

INTERPRETATIONS OF THE CONTROVERSY OVER THE CONQUEST OF AMERICA¹

Despite the distance that separates us from the events and the publication of the key documents in the debate, the interpretations remain the most divergent and contrasting, not only on marginal issues, but also on essential aspects. Many of the themes are disconcertingly topical, in their similarities to the themes of the contemporary controversy over globalisation and its consequences, a phenomenon that finds its roots precisely in those tragic historical events that were fundamental to the constitution of Modernity.

Without wishing to make a history of the historiography on the issue² we want to open a confrontation with some of the most significant and paradigmatic interpretations of the debate.³

2.1. *Pace's Corpus Hispanorum. An apologetic approach.*

We owe Iberian scholars the most important and qualified contribution to the knowledge and dissemination of the debate. It is they who, with great skill and dedication, have brought the fundamental texts to public attention, publishing manuscripts considered lost, promoting new editions of hard-to-find texts and carrying out painstaking work to reconstruct the historical and conceptual context and the characters involved in the debate.

More complex is the assessment of the reading key used by Spanish scholars, which has a clear apologetic flavour. In fact, one of the explicit aims of this great movement of academic studies is to justify and defend the process of Spanish conquest and colonisation from the negative image that the famous *leyenda negra* had projected over the centuries and which persists.

In controversy against the *Leyenda Negra*, several works have been published which defend the thesis that:

The Spanish-American black legend is a sophism that has served as a political weapon to fight Spain and, not infrequently, the Catholic Church. [...] From the outset, the various ideological currents demonstrate this intentional denaturalisation of Bartolomé de Las Casas' "*Brevísima Relación*" on the destruction of the Indies. The legacy of the Bishop of Chiapas became a veritable pamphlet in the hands of Spain's enemies⁴.

¹ Originally published in TOSI, G. *Aristóteles e o Novo Mundo. A controvérsia sobre a Conquista da América*. Rio de Janeiro: Lumen Juris, 2021, p. 63-119.

² A very well-documented historical review of the issue can be found in PÉREZ-LUÑO, A-E. *The polemic on the New World. The Spanish classics of legal philosophy*. Madrid: Trotta 1992, p. 43-76.

³ TOSI, G. *Interpretazioni del dibattito sul nuovo mondo*. "Atti dell'Istituto Veneto di Scienze, Lettere ed Arti", 164 (2005-2006), Classe di scienze morali, lettere ed arti, pp. 547-585. This chapter is an updated, expanded and modified version of this essay.

⁴ The organisers of the *Corpus Hispanorum de Pace* collection have produced several works on what they call of a "process to the conquest of America" to combat the *Black Legend* and cast doubt on the existence of a genocide. See: PEREÑA, Luciano (org.) *Proceso a la leyenda negra*. Testigos de excepción. Salamanca: Universidad Pontificia de Salamanca, 1996, p. 9. (the translation is mine). IDEM. *Discovery*

In a somewhat legitimate attempt to contrast the *black legend*, whose shadow still hangs over the Iberian conquest, some interpreters (mainly Spanish and Latin American) proposed a new and surprising way of reading the debate and its main protagonists, with apologetic intentions that were emphasised above all during the Franco dictatorship.⁵

A typical representative of this period is the Dominican Venancio Carro, who, in the middle of the 20th century, promoted a historical revisionism that not only exalted Spain's positive role in the New World, but also denied that Spain had colonies in the New World:

Fortunately, Spain followed the rules of the theologian-jurists, so much consulted by the Catholic Kings, by Charles V and by his son Philip II: *Peninsular Spain gave overseas Spain everything it had*, and it was no small *thing*, as it was the first power in Europe. Aware of this reality, the best modern critics of Hispanoamerica have reaffirmed that *Spain did not have colonies*. At the International Hispano-American History Congress held in the capital of Santo Domingo, the former Spanish island, on the first of October 1957, which we attended as part of the Spanish committee, the representatives of Colombia asked, and it was unanimously agreed, that the word *colony* should be dropped when talking about the Spanish era in Hispanoamerica".

As a distinguished scholar of the Iberian legal tradition, Antonio-Enrique Pérez Luño, puts it⁶:

They then turned to the classic jusnaturalists of the *Siglo de Oro* as indigenous models of thought on which to rebuild the glories of the lost Empire that they wanted to restore. Anthony Pagden described as "subtly propagandistic" the work of those who, like Angel Losada, Venancio Carro and Teodoro Andrés Marcos, presented the classics of the School of Salamanca as moral legitimisers of a great imperial past with projections right up to the present. The discussions about the conquest of America were adduced as proof of the intellectual and ethical superiority of an Empire that had not only acted in favour of its subjects, whether Spanish or Indian, but also of universal Christianity.⁷

This *sub specie modernitatis* recovery of the classics of Spanish thought has been brilliantly analysed and criticised by Pérez Luño, according to whom this interpretative stance combines both an apologetic and an anachronistic reading:

y *Conquista ¿Genocidio?* Salamanca: Pontifical University of Salamanca, 1990. See, from a more critical point of view: G. CARCEL. *La leyenda negra*, 1989 and J. JUDERÍAS. *La leyenda negra*, Madrid: Editorial Swan, 1986.

⁵ CARRO, V. *General Introduction*. In SOTO, D. de. *De Iustitia et Iure*. Salamanca 1956, p. XXXV.

⁶ A. H. PEREZ LUÑO. La historiografía sobre el pensamiento iusnaturalista clásico español durante el franquismo. In IDEM. *La polémica sobre el Nuevo Mundo. The Spanish Classics in the Philosophy of Law*. Madrid: Trotta, 1992, p. 59-66.

⁷ IDEM, p. 60 (my translation).

The desire to praise our classics without limits, combined with a methodologically and historically insufficient use of philosophical, legal and political categories, sometimes led to those figures being labelled with epithets that lowered the boundaries of space and time. The terminology used pays the price for excess and suggests serious misunderstandings. To speak of a "Spaniard at the UN"⁸ or an advocate of "economic neoliberalism"⁹ with reference to Francisco de Vitoria, pretending to situate in his thinking the distinction between "individual and social human rights"¹⁰ and in his "right to communication (*jus communicationis*)" the regulation of space satellites;¹¹ attribute to Bartolomé de Las Casas the drafting of a "Charter of Human Rights" or a treaty on "Civil Rights".¹² or a treaty on "civil and political rights";¹³ or inventing in Domingo de Soto a "Right to one's own image",¹⁴ represent doctrinal metaphors that are not without risk¹⁵.

The consequences of such a reading are twofold: the past is exalted with respect to modernity, and, at the same time, the modernity of the past is recognised, projecting categories, concepts and problems typical of modernity onto the authors of the past.

From this perspective, there are those Spanish scholars who, during and after the Franco period, collaborated in the publication of a collection of documents, texts and commentaries under the title "*Corpus Hispanorum de Pace*".¹⁶ According to Luciano Pereña, the collection's editorial coordinator, the Escuela de Salamanca is the "school of peace".¹⁷ and its founder, Francisco de Vitoria, is praised as a "humanist"

⁸ HERNANDEZ, R. *Un español en la ONU. Francisco de Vitoria*. Madrid: BAC, 1977.

⁹ URDANOZ, T. *Síntesis teológico-jurídica de la doctrina de Vitoria* In, F. DE VITORIA, *Relectio de Indis*, Madrid 1967, p. 140-141.

¹⁰ HERNANDEZ, R. *Derechos Humanos en Francisco de Vitoria*. Salamanca: Ed. San Esteban, 1984.

¹¹ DESANTES, J. M. *El "jus communicationis" según Vitoria y la regulación de los satélites de difusión directa*. In "Atlántida", Vol. VIII, 47 (1970), p. 471 ff.

¹² PEREÑA, L. *La carta de los derechos humanos según fray Bartolomé de Las Casas*. In "Estudios sobre fray Bartolomé de Las Casas", Sevilla, 1974, p. 293 ff.

¹³ PEREÑA, L. *Los derechos civiles y políticos según Bartolomé de Las Casas*. Madrid, 1974.

¹⁴ MARCANO, E. *Domingo de Soto's fundamental rights. Their content and their ethical-legal dimension*. Valladolid, 1986.

¹⁵ PÉREZ LUÑO, A. H. *La polémica sobre el Nuevo Mundo, op. cit.*

¹⁶ The "*Corpus Hispanorum de Pace*" is a collection of original texts, in a bilingual critical edition, by some of the most important Spanish theologians and jurists of the 16th century, from Vitoria's *De Indis* to Suárez's *De Legibus*; from Juan de La Peña's *Tractatus de bello contra insulanos* to Las Casas's *De Regia Potestate*. The collection has produced several monographic studies on the different aspects of the debate with the collaboration of valuable Iberian and Latin American scholars. The *Corpus Hispanorum de Pace* is published by the Consejo Superior de Investigaciones Científicas (CSIC) in Madrid, under the coordination of Luciano Pereña, and began publication in 1963; by 1990 it had 28 volumes published. The apologetic intent is evident from the title of the collection (*de pace*) and the works; alongside the original Latin title, a Spanish one is added, which gives an interpretation to the text. Thus, Vitoria's *Relectio de Indis* is *De Indis o de la libertad de los indios*; Vitoria's *Relectio* on war is also *de iure belli o de la paz dinámica*. Las Casas' *De Regia Potestate* is entitled *Del derecho de auto-determinación*.

¹⁷ L. PEREÑA. Preliminary study in: VITORIA, F. de. *Relectio de Jure Belli*. Madrid: CSIC, 1981, pp. 63ff. (*Corpus Hispanorum de Pace*). Although most of the texts refer to the law of war (*de iure belli*).

(*defender of lo humano*¹⁸), "master of peace", "anti-imperialist and democratic", creator of a "new spirit of understanding and tolerance", defender of the unity of Europe and precursor of a system of "guarantees and principles of international peace, such as the economic and diplomatic blockade", which found in the Papacy the natural arbiter to resolve European conflicts:

Vitoria ended up creating a spirit of understanding and tolerance. He defined Spain as a national, democratic state, independent of the Papacy and the Empire. He conceived of America as a community of free peoples politically protected by Spain. He advocated a strong and united Europe over the Franco-Spanish alliance, in the sole service of international peace¹⁹.

The concern for European unity (which is identified with Charles V's policy), says Pereña, led Vitoria to seek "guarantees for that system of principles in a set of international institutions. These were the economic and diplomatic blockade, the commissions of enquiry and the intervention of neutral powers".²⁰ It's not clear where Vitoria presents these "current" proposals, because there are no references to the texts. Pereña goes on to say that, for Vitoria: "The Pope's mediation seemed the most natural and organic way of resolving Europe's internal conflicts"²¹ just when the Pope's authority was being radically challenged by the Protestant reformation and the King of France, Francis I.

According to Pereña, Vitoria proposed an "anti-imperialist and anti-colonialist" vision of Spain's "mission" in the New World, with the aim of "preparing *backward* peoples for political independence" through the "peaceful civilisation of non-European peoples" and within an international community of equals²². It seems rather difficult to distinguish the statements in which the commentator's *wishful thinking* plays out, in his eagerness to defend the current thinking of the master from Salamanca, from the purposes, intentions and texts of Vitoria himself²³.

¹⁸ In the introduction to the *Relectio de Indis*, we find hyperbolic statements like these: "It is the call of the human against modern materialism, racial segregation and the depersonalisation of the masses. Vitoria is all one symbol: the rebellion of human freedom against the oppression of power". PEREÑA, L. Introduction. In: F. DE VITORIA. *Relectio de Indis* (1538), Madrid, 1981 (1967), pp. I-VII.

¹⁹ PEREÑA, L. *Preliminary study*. In: VITORIA, F. de. *Relectio de Jure Belli*, op. cit., p. 65. With regard to these themes, I would like to point out: TOSI, G. La dottrina della guerra giusta in F. de Vitoria. In: SCATTOLA, M. (org.) *"Figure della Guerra. La riflessione su pace, conflitto e giustizia tra Medioevo e prima età moderna"*. Milano: F. Angeli, 2003, p. 63-87.

²⁰ PEREÑA, L. *Estudio preliminar*, op. cit. p. 55.

²¹ IDEM, p. 60.

²² "Europe was part of the international community. Its own interests were subordinated to the common good of all peoples. The good of the planet could not be justified by the collective interests of Europe, even though these were so important for the progress of humanity" (IDEM, p. 59). Pereña, however, does not cite any texts by Vitoria that confirm these statements. The same happens with even more forceful statements: "The very concept of colonisation converted European states into instruments and mandataries of the international community: they intervened and colonised in the name of humanity and only to prepare backward peoples for political independence. Against colonialism and imperialism, Spain had to prepare the peoples of America culturally and politically so that they could access their own government on their own" (IDEM, p. 60).

²³ The work of a Latin American scholar, the Argentinian Alberto Caturelli, also has a similar perspective, for whom the discovery is part of a providential plan from a theological and historical perspective. CATURELLI, Alberto. *El Nuevo Mundo: el Descubrimiento, la Conquista y la Evangelización de América y la Cultura Occidental*. Mexico: EDAMEX, 1991. For a critical evaluation of this text see: PIAIA, G., Rec. a: A. CATURELLI, *Il Nuovo Mondo riscoperto*. La scoperta, la conquista,

From this perspective, the scholastics of Salamanca are given absolute prominence, and their "Indian doctrine" is considered the "magna carta" of the Indians²⁴ of the Indians, the benchmark of the entire debate, and from this central and orthodox position, the extreme and opposing theses of Sepúlveda and Las Casas are examined.

In relation to Sepúlveda, an attempt is made to recover him in a "humanist" key, attenuating his differences with the scholastics of Salamanca and even with Las Casas²⁵.

This apologetic endeavour finds its main obstacle in the figure of Bartolomé de Las Casas, who must be fought on the one hand, but at the same time somehow assimilated. In Spain, after a long period of ostracism and open hostility, the defender of the Indians²⁶ - because he was considered the main culprit in the *black legend* - is gradually being rehabilitated and finally admitted to the *pantheon* of homeland glories. "It's a glory that belongs to us Spaniards," says Luciano Pereña²⁷. He then adds, however, that although he is a brilliant thinker, his work has been marred by fanaticism, intemperance and obsession, unlike the moderation, balance and depth of the Dominican masters of the "Salamanca School", on whom he depends completely from a theoretical point of view.²⁸

Similar is the position of the Father Venancio Carro, to whom we owe the merit of having been one of the first, at Dominican level, to recognise the value of Las Casas, but with the following caveats:

Las Casas added to the missionary plan of the first Dominican missionaries by changing and converting, even though he was a simple cleric. **What is best and most correct about him, he receives from the Dominican missionaries and theologians, both ideologically and practically;** on his part, he put in an unrivalled constancy and zeal to fight, for more than half a century, for a very noble cause, which was the same cause defended by the real Spain, by the Kings, the theologian-jurists and the missionaries, Las Casas has excesses of language and verbal exaggerations; however, **deep down he is right and does not say so.**

l'evangelizzazione dell'America e la cultura occidentale (Milano 1992) "*Studia Patavina*", 39 (1992), pp. 644-647; and MALUSA, L. *La "coscienza cristiana" nella conquista d'America. Considerazioni di filosofia (e teologia) della storia*. In AA. VV. *L'universalità dei diritti umani*, op. cit. p. 211-229.

²⁴ PEREÑA. *Escuela de Salamanca. Magna Carta of the Indians. Constitutional Sources (1534-1609)*, op. cit.

²⁵ See LOSADA, A. *Juan Ginés de Sepúlveda a través de su "epistolario" y nuevos documentos*. Madrid 1973 (1949); IDEM. *Sepúlveda - Las Casas - Vitoria. More coincidences than divergences*. In *I diritti dell'uomo e la pace nel pensiero di Francisco de Vitoria e Bartolomé de Las Casas*, op. cit. p. 439-462. ²⁶

The most famous example of this hostile interpretation of Las Casas remains the book by the Spanish historian MENÉNDEZ-PIDAL, R. *El Padre de las Casas. Su doble personalidad*, op. cit. which aroused an almost unanimous reaction of repudiation on the part of scholars. See HANKE, L. *La lucha por la justicia*, op. cit., pp. 320-340; BATAILLON, Marcel. *Studies on Bartolomé de Las Casas*. Barcelona: Ediciones Península, 1976 [1965], p. 5-42.

²⁷ "It is a glory that belongs to us Spaniards. Above the morbid fanaticism of Bartolomé de Las Casas, from his political speculation on scientific texts or his psychological contradictions, the treatise "De Regia Potestate" offers positive values that we cannot silence and have a duty to cultivate, vindicate and update." L. PEREÑA, *Presentación ao De Regia Potestate de Bartolomé de Las Casas*, in the edition of "Corpus Hispanorum de Pace", Vol. VIII, Madrid 1984, p. XI.

²⁸ CARRO, V. *General introduction*. In: D. DE SOTO. *De Iustitia et Iure*, op. cit., p. XXXV. IDEM. *The Theological and Juridical Postulates of Bartolomé de Las Casas, his successes, his failures and his failures, before the Masters Francisco de Vitoria and Domingo de Soto*. In "Estudios lascasianos", IV Centenario de la muerte de Fray Bartolomé de Las Casas (1566-1956), and in the "Anuario de Estudios Americanistas" XXIII (1966).

nothing new, because it reflects the feeling of the whole of Christian Spain, which was *not* precisely that of the *encomenderos* and some warriors²⁹.

This apologetic reading of the *Conquest* process and distortion of Las Casas' work was the dominant ideology in Franco's Spain and only in recent decades has it begun to be criticised in Spain itself and by the Dominicans themselves, above all through the tireless work of Father Isacio Pérez Fernandez³⁰.

It was only in more recent times, especially after the end of Francoism and during the process of democratisation, that Spanish historiography began to revive and more pluralistic readings of the whole debate and the work of the defender of the Indians appeared³¹ as can be seen in the numerous and qualified articles published in recent decades by the journal *Ciencia Tomista*.³²

In this regard, it is important to emphasise the contribution of Professor Pedro Calafate, from the University of Lisbon, and his research group on *The Iberian School of Peace*, which in recent decades has published several documents by Spanish and Portuguese authors, many of them unpublished, on the themes of the conquest, including Martín de Azpilcueta (1492-1586), Friar António de São Domingos (1531-1596), Luís de Molina (1535-1600) and Francisco Suárez (1548-1617), who taught at the universities of Coimbra and Évora.

Write Calafate:

The authors of this Iberian and Hispanic School, both Spanish and Portuguese, were all men of the church, friars and clerics, some Dominicans, others Jesuits, royal confessors, almost all theology professors at the Universities of Coimbra, Évora, Salamanca and Alcalá de Henares, royal theologians at the Council of Trent, abbots of monasteries and missionaries, sincere believers who were repulsed by the idea that the God of peace would decide that Christians should bring desolation and death to those who didn't worship him, shedding the blood of his children, occupying other people's territories, expropriating the property of indigenous communities and crushing their sovereignty, even if it was in its infancy, in territories that had never belonged to Christians, through practices of cruelty that the worst tyrants had not yet dared³³.

In this book, we will endeavour to show - by reading as far as possible *iuxta propria principia* - how the theologians and jurists of the Escuela de Salamanca, when debating the new issues presented by the discovery of the New World, elaborated

²⁹ CARRO, V. *General introduction*: SOTO, D. de. *De Iustitia et Iure*. Madrid: Instituto de Estudios Políticos, 1967-68 (my translation).

³⁰ See the completely different reading by the Dominican Isacio Pérez Fernandez, who documents the originality and independence of the Dominican friar's thought in relation to the masters of Salamanca: PÉREZ FERNÁNDEZ, I. *Cronología comparada de las intervenciones de Las Casas y Vitoria en los asuntos de América*, op. cit. See also the monumental work: PÉREZ FERNÁNDEZ, I. *Inventario documentado de los escritos de Fray Bartolomé de Las Casas*. Revised by Helen Rand Parish. Bayamon, Puerto Rico: Centro de Estudios de los Dominicos del Caribe (CEDOC), 1981.

³¹ New publications on the debate include: URBANO, Francisco Castilla. *The thought of Francisco de Vitoria*. Political philosophy and the American Indian. Barcelona: Anthropos, 1992. REAL, Ricardo José Cuéllar. *Francisco de Vitoria y las cuestiones de India*. Sevilla: Punto Rojo libros, 2015.

³² See, for example: FERNÁNDEZ-LARGO, Antonio Osuna. Bartolomé de Las Casas in the V Centenary. A review of his figure and his moral doctrine. *Ciência Tomista*, Año LXXXIII - Tomo CXIX - Sep. Dic. 1992 - Nº 389, p. 459-498.

³³ CALAFATE, Pedro. *The Iberian school of peace at the universities of Coimbra and Évora (16th century)*. *Theocommunication*. Porto Alegre v. 44 n. 1 p. 78-96 jan.-abr. 2014

a subjective doctrine of natural rights, innovative and original, which differs from both ancient and medieval objective law and modern human rights, but which is, in any case, an obligatory passage for the historical affirmation of human rights.

2.2. Quentin Skinner. A counter-reformist reading.

A totally different stance to the previous one, much more critical of Vitoria and the Second Scholasticism, is that of the British Quentin Skinner, a professor at Cambridge and one of the most prestigious exponents of English *conceptual history*, in his fundamental book on the origins of modern political thought³⁴.

The Second Scholasticism, which he prefers to call "*16th century neo-Thomism* or the *rebirth of Thomism*", is presented in a purely counter-reformist key, that is, as a doctrine designed to defend Catholic orthodoxy against the nominalists, the Lutherans, the humanists, the Machiavellians, in short, against "all the heretics of the present age".

One of their main concerns, they constantly claimed, was to refute "all the heretics of this age". The heretics they were most concerned about were, of course, the Lutherans, and one of their main aims was to discredit not only the Lutheran concept of the Church, but the whole concept of political life associated with the evangelical reformation.

[...]

Vitoria's *relectio* entitled *On the Power of the Church (De Potestate Ecclesiae)* in good measure addresses itself against "the words of exceptional imprudence of Luther" and other "incredibly arrogant heretics", who disregard the traditions of the Church, affirm that "all Christians are equally priests" and insist that "the power of the Church resides in all persons, containing no ecclesiastical rank or orders of any kind whatsoever"³⁵.

Skinner disagrees with authors such as Pierre Mesnard³⁶ and Bernice Hamilton³⁷ who consider Vitoria and Soto to be scholastics with humanist sympathies, not hostile to Erasmus and committed to promoting a synthesis between scholasticism and humanism:

³⁴ SKINNER, Quentin. *The foundations of modern political thought*. Technical review by Renato Janine Ribeiro. São Paulo: Companhia das Letras, 1996.

³⁵ IDEM, p. 417.

³⁶ In the chapter Mesnard dedicates to Vitoria in *L'Eessor de la philosophie politique au XVI siècle*, the Salamanca master is considered to be a scholastic deeply influenced by Erasmus' Christian humanism: "A friend and disciple of Erasmus, [Vitoria] fought in his environment for 'Christian philosophy' and the cult of the *humanitates*: when he became famous and influential in Spain, he intervened in favour of the Rotterdam theologian, to whom he had remained faithful. He owes his flair for style to his Parisian upbringing and Erasmian influence". MESNARD, P. *Il pensiero politico rinascimentale*. Bari: Laterza, 1964 [1951], p. 105 (my translation).

³⁷ Bernice Hamilton states that until the second half of the 16th century (and perhaps beyond) in Spain an *illiberal atmosphere* had not yet been created and intolerance (*bigotry*) and censorship were not as active as certain historiographies claim. As an example, *inter alia*, of this climate, he cites the wide acceptance of Erasmus' ideas in Spain. Regarding the episode of the Valladolid council of 1527, the scholar says that it was more a question of form than content. Erasmus himself, in a letter to Vitoria, complains that: "Things that had a purely rhetorical value were examined in a scholastic manner and the style of the Sorbonne"; and Vitoria had claimed that Erasmus, philologist that he was, wanted to pass himself off as a theologian. See HAMILTON, B. *Political Thought in Sixteenth Century Spain*. Oxford: The Clarendon Press, 1963, p. 9 and p. 172 (my translation). On the influence of Erasmus on

As well as pointing out the errors of the Lutherans, the Thomists also considered it a priority to correct various heresies for which the humanists were responsible. Initially, they turned their attention to the dangerous ideas about the Church that came from Erasmus and various other Christian humanists. The need to challenge this perspective, and in particular to subject the works of Erasmus himself to detailed examination, was fully recognised for the first time during a conference of theologians held in Valladolid in 1527, at which Vitoria and his associates renounced the sympathy they had previously expressed for the programme of Christian humanism, going on to criticise a series of nineteen heresies that Diego López de Zuñiga claimed to have discovered in Erasmus' published works.

[...]

It's important to note how quickly Vitoria and Soto radicalised their opposition to Erasmus, given that their perspective was once considered, perhaps wrongly, an attempt to combine scholasticism with Christian humanism³⁸.

Skinner therefore considers Vitoria to be a scholastic who already participated in a counter-reformist climate. In order to maintain consistency with this scheme, he also places the polemic on the New World in the context of the response that the "renovators of Thomism" gave to the "humanists" and the "Lutherans", in particular on the question of the relationship between nature and grace³⁹.

The point of contact between humanists - in this case represented by Sepúlveda - and Lutherans was, for Skinner, the Lutheran thesis that human nature was irremediably corrupted by sin and only the mysterious intervention of divine grace could save it; a thesis that contrasted with the traditional doctrine of St Thomas that grace does not eliminate, but only perfects, human nature.

What was at stake was the legitimacy and legality of the natural domain of the indigenous peoples, which Sepúlveda denied, among other reasons, because of their infidelity or lack of religiosity. According to Skinner, these arguments were also supported by the humanists: "But the most dangerous among the humanists were those in whom the Thomists saw affinities with Lutheran conceptions of political society"⁴⁰. Firstly Erasmus, but also Sepúlveda:

Above all, [the Thomists] were concerned with responding to the theses that Juan Ginés de Sepúlveda and his followers were beginning to put forward regarding the legitimacy of the Spanish conquests in the New World. [...] The essence of their argument was that since the Indians did not have knowledge of the Christian faith, they could not be said to live with genuine "political freedom and human dignity".

Spain and specifically on the New World, see the classic: BATAILLON. M. *Erasmus y España*. México: Fondo de Cultura Económica, 1991 ("Erasmus y el Nuevo Mundo", pp. 807-832).

³⁸ SKINNER, Q. *The Foundations*, op. cit. p. 419.

³⁹ Although Skinner recognises that "Sepúlveda personally went to the Council of Trent to defend his theses", IDEM, p. 420.

⁴⁰ IDEM, p. 420. Although, as we have seen, the "humanist" Sepúlveda had published polemical pamphlets against both Erasmus and Luther.

[...] For the Jesuit and Dominican theoreticians, it was somewhat difficult to oppose Sepúlveda's thesis, since it was based on a reference to Aristotle's *Politics*, an authority for whom they expressed the greatest reverence. However, it is true that they considered it essential to repudiate the way in which Sepúlveda defended the ethics of the Empire. They were undoubtedly concerned about the heretical implications of his argument, especially since it was based on the thesis, akin to Lutheranism, that every genuine political society should always be founded on piety. And they were equally sincerely opposed, on purely humanitarian grounds, to its dark consequences for the Indians of America, as Sepúlveda's theses achieved almost universal acceptance in practice⁴¹.

In relation to Vitoria's *Relectio de Indis*, Skinner emphasises how the master of Salamanca refuted as heretical the theory - already found in Wycliff and Hus - according to which true dominion must always be based on divine grace. For this reason, he affirmed that the indigenous people exercised a true *dominium* over their own public and private affairs (*barbari isti sunt veri domini et publice et privatim sicut christiani*). In this way, says Skinner, Sepúlveda's "quasi-Lutheran" theories were rejected as heretical.

As well as responding to the heresies of the Lutherans, the Counter-Reformation theorists also directed their arguments against their various humanist enemies. Firstly, they manage to respond to Sepúlveda's misguided suggestion that the infidels were incapable of maintaining a genuine political society and that it was therefore legitimate to conquer and enslave the indigenous people of the New World. The mistake in this idea, they assure us, is the same fundamental mistake made by the Lutherans. Sepúlveda and his adherents fail to recognise that since it is possible for everyone to understand natural law, it should be possible for any group of men to establish a political society without the need for revelation, simply by consulting and following their instincts about the rules of natural justice⁴².

We agree only in part with this interpretation of the great English *scholar*. Certainly, the Thomist conception of the nature-grace relationship, much more positive than the Augustinian-Lutheran one, will be used by Vitoria and Soto, and above all by Las Casas, to accuse Sepúlveda of heresy and will play an important role in the refusal of the theologians of Salamanca and Alcalá to publish *Demócrates Segundo*.

However, if Skinner's observations regarding the anti-Lutheran polemic in the nature-grace debate are pertinent, they do not apply to the "humanists", who certainly did not share Luther's pessimistic conception of human nature. In fact, using Skinner's categories, it would be very easy to show how the thinking of the Cordoba "humanist" is much more "counter-reformist" than that of the Salamanca masters. Not only because Sepúlveda wrote a treatise against Erasmus and another against Luther, and went personally to the Council of Trent to defend his theses on the Conquest, but above all because he shared the theocratic principles common to a large part of the theologians of his time, which underpinned the papal bulls of

⁴¹ IDEM, p. 421. However, it should be noted, as we will see later, that although Sepúlveda took up some themes of political Augustinianism (underlying some Lutheran theses), he did not affirm that "every genuine political society should always be founded on piety".

⁴² IDEM, p. 445.

Alexander VI and which the scholastics of Salamanca contested. Not by chance, the "humanist" was appointed chronicler and chaplain to the Emperor and always enjoyed protection in the Roman Curia⁴³.

This is why we consider Skinner's contrast between "counter-reformists" and "humanists" to be reductive and insufficient in the face of the complexity of the controversy over the New World, and particularly deviant in relation to Vitoria's thinking, which was born and developed in a context that, as Bernice Hamilton says, cannot yet be defined as counter-reformist.

Perhaps it would be more pertinent to historically place the thinking of Vitoria and the Escuela de Salamanca (because there are differences between the Dominican founders of the school and the Jesuit continuators, which Skinner analyses together) within the framework of the so-called "Catholic Reformation", that is, that movement of renewal of Catholicism that developed between 1530 and 1550, which received the influence of Christian humanism and which preceded the hardening that followed the Council of Trent⁴⁴. The very surprising freedom of debate and lack of censorship highlighted by Lewis Hanke could be a sign of this cultural climate, which would change with Philip II and the Council of Trent. For example, Las Casas, in 1552, just after the Valladolid controversy, which was the last great open debate, was allowed to publish eight of his main treatises without asking permission, but from that date on he was not allowed to publish any more works.

We therefore believe that the New World Dispute, although it obviously cannot be isolated from the historical-conceptual context of the time, must be dealt with in its specificity and not as a marginal and secondary aspect of a dispute between Humanists and counter-reformists.

In this context, the neo-Thomists are not fighting opponents "external" to Catholic orthodoxy, but they are facing an "internal" struggle, which is forcing them to take more original and open stances that border on heterodoxy as we hope to demonstrate in the course of exposing the debate.

2.3. Anthony Pagden. An ethnological look.

In *The Foundations of Modern Political Thought*, Skinner devotes a few pages to the controversy over the Conquest, in which he recognises that the scholastics exhaustively developed the Thomist intuition and that:

The testimony that Las Casas provided in his treatise *in defence of the Indians* [the *Apologia*] still constitutes an impressive and above all convincing document, even though, in his strong commitment to

⁴³ Anthony Pagden, who trained with Skinner, recognises this: "It seems that although he frequented the rather open intellectual world of the Italian Aristotelians, his mind remained rigidly orthodox and deeply chauvinistic. Uncertain even about the risks of his love for classical studies, Sepúlveda was far from being the enlightened humanist that many historians have tried to paint him as. In his own way, he was, to use Marcel Bataillon's words, the typical representative of those who were preparing the ground for 'the dogmatic restoration of Trent'". PAGDEN, A. *La caduta dell'uomo naturale*. L'indiano d'America e le origini della etnologia comparata. Torino: Einaudi, 1989, p. 141 (The quote from Bataillon is taken from *Erasmus y España*, op. cit. p. 409. The translation is mine).

⁴⁴ According to this reading, "the Counter-Reformation operates in relation to previous attempts at Catholic Reformation in a new way and often against them. Catholic historians such as Imbart de la Tour, Jedin, Brezzi, Alberigo, and secular historians such as Febvre share this opinion." See MALUSA, L. *Dall'Umanesimo alla Controriforma*, in "Storia del Pensiero Occidentale" diretta da M. F. Sciacca, Vol. III, Milano: Marzorati Ed., 1975, pp. 303-309, at p. 307.

justifying every aspect of indigenous life, even going so far as to make a lengthy defence of cannibalism and human sacrifice⁴⁵.

Despite these excesses that scandalise him, the Cambridge professor interprets Las Casas' thought as substantially indebted to and dependent on Vitoria's doctrine:

The essence of his argument is based on the same central premise as Vitoria's: all men, except for a very few barbarians, are equally endowed by God with the same reasoning capacities. Thus, Las Casas insists from the outset that Sepúlveda is fundamentally wrong when he assumes that the indigenous people are barbarians in the strict sense that God "determined that they lack reason". He admits that they are undoubtedly barbarians in the sense that they are not Christians, but he maintains that this in no way prevented them from forming a legitimate political society, with "sufficient natural knowledge and capacity to direct and govern themselves".

He concludes that since they have built a society without the benefit of revelation, there can be no reason to use their lack of Christian understanding as an excuse to enslave them. He agrees that it is obviously legitimate to "instruct them in the word of God", hoping that they can be "benignly led to accept the best way of life". But he also states, in much the same way as Vitoria, that even if they refuse to be led in this way, this is no reason to proceed in the manner of the Spaniards - "like ferocious executioners", trying to "justify their enslavement" and exploiting them for their own "comfort and pleasures", things that he judges to be contrary to the true spirit of Christianity⁴⁶.

It was Skinner's pupil, Anthony Pagden, who took up the study of Spanish Scholastic political thought from the same position⁴⁷ the study of the political thought of Spanish Scholasticism in a series of studies that made Pagden one of the greatest specialists in the political doctrines of the modern colonial empires.⁴⁸

One of the first and most important essays on the subject is the book *The Fall of Natural Man. The American Indian and the Origins of Comparative Ethnology*, which we'll deal with here.⁴⁹ The natural man Pagden refers to is not the man of the state of nature of modern jusnaturalists, but a reference to the static and hierarchical conception of human nature of the ancient and medieval tradition, which begins to be questioned by the image of the peoples of the New World.

⁴⁵ SKINNER, Q. *The Foundations*, op. cit., p. 447.

⁴⁶ IDEM, p. 447.

⁴⁷ He considers Skinner's analysis "the best analysis of the political thinking of the Neo-Tomists". See VITORIA, F. de. *Political writings*. Edited by A. PAGDEN - J. LAWRENCE, Cambridge 1991, p. XXXI.

⁴⁸ PAGDEN, A. *The "School of Salamanca" and the "Affair of the Indies"*, in "History of Universities, I: Continuity and Change in Early Modern Universities", Avebury 1981, pp. 71-112; IDEM. *Dispossessing the Barbarian: Rights and Property in Spanish America*, in "Spanish Imperialism and the Political Imagination: Studies in European and Spanish-American Social and Political Theory (1513-1830)", New Haven and London: Cambridge University Press, 1990, pp. 13-35; IDEM. *Lords of all the World. Ideologies of Empire in Spain, Britain and France (c. 1500-c.1800)*. New Haven-London: Yale University Press, 1995, pp. 29-62. IDEM. *People and Empires. A history of migrations and conquests from Greece to the present day*. Rio de Janeiro: Objetiva, 2002.

⁴⁹ *The Fall of Natural Man: the American Indians and the Origins of Comparative Ethnology*, Cambridge 1986 (1982). (We will use the Italian translation: *La caduta dell'uomo naturale*, op. cit.)

As the author writes in the introduction:

This book is an attempt to explain that far-reaching change in the way we understand human societies that marked the transition [...] from a description of cultures based on a concept of human nature constant in time and space to a broader anthropological and historical relativism⁵⁰.

According to Pagden, one of the most relevant and unexpected results of the discovery of the peoples of the New World was to promote a shift from the traditional static conceptions of human nature as essentially uniform to a more relativistic approach, leading to the assertion - which would become commonplace in the 17th century - that "differences in cultural behaviour could be explained by different degrees of historical development".⁵¹ For Pagden, the fundamental theoretical question raised by the discovery of the New World was that of the universal value of natural law, which should be known by all peoples, including infidels, because it had been inscribed by God in the hearts of all men since the creation of the world. The discovery of populations that had lived for thousands of years in isolation from the rest of the world and who practised truly "unnatural" customs such as cannibalism and human sacrifice seriously questioned the validity of the doctrine. Indeed, the scholastics asked themselves:

If they were *irrational* or *amentes*, how can we explain their cities, their civil and religious administration and so on? If they were rational men, how can we explain cannibalism, human sacrifices, primitive farming techniques and the imitative nature of art?⁵².

The most immediate and common response was to consider these manifestations to be typical of barbaric and savage peoples, identifying them with barbarians absolutely (*simpliciter*) or by nature of the medieval exegesis of Aristotle's *Politics*. The other solution, which had been raised by some theologians and jurists, was to consider them as a third species, situated between men and apes.

But the maestros of Salamanca could not accept the thesis that entire peoples, for millennia, had remained ignorant not only of Christianity, but also of the elementary principles of natural law. This was an eminently theological problem, which cast a disturbing shadow over the doctrine of natural law.

Pagden states that, in the *Relectio de Indis*, Vitoria rejected both theories, the first because the Aristotelian principle of the perfection of nature (*natura nihil frustra facit*) prevented Aristotle's doctrine of natural slavery from being applied to entire peoples, even more so for a Christian who believed in the existence of an omnipotent and provident God. But neither did Vitoria accept the second theory, of those who considered that "the Indians of the Americas were not true men, but a third animal species between man and ape, created by God to better serve man", as Bernardino de Minaya had said, for example⁵³.

Vitoria, according to Pagden, would propose another option:

⁵⁰ PAGDEN, A. *La caduta dell'uomo naturale*, op cit.

⁵¹ IDEM, p. IX.

⁵² IDEM, p. 110.

⁵³ IDEM, p. 122.

For Vitoria, the Indians were not a third species, but a type of grown-up children endowed with rational faculties still in potency, not in act, but complete. [...] The Indians, like the children of other races, would one day grow up and become free and independent citizens of a true *polis*, but until then, for their own good, they should remain under the legitimate tutelage of the King of Spain, in a state similar, although not the same, as that of slaves⁵⁴.

The irrational or barely rational manifestations of the indigenous people were thus interpreted not as expressions of men who were naturally and irremediably inferior, but of minds that were still forming and only potentially rational, like those of children.

Any claim to *dominium* in America was justified not by the *rights* of the Crown, but by their Christian duty to help the development of populations that had remained in the stage of infantile obtuseness. However, to reach this conclusion, they were forced to invent their own theory of the relativity of human social behaviour. What they did (as I will explain in chapter IV), was to transfer a certain type of argument from one branch of Aristotelian psychology (concerning the mental condition of slaves) to another (concerning the mental state of children)⁵⁵.

Using the Aristotelian categories of act and potency, Vitoria and his disciples demonstrated, according to Pagden, how the supposed inferiority of the Indians was not permanent, but temporary; and how they were human beings whose intellect was still in a state of becoming, in potency rather than in act.⁵⁶

In this way, the barbarian who had been excluded from human life was brought back into civilisation, albeit at the lowest possible social level:

Socially, he was at the level of a peasant, a rude creature who was alien to the subtle web of affiliations, behavioural schemes, language and expression that made up civilian man; and psychologically, at the level of a child, an unreflective creature, dominated by passions and semi-rational. Despite this, however, the Indian was "inside"⁵⁷.

In this way, Vitoria opens the possibility of missionary action that develops rational potential and for a historical and evolutionary interpretation of the American world that will later be followed more widely by Bartolomé de Las Casas and José de Acosta.

For Pagden, the defender of the Indians is one of the first modern authors to recognise that spatial differences can be assimilated to temporal differences and that the unnatural customs of recently discovered peoples derive from the fact that they were "younger" on the historical scale common to all men. Here we find the first signs of what will be called comparative ethnology in the 19th century

⁵⁴ IDEM, p. 122-123.

⁵⁵ IDEM, p. IX."

⁵⁶ IDEM, p. 110

⁵⁷ IDEM, p. 123.

The static image of man in nature, which has lasted since antiquity, "falls away" and dynamic elements are introduced that make us think that human nature also has a history and is subject to evolution and progress.⁵⁸

Pagden's analysis touches on one of the crucial themes of the controversy, that is, the question of human nature and the validity of universal natural law, as we will see as the text develops. But the solution he proposes does not seem to be adequate and has been criticised by Brian Tierney of Cornell University, a specialist in the medieval legal tradition and a scholar of the debate on the conquest (whose thought we will analyse later), according to whom the whole structure of the book is based on a profound *misunderstanding* of Vitoria's thought:

Vitoria doesn't recognise an inherent contradiction in the Aristotelian theory of natural slavery; he doesn't claim that the Indians were children by nature, he doesn't consider their intellect to be in potency rather than in act and he doesn't switch from one branch of Aristotelian psychology to another⁵⁹.

We'll come back to these questions in this article. Here are just a few preliminary remarks.

Pagden's "anthropological-cultural" reading is valid up to a point. The scholastics, but above all Las Casas, began what can be called a comparative ethnology by discussing the cultural differences between peoples, not as criteria of inequality and inferiority, but to recognise the indigenous people's full humanity. In this way, they tried to make what was distant and strange close and common; it is more complex to know whether they also developed a historical-cultural anthropology, in other words, a theory of the cultural progress of peoples, as Anthony Pagden says.

As for the comparison between Indians and children, we agree with Tierney's doubts. As we shall see, in *Politics*, Aristotle admits three main types of relationships between men: the despotic, which prevailed between master and slave; the paternal or marital, which prevailed between husband and wife and between father and son; and the political, which prevailed between free and equal men.

While Sepúlveda and others affirmed that the Indians had despotic power, the scholastics of Salamanca disagreed because this power was exercised only in favour of the master and not the slave, and it was not a political power, but a private one, exercised within the *oikos*, in domestic relations. For this reason, they criticised the *encomienda* as a disguised form of slavery.

They therefore argued that the Indians, who were true masters from a public and private point of view like the Christians, should have the right to a "political" dominion exercised for the benefit of the indigenous peoples. The characteristics of this power fluctuated according to the interpreters: Vitoria and the Salamanca professors "temporarily" defended a type of "paternalistic" power, but not because the indigenous people were like children - since their fully human characteristics had been demonstrated by their ability to live in cities and create refined cultures, feats that children would not be able to achieve - but because they were victims of a "rude and barbaric education" and could, through a good education, rediscover their true nature.

⁵⁸ These are themes that Pagden will develop in analysing the works of José de Acosta and Joseph-François Lafitau.

⁵⁹ "Vitoria did not recognise an inherent contradiction in Aristotle's theory of natural slavery; he did not affirm that the Indians were nature's children; he did not regard their intellect as potential rather than actual; he did not shift from one path of Aristotelian psychology to another". TIERNEY, B. *Aristotle and the American Indians: Again. Two critical discussions*, in "Cristianesimo nella Storia", 12 (1991), pp. 295-322, at p. 307.

primitive and original nature. Las Casas, however, did not accept this paternalistic power, but preached a strictly political type of domination, the same as that exercised by the king over his majesty's other "free subjects".

During the text, we will have the opportunity to revisit Pagden's interpretations in the light of the texts.

2.4. Tzvetan Todorov. A relativist and perspectivist reading of otherness.

Tzvetan Todorov, like Pagden, in his beautiful book *"The Conquest of America. The question of the other"*, emphasises a Las Casas who is not only cultural anthropologist, but also "relativist" and "perspectivist" *ante litteram*⁶⁰.

Tzvetan Todorov's book is precious for the originality of its analysis, the literary quality of the text and the ethical passion that has guaranteed it great editorial success. Its main characteristic lies in its refined analysis of the interpretation of texts (which derives from his training as a semiologist) and its use of the (Levinasian) category of otherness as a key to reading. The *Conquest* appears to him, then, as an exemplary historical fact of the encounter with an "absolute other", the "different par excellence", an encounter that "will never again reach such intensity" and which was tragically successful: "the 16th century will see the greatest genocide in history perpetrated".⁶¹

The four parts of the book analyse in a suggestive way four typical attitudes in dealing with the "other": discover, conquer, love, know; embodied by four exemplary characters: Christopher Columbus, the discoverer, Hernán Cortés, the conqueror, Bartolomé de Las Casas, the passionate defender of the Indians, and Diego Durán and Bernardino de Sahagún, the first "ethnologists" who dedicated themselves to studying and classifying the uses and customs of the indigenous people.

Todorov's main interest is not historical, but moral, as he makes clear right at the start:

I chose to tell a story. It's closer to myth than to argument, but it's different on two levels: firstly, it's a true story (which myth *could be*, but *shouldn't be*); secondly, my main interest is more that of a moralist than that of a historian. The present matters more to me than the past. I have no other way of answering the question of how to behave towards others than by telling an *exemplary story* (this is my chosen genre), a story that is as true as possible, but trying never to lose sight of what the exegetes of the Bible called the tropological or moral sense⁶².

The merit and ambiguity of the work all lie in this initial choice. The story he tells is at once true and exemplary of what a novel can be: a crest that is difficult to traverse without losing your balance. The figure that, in my opinion, suffers the most is Las Casas, whom he paradoxically brings closer to Cortés:

Las Casas and the other defenders of the Indians are not opposed to Spanish expansion, but they prefer one of its forms to the other. We will give each of them a familiar name (although these names

⁶⁰ TODOROV, T. *The Conquest of America. The question of the other*. São Paulo: Martins Fontes, 1999.

⁶¹ IDEM, p. 6. Here we are in the middle of that "moralistic" reading of history that will be ironically stigmatised by Giuliano Gliozzi, as we will see below. GLIOZZI, G. *Tre studi sulla scoperta culturale del Nuovo Mondo*, "Rivista storica italiana", XCVII, I, (1985), pp.160-176, p. 163.

⁶² TODOROV, T. *The Conquest*, *op. cit.* p. 4.

are not entirely historically correct): they have an ideology and are opposed to the ideology of *slavery*.

[...]

If Columbus is to be placed on the side of the slavers, characters as different, and even opposite in reality, as Cortés or Las Casas, are linked to the colonialist ideology. [...]. It's true that many things separate the two men. Las Casas loves the Indians, but he doesn't know them; Cortez knows them in his own way, although he doesn't feel any special "love" for them. [...] And yet, Las Casas and Cortez agree on one essential point: the submission of America to Spain, the assimilation of the Indians into the Christian religion, the favouring of colonialism over slavery⁶³.

The figure of Las Casas is thus judged based on a value criterion (external to the debate) that the author introduces as his parameter, that of "non-violent communication".

So, if colonialism opposes slavery on the one hand, it also opposes another form of contact with others, positive or neutral, which I will simply call *communication*. The triad understand/take/destroy corresponds to this other triad, in reverse order: slavery/colonialism/communication. [...] Non-violent communication exists and can be defended as a value. This could mean that the slavery/colonialism/communication triad is not just a tool for analysis but ends up corresponding to a succession in time⁶⁴.

Todorov develops this concept of non-violent communication from another criterion: "It is possible to establish an ethical criterion for judging the form of influences: the essential thing, I would say, is to know whether they are *imposed* or *proposed*"⁶⁵.

In the light of this moral criterion, Todorov sees two distinct and contradictory moments in Las Casas' thinking: the first is when Las Casas imposes his vision of the encounter on the Indians:

Las Casas rejects this violence (of the *conquistadors*), but at the same time, for him there is only one "true" religion: his own. And this "truth" is not only personal (it's not the religion that Las Casas considers true for himself) but universal and valid for everyone, and that's why he doesn't renounce his evangelising project. Now, isn't there already violence in the conviction that you possess the truth, while this is not the case for others, and that, on top of that, you must impose it on them?

⁶⁶

And here Todorov shows his purposeful ambiguity between historical and moral judgement with a rather surprising phrase:

It does nothing to diminish the greatness of the character, quite the opposite, to recognise that the ideology assumed by Las Casas and other defenders of the Indians is a colonialist ideology. It is precisely because it is

⁶³ IDEM, p. 212, 213.

⁶⁴ IDEM, p. 215 and 219.

⁶⁵ IDEM, p. 216

⁶⁶ IDEM, p. 203-204

It's impossible not to admire the man, and it's important to make a clear judgement on his politics⁶⁷.

What is surprising about this sentence is that "lucidly": from what perspective can a "lucid" judgement be made about the characters and historical events of such a distant and complex situation? We can't tell whether "lucidly" means a moral or historical judgement, because Todorov doesn't differentiate between the two. of the "neutral and positive" criteria of non-violent communication: in other words, cultural relativism and perspectivism.

Todorov thus identifies a second moment in Las Casas' thinking and actions, that of old age, when the Dominican friar even justifies human sacrifices. In doing so,

Las Casas ended up adopting a new position, introducing what could be called "perspectivism" within religion. [...] Recognising that his god is true for them, doesn't that mean taking a step towards another recognition, namely that our God is true for us - only for us?⁶⁸

The last Las Casas thus discovers that superior form of egalitarianism, which is perspectivism, in which everyone is related to their own values, instead of referring to a single ideal⁶⁹.

For this reason, the latter Las Casas "suggests to the King of Spain that he renounce his overseas possessions, no more and no less". In this way, "renouncing, in practice, the desire to assimilate the Indians, he chooses the neutral path: the Indians will decide for themselves about their own future".⁷⁰

Not only that, but Las Casas, according to Todorov, would renounce Christianity as the only true religion, that is, as the only path to salvation, admitting the existence of a plurality of religions, all legitimate:

Although he affirms the existence of a single god, Las Casas does not *a priori* favour the Christian way of reaching him. Equality is no longer established at the expense of identity; it is not an absolute value: everyone has the right to approach God in the way that suits them. There is no longer one true God (ours), but a coexistence of possible universes: if someone considers him to be true... Las Casas surreptitiously left theology and began to practise a kind of religious anthropology; which, in this context, is really subversive, because it seems that, by taking on a discourse about religion, he took a first step towards abandoning religious discourse itself⁷¹.

"What's too much?" says Giuliano Gliozzi, commenting on this passage: "Todorov defends his right not to disappear as subjectivity in interpretation

⁶⁷ IDEM, p. 210.

⁶⁸ IDEM, p. 228.

⁶⁹ IDEM, p. 231.

⁷⁰ IDEM, p. 233.

⁷¹ IDEM, p. 229.

of the sixteenth-century texts that he examines, but it is doubtful that he has managed to avoid the danger that he himself fears, that is, 'subjecting others to himself'.⁷²

As you read Todorov's fascinating work, you get the impression that he is doing the same thing as the historical figures he criticises, i.e. "confronting everything with a single ideal", in this case no longer Christianisation, but cultural relativism and perspectivism, a "neutral and positive" parameter of moral and historical judgement.

The ambiguity lies in wanting to maintain the two levels of moral and historical judgement at the same time. If the main criterion for judgement is moral, then Todorov should refrain from giving historical judgements; if his is an exemplary history, Las Casas is just a *dramatis persona*, a mask, a character from the mythical narrative and not a man inserted in his historical time; but Todorov also wants to talk about the historical Las Casas. During this presentation, we will return to Todorov's suggestive reading proposals which, despite their limitations, contain many elements of great interest. We'll see how Las Casas radicalises his critical stance towards conquest over the years, to the point of total delegitimization; we'll see how this stance finds its highest and most paradoxical point (in the literal sense of the term, against common opinion - *doxa*) in the defence of human sacrifices and cannibalism. We will also see how Las Casas makes the greatest and most disconcerting attempt, never made in the entire modern era, to understand and approach this "absolute otherness"; but also how, in doing so, he does not abandon his belief in his religion as true, in other words, it doesn't abandon its own religious discourse.

If he succeeded in bringing the distant closer, it is very doubtful that he did the opposite, i.e. bringing the distant closer, by abandoning his deeply rooted religious convictions, typical of the man of his time and his historical context, which were somewhat insurmountable.

2.5. Giuliano Gliozzi. A marxist reading: colonial ideologies.

Giuliano Gliozzi, an Italian scholar who taught at the University of Turin, in his work on the theory of the origins of American man developed in the 16th and 17th centuries: *Adam and the New World. The birth of anthropology as a colonial ideology: from biblical genealogies to racial ideas*⁷³.

Gliozzi's originality consists of introducing a Marxist or historical materialist reading of the controversy, through the concept of ideology that relates ideas to the material interests at stake. Gliozzi criticises the so-called "conceptual history", claiming that the "historians of ideas" had the merit of directing attention to the problem, but erred in "reducing the problem to a purely intellectual dimension".

A clear example of this method is given by the different interpretations of the debates on the New World between a disciple of the *history of ideas* like Pagden and a Marxist like Gliozzi:

For example - says Pagden in response to Gliozzi's criticisms - I claim that the jurists Palacios Rubios, Gil Gregorio and Bernardino de Mesa were led to the paradoxical hypothesis that the Amerindians were both natural slaves and free agents (*liberi et ingenui*), by an imperative need to preserve the

⁷² GLIOZZI, G. *Tre studi sulla scoperta culturale del Nuovo Mondo*, op. cit.

⁷³ GLIOZZI, G. *Adamo e il Nuovo Mondo. La nascita dell'antropologia come ideologia coloniale: dalle genealogie bibliche alle idee razziali (1500-1700)*. Firenze, 1977 (my translation of the passages quoted).

integrity of the human species. According to Gliozzi, on the contrary, "this lacerating opposition" could also be "an attempt at compromise between the interests of the Crown and those of the conquerors"⁷⁴.

Gliozzi therefore massively and to a certain extent obsessively introduces the concept of ideology and interest to demonstrate, through a detailed, erudite and documented analysis, and using historical materialism, how any theory, including the apparently most eccentric ones, finds its justification in causes external to the debate, in other words, in the interests that the various social groups defend.

He believes that the most exhaustive possible reconstruction of the debate is indispensable and preliminary, but not sufficient.

It is also essential to move away from the excessively narrow perspective of the European cultural debate to get closer to the real object of discourse, the *relationship* established or to be established with the inhabitants of the world that is the object of conquest. This is the perspective of *colonial ideology*. Only by bearing in mind not only each author's solution, but also the way in which he arrived at it, his "reasons, his "proofs", can we reconstruct the historical significance and genesis of his thought until we find its material foundations⁷⁵.

The theories discussed are, in fact, ideological justifications for the various colonial policies that these groups represent and promote. The book, in its 635 pages, offers a very suggestive and detailed overview of a plurality of theories and hypotheses about the origins of the American peoples, developed over two centuries, not only in the Iberian Peninsula and in Catholic areas, but also in Protestant areas and throughout Europe until the emergence of properly racist theories in the 18th century.

The debate on natural slavery is seen in the context of the discussion between monogenetic (or Adamic) or polygenetic (or pre-Adamic) theories on the origin of the American Indian. According to Gliozzi, despite the common opinion uncritically repeated by many interpreters, "the belonging of the Americans to the human race - that is, to Adam's offspring - was not discussed by any Spaniard in the first half of the 16th century".⁷⁶ What was discussed was their "bestiality", but not in order to "affirm their belonging to a different zoological species", but to a different type of inferior man, but of the same human species⁷⁷.

During the debate, three different conceptions of the inferiority or "bestiality" of the Indians were developed. "One meaning of the accusation of bestiality referred to the Indian refers to his intellectual and moral incapacity to accept the preaching of the Gospel"; in another meaning, very close to this, "bestiality consists of the *transgression of natural law* and is therefore deserving of *punishment*". In these two cases, indigenous bestiality is not understood as a natural and original fact, but as a secondary and derived fact, the fruit of sin. "The *bestial Indian* is an object of moral imputation and, for this very reason, cannot be conceived as a merely animal creature.

⁷⁴ GLIOZZI, G. *Tre studi sulla scoperta culturale del Nuovo Mondo*. "Rivista storica italiana", XCVII, I, (1985), pp.160-176, which includes a critical review of Pagden's book, to which Pagden responds in the introduction to the Italian edition of the work. PAGDEN, A. *La caduta dell'uomo naturale*, op. cit.

⁷⁵ GLIOZZI, G. *Adamo e il Nuovo Mondo*. Op. Cit. p. 11-12.

⁷⁶ IDEM, p. 287.

⁷⁷ IDEM *ibidem*.

Animals don't sin"⁷⁸. A third meaning of "bestiality" could be suggested by the Aristotelian theory of natural slavery, as a permanent and original political and rational incapacity in some men, or even peoples, which seemed in contrast to biblical monogenism.

Gliozzi shows how, in *Democrates Secundus*, these three different conceptions of the inferiority of the *Indian* are present and interact. In fact, despite various statements by the literary writer from Córdoba which suggest that he considers the Americans to be "an intermediate genus between ape and man, an inferior race separated from the truly 'human' races by a natural, original and ineliminable difference", Sepúlveda considers the Indians to be "morally and religiously depraved men, who can be corrected by force (*manu militari*) and led to regain more human characteristics".⁷⁹

Sepúlveda, according to Gliozzi, modifies the Aristotelian conception⁸⁰ because he is not interested in defending the *slavery* of the Indians, but their *servitude* under the *encomienda* system.⁸¹ Therefore, if the image of the naturally inferior slave served him to justify the submission of the Indians, he had to "place alongside the Aristotelian image of the *homunculus*, the Christian image of the man who has become a beast through depravity", since the *encomienda* found its legal justification in the possibility of the religious and human recovery of the Indians under *encomienda*.

The analysis, which until now had been limited to discourses and their internal coherence, moves on to the "material foundations". The theory of the bestiality of the Indian is elaborated according to the *encomienda*, which has a dual character: it tends to produce a type of exploitation aimed solely at profit and therefore at eliminating obstacles of an "extra-economic" nature; but at the same time, it is conditioned by the "*feudal form of this relationship*", which "inhibits the development of this potential"⁸² This feudal form is represented by the interests of the Spanish crown.

Potentially polygenetic theories, which "sometimes come close to a first formulation of the theory of race", were developed within the framework of the *conquistadors*, whose main interest was profit and the exploitation of indigenous and black labour. However, these doctrines were unable to gain a foothold due to "the imposition of the absolutist feudal state on those forces - the *conquistadors* - who had contributed to the process of capital accumulation in a decisive way, albeit in the violent forms that are, on the other hand, peculiar characteristics of this process".⁸³ This is how we can understand the Crown's hostility to the publication of Sepúlveda's book: it was seen not only or mainly as heresy and a departure from Christian principles, but also as a threat to the absolutist feudal power of the Spanish royals over the *conquistadores*.

⁷⁸ Ibid., p. 293.

⁷⁹ Ibid., pp. 295-297.

⁸⁰ The Aristotelian theory implies, for Gliozzi, a conception of the slave's inferiority of a permanent and essential kind.

⁸¹ Gliozzi refers approvingly to Robert Quirk's thesis, which "opportunistically insists on the fact that Sepúlveda modifies Aristotle by speaking of 'natural servitude' instead of 'natural slavery'." IDEM, p. 301, note 54. See QUIRK, R. *Some notes on Controversial Controversy: Juan Ginés de Sepúlveda and Natural Servitude*", in "The Hispanic American Historical Review", 34 (1954), pp. 357-364. Quirk's thesis is contested by HANKE, L. *Aristotle and the American Indians*, op. cit. pp. 58-61.

⁸² IDEM, p. 301-302.

⁸³ IDEM, p. 304.

Based on this analysis, Gliozzi takes a very critical stance towards all those interpreters - who are the vast majority - who use "moralistic categories that prevent an evaluation of the historical meaning of the theory of the bestiality of the Indian, as well as an evaluation of the contrast between Sepúlveda-Las Casas that expresses this meaning". In fact, what is at stake is not "an abstract confrontation between a Christian conception of man and a pagan one, since both positions remain definitively within Christian ideology".⁸⁴ Nor is it a "struggle for justice" or to make a "spirit of justice" prevail.⁸⁵ or to make the "more humanitarian spirit" represented by Las Casas prevail.⁸⁶ Not at all, it was a dispute between the interests of the *conquistadors* - representatives of a profit-driven logic of exploitation - and the interests of the Crown - representative of an absolutist and feudal state.

For Gliozzi, Sepúlveda's thinking expresses with "logical clarity", through a theory of slavery, the interests "of the *conquerors* solely concerned, through the exploitation of indigenous labour, with making the maximum profit"⁸⁷. However, he must mask and dilute his doctrine with the admission of the unity of the human race, since "the role of the *encomendero* as propagator of the faith can only be conceived as one of those obligations in which men must recognise their dealings with other men simply because they are men".⁸⁸

Gliozzi polemicises with the anthropologist Séjourné, because "her progressive intentions do not stem from a correct historical judgement, since they are inspired by an abstract 'moral criterion' and a respect for 'human values'". This confusion between "moral and historical criteria" (which, for him, is the same as Todorov's) leads to "Séjourné denying the **progressive** character that Sepúlveda's doctrine possessed in his time, as an expression of a tendency to break down the European feudal system".⁸⁹

In this "progressive" we finally have Gliozzi's judgement criterion: the breakdown of the European feudal system constitutes a progressive moment in history, since it allowed for the primitive accumulation of capital, albeit in the violent forms that are an intrinsic characteristic of this process, as Marx rightly demonstrated. Sepúlveda's thinking, as an (organic) representative of the interests of these forces that are breaking down the feudal system and carrying exploitation based purely on profit and not on extra-economic factors, has an objectively progressive value:

The *conquistadors*, these 'gentlemen of original accumulation', tried to establish a relationship that had, and recognised that it had, economic profit as its only driving force and end, and this attempt was expressed in the most radical conception of the 'animality' of the Indian, of which they became the bearers, albeit prudently: a conception that, while justifying the search for profit on exclusively naturalistic grounds, with its virtual polygenism tended to disengage itself from feudal ideology, which imposed obstacles of an extra-economic nature on this search⁹⁰

⁸⁴ IDEM, *ibidem*

⁸⁵ HANKE, L. *La lucha por la justicia en la conquista de América*, op. cit.

⁸⁶ SÉJOURNÉ, L. *América precolombiana*, Milano: Feltrinelli, 1971, p. 84 ff (in *Storia Universale* Feltrinelli-Fischer).

⁸⁷ GLIOZZI, G. *Adamo e il Nuovo Mondo*, op. cit.

⁸⁸ IDEM, *ibid.*

⁸⁹ IDEM, p. 304.

⁹⁰ IDEM, *ibidem*.

Gliozzi has the merit of introducing the discussion of the "material interests" that underlie the debate on ideas. It is an explicit criticism of a history of ideas and concepts that ignores social history, as if the two dimensions were separate and independent. As if it were possible, for example, to make a history of human rights through treaties and documents, forgetting to relate it to the events and historical contexts in which they arose.⁹¹

Gliozzi also criticises interpretations that use moral criteria or judgements, such as those of Todorov or Séjourné, which he considers to be abstract and anachronistic and which claim to only make "historical judgements", of an objective or "scientific" kind. To do this, he uses the categories of historical materialism, bringing discourses back to their context of reference and, ultimately, to their material foundations, the interests at stake.

The scientific criterion introduced by historical materialism is to ascertain, based on the material interests at stake, which social forces, in each context and historical moment, represent the "most progressive" interests. In this case, it is a question of knowing which forces contribute to overcoming the feudal system (represented by the Spanish Crown), in other words, an outdated mode of production that must be overcome. This is not a moral judgement, but a historical judgement, based on a "scientific and evaluative" conception of history, but which presupposes a whole philosophy of history that is no less evaluative than abstract and anachronistic moralistic conceptions.

We believe that Gliozzi, in showing the "progressive" character of the conquistadors, was not trying to make a value judgement, but simply to present an "objective fact" and, in his intentions, a "scientific" one. This doesn't mean that he approved of the conquerors' stance and the justifications of their defenders, which would be a "moral" judgement. However, it's not clear what conclusions Gliozzi wants to draw from this analysis. From this perspective, everyone is acting in the name of defending more or less unconfessed interests: the profit-seekers, the Crown with its absolutist feudal power, the missionaries with their congregations; including Las Casas⁹² who is a legitimate representative of the "missionary ideology", and as such is not the bearer of a proposal pregnant with progress, because he is acting in the interests of his congregation and the Crown, both of which are the same.

linked to a feudal world that must be overcome.

The only criterion is to know which interests are paving the way for a superior mode of production. For Gliozzi, they are those of the *conquistadors* and Sepúlveda, their representative, who appear here *paradoxically* as the bearers of progress. Las Casas, a defender of the Crown and the imposition of "extra-economic" criteria, remains anchored to the medieval and feudal world and, therefore, to a non-"progressive" way of thinking.

This is one of the problems with using the concept of ideology: it explains everything and nothing at the same time; there isn't always a correspondence between ideologies and material interests; often very different and even contradictory theories appear between groups that share the same material interests. For example, within *missionary ideology*, there are opposing positions such as those of Las Casas, Vitoria and Oviedo, to mention the extremes of a *continuum*.

⁹¹ See TRINDADE, D. de L. *História social dos direitos humanos*, op. cit. or LOSURDO, D. *Contra-História do Liberalismo*. São Paulo: Ideias & Letras, 2006.

⁹² Gliozzi doesn't study Las Casas' thought in depth, but devotes much more attention to another representative of the "missionary ideology", the Jesuit José de Acosta, whose positions were different and less radical than those of the defender of the Indians.

The issue is even more complicated when it comes to a scientifically proven "progressive ideology". But the alleged "scientificity" of the theory depends entirely on the different interpretations of the phenomenon in question. In the case of the Conquest, questions like these need to be answered: did the *encomienda* and the entire colonial enterprise have a feudal character or not?⁹³ In what sense can the category of feudalism be used in this case? What are the differences between European feudalism and feudalism in the New World? Was the Spanish Crown absolutist and feudal or, on the contrary, like the great absolutist monarchies of the time, was it fighting against feudal forms? Were the *encomenderos* the "knights of the original accumulation" of capital or were they tied to the feudal world and its extra-economic motives?⁹⁴ These are questions on which historians are far from having a consensus: according to interpretations, what was considered "progressive" is no longer so, and the whole controversy can be seen from a different perspective.

In addition to these considerations, we understand that what is at stake in this debate is not the feudal or (proto)capitalist nature of the colonial enterprise, but the possibility of an encounter or disagreement between civilisations that would make it possible to preserve the life, culture, social and political structure of individuals and peoples. The fact that Sepúlveda's positions were more "progressive", because they dismantled the feudal system, was of no interest to the peoples of the New World, who watched helplessly as their civilisation was destroyed.

Nor were they interested in whether the *encomienda* represented a form of servitude or slavery, because the practical effects were the same. On the contrary, they knew very well that Sepúlveda's and the conquistadors' proposals meant aggravating and perpetuating the unjust and inhumane system that oppressed them; and that there were alternative proposals, within the same cultural environment and the same interests linked to the colonial enterprise, that would have less harmful consequences for them.

For this reason, the indigenous *chieftains*, meeting in *Ciudad de Los Reyes* (Lima), formally commissioned Las Casas to represent them as their *Procurator* before the Court, to fight against the granting of perpetual and hereditary *encomiendas* (which would perhaps have transformed the *encomienda* into something resembling a feudal institution). And Las Casas succeeded in getting King Philip not to approve the perpetuity of the *encomienda*.

How Las Casas was able to reconcile being the representative of indigenous interests and *missionary ideology* at the same time is something we're going to debate in all the complexity of the issue, without being afraid to use historical and moral judgements, because the real possibility of saving human lives and preserving cultures is an evaluation criterion of both historical and moral value, which proposes a possible and real alternative that would have protected indigenous rights and interests much more effectively.

However, it is important to emphasise an aspect that we raised at the beginning of this book: Las Casas represents (with all the force and ambiguity of the concept of

⁹³ Aldo Andrea Cassi's thesis is that *encomienda* is not entirely assimilable to the tradition of feudal *jus commune* but constitutes a *unicum* in the history of law. See CASSI, A. A. *Jus commune, tra vecchio e nuovo mondo*. Mari, terre, oro nel diritto della conquista (1492-1680). Milano: Giuffrè, 2004. p. 240-241.

⁹⁴ On this subject, historian Lyle McAlister writes: "The link between the *encomienda*

The Spanish and American dichotomies are in turn related to another controversial question: was this institution in the Indies essentially capitalist or essentially feudal, or more precisely, manorial? The feudalism-capitalism dichotomy has little meaning outside a marxist theoretical framework and is empirically specious". McALISTER, L. *Dalla Scoperta alla Conquista*, op. cit.

representation) the interests of the indigenous people, but nobody in this debate is concerned with giving them a say. Las Casas justifies this because of the tiredness and discouragement of the indigenous people: "Y pues no tienen los indios quien vuelva por ellos, y están tan lejos y tan abatidos y desamparados que no tienen ni esperan remedio de pedir de justicia"⁹⁵. But this statement does nothing more than reinforce the lack of political recognition of the victims of this whole process; a crucial aspect of the debate, which we will return to as we go along.

2.6. Michel Villey and the "deformation" of the philosophy of law by the Spanish scholastics

Michel Villey (1914-1988) was one of the greatest French legal philosophers of the 20th century. Catholic, conservative, brilliant and polemical in his always very clear and profound arguments. He wrote several fundamental works on the history and theory of law, many of which have been translated in Brazil⁹⁶. We will focus on just one aspect of his thought, which is central and recurrent throughout his work, namely his criticism of what he calls the "deformation" of law caused by the theory of subjective rights, which underpins modern human rights.

This deformation⁹⁷ of law occurred in the passage "from law (*jus*) to human rights (*jura*)", from the objective law of the Greco-Roman tradition, which finds its most exact formulation in the Aristotelian-Thomist tradition, to the subjective rights of the moderns.

According to Villey, the objective concept dates to Roman law. For Roman jurists, law is an art (*ars*) that "has no analogue in the Eastern Empires, in the biblical world of the Old Testament, in the Indies or in China".⁹⁸ It is an invention that arose in Rome under the influence of Greek philosophy and the dialectical method, in the ancient sense of the term, as "the art of defining and distinguishing the precise meanings of the general terms of language", developed by Aristotle.⁹⁹

The purpose of civil law is defined by Roman authors, particularly Cicero, as: "The establishment of a just proportion in the distribution of goods and in the judgement of disputes between citizens". The right (*jus*) is exercised in order to do justice (*justitia*), understood as "giving each person what belongs to them or is their due" - *suum jus cuique tribuere* or *unicuique suum tribuere*, in which *tribuere* should be understood as the act of the judge in assigning, i.e. determining the respective right (*jus*) of each citizen¹⁰⁰.

In this objective conception, law is what is just (*id quod justum est*) or the just thing (*res justa*) and refers to an objectively just order according to which everyone receives their due in the distribution of goods and positions.

This conception of law began to be questioned at the end of the Middle Ages and the beginning of the Modern Age. The main culprits of what he calls the "degeneration" of the Aristotelian-Thomist science of law were William of Ockham and the nominalist followers of his school, and later the Spanish theologians of the

⁹⁵ LAS CASAS, B. *Tratado sobre los indios que han hecho esclavos*. Madrid: Alianza, 1992 (*Obras Completas*, Vol. 10, p. 230).

⁹⁶ VILLEY, Michel. *The Formation of Modern Legal Thought*. São Paulo: Martins Fontes, 2005.

IDEM. *Philosophy of law*. Definitions and ends of law. The means of law. São Paulo: Martins Fontes, 2008.

IDEM. *Law and human rights*. São Paulo: Martins Fontes, 2007.

⁹⁷ VILLEY, M. Déformations de la philosophie du droit d'Aristote entre Vitoria et Grotius. In: *Platon et Aristote à la Renaissance*. Paris: Vrin, 1976 (XVI Colloque International de Tours).

⁹⁸ VILLEY, M. *O direito e os direitos humanos*, op. cit.

⁹⁹ IDEM, *ibidem*.

¹⁰⁰ IDEM, p. 62.

School of Salamanca, such as Francisco de Vitoria and Francisco Suárez, who, despite affirming their fidelity to the Summa of Thomas Aquinas, ended up following the lead of *the modern theologians* in favour of a subjective conception of law¹⁰¹.

Villey is explicit about this:

First, I think it's a legend that the Scholastics were faithful to St Thomas. [...] In any case, regarding the subject of law or legal theory, I have not been able to find in Spanish Scholasticism the doctrine of St Thomas. [...]

Law (*jus*) has become a *subjective right*, i.e. the power, the *freedom* recognised by the individual to behave in a certain way about this or that thing and this or that person. I have the "right" to sign the social contract, to use my property as I wish. This is one of the origins of our "rights of man" and of the citizen, and of our individualistic and liberal right to property¹⁰².

He continues:

We have seen that for Aristotle, law was a proportion between things distributed among *several men*. The notion of 'subjective' law, inherited from nominalism (nominalists refuse to conceive of anything other than the *individual*) and received by Spanish scholasticism, collapsed in humanism because humanism emphasises the freedom of the human person, and following its Stoic sources, seeks what the individual is or is not *allowed to do*: confusion between morality and law¹⁰³.

The concept of *dominium* (i.e. property) acquires a breadth that it didn't have before and tends to be identified with the concept of law as a whole (*jus*). A nominalist like Jean Gerson and his followers had affirmed that *dominium* is identical to *jus* and had defined it in these terms: "Property (*dominium*) is understood to be the power (*potestas*) or faculty (*facultas*) of taking over things that are close at hand in order to make lawful use of them in conformity with the law and the rights (*iura*) rationally instituted (*rationalabiliter institutas*)"¹⁰⁴.

The *modern theologians*, identifying the two concepts, tended to consider the subject as the sole holder of rights and to conceive of the right as the property and appropriation of a subject over a series of rights (*iura*), whose only limit was given by the law. As one medieval legal scholar, Paolo Grossi, comments: "My freedom coincides with the property I have over myself and my actions, my existence as a free subject consists in a series of 'domineering' behaviours, in short in the property I have over myself".¹⁰⁵.

¹⁰¹ On this subject I refer to my essay: TOSI, Giuseppe. Theological roots of modern subjective rights. The concept of *dominium* in the debate on the indigenous question in the 16th century. *Prima Facie*, Year 4, n. 6 - Jan/June, 2005, pp. 42-56.

¹⁰² VILLEY, M. *Déformations de la philosophie du droit d'Aristote entre Vitoria et Grotius*, op. cit.

¹⁰³ IDEM, *ibidem*.

¹⁰⁴ TOSI, *Theological Roots*, op. cit. p. 42-56.

¹⁰⁵ GROSSI, Paolo. La proprietà nel sistema privatistico della seconda scolastica, in *Quaderni fiorentini per la storia del pensiero giuridico moderno*, n° 1 (1973), p. 135.

This subjective conception of rights would later be radicalised, secularised, taken out of its religious context by the moderns, in particular Hobbes and Locke, to whom Villey devotes his attention.

For it is the source of "human right", of his "natural right" (*jus naturale*). What, in this hypothesis, is taken to be the right of everyone, what should be attributed to them (*suum jus cuique tribuendum*)? Logically, "freedom", since in this "state of nature" it is assumed that no law restricts the individual's freedom. The Hobbesian notion of law is linked to the tradition of Gerson and William of Ockham, which reduces law to morality, or to the absence of a moral law that generates freedom. The right is a licence, permission to act (*of doing*). [...] Let's look at the distance that separates this "natural right" from the *dominium naturale* of the Spanish scholastics. The *dominium* is a power of government granted by God; a fraction of the power granted to men. Hobbes' *jus naturale* is an unfolding of the individual's free action that no law can hinder: an emanation of the subject himself, an authentic subjective right. Every man possesses it for himself¹⁰⁶.

And he concludes that:

The emergence of human rights attests to the decomposition of the concept of law. Their advent was the correlate of the eclipse or perversion, in modern individualist philosophy, of the idea of justice and its instrument, jurisprudence. The purpose of jurisprudence was to measure just relationships. This autonomous art fulfilled its own irreplaceable function. The philosophies of modern Europe have cast it aside. Care for a just distribution disappeared from their works. These non-lawyers, who were the inventors of human rights, sacrificed justice, sacrificed law¹⁰⁷.

The consequences are a proliferation or inflation of ineffective rights:

'Men were born equal and free'. Can we be surprised that an image so contrary to reality, so deliberately fictitious of our 'natural' condition, still lingers in our subconscious and is inscribed, in the middle of the 20th century, in the first line of the Declarations of Human Rights?"¹⁰⁸.

What many authors consider to be the most important contribution of the Scholastics to the historical affirmation of human rights is seen by Villey as a "degeneration" of law. We'll see Brian Tierney's criticisms of Michel Villey on this subject below¹⁰⁹.

2.7. Brian Tierney. The origins of the idea of natural rights.

¹⁰⁶ VILLEY, M. *O direito e os direitos humanos*, op. cit. p.145-146).

¹⁰⁷ IDEM, p. 163.

¹⁰⁸ IDEM, p. 145.

¹⁰⁹ See: TOSI, Giuseppe. The debate on the genesis and validity of subjective natural rights: Michel Villey and Brian Tierney. *Revista Portuguesa de Filosofia* T. 75, Fasc. 2, Iberian School of Peace: Natural Law and Human Dignity (2019), pp. 1067-1102.

An eminently juridical reading of the controversy is that of Brian Tierney (1922), an Englishman by origin, educated at Cambridge, but who pursued his academic activity in the United States, initially at the *Catholic University of America* and then at *Cornell University of Ithaca*, where he is professor emeritus of humanistic studies. He is one of the greatest scholars of canon law and medieval political thought¹¹⁰.

Tierney devoted some chapters of his fundamental book on *The Idea of Natural Rights* to the controversy over the conquest of America. *Natural Rights, Natural Law and Canon Law 1150-1625*, and several essays¹¹¹.

Tierney's detailed and documented study, carried out on the original texts, is dedicated to the historical evolution of the idea of natural rights, starting with the medieval decretalists of the 12th century who, according to Tierney, inaugurated the language of subjective natural rights. Tierney follows this theme in the famous controversy over the poverty of Christ, which took place in the 14th century between Pope John XXII and the Franciscans, represented by the great theologian and philosopher William of Ockham, founder of the nominalist current and critic of the power of the Papacy; and his nominalist followers, who exercised great influence for a long time at the Sorbonne in Paris, and who were called *theologi moderni*, among them Jean Gerson, Jacques Almain, John Mair (whom we meet in the debate on the conquest) and Conrad Summenhart.¹¹²

In the third part of the book, Tierney devotes a chapter to *Aristotle and the American Indians* (a tribute to the book of the same name by the American historian Lewis Hanke) until he gets to the influences that Spanish scholasticism exerted on Hugo Grócio and modern political thought.

The book can be seen as a response to the theses of Michel Villey, who had "blamed" the scholastics of Salamanca, in particular Vitoria and Soto, for having betrayed the Thomist lesson, despite their formal adherence to and restoration of Thomism, influenced by the nominalists. Tierney formulates three main objections to Villey's thesis.

Villey uses a narrow conception of law (*jus-dikaion*), that of the objective type; but, as Tierney demonstrates in detail by turning to the authors, there was a certain flexibility in the use of the concept of *jus/dikaion* between the ancients and the medievals. At least three meanings can be identified: what is just, an objectively just state of affairs, *id quod justum est*, which is the meaning that Villey considers to be the main, if not the only one; a second meaning as the moral virtue of justice, as for example in Aristotle; but there is also a third definition of *jus*, as a subjective right, despite Villey's denial. Tierney provides a very significant example of these three senses:

The various senses of *jus* that he [Villey] discusses are not contradictory concepts but correlated. When we study Thomas and the canonists, we suggest that the concepts of *jus* as right

¹¹⁰ His main works include: *Foundations of Conciliarism Theory* (1955), *The origin of Papal infallibility* (1972), *Church Law and Constitutional Thought in the Middle Ages* (1979), *Religion, Law and the Growth of Constitutional Thought* (1982).

¹¹¹ TIERNEY, Brian. *The Idea of Natural Rights. Studies on Natural Rights, Natural Law and Church Law (1150 - 1625)*. Emory University: Emory, 1997. Italian edition: *L'idea dei diritti naturali. Diritti naturali, legge naturale e diritto canonico 1150-1625*. Bologna: Il Mulino, 2002. We will use the English original to compare with the Italian translation. IDEM. The essays include: IDEM. *Aristotle and the American Indians-Again. Two critical discussions*. "Cristianesimo nella Storia", (12. 1991), p. 295-322.

¹¹² This is the debate that inspired Umberto Eco in his famous novel *The Name of the Rose*, in which the protagonist, the Franciscan William of Baskerville, is at the same time a tribute to Sherlock Holmes and William of Ockham.

objectively just and as a moral or legal precept were not intrinsically incompatible with each other. Now we can add that both concepts are compatible with the idea of individual rights. We can define the relationship between parents and children in terms of an objectively just order; or we can define it in terms of a moral precept - "Honour thy father and mother"; but we can also define the same relationship by saying that parents have the right to be respected by their children¹¹³.

The second criticism of Villey is that it wasn't Ockham or the nominalists who introduced, "as if it were an absolute novelty", a subjective definition of natural rights; rather, the concept circulated among medieval canonists from the 12th century onwards, who (re)introduced or emphasised it to respond to new legal situations emerging in social and economic relations.

It is therefore a legal concept practised by medieval jurisprudence.

Among the canonists, long before Ockham, we often find the term *jus* used in a subjective sense, as well as the association of "right" and "power" that Villey had emphasised as the Franciscan's greatest contribution to the theory of rights. Furthermore, sometimes, when formally defining natural law, the *jus naturale*, the canonists attributed a subjective meaning to this term, understanding it as if it referred not to objective natural law, but to a subjective "faculty" or "force" or "power" of the human person¹¹⁴.

Commenting that:

This fundamental concept of Western political theory [natural rights] was born almost imperceptibly in the obscure glosses of medieval jurists. It could be said that in the works of the first decretalists there was a significant change in thought and language, which gave rise to a whole new species of ideas: the species of natural rights theories¹¹⁵.

Tierney recognises, therefore, with Villey, that there has been a shift from "right" to "rights", but he doesn't attribute it solely to Ockham, nor does he consider it incompatible with Thomist doctrine.

The third objection is that, according to Tierney, the idea of subjective natural rights does not depend on a particular philosophy or an individualist or nominalist metaphysics on which it is based. It is compatible with various types of philosophies and metaphysics, so much so that it is present in thinkers as diverse as the Spanish scholastics and Hugo Grotius, absolutists like Thomas Hobbes, liberals like Locke, Enlightenment figures like Kant, but it is also accepted by contemporary authors, neo-Aristotelians or neo-Thomists like Jacques Maritain and John Finnis.

In fact, it turns out that natural rights are correlated with natural law at all stages of the history of the doctrine - in the renaissance of law in the 12th century, in the Enlightenment

¹¹³ TIERNEY, B. *The Idea of Natural Rights*, op. cit.

¹¹⁴ IDEM, p. 60.

¹¹⁵ IDEM, p. 344.

of the 18th century and in the speeches of the 20th century. A modern thinker like Jacques Maritain, rooted in the Thomist tradition of natural law, defined natural rights as compatible with this tradition. More recently John Finnis, arguing with the language of contemporary analytical jurisprudence, treated the concept of subjective right as a "precious addition ... to the tradition of the 'doctrine of natural law'¹¹⁶.

Finally, Tierney gives a very rigorous judgement of the conceptual scheme of Villey:

Villey created a kind of Manichaeian universe. There is an Aristotelian world of thought, full of light and gentle reason, and an Ockhamist world of thought, where everything is darkness and blind will. The good theory of objective law can flourish only in the first world of thought, the bad theory of subjective rights only in the second¹¹⁷.

Despite this observation, the question posed by Villey remains. In fact, Spanish scholasticism was born at the beginning of the 16th century to promote a renewal and restoration of Thomism against the *modern way* that had dominated the main European universities, especially the Sorbonne, over the previous two centuries. On the question of the scholastics' fidelity to the Thomist tradition, Tierney states that interpreters are substantially divided. Some defend the thesis that the scholastics remained faithful to the Thomist tradition of objective law and did not develop a doctrine of subjective rights¹¹⁸ among them, Tierney cites the Dominican Philippe André-Vincent, who wrote:

If you look in Las Casas' work for the modern word 'human rights', the first proof is that you won't find it: neither the word nor its equivalent. [...] Behind this word there is always and definitively the idea of a set of subjective rights attributed to man, before any social relationship, by virtue of his nature. This idea does not exist in Las Casas. [...] Among the different meanings of the word right, the priority belongs to the objective meaning: *prima facie* the right is said to be "that which is just" (*quod justum*), - the very thing that is due between one and another; then, in the second and third attributions, the right is said to be the activities that determine what is just: the art of judgement, the prudence of the legislator, the fruit of these activities (the sentence and the law) (II- II q. 57 a. 1c et ad Primum). Like us, Las Casas doesn't need to refer to this analogy; he lives it with his Thomistic realism through his struggle to defend the rights of the Indians¹¹⁹.

¹¹⁶ See MARITAIN, Jacques. *Les droits de l'homme et la loi naturelle*. Paris: P. Hartmann, 1945. FINNIS, John. *Natural Law and Natural Rights*. São Leopoldo: UNISINOS, 2007.

¹¹⁷ TIERNEY. *The Idea of Natural Rights*, op. cit., p. 30.

¹¹⁸ IDEM, p. 257. ANDRÉ-VINCENT, Philippe. *Indigenous rights and development in Latin America*. Paris, 1971, p. 55. This position is analysed and criticised by Tierney in: IDEM. *Aristotle and the American Indians-Again*, op. cit. p. 297-305.

¹¹⁹ ANDRÉ-VINCENT, P. La dialectique lascasienne du droit naturel concret. Las Casas et le droit de l'homme. In: *I diritti dell'uomo e la pace nel pensiero di Francisco de Vitoria e Bartolomé de Las Casas*, op. cit. pp. 639-640. It should be noted that André-Vincent has the same conception of law as Michel Villey, only

Other authors, such as Villey, on the other hand, claim that the Spanish betrayed the teaching of St Thomas by attributing subjective rights to the American Indians, in fact assuming, despite their intentions, the doctrine of the *theologi moderni* or *juniors* who were heirs to the Ockhamist tradition.¹²⁰

The thesis I'm going to defend is that our notion of the law has the defect of being itself a foreign body, and is the product of the infiltration into law of a *Theology*, that this infiltration has unfortunately taken place in modern times and that the Spanish scholasticism is largely responsible for this happening¹²¹.

According to Tierney, the scholastics didn't betray Thomas' thought, but they didn't follow it literally either; they changed the meaning of the concepts to respond to the new questions raised by the discovery of America. Among the themes Tierney studied was the relationship between *jus* (right) and *dominium*, which can mean political dominion over people and economic dominion over things, in other words, property. Vitoria and Soto, says Tierney, received different meanings of *dominium* from tradition: some narrower, which do not allow the identification between *dominium* and *jus*, and others broader, such as *facultas* or *potestas*, which tend towards an identification between *dominium* and *jus*.

The maestros of Salamanca take up the objective conception of law from the Thomist tradition, but at the same time use the subjective definition of the *juniors*¹²² which tends to identify *dominium* and *jus*. *Dominium* is defined as the power or faculty to assume a thing for its use according to the law and reasonably instituted rights ("*potestas vel facultas propinqua assumendi res aliquas in sui usum licitum secundum leges et jura rationabiliter institutas*")¹²³ thus embracing the subjective conception of natural rights (*jura*).

Tierney therefore affirms, along with other interpreters¹²⁴ that the Salamanca theologians, without abandoning the objective conception of law, also defended a new conception of subjective natural rights, which is not identical to modern human rights, but opens the way to the new language of subjective rights.

who claims that the scholastics and Las Casas remained faithful to this objective conception and did not betray it, as Villey claims.

¹²⁰ TIERNEY, B. *The Idea of Natural Rights*. Op. Cit., p. 257.

¹²¹ VILLEY, M. *La formation de la pensée juridique moderne*. IV ed., Paris 1975 p. 362. See also IDEM. *La promotion de la loi et du droit subjectif dans la seconde scolastique*. "Quaderni fiorentini per la storia del pensiero giuridico moderno", n° 1 (1973), p. 55 (my translation).

¹²² Like the nominalist theologian Gabriel Biel (1410-1495), the jurist Conrad Summenhart (1465-1511) and the

Scottish theologian John Mair (circa 1550) to whom we owe the first theological intervention on the question of the New World in 1513.

¹²³ *Ibid.*

¹²⁴ Two scholars agree on this point, Paolo Grossi and Daniel Deckers. GROSSI, P. *La proprietà nel sistema privatistico della seconda scolastica*. In "Quaderni fiorentini per la storia del pensiero giuridico moderno", n° 1, 1973, pp. 123. DECKERS, D. *Gerechtigkeit und Recht. Eine historisch-kritische Untersuchung der Gerechtigkeitslehre des Francisco de Vitoria (1483-1546)*, Freiburg i.Br., Universitätsverlag-Herder, 1991 (Studien zur theologischen Ethik 35). On the other hand, they argue for a rigid continuity between the theologians of Salamanca and Thomas, as well as the Philippe André-Vincent: CARRO, V. *La teología y los teólogos-juristas españoles ante la conquista de América*. Op. Cit. BRUFRAU-PRATS, J. Introduction to SOTO, D. de. *Relección de Dominio*: Granada: Universidad de Granada, 1964.

Contemporary writings on the theories of rights by 16th century Spanish authors often claim either that they found a doctrine of rights in Thomas and simply appropriated it, or that they "betrayed" Thomas by adopting a doctrine that was contrary to his teachings, and ultimately derived from Ockham's nominalism and voluntarism. Both theories are simplistic. Ockham did not invent the concept of natural rights, which had deeper roots in medieval jurisprudence. And the doctrine of natural rights does not formally contradict anything that Aquinas wrote. [...]

The Spanish Dominicans were committed to reviving and spreading the teachings of their Order's greatest master. They could have decided to follow his example in this case too. But in the context of their time, they *needed* a doctrine of natural rights; above all to face the moral dilemmas raised by the Spanish conquests in America. As a result, they chose to associate a doctrine of rights with the Thomist principles they professed. The result was that when new problems arose at the beginning of the modern age, there was a theory of natural rights already widely disseminated and ready to be easily utilised by future generations of jurists and philosophers¹²⁵.

This reading seems the most appropriate to us, as we will see in detail in the interpretation of the main texts of the controversy.

2.8. Enrique Dussel. Las Casas: "as much critical consciousness as possible".

Tierney's hypothesis regarding the relevance of the debate on the New World for the development of modern political and legal thought is supported and "radicalised", from a different perspective, by Latin American liberation theologians and philosophers, especially in relation to the thought of Las Casas.

The Peruvian theologian and founder of liberation theology, Gustavo Gutierrez, has published a fundamental study on the theological thought of Las Casas, the fruit of more than two decades of research, entitled: *In search of the poor of Jesus Christ. The thought of Bartolomé de Las Casas*, in which Las Casas is presented as one of the true Fathers and Doctors of the Latin American Church¹²⁶.

In Brazil, Friar Carlos Josaphat, in addition to coordinating the Portuguese edition of the Complete Works of the great Dominican, published the largest Brazilian study on the life, work and theological and ethical-political thought of Las Casas, entitled: *Las Casas. All rights to all*, as well as other booklets¹²⁷.

One of the greatest contemporary Mexican philosophers, Mauricio Beuchot dedicated several works to Bartolomé de Las Casas, emphasising his philosophical value: *Filosofía y*

¹²⁵ TIERNEY. B. *The Idea of Natural Rights*. Op. Cit. p. 286-87.

¹²⁶ GUTIERREZ. Gustavo. *The search for the people of Jesus Christ*. The thought of Bartolomé de Las Casas. Brescia: Queriniana, 1995. Brazilian edition. *In search of the poor of Jesus Christ. The thought of Bartolomé de Las Casas*. São Paulo: Paulus, 1995 (Quotations will be made from the Italian edition).

¹²⁷ JOSAPHAT, Carlos Frei. *Las Casas. All rights to all*. São Paulo: Loyola, 2000. This book is the most comprehensive and documented biography of Las Casas published in Brazil. IDEM. *Bartolomeu de Las Casas. Contemporary and militant spirituality*. São Paulo: Paulinas, 2008.

política in Bartolomé de Las Casas. Los fundamentos de los derechos humanos en Bartolomé de Las Casas, among others¹²⁸.

As a representative of the philosophy of liberation, we have chosen the thoughts of Enrique Dussel, an Argentinian historian and philosopher who has lived in Mexico for many decades, on the controversy surrounding the Conquest of America and in particular the figure of Bartolomé de Las Casas.¹²⁹

In a short essay from 2002, which is little known, but which summarises the author's thinking on the subject well, Dussel defends three central theses¹³⁰.

The **first** is historiographical. Modernity finds in the discovery of America and the controversy that followed its true beginning, not just chronological, but foundational. It is a question of recognising that this first and last true encounter with a totally unexpected otherness, the "absolute otherness" Todorov speaks of, did not lead to the "discovery", but to the "concealment" of the other (*descubrimiento/encubrimiento*)¹³¹ to its destruction: the greatest genocide in modern history¹³².

This event has not been adequately thematised by Western reflection on the constitution of modernity and has not been considered as emblematic or paradigmatic as the Protestant Reformation or the French Revolution. This is because it is an event that needs to be somehow "removed" from the collective consciousness of the West, because it shows how Western modernity sinks its roots in violence and overshadows the image of Europe as the bearer of emancipation and progress.

Dussel uses the category of alterity in the same way as Todorov, but in a more political than moral way. He wants to demonstrate the originality and radicalism of Las Casas in relation not only to the School of Salamanca, but to all modern reflection on alterity.

In this sense, Dussel puts forward a daring proposal: to show how modern political philosophy was not born with Machiavelli or Hobbes, but with the controversy over the Conquest of America, which had Las Casas as its centrepiece.

Modern political philosophy was born out of reflection on the problem of the opening of the European world to the Atlantic; in other words, it was a Hispanic philosophy. For this reason, it was neither Machiavelli nor Hobbes who initiated modern political philosophy, but those thinkers who were in charge of Europe's expansion into the colonial world. The question of the other and the right of conquest were the initial themes of early modern philosophy¹³³.

¹²⁸ BEUCHOT, Mauricio. *Philosophy and politics in Bartolomé de Las Casas*. Salamanca: San Esteban, 2013. IDEM. *The foundations of human rights in Bartolomé de Las Casas*. Barcelona: Anthropos, 1994. IDEM. *La querella de la conquista: una polémica del siglo XVI*. Mexico: Siglo XXI, 1992.

¹²⁹ I would also like to point out: TOSI, G. Bartolomé de Las Casas. First philosopher of liberation Latin American. *Filosofazer*, no. 36, Jan/Jul 2010, p. 23-42.

¹³⁰ DUSSEL, Enrique. *Modernity and alterity. Las Casas, Vitoria and Suárez: 1514-1617*. In: Proceedings of the

"Primer Simposio Internacional del Pensamiento Iberoamericano". Salamanca: Universidad Pontificia de Salamanca (16-19 October 2002). (CD-ROM).

¹³¹ DUSSEL, E. 1492. *The Concealment of the Other. The origin of the myth of modernity*. Vozes: Petrópolis, 1993.

¹³² In addition to Todorov, whom we have already mentioned, STANNARD, D. *Olocaust* also defends the genocide thesis

American. The conquest of the New World. Torino: Bollati-Boringhieri, 2001 [1992]. A more balanced position, not so much on the numbers, but on the causes of the destruction of the indigenous people can be found in: LIVI BACCI, Massimo. *Conquest. The destruction of American Indians*. Bologna: Il Mulino, 2005.

¹³³ DUSSEL, Enrique. *Modernidad y alteridad*, op. cit.

At this crucial moment in the constitution of modernity, Las Casas represents for Dussel, using a Marxian/Lukacsian category, the "maximum possible critical consciousness":

Bartolomé de Las Casas is a critic of nascent Modernity, whose shadow has covered the last five centuries. It is the "maximum possible awareness", not only from Europe - as I thought until I wrote these pages - but also in the Indies themselves, from the Amerindian peoples. He coherently develops a theory of the *universal claim to truth*, of every serious and honest participant (European and Amerindian, as well as African or Arab) - against relativism or scepticism à la Rorty - in intercultural dialogue; which does not prevent him, in any case, from admirably articulating a position not only of tolerance (which is merely negative), but of full responsibility towards the Other (which is a positive attitude), from a *universal pretence of validity*, which ethically and politically obliges us to "take seriously" the rights (and also the duties deducible from said rights) of the Other, in an exemplary way until the 21st century¹³⁴.

The **second** element is the point of view that Las Casas expresses and defends, which is not limited to the interests of the congregation itself, as Gliozzi would have it, but represents the interests of the poor and oppressed of the colonial system.

Bartolomé de Las Casas resolutely takes the perspective of the dominated indigenous person as the starting point for his critical discourse, organised logically and philosophically from the horizon of the *modern* scholasticism of the Escuela de Salamanca - the most important European university centre in the 16th century, around the Dominican convent of San Esteban. [...]. In 1514 - three years before the start of the Lutheran Reformation, and when Machiavelli was writing *Il Principe* - continuing the *first ethical protest* against the expansion of Modernity, against conquest, launched by Antón de Montesinos and Pedro de Córdoba in 1511 in Santo Domingo, Bartolomé changed his existential project and, until his death, he became a "Defender of the Indians". He immediately discovers, in the material negativity of the Other¹³⁵ - as Horkheimer would say - the misery into which the conquest had reduced the Indian, the "original negativity"¹³⁶.

Las Casas becomes a spokesperson for the horror and indignation of the indigenous peoples at the destruction of their lives and the sudden and violent collapse of their entire value system. The **third** relevant element in Dussel's re-reading of Las Casas is the radicalism of his thinking, which applies the principles of reciprocity to the end, going so far as to justify human sacrifices and cannibalism, which are considered by all to be the worst forms of violence.

¹³⁴ IDEM, *ibid.*

¹³⁵ See DUSSEL, E. *Ethics of Liberation in the Age of Globalisation*. Petrópolis: Vozes, 2000, ch. 4.

¹³⁶ DUSSEL, E. *Modernidad y alteridad*, op. cit.

contemporary interpreters (and some of our contemporaries) as intolerable and a reason for a "holy, just and humanitarian" war.¹³⁷

Las Casas not only argued that the only just war in the Americas was the war of self-defence by the Indians, but he also defended the duty of the Indians to promote a just war to defend their traditions against European Christians. This must have seemed scandalous to his contemporaries, like defending terrorists today.

Given that they are happy to claim [...] that by worshipping their idols they worship the true God [...] and, despite the assumption that they have an erroneous conscience until the true God is preached, with *better and more credible and convincing arguments*, above all with the examples of Christian conduct, they are undoubtedly obliged *to defend the worship of their gods and their religion and to go out with their armed forces* against anything that attempts to deprive them of such worship [...]. They are thus obliged *to fight against them, kill them, capture them and exercise all the rights that are corollaries of a just war*, according to the law of the nations¹³⁸.

And Dussel comments:

Never in the history of Europe, and subsequently in the five centuries of Modernity, had this strategic ethical and political criterion been reached with such clarity! [...] Bartolomé de Las Casas will remain in the history of Modernity as a political failure, but also as the first critic and most radical sceptic of Modernity's civilising pretensions¹³⁹.

If, as Todorov says, "the discovery of America, or rather of Americans, is the most extraordinary encounter in our history"¹⁴⁰ Las Casas' understanding of this encounter is one of the most extraordinary in our history.

According to Dussel, in his theory and in his practice, one of the highest moments of the "discovery that the *self* makes of the *other*" is manifested, which will never again be achieved with such radicalism in modern consciousness and in the contemporary and subsequent consciousness.

In the following centuries, the theories that Las Casas had fought against, of the superiority of one civilisation over another, would dominate the scene, fuelling the various forms of Eurocentrism in the name of the ideologies of evangelisation, civilisation, progress, racism, (under)development, democracy and human rights that accompanied the long process through which the history of Europe became the history of the world.

Dussel agrees with Todorov and Pagden's "anthropological" reading, valuing Las Casas' understanding of the "otherness" of the other, seen as both absolute and negative. He also uses Gliozzi's Marxist category of ideology, but attributes to Las Casas the representation not of interests

¹³⁷ CASSI, A. A. *Santa, giusta, umanitaria. La guerra nella civiltà occidentale*. Rome: Salerno Editrice, 2015.

¹³⁸ LAS CASAS, B. *Apología*. Madrid: Alianza Editorial, p.168.

¹³⁹ DUSSEL, E. *Modernidad y alteridad*, op. cit.

¹⁴⁰ TODOROV, T. *The conquest of America*, op. cit. p. 5-6.

of his congregation, but of the Indians themselves, since he was the only one to defend the just war of the Indians against the Spanish.

It's a very fascinating and radical read, which sees Las Casas in the light of the categories of contemporary liberation theology and philosophy, like his father and founder.

2.9. Nestor Capdevila and Luca Baccelli. Bartolomé de Las Casas, the legitimacy of evangelisation versus the illegitimacy of the Conquest.

Nestor Capdevila, despite adopting a very favourable interpretation of Las Casas, differentiates himself from the philosophers of liberation by denouncing the structural ambiguities and insurmountable limits that he finds in the Dominican friar's thinking.

At the beginning of the book, he makes two main criticisms of Las Casas' "liberating" reading, contrasting "humanism" with "humanitarianism" in Las Casas.

Las Casas, faithful to Christianity, affirmed the unity of humanity and the equality of men before God. On this basis, he defended the rights that the Indians shared with the Spanish. But this humanism has two immediate limitations. Firstly, Las Casas' fight refers only to the Indians [...].¹⁴¹ But even in the field where it works, (the Indians), this humanism is limited. Las Casas defended equal rights only up to a certain point. Throughout his life he always accepted Alexander VI's donation as sufficient, according to him, to substantiate the legitimacy of the Castilian imperial claim. This double limitation is intrinsic to his position. Analysing his arguments will show that nothing will allow him to overcome it¹⁴².

And he concludes his reasoning like this:

This ambiguity is profound. It runs through the apparently univocal objective of the Lascasian struggle: to defend the Indians. This defence can be based on the affirmation of equality, since Las Casas very clearly legitimises the indigenous war against the Spanish (humanism); but it can also express the existence of a form of inequality, since Las Casas strives to make Spanish domination acceptable to the Indians (humanitarianism)¹⁴³.

Las Casas' relationship with the otherness of the indigenous people was thus a profoundly and inevitably asymmetrical one, despite his (good) intentions.

Capdevila's questions are as follows:

How can the same ideology serve to defend those whose submission it legitimises? How is it possible for opposing positions to be constituted in ideology? What is the relationship between the Lascasian critique and the ideology within which (and against which?) it takes place?¹⁴⁴

¹⁴¹ It doesn't include heretics, witches, Muslims or, according to a "black legend" against Las Casas, enslaved blacks. We'll return to this issue in the text.

¹⁴² CAPDEVILA, Nestor. *Las Casas. Une politique de l'humanité*. L'homme et l'Empire de la foi. Paris : Les Édition du Cerf, 1998, p. 13 (my translation).

¹⁴³ IDEM, p. 13, 14.

¹⁴⁴ IDEM, p. 14.

These questions are analysed in detail and answered throughout Capdevila's detailed and documented text. The author recognises the anti-imperialist stance of Las Casas, who goes so far as to denounce the illegitimacy of the entire conquest process, the obligation of restitution and the legitimacy of Indian warfare, but concludes that: "The denunciation of abuses, the defence of peaceful evangelisation play an essential role in Las Casas, but they also allow us to think about the possibility of a submission of the indigenous people by the Spanish."

And in his conclusions, he takes up the critique of Lascasian humanism:

But this humanism remains problematic. Two phenomena explain this limitation. The difference between fidelity and infidelity, which always produces theocratic political effects. The impossibility of understanding the anti-imperialist position on a spiritual level, despite the dynamics of Lascas's critique, symbolises the difficulty he has in assuming this humanism theologically and to the end in the case of the Indians¹⁴⁵.

In the end, Capdevila's arguments focus on the fact that, in Las Casas, the uncompromising defence of indigenous rights is an exceptional and specific case; he does not take an equally radical stance on other aspects of evangelisation, imperialism and colonialism, such as the issue of heretics, Muslims and blacks. Capdevila concludes:

On all other political issues, Las Casas can hold perfectly "normal" positions. The principles that allow the oppression of indigenous people to be criticised can justify other oppressions without there being an ideological and political contradiction¹⁴⁶.

In fact, Las Casas was a member of the ecclesiastical and political *establishment* of the time, an influential figure who was never investigated by the Inquisition and who defended orthodox positions on many aspects of Catholic doctrine; who wrote a *treatise proving the sovereign empire and universal principality that the kings of León and Castile have over the Indies*, and defended (against Vitoria) the legality and legitimacy of the Alexandrian Bulls. But he felt invested with this power to accuse the whole colonialist and imperialist process more effectively and with ever greater radicalism.

Todorov's moral (or moralistic?) dilemma reappears here, although expressed in a more refined and complex way: the ambiguities, contradictions and limitations are part of the cultural horizon in which he lived and moved. Could he have done more or are we asking too much of Las Casas who, despite his originality, was and could not have been a man of his time?

In the end, as Dussel says, it's about the maximum "possible" awareness; according to a historicist like Hegel, nobody can step outside their own time, nobody can be "extemporaneous" as Nietzsche thought.

However, we recognise the relevance of Capdevila's observations, which help us to avoid an apologetic or hagiographic reading of such a complex author.

A similar tension and ambiguity are also attributed to Las Casas in Luca Baccelli's book, *Bartolomé de Las Casas. La conquista senza fondamento*¹⁴⁷.

¹⁴⁵ IDEM, p. 361.

¹⁴⁶ IDEM, p. 361

¹⁴⁷ BACCELLI, Luca. *Bartolomé de Las Casas. La conquista senza fondamento*. Milan: Feltrinelli, 2016.

The book intelligently and thoughtfully explores the main recurring themes in Las Casas' work: the condemnation of wars against the indigenous people; the condemnation of the application of the Aristotelian doctrine of natural slavery to indigenous peoples; the anthropological themes, which make Las Casas' work one of the first examples of comparative cultural anthropology; the political-legal themes relating to the (de)legitimation of the entire process of conquest; evangelisation as the *only* legitimate "foundation" of the conquest, as long as it was conducted in the *only true way*, that is, in an absolutely peaceful manner.

Baccelli follows the different "phases" of Las Casas' thought and action, which began with attempts at alternative "experiments" in evangelisation and colonisation and continued in a crescendo until his disillusionment at the failure of these experiments and the progressive radicalisation of his thinking and action led him to condemn the whole process of conquest.

Baccelli writes in the conclusions of his work:

Las Casas turned from a peacemaker of the conquered to a promoter of paternalistic and disciplinary forms of reform, which also referred to a vision of evangelisation as civilisation. However, the successive defeats [...] led him to a progressive radicalisation and to denounce everything that had been done in the Indies as unjust and tyrannical¹⁴⁸.

Baccelli wonders how to understand this process in relation to the meaning of the colonial enterprise:

Should we conclude that Las Casas "remains from a colonial perspective", to use Todorov's expression?¹⁴⁹ Or can we consider Las Casas a precursor of anti-colonialism, who nevertheless favours Spanish imperialism, both political and ecclesiastical, according to Castro's interpretation?¹⁵⁰

He concludes:

In the chapters of this volume I have examined the theoretical content of Las Casas' work, trying to avoid beatifications and demonisations; but I hope to have offered some arguments for an evaluation that is more in tune with Young's thesis according to which Las Casas begins his critique of colonialism and, at the same time, imperialism¹⁵¹.

However, this reading does not hide the fact that, according to Baccelli, Las Casas' entire oeuvre is permeated by a fundamental tension that finds its origin "in the attempt to

¹⁴⁸ IDEM, p. 227 (my translation). In his conclusions, Baccelli explains the meaning of the work's title: "From success to defeat, Las Casas' thinking becomes ever more radical, and conquest loses any foundation". (p. 230). See also: BACCELLI, L. Norberto Bobbio: the age of baseless rights, in: TOSI, G. (org). *Norberto Bobbio. Democracy, Human Rights, War and Peace*. João Pessoa: Editora UFPB, 2013, Vol. 2, p. 105-138.

¹⁴⁹ BACCELLI, L. *Bartolomé de Las Casas... op. cit.* Baccelli refers here to Todorov's book on *The Conquest of America*, which we analysed above.

¹⁵⁰ IDEM, p. 226. Baccelli refers here to Daniel Castro's book. *Another face of Empire: Bartolomé de Las Casas, Indigenous Rights, and Ecclesiastical Imperialism*. Durham: Duke University Press, 2007.

¹⁵¹ BACCELLI, L. *Bartolomé de Las Casas... Op. Cit.*, p. 226. Baccelli refers here to the book by Robert J.C. Young. *Postcolonialism. An Historical Introduction*. London: Blackwell, 2001.

to make compatible the affirmation of the legitimacy of evangelisation and the denunciation of the illegitimacy of conquest".¹⁵².

Marco Geuna writes in his review of Baccelli's work:

At the heart of Las Casas' thinking is an ambivalence that resolves itself into a paradox: "the Indians are fully rational and virtuous; therefore, they are suitable to receive the gospel" (p. 153). Based on this, Las Casas, on the one hand, opposes the reduction of the Indians into slavery with all his might; on the other, he justifies the presence of Christians in the New World. Even in the later years, in which the Dominican radicalised his theses and seemed to be on the "threshold of a final, radical 'conversion'¹⁵³ which goes so far as to revoke any legitimacy for the Spanish presence in America (p. 228), the need to proclaim the Christian message is not discussed¹⁵⁴.

And here we come back to the issue raised by Capdevilla about the Catholic message's claim to universality, which implies the claim to be the bearer of a civilising project. It is with this question that Baccelli concludes his long analysis of the work of the procurator of the Indians:

Las Casas implicitly criticises the dialectic of Christian-European and then Western reason, but he cannot escape it. It is a reason that is convinced of reaching the truth and expressing universal values, and for this very reason is structurally prone to cultural imperialism and the imposition of a model of rationality that is always more likely to unleash symbolic violence, and not only that¹⁵⁵.

This is a very complex and topical subject. One of the many paradoxes of the controversy is that the ethical and political values defended by Las Casas were foreign to the culture of the *recenter inventi* peoples. Todorov is right when he says that "Las Casas loves the Indians, but he doesn't know them; Cortés knows them in his own way, although he doesn't feel any special 'love' for them". Indeed, Cortés' ideology was the same as Moctezuma's: they both spoke the same language, that of the conquistadors. While Las Casas spoke a strange language and brought a new and unknown message.

The issue has everything to do with the current debate on the universality of human rights, which is developing between two extremes: an imposition of Western values of human rights, democracy and tolerance in the name of their supposed universality; and the justification of human rights violations in the name of cultural differences.

A balance that is as difficult (or impossible) to find today as it was in Las Casas' time¹⁵⁶.

¹⁵² BACCELLI, L. *Bartolomé de Las Casas...*op. Cit., p. 17.

¹⁵³ Todorov, as we saw above, had indicated this as a conversion to "cultural relativism or perspectivism", the result of Las Casas "abandoning" the belief that his religion was the only true one.

¹⁵⁴ GEUNA, Marco. Las Casas e i Dilemmi della Conquista. *Storia del Pensiero Politico*, 2/2017, p. 307-330, p. 312.

¹⁵⁵ BACCELLI, L. *Bartolomé de Las Casas...*Op. Cit, p. 230.

¹⁵⁶ On this argument see: BACCELLI, L. *I diritti dei popoli*. Universalismo e Differenze culturali. Roma-Bari: Laterza, 2009. See also: ZOLO, Danilo. Universalità dei Diritti Umani? In

Conclusions

All these readings and interpretations, sometimes so different and contrasting, are in a way legitimate and show the various facets of this very complex debate which, despite the great distance that separates us, cannot become something "past"; this only happens with the great events that deserve the title of historical, and which therefore continually need to be interpreted and reinterpreted because they have to do with the present.

All the protagonists in the debate were Spaniards who owed allegiance to the nascent unified state after the *Reconquista*, who were proud to be "free subjects of his majesty", the greatest power of the time, and who at the same time owed respect to the supreme medieval authorities, the Empire and the Papacy. They were all deeply convinced that the Catholic religion was the true religion, that heretics should be condemned, that the Muslim infidels were "perpetual enemies" of Christians and therefore had to be fought.

They all represented certain material interests, justified in the name of the need to preach the gospel to the newly discovered peoples and to annex these peoples to the Spanish Crown. They all believed in the doctrine of natural law imprinted by God in the hearts of all men and respected Aristotle and Thomas Aquinas as the highest authorities, as well as all the other religious and lay authorities they were obliged to quote by the scholastic method. They all believed in the doctrine of a just and holy war to defend and propagate the faith against the infidels.

Despite these identities, opinions on the legitimacy and legality of the conquest of America diverge radically, on a *continuum* ranging from apology to the most radical delegitimization, in a surprisingly free, open and engaged debate on practical issues and decisions, never just academic.

On one thing, however, everyone agrees about the eccentricity of Las Casas' thinking and actions: either because he was a fanatic and a psychopath, or because he was a saint and a prophet, or because he was a cultural anthropologist and a relativist/perspectivist, because he defended human sacrifices and the just war of the Indians, or because he was a democrat, a Rousseau *avant la lettre*, or because he was the first Latin American liberation theologian and spokesperson for oppressed peoples.

The interpretations presented here therefore constitute premises for understanding the authors' original texts: Sepúlveda's *Demócrates Segundo*, Soto's *Relectio de Dominio, Indis' Relecciones* and Vitoria's *De Jure Belli, the Brevísima Relación, the Apologia* and Las Casas' *De Regia Potestate*, among others.