

SINS AGAINST NATURE AS REASONS FOR A 'JUST WAR': SEPÚLVEDA, VITORIA AND LAS CASAS

GIUSEPPE TOSI

The discussion surrounding the conquest of America finds in the principle of just war and in its reasons the centre of gravity towards which converge several crucial topics for the legitimization or de-legitimization of acts committed **here**¹ In that period, the just war doctrine still needed theological justification, and the theologians were given the decisive task of defining the legitimacy and the legality of the war.²

Among the legitimate reasons for a “just and holy” war against the inhabitants of the New World particularly, there was a strong one (*potissi-*

This work is an English version of the Italian original, translated by Irene Bassanezi Tosi and revised by Professor Sandra Luna Cirne de Azevêdo (UFPB) with further revisions by Kent Emery, Jr.

¹ A.A. CASSI, *Ius commune tra vecchio e nuovo mondo. Mari, terre e oro nel diritto della conquista (1492-1680)*, Milano 2004, 373: “It was the ‘just war’, the true principle, the valid legal title on which the conquest of the New World was founded” (our translation).

² In the polemic between theologians and jurists, Francisco de Vitoria (1483-1546) is one of the strongest supporters of the authority of theologians over jurists and, in a more general sense, of the authority of theology over other fields of knowledge. In the *De potestate civili* (1528) he wrote: “Officium ac munus theologi tam late patet, ut nullum argumentum, nulla disputatio, nullus locus alienus videatur a theologica professione et instituto”; see FRANCISCO DE VITORIA, *Relecciones teológicas*, ed. T. URDÁNOZ, Madrid 1960, 150. In the introduction to *Relectio de indis* (1537), Vitoria affirmed that concerning the question of the legitimate domain of Indians “is not the province of lawyers [quod haec determinatio non spectat ad iureconsultos], or not of lawyers alone, to pass sentences in this question. Since these barbarians we speak of are not subjects by human law [non essent subiecti iure humano], their affairs cannot be judged by human statutes but only by a divine one [per leges humanas sed divinas], in which jurists are not sufficiently versed to form an opinion of their own [quarum iuristae non sunt satis periti]”; see FRANCISCO DE VITORIA, *On the American Indians*, ed. A. PAGDEN and J. LAWRENCE, in *Political Writings*, Cambridge 1991, 238. Sixty years later (1598) Alberico Gentili (1552-1608) would answer Vitoria with his famous motto, which Carl Schmitt appreciated so much (and also Michel Villey): “Silete theologi in munere alieno!”; see A. GENTILI, *De iure belli libri tres* I c.12, Hannover 1612 (first published 1598), 92. See also P. HAGGENMACHER, *Il diritto della guerra e della pace di Gentili. Considerazioni sparse di un “Groziano”*, Milano 1995, 26. The reference to Gentili by Schmitt is found in C. SCHMITT, *The nomos of the Earth in the International Law of the Jus Publicum Europaeum*, New York 2003, 121.

mum): the sins against nature, which were not only widely committed, but also encouraged by the customs of the so-called “barbarian peoples.” These facts cast a shadow on the universality of the natural rights God engraves in the hearts of all human beings, “created in his image and likeness.” Among those who discussed this topic, we have selected authors who represented three paradigmatic positions: the apologists of the *conquista*, represented by Juan Ginés de Sepúlveda; the school of Salamanca, particularly Francisco de Vitoria; the *Procurador de los Índios*, Bartolomé de Las Casas.

I. Sepúlveda: The Reasons for a Just and Holy War

We begin with the analysis of Sepúlveda’s dialogue, *Democrates Secundus, sive de justis belli causae apud Indos*.³ The work opens with arguments against pacifism and Christian irenicism, followed by a discussion about the reasons for a just war,⁴ in which Sepúlveda summarizes the content of his first dialogue dedicated to the topic, defending a thesis on the compatibility between war and Christian doctrine.⁵ The rhetorician of Córdoba de-

³ JUAN GINÉS DE SEPÚLVEDA, *Demócrates segundo o de las justas causas de la guerra contra los indios*, ed. A. LOSADA, Madrid 1984; JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo, ovvero sulle giuste cause di guerra*, ed. D. TARANTO, Macerata 2009. The English quotations are based on a bilingual Italian-Latin edition.

⁴ IDEM, *Democrate Secondo*, ed. TARANTO, 7-19. Sepúlveda says that his book is against the “modern heretics” according to whom all wars are prohibited by divine law; this is an evident allusion to Erasmus, with whom he had already disputed in a previous work; see M. BATAILLON, *Erasmus y España*, México 1991, 632-33, and 421-25. Against the attempts to present Sepúlveda as a “humanist” in opposition to the Counter-Reformation theologians of Salamanca, see H. MÈCHOULAN, *L’antihumanisme de J. G. de Sepúlveda. Étude critique du Democrates primus*, Paris-La Haye 1974; see also G. TOSI, “Interpretazioni del dibattito sul nuovo mondo”, in *Atti dell’Istituto Veneto di Scienze, Lettere ed Arti* 164 (2005-2006), 547-85.

⁵ Juan Ginés de Sepúlveda (1490-1573) for the first time had faced the issue of the compatibility between war and Christian doctrine in 1535, in a dialogue titled *Democrates primus, sive de convenientia militaris disciplinae cum christiana religione, qui inscribitur Democrates*, Roma 1535. In 1545, after he had personally known Hernán Cortés, he applied the arguments of the dialogue to the American conquest in the work titled *Democrates Secundus, seu de justis belli causis apud Indos*. He presented the manuscript to the Council of the Indies, which denied the *imprimatur*; then he sent it to the Royal Council, but in that year Bartolomé de Las Casas returned from America and managed to ensure that the book would not be published. Emperor Charles V decided to send it to the universities of Salamanca and of Alcalá de Henares for an opinion from the theologians, which was extremely negative. The dialogue remained unpublished until the end of the nineteenth century, when it was published by the Spanish historian Menéndez Pelayo. In 1550, failing in his attempt, Sepúlveda published in Rome an *Apologia pro libro de justis belli causis*, which represents the arguments of the *Democrates alter* no more in dialogue but *more scholastico* (*Tratado sobre las justas causas de la guerra contra los*

fends the traditional doctrine that a war, to be just, requires a declaration by a legitimate authority with appropriate jurisdiction, good intentions on the part of those who promote the war, righteousness in its development and the existence of good causes, which are basically three: the reparation of a suffered injustice (*repellere iniuriam acceptam*), the recovery of loot unjustly taken and the imposition of just punishment on those who committed the offence (*iniuria*).⁶ Without these premises, the war would not be just, but it would be a "grave assault" (*magna latrocinia*), to paraphrase the famous statement by Saint Augustine.⁷

The war that the Spaniards waged against the Indians should actually be seen as an assault because there were no just causes. In fact, the Indians had lived for millennia in their territories which were eventually invaded by the Spaniards. For this reason, there was no *iniuria* to repair or loot to recover, and thus not even a just punishment to be imposed. Therefore, the question was not simply to apply the traditional doctrine to justify the war, but to find other causes for the 'just war'. Sepúlveda recognized this and searched for other causes (*aliae iusti belli causae*), which he thought deserved to be taken into account as corresponding to the "natural right and to the philosophers' doctrine."⁸ They basically were four: (1) the state of natural servitude and clear inferiority in which the Indians lived and which justified their submission to "superior peoples" like the Spaniards; (2) the sins against nature committed by those "barbarians," such as human sacrifices, cannibalism, idolatry and sodomy; (3) the defence of the innocent victims of these human sacrifices and of other practices against the natural rights and the laws of nations, typical of peoples who share their godless religion; (4) the necessity of the "barbarians'" prior submission as a favourable con-

Indios, México, D.F. 1996). Sepúlveda returns to the topic in a polemic brochure against Las Casas, in which he denounces the thesis of the Dominican, considered by him "audacious and heretical." He also wrote a chronicle of the Spanish conquest, inspired by the deeds of Hernán Cortés, titled *De Orbe novo*; see A. LOSADA, *Juan Ginés de Sepúlveda a través de su "Epistolario" y nuevos documentos*, Madrid 1973.

⁶ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 27-28. For the reconstruction of the concept of just war, see A.A. CASSI, "Dalla santità alla criminalità della guerra. Morfologie storico-giuridiche del *bellum iustum*", in *Guerra Giusta? Le metamorfosi di un concetto antico*, ed. A. CALORE, Milano 2003, 101-58; see also J. VERHOVEN, "Les grandes étapes de l'évolution du droit de la guerre", in *500 anni di solitudine. La conquista dell'America e il diritto internazionale*, Verona 1994, 143-77.

⁷ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 27; AUGUSTINUS HIPPOBENSIS, *De civitate Dei* IV.4.1 (CCSL 47), Turnhout 1955: "Remota itaque iustitia, quid sunt regna nisi magna latrocinia?"

⁸ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 31.

dition for preaching the Gospel to them.⁹ In this essay, we will focus on the second cause and indirectly on the third cause.¹⁰

Sepúlveda asserts that the most obvious evidence of the Indians' condition of barbarism and inferiority lies in their godless religion that allows and promotes "heinous human sacrifices," in which they open the chest of the victims, tear out their hearts and offer them in sacrifice on their "nefarious altars" to appease their idols.¹¹ These customs show the bestial nature of these peoples, and for that reason they were compared not only to Aristotle's natural slaves but also to the *barbari simpliciter* of the medieval exegesis of the *Politics*, in which the character of bestiality and monstrosity prevails.¹² Sepúlveda states:

I talked about their intelligence and their barbarian customs, but what should I say about their godless religion and nefarious sacrifices? Worshipping a demon instead of God, they believed that they could not appease him with sacrifices better than those of human hearts. That would be true if it would refer to the healthy and pious minds of men; however they did not interpret that *dictum* to "vivify the spirit," according to St. Paul's words [2 Cor. 3:6], but literally, to kill the spirit. Interpreting the *dictum* foolishly and barbarously, they believed it was right to sacrifice human victims uprooting hearts from the ripped human chests to offer them on nefarious altars, offering sacrifices according to the rituals to appease gods, while they themselves ate the flesh of men they killed. Philosophers classify these crimes, which exceeded all human malevolence, as tremendous and fierce infamies.¹³

⁹ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 31-121.

¹⁰ For a wider reading on the debate, see G. TOSI, "La teoria della schiavitù naturale nel dibattito sul Nuovo Mondo: *veri domini o servi a natura*", in *Divus Thomas* 33 (2002), 258.

¹¹ On human sacrifices, see G.Y. TORRES, *El sacrificio humano entre los Méxicas*, México, D.F. 2006.

¹² Among the different meanings of the word *barbari* in the comments of Aristotle's *Politics*, there was that of the "barbari proprie et simpliciter," i.e., those peoples who practice monstrous customs (as eating human flesh), who were living in distant (*iuxta aequinotialem*) and inhospitable regions (*intemperies aereis*) in which, because of the harsh climate ("propter persistatim ratione frigoris circumstantis"), they acquired physical features ("generatur multus sanguis grossus circa cor et turbulentus") which deprived them of the use of reason ("et sic intellectus in illis deficit in judiciis suis"), as affirmed John Buridan, Albert the Great, Peter of Auvergne and Thomas Aquinas. The barbarian *simpliciter* still remained apart from any known society (*in finibus mundi*), and medieval thinkers, despite their attempts, would never identify a concrete historical subject with these features. The discovery of the New World offered the opportunity to give a concrete referent to this 'empty' category; see G. FIORAVANTI, "Servì, rustici, barbari: interpretazioni medievali della *Politica aristotelica*", in *Annali della Scuola Normale Superiore* 11 (1981), 399-429, 427.

¹³ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 59: "Dixi de ingenio et

Regarding this custom, Sepúlveda has harsh words of condemnation: he considers it the “most serious and the vilest crime against human nature,” a “really shameful” sort of idolatry, practised by those who “have neither religion nor any knowledge of God,” who “adore the belly and the most abhorrent parts of the body as God, and have as religion and virtue the pleasures of the body, as if they had never admired the sky, always on the ground, prone to the habits of pigs.”¹⁴ These crimes *per se* are a sufficient just cause for war.

Leopold, an imaginary German Lutheran interlocutor in the dialogue, quotes the opinions of “well-renowned” theologians, who denied that infidelity and the practice of crimes against nature were sufficient causes to promote wars, because neither the Pope nor the Emperor could claim jurisdiction over the Indians:

LEOPOLD: How then did it come to the minds of some theologians of great renown to deny that Christian princes were allowed to subdue pagans, who lived in regions where the name of Christ or that of the Roman Empire had never entered? The lack of faith, as they said, is not a sufficient cause to lead a just war and to despoil infidels of their goods. The authority of this very learned man (*vir doctissimus*) does not really impress me, but rather the testimony of the apostle Paul, who would deny the responsibility to judge pagans under the apostolic care and authority with these words: “For what have I to do with also judging those who are outside?” [1 Cor. 5:12].¹⁵

moribus barbarorum, de impia vero ipsorum religione et nefariis sacrificiis quid dicam? Qui cum daemonia pro Deo colerent, hunc nullis sacrificiis aequae placari putabant, ac cordibus humanis. Quod quamquam verissimum est, si sanas et pias hominum mentes intelligas; isto tamen dictum, non ad vivificantem spiritum (ut verbis utar Pauli), sed ad occidentem litteram referentes et stultissime, ac barbaramente interpretantes victimis humanis litandum putabant, et hominum pectoribus ereptis corda divellebant, et his ad nefandas aras oblatis, rite sese litasse atque deos placasse putabant ipsique mactatorum hominum carnibus vescebantur. Quae scelera, cum omnem humanam pravitatem excedant, inter fera et immania flagitia a philosophis numerantur.” Aristotle’s quotation refers to those passages of the *Nicomachean Ethics* which deal with the bestial customs (*terioideis*) of some barbarian peoples; see ARISTOTLE, *Ethica Nichomachea* VII.6 (1148b18-30), a cura di C. MAZZARELLI, Milano 1993, 272-73.

¹⁴ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 59: “Nam quod quaedam eorum nationes nullam omnino religionem nullam dei cognitionem habere dicuntur, hoc quid aliud est, quam Deum esse negare, et vitam bestiarum more transigere. Quo quid gravius, quid foedius, quid magis ab humana natura alienus excogitari possit, non video. Est enim foedissimum genus idolatriae ventrem, turpissimam corporis partes pro deo colentium, et pro religione, et virtutibus corporeas voluptates, quasi nunquam coelum aspexerint, semper in terram pronos more porcorum assectantium.”

¹⁵ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 67: “Leopoldus: Quid igitur quibusdam magni nominis Theologis in mentem venit negare, Christianis principibus

The *vir doctissimus* was obviously Francisco de Vitoria.

II. Francisco de Vitoria: Sins against Natural Law Are Not Sufficient Reasons for a Just War

It was a widespread doctrine among the masters of Salamanca that sins against natural law were not by themselves causes for a just war, basically for two reasons: because the Pope had no jurisdiction over the peoples who committed them, and although Christians also committed sinful practices against nature, religious or secular authorities could not make them slaves and dispossess them of their property. Rejecting the idea that infidelity can be a justification for the loss of *dominium*, Francisco de Vitoria literally quotes the doctrine of Thomas Aquinas: “Aquinas shows that unbelief does not cancel either natural or human law; but all forms of dominion [*dominia*] derive from natural or human law; therefore they cannot be annulled by lack of faith.”¹⁶ Vitoria adds that this is so true that it is not allowed to dispossess Jews, Saracens or others infidels of their goods “on the grounds of their unbelief *per se*. To do so is theft or robbery, no less than it would be in the case of Christians.”¹⁷ The conclusion is clear: “the barbarians are not impeded from being true masters, publicly and privately, either by mortal sin in general or by the particular sin of unbelief. Nor can Christians use either of these arguments to support their right to dispossess the barbarians of their goods

esse permissum, ut paganos in ditionem redigant, si quis reperiantur regiones inhabitantes, quo numquam imperium Romanorum, nec Christi nomen penetravit? Infidelitas enim, ut ipsi loquuntur, non satis habet causae, ut bellum citra iniuriam inferatur, et infideles bonis suis spoliuntur. Neque vero me tantum monet huius viri doctissimi auctoritas quantum Pauli apostoli testimonium, qui ad apostolicam curam et potestatem pertinere negat de paganis iudicare illis verbis: “Quid enim pertinet ad me de iis qui foris sunt iudicare?” [1 Cor. 5:12].

¹⁶ FRANCISCO DE VITORIA, *Relectio de Indis: La questione degli indios* I.1.4, ed. A. LAMACCHIA, Bari 1996, 20; FRANCISCO DE VITORIA, *On the American Indians*, in *Political Writings*, ed. A. PAGDEN and J. LAWRENCE (Cambridge Texts in the History of Political Thought), Cambridge 1991, 244 (We use the Italian edition for the Latin text, and the edition of *Political Writings* for the English translation.): “Item ratione S. Thomae, quia fides non tollit nec ius naturale nec humanum; sed dominia sunt vel de iure naturali vel humano, ergo non tolluntur dominia per defectum fidei.” THOMAS DE AQUINO, *Summa theologiae* IIaIIae q.10 a.10, Torino 1948, 74: “Ubi considerandum est quod dominium et praelatio introducta sunt ex iure humano: distinctio autem fidelium et infidelium ex iure divino. Ius autem divinum non tollit ius humanum, quod est ex naturali ratione. Et ideo distinctio fidelium et infidelium, secundum se considerata, non tollit dominium et praelationem infidelium supra fideles.”

¹⁷ FRANCISCO DE VITORIA, *Relectio de Indis* I.1.4, ed. LAMACCHIA, 20: “per se loquendo, id est, quia infideles sunt. Sed est furtum vel rapina, non minus quam christianis.”

and lands, as Cajetan elegantly deduces [in *ST IIaIIae* q.66 a.8]."¹⁸

The teachings of Cardinal Cajetan, who was one of the most influential clergymen and theologians of his time, provided important support to the thesis of the masters of Salamanca and Las Casas. For this reason also Sepúlveda, who for a certain period had been the cardinal's assistant, responded to these arguments. Sepúlveda claims that if it is true that the barbarians cannot be punished for their infidelity, it is also true that they can be punished for the sins deriving from it, especially those committed against the natural law. Vitoria recalls this argument, which he will oppose:

Some sins, they say, are not against natural law, but only against positive divine law, and for these the barbarians cannot be invaded. But others, such as cannibalism, incest with mother and sisters, or sodomy, are against nature, and for these sins they may be invaded and compelled to give them up.¹⁹

Vitoria bravely objected to this opinion, which was widespread, apparently solid and supported by renowned theologians, including Pope Innocent IV,

¹⁸ FRANCISCO DE VITORIA, *Relectio de Indis* I.1.10, ed. LAMACCHIA, 25 (*Political Writings*, ed. PAGDEN and LAWRENCE, 246): "Quod barbari nec propter peccata alia mortalia nec propter peccatum infidelitatis, non impediuntur quin sint veri domini, tam publice quam privatim, nec hoc titulo possunt a christianis occupari bona terrae illorum, ut late et eleganter deducit Caietanus." Tommaso di Vio, Cardinal of Gaeta, called *Caietanus* (1469-1534), in his comment to Thomas' *IIaIIae* q.66 a.8, wrote: "Quidam autem infideles nec de iure nec de facto subsunt secundum temporalem iurisdictionem principibus christianis, ut si inveniuntur pagani qui nunquam imperio romano subditi fuerunt, terras inhabitare in quibus christianum numquam fuit nomen; horum namque domini, quamvis infideles, legitimi sunt sive regali, sive politico regimine gubernentur. Nec sunt propter infidelitatem a dominio suorum privati, cum dominium sit ex iure positivo, et infidelitas ex divino iure, quod non tollit ius positivum.... *Contra hos nullus Rex, nullus Imperator; nec Ecclesia Romana potest movere bellum* ad occupandas terras eorum aut subiicendum eos temporaliter: quia nulla subest causa iusti belli cum Iesus Christus, *Rex Regum, cui data est omnis potestas in coelo et in terra* (Apoc. 17:14; 19:16, et Mat., 28:18) miserit ad capiendam possessionem mundi *non milites armatae militiae, sed sanctos praedicatores, sicut oves inter lupos* (Mat. 10:16; Luc. 10:3). Unde *gravissime peccaremus si fidem Christi Iesu per hanc viam ampliare contenderemus*: nec essemus legitimi domini illorum, sed magna latrocinia committeremus et teneremur ad restitutionem, utpote *iniuste debellatores aut occupatores*. Mittendi essent ad hos *praedicatores boni viri, qui verbo et exemplo converterent eos ad Deum: et non qui eos oppriment, spolient, scandalizent, subiiciant, et duplo gehennae filios faciant, more phariseorum* (Mat., 26, 16)"; quoted in V. CARRO, *La teología y los teólogos-juristas españoles ante la conquista de América*, Salamanca 1951, 299-308.

¹⁹ FRANCISCO DE VITORIA, *Relectio de Indis* I.2.5 (*Political Writings*, 272): "Dicunt enim quod, cum sint aliqua peccata, quae non sunt contra legem naturae, sed solum contra legem divinam positivam, pro his barbari non possunt infestari bello; alia autem sunt contra naturam, ut esus carnis humanae, concubitus indifferens cum matre, et sorore, et cum masculis; et pro his possunt infestari bello et cogi ut ea relinquunt."

who, in his comments on the *Decretal* said: “I believe that if the *gentiles* would break natural law, which is the only law they have, they may be punished by the Pope.”²⁰ In opposition Vitoria says that Christians kings cannot by force oblige the barbarians to abandon their customs against nature: “even by the authority of the Pope, Christian princes may neither compel the barbarians to give up their sins against the law of nature nor punish them for such sins,”²¹ first, because “the premise that the Pope has jurisdiction over the barbarians is false,” secondly, because sins against nature are not only those committed “against the natural law” but also those committed “against the natural order” (as Thomas Aquinas teaches in *ST* IIaIIae q.154 aa.11-12). In this sense, a murder is also a grievous sin against the natural order (“est ita grave vel gravius peccatum”) as well as blasphemy. Even so, it is not allowed to wage war against those who committed these sins and deprive them of their belongings, for they can also be committed by Christians. Using an argument of reciprocity, Vitoria remarks with irony:

Besides, the Pope may not wage war on Christians because they are fornicators or robbers or even because they are sodomites; nor can he confiscate their lands or give them to other princes; if he could, since every country is full of sinners, kingdoms could be exchanged every day. And a further confirmation is that such sins are more serious in Christians, who know them to be sins, than in the barbarians, who do not.²²

Sepúlveda responds to this argument by observing rightly that the question is not about sins against the natural order committed by individuals and forbidden by the customs and the laws of society, but it is about sins committed by entire populations, allowed and promoted by their customs and their laws; therefore, etc. Vitoria’s argument does not address the question.

III. Sepúlveda: Holy War to Revenge Offences against God

Sepúlveda responds at length to Vitoria deriving his arguments from both Aristotelian doctrine and the *loci communes* of political Augustinianism.²³

²⁰ IDEM, *Ibid.*

²¹ IDEM, *Ibid.*

²² FRANCISCO DE VITORIA, *Relectio de Indis* I.2.5, ed. LAMACCHIA, 40 (*Political Writings*, ed. PAGDEN and LAWRENCE, 274): “Item non licet Papae inferre bellum christianis, quia sunt fornicarii aut fures, immo etiam quia sunt cinaedi; nec ideo potest publicare terras illorum et dare aliis principibus. Hoc enim modo, cum in omni provincia sint multi peccatores, quotidie posset mutare regna. Et confirmatur: graviora enim peccata sunt haec apud christianos, quia sciunt illa esse peccata, quam apud barbaros, qui ignorant esse peccata.”

²³ H.X. ARQUILLIERE, *L’augustinianisme politique. Essai sur la formation des théories politiques du Moyen-âge*, Paris 1955.

Firstly, he attacks the Thomistic distinction between natural law and divine law, arguing that the precepts of the natural law are identical with those of the positive divine law contained in Deuteronomy and in the prescriptions of Yahweh to the Jews:²⁴

DEMOCRITUS: Although these precepts are for the sons of Israel, God Himself declared that they constitute a natural law which obliges all peoples, and asserted that for the same crimes he would destroy the sinful peoples.... These words have the value of universal law, regarding all men: "Whoever does any of these abominations will be cut off from his people," which is equivalent to saying that whoever has committed the crimes previously referred to concerning the worship of idols and sacrifices of human victims must be punished with death, according to what Moses, who was an excellent interpreter of the divine will, declared with considerable wisdom.²⁵

If natural law is considered to be identical with the positive divine law, then the Supreme Pontiffs have the sufficient jurisdiction to grant Christian princes the right to wage war "against the pagans to punish and correct them in case there would be some peoples who would not respect the natural law."²⁶ The example of the biblical wars, which the Scholastics commonly had considered an exception allowed by God with his direct intervention, is justified as a model to be followed. In fact, in the Promised Land with divine permission the Jews destroyed and annihilated entire populations because of their infidelity and associated crimes.

Furthermore, Sepúlveda directly attacks Victoria's argument related to the sins against nature committed by Christians. It is again Leopold who gives voice to the objections of the master of Salamanca:

LEOPOLD. I do not really understand, Democritus, what you mean here by natural law.... But I say that what is against the natural law is robbery, adultery, murder and other major crimes which can be seen everywhere as having also contaminated Christians; if you want to agree with yourself, you cannot deny it, having earlier defined the natural law as participation in the eternal law of the creature capable of reason.²⁷

²⁴ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 41.

²⁵ IDEM, *Ibid.*, 61: "Quae quamquam filijs Israel praecepta sunt eandem tamen legem esse non solum divinam, sed etiam naturalem, et ad omnes gentes pertinere, deus ipse declaravit, testatus se gentes illas peccatrices os eadem scelera delevisse.... Quibus dictis adjicit legem universalem, et ad omnes homines pertinentem: 'Omnis', inquit, 'anima, quae fecerit de abominationibus istis quidpiam peribit de medio populi sui; id est, quicumque commemorata flagitia, quae pertinent ad cultum idolorum, et humanarum victimarum sacrificia morte plectendus est, ut maximo documento Moses optimus divinae voluntatis interpres declaravit'."

²⁶ IDEM, *Ibid.*, 45.

²⁷ IDEM, *Ibid.*, 86: "Quid naturae legem Democrates hoc in loco voces, non satis intelli-

Sepúlveda responds to the argument by finding an evident mistake in Vitoria's reasoning, which does not distinguish between the faults of individuals, which are committed in societies where they are condemned by customs and laws, and collective faults, which are practised and considered licit by entire peoples:

In fact, if in some nation one or all of the individuals commit sins against natural law, for this the whole nation cannot be said to have sinned against natural law, as the most recent theologians falsely believed; for a public issue should not be considered in individuals but in their customs and public institutions, as Aristotle says in Book III of the *Politics*.²⁸

In fact, the situation of those societies in which sins against nature are punished by "laws and customs" is very different from that of societies which not only do not punish but encourage the sins; only in this case is there disobedience of natural law:

DEMOCRITUS. But if there were some peoples so barbarous and inhuman who did not consider abhorrent all or some of these crimes I have examined, and who did not punish them with laws and customs or with lighter penalties those crimes that are more serious (especially those crimes that nature chiefly hates), and even those who did not consider to punish them at all, so we could say, rightly and properly, that these peoples do not obey the law of nature.²⁹

Moreover, Sepúlveda correlates sins against nature with the positive divine law, and introduces the Christian commandment to love one's neighbour:

DEMOCRITUS. Everything that was said against the heretics is also valid for pagans: they are both our neighbours, and the divine and natural law require us to take care of both of them, to remove them from abhorrent actions especially from those actions that most violate and of-

go.... At ego latrocinia, adulteria, homicidia, et alia magna crimina quibus etiam christianos passim contaminari cernimus, contra naturae legem esse dico, nec tu, si quidem tibi constare velis hoc possis inficiari, qui dudum naturae legem participationem esse legis aeternae in creatura rationis compote definiebas."

²⁸ IDEM, *Ibid.*, 86: "Nec enim si a quibusdam ut etiam ab omnibus sigillatim in aliqua natione peccatur in leges naturae, idcirco tota natio legem naturae non servare dicenda est, ut quidam iuniores Theologi falso putaverunt. Quoniam publica causa non in singulis hominibus spectari debet, sed in publicis moribus, et institutis acta enim civitatis ut libro tertio de republica (c.1) docet philosophus."

²⁹ IDEM, *Ibid.*, 88: "Sed se qua gens esset tam barbara et inhumana, ut scelera quae recensui vel omnia vel aliqua in rebus turpibus non haberet nec legibus aut moribus vindicaret aut gravissima praesertim illa, quae maxime natura detestatur, levissimis poenis afficeret, quaedam prorsus puniendi non putaret, haec merito ac proprie legem naturae non servare diceretur."

fend nature and God, who is the author of nature, and particularly the worship of idols, the greatest sin of all.³⁰

Finally, he concludes by arguing that this is a great and evident reason for the proclamation of a just and holy war against the infidels, a war that takes vengeance not only for the offences against men but also those against God, which “for their greater gravity are more deserving to be vindicated,” as Augustine teaches:

DEMOCRITUS. As for the objection, Leopold, that you have initially opposed to me, i.e., that the war that the Spanish wage against those barbarians, who in no way deserve it, seems unjust, I think that considering Augustine’s doctrine of just war, as “those that avenge the injuries,” one must understand that a holy war that is inflicted on idolaters by pious people, avenges injuries made not only against men but also God, which are much more serious.³¹

While the argument of natural slavery is based on the authority of Aristotle, Sepúlveda’s argument concerning sins against nature finds its justification in a reading of political Augustinianism, expressed, in its most radical forms by theologians of the Roman Curia such as Hostiensis.³²

Among the reasons presented, one is really persuasive: if natural law is identical with the positive divine law revealed by God and engraved in the hearts of all mankind, there can be only one of two possibilities: either the universality of natural law is valid, and then the barbarians commit sins against both the natural and the divine laws, and are thus subject to a just and holy war, or the idea of natural law fails: in this case, the barbarians are “saved” but the price to be paid is very high. Would the Scholastics be willing to pay this price? The dilemma is clearly stated; Sepúlveda thus chal-

³⁰ IDEM, *Ibid.*, 92: “Quod contra hereticos dictum valet etiam contra paganos; utrique enim proximi nostri sunt utrisque consulere iubemur lege divina et naturali, ut a flagitiis deterreantur, iis praesertim, quibus, natura auctorque naturae, Deus plurimum violatur et offenditur, in primisque ab idolorum cultu peccatorum omnium gravissimo.”

³¹ IDEM, *Ibid.*, 92: “Quod igitur initio, Leopoldo, opposuisti, bellum hoc, quo Hispani barbaros nihil de se male meritos persequuntur, iniustum videri, ad illud scilicet, ut opinor, spectansque iusta bella, auctore Augustino, definiri solent: ‘Quae iniurias ulciscuntur’, intelligendum est *bello sacro*, quod a piis infertur idolorum cultoribus, non tam hominum, quam Dei iniurias, quae multo graviores sunt, vindicari.”

³² Henry of Susa (1210-1271), Cardinal of Ostia, in his *Summa aurea* had defended the *dominium totius orbis* of the Pope and the Emperor and the thesis that, with the advent of Christ, each jurisdiction and domain were subtracted from the infidels and transferred to Christians, see HENRICUS HOSTIENSIS, *Summa aurea*, Lyon 1568, Tit. *De praescriptionibus rerum immobilium* n.3, f. 168va. For a critical view on the positions of Hostiensis, see BARTOLOMÉ DE LAS CASAS, *De regia potestate*, ed. G. TOSI, Roma-Bari 2007, 17-19.

lenges the theologians of Salamanca, posing a problem to be solved. Bartolomé de Las Casas bravely accepted the challenge.

IV. Bartolomé de Las Casas: A Justification Regarding Sins against Nature

Las Casas had carefully read the *Democrates Secundus* and responded to it in his *Apologia*,³³ which he read aloud for several days before the jurors of Valladolid in 1550. He caused such an impact that the session was suspended and adjourned until the next year.³⁴

Las Casas responds to Sepúlveda in an accurate, meticulous and prolix way, with a long and laborious variety of “arguments, reasons, cases, answers, objections, modes.” We can divide the arguments into two types: those in which Las Casas radicalized the theological and juridical reasons of the masters of Salamanca, and those in which he goes further into an unexplored territory, which until then nobody had the courage and the audacity to penetrate. He “justified the unjustifiable,” cannibalism and human sacrifices, causing scandal among his contemporaries, as he still causes perplexity for some distinguished modern scholars.³⁵

First, he retrieves the arguments of the theologians of Salamanca, according to which Christian princes and the Church have no jurisdiction to impose that punishment. In fact, the situation of Jews, Muslims, heretics and indigenous peoples differs. Jews and Muslims, when living in Christian kingdoms are subject to Christian laws but they can be punished only in case of violations of civil laws. Regarding their religion and their rituals, however, they are not subject to the Church or to Christian princes, and thus they cannot be punished because neither the Church nor the prince has

³³ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. A. LOSADA, in *Obras completas* 9, Madrid 1988. The English translation is ours.

³⁴ On this debate, see the classic L. HANKE, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World*, London-Chicago 1959; IDEM, *All Mankind is One: A Study of the Disputation Between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians*, Chicago 1974; see also BARTOLOMÉ DE LAS CASAS–JUAN GINÉS DE SEPÚLVEDA, *La controversia sugli indios*, a cura di S. DI LISO, Bari 2007.

³⁵ Q. SKINNER, *The Foundations of Modern Political Thought: The Age of Reformation*, Cambridge 2004, 170, affirms that: “Nevertheless, the testimony which Las Casas provided in his treatise *In Defense of the Indians* still constitutes an impressive and mainly persuasive document, in spite of the fact that, in his anxiety to vindicate every aspect of Indian life, he goes so far as to include a long defence to cannibalism and human sacrifices.”

jurisdiction over the religious affairs of these peoples. Therefore, no jurisdiction exists over those infidels who do not even live in Christian kingdoms but in territories under the authority of infidel princes.³⁶ Indigenous peoples were infidels who had never embraced the faith of Christ (like the heretics), and who (unlike the Muslims) had never waged war against Christians nor occupied their territories. They thus had not provided causes for a just war because they could not be considered subjects of Christians; thus they could not be punished by either the Church or Christian princes for any crime at all, no matter how atrocious it might be.

Second, reinterpreting political Augustinianism in his own way, Las Casas introduces another distinction that protects the indigenous peoples from the jurisdiction of Christians. Infidels are not subject to Christ *in actu* but only *in potentia*; thus, since the Pope cannot exceed Christ in power, they cannot be subject to the spiritual jurisdiction of the Pope nor to the temporal rule of princes. The power of the Church and that of the Vicar of Christ extends *in actu* only to those men who voluntarily received baptism, that is, all the faithful who make their way to eternal happiness.³⁷ Towards the infidels who are outside the Church the Pope can exercise only a *potestas in potentia*, as Thomas Aquinas says:

Saint Thomas teaches that the infidels are subject to the Church only *in potentia*, not *in actu*, with these words: "Those who are infidels, although they do not belong *in actu* to the Church, belong to it *in potentia*." This potentiality is based on two principles: the first and main one is the virtue of Christ, which is sufficient to save all mankind; the second is men's free will.³⁸

The *potestas* of the Church is based on two principles that guarantee free adhesion to faith: the power of Christ (*in virtute Christi*), which does not oblige anyone (*qui neminem cogit*), and men's free will, which cannot be compelled (*quod etiam cogi non potest*).

³⁶ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 128. According to Las Casas, the case of the heretics is different because of to their domicile and the vote formulated in obedience to God and to the Catholic Church. By baptism they are required to observe the Christian religion and can be punished if they do not follow it.

³⁷ IDEM, *Apologia*, ed. LOSADA, 136: "Unde patet quod Potestas Ecclesiae et Christi Vicarii dumtaxat extenditur ad eos homines qui sacrum baptismum voluntarie susceperunt, id est, cunctos fideles ad aeternam felicitatem tendentes."

³⁸ IDEM, *Ibid.*: "Quod autem infideles habitu tantum non actu Ecclesiae subditi sint, docet Sanctus Thomas in III Parte q. 8 art. 3° ad I his verbis: *Illi qui sunt infideles, etsi actu non sunt de Ecclesia, sunt tamen de Ecclesiae potentia*. Quae quidem potentia in duobus fundatur: primo quidem et principaliter in virtute Christi, quae est sufficiens ad salutem totius humani generis, secundario in arbitrii libertate."

Third, Las Casas refutes Sepúlveda's interpretations concerning Saint Paul's words in the Epistle to the Corinthians, "For what have I to do with also judging those who are outside?"³⁹ It is evident that in this passage commented upon by many, the judgment of infidels does not pertain to the Church, but is remitted exclusively to God, as Vitoria also argues.

Fourth, responding directly to Sepúlveda, Las Casas denies that the Church can use violence and coercion to abolish idolatry and to punish idolaters. The development of this thesis extends from c.7 to c.27, and it encompasses an impressive variety of arguments from reason and arguments from authority, as well as historical and contemporary examples in favour of a peaceful evangelization as the only way to spread the Christian faith.⁴⁰ At the end of his long list of ten arguments, he introduces a complete quotation of, and extended commentary on, the bull *Sublimis Deus*, proclaimed by Pope Paul III in 1537.⁴¹

³⁹ 1 Cor. 5:12-13: "Quid enim mihi de his qui foris sunt, iudicare? Nonne de his qui intus sunt vos iudicatis? Nam eos qui foris sunt Deus iudicabit."

⁴⁰ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 136. The arguments about sins against nature run from page 156 to 359. Las Casas quotes especially ten arguments that specified and detailed the thesis of the illegal use of force that he had already presented in his treatise on peaceful evangelism; see BARTOLOMÉ DE LAS CASAS, *De unico vocationis modo omnium gentium ad veram religionem*, ed. P. CASTAÑEDA DELGADO y A. GARCÍA DEL MORAL, in *Obras completas* 2, Madrid 1990.

⁴¹ In 1537, Pope Paul III had issued several texts which accepted the Dominican's thesis about the full humanity of the Indians, among them, the bull *Veritas ipsa* (or *Sublimis Deus*) in which he affirms that "Indians, as real men, not only are able to receive the Christian faith" ("ut pote veros homines, non solum christianae fidei capaces existere"), but, "also if they lived out this faith, they were able, freely and lawfully, to use, have and enjoy their freedom and the possession of their own things and not be enslaved ("licet extra fidem christianam existant, sua libertate ad rerum suarum dominio huiusmodi uti et potiri et gaudere libere et licite posse, nec in servitutum redigi debere"), and that the same Indians and all the other peoples should be invited to the faith of Christ through the preaching of the word and the example of a good life ("ipsos Indos et alias gentes verbi Dei praedicatione et exemplo bonae vitae ad dictam fidem Christi invitandos fore"). The original text is found in *America pontificia. Primi saeculi evangelizationis 1493-1592. Documenta pontificia ex registris et minutis praesertim in archivio secreto vaticano existentibus* I-II, collegit et edidit I. METZLER, Città del Vaticano 1991, 364-66 #84. According to B. BOCCHINI CAMAIANI, "Il papato e il nuovo mondo. A proposito di un'edizione di fonti", in *Cristianesimo nella Storia* 16 (1995), 521-52, 530-31, Pope Paul III's interventions are an exception in relation to the American politics of the previous and subsequent pontiffs: "In fact, only in some texts does Paul III abandon an ecclesiocentric and Romancentric perspective to take part in the great debate, which involved most of the European world, concerning the legitimacy of the *conquista* and the nature of the recently discovered peoples. The most important interventions of this pontiff concern the problematic of the Indians' rights, who are defended for the first

Fifth, Las Casas rejects the example of the Jewish conquest of Canaan, adduced by Sepúlveda, arguing that God ordered the destruction of the pagan kingdoms not because of their idolatry but because they had invaded the Promised Land, causing serious damage to the Jewish people.⁴² In the last part of his treatise, he enumerates the circumstances in which the Church could exercise its jurisdiction over the infidels: (1) if the infidels are subject *in actu* to the Church; (2) if they practise idolatry in regions that had once been Christian territories; (3) if they deliberately raise obstacles to the peaceful propagation of the faith in a violent and aggressive way. Las Casas concludes that none of these cases applies to the indigenous peoples of the New World. Finally, he questions the sources of political Augustinianism used by Sepúlveda, and criticizes the doctrine of Pope Innocent IV, who admitted the intervention of the Church to punish sins against nature, and criticizes such curial and theocratic theologians as Augustine of Ancona, who on the authority of Innocent IV has founded the doctrine of the temporal power of the Pope *totius orbis*.⁴³

The topic that interests us most is developed later,⁴⁴ when Las Casas treats arguments censuring cannibalism, because “eating human flesh is a savage and bestial act [*ferum et bestiale*], as Aristotle affirms, and it is contrary to natural law for two reasons, first, because cannibals kill innocent human beings to eat human flesh and second, because eating human flesh is so feral an act that animals eating corpses of the same species are rare.”⁴⁵ Responding to these objections and displaying an uncommon erudition, Las Casas adduces several *auctoritates* and draws examples from both profane and biblical history and from the customs of ancient peoples, and appeals to ancient authors to justify an original and innovative thesis.⁴⁶

time both in relation to their capacity to join the faith and against the violence of the *conquistadores*” (our translation). About the historical context of this important document and on the requirement of the Emperor Charles V for a papal retraction, considering it a papal interference in the institute of *patronato*, see L. HANKE, “Pope Paul III and the American Indians”, in *Harvard Theological Review* 30 (1937), 65-102, 77.

⁴² BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 217-35.

⁴³ IDEM, *Ibid.*, 283-359.

⁴⁴ Las Casas’ response on the salvation of the innocent victims of cannibalism and human sacrifices extend from c.28 until c.42 (360-499, esp. 417-62, in LOSADA’s edition).

⁴⁵ IDEM, *Ibid.*, ed. LOSADA, 419.

⁴⁶ The arguments in the *Apologia* by which de Las Casas justifies human sacrifice are more broadly developed in his *Apologética historia sumaria*, one of the first treatises of cultural anthropology that describes customs and traditions of the peoples of the New World; see BARTOLOMÉ DE LAS CASAS, *Apologética historia sumaria*, ed. V. ABRIL CASTELLÓ, J. A.

First Las Casas argues that the Indians who practise these customs fall into a “probable error;” to support this thesis he calls upon the authority of Aristotle:

According to Aristotle [*Topics* 1], that which is approved by all men or by the major part of the wisest people or by those whose wisdom is proved is defined as ‘probable’. Aristotle also affirms in the *Rhetoric* that “it is necessary to consider and esteem as good or better what is judged as good by all or by the major part of prudent men or by those who are esteemed as the most prudent, even if there would be only one such.” The judgments of such men, morally approved, are considered right by the same Aristotle [*Ethics* 1.2], who is followed by all philosophers and theologians.⁴⁷

With much sagacity and perspicacity, Las Casas applies the Aristotelian doctrine of *endoxa* to the indigenous people,⁴⁸ showing how the obligation

BARREDA, B.A. QUELJA y M.J. ABRIL STOFFELS, in *Obras completas* VI-VIII, Madrid 1992. This theme is treated in several parts of the work, especially cc.161-84, pp.1123-215 in Volume VIII. In this work, Las Casas demonstrates that he knows very well the character, times and places, rituals, rules and dimensions of human sacrifices, as he also knows that the victims are war prisoners and slaves, as well as women and children.

⁴⁷ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 422: “Auctore enim Philosopho [I *Topicorum*] illud probabile dicitur quod omnes homines approbant vel maior pars sapientium vel illi quorum sapientia est magis approbata. Rursus [I *Rhetorices* 20], inquit: *Illud necessario esse estimandum bonum vel melius quod omnes vel maior pars prudentium vel illi qui prudentiores existimantur, etiam et sit unus, iudicant bonum*. Et huiusmodi decreta horum sententiis comprobata moraliter dicuntur certa secundum eundem Philosophum [I *Ethicorum* 2] quam omnes tam philosophi quam theologi sequuntur.” The quotation is not found in c.20 of Book I of the *Rhetoric*, as indicated by Las Casas and the editor, but in c.7, in the context of the debate on how to determine whether one good is superior to another; see ARISTOTLE, *Rhetoric* I c.7 (1364b10-13), ed. W.D. ROSS, trans. W. RHYS ROBERTS, Princeton 1991, 27: “Again, that which would be judged, or which has been judged, a good thing [*agathón meízo*], or a better thing than something else, by all or most people of understanding [*phronomoi*], or by the majority of men, or by the ablest, must be so; either without qualification [*aplós*], or in so far as they use their understanding to form their judgement [*katá tèn phrónesin èkrinan*].” Las Casas’ quotation of the *Nicomachean Ethics* is actually not found in 1.2, but rather in 1.4, and we do not find the statement that “the judgments of such men [the wisest] are considered right,” as Las Casas suggests. Aristotle argues that: “It is rather futile to examine all these beliefs and it is enough to examine those that are most current [*málista epipolazousa*] or seems to have some argument for them [*tiná logon*];” see ARISTOTLE, *Nicomachean Ethics* I c.4, ed. T. IRWING, Indianapolis 1994, 3 §4. Las Casas’ quotations, even if inaccurate, still capture the general sense of the Aristotelian thought, i.e., the importance in ethics of the common opinions and of the opinion of the wisest (*endoxa*), even if they are not something absolute, but only a starting point in a dialectic debate.

⁴⁸ Concerning *endoxa*, see E. BERTI, *Le ragioni di Aristotele*, Roma-Bari 1989; IDEM, “L’uso scientifico della dialettica in Aristotele”, in *Giornale di Metafisica* N.S. 17 (1995), 169-90; see also L. SEMINARA, *Carattere e funzione degli endoxa in Aristotele*, Napoli 2002.

to offer human sacrifices for those peoples is a common opinion and a custom practised from immemorial times, supported by holy or sacred people and confirmed by legal decrees, involving sanctions and threats of punishment against violators. Therefore, it is a "probable error" and we should not be surprised if the indigenous people do not immediately respond to Christian preaching, especially when it is imposed in a violent way and not through edifying examples:

Now, among all the known indigenous peoples there is full consensus regarding their opinion on their own gods, on the obligations to offer them sacrifices, and on what must be sacrificed. These gods are worshiped by persons considered sacred and holy (that is, the priests) and idolatry is confirmed by legal decrees and by their princes' penalties and threats against violators. Finally, since idols are not worshiped secretly but publicly in the religious ceremonies practiced in their temples from the most remote centuries, it is quite clear that these peoples share in a probable error [*certe errare probabiliter*], and it is no wonder that they do not respond immediately to our first preaching.⁴⁹

Las Casas recognizes the effectiveness of Sepúlveda's answer to Vitoria, but he refutes the argument. Indigenous peoples originated a probable error, not only in the case of cannibalism but also in relation to human sacrifices. He recalls ancient history, both pagan and Christian, which testified that almost all peoples practised these customs in ancient times, and he also reports a long variety of authors who wrote about these customs: Eusebius of Caesarea, Clement, Lactantius, Plutarch, Herodotus, Diodorus Siculus, Strabo. He also recalls the most outstanding example presented in the Old Testament, the sacrifice of Isaac. He concludes that "if among many peoples human sacrifice to gods was a usual practice, certainly the indigenous peoples, sacrificing human beings for so many centuries, participate in a probable error,"⁵⁰ which cannot be corrected by force but only through persuasion, that is, not "until these indigenous peoples, who, with prudence and perseverance, hold to their beliefs, are persuaded with reason. But, as we said, the most important and difficult thing for man to renounce is the religion he has embraced."⁵¹

Las Casas concludes this first argument with a rhetorical question: Why would indigenous peoples believe in the word of a proud, stingy, truculent, greedy people as the Spaniards? Why would they abandon the religion of their ancestors, unanimously approved for centuries and supported by the

⁴⁹ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 423.

⁵⁰ IDEM, *Ibid.*, 427.

⁵¹ IDEM, *Ibid.*, 429.

authority of many prudent men, to heed the warning of people whose faith does not produce miracles and does not reduce vices? By referring to ancient customs of European peoples, closer to the culture of his interlocutors, Las Casas moves in a double direction: he makes more familiar and closer to his interlocutors what seemed so distant, trying to reduce the scandalous effect, and at the same time he shifts the focus from his “clients” (the indigenous peoples) to ancient peoples that could not be considered uncivilized and savage, insinuating a “contributory negligence”: not only the indigenous but also the more “distinguished” peoples incurred in this probable error. He combines typical arguments of juridical rhetoric with the first attempts towards a cultural and, to a certain extent, historical comparative anthropology.

But a theological question still remains: this argument “culturally” justifies customs against nature, but it does not explain how indigenous peoples became involved in this “probable error,” that is, how they could have lost the notion of natural law engraved in their hearts.⁵² This could dangerously throw the doctrine of natural law into a crisis, founding the customs of peoples no more on universally valid principles placed by God in the hearts of all men but on the consensus of accepted beliefs consolidated by tradition, thus opening the doors to a sort of cultural relativism.

Las Casas responds to this question, trying to demonstrate the validity of the natural law, despite the diversity of customs. His first argument appeals to the universality of the knowledge and worship of God, by virtue of a “natural instinct” found in all peoples, including the most barbarous.⁵³ Sacrifice is one of the highest forms of expression of the worship of God, the main act of *latria*, which is due only to God and it is the means by which men can worship God and be grateful and subject to him.⁵⁴ Offering sacrifices to the true God or to whom is considered to be the true God (this is a recurrent distinction in the text) is sanctioned by divine law, but “defining what must be offered to God corresponds to the human and positive law.”

Las Casas develops his argument in two ways. First, he affirms that religion belongs to the “law of peoples” (*ius gentium*) and that the law of peoples is nothing but natural law when practised by peoples.⁵⁵ To support this thesis he quotes a famous passage from the *Nicomachean Ethics* (Book

⁵² The question gave rise to the hypothesis of a non Adamic origin of the peoples of the New World; see G. GLIOZZI, *Adamo e il Nuovo Mondo: La nascita dell'antropologia come ideologia coloniale dalle genealogie bibliche alle idee razziali (1500-1700)*, Firenze 1977.

⁵³ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 431-33.

⁵⁴ IDEM, *Ibid.*, 435.

⁵⁵ IDEM, *Ibid.*, 437.

V),⁵⁶ in which Aristotle distinguishes between the natural law, which has the same validity everywhere, and the positive law, which has its origin in natural law but differs from it because of the specific requirements it determines: for example, sacrificing to gods is a matter of natural law, but the object and the form of the sacrifice are matters of positive law and depend on different customs. He draws the following conclusion:

Men naturally know the existence of God and think that nothing better or grander than he exists, because everything we own, we can and we are, we owe to his immense goodness. If this is true, then we cannot reward God properly even if we offered him all our goods, including life.⁵⁷

The "main way to adore God is to offer him sacrifices," and nature itself teaches that

those who do not have faith, grace or doctrine, and live within the limitations of natural light, i.e., without a positive law that orders the contrary, must sacrifice human lives to the true God, or to the false god considered as true, so that offering him what they have that is most precious [life] they show themselves grateful for the many blessings they have received.⁵⁸

The concept of natural law is thus saved (at least formally), but innocents are sacrificed against their will, a reason acknowledged by both Sepúlveda and Vitoria as a justification for a just war. Las Casas does not retreat before this accusation, although his argument is literally paradoxical. Here he walks on a logical tightrope:

Every man, however innocent, owes to God more than his life: and then, although these persons do not by a voluntary act want to be sacrificed [*actu elicitio non sint voluntarii*], nonetheless they accept it as a duty [*sint voluntarii actu debito*], since all men are obliged to give their blood and their life whenever it is required by the honour of God.⁵⁹

This argument is clearly very dangerous, because it allows a high level of arbitrariness and discretionary power of the State over the individuals, and it does not defend the right to life, one of Las Casas' main arguments against the war that the Spanish conducted against indigenous peoples. In this way, Las Casas indirectly justified Sepúlveda, who asserted the tyrannical and despotic character of the regimes of indigenous people.

⁵⁶ ARISTOTLE, *Nicomachean Ethics* V.6. The text is difficult to interpret. Las Casas chooses the more common reading, which affirms the immutability of the natural law, while here Aristotle affirms the contrary, i.e., the mutability of the natural law.

⁵⁷ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 443.

⁵⁸ IDEM, *Ibid.*, 443.

⁵⁹ IDEM, *Ibid.*, 445.

Las Casas responds by arguing that the sacrifice is not an imposed tyrannical act but a custom “voluntarily” accepted by all to “save” society and “the common good.” In fact, the act must be understood according to an ‘organicist’ interpretation of the relationship between the part and the whole, between the subject and the State. Las Casas’ second argument shifts the focus from individuals towards society and asserts that it is necessary for some individuals to sacrifice themselves to ensure the good of all. As a part, the individual

would sacrifice his happiness and his well-being for the happiness and the well-being of the whole community, which is the Republic. Therefore, since *gentiles* believed that the universal good and the happiness of the whole republic depends on such sacrifices and immolations, i.e., of human victims, one should not be surprised if these peoples, afflicted by their necessity, immolate to God that which, in their opinion, is the most precious and grateful.⁶⁰

In sum, war cannot eradicate those sacrifices because they are an expression of a longstanding traditional culture, and they find their justification in the authority of the wisest and most influential men. Cannibalism and human sacrifice do not show a savage and primitive state, as Sepúlveda argues, but a conception of God and religion that also existed among the ancients, of which there are traces in the Bible (Abraham’s sacrifice), according to which it was necessary to sacrifice individuals for the good of the community.⁶¹ Human sacrifices are demonstrations of another kind of religiosity, different from ours, but which must be respected until, by peace-

⁶⁰ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 449. In fact, modern studies show that the main reason for human sacrifices in Aztec culture was the “common wealth” of society through a dialectic relation between man and nature in order to perpetuate the historical and natural cycles of the ages; see G.Y. TORRES, *El sacrificio humano entre los Mexicanos*, México, D.F. 2006. The book offers a detailed analysis of human sacrifices in the Mexican culture. The author takes up, as Las Casas did, the theme of the diffusion of human sacrifices in several other civilizations, but he concludes with the following words (304): “However, undoubtedly in no other country in the world were human sacrifices so important for rituals or practised in such great quantities, as in Mexican society.” The phenomenon, of which there are traces in the Mesoamerican region from ancient times, was greatly intensified during the last years of the Aztec kingdom until it reached paroxysm. This was due to two factors: an excess of prisoners of war, who furnished abundant “raw material” for the sacrifices, and the Aztec vision of the cosmos, which foresaw the end of a cycle of creation, destruction and regeneration, which needed “energy” or *mana* to reproduce itself (306). Torres concludes that, despite the ritual and the wide acceptance of this practice, it was imposed by the State with the aim to strengthen its power, and there are few records of voluntary sacrifices.

⁶¹ BARTOLOMÉ DE LAS CASAS, *Apologia*, ed. LOSADA, 417-23.

ful means, we prove the superiority of the Christian religion (an assertion Las Casas did not doubt).⁶² In conclusion, Las Casas refers to experiments in pacific evangelization, particularly to that of Vera Paz, in order to demonstrate how the preaching of faith can be effective without resorting to violence, coercion and war.⁶³ Finally, he turns against the Spaniards the accusations of inhumanity, cruelty and barbarism: the real barbarians are the Spanish and not the indigenous, "because of the cruel actions committed against those peoples, through which they have exceeded all the other barbarians,"⁶⁴ as he had asserted in the famous pages of the *Apologia* dedicated to the four types of barbarians and exemplified in the *Brevísima relación de la destrucción de las Indias*.⁶⁵

V. The Conquest on Trial: Humanitarian Interventions, Toleration and Recognition

We return to the debate over the universality of the natural law, in which Sepúlveda, Vitoria and Las Casas strongly believed but concerning which they drew totally different conclusions. To better clarify the debate, we distinguish three levels that are interwoven, but which should be kept separate: juridical, cultural/moral and political. Above all, we must emphasize that

⁶² IDEM, *Ibid.*, 423-71.

⁶³ IDEM, *Ibid.*, 471-83. This experiment, initiated in 1537, had been devised to show the practical validity of Las Casas' treatise *De unico vocationis modo*; the experiment was directed by Las Casas and a large group of Dominican confreres. They managed to deny the entry of soldiers or of *encomenderos*, in a wide area of Guatemala, which belonged to the Diocese of Chiapas, called *Tierra de Guerra* because of the bellicosity of the indigenous peoples, where only the entrance of missionaries was allowed. The experiment met with strong opposition, but it persisted thanks to the support of the royal ordinances and, against all the negative expectations, it succeeded at first, to the point that the territory was renamed *Tierra de Vera Paz*. It continued to exist also after that, when, in 1547, Las Casas was obliged to quit the diocese of Chiapas to return to Spain. In 1556 the experiment had a violent and brutal end: the indigenous rose up, apparently supported by *caciques* and "priests" of the traditional religion, who felt ousted, and waged war with the support of neighbouring tribes, not yet pacified. They killed the friars (about 30 of them) and the Christianized indigenous, and destroyed the churches and the towns. The Spanish army did not intervene to rescue the friars, explicitly alleging respect to the royal prohibition to enter their territory. Las Casas, in the *Apologia*, presents the experience as a model to be followed, but he did not mention its violent end; see BARTOLOMÉ DE LAS CASAS, *Apologia* 26.122, ed. LOSADA, 34.

⁶⁴ IDEM, *Ibid.*, 76-125, here 82: "Et de horum numero revera Hispani nostri non sunt alieni, quinimmo ex operibus immanissimis, quae in illas nationes exercuerunt, superarunt barbaros universos."

⁶⁵ BARTOLOMÉ DE LAS CASAS, *Brevísima relación de la destrucción de las Indias*, ed. R. HERNANDEZ, in *Obras completas* 10, Madrid 1991.

the debate is a “trial of the conquest,” in the strict juridical sense of the word, a process that takes place in courtrooms and in the palaces of power, having the public opinion that mattered (the university chairs and the pulpits) as a spectator, having as protagonists defenders and prosecutors, the “attorneys” (*procuradores*), the judges and the “experts” called to give their “competent” opinion.⁶⁶ For this reason, key interpretations must be sought in rhetoric and legal dialectics, where arguments are inevitably placed at the service of conflicting interests that cannot be reconciled, which have the ultimate purpose to win and persuade.⁶⁷

The Dominican friar Bartolomé de Las Casas was a missionary and a bishop, but he was known especially as “Procurador de los indios.”⁶⁸ For this reason, his discourse is an endless plea of defence interwoven with juridical arguments that he uses with great competence, addressed to the judges of the *Cortes* and the *juntas*, which had to issue judgments, promulgate laws and propose solutions.⁶⁹ This explains why we do not find in all of Las Casas’ great work a single criticism against the indigenous peoples; on the contrary, he always offers us a positive image of the indigenous populations of the New World.⁷⁰ It was not his task to exacerbate the heavy accusations hanging over them. We also understand why Sepúlveda exalts the greatness of his Spanish clients compared to the insignificance and wretchedness of the Indians, always portrayed in dark rhetorical colours. This also makes more understandable the “objectiveness and neutrality” of the theologians of Salamanca, called upon either to give a competent judgment as experts of the courts or to act as referees and judges in the dispute.

⁶⁶ The indigenous, though directly involved, were excluded from the debate, because they did not have the right to speak but could speak only through their mediators. Las Casas became their spokesman, but he did not give them voice, unless in an indirect way. They remained marginal to the debate, the consequences of which they suffered without having been able to make their own voice heard directly.

⁶⁷ ARISTOTLE, *Rhetoric* I (1368b1-1377b12).

⁶⁸ In 1560, many *caciques* from all parts of Peru gathered in the *Ciudad de los Reyes* (Lima) subscribed unanimously and freely (“todos de mancomun”) to a text that attributed to Las Casas and other two Dominicans “all the power” that they had to represent the indigenous leaders. The full text of this exceptional document is reported in L. PEREÑA, “Estudio Preliminar”, in BARTOLOMÉ DE LAS CASAS, *De regia potestate*, ed. L. PEREÑA, J.M. PEREZ-PRENDA, V. ABRIL et J. AZCARRAGA, Madrid 1984, CII-CVII.

⁶⁹ On the competence of Las Casas’ use of legal sources, see B. TIERNEY, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law (1150-1625)*, Atlanta 1997 (c.11: Aristotle and the American Indians).

⁷⁰ For this reason, Las Casas is one of the most probable sources of the myth of the “good savage”; see S. LANDUCCI, *I filosofia e i selvaggi*, Roma-Bari 1972, 93-96.

We assert this not to exempt ourselves from the analysis of the arguments themselves but to try to understand the political context in which they took place. Indeed, it is not about an academic *querelle* without great practical consequences, but about a debate which decides the fate of hundreds of thousands of people (or millions, according to Las Casas' numbers); a dispute not only "over" power, but "within" power, taking place in palaces and affected by the turbulence of events that surrounded it, requiring decisions, without leaving many options or escape routes.⁷¹

In the analysis of the legal arguments, we can assert first that Sepúlveda is aware of his weakness and he knows that he must find "other reasons for a just war" different from the traditional ones. He finds them in the mixing of political Augustinianism and Aristotelianism: from Aristotle he takes the doctrine of natural slavery; from a typical medieval reading of Augustine he captures the idea of the universal power of the Pope and the Emperor over the world. Sins against nature are "offences" (*iniuriae*) against God, which the Pope, as God's representative on earth, can and must punish through the secular arm of the Emperor. It is the most "simple and effective" solution, and also the one that will prevail. *De facto*, these customs will be eliminated and eradicated by the *conquistadores*; not only were human sacrifices and cannibalism eliminated but also the millenarian cultural and religious traditions of the indigenous people would be largely uprooted or would barely survive in forms of syncretism more or less well accomplished.

In Part II of *De indis*, Vitoria pitilessly abandons the arguments commonly used to justify the conquest, but he also dismisses the doctrine of the power *totus orbis* of the two supreme authorities of Christendom, and with a stroke of genius he founds the legitimacy and legality of the conquest on a totally new argument, i.e., on the "universal right" to trade, communicate, wander and reside all over the globe (*ius commercii*, *ius communicationis*, *ius peregrinandi et degendi*), thereby distinguishing himself from both Las Casas and Sepúlveda. Therefore, for Vitoria, because the conquest still lacks its main legal title, i.e., the *iurisdictio*, which is the necessary condition for the legality of any intervention, it was necessary to find a new legitimacy.⁷² Unlike the theologians of Salamanca, Las Casas accepts the doc-

⁷¹ The theme of the "colonial ideology" and of the representation of interests involved in this debate was developed with great expertise, and I should say in an obsessive way, by GLIOZZI, *Adamo e il Nuovo Mondo*.

⁷² On the asymmetric character of this new international law, see L. FERRAJOLI, *La sovranità nel mondo moderno*, Roma-Bari 2004. A totally reading can be found in SCHMITT, *The nomos of the Earth in the International Law of the Jus Publicum Europaeum*, 132-33; see also G. TOSI, "Bartolomé de Las Casas y la guerra justa de los indios", in *El pensamiento*

trine of the power *totus orbis* of the Pope (although only *in ordine ad spiritualia*) and of the Emperor (although only as *iurisdictio* and not as *dominium*), but his distinction between *potestas in actu* and *potestas in potentia* empties this doctrine of its aggressiveness, because the power of the Pope is only *in potentia* and not *in actu*, and violence in no way can be used to preach the Gospel, which was the official justification of the Alexandrian bulls. Vitoria had already foreseen the new international order, based on the emerging of sovereign nations, which Las Casas had not seen, because, from a pragmatic point of view, he trusted, that the only authorities able to protect the indigenous peoples from the greed of the *conquistadores* were the Emperor and the Pope.

But it was the argument of the innocent victims, that remained the valid argument for both Sepúlveda and Vitoria. Sepúlveda appeals to the right and duty to intervene by all means, and especially by the use of force as a prior instrument to save innocent victims, to stop the crimes and to uproot the unnatural customs of barbarians and savages. He appeals to the universality of the natural law as an ideological justification for “humanitarian intervention” on behalf of their common humanity and also on account of the Christian precept of charity.⁷³

According to Vitoria, recourse to war is allowed only when all forms of pacific persuasion are exhausted, not only through words but also through deeds urging the Spanish to establish a relationship of exchange and trade with the Indians on the basis of mutual benefit. Therefore, war is seen as *extrema ratio* and, in a first moment, allowed only as a purely defensive means that does not entitle the right to subject the enemy and make him a prisoner.⁷⁴ The justified fear of barbarians feel toward the Spanish, who were so different, armed and stronger than they were, could be a reason for a just war on the part of the indigenous peoples. In this case, Vitoria admits that the war would be just on both sides because “on the one hand there is the right, and on the other invincible ignorance” (“ex una parte est ius et ex altera ignorantia invincibilis”). The invincible ignorance of the barbarians

hispanico en América: siglos XVI-XX, ed. I. MURILLO, Salamanca 2007, 639-49.

⁷³ Sepúlveda's image as an humanist and “humanitarian”, who defended the conquest as an “act of love and charity,” has recently been supported by G. PATISSO, “Introduzione”, in JUAN GINÉS DE SEPÚLVEDA, *Democrate secondo o della giusta causa della guerra contro gli indios*, ed. G. PATISSO, Lecce 2008, 54: “Spreading the word of God represented for the Spanish humanist a duty of humanity and love towards his neighbour for the salvation of the soul, but if this was impossible and no other solution remained but the use of weapons, such behaviour could be considered legitimate” (our translation).

⁷⁴ FRANCISCO DE VITORIA, *Relectio de indis*, ed. LAMACCHIA, I.3.5, 84.

should be very seriously considered because a war waged against a culpable and conscious enemy is different from one waged against an innocent and ignorant enemy.⁷⁵

In the last part of *De indis*, Vitoria progressively abandons these hesitations and recommendations, and argues that not only a war that is defensive but also those that are preventive or offensive can be just, nor does he continue to recognize the innocence of indigenous people because of their invincible ignorance.⁷⁶ Starting from the principle of the right to free trade, Vitoria arrives increasingly at the justification of the Spanish right to guarantee this free trade, first through persuasion and words, then by means of a defensive and at last by means of an aggressive war against the indigenous peoples, who could be considered at that time as *perfidi hostes* against whom the law of war could be applied, i.e., their dispossession and reduction to captivity and the deposition of their rightful lords.⁷⁷

Las Casas knew well the people, the circumstances, the events and the true reasons of the conquest and thus he fully understood that these arguments were ideological motivations and excuses to justify the domination that had to be cleverly "deconstructed." His first pleading starts from the same arguments as Vitoria's: the Church and the Christian princes have no jurisdiction over this kind of infidels; thus, the war against the indigenous peoples has no justification. Furthermore, from a pragmatic point of view, the war undertaken by the *conquistadores*, with the excuse of rescuing the victims, had killed more innocents than human sacrifices and the cannibalism ever did. The cure was worse than the damage they were intended to repair, and violence is not an adequate means to change the mentality and the customs deeply rooted in the history and the culture of a people.

Sepúlveda, on the other hand, was not restricted to juridical arguments;

⁷⁵ IDEM, *Ibid.*, I.3.5, 85. The acceptance of the possibility of a just war by the indigenous peoples did not derive from their "right" (*ius*) but from their invincible ignorance, which is a mitigation but not a true right, contrary to what Las Casas says.

⁷⁶ FRANCISCO DE VITORIA, *Relectio de indis* I.8.85, ed. LAMACCHIA, 283: "Once the Spaniards have demonstrated diligently both in word and deed that for their own part they have every intention of letting the barbarians carry on in a peaceful and undisturbed enjoyment of their property, if the barbarians nevertheless persist in their wickedness and strive to destroy the Spaniards, they may then treat them no longer as innocent enemies but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones. All this must be done with moderation in proportion to the actual offence."

⁷⁷ On Vitoria's doctrine of war, see G. TOSI, "La teoria della guerra giusta in Francisco de Vitoria", in *Figure della guerra*, ed. M. SCATTOLA, Milano 2003, 63-88.

he added some others, focusing on the superiority of the culture, civilization and religion of the Christians over those of the barbarians. In this way, he inaugurated a discourse that would be used by the ideologists of the colonization and the slavery imposed by European colonial powers, who defended the superiority of a civilization, that had the right to rule over both the semi-civilized and the uncivilized peoples. Sepúlveda talks about civilization, “that concept which,” according to Carl Schmitt, “occupies from the seventeenth to the twentieth centuries, a whole period of European International Law.”⁷⁸ The medieval categories of political Augustinianism were placed in service of the civilizing mission of Christianity, which involves great material and spiritual benefits for which it is worth paying a high price, including the extermination of innocents when required.⁷⁹

Sepúlveda’s argumentation, focused on the topic of war, is a typical ideological justification of the *conquista*, of which he, as a chronicler of Hernán Cortés, narrated as a glorious deed. Sepúlveda is “the organic intellectual” of the cause of the *conquistadores*, those “knights of the primitive accumulation,”⁸⁰ interested in the submission of bodies in order to take full advantage of the exploitation of the work in mines, in fields and in domestic services in a servile condition to produce that huge flow of resources that would allow the development of the global capitalist system.

Las Casas has an opposite and polemic aim: he wants to show the superiority of the indigenous culture compared to Spanish civilization, and to demonstrate that the Spaniards are the true barbarians. He makes a huge intellectual and moral effort to penetrate the symbolic universe of another people, trying to understand the internal logic of their behaviour and translating that behaviour into categories understandable to members of his culture. This is a real act of “comparative ethnology” that seems to be the first

⁷⁸ SCHMITT, *The nomos of the Earth in the International Law of the Jus Publicum Europaeum*, 107, asserts the medieval character of Vitoria’s doctrine, because the Scholastic master does not recognize the concept of civilization: “Vitoria later wrote in a letter, with clear reference to Sepúlveda: ‘The Indians are human beings not apes’. But what would the representatives of modern civilization say about the fact that Vitoria says nothing about the rights of superior civilization or culture, the rights of a civilized peoples to rule over half-civilized or uncivilized peoples, about ‘civilization’, which has been a decisive concept in European international law since the eighteenth century?”

⁷⁹ JUAN GINÉS DE SEPÚLVEDA, *Democrate Secondo*, ed. TARANTO, 79, argues, in a clear allusion to Las Casas: “Those who, through a cowardly and inappropriate decision want to prevent such expeditions do not humanely favour the barbarians, as they want to make us believe, but rather cruelly deprive them of many great assets.”

⁸⁰ This expression is found in GLIOZZI, *Adamo e il Nuovo Mondo*, 304.

to appear in modern times.

But the central issue still remains: how to explain that, for centuries or millennia, entire civilizations, composed by millions of people, had remained unaware not only of the Christian message but even of the most elementary principles of the natural law, building on the transgression of these principles entire civilizations, customs and traditions?⁸¹ Sepúlveda's objection casts a shadow on the traditional conception of the natural law as *ius apud omnes*, and also on Las Casas' identification of *ius naturale* and *ius gentium*. Two possibilities remain: either those who practice these customs are not completely human beings, which is Sepúlveda's thesis, or a universal natural law does not exist; then the idea of "natural man" falls, and this opens the doors to perspectivism and cultural relativism.

From this perspective, Anthony Pagden's central thesis is that in order to avoid falling into scepticism (like Montaigne)⁸² or into the negation of the human nature of the indigenous (like Sepúlveda), and to maintain the doctrine of the universality of the natural law,⁸³ the Scholastics of Salamanca developed a comparative ethnology *ante litteram*, asserting that the differences in cultural behaviour can be explained as moments in a scale of different levels of historic development.⁸⁴ The Scholastics assert that the indigenous are not inferior to the Spaniards, they only live in a temporary

⁸¹ Obviously the problem was well-known in the Scholastic tradition; in fact, the doctrine admits the fundamental distinction between the universality of natural law and "consciousness" of it, as Vitoria affirms; see FRANCISCO DE VITORIA, *De legibus* a.4, ed. S. LANGELLA, Salamanca 2010, 127: "The natural law is generally the same for all, but not everyone is equally aware of it." On the theme of knowledge of the natural law *per connaturalitatem* and *per inclinationem* in the Thomistic doctrine, see R. PIZZORNI, *Diritto naturale e diritto positivo in Tommaso d'Aquino*, Bologna 1999.

⁸² A. PAGDEN, *The Fall of Natural Man. The American Indian and the Origins of Comparative Ethnology*, Cambridge 1987, 1: "As Montaigne pointed out, the fact that some people turned their back as a sign of greeting and ate their parents as an act of devotion was surely sufficient to disturb any faith one might have in universally binding laws. But if the natural law was not, as most of those discussed in this book insisted it was, supra-cultural, what safeguard could there be against truly unnatural behavior, cannibalism, for instance, or human sacrifice?"

⁸³ IDEM, *Ibid.*, 6: "There might, of course, exist a wide variety of local customs (the *jus gentium* or law of nations was a record of such customs); but they had all to conform to a body of meta-laws, the law of nature, the *ius naturae* itself."

⁸⁴ IDEM, *Ibid.*, 4: "It was not a general evolutionary history of mankind, but a comparative ethnology, an ethnology which argues that culture difference could be explained as the indication of the position the various human societies had reached on a historical time-scale." For Padgen's complete argument, see 119-45 (c.6: "A Program for Comparative Ethnology. Bartolomé de Las Casas")

condition of incapacity, because of their “poor and barbarian education.” They affirm that through an adequate educational work, performed by missionaries, the indigenous can fully recover the natural capacities that they have in common with all men, and reach the level of civilization of more advanced societies.⁸⁵

Tzvetan Todorov went further than Pagden, suggesting an even more radically relativist interpretation in his famous and brilliant essay on the American Conquest.⁸⁶ According to him, Las Casas abandoned the conviction that his faith was the only true one and assumed a relativist and perspectivist position, especially in the last part of his life. For Todorov, Las Casas came to the point of suggesting that “the Spanish king renounce his possessions overseas,” and in this way “renouncing the desire to assimilate the indigenous, he chooses neutrality: the indigenous would choose by themselves their own future.”⁸⁷ Las Casas would even renounce Christian religion as the only true faith, i.e., as the only way to achieve salvation, admitting a unique religiosity within a plurality of religions:

Even as he asserts the existence of one God, Las Casas does not *a priori* privilege the Christian path to that God. Equality is no longer bought at the price of identity; it is not an absolute value that we are concerned with: each man has the right to approach god by the path that suits him. There is no longer a true God (ours), but a coexistence of possible universes: if someone considers it as true... Las Casas had surreptitiously abandoned theology and he practices here a kind of religious anthropology which, in his context, is indeed a reversal, for it certainly seems that the man who assumes a discourse on religion, takes the first step towards the abandonment of religious discourse itself.⁸⁸

It seems true that Las Casas had taken the first way, i.e., he dared to make closer and familiar what was different and distant, but it is not certain that he took the opposite way, i.e., to make his own cultural universe distant,

⁸⁵ IDEM, *Ibid.*, 3: “The American Indians, they [the Scholastics] concluded, were subject to the crown of Spain not by virtue of any positive law but because their ‘poor and barbarous education’ had made them, temporarily at least, unable to create civil society for themselves.” It seems plausible that Las Casas’ speech contains elements of a comparative anthropology; a more complex question is to understand whether Las Casas had outlined a historical anthropology, i.e., the first sketches of a theory of cultural progress of peoples. A different opinion from Pagden is found in B. TIERNEY, “Aristotle and the American Indians Again. Two Critical Discussions”, in *Cristianesimo nella Storia* 12 (1991), 295-322.

⁸⁶ T. TODOROV, *The Conquest of America. The Question of the Other*, trans. R. HOWARD, Norman, OK 1999.

⁸⁷ TODOROV, *The Conquest of America*, 235.

⁸⁸ IDEM, *Ibid.*, 190.

calling into question his own culture and faith, becoming a thorough relativist and skeptic.⁸⁹

Las Casas is not Montaigne, but a missionary, who believed firmly that the Catholic religion is the only true faith, a religion to which by "natural law" everyone would join, and who defends orthodox positions against Muslims (*perpetui hostes*) and heretics (who can be condemned by the Church). According to him, human sacrifices are not expressions of ferocity but of civilization; however, they are still "objectively" errors, although "subjectively" they are probable errors, because they are confirmed by customs and traditions. Subjectively, the indigenous cannot be considered guilty because they do not know that they are committing a mistake (*ignorantia invincibilis*), and the Spanish cannot use this as a pretext to wage a war of extermination. Las Casas says that the "salvation of souls" is to be left in the hands of God and in his mysterious plans, and that must not use this as a pretext to kill and dominate others. Las Casas could do this without falling into cultural and moral relativism and without sacrificing the idea of the universality of the natural law, of which he was deeply convinced. In fact, all of his speech is dedicated to preserve, even at the cost of being paradoxical, the universality of the rights of all humanity,⁹⁰ appealing to the fundamental and universal principles of Christian humanism.⁹¹

The customs "against nature," as cannibalism and human sacrifices, could be explained as consequences of Original Sin, because Indians are also sons of Adam, who had disfigured the original divine image and allowed the entrance of evil into human history. However, in no circumstances could the damages inflicted by Original Sin be irreparable, because, as Thomas taught, sin wounds human nature but it does not destroy it; thus by means of an educative process in divine grace it is possible to restore the original image of God and to find again the way to salvation.

And what about the innocent victims of cannibalism and human sacrifice? The justification of human sacrifices and cannibalism on behalf of the common good is an extreme and paradoxical recourse to at the same time

⁸⁹ On Todorov's view, see the critical observations by G. GLIOZZI, "Tre studi sulla scoperta culturale de nuovo mondo", in *Rivista storica italiana* 97 (1985), 160-76, 164: "Todorov claims the right of his subjectivity not to disappear when interpreting the seventeenth-century text he examines, but it is doubtful if he managed to avoid the same danger he himself fears, i.e., 'subjecting others to himself'" (our translation); see also TOSI, *Interpretazioni del dibattito sul nuovo mondo*, 567-70.

⁹⁰ HANKE, *All Mankind is One* (see, n. 34, *supra*).

⁹¹ G. GUTIERREZ, *Las Casas: In Search of the Poor of Jesus Christ*, New York 1993.

‘save’ the appearances of the indigenous and the natural law. We can interpret it as a rhetorical instrument in the procedural debate, but also as a form of moral and political tolerance that forbids violence even when the customs of others seem to be aberrant, a tolerance based on the recognition of the humanity of the other,⁹² a tolerance which is passive or negative when it refers to the indigenous and active and positive when it refers to the Spanish. It is as if Las Casas would argue: let them live their customs and leave their salvation to the mysterious divine judgment. Who are we to judge others, entire populations, entire civilizations? Our power and duty is not to intervene to correct others but to preach the values in which we believe with examples: the love of neighbour, charity and respect of life. Saying to ourselves that we are Christians and civilized and preaching these values but not practising them, we are the true sinners, not the indigenous, who do not know them.

Las Casas recognises the otherness not only from a cultural and moral point of view but also from a political standpoint, making it an instrument of self-defence for the indigenous. He defends paradoxical positions because he radically assumes the point of view of the *indios*, he becomes the spokesman of the unspeakable horror, of their indignation and their absolute astonishment before the destruction of their lives, and the sudden and violent collapse of all their system of values.

In the interpretation of philosophers of Latin-American liberation such as Enrique Dussel, Las Casas recognizes not only the rights of the indigenous but also their “duty” to promote a “just war” to defend their traditions against European Christians:

Since they are pleased to affirm... that by worshipping their idols they worship the true God... and despite the assumption that they have a wrong conscience, until you preach the true God with *better, more credible and persuasive arguments* and above all with the example of good Christian conduct, they are, without doubt, obliged to defend the *worship of their gods and their religion and to take weapons against* all those who seek to deprive them of that *worship.... Then, they are obliged to fight against those, kill them, capture them and exercise over them all the rights that are the corollary of a just war*, in accordance with the right of peoples.⁹³

Bartolomé de Las Casas’ radical reciprocity subverts Sepúlveda’s positions:

⁹² A. HONNETH, *The Struggle for Recognition: The Moral Grammar of Social Conflicts*, London 1995; A.E. GALEOTTI, *Tolerance as Recognition*, London 2005.

⁹³ E. DUSSEL, “Modernidad y alteridad. Las Casas, Vitoria y Suárez: 1514-1617”, in *Cadernos Salmantinos de Filosofía* 30 (2003), 689-720, 696 (our translation).

it is true there exists a just war in the New World, the war of self-defense of the indigenous peoples against the invaders, as he wrote many times and repeated strongly a few days before his death in his last *memorial* addressed to King Felipe II:

The first [reason], is that all the wars called conquests were and are extremely unjust and waged by true tyrants. The second is that all the kingdoms and Lordships of the Indies had been **usurped....** The fifth is that the King, our lord, who may God prosper and save, with all the power God gave him, cannot justify the wars and robberies made against these peoples, nor those *repartimientos* or *encomiendas*, as well as are not justified the wars and robberies made by the Turks against the Christian people.... The eighth is that native peoples of all parts of the Indies where we entered have the acquired right to lead an extremely just war against us and to remove us from the face of the earth, and this right will last until the Day of Judgment.⁹⁴

Anathema sit!

Universidade Federal da Paraíba, João Pessoa

⁹⁴ A. HUERGA, "Bartolomé de Las Casas. Vida e obras", in *Bartolomé de Las Casas: Obras Completas* 1, Madrid 1992, 383 (our translation).

Blank Verso, p. 32