



MAX-PLANCK-GESELLSCHAFT

MAX-PLANCK-INSTITUT
FÜR EUROPÄISCHE RECHTSGESCHICHTE

MAX PLANCK INSTITUTE
FOR EUROPEAN LEGAL HISTORY

www.rg.mpg.de



Max Planck Institute for European Legal History

research paper series

ISSN 2699-0903 • Frankfurt am Main

No. 2020-02 • <http://ssrn.com/abstract=3526000>

Francisco Castilla Urbano

The Salamanca School on Slavery: from naturalism to culture and awareness

This work is licensed under a Creative Commons Attribution 4.0 International License



The Salamanca School on Slavery: from naturalism to culture and awareness

Francisco Castilla Urbano*

1. Introduction

Around 1 January 1539, Francisco de Vitoria (Burgos, 1483 – Salamanca, 1546) delivered the annual lecture, or *relección*, *De indis*. Also known as *repeticiones*, it was one of the duties of professors at some Spanish universities to give these two-hour lectures once a year outside term-time on the subject they had taught in their ordinary lectures during the academic year. Vitoria, who became a master of this art at the University of Salamanca, channelled into his annual lectures the very best of his intellectual output. Of his thirteen surviving lectures, *De indis* was the one to forge his reputation and one of the most important together with *De iure belli*, delivered six months later, on 18 June, and *De potestate civili*, delivered in 1528¹.

The lecture of the *Prima de teología* professor was innovative in many ways, but what is noteworthy for our purposes is its revision of the theory of natural slavery applied to the natives of the New World. Ever since the late nineteenth century, there has been so much emphasis on the legal aspects of Vitoria's thought that his real thesis has tended to be overlooked: under the standard of a theology which recognised no limits to the field of its enquiry, Vitoria's lecture entered the field of ethics and trained its sights on a complete overhaul of the Aristotelian theory of natural slavery. This theory should have been consigned to the waste bin of history with the advent of Christianity and its ideological hegemony during the Middle Ages. Of the Church Fathers, Augustine accepted war as a cause of slavery but realised that the natural slave was incompatible with the unity of the human race created in the image and likeness of God². After Augustine, opinions were divided with some rejecting slavery *tout court*, but others – the majority – pushing it into the background in favour of a moral perfection which sought to rise above social conditioning factors³. For his part, Thomas Aquinas ruled out the existence of the natural slave on the grounds that “all men are by nature equal”⁴

* Universidad Alcalá de Henares.

¹ Castilla Urbano, “Francisco de Vitoria, una biografía de sus ideas políticas y religiosas”, 13-135.

² S. Agustín, *La ciudad de Dios*, XIX, 15; Rist, *Augustine. Ancient thought baptized*, 236-239, and Garnsey, *Ideas of slavery from Aristotle to Augustine*, 216-219.

³ Pena González, “La esclavitud en el mundo antiguo”, 820-835.

⁴ Sto. Tomás, II-II, q. 104, a. 5.

and revamped what slavery existed as a mutually beneficial arrangement, for “it is in the interests of [the slave] to be guided by one wiser than himself, and of the latter to be assisted by the former”⁵. Aquinas ended up admitting that slavery was more a matter of human reason than of nature⁶, thereby aligning himself more with civil than with natural slavery.

2. The natural slave in the New World

For one reason or another, the Aristotelian theory inevitably lost ground, but it endured sufficiently to be applied to the American Indians, the first to do so being the Scottish theologian John Mair or Maior⁷. Professor at the Collège de Montaigu, Paris, Mair, author too of a politically suggestive *History of Greater Britain*⁸, referred to the discovery of the New World in his *Commentary on Book IV of the Sentences of Peter Lombard* (1508). He mentioned Amerigo Vespucci and the many “islanders who live in the world, where the word of Christ has not reached them, and they have never heard of His law”⁹. However, it was in his *Commentary on Book II of the Sentences* (1510) where he got down to the task of justifying the conquest of America as a means to make preaching easier:

“The Spaniards found such people [meek gentiles] in the Atlantic Ocean. Were they justified in claiming as their own the domains belonging to their king, or to any other form of government? This is my answer: as those gentiles had no knowledge of the Spanish tongue, nor would they admit the preachers of the Divine Word without the backing of a strong army, it was necessary to build here and there fortified outposts so that over time – and through a process of mutual understanding – that indomitable people should grow used to the customs of the Christians. And since all that requires great expenditure beyond the purse of the other king, therefore it is right to make them pay for it, for they must desire it rationally”¹⁰.

Moreover, Mair justified the subjugation of the Indians not only by appeal to the soft interpretation of Aristotle’s theory which Thomists applied to underline the complementary nature of master-slave relations, but also to the stronger, hierarchical interpretation which highlighted slaves’ subordination to their masters:

“That people [the native Caribbeans] live like beasts. As Ptolemy wrote in the *Cuatripartitum*, to either side of the Equator, and towards the poles, live savage men: this is just what experience has confirmed. Wherefore, the first to occupy those lands may in full justice govern their inhabitants for they are by nature slaves, as is evident. In the first book of the *Politics*, the Philosopher said that there is no doubt that some are slaves by nature, others freemen, and that this is most decidedly beneficial for some, and that it is just that some command and others obey. Accordingly, the Philosopher adds in his first

⁵ Ibid., II-II, q. 57, a. 3.

⁶ Ibid., I-II, q. 94, a. 5, 3.

⁷ Leturia, “Maior y Vitoria ante la conquista de América”, 43-87; Beuchot, “El primer planteamiento teológico-jurídico sobre la conquista de América: John Mair”, 213-230.

⁸ Skinner, *Los fundamentos del pensamiento político moderno. II. La Reforma*, 127.

⁹ Mair, in Leturia, “Maior y Vitoria ante la conquista de América”, 56 note.

¹⁰ Mair, in Leturia, “Maior y Vitoria ante la conquista de América”, 70.

chapter of that book that for this reason the poets say that the Greeks hold sway over the Barbarians since these are by nature barbaric and wild”¹¹.

We cannot be certain that Mair’s strong interpretation of the theory of natural slavery was known to his Hispanic followers, but it is true that subsequent developments in the application of Aristotelian ideas to the New World were the work of servants of the Crown of Castile and coincided from the start with Mair’s proposals. On the occasion of the Council of Burgos (1512), summoned by King Ferdinand to counter the criticisms being voiced on Hispaniola by the Dominican friar Antonio Montesinos, the jurist and adviser to the king, Juan López de Palacios Rubios, began to write *De las islas del mar Océano*. This text gathered together more information about the Indians than Mair had done but agreed with the spirit of his arguments¹². Palacios Rubios, who must have completed the work around 1514, defended the Bulls of Donation of Pope Alexander VI as granting the Spanish crown title to those lands:

“Pope Alexander VI granted and donated those islands with all their dominions, cities, castles, villas, rights, jurisdictions and belongings to you and your heirs and successors, the Kings of Castile and Leon, in perpetuity, so that no one else might make bold to take them or the land discovered or yet to be discovered, included within certain limits, on the pretext of trade or for any other reason, without your special licence or that of your heirs and successors, as set out in full in the privilege of the Donation”¹³.

Under the terms of the Bull, the Indians were obliged to admit the evangelisers so that they might have the Christian religion explained to them, “and if, after a prudent period of time has elapsed, they should decide not to do so, they may be invaded and conquered by means of warfare, force and arms, their goods may be seized, and their persons reduced to slavery, because war on the part of Christians is justified”¹⁴. The key point is, however, that Palacios Rubios invokes not only this legal slavery but, as did Mair, resorts once again to the strongest version of the theory of natural slavery:

“some of them are so inept and incapable that they have no knowledge of how to govern themselves, which is why, in a broad sense, they may be called slaves in the sense of born to serve and not to command, as the Philosopher puts it in Book I of his *Politics*, and must, in their ignorance, serve those who do know how to govern, as subjects their masters”¹⁵.

Together with Palacios Rubios’s work, Bartolomé de las Casas’s *Historia de las Indias* lists a series of writers who mention with more or less cogency and detail, Aristotle’s theory: the bishop of Cuba, Bernardo de Mesa, the *licenciado* Gregorio, present also at the Council of

¹¹ Mair, in Leturia, “Maior y Vitoria ante la conquista de América”, 72.

¹² López de Palacios Rubios, *De las islas del mar Océano*, 9.

¹³ López de Palacios Rubios, *De las islas del mar Océano*, 128.

¹⁴ López de Palacios Rubios, *De las islas del mar Océano*, 36; Birr, “*Dominium* in the Indies. Juan López de Palacios Rubios’ *Libellus de insulis oceanis quas vulgus indias appellat* (1512–1516)”, 264–283.

¹⁵ López de Palacios Rubios, *De las islas del mar Océano*, 37–38.

Burgos and, in 1519, the Franciscan bishop, Juan de Quevedo¹⁶. While none of these references develops into any systematic account of the theory of natural slavery, they do give their assent to the incapacity of the Indians and the need for them to be governed by the Spaniards.

3. Vitoria's theological contribution

This, then, is the background to Vitoria's contribution. It is more than likely that Vitoria knew Mair's text. Not only was Vitoria in Paris at the time Mair¹⁷, who had regular contacts with Spaniards interested in his theories¹⁸, wrote his work; but he was also familiar with his other writings, which were published frequently¹⁹ and which he often cites in his lectures²⁰ and *relecciones*²¹. It is not impossible that Vitoria's disputed conciliarism owed much to the influence of Mair, who was a devotee of that doctrine²². Vitoria's contribution, then, takes stock of existing ideas in order to amend them, subjecting them to analysis and thereby modifying the state of the art as configured by authorities from within Spain and without. In this fashion, he commences to write with some imprecision of "these barbarians in the New World, commonly called Indians, who came under the power of the Spaniards some forty years ago, having been previously unknown to our world"²³.

Despite the apparent caution with which Vitoria unfolds his arguments to a more motley public than the one that attended his lectures²⁴, in his introduction to *De indis* he makes no bones about the fact that he staking a claim to a field of study which had hitherto been deemed not to fall within the remit of theology, from the perspective of which he proposes to tackle the matter of the Indies:

"I say that it is not the province of lawyers, or not of lawyers alone, to pass sentence in this question. Since these barbarians we speak of are not subjects [of the Spanish Crown] by human law (*iure huma-*

¹⁶ Castilla Urbano, "El esclavo por naturaleza en la España de la primera mitad del siglo XVI: Vitoria, Sepúlveda y Las Casas", 1-25.

¹⁷ García Villoslada, *La Universidad de París durante los estudios de Francisco de Vitoria O. P. (1507-1522)*, 127-164.

¹⁸ Broadie, *The Scottish-Spanish circle of John Mair. Some basic themes - El círculo hispano-escocés de John Mair. Algunos temas básicos*, 56.

¹⁹ Farge y Zahnd, "An Analytic Bibliography by Name and Subject", 376-389.

²⁰ Pena González, "Aproximación histórica al concepto 'Escuela de Salamanca'", 80.

²¹ Vitoria, *Relecciones jurídicas y teológicas*, tomo II, 1008.

²² Oakley, "On the Road from Constance to 1688: The Political Thought of John Major and George Buchanan" and "Almain and Major: Conciliar Theory on the Eve of the Reformation"; Utrera García, "La noción de soberanía papal y sus límites en la teoría conciliar de Francisco de Vitoria".

²³ Vitoria, *On the American Indians*, in *Political Writings*, ed. Pagden/Lawrance, 233.

²⁴ Martín de la Hoz, "Las relecciones teológicas en la Universidad de Salamanca, siglo XVI", 155, 189 and 192; Rehbein Pesce, "La elección teológica, su aporte a la renovación de la teología hispana del siglo XVI", 345.

no), as I shall show in a moment, their affairs cannot be judged by human statutes (*leges humanae*), but only by divine ones, in which jurists are not sufficiently versed to form an opinion on their own”²⁵.

Vitoria set no bounds to his aims because at some time or other, as at the Council (*Junta*) of Burgos, a theologian happened to have been consulted, like fellow-Dominican, Matías de Paz. This might raise doubts about the pertinence of his claim that “And as far as I am aware, no theologian of note or worthy of respect in a matter of such importance has ever been called upon to study this question and provide a solution”²⁶. But the fact is that, although Matías de Paz wrote a treatise for that meeting with the title *Del dominio de los Reyes de España sobre los indios*, in which he appealed to “what should be thought in accordance with theology, origin and mistress of the other sciences”²⁷, Vitoria’s vindication was not satisfied with the occasional sporadic mention of the theological view of such matters or the participation in the debates on the Indies by some or other person with a theological training. Though not rejecting outright that jurists could have their own space from which to intervene in the dispute, Vitoria thought the priority should be to tackle those problems from the vantage of theology²⁸, that is to say, his aim was a gnoseological claim entailing a collective demand which, if heeded, would transform the decisions made about the government of the Indies.

Up to then, such matters had been decided at Court and by its organs of government, or at specially created councils. But Antonio Montesinos’s moral denouncement of the abuse of the Indians fuelled the scorn of civil and religious authorities and lead to explanations, mobilisations in favour and against, appeals to King Ferdinand, the summoning of the Council of Burgos, and a series of political measures which were partly modified the following year at Valladolid²⁹. The Dominican friar Pedro de Córdoba, on his return from Hispaniola, warned the king of the insufficiency of the measures and then declined his offer to take part in reforming the laws: “Sire, it is not my profession to meddle in so arduous a business; I beg your Majesty not to order me to do so”³⁰. Whether on the initiative of Cisneros, King Charles’s advisers or, later, of the emperor himself, later action overseas like the official creation of the Council of the Indies was always geared towards improving the government of those territories, the indigenous peoples and the colonists, but without every querying the dominion and control of the Spanish Crown. The proposals and decisions taken might vary, but until then no one had questioned the need for a political response to the issues raised in which legal considerations had priority.

By no means, then, was Vitoria’s proposal a minor affair of no more significance than a change in the field of knowledge in which the opinion of experts on such issues was to be sought; rather, it called for a change of method and perspective, with all that might imply.

²⁵ *On the American Indians*, 238.

²⁶ *On the American Indians*, 238.

²⁷ Paz, *Del dominio de los Reyes de España sobre los indios*, 227.

²⁸ Langella, “Apuntes sobre el concepto de teología en Francisco de Vitoria” and “El estatuto epistemológico de la teología y de la filosofía en Francisco de Vitoria”.

²⁹ Castilla Urbano, “La interpelación ética de la conquista de América”, 121-146.

³⁰ Las Casas, *Obras escogidas. Historia de las Indias*, vol. II, libro III, cap. XVII, 212a.

If problems associated with the conquest and control of the Indies were to be solved on the basis of theological rather than legal or – which was the same – political postulates, Crown control over territories and people was at sudden risk of crumbling. Legal provisions aimed at shoring up dominion were bound to be eclipsed or rejected as an approach based on its actors' consciences gained ascendancy. Although the *Leyes Nuevas* (*New Laws*) of 1542 were prompt in their attempts to alleviate the effects of the greatest acts of injustice meted out on the Indians, it is perfectly understandable that in the very year Vitoria delivered his *De indis* and *De iure belli* lectures, Charles V prohibited all discussion of these matters “in sermons and annual lectures” and claimed to the Prior of San Esteban the writings with them related³¹. The problem was not whether the *De Indis* lecture supported the Spanish Crown's right to the Indies, but that it was an uninvited intervention which drew its arguments from the field of theology to boot³². The last thing the king needed, hard-pressed as he was to govern the Indies while keeping under tabs the economic profitability of the enterprise, territorial control, Indian rights, the exploits of the *conquistadores*, the complaints of the religious orders, the evangelizing mission commended by the papal bulls, and competition from other European monarchies, was a shift in attention to the theological lectures of a handful of university professors who took as their theme the political action to which his decisions gave rise.

In fact, the doctrine that argued for the priority of theology over law and politics when deciding matters relating to the Indies ran counter to the line of thought predominant at court, which divided them into “theological matters” (“cosas theologales”) and matters of “governance” (“gobernación”). That was how the letter of 31 January 1539 put it, too close in time to the *De Indis* lecture for it to be considered an implicit response to Vitoria's thesis. This letter requested Vitoria to attend to the issues raised by the Augustinian friar Joan de Oseguera, at the Council of the Indies, concerning “certain chapters and doubts proceeding from New Spain, in our Indies of the ocean sea, regarding the instruction and conversion of the natives to our holy faith, which, it has been deemed at the hearings, should more properly be examined and inspected by theologians as they amount to theological matters”³³. In case there were any doubt that no further examination were necessary, the letter added:

“as you might find among these articles some matters pertaining more to governance than to letters, send those you consider to be of the former kind to our advisers so that they may use their greater knowledge of what is proper to the sound governance of those parts to ordain those we should order and dispose in its regard”³⁴.

³¹ Letter of 10.XI.1539, in F. de Vitoria, *Relectio de indis*, ed. L. Pereña and J. M. Pérez Prendes, 152-153.

³² M. Ma, Martínez, “Las Casas-Vitoria y la bula ‘*Sublimis Deus*’”, 34.

³³ Letter of 31.I.1539, in F. de Vitoria, *Relectio de indis*, 154: “ciertos capítulos y dudas que en la Nueva España, ques en las nuestras Indias del mar océano, se an ofrecido acerca de la ynstruccion y combersion de los naturales della a nuestra santa fee, las cuales en el vistas, por ser como son cosas theologales, ha parecido que conviene que sean vista y esaminadas por personas theologas”.

³⁴ Letter of 31.I.1539, in Vitoria, *Relectio de indis*, 154-155: “porque entre estos articulos puede ser que halléis algunas cosas que consistan mas en gobernación que en letras, las que os pareciere que son desta calidad,

Since Vitoria's vindications were at odds with this instruction, it is not surprising that a debate of no little transcendence was generated which the emperor's intervention was unable to bring to an end; indeed, those who realized fully its importance carried it on on the theoretical plane. Around 1544, while Vitoria was still alive, Sepúlveda refused to accept that Indian affairs were "the business [of] theologians", as the former maintained. It was the controversial opinion of the imperial chronicler that, "whether in private among [learned] men or in public before the august Royal Council established for the governance of those peoples and regions", it could only be regarded as a "*publico negotio*"³⁵ and, therefore, as unsuited to theological treatment. Three years after Vitoria's death, Sepúlveda would return to the same subject in his dispute with Melchor Cano³⁶.

4. "I have never seen any writing work on this question"

The paradigm change advocated by Vitoria was accompanied by a confession regarding his knowledge of, and familiarity with, the background to the question that cannot be accepted in its entirety. Although from what we know of his life to 1539, there appears to be no reason to query his assertion that "nor been personally present at any debate or council on the matter", it is more difficult to believe him when he claims, "I have never seen any written work on this question"³⁷. Were that true, how could he have known that such issues were being resolved from the province of law rather than of theology? What is more, his familiarity with Mair's works seems to militate against his ignorance of writing on the subject. At the same time, the College of San Gregorio, Valladolid, where he taught for three years after returning to Spain in 1523, was hardly the best place to live in isolation of these issues since it was the preferred location of the court, the royal councils and, above all, the newly ratified Indies Council for their deliberations. Nor, on account of their blood-ties to American evangelisation, were the University of Salamanca and the Convent of San Esteban, to which Vitoria moved on being awarded his chair in 1526. Men like Antonio Montesinos, Pedro de Córdoba, Domingo de Betanzos or Vicente de Valverde are only some of the better-known missionaries to have departed from there³⁸. Both the university and the convent were too deeply involved in Indian affairs for anyone of Vitoria's prestige living within their walls to have remained aloof of the troubling questions related to the Indies. In fact, Vitoria, who had

remitirlas eys a los del dicho nuestro Consejo para que, como más ynformados en lo que conviene a la buena governación de aquellas partes, hordenen las que debemos mandar y proveer sobrello."

³⁵ Sepúlveda, *Demócrates segundo o de las justas causas de la guerra contra los indios*, 1.

³⁶ Castilla Urbano, *El pensamiento de Juan Ginés de Sepúlveda: vida activa, humanismo y guerra en el Renacimiento*, 150.

³⁷ *On the American Indians*, 277.

³⁸ Getino, *El Maestro Fr. Francisco de Vitoria. Su vida, su doctrina e influencia*, 193 and 541.

been treating New World subjects for some time³⁹, could not have done so if he had not had some familiarity with events in the Indies. His companion, Domingo de Soto, was on the point of abandoning his office of Prior of San Esteban and taking ship for the Indies⁴⁰; in his annual lecture *De dominio* of 1535, he had also gone so far as to voice what must have sounded like a truly shocking opinion when control of the Incan empire had just been secured and the conquest was coming to its climax:

“What right do we have to retain the overseas Empire which is now being discovered? The truth is, I know not. The Evangelist tells us: *Go into all the world and preach the gospel to all creation* (Mk. 16); wherefrom we are given the right to preach in any place on earth and, in consequence, the right to defend ourselves from whoever hinders our preaching. Therefore, if we were not secure, we might protect ourselves from them to their cost; but to proceed further and take from them their goods or subject them to our empire – I cannot see where that right is given us”⁴¹.

This bold affirmation notwithstanding, Soto did not rule out action of another kind: “it is not my intention to say these things in order to condemn all that is done in those islands because God’s judgements are unsearchable, and he may wish to convert so many people by means unknown to us”⁴². Granted that qualification – admittedly more apparent than real – Soto’s cavil was sufficient for people to see where a conquest guided by theological principles might lead. Vitoria cannot have been unaware of this: not only might members of Soto’s audience have informed him, but he must have known the second letter of Hernán Cortés (or a very similar text), in circulation in Spain since 1522, for he himself refers to its contents: “the injured party has the right to wage war, and may call upon the Spaniards to help them, and then share the prizes of victory with them. This is what is said to have happened when the Tlaxcaltecs were fighting the Mexicans; they made a treaty with the Spaniards that they should help them to defeat the Mexicans”⁴³.

When justifying his own treatment of the matter, Vitoria himself allows that when “we hear subsequently of bloody massacres and of innocent individuals pillaged of their possessions and dominions, there are grounds for doubting the justice of what has been done”⁴⁴.

Even if it what appears incredible were true and he really had not seen anything in writing, Vitoria’s words show that he had at least heard enough to remove all question of his having taken a stand on the matter in his annual lecture without first giving some thought to the antecedents. Furthermore, shortly after delivering his lecture *De indís*, the authorities consulted Vitoria on several occasions regarding matters related to New World evangelism: in the aforementioned letter of 31 January 1539, instructing Friar Joan de Oseguera to provide Vitoria with all the facts necessary to be able settle the doubts raised by Bishop Zumárraga⁴⁵;

³⁹ Iannarone, “Génesis del pensamiento colonial en Francisco de Vitoria”, XXXI-XLI.

⁴⁰ Beltrán de Heredia, *Domingo de Soto. Estudio biográfico documentado*, 615-616, and *Francisco de Vitoria*, 129-130.

⁴¹ D. de Soto, *Relecciones y opúsculos I. De Dominio*, 177.

⁴² D. de Soto, *Relecciones y opúsculos I. De Dominio*, 177.

⁴³ *On the American Indians*, 289.

⁴⁴ *On the American Indians*, 238.

⁴⁵ Letter of 31.I.1539, in Vitoria, *Relectio de indís*, 154-155.

in the letter dated 18 June of the same year, requesting the recruitment of up to twelve priests for Mexico, also on Zumárraga's request⁴⁶; and in the Royal Missive of 31 March 1541⁴⁷, addressed to Vitoria and evidence of his reputation, which asked him, together with theologians from Salamanca of his choosing, for their opinion about Indian baptism. His answer took the form of the *Parecer de los teólogos de la Universidad de Salamanca sobre el bautismo de los indios* (*View of the Theologians of the University of Salamanca regarding Indian Baptism*) of 1 July 1541⁴⁸. Vitoria's advice can only have been sought because he was known to have been showing an interest in these matters for some time.

There is no doubting the intellectual originality of Vitoria's analysis of the legal rights and wrongs of the Spanish case for their claim to the New World; but what underpins that and forms the backbone of his lecture is his analysis of the dominion over the Indies, which is where the theory of natural slavery assumes a key role. The theory is grappled with almost from the very start of *De indis*, when, immediately after the introduction, Vitoria argues for the issue to be treated in theological terms. When he wonders whether, prior to the arrival of the Spanish, the Indians "they were true masters of their private chattels and possessions, and whether there existed among them any men who were true princes and masters of the others"⁴⁹, he denies that they cannot be it on account of their sins or their lack of faith, as he had already demonstrated in his annual lectures *De potestate civili*⁵⁰ and *De potestate Ecclesiae prior*⁵¹. Although Vitoria's lecture barely mentions Luther and Lutheranism and chooses instead to pillory the ideas of John Wyclif, who was equally firm in his position that dominion could only be justified by grace, the surge in evangelism must have been uppermost in Vitoria's thoughts if was able to accept such arguments.

Ruled out, then, any obstacles for reasons of faith, it was by analysing the last of his three hypotheses, namely, that the barbarians lacked dominion on account of their mindlessness, that Vitoria would manage to revamp the theory of natural slavery. In the course of his answer, he maintained that as God had created the world for man, only man had genuine dominion. Even those human beings who lacked reason, either because they had yet to reach maturity, as was the case with children, or because they had lost it, the case of the demented, were still susceptible to injustice, a state of affairs that seemed to attest sufficiently to their possession of rights. On this view, the dilemma of Indian rights could be answered for, when all was said and done, they showed clear signs of not being mindless:

"they are not in point of fact madmen, but have judgment like other men. This is self-evident, because they have some order (*ordo*) in their affairs: they have properly organized cities, proper marriages, magistrates and overlords (*domini*), laws, industries, and commerce, all of which require the use of reason.

⁴⁶ Letter of 18.VI.1539, in Vitoria, *Relectio de indis*, 156.

⁴⁷ Hinojosa, *Discursos leídos ante la R. Academia de la Historia en la recepción pública de D...*, 64-65.

⁴⁸ In Vitoria, *Relectio de indis*, 157-164.

⁴⁹ *On the American Indians*, 239.

⁵⁰ Vitoria, *Obras. Relecciones teológicas, De potestate civili*, 164.

⁵¹ Vitoria, *Obras. Relecciones teológicas, De potestate Ecclesiae prior*, 249.

They likewise have a form (*species*) of religion, and they correctly apprehend things which are evident to other men, which indicates the use of reason”⁵².

This admittedly *sui generis* recognition of the dominion and rationality of the barbarian was enough to mark a break with the previous line of thought, which amounted to identifying the Indians with Aristotle’s natural slaves. In fact, the paragraph is a list of those qualities which Aristotle had regarded as defining civility and the ensuing tradition as written in stone. Recognition of those defining features made it hard, if not impossible, to argue that the Indians could be slaves by nature who lacked the capacity to deliberate, which Aristotle had identified⁵³, or who were able to recognise reason but not to possess it⁵⁴.

Vitoria then abandons the interpretation of natural slavery, so incompatible with Christianity, which his predecessors had applied to the Indians, and turned its poor fit with European social patterns into a sign of cultural deficiency. For in his view, the problem of the Indians was no longer one of nature, as Mair had assumed, but due to a lack of education similar to that suffered by many in the Old World: “Thus if they seem to us insensate and slow-witted, I put it down mainly to their evil and barbarous education. Even amongst ourselves we see many peasants (*rustici*) who are little different from brute animals”⁵⁵. This rewiring of the problem implied a further change in the way the Aristotelian theory was interpreted. According to Vitoria, what the philosopher had meant to say about the nature of the barbarians had been misunderstood:

“1. Aristotle certainly did not mean to say that such men thereby belong by nature to others and have no rights of ownership over their own bodies and possessions (*dominium sui et rerum*). Such slavery is a civil and legal condition, to which no man can belong by nature.

2. Nor did Aristotle mean that it is lawful to seize the goods and lands, and enslave and sell the persons, of those who are by nature less intelligent. What he meant to say was that such men have a natural deficiency, because of which they need others to govern and direct them. It is good that such men should be subordinate to others, like children to their parents until they reach adulthood, and like a wife to her husband. That this was Aristotle’s true intention is apparent from his parallel statement that some men are ‘natural masters’ by virtue of their superior intelligence. He certainly did not mean by this that such men had a legal right to arrogate power to themselves over others on the grounds of their right to arrogate power to themselves over others on the grounds of their superior intelligence, but merely that they are fitted by nature to be princes and guides.

Hence, granting that these barbarians are as foolish and slow-witted as people say they are, it is still wrong to use this as grounds to deny their true dominion (*dominium*); nor can they be counted among the slaves”⁵⁶.

However, although that claim meant rejecting the classification of the Indians as natural slaves, Vitoria could not give it up all together. Thus, in the last part of *De indis*, which treated

⁵² *On the American Indians*, 250.

⁵³ *Política*, 1260 a 12.

⁵⁴ *Política*, 1254 b 20.

⁵⁵ *On the American Indians*, 250. Pagden, *The fall of natural man*, 104-106, and the criticism of Tierney, *The idea of natural rights: studies on natural rights, natural law, and church law, 1150-1625*, 270, and *Rights, laws and infallibility in Medieval thought*, 295-322.

⁵⁶ *On the American Indians*, 251.

the legal titles that could be adduced to justify the conquest, Vitoria appears to take pleasure in describing the shortcomings of the inhabitants of the New World and shows the same perplexity concerning their ways of life as the most fervent defenders of the Aristotelian theory:

“these barbarians, though not totally mad, as explained before, are nevertheless so close to being mad, that *they are unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms*. Hence they have neither appropriate laws nor magistrates fitted to the task. Indeed, they are unsuited even to governing their own households (*res familiaris*); hence their lack of letters, of arts and crafts (no merely liberal, but even mechanical), of systematic agriculture, of manufacture, and of many other things useful, or rather indispensable, for human use”⁵⁷.

With these premises, and despite his reluctance to overlook what might be in the Indians’ best interests, Vitoria ends up wondering “with the limitation that only applies if everything is done for the benefit and good of the barbarians, and not merely for the profit of the Spaniards”, whether the Indians, or some of them, are not, after all, natural slaves: “In this connexion, what was said earlier about some men being natural slaves might be relevant. All these barbarians appear to fall under this heading, and they might be governed partly as slaves”⁵⁸. Accordingly, and notwithstanding his theoretical exertions, Vitoria did not culminate the break with the doctrine of natural slavery. Instead, he fell back on a guardianship similar to that exercised over children or the demented, which left the fate of the Indians in the hands of the Spanish monarchs⁵⁹.

5. Abandonment of the Indian natural slave

Although cloaked in good intentions, Vitoria’s lukewarm stance affected not only the theory of natural slavery but also the just titles and even the benefits that might be reaped by merchants and religious orders alike if those titles had no effect. Vitoria’s much vaunted theological wisdom took second place to the profit motive when he admitted that the idea of curtailing expeditions and ceasing trade “would be intolerable”⁶⁰. Vitoria’s final proposal is clear: conquest might be given up while maintaining trade on the Portuguese model, as long as taxes continued to be exacted to safeguard royal income. But what could in no way be renounced was, “that once a large number of barbarians have been converted, it would be neither expedient nor lawful for our prince to abandon altogether the administration of those territories”⁶¹.

Vitoria’s ideas were understandably viewed with suspicion by Las Casas who, from the early 1550s, had been distancing himself from the theory of guardianship: “he showed signs of

⁵⁷ *On the American Indians*, 290.

⁵⁸ *On the American Indians*, 291.

⁵⁹ *On the American Indians*, 290.

⁶⁰ *On the American Indians*, 291.

⁶¹ *On the American Indians*, 292.

certain carelessness regarding some of those titles in his desire to temper what the Emperor's circle thought he had expressed with certain severity"⁶².

That "carelessness" would be remedied by Vitoria's followers, who not only criticised the validity of some of their master's legitimate titles but were also more categorical in their rejection of the theory of natural slavery. Melchor Cano, Vitoria's successor in the Prima Chair of Theology, pointed out in 1546 that "no man is slave by nature" because "all men are born equal"⁶³. Shortly afterwards, in 1547, Diego de Covarrubias, jurist and great admirer of Vitoria, voiced his opposition to natural slavery: "All men are by nature free, not slaves"⁶⁴. The appearance of slavery was a consequence of man's fallen state, of warfare in particular, and was not found in nature⁶⁵.

However, such statements should not be taken as absolute⁶⁶. Melchor Cano noted that "they are not fools but have a limited use of reason"⁶⁷; Diego de Covarrubias pointed out that "they have knowledge of the mechanical arts and of morality, and are endowed with reason, although they do not enjoy such wholesome customs as Christians or Saracens"⁶⁸. In other words, both admitted that there could be no doubts about the Indians' mental capacity but argued in the same line as their predecessors that it had not reached a level of development which made them totally comparable with Europeans. Following in Vitoria's footsteps, they attributed Indian shortcomings to "their poor education"⁶⁹, in spite of which Aristotelian views on natural slavery were still influential enough in their circles for both thinkers to feel obliged to offer their own interpretation of them. Cano chose to explain them in terms of Aristotle's high esteem of the Greeks: "Aristotle may have over-prized the Greek republic because he thought all other peoples were savage"; while, as a theologian, he took a Thomist position when remarking that "it is naturally better when men have to live in community that those govern who have most wit and that the strongest are obeyed"⁷⁰. For his part, Covarrubias too chose Aristotle's interpretation of the master-slave relation as a mutually beneficial one between a wise man and an ignorant one: "the less wise and perfect are, naturally, subjected by the wiser and need to be governed by them". But he took great pains to stress that natural slavery of that kind "is not coercive nor restrictive of liberty, but a submission for reasons of respect and honour"⁷¹.

⁶² Las Casas, *Obras completas*, 9. *Apología*, 627-629; Abril Castelló, "La bipolarización Sepúlveda-Las Casas y sus consecuencias: la revolución de la duodécima réplica," 229-288, and "Las Casas contra Vitoria, 1550-1552. La revolución de la duodécima réplica, causas y consecuencias," 83-101.

⁶³ Cano, *De dominio indorum*, 102-105.

⁶⁴ Covarrubias, *De justitia belli adversus indos*, 188-189.

⁶⁵ Covarrubias, *De justitia belli adversus indos*, 190-191.

⁶⁶ Tardieu, *Les penseurs ibériques et l'esclavage des noirs (XVIe.-XVIIIe. siècles)*, 20-21.

⁶⁷ Cano, *De dominio indorum*, 102-103.

⁶⁸ Covarrubias, *De justitia belli adversus indos*, 204-206.

⁶⁹ Cano, *De dominio indorum*, 110-111.

⁷⁰ Cano, *De dominio indorum*, 104-105.

⁷¹ Covarrubias, *De justitia belli adversus indos*, 198-199.

Soto also held to the idea that “by natural right all men are born free”. Yet, like his colleagues, he too dusted down the Thomist interpretation, taking natural slavery to be “that which men of liveliest wit exercise over the more sluggish and rude-witted”⁷². This kind of slavery did not grant the master any natural right to his own benefit as if those who were natural slaves were therefore his property; rather, “he had to use them as free and independent men for their own profit and advantage, giving them instruction, for example, and training them in customs”⁷³.

Like Covarrubias and Soto, Cano could convey his master Vitoria’s message with greater clarity than Vitoria himself. It is true that the first two left their views unpublished, although Covarrubias did state it elsewhere in his writings:

“the slavery we said was instituted by nature has nothing to do with coercion or violence, nor with dominion, but is born of the obligation the young are under to pay due honour and respect to their elders, the lower sort to the nobles, sons to fathers, and wife to husband; and even of the benefit the servant derives from serving, the imprudent man from serving the prudent one, the less wise, the wiser”⁷⁴.

However that might be, it cannot be denied that they all shared the view that as the Indians were not natural slaves, war could not be declared on them for that reason or their property seized from them. Indeed, well aware of the weight of the Aristotelian theory in western morality and politics, they went so far as to speculate that it might have referred to some other being beyond their ken:

“men created by nature such that they roam the fields, vagabonds and outlaws, with no political institutions; in short, men born to obey and to serve others like the beasts and wild animals they resemble – according to Aristotle, men like these can be hunted like wild animals. But I doubt that the Indians are to be counted men of that sort”⁷⁵.

The activist Las Casas availed himself of this interpretation, including it for the first time in the *Apology* which he read before the Council of Valladolid, and which only survives in Soto’s summary (*Sumario*): “The third species of Barbarian are those who, on account of their perverse customs and rude wit, are like woodwoses who live in the fields, with no towns, no houses, no police, no laws, no rites, no *ius gentium* agreements; but who go about *palantes*, to use the Latin word, which means robbing and waylaying”⁷⁶. He must have like the idea because he would use it again in his final version of the *Apology*⁷⁷ and repeat it on numerous

⁷² Soto, *De la justicia y del derecho*, T. II, L. IV, q. II, a. II, 288.

⁷³ Soto, *De la justicia y del derecho*, II, IV, II, II, 290.

⁷⁴ Covarrubias, *Textos jurídico-políticos*, “De las cosas ocupadas en la guerra y de la esclavitud de los cautivos de guerra”, 129-130.

⁷⁵ Covarrubias, *De justitia belli adversus indos*, 204-205.

⁷⁶ Soto, O.P., *Relecciones y opúsculos. I; Sumario*, 231.

⁷⁷ Las Casas, *Obras completas*, 9. *Apología*, 89.

other occasions⁷⁸. The far more scholarly Soto⁷⁹ and Juan de la Peña⁸⁰, among others, would also make it their own⁸¹.

Vitoria may have failed to stake a claim for a theological approach to the affairs of the Indies, but his 1539 intervention proved to be a genuine epistemological watershed. From then on, pains were taken to dissociate the New World Indians from the theory of natural slavery, whether by interpreting it in their favour as expressing a utilitarian relationship of collaboration between those who possessed knowledge and those who did not, or by applying it exclusively to individuals who could barely be recognised, if at all.

This was the dominant approach among both Vitoria's colleagues and his disciples, whether direct or linked only by a family resemblance in respect of their forms of argument and broad agreement with the ideological substance of his writings. More than the acceptance of legitimate titles, which also came under fire from Vitoria's own followers, it is that which explains why, before the royal chronicler, Juan Ginés de Sepúlveda, Cano should feel obliged to vindicate his master's memory when dealing with Indian affairs: "he has maintained the contrary position to yours"⁸². Although the author of *Demócrates Segundo* did not defend natural slavery in the same terms as Las Casas said, it is certain that he became an open or covert target for the diatribes of most of those who felt closest to Vitoria's positions. In this way, Cano contributed to creating an image which some have risen to the category of school even if, despite efforts in that direction, it is easier to define it with reference to its opponents than in terms of its own common ground and membership⁸³.

⁷⁸ Las Casas, *Obras completas*, 8. *Apologética Historia Sumaria* III, 1580; *Obras escogidas. Historia de las Indias*, II, III, CLI, 539, etc.

⁷⁹ Soto, *De la justicia y del derecho*, II, IV, II, II, 290: "what Aristotle said in the same Book I of Politics, ch. 3, namely, that just as beasts may be sold, we can wage war on those men who have been born to serve, should be taken as meaning that we can use force to repulse and to submit to order those who, like wild beasts, roam with no respect for laws of nations (*gentium foedera*), but invade what belongs to others wherever they go".

⁸⁰ Peña, *De bello contra insulanos. Intervención de España en América*, 251-252: "Aristotle says: the barbarians lack reason and are no different from the beasts; those barbarians can, in full justice, be conquered and reduced to political slavery. But no nation has ever been found where all the people are born mindless because of the climate. The Indians, in contrast, were barbarians like the other pagans scattered around the world. "In conclusion, it is clear that the Indians were barbarians; that a natural barbarian and a slave are not the same thing; and that one cannot, on account of their being barbarians, conquer them or strip them of ownership of their things".

⁸¹ García Añoveros, "Carlos V y la abolición de la esclavitud de los indios. Causas, evolución y circunstancias", 63.

⁸² Sepúlveda, *Obras completas* IX, 2. *Epistolario*, letter 81 of Melchor Cano [July 1549], 222.

⁸³ Grice-Hutchinson, "El concepto de la Escuela de Salamanca: sus orígenes y su desarrollo"; Barrientos García, "La Escuela de Salamanca: desarrollo y caracteres"; Belda Plans, "Hacia una noción crítica de la 'Escuela de Salamanca'"; Pena González, "Aproximación histórica al concepto 'Escuela de Salamanca'"; Jericó Bermejo, "¿Escuela de Salamanca y Pensamiento hispánico? Ante una propuesta"; Zorroza, "Hacia una delimitación de la Escuela de Salamanca"; Pena González, "La Escuela de Salamanca: un intento de delimitación del concepto".

6. Dismantling the case for African slavery

Nonetheless, Vitoria did not stop at “tempering” the theory of natural slavery, but in connection with black slavery went on to show such condescension towards the well-known practices of captivity and trafficking that his justifications are amongst the most exculpatory. In his letter to Father Bernardino de Vique of 18 March 1546, while not concealing his misgivings over “Portuguese trading” (*contrataciones*), he is reluctant to think “I do not suppose this trick is common, at least among the Portuguese, though it may sometimes have occurred; it is hardly likely the king of Portugal would permit such inhumanity, or that there should be no one to inform him of it”⁸⁴. On those premises, he prefers to exonerate the parties to the business: “I see no reason why the gentlemen who purchased the slaves here in Spain should have any scruples”; which also covers slaves of war, although his qualms are no small matter: “for the Portuguese are not obliged to discover the justice of wars between barbarians”⁸⁵. In point of fact, everything boiled down to a question of humanity; if the victims were guaranteed fair treatment, there was no reason to question slavery:

“A greater scruple than any of these, and more than a mere scruple, is that in general they treat their slaves inhumanly, the masters forgetting both that their slaves are fellow-men, and St Paul’s saying that masters and servants both have a Master in heaven to whom they must render account (Col. 4: 1). If treated humanely, it would be better for them to be slaves among Christians than free in their own lands; in addition, it is the greatest good fortune to become Christians”⁸⁶.

The refusal to countenance cruelty seems to be the limit and basic principle on which Vitoria rests his verdict on slavery. His credulity concerning the circumstances surrounding the capture, traffic and purchase of slaves overcame whatever objections he might have contemplated raising. It is hard to decide how much of this was due to good faith and how much to the ideological prejudice attaching to such a deeply rooted phenomenon as the slave trade. Nevertheless, those who concerned themselves with the issue in the wake of Vitoria’s intervention followed him in demanding fair treatment, while questioning more emphatically the alleged grounds of slavery. His companion Domingo de Soto, for example, preferred not to set out his opinion in private correspondence which would only secure a small audience; instead, he wrote a treatise that was to run into over twenty editions before the century was out⁸⁷. His point of departure was that in cases of need, “although liberty is worth more than all the gold in the world”, life is more valuable still, which means that the former may sometimes have to be sacrificed in order to preserve the latter. This is what some fathers still did when following the ancient custom of selling their children – not Christian fathers, of course, “but the custom is said to still flourish among the Ethiops, whither sail the Portuguese with their ships in order to buy them”. If the sale is carried out freely,

⁸⁴ Vitoria, “Letter to Fray Bernardino de Vique, OP”, in *Political Writings*, ed. Pagden/Lawrance, 334.

⁸⁵ Vitoria, “Letter to Fray Bernardino de Vique, OP”, 334-335.

⁸⁶ Vitoria, “Letter to Fray Bernardino de Vique, OP”, p. 335.

⁸⁷ Cuesta Domingo, *Domingo de Soto. Estudio crítico*, 12.

“there is no reason for this commerce to be branded as criminal. But if there is some truth in what is bruited abroad, one must think differently. There are indeed some who affirm that the disadvantaged are seduced with lies and deceits and gulled into going to the harbour by means of assorted gifts and gimcracks, and so, without realising or knowing what should be done to them, they are embarked and sold”⁸⁸.

Soto could be criticised for tolerating in the case of Africans what he opposed in the case of Christians; but at least, unlike Vitoria, he brooks no trickery in what he believes should be a simple matter of trade with the free participation of all involved. Fully aware of the fraud, the parties to this traffic of souls – the traffickers, the buyers and sellers – agreed that only those made slaves unfairly could be freed, although they could not recover what they had paid for them. Nothing justified business based on deceit, manipulation and the use of force. Soto even closes firmly the door opened by Vitoria to the consolations of evangelism for those who were victims of unscrupulous sleight of hand: “if anyone thinks of offering the excuse that by paying to enslave them he is acting to their greater benefit by converting them to Christianity, let him know that he is slandering the faith, which has to be taught and made persuasive in a climate of utmost freedom. He is a long way from securing God’s acceptance of his excuse”⁸⁹.

The same path would be trodden by many other writers. Of these, perhaps the first to carry out a thorough analysis of the state of African slavery was Tomás de Mercado. However, his *Suma de tratos y contratos* (1571; enlarged of the 1569 edition) were preceded by those of Bartolomé de las Casas which stand out because of his celebrity and also his changes of opinion regarding black slavery. Those changes may reflect not only the inconsistencies of his own thought⁹⁰ but also the difficulties encountered by the prevailing ideology to find a way of surmounting the dilemma of war and slavery.

The opinions and attitudes towards black slavery of Las Casas – *encomendero*, or settler, turned priest, who would later join the Dominican Order and be appointed Bishop of Chiapas on the strength of his defence of the Indians – started to make themselves felt shortly after the sermon of Montesinos had pricked his conscience. From 1516, his commitment to the Indians led him to request shipments of slaves from the Old World to take their place in the most strenuous occupations: “in place of the Indians that there should be [in] the said communities, let your Majesty sustain in each twenty blacks, or other slaves in the mines”⁹¹. Ideally, the slaves would be *ladinos*, that is, Latinised blacks who had been born or spent a spell in Castile and were therefore familiar with European customs, in preference to *bozales*

⁸⁸ Soto, *De la justicia y del derecho*, II, IV, II, II, 289.

⁸⁹ Soto, *De la justicia y del derecho*, II, IV, II, II, 289.

⁹⁰ Tierney, “Aristotle and the American Indians”, 276: “Las Casas was not articulating a coherent political theory in the calm of the study; he was engaged in constant battle; his adversaries kept reiterating the same arguments against his position, and Las Casas kept responding from his adversary had chosen. When faced with an Aristotelian argument he would argue back from Aristotle or Aquinas. When dealing with a juridical objection he would deploy an array of legal texts. Sometimes, most interestingly, he would weave together Thomistic and juristic doctrines to reach a new conclusion”.

⁹¹ Las Casas, *Obras completas*, 13, “Memorial de remedios para las Indias”, 28.

blacks, brought straight from Africa. Thus, Las Casas does not only remain open to non-African slavery – “permitting them to have black and white slaves that they can bring from Castile”⁹² – but, as he bends over backwards to come up with a solution to the Indian problem, he can even resort to proposals – like the one concerning Moorish slaves – which would imply a break with the Crown’s ongoing concern to rule the New World out of bounds to all who did not profess Roman Catholicism: “in the fortresses that have to be built, villages could also be built for the Christians who wanted to go there to live, not at the king’s cost, but at that of the landowners, and black and Moorish slaves could be brought”⁹³.

That said, Las Casas almost always mentioned black slaves, while his initiatives geared towards bringing them to the New World would continue at least into the 1540s⁹⁴. If nothing else, this shows his deep-seated conviction that he possessed the best solution and perhaps, in his view, the only feasible one in the short-term. This recourse to black slavery even took a personal turn. In Valladolid, between August and October 1543, as he was preparing his journey to the Chiapas diocese to which he had just been appointed, Las Casas asked the emperor, Charles V, “to permit the passage of two dozen black slaves, free of all rights in Seville as in the Indies”. Under threat of a stiff penalty (“that I pay your Majesty the rights five times over”), he undertook to employ them in maintaining the priests and settlers who were to accompany him⁹⁵. Prince Philip, who at that time took charge of Indian business, finally granted him “four black slaves to serve your person and household”⁹⁶. The defender of the Indians had, then, no doubts regarding the convenience of using black slaves to work in place of the former and to serve in menial tasks.

The rectification and repentance of Las Casas cannot be denied. On discovering that, as had been the case with the Indians, the Africans’ captivity was not the outcome of what might be deemed a just war and that it was European demand for slaves which prompted the violent conflicts between Africans to secure their sale, he wrote:

⁹² Las Casas, “Memorial de remedios para las Indias”, 36.

⁹³ Las Casas, “Carta al Consejo de Indias” (20.I.1531), 79-80.

⁹⁴ Las Casas, “Memorial de remedios para las Indias” (1518), 52: “que vuestra alteza haga merçed a los cristianos que agora están en las yslas, que puedan tener cada uno dos esclavos negros y dos negras”, and 53: “que qualquiera que hiziere ynjenio para hazer açucar, que vuestra alteza le mande ayudar con algunos dineros, porque son muy costosos, y les haga merçed a los que los hizieren, que puedan llevar y tener veynte negros y negras, porque con ellos ternán otros treinta cristianos que han menester por fuerça, y ansí estarán los negros seguros”; “Memorial de remedios para Tierra Firme” (1518), 60: “hay algunas personas que podrán prestar a Vuestra Alteza dineros para los gastos presentes que son menester para las islas, y a los que los prestaren haga Vuestra Alteza merçed que puedan tener y llevar hasta quince esclavos negros”; “Memorial de remedios” (1542), 116; “Conclusiones sumarias sobre el remedio de las Indias” (c. 5-1542), 129: “Para esto mandar sea, que se adoben luego los caminos que más se tratan en todas las Indias, cada ciudad villa o lugar de spañoles, especialmente los caminos de las minas y los de los puertos, sin que entiendan ni trabajen los indios en el adobo dellos, porque allí los matarán y vexarán, sino que los adoben con esclavos negros a costa de las dichas ciudades”.

⁹⁵ Parish, *Las Casas as a Bishop / Las Casas, obispo*, 9 [22].

⁹⁶ Fabié, *Vida y escritos de don fray Bartolomé de las Casas, obispo de Chiapa*, T. II, cédula de 13 de febrero de 1544, 96.

“as the Portuguese, many years ago, set themselves to robbing Guinea and enslaving the blacks, absolutely unjustly, seeing that we seemed to need them as much as they did and that we would buy them at a good price, they made haste and make haste every day to steal and capture them, using whichever evil and wicked ways they can to capture them; so, as the blacks themselves see how the Portuguese seek them out and desire them so avidly, they wage unjust wars on each other, and by other illicit means steal and sell to the Portuguese, the outcome being that we are the cause of all the sins that the ones and the others commit, as well as of the sins which we commit in buying them”⁹⁷.

This does not mean that he worried as much about the Indian slaves as the black ones⁹⁸, but it does seem clear that his conscience acknowledged the injustice implicit in their existence⁹⁹. But for all that, Las Casas never went so far as to anathematise the institution of slavery; neither did Vitoria, Soto, or Mercado, nor any of those who treated these matters during the sixteenth century.

Specifically, in chapter XXI (“On the treatment of the slaves of Cape Verde”), Mercado accepts the legality of the business, despite “it being publicly known and notorious that in rescuing, removing and taking the blacks from their land to the Indies or bringing them here there are two thousand deceits and a thousand thefts and a thousand acts of violence”¹⁰⁰. Nevertheless, in Guinea and Cape Verde – which is to say in Africa – the initial state of affairs of a proliferation of kingdoms and small fiefdoms and the absence of “a supreme prince obeyed and respected by all”¹⁰¹ only contributed to give the slave markets a kick-start, while corrupting it at the same time. This state of affairs generated perpetual instability as “the peoples [smouldered] in continuous war”, which “justifies the capture of many from one side and the other”¹⁰². Furthermore, their laws punished almost all infractions with the loss of liberty, “and as they are prey to vice and barbarians, they commit huge and execrable crimes” which results in their becoming slaves. Thus, Mercado harbour no doubts about African barbarity; but by around 1570, the issue is no longer related to natural slavery but to extremely severe laws and individuals who are unable to control their impulses. Not even the oft-denigrated Sepúlveda, old and almost blind, seemed by then to have any intention of associating natural slavery and African barbarity, although his mind plainly held them in close proximity. In his treatise *Acerca de la monarquía*, published in 1571, he claimed to be in no doubt that certain men in Europe, Asia and, above all, “numerous blacks and Ethiops and members of other savage and uncouth barbarian peoples along the coast of Africa” whom the Portuguese capture,

“under their dominion – albeit despotic – lead a much better life than they would lead in their homeland, which is a territory scorched by the rays of the sun, where they roam, vagabonds and naked, alien

⁹⁷ Las Casas, *Obras escogidas. Historia de las Indias*, II, III, CXXIX, 488.

⁹⁸ Rivera-Pagán, *Evangelización y violencia. La conquista de América*, 14-15, and “Bartolomé de las Casas y la esclavitud africana”, 63-84.

⁹⁹ Las Casas, *Brevísima relación de la destrucción de África*.

¹⁰⁰ Mercado, *Suma de tratos y contratos*, I, 230.

¹⁰¹ Mercado, *Suma de tratos y contratos*, I, 230.

¹⁰² Mercado, *Suma de tratos y contratos*, I, 231.

like beasts to all semblance of civilization, to the point of giving the impression of having received from their conquerors not so much an attack as a blessing”¹⁰³.

At least in large swathes of the scholastic circles which brought their influence to bear on the training of clergymen and lawyers, the Aristotelian theory seems to have been dismantled successfully. The recourse to slavery on account of their defects and the custom of selling their children – a custom extinguished among Greeks and Romans thanks to their magnificent legislators and not practiced among Christians – showed at most their barbarity: guided not by reason but by passion, they treated each other like beasts¹⁰⁴.

Despite the attribution of these shortcomings to the Africans, the problem was that none of those three titles was performed licitly; rather, they were wrapped in all sorts of deceptions and acts of violence. No wars were just, no rules were applied equitatively by their governors, and parents did not cease to sell their children out of pique. On top of that, to ensure that these indecencies should continue, there was a whole army of intermediaries – Portuguese, Spaniards, Africans, too – who purchased them without enquiring into the cause of their captivity or, simply, tricked them and made off with them in order to sell them in places they had never been to. Tomás de Mercado not only denounced this process and its high price in deaths¹⁰⁵, but he also underscored how it was helped along by those who participated in it with eyes shut to what they knew did not enjoy the sanction of law – kings and advisers, traffickers and merchants, civil servants and buyers. If the person who inspired Mercado’s chapter, Domingo de Soto, ruled out all prospect of whitewashing the crime however much it was claimed to be a helpmeet of evangelism, Mercado, too, dedicated this meaty paragraph to all those parties to the fraud who preferred to ignore the stain that besmirched their human merchandise:

“Many of those who trade and sell retail into service here in Seville have their doubts. But I have nothing to say, for I only set out in this chapter to treat of the merchants who seize them in Cape Verde or on the coasts, where the evil starts to be committed in large consignments, about which I have said what I understand, after having spoken, argued and consulted good lawyers, both in Salamanca, in Mexico and here. In this other business, which is carried on in this river and affects the whole city, I neither approve nor reprove it here, nor do I wish to say of it more than a saying of mighty Trajan’s teacher, Plutarch, in *de republica*: when the fountain is damaged, the water it spouts and which flows along the streams tends not to be healthy, but suspect and sick”¹⁰⁶.

The first abolitionist arguments would have to wait a century to appear, and several more to triumph¹⁰⁷. But the intellectual defeat of Aristotle’s theory of natural slavery and the indictment of the multiple deceptions on which African slavery was founded and which are at the

¹⁰³ Sepúlveda, *Acerca de la monarquía*, 92.

¹⁰⁴ Mercado, *Suma de tratos y contratos*, I, 232.

¹⁰⁵ Mercado, *Suma de tratos y contratos*, I, 234.

¹⁰⁶ Mercado, *Suma de tratos y contratos*, I, 239.

¹⁰⁷ Pena González, “Un documento singular de fray Francisco José de Jaca, acerca de la esclavitud práctica de los indios”; Pena González, “Doctrina antiesclavista de Epifanio de Moirans en su ‘Servi Liberi’”; Pena González, “La lucha por la libertad de naturales y africanos en las Indias Occidentales (siglos XVI y XVII)”, and the numerous publications of this author about Jaca and Moirans.

origin of those abolitionist theses, gradually gained momentum and evolved – not always in a straight line – from just before the second half of the sixteenth century.

Bibliography

Sources

- Cano, M., De dominio indorum, en L. Pereña Vicente, *Misión de España en América 1540-1560*, Madrid, 1956.
- Casas, B. de las, *Obras completas*, 13. Cartas y memoriales, ed. P. Castañeda Delgado, Madrid, 1995.
- Casas, B. de las, *Obras completas*, 8. Apologética Historia Sumaria III, ed. V. Abril Castelló y otros, Madrid, 1992.
- Casas, B. de las, *Brevísima relación de la destrucción de África*. Edición de I. Pérez Fernández. Salamanca, 1989.
- Casas, B. de las, *Obras completas*, 9. Apología, ed. Á. Losada, Madrid, 1988.
- Casas, B. de las, *Obras escogidas*. Historia de las Indias, ed. J. Pérez de Tudela Bueso y E. López Oto, Madrid, 1957 (V. I) y 1961 (V. II).
- Covarrubias y Leyva, D. de, *Textos jurídico-políticos*, ed. M. Fraga Iribarne, Madrid, 1957.
- Covarrubias, D. de, *De justitia belli adversus indos*, in L. Pereña Vicente, *Misión de España en América 1540-1560*, Madrid, 1956.
- López de Palacios Rubios, J., *De las islas del mar Océano*. Fray M. de Paz, *Del dominio de los Reyes de España sobre los indios*, ed. S. Zavala y A. Millares Carlo, México, 1954.
- Mercado, T. de, *Suma de tratos y contratos*, ed. N. Sánchez Albornoz, Madrid, 1977 (1571), 2 vols.
- Paz, Fray M. de, *Del dominio de los Reyes de España sobre los indios*, ed. S. Zavala y A. Millares Carlo, México, 1954.
- Peña, J. de la, *De bello contra insulanos*. Intervención de España en América, ed. L. Pereña y otros, Madrid, 1982.
- Sepúlveda, J. Ginés de, *Demócrates segundo o de las justas causas de la guerra contra los indios*, ed. Á. Losada, Madrid, 1984.
- Sepúlveda, J. Ginés de, *Obras completas IX*, 2. Epistolario, Cartas 76-139 (1549-1567), ed. I. J. García Pinilla y J. Solana Pujalte, Excmo. Ayuntamiento de Pozoblanco, 2007.
- Sepúlveda, J. Ginés de, *Obras completas VI*. Acerca de la monarquía, ed. J. M. Pérez- Prendes Muñoz-Arraco e I. J. García Pinilla, Excmo. Ayuntamiento de Pozoblanco, 2001.
- Soto, D. de, *De la justicia y del derecho*, ed. V. Diego Carro, Madrid, 1968 (1556).
- Soto, D. de, *Relecciones y opúsculos I*. Introducción general. De Dominio. Sumario. Fragmento: An liceat ... ed. J. Brufau Prats. Salamanca, 1995.
- Vitoria, F. de, *Obras*. Relecciones teológicas, ed. T. Urdániz, Madrid, 1960.
- Vitoria, F. de, *Relecciones jurídicas y teológicas*, ed. A. Osuna Fernández-Largo. Salamanca, 2017, 2 tomos.

Vitoria, F. de, *Relectio de indis*, ed. L. Pereña y J. M. Pérez Prendes, Madrid, 1967.

Vitoria, F. de, *Political Writings*, ed. A. Pagden and J. Lawrance, Cambridge, 2007.

Literature

Abril Castelló, V., “La bipolarización Sepúlveda-Las Casas y sus consecuencias: la revolución de la duodécima réplica”, in D. Ramos y otros, *Francisco de Vitoria y la Escuela de Salamanca. La ética en la conquista de América*, Madrid, 1984, 229-288.

Abril Castelló, V., “Las Casas contra Vitoria, 1550-1552. La revolución de la duodécima réplica, causas y consecuencias”, *Revista de Indias* 47 (1987), 83-101.

Barrientos García, J., “La Escuela de Salamanca: desarrollo y caracteres”, *La Ciudad de Dios* 208 (1995), 1041-1079.

Belda Plans, J., “Hacia una noción crítica de la ‘Escuela de Salamanca’”, *Scripta Theologica* 31 (1999/2), 367-411.

Beltrán de Heredia, V., *Domingo de Soto. Estudio biográfico documentado*, Salamanca, 1960.

Beltrán de Heredia, V., *Francisco de Vitoria*, Barcelona, 1939.

Beuchot, M., “El primer planteamiento teológico-jurídico sobre la conquista de América: John Mair”, *La Ciencia Tomista* CIII, 335 (1976), 213-230.

Birr, Christiane, “Dominium in the Indies. Juan López de Palacios Rubios’ *Libellus de insulis oceanis quas vulgus indias appellat* (1512–1516)”, *Rechtsgeschichte – Legal History* Rg 26 (2018), 264-283.

Broadie, A., *The Scottish-Spanish circle of John Mair. Some basic themes - El círculo hispano-escocés de John Mair. Algunos temas básicos*, Pamplona, 1996.

Castilla Urbano, F., “Francisco de Vitoria, una biografía de sus ideas políticas y religiosas”, in VV.AA., *Humanismo y visión del otro en la España moderna*, Madrid, 1992, 13-135.

Castilla Urbano, F., “El esclavo por naturaleza en la España de la primera mitad del siglo XVI: Vitoria, Sepúlveda y Las Casas”, *e-SLegal History Review* 15 (2013), 1-25.

Castilla Urbano, F., “La interpelación ética de la conquista de América”, in F. Martínez, R. Mate, M. R. Ruiz (Coords.), *Pensar Europa desde América. Un acontecimiento que cambió el mundo*, Barcelona, 2012, 121-146.

Castilla Urbano, F., *El pensamiento de Juan Ginés de Sepúlveda: vida activa, humanismo y guerra en el Renacimiento*, Madrid, 2013.

Cuesta Domingo, M^a del P., *Domingo de Soto. Estudio crítico*, Madrid, 2013.

Fabié, A. M^a., *Vida y escritos de don fray Bartolomé de las Casas, obispo de Chiapa*, Madrid, 1879, 2 Tomos.

Farge, J. & Zahnd, U., “An Analytic Bibliography by Name and Subject”, in J. Slotemaker & J. C. Witt, ed., *A Companion to the Theology of John Mair*, Leiden, 2015, 376-389.

García Añoveros, J. M^a., “Carlos V y la abolición de la esclavitud de los indios. Causas, evolución y circunstancias”, *Revista de Indias* LX, 218 (2000), 57-84.

García Villoslada S. I., R., *La Universidad de París durante los estudios de Francisco de Vitoria O. P. (1507-1522)*, Roma, 1938.

Garnsey, P., *Ideas of slavery from Aristotle to Augustine*, Cambridge, 1996.

Getino, L. G. A., *El Maestro Fr. Francisco de Vitoria. Su vida, su doctrina e influencia*, Madrid, 1930.

- Grice-Hutchinson, M., "El concepto de la Escuela de Salamanca: sus orígenes y su desarrollo", *Revista de Historia Económica* VII, 2 (1989), Suplemento, 21-26.
- Hinojosa, E., *Discursos leídos ante la R. Academia de la Historia en la recepción pública de D..., el día 10.III.1889*, Madrid.
- Iannarone, R. di A., "Génesis del pensamiento colonial en Francisco de Vitoria", en F. de Vitoria, *Relectio de indis*, XXXI-XLI.
- Jericó Bermejo, I., "¿Escuela de Salamanca y Pensamiento hispánico? Ante una propuesta", *Salmanticensis* 59 (2012), 83-114.
- Langella, S., "Apuntes sobre el concepto de teología en Francisco de Vitoria", *Cuadernos Salmantinos de Filosofía* 30 (2003), 277-290.
- Langella, S., "El estatuto epistemológico de la teología y de la filosofía en Francisco de Vitoria", *Helmántica: Revista de filología clásica y hebrea* 65, 192 (2013), 343-358.
- Leturia, P., "Maior y Vitoria ante la conquista de América", *Anuario de la Asociación Francisco de Vitoria* III (1930-1931), 43-87.
- Martín de la Hoz, J.C., "Las elecciones teológicas en la Universidad de Salamanca, siglo XVI", *Archivo Dominicano* XIV (1993), 149-194.
- Martínez, M. Ma., "Las Casas-Vitoria y la bula 'Sublimis Deus'", in F. Morales Padrón, ed., *Estudios sobre fray Bartolomé de las Casas*, Sevilla, 1974, 25-51.
- Oakley, F., "Almain and Major: Conciliar Theory on the Eve of the Reformation", *The American Historical Review* 70, 3 (1965), 673-690.
- Oakley, F., "On the Road from Constance to 1688: The Political Thought of John Major and George Buchanan", *Journal of British Studies* 1, 2 (1962), 1-31.
- Pagden, A., *The fall of natural man. The American Indian and the origins of comparative ethnology*, Cambridge, 1982.
- Parish, H.R., *Las Casas as a Bishop / Las Casas, obispo*, Washington, 1980.
- Pena González, M.A., "Aproximación histórica al concepto 'Escuela de Salamanca'", *Salmanticensis* 52 (2005), 69-119.
- Pena González, M.A., "Doctrina antiesclavista de Epifanio de Moirans en su 'Servi Liberi'", *Naturaleza y gracia: revista cuatrimestral de ciencias eclesiásticas* 2 (2005), 279-327.
- Pena González, M.A., "La esclavitud en el mundo antiguo", *Naturaleza y gracia: revista cuatrimestral de ciencias eclesiásticas* 2-3 (2000), 779-835.
- Pena González, M.A., "La Escuela de Salamanca: un intento de delimitación del concepto", in Á. Poncela González (ed.), *La Escuela de Salamanca: filosofía y humanismo ante el mundo moderno*, Madrid, 2015, 83-130.
- Pena González, M.A., "La lucha por la libertad de naturales y africanos en las Indias Occidentales (siglos XVI y XVII)", *Revista Española de Derecho Canónico* 71, 176 (2014), 369-399.
- Pena González, M.A., "Un documento singular de fray Francisco José de Jaca, acerca de la esclavitud práctica de los indios", *Revista de Indias* 61, 223 (2001), 701-714.
- Rehbein Pesce, A., "La elección teológica, su aporte a la renovación de la teología hispana del siglo XVI", *Teología y Vida* XXXVI (1995), 335-354.
- Rist, J.M., *Augustine. Ancient thought baptized*, Cambridge, 1994.

Rivera-Pagán, L.N., “Bartolomé de las Casas y la esclavitud africana”, in G. Meléndez (ed.), *Sentido Histórico del V Centenario (1492-1992)*, Costa Rica, 1992.

Rivera-Pagán, L.N., *Evangelización y violencia. La conquista de América*, San Juan, Puerto Rico, 1990.

Skinner, Q., *Los fundamentos del pensamiento político moderno. II. La Reforma*, México, 1986 (1978).

Tardieu, J.-P., *Les penseurs ibériques et l’esclavage des noirs (XVIe.-XVIIIe. siècles). Justifications, réprobations, propositions*, Paris, 2016.

Tierney, B., “Aristotle and the American Indians”, in B. Tierney, *The idea of natural rights. Studies on Natural Rights, Natural Law and Church Law, 1150-1625*, Atlanta, 1997.

Tierney, B., *Rights, laws and infallibility in Medieval thought*, Aldershot, 1997.

Utrera García, Juan Carlos, “La noción de soberanía papal y sus límites en la teoría conciliar de Francisco de Vitoria”, *Relectiones* 5 (2018), 55-72.

Zorroza, M^a Idoya, “Hacia una delimitación de la Escuela de Salamanca”, *Revista Empresa y Humanismo* XVI, 1 (2013), 53-72.