church can interfere with infidels due to blasphemy. Las Casas states, “it is utterly irrational that the Church tolerate such conditions, if it can do otherwise, since this redounds to the dishonor and insult of the name Christian.”⁵⁸ Invoking the canonist-pope

⁵⁵ Ibid., 117.

⁵⁶ Ibid., 118.

⁵⁷ Ibid., 119.

⁵⁸ Ibid., 119.

Innocent, Las Casas asserts that Christians ought not to attack Saracens if they do not defile, conquer, or attack Christian lands. The pope, as the leader of the Church, has the authority, as a last resort, to deprive unbelievers of their kingdoms if the prince is persecuting Christians.⁵⁹ This argument, in the context of the New World, favors the Amerindians, not the Spanish. For although the Amerindians participated in idolatry, they did not commit the grave sin in lands formerly under Christian jurisdiction.

The third situation occurs when unbelievers are voluntarily, knowingly, insultingly, and maliciously blasphemous toward Christ and the Church. When unbelievers mock Christ out of ignorance, however, the Church cannot harm the unbeliever.⁶⁰ Even Las Casas admits that the Amerindians were guilty sometimes of mocking the Christian religion. He even provides an example of Amerindians ridiculing the Catholic Mass through spiteful imitation. Although Las Casas does not support the freedom of the Amerindians to mock the Christian religion, he argues that the blasphemous actions of the Amerindians are excusable insofar as they do not understand the gravity of their actions. Drawing upon Aristotle's definition of voluntary action, the Amerindians, due to their ignorance, are not committing a completely voluntary action, as voluntariness is dependent upon knowledge. The spitefulness and anger Amerindians have to the Christian religion are rather a result of their unfortunate experience with the Spanish, who not only failed to instruct the Amerindians in Christianity, but failed even to provide the Amerindians with an example of Christian charity and brotherhood. Since these Christians were hateful and cruel men, it is only natural for the Amerindians to look upon Christianity as both

⁵⁹ Ibid., 125.

⁶⁰ Ibid., 165-166.

hateful and cruel. Therefore, the blasphemies committed by the natives under such circumstances do not provide the Church with a legitimate claim over the Amerindians.⁶¹

The fourth case occurs when infidels inhibit and prohibit the promulgation of the Catholic faith. Such interference is a violation of natural right. Las Casas praises the benefits of Christian faith upon the regime because it is “strengthened by a greater legitimacy, and their cities, instructed in knowledge of the truth and good morals, will flourish to the highest degree with the support of the holy sacraments that are ministered them.”⁶² Thus, denial of the Christian faith and its corresponding sacraments hinders pagans from seeking their perfection. Invoking both Bernard of Clairvaux and Pope Leo, Las Casas writes:

It follows from this that any pagan ruler can be forced by war to let the gospel be preached in his jurisdiction, not because of the sin committed by those who prevent the preaching of the gospel (as the canonists claim, for the Church does not punish their crimes, as has been made clear) but because, without lawful cause, they maliciously and, as we have said, by their own efforts obstruct the spread of the truth of the gospel, which Christ commanded be proclaimed to all nations. They also hinder the good of the souls and those persons who, once they have heard the word of God, will accept it.⁶³

Las Casas later adds “that this is true only when the pagans, knowing what is preached to them, kill the preachers out of the malice and hatred they continually bear toward the faith.”⁶⁴ Thus, according to the Spanish Dominican, Christians can lawfully wage war against Saracens and Moors because they knowingly reject the Christian faith and prevent it from being preached in their domains. The violations of the Amerindians, however, are different in type from those of

⁶¹ Ibid., 165-166.

⁶² Ibid., 169.

⁶³ Ibid., 170.

⁶⁴ Ibid., 171.

the Moors. Although the Amerindians have killed innocent preachers, they did so without understanding the gravity and significance of the Christian preacher. Unlike the Moor, who knows of Jesus, the rejection of Christianity by the Amerindians is a rejection of the Spanish colonist, not of Christ.⁶⁵

The fifth situation in which the Church can exercise temporal jurisdiction is similar to the first reason: when unbelievers attack provinces or harass Christians, the Church can respond to infidels not only with force but dominion (in a way similar to the just war principle that the just victor ought to decide the penalty of the defeated).⁶⁶ According to Las Casas, however, this argument does not apply to the Amerindians because of the just war tradition. The Spanish always attacked the Amerindians first. When the Amerindians were assaulting Christians, they were attacking them, not out of hatred of Christ, but in response to a violation of sovereignty, which is a just cause of war according to the just war tradition.⁶⁷ Las Casas admits that during Amerindian strikes against the Spanish, the natives would often kill preachers. The killing of preachers, as mentioned in the last chapter, is a serious violation against the just war tradition. Las Casas does not defend or excuse the Amerindians for the killing of preachers, but neither does he condemn their actions. Instead, Las Casas responds by pointing out that preachers were often – and too often – in the company of soldiers, making it difficult if not impossible for a people who were never exposed to the nuances of Western civilization to distinguish between the two. Las Casas, therefore, considers the killing of preachers to be accidental, not intentional. He also asserts, in order to protect preachers in the future, that they ought to go unarmed and without

⁶⁵ Ibid., 171.

⁶⁶ Ibid., 183-184.

⁶⁷ Ibid., 172.

the company of soldiers. Las Casas truly believed that unharmed Christian preachers could convert the Amerindians. Therefore, Amerindian harassment against Christians was not an adequate reason for the Church to assert authority over the Amerindians.⁶⁸

The sixth situation in which the Church can theoretically exercise temporal jurisdiction is the most pertinent regarding the ethics associated with the Conquest. Las Casas writes that, “if [unbelievers] are found to oppress and injure any innocent persons or to kill them in order to sacrifice them to their gods or in order to commit cannibalism” the Church, by the authority of the pope, may wage war to defend the innocent.⁶⁹ Here Las Casas drops a bombshell! After developing a complex theology of preaching and a sophisticated explanation for Amerindian cannibalism and human sacrifice, Las Casas writes that the Church, through the dictate of the pope, could intervene in Amerindian affairs. By granting the pope such authority, is Las Casas contradicting his theology of preaching? He does not think so. The right of the Church to intervene does *not* come from the fact that certain Amerindian practices are against the natural law because the Church does not have the responsibility to eradicate all sins against the natural law. Rather, the right of the Church comes from the fact that all people are *potentially* in the Church. Thus, the pope has the discretionary authority to intervene when unbelievers attack innocent human beings who could eventually become Christian. Las Casas writes that the pope has “pastoral care of the whole world” which “has been entrusted by Christ, to prevent the slaughter of such innocent persons lest their souls, whose salvation should be of special concern, should perish forever.”⁷⁰ The political question that arises, therefore, is how the pope can

⁶⁸ Ibid., 172-173.

⁶⁹ Ibid., 186.

⁷⁰ Ibid., 186.

practically intervene to protect the innocent, since the pagan innocents are only *potentially* in the Church and have no loyalty to the pope. Hence, their liberation needs to be entrusted to a third party, namely a Christian ruler who ought to take arms to defend these people.

It should be emphasized that such a right to conquest in the Americas remains theoretical because the pope never directly called for a conquest specifically for the eradication of cannibalism and human sacrifice. Thus, the Spanish cannot wage war on the Amerindians for these reasons until the pope calls for it. Moreover, though Las Casas grants the pope the authority to intervene, he discourages the Church for committing this action because of his theology of preaching. The natives ought to be converted through persuasion. Any attempt at force will only create scandal.

Las Casas' sixth argument also provides an important point of departure from Vitoria. Whereas for Las Casas the Church can only interfere with Amerindian governments on account of human sacrifice and cannibalism *by direct order of the pope*, Vitoria argues that the Spanish can intervene in such situations without the pope's order. Vitoria writes: "I assert that in lawful defense of the innocent from unjust death, *even without the pope's authority*, the Spanish may prohibit the barbarians from practicing any nefarious custom or rite."⁷¹ Vitoria, rather, considers Spanish interference to be in accordance with the *ius gentium*; Las Casas never makes this argument. The reason why they both define differently the scope of the temporal power of the papacy (and the scope of the *ius gentium*) boils down to their understanding of national sovereignty. Vitoria's starting point is the blunt realization that, if the individual nation becomes too powerful, there will be no international check, whether through the *ius gentium* or the papacy, to stop the evil embedded in the laws of the individual nation. Las Casas' emphasis on

⁷¹ Vitoria, "De Indis," 288.

the individual's exercise of reason and the use of persuasion, however, leads the Dominican to limit the role that foreigners, whether through the *ius gentium* or the papacy, can have over the individual nation, lest foreigners violate the right of a nation to rule itself.

Las Casas realizes that his sixth argument – that the pope can interfere in Amerindian regimes that practice human sacrifice since they are members of the Church *potentially* – can lead to tremendous abuse. After all, if the pope has temporal authority over those who are *potentially* in the Church, the pope, in essence, has authority over the whole world. Such a claim could lead, theoretically, to the attempted destruction of all infidel kingdoms. Las Casas, following the *indirecta potestas* tradition, argues that the pope has temporal authority *only* in extraordinary situations. The Church, for example, can only interfere in the defense of innocent people when “there is no other suitable person to free them.”⁷² Thus, the pope would be able to appoint whomever he wishes, such as a Christian Amerindian king or the Spanish king, to intervene in the affair.

Although Las Casas acknowledges that the Church has the authority to intervene, he does not believe that the Church should always exercise this right. In fact, careful consideration of the text shows that Las Casas believed that even when the Church had the right to intervene, it ought not do so. His reservations are similar to those of Thomas' warnings against temporal overreach. Las Casas grounds his position on the idiom that the lesser evil ought to be chosen. War, as was mentioned in the last chapter, produces a tremendous amount of evil, including the killing of innocent people. Las Casas believed that the evils that stem from war were graver than those sins that derived from human sacrifice. The unfolding of the Conquest had demonstrated to Las Casas that the Spanish wars produced too much destruction, chaos, and animosity to Christianity

⁷² Las Casas, *In Defense of the Indians*, 187.

for war to be the method through which to attempt to eradicate human sacrifice and cannibalism. Such methods would fail to persuade the populace. Without carefully instructing the Amerindians as to why human sacrifice and cannibalism was wrong, they would naturally embrace the wicked custom even more. Moreover, it invites distrust and contempt to Christianity. Following Thomas' argument that "the greater the damage sin inflicts, the more serious it is," Las Casas believed that this method could cause the even greater sin of hatred toward God.⁷³

Conclusion

Vitoria and Las Casas navigate a position concerning the temporal power of the papacy that is more moderate than Thomas' position. To a certain extent, they were correcting Thomas by using Thomas. They both posited that the pope can only use temporal authority for spiritual purposes *as a last resort*. The differences that emerge between Las Casas and Vitoria are a result of what the Spanish Dominicans mean by last resort. Vitoria viewed last resort a little more broadly. He argued the pope could have the authority to depose infidel Amerindian kings if they threatened their Christian subjects, even if the Christian subjects did not specifically ask the pope to do such a thing. Las Casas views last resort more narrowly, perhaps due to his emphasis of the sovereignty of nations. He allows the pope to intervene in six contentious cases, but only one case suffices concerning the Amerindians: the Church's right to defend innocents from human sacrifice and cannibalism. Regardless of their differences, both men, however, did not believe that the pope granted any right to Spain to conquer the New World.

The *indirecta potestas* was always meant to be for the common good. Classical and medieval thought had always taught that without a just leader the common good could not be

⁷³ Ibid., 192; Las Casas invokes Aquinas, *Summa Theologica*, I-II Q. 20 a. 5.

realized. Thomas' reluctance to depose unjust leaders lead him to argue that the best recourse to a tyrant was prayer.⁷⁴ The *indirecta potestas* provided a more robust and proactive solution than praying for the death of a tyrant. In theory, it allowed the pope, the Vicar of Christ concerned for the souls of his faithful, to provide a check against egregious crimes of a regime that threatened the spiritual wellbeing of Christian subjects. The purpose of the *indirecta potestas*, in spiritual terms, was to save souls from the corrupting influence of evil kings.

Although Vitoria and Las Casas differ on the application of the *indirecta potestas*, this Neo-Thomistic concept would have a tremendous impact on the development of Catholic Counter-Reformation thought for the next century. Throughout the late sixteenth and early seventeenth century, the 'middle position' of the *indirecta potestas* was important in moderating papal power without making the pope powerless over Catholic kings. In the history of ideas, the Jesuits, particularly Robert Bellarmine and Francisco Suárez, furthered Vitoria's ideas into an even more robust political theology. Bellarmine employed the tradition of the *indirecta potestas* in a series of controversies with Venice in the early seventeenth century and as a bulwark against Gallican tendencies in France.⁷⁵ The *indirecta potestas* position, however, was most influential in the Catholic backlash against the English King James I's Oath of Allegiance. The Oath required Catholics to deny that the pope had any right to depose a foreign king (such as James) and that James was the true and lawful king of England. Both Bellarmine and Suárez wrote long rebuttals to the Oath because of the Oath's incompatibility with the *indirecta potestas* position.⁷⁶ The *indirecta potestas* had such a huge impact on the English psyche that even Thomas Hobbes,

⁷⁴ Aquinas, *De Regno*, ch. 7, p.28-29.

⁷⁵ Stefania Tutino, "Introduction," in *On Temporal Authority*, xi-xiii.

⁷⁶ Stefania Tutino, *Law and Conscience: Catholicism in Early Modern England, 1570-1625* (Burlington, VT: Ashgate, 2007), 139-160.

a full generation after James, dedicated an entire chapter in his *Leviathan* to denouncing the idea.⁷⁷ For both King James and Hobbes, the *indirecta potestas* was a direct threat to their absolutist beliefs because it was perceived to be a violation of national sovereignty. No king could have absolute authority because it allowed foreign encroachment over temporal affairs. Thus, the political implication of the *indirecta potestas* tradition – whether with the Spain of Charles V or the England of James I – was congruent with the republican tradition, insofar as it provided a potential check against kingly abuse.⁷⁸

⁷⁷ Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis, IN: Hackett, 1944), 373-397.

⁷⁸ George H. Sabine, *A History of Political Theory* (New York: Henry Holt and Company, 1937), 385-388.

CONCLUSION: THE IMPORTANCE OF THOMISM IN THE DEFENSE OF THE AMERINDIANS

The purpose of this dissertation is to demonstrate that the Thomistic appeal to nature provided Las Casas with a robust defense of the rights of the Amerindians and a laudable condemnation of certain aspects of the Spanish Conquest. His appeal to nature was not an act of sophistry, but a well-reasoned attempt to stop a group of human beings from perpetuating injustice on another. This dissertation has hinted that this appeal to nature was actually necessary in the defending the Amerindians. After all, in claiming that one group is doing an ‘injustice’ to another, one must assume that there is a standard of justice applicable to both the aggressor and the victim.

The injustices of the Spanish Conquest occurred when there was no standard and universal concept of justice applicable to all human beings. Aristotelian natural slavery did not provide such an idea of justice, because natural slaves were only able to perceive reason, not understand it. The forced migration of the Amerindians by the Franciscans into apolitical villages was a result of the assumption that the natives need not participate in politics due to the friars’ apocalyptic belief in the perfectibility of human nature. They believed that the Amerindians ought to be held to a different standard of life, lest they fall victim to the sinful attributes of European political life. In conflating what is natural (i.e. political association) with what is European (i.e. the belief that European society was simply a product of unfortunate and sinful occurrences), the Franciscans wrought havoc on the Amerindians, destroying their way of life. The temporal power of the papacy, as the canonists defined it, violated the universal standard of natural justice by assuming that all *dominium* derived from grace, not nature. By attributing *dominium* to the *supernatural*, they perpetuated injustices that robbed the natives of their land, property, and, sometimes, their own families. Likewise, empire violated natural right

because it discounted the importance of the consent of the governed, jurisdictional boundaries, property rights, and limited government.

Las Casas' Thomism served as an indispensable corrective to these arguments. Las Casas debunked Aristotelian natural slavery by invoking the grandeur of creation, upheld the existence of natural right, and defended the universal capacity for human beings to understand the natural law. He provided arguments against the misuse of papal temporal authority and the zealous religious fantasy of the Franciscans by emphasizing that *dominium* comes from nature, not grace. He rejected imperial claims, because he argued that no divine, natural, or human law ever instituted an empire spanning the entire world. Lastly, he condemned the Spanish Conquest because it did not meet the standards of the Augustinian-Thomistic just war tradition.

In arguing that Thomistic natural law played an important role in the defense of the Amerindians, a counterargument could be made that natural law was not necessary in defending the rights of the Amerindians. Recently, Las Casas was criticized by Daniel Brunstetter, a notable leading American Lascasian scholar, for interpreting the Conquest through a Thomistic worldview. The problem with Las Casas, according to Brunstetter, is that Las Casas' appeal to nature was too ideological. Thomistic natural law, though more humane than the other predominant philosophies legitimizing the Conquest, nevertheless, imposed too many European and Christian ideas and expectations upon the Amerindians. Brunstetter writes:

Las Casas' defense of the Other implicitly reveals how arguments about equality are dependent on claims to moral superiority, and indelibly linked to cultural othercide. While he contributed much to diffusing the threat of violence by criticizing the conquistadors and calling for persuasive assimilation, the looming threat of violence resulting from difference remains because the claims of moral superiority that define his concept of the human and the scope of equality create the space beyond the gates of equality for the true barbarian who refuses to assimilate.¹

¹ Brunstetter, *Tensions of Modernity*, 91.

In other words, Thomistic natural law was yet another oppressive and foreign idea imposed upon the Amerindians; it was part of the problem, not the solution, to the Conquest. Brunstetter comes to this conclusion for a few reasons. The first is that he exaggerates certain aspects of Las Casas' thought. He overemphasizes Las Casas' criticisms of the Amerindians acting in perceived barbaric ways, while also underemphasizing, if not missing, Las Casas' belief in the essential equality of the Amerindian and the European. Second, though he correctly acknowledges the role of (European) Christianity in the natural law tradition, he does not pay serious attention to the universalism of the natural law tradition. Since Brunstetter does not adequately explicate what the natural law actually is, he never explains how the principles of natural law, such as *do good and avoid evil*, *seek preservation*, *have children*, and *live in community* represent specifically Christian ideas. Brunstetter, therefore, fails to distinguish between what all human beings ought to know and what human beings know only because of custom and convention. As a consequence, Brunstetter collapses the distinction, making Las Casas a cultural imperialist. In truth, when Las Casas passes judgment on the Amerindians, it is for crimes that all human beings should condemn, like cannibalism and human sacrifice. Las Casas does not use the natural law tradition to pass judgment on petty criticisms of the Amerindians, such as food choice or dress. Las Casas, in other words, does not impose anything uniquely Western on the Amerindians.²

In order to argue that the natural law is not necessary in delineating the rights of the Amerindians, Brunstetter employs Michel de Montaigne to make his argument. Montaigne also

² Las Casas does *not* impose Christianity upon the Amerindians. Brunstetter has a tendency of thinking in his monograph that Las Casas believes that the Amerindians are inferior to the Spanish until the natives convert. Brunstetter, however, is conflating natural and supernatural ends. Las Casas recognizes human equality on the basis of nature, not Christianity. Christianity is necessary for the Amerindians for a supernatural purpose; without it, they will not be able to be saved. Las Casas believes that the Amerindians have legitimate governments, not because through their reason they may become Christians, but because *dominium*, which the Amerindians possess, is natural.

wrote about the Amerindians in several of his essays and he defends the legitimacy of Amerindians customs without drawing upon natural law or natural right. Thus, the question arises: what does the foundationalism of natural law provide that the anti-foundationalism and skepticism of Montaigne fail to provide?

The Limits of Montaigne's Philosophy

Despite his numerous citations to Classical antiquity and his alleged allegiance to the Catholic faith, Montaigne is a quintessentially modern thinker. His modernity is present in his longest essay, *An Apology for Raymond Sebond*. Montaigne begins his essay by claiming that he will defend the theology of an obscure fifteenth century theologian, Raymond Sebond, against Catholic censors. Montaigne asserts, on the authority of a friend, that Sebond's thought is "a quintessence distilled from St. Thomas Aquinas."³ Montaigne uses Sebond to criticize Thomas. In actuality, the purpose of the essay is disingenuous: after a brief introduction, the essay hardly mentions Sebond. Instead, the essay is, in truth, a treatise on Montaigne's own thoughts on the relationship between faith and reason. It emerges quickly that Montaigne's thought is radically anti-Thomistic. Whereas Thomas teaches that faith and reason illuminate each other, Montaigne argues that truths about God can only be known through faith: "we can only grasp that Truth and lodge it within us if God favors us with the privilege of further help, beyond the natural order."⁴ Montaigne tries to make Christian belief purely an act of grace; for Thomas, belief is a mixture of reason and grace, of faith seeking understanding. While Thomas acknowledges that certain aspects of Christianity can be known only through faith (e.g. the Trinity), the Angelic Doctor

³ Michel de Montaigne, "An Apology for Raymond Sebond," in *The Complete Essays*, trans. M.A. Screech (New York: Penguin, 2003), 491.

⁴ *Ibid.*, 492.

does assert that human beings can come to know of God through reason alone, though imperfectly.⁵

Montaigne's shattering of the Thomistic synthesis of faith and reason occurs because he changes the meaning of faith and reason. Since nature does not provide any knowledge of God, faith in God cannot be proved or disproved. Arguments in favor of faith, therefore, are only convincing if one already accepts the articles of faith.⁶ The goodness of faith, since it is beyond the domain of reason, can only be convincing through an analysis of its effects. Christianity, however, rarely produces good fruit, since many Christian acts of faith are usually violent (as opposed to that of the more moderate pagans).⁷ In addition to restricting faith as an act of will devoid of any reasonableness, Montaigne also fundamentally criticizes the Aristotelian-Thomistic understanding of reason. He doubts the existence of Aristotle's *nous* (or intellect): "But there can be no first principles unless God has revealed them; all the rest – beginning, middle, and end – is dream and vapor."⁸ Montaigne wishes to divorce metaphysics from epistemology and philosophy because reason cannot perceive any metaphysical truths – such as first principles known through the intellect – without divine revelation. The history of Greek and Roman philosophy attests to reason's many errors. Instead of relying on metaphysics, philosophy must deal solely with what is material and known through the senses. David Lewis Schaefer convincingly argues that Montaigne "urges others similarly to adapt their souls to their bodies' needs," rather than, as in the Classical and Medieval tradition, the soul having primacy

⁵ Aquinas, *Summa Theologica*, I Q. 1 a.1.

⁶ David Lewis Schaefer, *The Political Philosophy of Montaigne* (Ithaca: Cornell University Press, 1990), 54.

⁷ Montaigne, "An Apology," 495: "Christians excel at hating enemies. Our zeal works wonders when it strengthens our tendency towards hatred, enmity, ambition, avarice, evil-speaking...and rebellion."

⁸ *Ibid.*, 607.

over the body.⁹ Ultimately, Montaigne's philosophy leads to a "dogmatic skepticism" which rejects teleology, calls for the conquest of nature "through our own arms," and suggests that religion is man-made.¹⁰ Montaigne, to a certain extent, paves the way for the modern interpretation of reason. Reason's power is negative; it is able to examine and criticize beliefs (e.g. Montaigne's condemnation of cruelty), but it is no longer able to affirm, along the lines of Aristotle and Thomas, first principles. Reason is also no longer able to affirm positively revelation.¹¹

These aspects of his political thought affect how he interprets the Amerindians of the New World, especially in one of his most infamous essays, *On the Cannibals*. Although the essay deals specifically with the natives of Brazil (i.e. natives with which Las Casas had no dealings), all his comments concerning the natives easily apply to those conquered by Spain. Montaigne argues that there are no significant differences between Europeans and the Amerindians. He writes: "I find (from what has been told me) that there is nothing savage or barbarous about these peoples, but that every man calls barbarous anything he is not accustomed to."¹² Both Montaigne and Las Casas disdain rash judgments that condemn a person as barbarous solely because of foreignness. Both men, however, define the term 'barbarian' in a different way, and the divergent way in which they use term illuminates the nuances of their respective positions. Las Casas, as was outlined in the fourth chapter, provides four alternative ways in which a person can be considered a barbarian – whether as a corrupt man, a person who cannot write, a natural slave, or a pagan. Montaigne, however, uses the term 'barbaric' to describe

⁹ Schaefer, *Political Philosophy*, 170.

¹⁰ *Ibid.*, 150, 123, 126, 137, 67.

¹¹ Judith N. Shklar, *Ordinary Vices* (Cambridge, MA: Belknap Press of Harvard University Press, 1984), 8-9.

¹² Montaigne, "On the Cannibals," in *Complete Essays*, 231.

actions that are distasteful. Montaigne's concern with taste and the senses creates a more subjective understanding of what constitutes a barbarian. While he acknowledges that certain practices of the Amerindians are barbaric (e.g. their way of war), he asserts that his fellow Frenchmen during the wars of religion have committed more atrocious crimes:

I think there is more barbarity in eating a man alive than in eating him dead; more barbarity in lacerating by rack and torture a body still fully able to feel things, in roasting him little by little and having him bruised and bitten by pigs and dogs (as we have not only read about but seen in recent memory, not among enemies in antiquity but among our fellow-citizens and neighbors – and, what is worse, in the name of duty and religion) than in roasting him and eating him after his death.¹³

To a certain extent, Las Casas agrees with Montaigne's sentiment: Christians, due to revealed faith, ought to know better than to perform such horrible actions. Montaigne's argument as to why the atrocities of the French are worse than the Amerindians, however, is not grounded in natural right or some concept of human dignity. It is based upon utility. After making his condemnation of European atrocities, he cites the Stoic philosophers Chrysippus and Zeno, who believed that there was nothing wrong with cannibalism. Montaigne suggests that once a body is dead, it ought to be used in whatever way is useful to the living.¹⁴ His mild defense of cannibalism is the result of the materialism and the worldliness of his philosophy. Since reason cannot interpret first principles from the intellect, it is merely a product of calculation and utility in assessing what is good for the human person. Montaigne's argument that the soul is mortal, as opposed to immortal, further legitimizes cannibalism.

Montaigne's openness to the practice of cannibalism is also a result of his epistemology.

In one of the most memorable and important lines in the *Essays*, Montaigne goes on to write, "it

¹³ Ibid., 231-232.

¹⁴ To persuade his audience, he invokes the example of medical men who use corpses in order to find cures. M.A. Screech, Montaigne's English translator, notes in a footnote that it was common for Egyptian mummies to be "imported for use in medicines." Ibid., 236 n19.

is indeed the case that we have no other criterion of truth or right-reason than the example and form of the opinions and customs of our own country. There we always find the perfect religion, the perfect polity, the most developed and perfect way of doing anything!”¹⁵ Montaigne’s argument is in accordance with both pre-Socratic Greek conventionalism and present-day conceptions of the social construction of reality: that what a certain society considers to be good and true is a product of the constructs, tastes, prejudices, and conditions of a particular time and place rather than what is natural. Montaigne’s epistemology is significantly different than the Spanish Dominican’s position. Las Casas drew upon Aristotelian realism, which like Montaigne, begins with the senses. Yet, the radical break between Aristotle and Montaigne is the former’s understanding of the intellect, an immaterial object that can decipher first principles. The intellect interprets the senses and, since it is *not* created or formed by the senses, it provides an account of reality that transcends and, ultimately, provides a bulwark against the subjectivity of personal opinion. Both Thomas and Las Casas Christianize this account by claiming that the *imago Dei* is indelibly stamped upon the human intellect, allowing a human being to interpret objective first principles. Cannibalism, according to this tradition, is a crime against the natural order that can be denounced by reason alone. Las Casas, therefore, considered the Amerindian crime of cannibalism to be against natural law, though the Amerindians participated in the action only insofar as they thought that it was in accordance with the precept of natural law that demands the worship of God.

Although Montaigne and Las Casas do not demean the Amerindians for their cannibalism, they do so for different reasons. Las Casas’ moderation derives from reasoning based upon natural standards. Montaigne, though he appears moderate due to the postmodern

¹⁵ Montaigne, “On the Cannibals,” *Complete Essays*, 231.

affection for value-free judgments, actually provides the more radical idea because he, in considering criteria for truth and right-reason to be products of the culture in which one dwells, is historicizing all moral claims to be mere opinions. Montaigne does not have the philosophical tools necessary to condemn the cannibalism of the Amerindians because, by being a member of a different culture, he can only condemn the Amerindians by *his* standards of good and evil, which if acted upon would constitute an act of aggression against the natives. Brunstetter admires Montaigne for this very reason: the Frenchman does not participate in such cultural imperialism.

Montaigne writes about the Amerindians, in part, to provide a counterargument against the prevalence of sixteenth-century European ethnocentrism. He admires the Amerindians for their egalitarianism and closeness to nature. Yet, Montaigne, in essay *On Moderation*, does criticize quite harshly on one account: their immoderation. He writes:

All their idols are soaked with human blood, not without various examples of dreadful cruelty. Men are burned alive; when half-roasted they are withdrawn from the fire so that their hearts and entrails can be plucked out; others, even women, are flayed alive: their skin, all bloody, serves as a cloak to mask others; and there are no less examples of constancy and determination. For those wretches who are to be immolated, old men, women, and children, beg for alms a few days beforehand as offertories at their sacrifice, and present themselves to the slaughter singing and dancing with the congregation.¹⁶

Montaigne does not think highly of this custom, but his disapproval stems, not from natural right, but from his belief that human sacrifice is immoderate. Human sacrifice, even if the sacrificial victim is joyfully consenting to it, is not moderate. As Machiavelli changes the meaning of prudence in his writings, so does Montaigne change the definition of moderation. Both Aristotle and Montaigne agree that moderation concerns itself with pleasures that human beings share with animals, the pleasures of touch and taste.¹⁷ Moderation, for Aristotle, is a habit that

¹⁶ Montaigne, "On Moderation," *Complete Essays*, 227.

¹⁷ Aristotle, *Ethics*, 3.10.1118a25.

strengthens one's soul. Thus, one cannot be 'moderate' in moderation. Rather, the habituation of moderation transforms the person so as to unthinkingly choose the moderate choice; the virtue perfects the person. Moderation, for Montaigne, is more leisurely than habitual. As an example of a moderate person, he provides from Plato's *Gorgias* the character of Callicles, whom Plato considered to be the epitome of immoderation. Like Callicles, Montaigne asserts that one should only dabble in philosophy; no one should give one's life to philosophy.¹⁸ Such a claim would not make any sense to Plato and Aristotle because, for both men, philosophy is absolutely essential in thwarting disordered *eros*. In contradistinction to the Classical authors, both Callicles and Montaigne assert the primacy of pleasure. As such, Montaigne's concept of moderation is simply the art of attaining as much pleasure as possible without getting sick from excess. Moderation has nothing to do with the soul. The Amerindians fail according to Montaigne's standard of moderation because they do not handle pleasure and pain correctly. Their practices of cannibalism and human sacrifice are too religious and otherworldly; their concern for the gods leads them to commit intemperate acts. In sharp contrast, it Las Casas' concern *with* the human soul that makes the Spanish Dominican's theology of preaching so powerful. The Amerindians are the Spanish's equals precisely because they care for their soul. For Las Casas, this attention to 'the most important things' is proof of a universal nature that transcends the merely temporal affairs of human life.

Montaigne partially defends the Amerindians because they exemplify the primal, sensual, and material lifestyle that he wishes Europeans adapt. When viewed in this light, Montaigne's reasons for defending the legitimacy of the Amerindian kingdoms are completely different from Las Casas' arguments. They posit different understandings of nature, though they use their

¹⁸ Montaigne, "On Moderation," *Complete Essays*, 223.

concept of nature to the advantage of the Amerindians. The question, therefore, arises: do the differences between the two matter even though they both defend Amerindian government? As mentioned previously, Brunstetter argues that the differences do matter and that it is better to support Montaigne because his concept of nature provides less metaphysical and cultural baggage to impose upon the Amerindians. What Brunstetter's analysis misses, however, is that there are many positive political realities – such as human rights and dignity – that Montaigne's philosophy fails to adequately defend or even envision.

The Case for Las Casas' Thomism

Montaigne's skepticism – his belief that truth and right reason are a direct result of customs and opinions – undercuts any universal claims that he can make above any basic or primal claims. Modern concepts, however, such as human rights and human dignity – the right to free expression of religion, the right to assembly, the right to free speech, the abolition of slavery, and equal protection for women, among others – are grounded on truth-claims more noble and foundational than those based on primal, sensual, and material reasons. There has to be some sort of universal claim about human nature to legitimize human rights, lest one is forced to say, embarrassingly, they exist merely out of fancy, wish, or the demands of the mob or of the powerful. If one does not make universal claims about human nature, then the modern attempt to promote human rights and to protect dignity around the world, especially in those regions or regimes that do not want to adhere to these principles, would be yet another form of cultural imperialism. Ultimately, Montaigne's worldview does not allow human beings to speak about justice in any meaningful way.

The limits of Montaigne's philosophy lead us back to Las Casas' Thomism. The first merit of Las Casas' Thomism is its robust understanding of the human person rooted in nature.

According to Las Casas, all human beings, regardless of religion or belief, are capable of understanding the premises of morality through nature. Human beings can even come to know certain things about God without revelation. As such, all human beings are naturally inclined to know what is good and evil. This natural inclination provides a universal precept of ethics: *do good and avoid evil*. No one, not even the conquistadors, can eradicate that proposition from their hearts.

Montaigne's criticism of this tradition boils down to this position: the exercise of reason has led human beings to different conclusions about the most elementary concepts, *ergo* reason cannot be a trustworthy source. His solution to this problem is skepticism and the exercise of moderation in the enjoyment of the body. Las Casas, however, provides a Classical alternative to Montaigne through the use of dialectical reasoning and persuasion. Whereas Montaigne equates custom with regional prejudice, Las Casas sees custom in good Thomistic fashion as products of practical reason. Las Casas' theology of preaching allows the similarities and differences between Christian and pagan thinkers to be compared. Las Casas believed that the truth of Christianity would appear more reasonable and clear to the natives through rigorous and honest searching. Regardless of its Christocentric conclusion, Las Casas' theology of preaching provides a more robust understanding of human reason than does Montaigne's skepticism. Las Casas' understanding of the human person allows the human being to take his or her proper place in the universe: as special and unique over all other animals because human beings are *political* animals.

Las Casas' Thomistic appeal to nature has a second merit: the handling of international affairs. Although Montaigne's philosophy is attractive to some anti-foundational relativists because his political thought involves passing minimal judgement upon others and avoids the

hated modern sin of ethnocentrism, it fails to provide clear and compelling guidelines that outline how different cultures and regimes ought to interact with each other. In this light, it is not surprising that Thomism is often considered foundational to the creation of international relations. Las Casas uses a Thomistic understanding of the *ius gentium* to provide a natural standard through which people can communicate. The *ius gentium* is a body of human law which derives directly from the principles of natural law. Embedded into the concept of the *ius gentium* is the naturalness of a *plurality* of governments, since the consent of the governed is only possible in regimes small enough in which the individual is able to consent. The existence of several regimes, however, does not prohibit the possibility of a natural standard common to all people, regardless of place or time. One of the cornerstones of Las Casas' defense of Amerindian self-government was that the Amerindians themselves had knowledge of the *ius gentium*. The Amerindians, in other words, through their apprehension of justice grounded in natural right, understood that Spanish colonization and seizure of property was unjust. The Amerindian capacity to consider Spanish actions as 'just' and 'unjust' was not grounded merely upon their subjective opinion, fancy, or wish, as Montaigne's philosophy would lead one to conclude, but by a standard they expected of all human beings.

This natural standard gave Las Casas the philosophical standing to condemn the Spanish Conquest as an unjust war. The Conquest lacked just cause because the causes the Spanish asserted were invalid. As it lacked a just cause, it neither had a legitimate ruler to promulgate a just war nor was its goal the attainment of a valid peace. Few men have the courage to condemn so boldly and blatantly the wars of one's own homeland. Fewer men have the prudence, tact, and courage to persuade a king to be open to abandoning a militarily successful war on purely

ethical grounds. Yet, Las Casas' Valladolid debate with Sepúlveda illuminates the Dominican's tenacity, vision, and wisdom.

Whether or not one agrees with all of Thomas' premises or Las Casas' application of Thomas' political thought, the Spanish Dominican provides an illuminating defense of Amerindian rationality and sovereignty. Like all great political philosophers, he addresses a variety of questions concerning human nature, God's analogous relationship with creation, the limits of power and governmental jurisdiction, the boundaries of the temporal and spiritual spheres, and the just war. Las Casas provides answers to these questions that, though timeless, can also be applied to a particular moment in history. In Las Casas, we see an example of an integrated balance between practical and theoretical wisdom; he was a man with a foot in both political and theoretical affairs. It is the hope of this dissertation that students of political thought will treat Las Casas with the attention and seriousness he deserves.

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