

THE *DE REGIA POTESSTATE* (and *Principia Quaedam*)

BY BARTOLOMÉ DE LAS CASAS¹.

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The life and work of the Dominican friar Bartolomé de Las Casas (Seville 1484 - Madrid 1566), Bishop of *Chiapas* and Procurator of the *Indians*, are inextricably linked to the process of conquest and colonisation of the New World. His entire long and industrious existence was in fact entirely dedicated to the cause of the newly discovered peoples, to denouncing the abuses and crimes committed against them, to the increasingly radical criticism not only of the methods, but also of the assumptions and legitimacy of the conquest, and to the attempt to draw up laws and implement concrete experiences that would avoid genocide and respect the dignity and humanity of the *Indians*. His intense and multifaceted activity makes him an exceptional witness, present at all the crucial moments and places where the fate of the natives of the New World was discussed and decided. We owe to him fundamental works to understand that conflict-ridden period, be it in the field of chronicle or history (just think of Christopher Columbus' logbooks he transcribed¹ and the *Historia de Las Indias*², his major work), or evangelisation (the *De unico vocationis modo*³), or knowledge of the customs and traditions of the indigenous peoples (the *Apologetica Historia*⁴) or legal issues (the *Tractado comprobatorio*⁵) or philosophical and theological principles relating to the human nature of the *Indios* (the *Apologia*⁶) and the theory of power (the *De Regia Potestate*⁷) or to the most famous work of radical and courageous denunciation of the terrible genocide taking place in the New World (the *Brevissima Relación*).⁸

¹B. DE LAS CASAS, *Diario del primer y tercer viaje de Cristóbal Colón*, in *Obras Completas* edited by C. VARELA, Madrid 1989.

² IDEM, *Historia de las Indias* edited by A. MILLARES CARLO, México, 1951; and *Historia de las Indias*, edited by J. PEREZ DE TUDELA and E. LOPEZ OTO, Madrid 1957-61.

³IDEM, *De unico vocationis modo omnium gentium ad veram religionem*, in *Obras Completas* edited by P. CASTAÑEDA and A. GARCÍA DE MORAL, Madrid 1990.

⁴IDEM, *Apologética Historia Sumaria* edited by E. O. GORMAN, Mexico 1967.

⁵IDEM, *Tractado comprobatorio del imperio soberano y principado universal que los Reyes de Castilla y León tienen sobre las Indias*, in *Obras Completas*, Madrid 1990.

⁶ IDEM, *Apologia*, in *Obras Completas* edited by ANGEL LOSADA, Madrid 1989.

In all these interventions he acts as a protagonist, being the only one who can boast of a broad and intense personal experience, first as a participant in the exploits of the conquistadores and himself an *encomendero*, then as a convert to the cause of the indigenous peoples, a conversion that will lead him to permanent militancy: he is clearly a man of partisanship who resolutely opposes those he considers to be his adversaries⁹; he is a man of action who acts in the field, who proposes and attempts new experiences of evangelisation; he is an influential man, much listened to and respected in the decision-making places whose proposals will have repercussions on legislative measures¹⁰. Some of his works circulated rapidly throughout the old and new world and were immediately the subject of lively debates between his detractors and admirers, controversies that continued for centuries and have not yet died down¹¹.

⁷ IDEM, *De Regia Potestate*, bilingual critical ed. edited by L. PEREÑA, J. M. PEREZ-PRENDA, VIDAL ABRIL J. AZCARRAGA, Madrid 1984.

⁸ IDEM, *Brevissima Relación de la Destrucción de Las Indias*, in *Obras Completas*, Madrid 1990 (Italian ed.: *Brevissima relazione della distruzione delle indie* edited by C. ACUTIS, Milan 1991). The edition that had the most success in Europe was the French edition, *La destruction des Indes* (1552), traduction de J. DE MIGGRODE (1579), gravures de THEODORE DE BRUYHE (1598), new edition edited by A. MILHOU-J. P. DUVIOLS, Paris 1995. In the university library in Padua, we found a copy of 1582 of this French translation of the *Brevissima* entitled: *Tyrannies et cruautez des spagnols, perpetrees en Indes Occidentales, qu'on dit le Nouveau Monde. Brievement descrit en langue castillane, par l'evêque Don Frere Bartelemy de las Casas ou Casaus, Espagnol de l'ordre de Saint Dominique, fidelment traduits par Jacques de Maggrode: A Paris, par Guillaume Iulien, a l'enseigne de l'Amitié, par le college de Cambray, 1582*. (Also contains the translation of a letter from Las Casas to the King; the translation of the treatise *El octavo remedio* and the *Sumario* of the debate of Valladolid written by Domingo de Soto).

⁹ As is well known, Las Casas' thought took place in a context of continuous polemics with his compatriots, the rhetorician Juan Ginés de Sepúlveda, (1490-1573) who was his most intransigent opponent. The latter was an intellectual with broad cultural interests, a connoisseur of classical literature and translator of Aristotle, a chronicler at the papal court and later the Emperor's official chronicler. He went down in history mainly for his application of the Aristotelian theory of natural servitude to the *Indians*, a condition that made them naturally inferior and therefore liable to be subjugated to the Spaniards, even by violence when necessary. His most important work on the subject is: J. G. DE SEPÚLVEDA, *Democrates alter, seu de justis belli causis apud Indios*, critical ed. with Spanish translation by A. LOSADA, Madrid 1951. Las Casas responded to this with his monumental *Apologia* that he read in Valladolid in 1550/51 before the *junta* of theologians and jurists appointed by Emperor Charles V to decide on the legitimacy of the conquest, which in the meantime had been temporarily suspended.

¹⁰ Among the numerous biographies of Las Casas are: M. MAHN-LOT, *Bartolomé de las Casas e i diritti degli indiani*, Milan, 1985.

¹¹ For an initial approach to the bibliography on the debate sparked by the conquest of America and on Las Casas in particular, we recommend: L. HANKE - M. GIMENEZ FERNANDEZ, *Bartolomé de Las Casas. Bibliografía crítica de su vida, escritos, actuación y polémicas*, Santiago de Chile 1954; BONDOLFI - D. DECKERS, *Auswahlliteratur zu den Debatten um die Eroberung Amerikas*, in *Freiburger Zeitschrift für philosophie und theologie*, Freiburg, XXXIX (1992) III, pp. 472-500; F. D'ELIA, *Studi lascasiani dell'ultimo ventennio. Bibliografia essenziale ragionata*, in *I diritti dell'uomo e la pace nel pensiero di Francisco de Vitoria e Bartolomé de Las Casas*, Milan 1988, pp. 309-321.

Considered the inspirer of the *leyenda negra*¹², he never enjoyed a good reputation among his compatriots, while he was used by opponents of Spain in an anti-Catholic and anti-Spanish function¹³. He was sometimes depicted as a fanatic and a psychopath¹⁴, sometimes as a saint and a prophet¹⁵; according to one Spanish scholar, he was the last *comunero*¹⁶, according to others, a forerunner of modern human rights¹⁷; while some have seen in his thinking a democratic conception of power and self-determination of peoples and have called him a Rousseau *avant la lettre*¹⁸.

¹²A. PINCHERLE, *La leggenda negra: storia proibita degli spagnoli nel Nuovo Mondo*, Milan 1981.

¹³ On the spread of the Spanish debate on conquest in Europe see: A. PROSPERI-W. REINHARD (ed.), *Il Nuovo Mondo nella coscienza italiana e tedesca del Cinquecento*, Bologna 1992. In this collective work there is an interesting essay by C. FORTI, *La "guerra giusta" nel Nuovo Mondo: ricezione italiana del dibattito spagnolo* cit., pp. 257-285. In Italy, Las Casas' thought spread especially at the beginning of the 17th century: various editions of the *Brevissima* and other small treatises by Las Casas were printed in Venice, between 1626 and 1645, on the initiative of Giacomo Castellani. According to Carla Forti, 'Castellani at the time was already the author of numerous polemical texts in prose and verse that fell within the sphere of anti-Spanish and anti-Curial publicising of Sarpian inspiration. Las Casas' greatest fortune is to be found in this context, in Venice; and it runs out before the end of the Thirty Years' War." IDEM, cit., p. 271. See also by the same author: *Un lascasiano e polemista antispagnolo del Seicento a Venezia: Giacomo Castellani*, in R. POZZI-A. PROSPERI (ed.), *Studi in onore di Armando Saitta dei suoi allievi pisani*, Pisa 1989, pp. 73-98.

In a search in the University Library of Padua, we found a few examples of these Venetian editions:

- *Istoria della distruzione delle Indie Occidentali*, Spanish text and translation by F. BERNABITA, Venetia, M. GINAMMI, 1626.

- *Istoria o brevissima relatione della distruzione delle Indie Occidentali, conforme al suo vero originale spagnuolo, con la traduzione in italiano di Francesco Bernabita (Giacomo Castellani)*, Venetia, presso M. GINAMMI, 1626.

- *Il supplice schiavo indiano di Bartolomeo delle Case o Casaus, Vescovo di Chiapa*, (col testo spagnolo a fronte), Venetia, apud M. GINAMMI, 1636. (Reprinted in *facsimile* edition and introductory study by C. CAMPLANI, Rome 1993).

- *La libertà pretesa dal supplice schiavo indiano*, (col testo spagnolo a fronte), Venetia, presso M. GINAMMI, 1640. (Reprinted in *facsimile* edition and introductory study by C. CAMPLANI, Rome 1994).

- *Istoria, o brevissima relatione della distruzione dell'Indie Occidentali*, translated into Italian by Eccell. Sig. Giacomo Castellani, Venetia, presso M. GINAMMI, 1643.

- *Conquest of the West Indies*, translated into Italian by Marco Ginammi, Venetia presso M. GINAMMI, 1645.

- *Il supplice schiavo indiano*, translated into Italian by Marco Ginammi, Venetia, per M. GINAMMI, 1657.

¹⁴ R. MENENDEZ-PELAYO, *El padre de Las Casas. Su doble personalidad*. Madrid 1963.

¹⁵ PH. I. ANDRÉ-VINCENT, *Bartolomé de las Casas, prophète du Nouveau Monde*. Paris 1980.

¹⁶ VIDAL ABRIL CASTELLO, *Bartolomé de Las Casas, el ultimo comunero. Mito y realidad de las utopías políticas lascasianas*, in *Las Casas et la politique des droits de l'homme*, Aix-en-Provence 1974, pp. 92-123.

¹⁷ L. PEREÑA, *La carta de los derechos humanos según fray Bartolomé de Las Casas*, in *Estudios sobre fray Bartolomé de Las Casas*, Sevilla 1974, pp. 293 ff.

¹⁸ J. A. MARAVALL, *I pensatori spagnoli del "secolo d'oro"*, in *Storia delle idee politiche, economiche e sociali*, Vol. III, Turin 1987, pp. 611-693: "Las Casas turns out to be a Rousseau who remains in the living Christian tradition, of which the real Rousseau represents a phenomenon of later secularisation. The main elements of the Rousseauian system are already in Las Casas. These elements, isolated, separated from one another, can certainly be found in many other thinkers; but probably none of them arrived at such a broad and systematic synthesis as the one Las Casas arrived at. This kind of Rousseau *avant la lettre*, who believed in the superiority of life according to nature, in the original goodness of man, in the myth of the good savage, in natural freedom and equality, even in education according to example and

Latin American liberation movements saw in him a forerunner of liberation theology¹⁹ and the struggle for justice in Latin America²⁰.

We will not, of course, enter this interpretative debate,²¹ because the narrow limits imposed by this essay prevent us from doing so. Instead, we would like to highlight an aspect of the great Dominican's thought that is still undervalued, namely its value and philosophical as well as theological, ethnological and historical originality. In fact, despite the mass of documents and studies attesting to the contrary²², there are still prejudices and reservations towards a simple *clerigo* who had never studied regularly and perhaps had not even obtained a *licencia* (degree) in theology, whose work does not respond to academic canons and is totally aimed at his practical activity, therefore easily accused of partiality, apologeticism and propagandism or at best, humanitarianism and evangelical messianism without cultural mediation.²³

ways of nature, he ended up rejecting the paradigm of the Greeks and Romans offered by the classicist humanism contemporary to him, to propose in its place the model of virtue of the "primitives", whom he identified with the so-called "savages" of his time, as they had been discovered on the American continent."

¹⁹G. GUTIERREZ *Alla ricerca dei poveri di Gesù Cristo. Il pensiero di Bartolomé de las Casas*, Brescia 1995.

²⁰ L. HANKE, *La lucha por la justicia en la conquista de América*, Colombia, 1988 (1949). 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*, Illinois 1974. IDEM, *Aristotle and the American Indians. A study in Race prejudice in the modern world*, London- Chicago (Illinois) 1959.

²¹ To accompany the more recent debate, we point out some collective works resulting from meetings and congresses held in recent decades:

I diritti dell'uomo e la pace nel pensiero di Francisco de Vitoria e Bartolomé de Las Casas, Massimo, Milano 1988. (*Studia Universitatis St. Thomae in Urbe* 29).

Las Casas e la politique des droits de l'homme, Institut d'Etude Politique-ICH-CNRS, Aix-en-Provence 1976.

Las Casas and Vitoria: le droit de gens dans l'âge moderne, Colloque de l'Institut Catholique de Paris, Paris 1987.

Autour de Las Casas, Actes du colloque du V centenaire (1884-1984), Paris 1987.

²² An important role in the re-evaluation of Las Casas' political thought was certainly played by Lewis Hanke who, as early as 1949, wrote: 'Bartolomé de las Casas ha solido considerarse come un noble humanitário ou un santo fanático, cuando no se han empleados términos más duros. Pocos son los que se han dado cuenta de que bajo el fuego y el azufre de sus invectivas existia una estructura de ideas bien elaborada, basada en los conceptos políticos fundamentales de la Europa Medieval.' Concluding the chapter on Las Casas' political theories, the author states: "Hemos dicho lo bastante para demostrar que ni era un teologo de gabinete ni un simple humanitarista exaltado, sino, de un modo casi episódico, un pensador político de primer orden." HANKE, *La lucha por la justicia* cit., p. 404 and p. 419. ²³As an example of such preconceptions we can cite the evaluations expressed, in a recent History of Philosophy, by Dino Pastine, according to whom: "It would be an arduous task to seek in the writings of the "defender of the *Indians*" specifically dedicated to the American problem, theories, arguments or even simple inspirations that could be defined as philosophical in a rigorous sense. Las Casas' perorations are part of that prophetic and apocalyptic interpretation of the discoveries that was already present in the reports of Columbus himself, and which was to spread and strengthen when the evangelisation of the new continent was entrusted to the mendicant orders. Nor do the conclusions reached by Las Casas, which appeared to the European consciousness of the following ages as revolutionary about the problem of relations between Europe and non-Christian peoples, denounce the presence of an inspiration that can be traced back to philosophical sources or arguments. Rather, the strength of those arguments appears to derive from the fact that they are drawn directly from the Gospel message to the exclusion of any cultural mediation." D. PASTINE, *I nuovi orizzonti dell'Umanità*, in *Storia della Filosofia*, edited by Pietro Rossi and Carlo Viano, Rome-Bari 1995, pp. 232.

It certainly does not help to appreciate the work of the defender of the *Indians* his complicated, cumbersome, verbose, discontinuous, inelegant style, far from the clarity and systematicity of scholastics such as De Soto and De Vitoria, as well as the elegance of rhetoric of a Sepúlveda. Finally, we must consider that his most doctrinally relevant works (e.g. the treatise *De Regia Potestate*), in which he expounds his thought in a systematic and organic manner, were only known, until recently, by a small circle of specialists or were even unpublished as in the case of his monumental *Apologia* in Latin²⁴

We therefore consider it useful, especially for the Italian reader who does not have many studies on the subject at his disposal, to expound and comment on one of the Dominican friar's most significant works, the *De Regia Potestate*, a veritable treatise on political theory that is still little studied and appreciated in its proper value, and which can serve as an introduction to a more in-depth study of this great man's political thought.

²³This decisive judgement appears to us more a caricature than an objective evaluation of the Dominican friar's thought and is indicative of the preconception - not to say ignorance - with which the author approaches what he defines as "the confused succession of philosophical, theological, exegetical and juridical schools, included in the generic denomination of Second Scholasticism". IDEM, p. 233.

²⁴ Only recently have Spanish scholars published the *Opera Omnia* of Las Casas in a critical edition: B. DE LAS CASAS, *Obras Completas*, edited by P. CASTAÑEDA-A. GARCÍA DE MORAL, Madrid 1988- , 14 vols.

GENERAL CHARACTER OF THE WORK²⁵

Las Casas' treatise is inserted in the last phase of the Procurator of the *Indios*' thought, at a time when he is fighting his last great battle against the conquistadores' claims to obtain from the Crown the perpetuity of the *encomienda*²⁶. The work is distinguished, within Lascasian production, by an unusual sobriety and rigour of exposition that brings it close, in style and organisation of arguments, to the *relecciones* of the masters of Salamanca. Moreover, it is the only treatise in which Las Casas does not make an explicit reference to the indigenous question but develops a general theoretical discourse on the power of the Emperor and the King, although the final objective always remains that of providing philosophical and juridical arguments to his theses against the perpetuity of the *encomienda* and his proposals for a radical transformation of the colonisation process.

It is finally worth mentioning that Las Casas' thinking became increasingly radicalised with the passage of time, he became more and more critical of the assumptions and methods of the entire transatlantic enterprise, and he envisaged an equally radical alternative to the process of conquest and colonisation.

The *quaestio*, which the treaty addresses, relates to the permissibility of the prince alienating his sovereignty over his subjects and the crown's property and subjecting them to domination of another Lord.²⁷

²⁵ B. DE LAS CASAS, *De Regia Potestate (o derecho de autodeterminación)*, bilingual critical ed. edited by L. PEREÑA-J.M. PEREZ PRENDA-VIDAL ABRIL-J. AZCARRAGA, Madrid 1984. ('Corpus Hispanorum de Pace', Vol. VIII). The treatise was not published during the author's lifetime, it is not mentioned by any Spanish philologist, there is no record of its existence in Spain, and not even Las Casas mentions it among his works. It was published, under Las Casas' name, by an Austrian publisher, Wolfgang Griesstetter, a member of the imperial court of Speyer, who had spent five years in Madrid during the last period of Las Casas' life, when the defender of the *Indians* was practically prevented by the royal censorship from publishing his manuscripts in Spain. The work appears with this title: *Erudita et Elegans explicatio quaestionis: utrum reges vel principes iure aliquo vel titulo, et salva consciencia, cives ac subditos a regia corona alienare et alterius domini particularis ditioni subicere possint?* and was published in Frankfurt in 1571, four years after its author's death. We do not know with certainty when the work was written, which is in any case after the Valladolid dispute (1550/51). For questions concerning the composition of the treatise see the *Estudio Preliminar*, in *De Regia Potestate* cit., pp. XXI-CLVI, where we argue convincingly for its authenticity.

²⁶ According to the Laws of Burgos of 1513, the natives of the New World were declared 'free subjects' (*livres súditos*) of Castile but were subjected to tribute and forced labour in the direct service of the Crown or of the *encomendero* (*encomendero*), a Spaniard to whom a certain number of natives were assigned with the declared aim of leading them to the true faith and educating them in more civilised customs. In fact, the *encomienda* became a form not unlike slavery and had terrible consequences on the native population. Las Casas - who for a time had also had *indios encomendados*. - never ceased to denounce it without obtaining great practical results, except for the attempt of the *Leyes Nuevas* of 1543, issued by Charles V, which provided for an effective limitation of the *encomiendas*, but which were not implemented due to the determined opposition of the *encomenderos*.

Behind the apparent generality of the treatise lies the objective of criticising the perpetual cession of the *encomiendas*²⁸, which implied a cession of the king's sovereignty over his subjects and property in favour of others, i.e. the *encomenderos*. The work is divided into two parts, the first devoted to questions and the second to conclusions; the most interesting and original is undoubtedly the first, in which Las Casas' political theory is outlined. We will dedicate our analysis to it, comparing it with the treatise *Principia Quaedam*,²⁹ which constitutes an anticipation and synthesis of *De Regia Potestate*, in which the reference to the indigenous question is explicit³⁰.

1. "From the beginning of the human race, every man and every land and everything, by force of a primordial natural law and of the nations, was free and allodial, that is, free and not subject to any servitude".³¹

The starting point of the entire argument is taken from the traditional medieval doctrine that all things and persons were originally free by virtue of man's rational nature that makes him an inherently free being:

Since by nature (all men are) *equal (equal)*, God does not make anyone the servant of another (man) but grants equal freedom to all. And the reason is that rational nature, according to St Thomas, for what is proper to it (*quantum est de se*), is not ordered to any other being as to its end, as man to man. In fact, freedom is a right inherent in men in a necessary way and per se, from the origin of rational nature and therefore natural law, as stated in the *Decretum Gratiani*: there is one freedom for all (*omnium una libertas*).³²

²⁷ *An videlicet Reges vel Principes iure aliquo vel titulo, et salva conscientiae, cives ac subditos suos a regia corona alienare et alterius domini particularis ditioni subicere possint?* LAS CASAS, *De Regia Potestate* cit., p. 9. The pages refer to the edition of the *Corpus Hispanorum de Pace*.

²⁸ The *encomenderos* of Peru had sent, in 1554, one of their plenipotentiaries, Don Antonio de Ribera, to ask the Emperor for the perpetual concession of the *encomiendas* with full civil and criminal jurisdiction over the natives, and to offer in exchange a large sum of gold as a token of vassalage. Philip II, to whom Charles V had entrusted the management of the affairs of the Indies, had summoned a *junta* of theologians, jurists and politicians to decide the matter, and they decided, by ten votes to two, that the sale of the *encomiendas* in perpetuity to the *conquistadores* and their heirs was legitimate. The actual realisation of the royal decision, however, found many obstacles, not only due to the opposition of the religious people, but also due to the fear of the royal officials themselves that such a measure would have posed a serious threat to the sovereignty of the Crown over the overseas territories. For a detailed description of this debate see *Estudio Preliminar*, in LAS CASAS, *De Regia Potestate* cit., pp. XLI-LXVI.

²⁹ B. DE LAS CASAS, *Principia quaedam, ex quibus procedendum est in disputatione ad manifestandam et defendendam iustitiam indorum*, in *De Regia Potestate* cit., pp. 135-154. The work was first published by Las Casas, in Seville, in 1552 along with other important treatises, including the *Brevissima relación*. Scholars believe that *De Regia Potestate* was written after the *Principia Quaedam*.

³⁰ According to the Spanish editors of *De Regia Potestate*, the letters, petitions, and small legal treatises that Las Casas wrote in the latter period are the concrete application to the indigenous question of the general principles set out in the treatise. See *Estudio Preliminar* in LAS CASAS, *De Regia Potestate* cit., pp. CXIV-CXXXVIII.

³¹ "A principio generis humanis omnis homo, et omnis terra, et omnis res, de iure naturali et gentium primaevo fuit libera et allodialis, id est, franca, nullio subiecta servituti." LAS CASAS, *De Regia Potestate* cit., p. 16. In the Middle Ages, *allodium* was considered a landed estate free from feudal obligations and burdens.

To reaffirm the original and natural freedom of all men, Las Casas relies on the *auctoritas* of the most important medieval and contemporary jurists and, among theologians, that of St. Thomas.³³ This unanimous affirmation of the medieval tradition was at odds with the highest philosophical *auctoritas*; in fact, as is known, Aristotle had argued, in the *Politics*, the natural and original difference between men, some destined to command others to be commanded, and had admitted the existence of 'slaves by nature' (*phúsei douloi*).³⁴ This doctrine could not be accepted as contrary to the principles of fraternity and universal equality of the Christianity, which, at this point, approaches the universalism of the Stoics.³⁵

We note, however, that the theoretical framework and the arguments he puts forward in favour of men's natural freedom are based on Aristotelian categories³⁶. Thus, to criticise the theory of natural slavery, Las Casas makes use of the Aristotelian distinction between substance and accident and the Aristotelian definition of freedom:

³²"Et quidem, quantum ad homines, probatur quoniam ab origine naturae rationalis liberi nascebantur, ut. 1. *Manumissiones, De iust. et iur.* Quia in natura pari Deus non facit unum alterius servum, sed par omnibus concessit arbitrium. Cuius ratio est secundum Thomam (*II Sententiarum*, dist. 44. Quaest. 1, art. 3), quia natura rationalis, quantum est de se, non ordinatur ut ad finem ad alium, ut homo ad hominem. Nam libertas est ius insitum hominibus de necessitate et per se ab exordio rationalis naturae, et sic de iure naturali, ut prima distinctio, can. *Ius naturale*, ibi: *Omnium una libertas*." LAS CASAS, *De Regia Potestate* cit., p. 17. The quote from Thomas is as follows: "Sed creatura rationalis, quantum est de se, non ordinatur ut ad finem ad aliam (...) quod natura omnes homines aequales in libertate fecit, non autem in perfectionibus naturalibus (...). Unus enim homo ex natura sua non ordinatur ad alterum sicut finem. S. Thomas, *Commentarium in lib. II Sententiarum*, dist. 44. quaest. 1, art. 3. N. 5."

The quote from the *Decretum Gratiani* is as follows: "Ius naturale est commune omnium nationum, eo quod ubique instinctu naturae, non constitutione aliqua habetur, ut viri et foeminae coniunctio, liberorum successio et educatio, communis omnium possessio et **omnium una libertas**, acquisitio eorum, quae coelo, terra marique capiuntur." *Decretum Gratiani* I, 1, 7.

³³ According to Luciano Pereña, Las Casas did not possess depth and direct knowledge of the juridical and philosophical sources of the time, but used indirect sources: he would have read Aristotle through Thomas and the medieval or contemporary jurists through Domingo De Soto, or the Italian jurist and glossator Luca di Penna, from whose work *In tres posteriores libros Codicis Iustiniani*, Las Casas makes extensive use, sometimes transcribing some passages without citing the source, in a true plagiarism operation. Pereña is highly critical of the unscrupulous and inaccurate use of sources and goes so far as to state that it is a "verdadeira falsificação científica", a "fraude intelectual" and a "montaje científico inaceptable y totalmente falso." PEREÑA, *Estudio Preliminar* in LAS CASAS, *De Regia Potestate*, cit., pp. CXLVII-CXLIX. Of a different opinion, however, is Brian Tierney, a English scholar of the medieval legal tradition, who acknowledges Las Casas' extensive knowledge of medieval legal literature: "I would agree that Las Casas was opportunistic in his use of juridical authorities, but his knowledge of literature was really very extensive." Tierney cites this passage as one of many examples of the importance of legal and juridical *auctoritates* in such a crucial point as the definition of *libertas*. It is indeed true that Las Casas derives his doctrine of natural liberty from Aquinas, but "the reference to Aquinas was inserted between two texts taken from Roman and canon law." B. TIERNEY, *The Idea of Natural Rights*, Emory 1977, p. 280 and p. 278.

³⁴ "To command and to be commanded (*árchein kai árchesthai*) are not only among the necessary things, but indeed among the jovial things, and certain beings, immediately from birth (*ek genetés*), are distinct (*diístemi*), part ad to be commanded, part to command." ARISTOTELE, *Politics* I, 5: 1254a 21-24

Slavery is an accidental phenomenon, inflicted on men by chance and fortune, since everything applies (*consequitur*) to the species according to what it is per se and not according to what it is by accident, since things that are accidental do not belong to the essence of the species. We therefore say accidental what happens apart from the intention (*praeter intentionem*) of nature, as we read in Aristotle and St Thomas. Thus slavery, as a rule, does not possess a natural cause, but an accidental one, i.e. imposed or prescribed (by laws), such as those in the *Institutiones* or the *Digestum*.³⁷

It must also be considered that the free man is master of himself (*sui arbiter*), as Aristotle states. That is why free men have the faculty to freely dispose of their persons and things as they wish. And in this the servant differs from the (free) man: for every prohibition, whether temporary or perpetual, is opposed to freedom.³⁸

Not only humans, but also inanimate things were originally by natural law free and, as such, not subject to servitude unless proven otherwise, as the so-called allodial properties, i.e. those properties that recognise no other lord but God:

God created all things for the service of all people living under heaven. Therefore, by divine grant, every man has the power to appropriate things by occupation, since in the beginning all were common, and all things are considered allodial, until proven otherwise.³⁹

³⁴ The majority of interpreters tend to consider the theory of the *phúsei doulos*, due to the aporias and problems it raises in the internal coherence of its arguments and in its more general compatibility with the principles of Aristotelian anthropology, the (more or less conscious) assumption of commonplaces widespread in the society of its time but not reconcilable with its philosophy, which may itself provide the elements for its criticism. See E. BERTI, *Il pensiero politico di Aristotele*, Bari-Roma, 1997, pp. 32-38.

³⁵ "The Stoic doctrine of natural law is the deepest layer of the doctrine of natural law: it influenced Roman law to a certain extent and, with important modifications, became part of the elements that make up Christian doctrine". L. STRAUSS, *Natural Law and History*, Genoa, 1990 (1953), pp. 311-312.

³⁶ Las Casas' attitude towards Aristotle's thought changes profoundly during his life. When he first learns of Aristotle's theory of natural slavery, he manifests a reaction of impatience and hostility towards the philosopher: "Aristotle," he replies to his opponent, Bishop Juan de Quevedo, "is a pagan who burns in the fire of hell, whose doctrine we have no need to follow except in the case that it conforms with Christian truth. Quoted in HANKE, *Aristotle* cit., p. 16. (The episode is narrated by Las Casas in his *Historia de las Indias*, cit. Book III, ch. 149-151). This is 1519 and Las Casas, a recent convert to the indigenous cause, had not yet submitted himself to the discipline and instruction of the Dominicans. His attitude would change profoundly in the following years, until the Valladolid Disputation, (1550/51) when he was confronted by what was considered the most important 'Aristotelian' of Spain: J. G. de Sepúlveda. Las Casas studied Aristotle's works intensively (in Latin translation and very often in commentary by Thomas) and acquired a broad knowledge, not only of the ethic-political works, but also of the 'physical' ones and parts of the *Metaphysics*, as B. REICH, *Bartolomé de Las Casas und Aristoteles*, in *Jahrbuch für Geschichte von Staat, Wirtschaft und Gesellschaft Lateinamerikas*", XXII (1985), pp. 39-68.

³⁷ "Servitus autem est accidentalis, iniuncta hominibus a casu et a fortuna, unumquodque autem consequitur speciem secundum illud quod est per se, non secundum illud quod est per accidens: quia ea quae sunt per accidens, sunt extra rationem speciei. Hos autem dicimus per accidens esse quod est praeter intentionem naturae, ut patet <Aristotle> (2 *Physicorum*) et secundum Thomam (1.2., quaest. 72, art. 1, c.). [...] Et sic servitus regulariter non habet causam naturalem, sed accidentalem, id est, impositam vel praescriptam (s. ultimo *Institutionum*, *De servitutibus* et *De aqua* et aquae pluviae arcenda, lex *Antaeus* et iustibus legibus sequentibus)". LAS CASAS, *De Regia Postestate* cit. 1, 2, p. 17.

Jurisprudence itself (the Digest and the Code) adheres to this principle insofar as for a servitude to be time-barred, it is sufficient simply that its holder does not exercise it during a certain time, whereas, on the contrary, freedom can never be lost by simple prescription (*Libertas vero nullo tempore praescribi potest*). Infidels, by virtue of being rational creatures, also enjoy the same rights of freedom and ownership over themselves and their property, as he states in *De Regia Potestate* and, more extensively, in *Principia Quaedam*:

Among unbelievers, there is a legitimate ownership of goods. It is demonstrated because, God, indiscriminately in favour of every rational creature and in the service of all peoples, has made other creatures inferior to man and did not distinguish between the faithful or the unfaithful. *Ergo*, we do not have to make such a distinction either.⁴⁰

The Aristotelian principle of man's natural sociality is taken up in the *Principia Quaedam* to justify the legitimacy of indigenous political power:

With infidels there is both ownership (over property) and jurisdiction over men, as far as the deliberative function is concerned. This is proven by the fact that every man, infidel or faithful, is a rational and social animal, therefore society, i.e. living in society, is natural to all men.[...] It is therefore clear that among all men, without distinction between faithful or infidel, as far as natural law and the law of nations is concerned, there exists a legitimate and natural dominion and jurisdiction of one man over others, whether they be rulers, kings, *caciques* or *tataones*, or whatever other name you wish to give them, who direct and rule over communities and over a multitude of men and care for the common good.⁴¹

³⁷Thomas, *In octo libros Physicorum Aristotelis expositio*, Marietti 1954, n 214, p. 105: "Unde quidquid provenit in effectu praeter intentionem, est per accidens." Aristotle, 2 *Physicorum*, V, 5." Similar and sometimes identical statements are found in *Principia Quaedam: Tertium Principium*, cit., p. 143.

³⁸"Est autem considerandum quod ille dicitur liber homo qui est sui arbitrii, secundum Aristotelem (1 *metaphysica*; lex finalis ff. De homine libero exhibendo). Unde habent facultatem libere de personis propriis et rebus disponendis, prout volunt." LAS CASAS, *De Regia Potestate* cit., p. 18.

The Aristotelian quotation refers to a famous passage from the *Metaphysics*: "It is evident that, just as we say free man is he who is an end in himself and is not enslaved to others, so this alone, of all the other sciences, we say free: for it alone is an end in itself. ARISTOTELE, *Metaph.* A, 2, 982 b 25-28.

³⁹"Quia cuncta, quae Deus creavit, fecit in ministerium cunctis gentibus quae sub coelo sunt (ut dicitur Deuteronomia 4). Unde homo quilibet divina potestatem habuit praeoccupandi possessionem cuiuscumque rei, quae a principio erat communis, et omnis res praesumitur allodialis, donec probetur contrarium (lex *libertas*, ff. *De statu hominum*)." LAS CASAS, *De Regia Potestate* cit., p. 22. The quotation from the *Digest* is significant of that tradition of Roman law that receives the influence of Stoic universalism: "Libertas est naturalis facultas eius quod cuique facere libet, nisi si quid vi aut iure prohibetur. Servitus est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur." *Digesta* I, 5, 4.

⁴⁰"Apud infideles iuste esse rerum dominia. Probatur, quia indifferenter pro omni rationali creatura et in ministerium cunctis gentibus, fecit Deus alias creaturas homine inferiores nece dixit inter fideles vel infideles. Ergo nec nos distinguere debemus." LAS CASAS, *Principia Quaedam. Primum Principium* cit., p. 138.

While Sepúlveda resorted to Aristotle to justify the subjugation of the *Indians*, "slaves by nature", Las Casas uses the Aristotelian categories of human rationality and sociality to justify the legitimacy of their power and institutions.⁴²

⁴¹"Apud infideles sunt etiam dominia et iurisdictiones super homines, in quanto importat officium consulendi. Probatur quia omnis homo tam infidelis quam fidelis est animale rationale et sociale, et per consequens societas, seu vivere in societate, est omnibus hominibus naturale [...] Patet igitur quod apud homines infideles vel fideles indifferenter, quantum ad ius naturale et gentium attinet, iuste et naturaliter habent dominia unius hominis super alios, et iurisdictiones, rectores, uti reges, cacique, vel tatoanes, seu quocumque alio nomine censeantur sive appellentur, qui dirigant et regnant communitates et hominum multitudines, atque curam habeant boni communi." LAS CASAS, *Principia Quaedam. Secundum Principium* cit., p. 141. This clear and unequivocal affirmation of the legitimacy of indigenous societies is very similar to the one Vitoria had argued in the first part of *De Indis*: "**Barbari erant et publice et privatim veri domini, sicut christiani.**" F. DE VITORIA, *Relectio de Indis. La Questione degli Indios*, critical text by L. Pereña, Italian ed. and transl. by Ada Lamacchia, Bari 1996: I. I 16, p. 30. However, unlike the Salamanca scholastics, Las Casas withdrew from this principle all possible consequences, including the restitution of all unjustly 'stolen' goods and the reinstallation of the legitimate lords, applying the principle of reciprocity of rights, whereas the Salamanca scholastics were much more hesitant to take this path to the end.

⁴²The Spanish scholastics base man's original freedom both on arguments of reason and on the unique value of man as a child of God and created in his image, as Vitoria does in the first part of *De Indis*: "Dominium fundatur in imagine Dei; sed homo est imago Dei per naturam, scilicet per potentias naturales; ergo non perditur per peccatum mortale. F. DE VITORIA, *De Indis*, edited by L. PEREÑA-J.M. PEREZ PRENDES, 1981 (Corpus Hispanorum de Pace <CHP>), Vol. V., I, 1, 3, p. 18. Las Casas also reiterates this Christian doctrine as one of the arguments against Sepúlveda in his *Apologia*: "Rursus, si Christi filii et evangelicae veritatis sectatores esse velimus, considerare nos oportet quod, etiam si maxime barbari sint, nihilominus sunt creati ad imaginem Dei, nec ita omnimode a providentia divina destituti quin et capaces existant regni Christi fratres et Christi sanguine pretiosissimo redempti, non minus quam prudentissimi et sapientissimi totius orbis. (LAS CASAS, *Apologia* cit., 20v, p.

2. The emperor and the king do not own the property of individuals but have only jurisdiction over them.⁴³

The second major theme developed by Las Casas refers to the power of the emperor and the king. He denies that *dominium*, i.e. property over the things and persons of the subjects, belongs to the *potestas* regale; the emperor and the king are only entitled to *iurisdictio* and not *dominium*, which is quite a *different* thing (*et aliud rei proprietates, aliud autem iurisdictio*)⁴⁴:

It is concluded from this, according to the canonists and jurists (*doctores*), that neither the kings nor the emperor extends their authority over the property of individual men, nor over the possession of the provinces or lands therein, nor over profit and direct rule. Therefore, the owners of such property cannot be regarded as vassals of the king or lords in this respect but are subject to and considered subjects or subjects of the authority of the kings or lords of the place, only as far as jurisdiction is concerned.⁴⁵

Las Casas here follows a juridical doctrine already consolidated by medieval jurisprudence and assimilated by the masters of Salamanca⁴⁶, who had reiterated the distinction between the sphere of *dominium*, i.e. property, and that of *iurisdictio*, i.e. political government

98). In this treatise, however, he mainly if not exclusively uses the arguments of philosophy and jurisprudence.

⁴³"**Imperator et rex non est dominus super rebus singulorum, sed tantum quoad iurisdictionem.**" LAS CASAS, *De Regia Potestate* cit., p. 23.

⁴⁴ After quoting in his support various laws of the *Digest* and the Civil Code, and the glosses of the *Panormitanus* (Nicola Tudeschi) he concludes: "Aliud namque est res particularium seu singularium personarum, et quibus de iure competunt, et aliud rei proprietates, aliud autem iurisdictio. Sufficit enim ad rei allodii substantiam quod a nemine recognoscatur, licet sit iurisdictio alterius." LAS CASAS, *De Regia Potestate* cit., p. 24.

⁴⁵ "Ex quibus colligitur secundum doctores quod nec reges nec imperator fundant intentionem suam super rebus singulorum hominum, et possessionibus ipsarum rerum, seu provinciarum, seu terrarum sitis in eis, nec super utili, nec super directo dominio. Unde illarum possessores non possunt dici respectu illarum vasalli regum vel dominorum, sed tantum subsunt, vel dicuntur subditi vel subiecti dominis vel regibus locorum, quantum ad iurisdictionem." LAS CASAS, *De Regia Potestate* cit, p. 22. See Panormitanus, *In secunda secundis Decretalium libri partem*, Venetiis 1605, t. IV, from which the quotation is taken almost literally. He also quotes I. Lopez de Palacios Rubios, Gregorio Lopez, Avilés, Meneses, D. Pérez, Diego de Covarrubias, Vázquez de Menchaca, Roderigo Suárez, Otalora, i.e. the most important jurists of the time.

⁴⁶ Domingo de Soto had expressed this distinction clearly: "Alterum quod est ius seu proprietates rerum, de quo dictum est hactenus; alterum quod est potestas iurisdictionis quod est dominatio seu dominatus, sicut est *dominium* principum in subditos." D. DE SOTO, *De Dominio*, edited by J. BRUFRAU PRATZ, Grenada 1964, p. 156. Francisco De Vitoria will use the same distinction in *Relectio De Indis* cit., ch. I, 2, 2. It is not anyone who does not see the importance of this distinction that seems to 'anticipate' that of the Modern liberalism between the private 'sphere' of subject property and the public sphere of power politician who must respect and guarantee the property of individuals.

The intention, not so hidden, was to render null and void, from a juridical point of view, the claims of the *conquistadores*, and in particular of the *encomenderos*, on the persons and property of the *Indians*, and at the same time to guarantee the supreme authority of the Emperor as defender and protector of the *Indians* as free subjects of the crown. If the natives are, by natural law, free and possess a legitimate dominion over their property, they cannot be given *encomienda*, which is a form of servitude, but must be considered free subjects of the Emperor, who, not having *dominium* over the property of his subjects, but only *iurisdictio* cannot give what he does not possess and therefore cannot grant the perpetuity of the *encomienda*

The discussion of this issue takes place in open polemic with the theocratic pretensions of the curialist theologians and in particular of their greatest representative, Henry de Susa, known as the Ostiense, according to whom "all things belong to the sovereign, both with respect to property and even more so to dominion, and the prince can transfer them to others not only with respect to use but also to the perception of rent."⁴⁷ Las Casas' position towards these authors is twofold: on the one hand, he agrees with them in stating that "*Imperator est dominus orbis et rex in suo regno*", thus accepting the doctrine of *totius orbis*, i.e. the universal power of the Emperor and the Pope over the whole world; on the other hand, however, he clearly distinguishes himself from them because he interprets *potestas universalis* not as *dominium*, but as *iurisdictio* and conceives the Emperor as a supreme power for the defence and protection of the world and the Church⁴⁸. Moreover, he does not accept Ostiense's theory according to which, with the advent of Christ, all *potestas* and *iurisdictio* were taken away from the infidels and transferred to the faithful, a doctrine that he considers "most pernicious, contrary to the sacred scriptures and the customary practices of the Church, finally heretical and the cause of innumerable robberies, unjust wars, murders and every kind of sin"⁴⁹

For these and similar expressions, Las Casas' thought has been likened to the medieval theocratic conception of political power, typical of the so-called political Augustinism.⁵⁰

We believe, however, that his affinity with this current is more apparent than substantial. As a matter of fact, Las Casas always upheld the legitimacy of the Emperor's authority over the new territories on the basis of the papal mandate, expressed in the Alexandrian bulls, which Vitoria had instead decisively criticised and delegitimised⁵¹ and this is perhaps the main reason that kept him safe from condemnation by the Inquisition and gave him free access to the Court. However, this was not just a tactical expedient, but

a deep conviction of Las Casas, who saw in the Emperor the only real power capable of counterbalancing and limiting the overwhelming power of the *conquistadores* and *encomenderos*. In his eyes, the Emperor appeared as the supreme guarantor, defender and protector of the *Indians* who were legally his free subjects and had the right to be treated as such. This conviction, despite all the frustrations that imperial policy had brought him, never abandoned him, as evidenced by the continuous petitions, treaties and letters he sent to Charles V, Philip II and the Pope.

⁴⁷ "Ubi (Hostiensis) dicit *quod omnia sunt principis*, et quantum ad proprietatem et maius dominium, et quod possit in alio transferre non solum quoad utilitatem, sed fructuum perceptionem." LAS CASAS, *De Regia Potestate* cit., p. 29. The quote from Ostiense is taken from the *Summa Aurea*.

⁴⁸ "Et quoque illa opinio Hostiensis est contra glossam [...], et utrobique Bartolus qui in secundo loco dicit *quod ratione protectionis et iurisdictionis Imperator dicitur dominus mundi, quia tenetur mundum*, id est, Ecclesiam defendere, *quod ratione protectionis quis dicitur dominus (ut lex interdum...)*. LAS CASAS, *De Regia Potestate* cit., p. 30.

⁴⁹ LAS CASAS, *De Regia Potestate* cit., pp. 29/30.

3. The people, in electing the king, did not lose their freedom⁵².

The **third** major principle underlying the Treaty of Las Casas relates to the origin of royal power, which he clearly identifies with popular consensus:

No subjugation, servitude, burden was ever imposed without the voluntary consent of the people who had to undergo these burdens. It can also be shown that from the very beginning (of the political regime) the people themselves determined (*constituit*) this submission together with the prince. In the beginning, all property and all peoples were free; therefore, if anything was imposed against the will of the people or the private owner (*dominus*), it would undoubtedly be violence and thus prohibit the people from using their freedom, which they were entitled to by natural right.⁵³

⁵⁰ In Augustine's 'political theology', the Christian state, which progressively replaces the Roman Empire, acquires its legitimacy no longer from natural law, but from divine law. If in Augustine we still find fluctuations and nuances, in the following centuries, to the extent that not only does the Empire become Christian, but the Church replaces the Empire as the highest moral and political authority, the tendencies present in Augustine's thought will become a doctrine: political Augustinism. If the first elements of this conception are already found in St Paul, they will not fully develop during the first centuries, when the Empire was still powerful and Christians a persecuted sect. It was only after the edict of Constantine that a long march of rapprochement between the Empire and the Church began, which would not end until the 9th century, with the creation of Charlemagne's Holy Roman Empire. The most significant consequence of this doctrine will be the **ministerial conception of political power**, which is considered legitimate only insofar as it is placed at the service of the Church's salvific mission. On political Augustinism and the ministerial conception of power, see the classic work by H. X. ARQUILLIERE, *L'augustinisme politique. Essai sur la formation des theories politiques du Moyen-age*, Paris 1955, pp. 65/66.

⁵¹ In the second part of *De Indis*, in fact, Vitoria had denied the Emperor's *dominium* over the entire world as a legitimate title of conquest: "Dato quod Imperator non est dominus totius mundi, non ideo posset occupare provincias barbarorum et constituere novos dominios et vetera deponere et vectigalia capere." DE VITORIA, *De Indis* cit., I, 2, 3, p. 42. On this point there is a significant difference between Las Casas and the Salmantic masters, for while Vitoria is now on the path of recognising the decline of the universal jurisdiction of the emperor and the pope and the rise of modern states on the international scene, Las Casas remains anchored to the medieval universalist view of the two powers, and the ministerial conception of power typical of political Augustinism.

⁵² "**Populus, eligendo regem, libertatem non amisit**". LAS CASAS, *De Regia Potestate* cit., II, IV, p. 33.

We note how Las Casas uses the past indicative tense, as if referring to an event that actually happened in a historical time: his reconstruction is in fact modelled on the history of Rome as described in the Digest but is, at the same time, an 'ideal history', consistent with the previously stated principles of the natural liberty of all men and the only jurisdictional power of princes. The prince has no power (*potestas* or *imperium*) to impose burdens on the people without their consent, because his power originates directly from the people:

The power (*imperium*) to rule proceeds immediately from the people, and the people are the actual cause of kings and princes and of all rulers who had a right beginning. Therefore, if the people were the actual or efficient and final cause of kings and princes, so that they had their origin in the people through free election, they could not impose on the people from the beginning except those tributes and services that were accepted by the people themselves and with whose imposition the people freely consented.⁵⁴

The thesis is developed by showing the original and natural character of the people that precedes and is the source of royal power:

Before there were kings and rulers, all the goods were common and belonged to the whole community by virtue of the same natural right. The people were, by nature and time, prior to kings themselves. But the people were bound to take from the public good those things that were necessary for the maintenance of the king. Therefore, the people ordained and decreed the royal rights.⁵⁵

⁵³ "Nulla subiectio, nulla servitus, nullum onus unquam impositum fuit, nisi populus qui subiturus illa onera erat, impositioni eiusmodi voluntariae consentiret. Immo principio idem populus ea constituit cum ipso principe, probatur. Ab initio omnis res, omnis populus fuit liber; si contra populi vel privati dominii alicuius rei voluntatem imponderentur, forent absque dubio violenta, et sic prohiberetur populus uti sua libertate, quae de iure naturali competabat." LAS CASAS, *De Regia Potestate* cit., IV, 1., p. 33.

⁵⁴ "Unde imperium immediate processit a populo, et populus fuit causa effectiva regum seu principum aut quorumcumque magistratuum, si iustum habuerunt, ingressum (93 dist., cap. *legimus*). Ergo si populus fuit causa effectiva seu efficiens, et finalis regnum et principum, ut a populo per liberam electionem originem duxerunt, non potuerunt imponere populo a principio nisi tributa et servitia quae ipso populo grata essent, et quorum impositioni libenter populus consensisset." LAS CASAS, *De Regia Potestate* cit., IV, 3., p. 34. The quotation is from *Digest* I, 2,2,8 and 9.

⁵⁵ "Antequam fuissent reges et magistratus, omnia bona praedicta totius communitatis erant, et ad ipsam iure naturae pertinebant (*Institutiones, De rerum divisione*). Populus prior fuit natura et tempore ipsis regibus. Sed populus tenebatur exhibere de publico aliqua ex quibus rex sustentari possit. Ergo populus praedicta iura fecit vel decrevit." LAS CASAS, *De Regia Potestate* cit., IV, 4., p. 35.

The king therefore needs a general consensus (*de consensu omnium est agendum*) when dealing with issues of general interest that can be beneficial or harmful to all. It is evident, on a first reading, the presence of naturalistic and contractualist elements in the origin of political power: the people exist *natura et tempore* before kings and rulers existed, they enjoy a natural and original freedom and exercise collective ownership over goods, and it is only at a later stage that the same people, through a voluntary choice (*electio*), constitute the king. By making this choice, the people do not lose their original freedom (*populus eligendo regem, libertatem non amisit*), which remains by natural right and which the king has no right to limit except with the consent of the people themselves (*sine consensu populi*).⁵⁶

If we use modern categories, we are tempted to read these pages as an expression of eclectic and confused thinking, where two conceptions, one voluntarist and the other naturalist, of the origin of the political community coexist, which appear irreconcilable to us⁵⁷. But they must not have appeared so to the medieval and Renaissance writers, not only because this opposition had not yet been thematised (it would in fact only be with Hobbes), but also and above all because it simply does not exist.

In fact, Las Casas, as well as the Salamanca theologians and medieval jurists, do not affirm the existence of free individuals in a state of nature that precedes the political community, who 'subsequently' unite through a pact: such individuals are the stateless ones mentioned by Aristotle who do not possess, in the proper sense, human characteristics⁵⁸.

⁵⁶ The contractual character of the power relationship is reaffirmed by the metaphor of the 'moral and political' marriage between the prince and the republic, analogous to the marriage between the bishop and the Church. LAS CASAS, *De Regia Potestate*, cit., p. 39.

⁵⁷ As Norberto Bobbio sustains, for example, when he compares two 'models', the 'Aristotelian' and the 'Hobbesian', which are, in his opinion, irreconcilable about the conception of the origin, nature, structure, foundation and legitimacy of political power. BOBBIO N. and BOVERO M., *Società e Stato nella Filosofia Politica Moderna*, Milan 1979, pp. 17-98.

⁵⁸ "From these considerations, it is evident that the city is a natural product and that man by nature is a sociable being; therefore he who lives outside the political community by nature and not by some chance is either abject or superior to man, just like the one blamed by Homer 'deprived of country, of laws, of hearth': such is his nature and, at the same time, also eager for war, since he is isolated, like a pawn at the game of dice." ARISTOTELE, *Politics*, I, 1253 a 1-7 (translated by Laurenti with some modifications).

⁵⁹ "According to a common opinion of public law writers, two successive conventions are needed to give rise to a state: the *pactum societatis*, whereby a certain number of individuals decide by common agreement to live in society, and the *pactum subiectionis*, whereby the individuals thus united subject themselves to a common power. The first pact transforms a *multitude* into a *populus*, the second a *populus* into a *Civitas*". BOBBIO-BOVERO, *Society and State*, cit., p. 63.

⁶⁰ That it is possible to interpret the origin of political power in Aristotle in this sense has been argued by scholars such as Berti: "Man, driven by a natural instinct to associate, can choose to give life to different forms of society, so the choice of the city as the society in which he can fully realise himself is, in fact, a free choice, the fruit of reason. But reason is still part of nature, indeed it is the most typical expression of human nature, so for Aristotle there is no antithesis between the natural character and the rational character of the city, I would say not even between its rational character and its artificial character". E. BERTI, *Il pensiero politico di Aristotele*, Roma-Bari 1997, p. 09.

Las Casas, on the other hand, always refers to a 'people'; in the 'original' state of nature, men are already thought of as being part of a natural 'political' community derived from natural (understood here in the sense of instinctive) human sociality. If we compare this conception with the modern conception of the two covenants through which originates the state,⁵⁹ we can say that the first contract (the *pactum unionis*) is not considered necessary, because the existence of individuals isolated from their natural community of origin is inconceivable, i.e. the *multitude* is already considered as *populus*.

The properly contractual moment, which is explicitly admitted (i.e. the *pactum subiunctionis*), occurs only when the original community decides, by its own free choice (*electio*), to give itself a ruler and thus submit to the authority of a king. The element of voluntariness of the association is thus defined not in contrast, but in harmony with the naturalistic element without interruption, and the voluntary character of political association coexists with its natural character.⁶⁰

It is in this sense that we can also read the organicist conception of power that Las Casas borrows from the Aristotelian tradition, according to which the naturalness of political association is clearly understood and expressed in strict analogy with the organic world: just as in a body the members cannot subsist outside the whole, so in society individuals and social groups cannot subsist outside it⁶¹. This conception in Las Casas does not necessarily imply the elimination of the voluntarist element and the subjection of the individual, understood as a part (member/member), to the whole⁶².

⁶¹ As is well known, Aristotle understands the *polis* as a whole that 'precedes' the parts, without which the parts would not exist, and as a body composed of various parts each having different functions in an established hierarchical order, according to the famous passage in the *Politics*: 'And by nature the *polis* is prior to the family and to each individual, because the whole must necessarily be prior to the part: for when the whole is abolished, there will be no more foot or hand except by verbal analogy, as if one were to say that a hand were made of stone.[...] It is evident, therefore, that the state exists by nature and that it is prior to each individual: in fact, if it is not self-sufficient, each separate individual will be in the condition of the parts in relation to the whole, and therefore whoever is not able to enter the community or because of his self-sufficiency does not feel the need, is not part of the state, and consequently is either a beast or a god. ARISTOTELE, *Pol.* I 2, 1253 a 18-29. 2.

⁶² That the organicist analogy in Aristotle does not entail totalitarian outcomes is argued by Enrico Berti:

The affirmation of the city's priority over the family and the individual and the comparison of the city with the living organism do not imply any 'totalitarian' or 'organicist' conception of politics, because the end of the city always remains the supreme good, that is, the happiness of man, and therefore of the individual. The city is in fact, for Aristotle, not a 'substance', i.e. an entity subsisting in itself but a collection of many substances that are individuals [...] Therefore it is not an end, but the means for the realisation of the end proper to individuals. BERTI, *Il Pensiero politico* cit., p. 10.

On this point, the Dominican friar's thinking is singularly precise and explicit. On the one hand, in condemning the alienation of property and jurisdiction by the king, he states that 'it is valid to apply to the moral or political body the arguments of the physical body', whereby just as the amputation of a member of the physical body would make it deformed and weak, in the same way the kingdom would remain imperfect, deformed and less powerful if certain territories were taken away or alienated from it.

On the other hand, he accepts the objection that 'the moral and political body maintains its unity solely by virtue of the union of wills and not by virtue of an organic integration, since the people consists of different and subordinate parts' (*cum constet ex distantibus sive suppositis*) and that 'political unity does not consist in a purely organic integration but rather in a union of wills' (*licet unitas consistat non in unione compaginis, sed in unione voluntatis*).⁶³ And it could not be otherwise, insofar as the author had defined freedom as an original characteristic of man that makes him an end in himself and not ordered to anything else, hence not even to the whole of which he is part.

5. Limits of royal power.

This original freedom therefore places limits on the power that the people confer on the king because, while it is true that the king 'possesses' citizens and subjects, they are not, in the proper sense, his total and full possession (*id quod est totaliter alterius*), so the *dominium* (as it is improperly called) must not undermine the freedom of citizens. It must be exercised to promote the common good (*ad procurandam utilitatem communem populorum*) in compliance with the law.⁶⁴ Kings and rulers are not the lords (*domini*) of their realm, but of the *rectores, praepostos administratoresque rerum publicarum* and should be chosen by election, as the gloss to the *Decretum Gratiani* recommends, even if the opposite is customary.

⁶³ After affirming the analogy between the physical body and the mystical and political body, he himself poses a possible objection, based on the difference between the organic character of the physical body and the voluntary character of the political body: "Nam licet corpus physicum unitum est ex partibus unione compaginis, corpus tamen mysticum unitum est **solum unione voluntatis, non unione compaginis**, cum constet ex distantibus sive suppositis, ut declarat textus legis *rerum*, De usurpationibus, et usucapionibus, et glossa cap. *dilecta*, De excessibus, praelatorum' (the quotations are taken from *Digest*, 41, 3. 30 and *Glossa*, X, 5, 31, 14). He accepts and acknowledges this distinction and replies that, despite this difference, the alienation of goods and powers is very dangerous, as experience shows: "**Licet unitas consistat non in unione compaginis, sed in unione voluntatis**, unitas tamen ista, quanto eiusmodi donationibus et alienationibus donatarii fiunt potentiores, tanto redditur ipsa debilior et propensior, hoc est, inoboedientia ac rebellione, cum experientia visum fuerit insolentiores et typo superbiae petulantiores efficit." LAS CASAS, *De Regia Potestate* cit., p. 88.

The second part of the treatise is dedicated to exemplifying and specifying the cases in which the king's power must be limited and restricted, so that he is prevented from restricting the freedom of his subjects, from alienating their property and his jurisdiction over cities and territories in part or *in full*, from selling public offices and tax assets even if they benefit the Church, from decreeing privileges and tax exemptions. All these actions, even if admitted by tradition and custom, are considered an abuse of power and require, on the part of those who committed them and those who benefited from them, full restitution and compensation for the damage caused to public property. The objective of combating the perpetuity of the *encomienda* is evident here: if in fact the king accepted the claims of the conquistadores, he would be committing an abuse of power, both because he would be depriving his subjects (the *Indians*) of their freedom and because he would be stripping the kingdom of territories and benefits due to him.

In the *Principia Quaedam* this is explicitly stated:

All those Indian nations and peoples must be governed and governed spiritually and temporally for their own good and for their own sake so that everything that is done or arranged in the temporal sphere towards them obliges the kings of Spain to act and dispose in accordance with the total spiritual and temporal benefit of the same.⁶⁵

In fact, these peoples were free, they lived in free lands and did not recognise any superior authority or ruler of either themselves or their lands and private property and, until the arrival of the Spaniards, exercised their power over immense extensions of land from time immemorial according to natural law and the law of nations.⁶⁶

⁶⁴ The reference to Aristotle is explicit: "That is why we do not allow a man to rule, but the law (*nomos* or *logos*, reason according to other readings), since he does so out of self-interest and becomes a tyrant." ARISTOTELE, *Nicomachean Ethics*, V, 10 1134a 35-37. In the *Principia Quaedam* (p. 147 and p. 150) the Aristotelian distinction between the king, who rules for the benefit of the kingdom, and the tyrant for his own benefit is also mentioned: "The deviation of the kingdom is tyranny. Both are indeed monarchies, but they differ greatly: for the tyrant looks after what is useful to himself, the king on the other hand to the benefit of his subjects." ARISTOTELE, *Nicomachean Ethics*, VIII, 12 1160b 1- 4.

⁶⁵ "Universae hae indianae nationes et populi regendae et gubernandae sunt spiritualiter et temporaliter ad bonum ipsorum et propter se ipsos ut quidquid in regimine temporali circa eas agatur vel disponatur, obligantur Hispaniarum reges agere et disponere ad omnimodam utilitatem spiritualem et temporalem eorum." LAS CASAS, *Principia Quaedam. Quartum Principium* cit., p. 152.

How then can one justify the temporal power of the princes and spiritual power of the Pope over these peoples, whose existence no one knew until recently? Unlike Vitoria, who, in *De Indis*, after listing the seven illegitimate titles, had proposed as many legitimate ones⁶⁷, Las Casas recognised only one reason that could legitimise the Spanish presence in the New World, namely the preaching of the Catholic faith and the spread of the Christian religion:

And since the Spanish princes, in order to promote the faith, received from the Apostolic See the care and the burden of putting the Catholic faith into practice throughout the immense territory of the Indians, preaching and spreading the Christian religion, it is necessary for the conversion of those peoples to Christ, that this be done of their own free will, or rather by their own offering and at the same time by apostolic acceptance and concession, according to the formal rule, and to this our princes committed themselves.⁶⁸

This power was conferred on kings by the Supreme Pontiff, depending on the preaching of the gospel and its free and spontaneous acceptance. Princes, in function of this mandate, must govern these peoples for their benefit "by making up for their defects, correcting their customs, but preserving their life, liberty, the property of things as well as men, and also the form of government (*status*) and jurisdictions, recognising the rights of individuals, communities and natural lords, and not instead with cruelty and harassment that make the Christian religion burdensome, odious, intolerable, horrible, abominable and harmful in their eyes."⁶⁹

⁶⁶ "Et ratio earum est, quia omnes istae nationes et populi sunt liberi, terras inhabitantes liberas, utpote nullum recognoscentes extra se dominium vel superiorem, tam sui ipsorum quam terrarum suarum et rerum particularium." LAS CASAS, *Principia Quaedam. Quartum Principium* cit., p. 153.

⁶⁷ F. DE VITORIA, *Relectio de Indis* cit., 1996.

⁶⁸ "Et quia Hispaniorum principes, favore fidei a Sede Apostolica receperunt curam et onus dandi operam ad per totum hunc maximum indiarum orbem fidem catholicam praedicandum et ampliandum christianam religionem, quod per conversionem harum gentium ad Christum fieri necesse est, ad quod efficiendum propria sponte, immo ex propria pollicitatione et apostolica acceptatione simul et concessione, addito formali praecepto, se obligarunt principes nostri." LAS CASAS, *Principia Quaedam. Quartum Principium* cit., p. 153.

⁶⁹ "Idcirco rectores et superiores huiusmodi orbis propter bonum duntaxat incolarum et habitatorum eius effecti sunt, et per consequens debitores Deo et Ecclesiae Dei eiusdemque gentibus et populis ad regendum et gobernandum eas bono et optimo regimine. Quod consistit in dirigendo populos et gentes huiusmodi in his quae agenda sunt, in supplendo eorum defectus, in corrigendo mores, in conservando eis vitam et libertatem, dominia tam rerum quam hominum, status et iurisdicciones, etc. Omnia quae spectant ad ius singulorum et communitatum seu etiam naturalium dominorum ne fides et religio christiana reddatur eis onerosa, odiosa, intolerabilis, horribilis et poenitus abominabilis et pernicioosa." LAS CASAS, *Principia Quaedam. Quartum Principium* cit., p. 154.

In fact, the *Indians* are by nature humble, pusillanimous, very peaceful and meek, and therefore can easily have their rights violated and oppressed by the Spaniards, as in fact happened and happens, so the King's responsibility to defend them effectively and with just administration is even more serious.

Concluding remarks

At the end of his long battle, Las Casas had come to a radical conclusion: he realised that no palliative measure was capable of putting an end to what he had described as the destruction of the Indies and saw no other remedy but to return to the *Indians* the ill-gotten gains, to restore their legitimate lords and their primitive and original condition as free and sovereign peoples. The whole colonial system is questioned at its roots: the emperor is considered as a supreme authority ruling over a set of autonomous political communities that maintain their own form of government and jurisdiction; of this "federation" of indigenous nations only those communities that peacefully received the gospel and spontaneously converted, voluntarily submitting themselves to the imperial power that has the obligation to defend and protect their lives, freedom and dominion over people and things, and to preserve the Christian religion, receiving tribute in return.⁷⁰

As is well known, despite Las Casas' ceaseless work dedicated to the defence and detailed exposition of this grandiose plan in all its aspects, the numerous petitions, *memoriales de remedios*, letters, treaties that Las Casas presented in his later years were not taken seriously by the authorities of the Council of the Indies. They must have seemed quite extravagant and unheard of for those times, just as they appeared unrealistic or utopian to some contemporary interpreters. But, if we analyse them in their historical context, they appear more realistic than they might seem.

Las Casas did not make these proposals in a personal capacity but on behalf of the indigenous communities. In fact, in those years, he had been formally invested by the indigenous representatives as their prosecutor in the Spanish court, at the time when which was to decide on the granting of the perpetuity of the *encomiendas*⁷¹

⁷⁰ Las Casas' positions radicalised in the years immediately following the Valladolid dispute, beginning with what one scholar calls Las Casas' 'la revolución de la XII replica' to Sepúlveda's objections. V. ABRIL-CASTELLO, *Vitoria-Las Casas, confrontación y proyección*, in *I diritti dell'uomo e la pace nel pensiero di Francisco de Vitoria e Bartolomé de Las Casas* cit., pp. 158- 163.

This is, perhaps, the first (and last?) time that the *Indians* entered the debate directly, with their own juridical personality, through the mediation of the Dominican friar to whom they had attributed wide powers of negotiation.⁷² This is why the terrain of the dispute is played out in the legal sphere, as can easily be deduced from both *De Regia Potestate* and the *Principia Quaedam*, interwoven with arguments and quotations taken from medieval and contemporary canonists: we know how, for the Spaniards of the time, the legal question of 'titles' was of great importance⁷³.

Las Casas skilfully played his cards on this ground with the aim of convincing the Crown that the granting of the *encomienda* in perpetual form would have meant an unjustifiable alienation of rights over persons and territories and thus a serious diminution of royal power over the New World, with the consequence of reinforcing the dangerous autonomist tendencies already manifested among the most powerful *conquistadores*. He knew that the king and the court, committed to strengthening central power and building a modern state, were sensitive to such arguments.⁷⁴

Moreover, he was well aware that the prince's priority interest in the overseas territories lay above all in the huge amounts of gold that, in the form of tribute, came from the colonies and were indispensable to cover the enormous deficits caused by imperial policy in Europe.

⁷¹ Las Casas and his brother Domingo de Santo Tomás, as legal procurators of the *Indians*, had drafted a *Memorial* to present to the Council of the Indies in 1560, in which they set out their proposals in detail, among which was the abolition of the *encomienda*, the restitution of the ill-gotten wealth, the reinstatement of the former lords, and which concluded with the proposal to saddle a pact between the king and the people and the promise of the payment, in the form of tribute, of two million ducats over four years, a higher sum than that proposed by the *encomenderos* in exchange for perpetual rights over the *encomiendas*. The project passed from the Council of the Indies to the commissioners of Peru, who referred it to the jurists and theologians to give their opinion. The Crown never pronounced on the subject and the Council did not give an answer either. See *Estudio Preliminar* in LAS CASAS, *De Regia Potestate* cit., p. CIX.

⁷² In 1560 various *caciques* from all parts of Peru, gathered in the *Ciudad de los Reyes* (Lima), unanimously (*todos de mancomun*) and freely subscribed to a text, which attributed to Las Casas and two other Dominicans "all the power" they had to represent them. The full text of this exceptional document can be found in *Estudio Preliminar* in LAS CASAS, *De Regia Potestate* cit., pp. CII- CVII.

⁷³ See L. HANKE, *La religiosidad y el formalismo legal de los españoles*, in HANKE, *La Lucha por la justicia* cit., pp. 61-66.

⁷⁴ "The *encomenderos* had laid the foundations of an authentic colonial policy that was, in principle, correct and theoretically invulnerable. *Conquistadores* and colonisers aspired to *señorial* grandeur over the indigenous population subjugated at gunpoint. This ruling minority pretended to mount Spanish colonisation on medieval institutions, which had been weakened by the centralising policy of the Modern State. The organisation of the new American colonies with *señoriales* tendencies seemed incompatible with the constitution of the 16th century Spanish monarchy. [...] The Council of the Indies moved, from the first moment, against the *señorial* thesis of the *encomenderos*." The authors also mention that there were revolt movements against the crown, especially in Peru, that seriously jeopardised Spain's sovereignty over those territories. See *Estudio Preliminar*, in LAS CASAS, *De Regia Potestate* cit., p. LXX.

For this reason, as procurator, he made himself a guarantor to the Crown of the maintenance of the tributes and indeed of their increase, arguing that only the recognition of the authority of the natural lords and the reconstruction of the traditional social and political fabric would allow the indigenous economy to recover and the payment of even greater sums than those promised by the *encomenderos*. Continuing the current policy, however, would have led to the extermination and destruction of the *Indians*, with no lasting benefits for the Crown. Finally, he appeals to the Prince's Christian conscience, which would have incurred serious, even mortal, guilt if he had not fulfilled his primary mandate of evangelisation.

The argumentation thus fits into, and cannot be separated from, the context of a political strategy and tactic of defending indigenous rights, which is the pole star towards which all his activity is directed, even if, at times, he is obliged to change course due to circumstances and events. His conception of power, bound to medieval universalist and Augustinian theories, must be read in this context: the king, in fact, appears to him as the only authority he can turn to put an end to abuses. Certainly, he continues in the wake of the 'ministerial conception' of political power and the relationship between temporal and spiritual power, typical of political Augustinism. Compared to tradition, however, he introduces decisive innovations: he recognises the legitimate *dominium* of recently discovered peoples, preaches the restitution of their goods⁷⁵ and admits no other means of evangelisation than peaceful evangelisation, as he had advocated in *De unico vocationis modo*. This obviously distinguishes him from Sepúlveda, but also from his master Francisco de Vitoria and the majority of his contemporaries.

However, the political context in which this grandiose strategic design moved was not at all favourable to him, as Carla Forti notes:

Charles V's universal empire was resolved in the new reality of the Spanish national monarchy, confessional barriers and colonial rivalries divided states and peoples, the gold and silver of the new world was destined to finance the wars of the old one. There was no room for an empire like the one he dreamt of, within which the peoples of the new world, governed by their rightful overlords, would be placed on an equal footing alongside European Christendom.⁷⁶

⁷⁵ On the important subject of restitution of property see: F. CANTÚ, *Evolution and meaning of the doctrine of restitution in B. de Las Casas*, in *Crítica Storica*, II, n.s. (1975), pp. 231-311.

⁷⁶ FORTI, *The Just War* cit., p. 293.

Regardless of the historical results achieved, in this crucial and tragic passage of our history, the figure of Las Casas, not only for his undoubted moral value, but also for his originality and theoretical strength, appears to us as one of the "summits" in the long journey of the relationship between "us" and "the others." If, as Todorov states, "the discovery of America, or rather of Americans, is the most extraordinary encounter in our history,"⁷⁷ the understanding that Las Casas acquires of this encounter is certainly among the most extraordinary in our history. In it is manifested one of the highest points of the 'discovery' that the self makes of the other, which will probably no longer be reached in modern and contemporary times. In fact, the theory of the superiority of one civilisation over the others, so much fought over by Las Casas, will only consolidate in the following centuries, through the various forms of racism and Eurocentrism, which dominate the long process, which began precisely in these crucial decades at the beginning of the 16th century, through which the history of Europe becomes the History of the World⁷⁸.

⁷⁷ T. TODOROV, *The Conquest of America. The Problem of the Other*, Turin 1992, pp. 5-6.

⁷⁸ Just as an example, it would suffice to compare Las Casas' theses with those of Hegel's *Vorlesungen über die Philosophie der Geschichte*: "The World is divided into the Old World and the New World. The name of the New World derives from the fact that America has not been known to Europeans except for a short time. Let it not be thought, however, that the distinction is purely external. Here the division is essential. This world is not only new in an absolute sense; it is new with respect to all its proper physical and political characteristics. [...] About America and its degree of civilisation, especially in Mexico and Peru, we have information of its development, however, as of an entirely peculiar culture, **which disappears the moment the spirit approaches it** [...] The inferiority of these individuals in every respect is quite evident." "Since history is the configuration of the spirit in the form of an event," "the people who receive such an element as a natural principle ... is the dominant people in a given epoch of world history Against the **absolute right** which he possesses to be the present bearer of the degree of development of the world spirit, **the spirit of other peoples has no right whatsoever**." Quoted in H. DUSSEL, *The Concealment of the Other*, Celleno 1993, pp. 31-41. For a detailed analysis of Hegelian thought on the New World see A. GERBI, *The New World Dispute. Storia di una polemica: 1750-1900*, Milan-Naples 1983 (1955¹).