



Research Paper Series

Human Identity and Otherness
Learning from Francisco de Vitoria

Human Identity and Otherness – Learning from Francisco de Vitoria

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Abstract

How are we to treat human beings whose moral values, aesthetic ideals, and religious convictions we do not share? In its search for an answer to such questions today's globalization ethics stands to benefit from a study of the moral philosophy of Francisco de Vitoria. Criticizing the violent exploitation of the South American natives, Vitoria developed a catalogue of basic moral norms whose validity, he held, reached across any and all cultural boundaries. In the 16th century, that was no minor feat. At the time, it was not uncommon to invoke Aristotle's theory of 'natural slavery' as a probate legitimization of the Christian conquest of South America.

In this paper, I first reconstruct Aristotle's theory of 'natural slavery'. Second, I sketch how the philosophy of Thomas Aquinas altered the intellectual framework from which Aristotle's theory was interpreted in the late middle ages. Third, I show how Francisco de Vitoria repudiated the theory of 'natural slavery' in defense of the unity of human dignity in the face of the socio-cultural diversity of human life. Last, with a few to contemporary debates, I draw conclusions on the status of religious arguments in the context of globalization ethics.

1. Introduction

Contemporary globalization ethics aims to reconcile two contrary tendencies. On one hand, many scholars reject the all-too-easy subordination of the “otherness” of foreign cultures and customs under exogenous generalizations (Cooke and Vassallo 2009). In past centuries, concepts of human identity have (too) often become the intellectual handmaidens of imperialism so that today qualms about the ingenuous use of such universals as ‘human nature’ and ‘humanity’ abound (Hardt and Negri 2004). On the other hand, the pressure of planetary problems drives a quest for global solutions and institutions, with a renewed tendency to prioritize the universal over the particular. Without some overarching standards, it seems, the global community cannot bring about the requisite cooperation to assure the sustainability of human life on earth (Singer 2004). Between these contrary poles of difference and identity, a debate presently takes place about the axiological status of theories on human nature and their ethical impact “in the age of globality” (Dierksmeier 2011). This debate stands to gain much from the moral philosophy of Francisco de Vitoria (1492-1546). Drafting a moral theory that integrated cultural and religious ‘otherness’, Vitoria embarked on a project with enormous relevance for present-day debates (Dussel 2005).

From the perspective of Christian humanism, Vitoria established principles of inter-cultural dialogue able to transcend the foundations they were built upon. Vitoria constructed an ethics that demanded unconditional respect also for persons who reject the very (metaphysical and theological) premises of his ethics. In the 16th century, many intellectuals legitimated the Spanish conquest and the concomitant subordination of the South American natives with Aristotle’s theory of ‘natural slavery’ (Hanke and Rausch 2006). Vitoria, however, rebuked such attempts and curbed the colonial ambitions of the *conquistadores*. He saw in the American Indians rational creatures, their manifest otherness notwithstanding, with exactly the same claim to human dignity and basic human rights as their invaders ascribed to themselves (Rodríguez Molinero 1998). Before the 19th century, such a cross-cultural acknowledgment of a

common human nature, was neither regarded theoretically as self-evident, nor could it practically be taken for granted (Scott 2007). At his time, Vitoria's position was unusual and marked a clear humanistic progress (Brett 1994).

In what follows, I first describe the impact of Aristotle's theory of 'natural slavery' on Vitoria's contemporaries (1). Then, I sketch how Thomas Aquinas (1225-1274) altered the cognitive framework Aristotle's theory was interpreted in (2), before I show why Francisco de Vitoria opted for a moral philosophy that reconciled the socio-cultural diversity of human life with an idea of human identity open and to such 'otherness' (3). Last, I draw some conclusions for contemporary debates on the status of religious arguments in the context of globalization ethics (4).

2. 'Natural Slavery' – from Aristotle to Juan Ginés de Sepúlveda

In 1493 Pope Alexander VI issued a Bull, wherein he 'donated' the American territories to the Spanish and Portuguese crown (Hanke 1949). Those regents in turn felt quite warranted in accepting this 'gift': because of their 'discovery' of these 'new' lands and their 'holy' mission to Christianize the natives. The assumption that life under Christian tutelage was a blessing for the American Indians was commonplace. Most contemporaries concurred the Amerindians could not and should not govern themselves (Hanke 1959). Hence the *encomienda* system: In order to civilize these 'savages', they were 'commended' to Spaniards through whose wise rule and model they – in (albeit involuntary) exchange for their labor – would be educated. Surely *some* Europeans also came to the 'New World' with genuine zeal to better the material lot and spiritual destiny of the natives. Yet the fervent belief of the conquerors in their own cultural, moral, and religious superiority translated often into practices much to the detriment of the social fabric of the Amerindian communities (Silva 2007). The patent violence of their conquest and dominion needed moral justification before the court of Christian consciences, and found it, too, in the claim that such measures were being applied (only) in the best interest of the coerced (Ramsey 1961). The violence was, the argument went, both for the moral betterment and to the material advantage of the natives.

An all-important buttress for such claims was Aristotle's 'natural slavery'-theory. In his *Politics*, Aristotle had remarked some people became slaves not by conquest and

convention alone but also *by nature*; for lack of virtue and/or reason some individuals as well as some peoples were incapable of self-government (Pol. 1254b20). For Aristotle, the subordination of such persons and communities was part of the natural order of life: the superior governs the inferior. This view rested on a philosophy that ascribes to each living entity a certain goal (*telos*) to which it strives. Plants, for example, need specific environments (soil, water, sun, etc.) but will, given these conditions, predictably flourish. Therein they realize their *final* end (PA I, 641b, 34-39). Humans strive towards ends, too. Everything human, however, does not simply follow a predetermined path but relies greatly upon personal agency. Not only external conditions can hamper the development of human life, but failure in human affairs also stems from misguided *inner* direction. The possibility to ruin well-being, e.g. through turpitude and vice, is endemic to every human being and community. For successful government of the self and the state, a *teleological* concept of life is needed therefore to assess what truly constitutes well-being (as an end) and what effectively brings it about (as means).

The final aim of human life is marked out by Aristotle as flourishing (*eudaimonia*), to be attained by rational activity (NE 1098a, 3-8). To Aristotle, “it is clear that the rule of the soul over the body, and of the mind and the rational element over the passionate, is natural and expedient; whereas the equality of the two or the rule of the inferior is always hurtful.” (Pol. 1254b5-1255a2) In consequence, individuals are to be considered “happy” (well-ordered, flourishing) when they rationally govern their outer and inner world so as to live self-sufficiently (NE 1097b, 15-16). One cannot “deduce” the good life from abstract principles (Koslowski 1993). Rather one must work from experience and develop an understanding of different customs and mores (NE 1142a, 13) so as to learn, gradually and habitually, to employ wise judgment in the management of one’s affairs. The good life can thus neither be defined nor attained in abstraction from the respective communities one lives in. We need the paragon of concrete persons, who excel in judgment and wisdom (NE 1140a, 24; 1145a, 13). By observing how these wise and prudent men (*phronimoi*) master life we gain the requisite normative orientation and by imitating them we develop our own character (Celano 2007). Following the example of such leaders and their judgment helps perfect individual life, and so does subordinating those who cannot judge for themselves to those who can (NE 1144a, 4).

There are then relations of *natural* subordination between men of different capacities, i.e. between those who govern their lives according to reason and “those whose business is to use their body, and who can do nothing better” (Pol 1254b5-1255a2). Aristotle declares that “the lower sort are by nature slaves, and it is better for them as for all inferiors that they

should be under the rule of a master. For he who can be, and therefore is, another's [...], is a slave by nature." (ibid.) It is not sheer physical strength that makes some the natural subjects of others but a difference in the ability to govern one's life according to reason virtue. The rational capacities of some individuals do not suffice to order their life to the good themselves and so they depend on the authoritative guidance of others. Hence "for these latter slavery is both expedient and right" (ibid.) because "the *superior in virtue* ought to rule, or be master." (Pol. 1255a20; my italics.)

Crucial for the favorable reception, which this theory of 'natural' slavery found throughout the ages, are its claims to first ontological and then and therefore ethical validity. Aristotle suggests he merely translated the eternal hierarchy of being into political forms. Such a 'natural' kind of slavery cannot be biased against the slaves. On the contrary, he states, "the slave by nature and the master by nature have in reality the same interests" (Pol. 1278b33-37). Each master will, if only as prudent/wise as stipulated, consider and further the well-being of his slave, "since, if the slave perish, the rule of the master perishes with him." (ibid.) Consequently, the truly 'natural' slave is 'naturally' better off under the wise direction of the slaveholder than under his own unwise guidance. This holds true, for Aristotle, especially in regard to some "foolish people who by nature are thoughtless and live by their senses alone [...], like some races of the distant barbarians" (NE 1149a5-12). For these "barbarians, being more servile in character than Hellenes", do not even "rebel against a despotic government". They gladly suffer "tyrannies because [they] are by nature slaves" (Pol. 1285a18-24); subordinating such peoples must be legitimate.

3. Medieval Reception and Thomas Aquinas

Aristotle's conception of natural slavery exerted considerable authority over the medieval mind (Ashley 1941). The Scottish theologian John Mair (1467–1550), was one of the first to ponder whether the American Indians might accordingly be considered 'natural slaves' (Quart. Sent. Quaest., Dis. 15, q.10). As stereotypes of the time had it, the peoples of South America were vastly inferior to Christians in the management of their cultural and political affairs (Brett 1994). Their enslavement might therefore be serving their own interests and thus be morally legitimate. Especially through the spirited advocacy of the renowned humanistic scholar Juan Ginés de Sepúlveda (1489-1573) this argument gained currency (Hanke and Casas 1974). Sepúlveda held the wars against the Indians were to their benefit.

“What is more appropriate and beneficial for these barbarians than to become subject to the rule of those whose wisdom, virtue, and religion have converted them from barbarians into civilized men (insofar as they are capable of becoming so), from being torpid and licentious to becoming upright and moral, from being impious servants of the Devil to becoming believers in the true God?”¹

A number of contemporary thinkers, spearheaded by Bartolomé de las Casas (1474-1566), Juan de Zumárraga (1468-1548) and Domingo de Santo Tomás (1499-1570), opposed this view. Many, perhaps most of the dialectic weapons they used came out of the arsenal of Francisco de Vitoria. Equipped with his arguments, these Dominicans aimed to conscribe the temporal power wielded by Christian authorities over non-Christian peoples. As, however, from a Christian perspective, the natives could never be worthy of respect *qua* pagans, one had to locate their innate dignity in dimensions of their personality unaffected by paganism. In order to underscore their rights one had to raise the axiological status of the pagans-as-*persons* through natural law theory (Tuck 1979). From within the Christian moral-theological program these thinkers had therefore to advance a religiously *neutral* anthropology; and in this daring intellectual maneuver the moral philosophy of Thomas Aquinas assumed a central role.

Thomas’s ethics raises and defends the claim to be valid for each human being, irrespective of his or her religious convictions. This claim rests on the ability of the “natural light” of reason (*lumen naturale*) to establish truth (*S. th.* I-II, 109, 1 ad 2; II-II, 8, 1 c; 15. 1; 171. 2 c & 4 ob. 3; etc.) independent of revelation. In Thomas’s view, the human being is endowed with rational capacities which can be supervened, but not contradicted or annihilated by ‘supernatural’ (*lumen supernaturale*), i.e. revelation-based, knowledge (*S. th.* I-II, 109, 1 ad 2). In emphasizing the capacity of human reason to reach truth unaided by theology, Thomas addresses the rational powers of every human being, everywhere and always (*SCG* 1, 2). The fundamentals of morals, for instance, – i.e. that “good is to be done and pursued, and evil is to be avoided” (*S. th.* I-II, 94, 2) – each human being can know with certainty (Greene 1997). This most basic knowledge (*synderesis*) can never be expunged “from men’s hearts” (*S. th.* I-II 94, 6). Within each person rests hence an indestructible core of goodness (*Sent.* II, d. 24, q. 3, a. 3 ad 3); no human being is, consequently, without any potential for the good and thus without dignity deserving of respect (*S. th.* I-II 85, 2).

Although, like Aristotle (*NE* 1094b), Thomas held that the good of the *polis* had

1 Sepúlveda, J. G. d. & Losada, A. 1951. *Democrates segundo*. Madrid,: Consejo Superior de Investigaciones Científicas, Instituto Francisco de Vitoria. [1547], p. 29.

preeminence over the interests of individuals, he added as an important qualification that God “is the ultimate cause of all good” (*Comm. NE I, 2, 30*). Whereas for Aristotle the common good (*qua* good of the *polis*) equals the good of the citizens, Thomas demurs. To him “the common good of the whole is God himself, in whom consists the happiness of all” (*De perf. vitae spirit.*, c. 13, n. 634). The political good, that is, remains subordinated to God (*Comm. NE I, 7, 95*). Hence “man is not ordained to the body politic, according to all that he is and has” (*S.th. I-II, 21, 4, ad 3*) but only in certain mundane affairs (Maritain 1947). Respect for human dignity cannot ever be outweighed by communal concerns (*S.th. II-II, 32, 5*).

Within this framework, Thomas situates his theory of government. Just as on a ship there are several tasks, which (as the work of the ship’s carpenter) can be performed in relative autonomy, it behooves the captain to execute supervision over all subordinate functions in view of the course set for the vessel. Similarly, the political leader must oversee that the social subsystems are well-ordered so as to provide the necessary conditions (health, wealth, science, defense, etc.) so that the social body can accomplish its predominant goal: to enable people to live well (Reg I, 14). In all, regents are to ward off detriments from society and to foster all that helps individuals reach their common good (Reg I, 1). Government should thus keep society (internally and externally) at peace and provide the requisite intellectual as well as material conditions so that the people can pursue worldly happiness and spiritual salvation (Reg I 13/14).

In order to describe what makes for legitimate government, Thomas employs Aristotle’s theory of the ‘four causes’². Legal and political injustice, he declares, can be identified by rational standards, namely “by being contrary to human good, [...] – either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory [*causa finalis*] – or in respect of the author, as when a man makes a law that goes beyond the power committed to him [*causa efficiens*] – or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good [*causa formalis*].” (*S.th. I-II 94, 4*; my interjections in brackets) In short, beyond procedural criteria of justice (*causa efficiens, causa formalis*) Thomas provides also substantial principles for its normative assessment (*causa materialis, causa finalis*) (*De Reg., I, 6*).

Different countries have, obviously, to deal with varying circumstances and will thus

² While Aristotle used these causality-types predominantly for questions of theoretical philosophy (*Phys. II, 3, Metaph. V, 2*), his medieval commentators employed this typology also in the ambit of practical philosophy, especially for juridical purposes. A simple way to conceptualize the ‘four causes’ is by the example of a man building a house. He employs his own labor (*causa efficiens*), uses stones (*causa materialis*), follows an architectural depiction (*causa formalis*) in order to build himself a dwelling (*causa finalis*).

build out divergent social norms (S.th. I-II 96, 5). Yet certain strictures of natural law apply to all peoples around the globe (*ius gentium*) due to their shared humanity (S.th. I-II 95, 4). Laws that are fundamental for social collaboration Thomas enlists as *ius gentium*, whereas norms to optimize the common good fall under the rubric of *ius civile* (S.th. I-II 95, 4). That is to say, although Thomas regards most specifics of government as socially negotiable, he does affirm that for its legitimacy human law always remains beholden to the fundamental principle of justice (S.th. I-II 95, 2). Some contextual differences in regards to the specificities of regional customs (*S. th.* I-II 95, 3) and temporal affairs (*S. th.* I-II 96, 1) are requisite, but the claim to ethical diversity also meets clear ‘natural’ limits. Not all variants introduced by circumstance and context are morally acceptable; practices that contravene the universal prescriptions of the natural law must be proscribed (S.th. I-II, 95, 2). In short, Thomas’s connection between positive law and certain global precepts of justice (ST II-II, q. 122 a. 6) portends the era of universal human rights.³

4. Francisco de Vitoria

Vitoria’s views about natural and positive law are decisively influenced by Thomas’s ethics⁴ and arise from the attempt to apply his natural law theory to a markedly changed world;⁵ to a world, that is, which since the year of Vitoria’s birth (1492) had dramatically transformed “because of these barbarians in the New World, commonly called Indians, who came under power of the Spaniards some forty years ago, having been previously unknown to our world.” (De Ind., title page) To these peoples, the Christian faith had never been

³ This is, *mutatis mutandis*, still the position of the Catholic Church. See the report of the International Theological Commission, “The Search for Universal Ethics. A New Look at Natural Law” (SUE 2009). In this study, a moral minimum of human rights is defended as following from human nature (n. 39), and certain ethical universals are derived from the fundamental inclinations of the human being (n. 45-51), while in all non-essential aspects and realms of the social mores allowance is made cultural variety (n. 53).

⁴ See his Comm. “De Lege” on S.th. I-II, 90-105; in fact, all the ‘relecciones’ that are the basis for his role as a precursor of contemporary international law theory like *De potestate civili* from 1528, *De homicidio* from 1530, *De eo ad quod tenetur homo* from 1535, *De Indis recenter inventis* from 1539, and *De jure belli* from 1539 are an outgrowth of his commentaries to Thomas’s *Secunda Secundae*.

⁵ Vitoria left no treatises. His thoughts are accessible to us, though, through transcripts of his lectures. His political writings are available in translation in: Francisco de Vitoria, *Political Writings*, ed. A. Padgen, and J. Lawrance, Cambridge: Cambridge University Press, 1991. A more comprehensive text base offers Teofilo Urdániz (Ed.), *Obras de Francisco de Vitoria: Relecciones teológicas*, Madrid 1960. Most texts by Vitoria are referred to as “relecciones”, instead of as lectures (“lecciones”). This is due to a contemporary nomenclature of the University of Salamanca. Whereas “lecciones” were held daily and more scholastic in content and form (trying to convey standard knowledge), the “relecciones” provided commentaries on the content matter of the “lecciones”, offering often more insight into the original thinking of the respective professor (Urbano, 2000, 8).

promulgated; how could they then fall under the jurisdiction of Christian kings? Vitoria thought that only laws which find the “general consensus of men” can bind them (Comm. S.th. I-II 90, 1, ad 4). Since such consensus cannot be established empirically, *conceptual approvability* has to stand in for *factual approval*. Thus the notion of *ius gentium* advances in importance. All depends on whether certain legal norms can be reconstructed – and thus justified – as manifestations of principles that are reasonably approvable by all (Covell 2009). Yet how does one draw up moral theories with strictly universal appeal? Is one to assume a “view from nowhere” (Nagel 1986, Beitchman 2001), construing humanity’s essential nature from a perspective that abstracts from all cultural specificity? Vitoria did not think so. Instead he operated from the concrete metaphysical assumptions of his Christian worldview, and asked to what extent these could be extended to people who did not share their theological and cultural premises.

Vitoria sets off from a description of human nature as fundamentally good (De Hom., I.2-3). Created in the image of God, humanity is equipped with rational powers that in and of themselves tend to the good (De Ind., I.2.6). Unless we wish to worship a stupid (*stultius*) and unworthy (*indignius*) God, who would have designed his creation for failure, we must believe that what the human being does prompted by the natural pursuit of happiness (*ut naturaliter appeteret felicitatem*) cannot be evil (De Hom., I.3). On the contrary, God equipped humanity with an original sense for justice to whose rationales our inclinations tend to yield (De Hom., I. 8). Evil is accidental, not inherent to human nature. Human beings are naturally prone to restrain their self-love on behalf of greater goods, and will, unless badly influenced, willingly put the public over their private interest (De Hom., I. 10).

Human Nature and Political Government

The aforementioned anthropological premises have direct repercussions on Vitoria’s conception of government. If human nature is essentially good, politics has to acknowledge and advance, rather than curb and crush, its natural inclinations. Any government – Christian or heathen – must be conducive to the realization of the benign social traits that arise from essential human capabilities (Titos Lomas 1993). Then government will further the commonwealth, which Vitoria, like Aristotle and Thomas, views as the *causa materialis* of politics (De pot. Civ., I. 4). Also in regard to the *causa formalis* of good governance, Vitoria aligns himself with classical positions on the necessity of procedural justice and legitimate authority (De pot. Civ. I.5-7). His main innovation consists in enlisting God not as the *causa finalis* of government but as the *causa efficiens* of governance. God, that is to say, influences

politics only through the *general* drives of human nature, not through *particular* transcendent objectives (such as preparing people for salvation) or interventions; care for the common good alone justifies the political order (De pot. Eccl. 5.5); *theocratic* justifications of political power are neither necessary, nor sufficient. Even if the Christian conceptions of the final destination of life in eternal felicity were mistaken, Vitoria muses, still the temporal commonwealth could administer the mundane affairs so that society prospers (De pot. Eccl. 5.5). There may be regents – like those of the American Indians – which, while pagan, have still to be considered legitimate.

This strict orientation of public power at the common good does not only curtail *clerical* influence on mundane affairs but circumscribes the reach of *political* government too: might does not make right. No political power must ever violate the public interest; and since Vitoria defines public interest through reference to the common good of human nature, all local, regional and national governments are committed to the interests of humanity at large. To Vitoria, the whole world is ultimately but one commonwealth under natural law (Carro 1963). Every government must therefore pursue the common good of its people in line with the common good of the entire human family (Soder 1955). By giving the ‘*ius gentium*’ overriding jurisdiction over the ‘*ius civile*’ (De pot. civ. 3.4), Vitoria generates a cosmopolitan canon of basic human rights. To enumerate but a few: As the real and ultimate common good is, strictly speaking, the good of *each and all* human beings, majorities must never violate but always integrate minority rights. The interests of all cannot outweigh the rights of one because an individual to society is more than a limb to a body. A limb can be sacrificed in the interest of the health of the body, whereas it would be illegitimate to kill an innocent man in order to save the state because every human being is an end in itself (*est bonum suiipsius*), argues Vitoria (Comm. S.th. II-II 64, 6, 2.). Just as rights concerning the human body and its integrity, the rights of government regarding personal property are strictly curtailed. Property rights express the rational authority of individuals over items (Comm. S.th. II-II 62, 1, 11-12); they are not creations by governmental *fiat* (Otte 1964). Accordingly, a king only has jurisdiction (*gubernatio*) but cannot claim proprietary rights (*dominium rerum*) over the private possessions in his realm (Comm. S.th. I-II 105.2). Every human being has an inalienable right to life, limb, and liberty as well as a claim to certain private goods. Not even a ‘just war’ gives the victor “the power to eject the enemy from their dominions and despoil them of their property” (De. Ind.,1.5.6.). *A fortiori*, all wars with imperialist and acquisitive objectives are illegitimate (Puente Egido 1962). In short, if a certain military campaign stands to be more damaging than beneficial to the world community at large, it must, for this very

reason, be rejected as unjust (De pot. 1.10). Thus does the 'ius gentium' regulate and curb local politics in the name of global human rights and cosmopolitan interests.

What Justice Demands

Vitoria gave credence to reports from Christian seafarers that describe the American Indians as childish and immature (De Ind. 3.8.) For all he knows, "these barbarians are by nature cowardly, foolish, and ignorant besides" (De Ind. 3.1.5). Were they allowed to continue in their religious 'idolatry', their salvation would be in peril. Hence he too believes "it would be against the interests of the barbarians themselves", if the Spaniards did not aim at a speedy Christianization of the Americas (De Ind. 3.2.3.). All the more remarkable it is, therefore, that Vitoria did *not* defend a right to conquer and subdue the American Indians for religious reasons. The natives, he declares repeatedly, "are not obliged to believe in the Christian religion, nor in the dominion of the Pope, and hence not in the dominion of the emperor either." (De Ind., 2.6.) Moreover, Vitoria reproves that the natives are incapable of governing themselves at all, i.e. he rebuts the essential premise of the 'natural slavery'-theorem.

"This is self-evident, because they have properly organized cities, proper marriages, magistrates and lords, laws, industries, and commerce, all of which require the use of reason. They likewise have a form (*species*) of religion, and they correctly apprehend things which are evident to other men, which indicates the use of reason." [...] "Thus if they seem to us insensate and slow-witted, I put it down mainly to their evil and barbarous education. Even amongst ourselves we see many peasants (*rustici*) who are little different from brute animals." (De Ind., I,6)

As reasonable administrators of their own affairs, the natives execute righteous political and economic autonomy within over their realm (De Ind. I, 6, concl.). No force can be applied other than for maintaining such norms that the American Indians, through rational insight into natural law, could also approve of (De Ind., 1.2). Vitoria repudiates therefore any arrogation of either regal or papal power beyond the confines of natural law and rejects as illegitimate all of the following attempts to justify Spanish rule in the Americas (De pot. eccl. prior, 5.1-5; De Ind. 2.2):

- *from divine gift* (no miracles prove God had decided to be so generous),
- *from global dominion* on part of the emperor (dominion follows first apprehension, which, in the Americas, lies with the natives),
- *from Papal donation* of the Americas to the Christian emperors (the Pope has temporal power only based on his spiritual power over the faithful, to which Indians did not belong at the point of said donation),

- *from discovery* (the ‘discovered’ lands were peopled, and the Spaniards would not be willing to give reciprocal claims to others who similarly ‘discovered’ Spain),
- *from the ‘mortal sins’* of the natives (as this title would grant an unlimited right to invasion as such sins are ubiquitous in every culture).

In a word, rebuked are all rationales which the *conquistadores* would not accept, if the tables were turned. Time and again, Vitoria tests the claims of the Spaniards against this criterion of *reciprocity* (De Ind., 1.5.4). The standard of reciprocity serves him not only to evaluate the justice of initiating military conflict (*ius ad bellum*) but also to prohibit that the martial behavior during the same (*ius in bello*) goes “further against them than we should take a war against Christians” (De Ind., 1.5.8). Nor can, after the war, the victor “put greater burdens on them than on his Christian subjects” (De Ind., 1.5.10) Vitoria, in short, views the rights of the American Indians through a lens by which the Spaniards too are observed; he universalizes the ‘*ius gentium*’ into a thoroughly reciprocal and thus truly cosmopolitan law (Scott 1934).

Vitoria does not rule out that the Christian princes might have some legitimate claims to defend in South America. In fact, he enumerates various reasons why Spain might indeed be lawfully engaged there. Yet, these reasons, Vitoria underscores, are of a nature that, theoretically, everyone could accept, because of their reciprocal structure. In short, the military presence of Spain in South America can be justified only by the rights of the Spaniards to defend universal natural law – i.e. their own natural rights but also those of others. For instance, contemporary accounts about “these barbarians discovered in the province of Yucatán” (De usu cib. 1.5) included reports of systematic “human sacrifice and cannibalism” (De Ind., 3.5). On behalf of the natural rights of the victims of such practices Vitoria contemplated a case for *humanitarian interventions* (Vacas Fernández 2003). It makes “no difference that all the barbarians consent to these kinds of rites and sacrifices, or that they refuse to accept the Spaniards as their liberators in the matter” (De Ind., *ibid.*). The validity of the ‘*ius gentium*’ hinges, as shown above, not on factual approval but on conceptual approvability, and so Vitoria can indeed take a strong anti-relativistic stance for humanitarian interventions, as long as “the reason why the barbarians can be conquered”, is not that their religious practices clash with Christian conceptions “but because they involve injustice to other men.” (De Ind., 1.5.5)

Vitoria also acknowledges a right of the Spaniards to travel (*ius peregrinandi*) to the ‘New World’ as well as their right to communicate freely with the native inhabitants (*ius*

communicationis), including a right to trade and to preach the gospel peacefully (De Ind., 3.1.). Should the Indians forcefully renege these natural rights, the Spaniards can resist them; if need be with military might (Muñoz 1937). Like the a humanitarian intervention, this right to self-defense can easily be misused as a pretext (Douzinas 2007). Vitoria hence qualifies its applicability strictly (Vacas Fernández 2003). Just as much as the physical progress of the Spanish soldiers must respect the already established dominion of the inhabitants, the spiritual advances of the Church must not violently invade the symbolic territory of the natives (De Ind., 3.2.1). Their mind is not a *tabula rasa* onto which Christians can simply inscribe their spiritual message, as the “unbelievers have their own priests – false ones, to be sure, but elected by the commonwealth to administer spiritual matters” (De usu cib. 1.5.). The (only) right way to preach is through reasoned argument and by the example of a virtuous life (De Ind., 3.2). Conversion must never be forced but always be patiently awaited from sustained peaceful appeals (*rogare ut convertuntur*) on part of the missionaries (Comm. S.th. II-II 10, 8, p. 196). Should “the barbarians permit the Spaniards to preach the Gospel freely and without hindrance, then *whether or not they accept the faith, it will not be lawful to attempt to impose anything on them by war, or otherwise conquer their lands.*” (3.2.3., italics in orig.)

Even if the Indians do not take kindly to such conversion efforts and resist them forcibly, this lesion of the *ius communicationis* should, at first, be forgiven, argues Vitoria, especially if it results from the natives’ fear “of men whose customs seem so strange, and who they can see are armed and much stronger than themselves.” (De. Ind, 3.1.5.) “If this fear moves them to mount an attack” on the Spanish, then the latter cannot simply take recourse to all sorts of violence in the name of self-defense. Instead the Spanish are to see that their “understandable fears made them innocent” and continue to treat the Indians with clemency (ibid.). Here Vitoria touches on a fundamental difficulty of international law: the proposition that either side of the fray may have a just cause (Kochi 2009); the Gordian knot of intercultural ethics. Vitoria acknowledges but does not solve the problem. “It is not incompatible with reason, indeed, when there is right on one side and ignorance on the other, that a war may be just on both. [...] [This] may be true of the barbarians. This is a consideration which must be given great weight.” (De Ind., 3.1.5) Unfortunately, however, Vitoria does *not* give the consideration *enough* weight and does not untie the knot (Cavallar 2002).⁶ Conflicted by the conceptual problem that if both sides fought a just war, “both would

⁶ Tarik Kochi ponders the following dilemma: “[...] Vitoria’s right of Christians to spread the Gospel, clothed as a neutral, natural law right to visitation and free travel, is not considered at a level of genuine reciprocity. That is, it is doubtful whether Vitoria would have extended the right of non-Christians to preach their religion in Spain and following this, the possibility that non-Christians would have a just cause to go to war,

be innocent” and so nobody could rightfully be killed (De iure belli 1.3.2), Vitoria eventually decides that the Indians only *apparently* have a just cause for war, i.e. they believe they do (and the Spaniards should duly take that into account) but, in truth, they do not. Vitoria thus leaves unexplored the potential that rests within the possibility that on both sides the moral rationales could verily be of equal merit (Negri et al. 2001); a dialectical opportunity soon thereafter seen and used by Bartolomé de las Casas.⁷

What Charity Intends

In the tradition of Thomas Aquinas (S. th. I-II, 96, 2), Vitoria demands that virtue operate where the law cannot reach. Vitoria concurs moreover with Thomas’s proposition that “no true virtue is possible without charity” (S.th. II-II 23, 7) because it is “charity which directs the acts of all other virtues to the last end, and which, consequently, also gives the form to all other acts of virtue” (S.th. II-II 23, 8). Charity must inspire the law – both in content and application. Whenever a human law, regardless of its declared objective, conflicts with charity, then we should reform its theoretical mandate and/or the way it is carried out in practice. In sanctioning the rules of natural law, the Spaniards must, for example, “always be prepared to forgo some part of their rights rather than risk trespassing on some unlawful thing” (De Ind. 3.2.3). So Vitoria stipulates that “the Spaniards ought first to remove any cause of provocation” on their part, and document their peaceful intent “not merely in words, but with proof”, before availing themselves of their right to self-defense (De Ind., 3.1.5) What is more, in any violent conflict, where the stronger party can avoid the death of its opponent by fleeing, it would be ‘uncharitable’ (*contra caritatem*), if otherwise no great loss was impending, not to flee but to fight (Comm. S.th. II-II 64, 7,7). When, however, adversarial relations are unavoidable, the Spaniards are entitled to take recourse to militarily means (De Ind. 3.8) but only “for their own safety”, causing “as little harm to the barbarians as possible” (De. Ind, 3.1.5.). A Christian king must should always try to arrest rather than kill the enemy

conquer or enslave the Spanish peoples if Christian Spanish monarchs had caused them injury.” (Kochi 2009, 41)

⁷ Las Casas entertained the possibility of a tie of ‘just war’-causes when advancing the view that the Indians had a moral right to their self-defense. It is debatable, however, whether he really wanted to propose a normative stalemate (as suggested by Dussel, E. 2007. *Materiales para una política de la liberación*. México, D.F.: Universidad Autónoma de Nuevo León, Facultad de Filosofía / Plaza y Valdés, S.A. de C.V.) or whether this was to him merely a rhetoric device to draw attention to the plight of the natives, whose fight for independence las Casas came to see ever more as the one and only justified military campaign. In other words, while both Vitoria and las Casas noted the possibility of a validity-impasse in the just war’-logic, they eventually decided each for one side of the conflict; Vitoria for the Spaniards, and las Casas for the South American Indians.

combatants (Comm. S.th. I-II 105.2, 13) and must, moreover, never stipulate the death of innocent civilians (Comm. S.th. II-II 64, 6, 4).

Only in the face of sustained unprovoked violence, the Spaniards may treat the natives “no longer as innocent enemies, but as treacherous foes against whom all rights of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones. All this must be done with moderation, in proportion to the actual defense.” (De Ind., 3.1.6) The notable ambivalence of these last phrases is expressive of Vitoria’s dual intent, i.e. to uphold the Spanish right to self-defense as a necessary corollary of the principle of justice on one hand and to temper its application by exhortations to charity on the other (Jáuregui and Moraña 2007). Vitoria fears that in the name of ‘self-defense’ the Spanish campaigns may have already “gone beyond the permissible bounds of justice” (De Ind., 3.2.4. concl.). He refers to “massacres and pillages” (ibid.) that, in his eyes, can neither be explained nor justified as defensive acts. To close such loopholes, Vitoria takes recourse to the principle of charity, mandating that ultimately everything must be “done *for the benefit and good of the barbarians, and not merely for the profit of the Spaniards.*” (De Ind., 3.8, italics in orig.) And he knows full well that “it is in this latter restriction that the whole pitfall of souls and salvation is found to lie.” (ibid.)

Vitoria thus proves himself to be a perspicacious political analyst. He sees that even the best of laws will not automatically accomplish their objectives. Their judicious application, directed by benevolent intent, is also requisite. The management of international peace and human rights cannot be entrusted to the law alone. In order to foster human solidarity on a global scale we also need a cosmopolitan ethos that charitably embraces ‘the other’ in all his or her difference. The law itself, however, cannot procure the moral motives it requires for its proper functioning. Hence the relevance of the spiritual domains that cultivate such moral resources, as, in this case, the Christian underpinnings of the ethics of charity.

5. Conclusions for Contemporary Globalization Ethics

Christians were not the first to develop the idea of a global ethics; Greek Sophists and Cynics as well as Greco-Roman Stoics had argued on a cosmopolitan plane before (Lettevall and Klockar Linder 2008). Yet their theories were premised either on the Greek concept of man (typically to the exclusion of the ‘barbarians’), or they accepted the borders of the Roman Empire more or less as the ultimate confines of the world that mattered. Christian

thinkers advanced a more *universalistic* philosophy, addressing each and every human being as, in philosophical parlance, ‘dignified through reason’, or, in theological language, as a ‘child of God’ (Barbieri 2001). From this plateau, Francisco de Vitoria advanced an impressively inclusive cosmopolitanism based on the theoretical universalization and practical globalization of the *ius gentium*. Whereas in Roman times the *ius gentium* depicted the *factual*, if tacit consensus of peoples within (and in contact with) the empire, from the early 1500s on, the *ius gentium* slowly but surely took on a more *counterfactual* tinge and became an instrument to criticize power. Applied to the ‘New World’, the *ius gentium*, ever more assumed the function of demanding respect for basic human rights where there was none. Vitoria did thus prepare the grounds for the legal philosophies of Hugo Grotius (1583-1645), Alberico Gentili (1552-1608) and Samuel Pufendorf (1632-1694) upon which much of modern international law rests (Hernández Martín 1995). Conceived more than 250 years before, the philosophy of the Francisco de Vitoria anticipated many of the later liberal conceptions of the French *Déclaration des droits de l’homme et du citoyen* from 1789 and contemplated an order of international law to protect them (Scott 1934).

Yet we must not forget that Vitoria was, first and foremost, a theologian, who drew his inspirations from a metaphysical world-view. We should thus be wary of interpretative templates that lock us into a mono-directional scheme of ‘progress’ away from a medieval netherworld of religious metaphysics (Comte 1891). Instead, we had better do justice to our author on his own terms, i.e. by trying to understand the both *metaphysical* and *theological* foundations that brought him to defend individual liberty and human rights. Instead of construing a false dichotomy between reason and faith, Vitoria used philosophical reason in order to clarify and validate the ethical premises of his faith. In the Vitoria’s view, it was God who set the human being free; God was the ultimate source of human nature and the one who oriented humanity towards its common good. The shared origin and destination of humanity granted that the socio-cultural diversity life could not go so far as to dissolve the metaphysical fabric which provided a common identity to all. Respect for the human rights and dignity of others, whose alterity seemed incommensurable by most mundane standards, remained possible precisely because of the invocation of transcendent relations with and through the Creator. This is in the last instance why, Vitoria, tracking Thomas Aquinas, understands human liberty not as license but as *responsible autonomy* to act with respect for each and responsibility to all (Pinckaers 1995)

Vitoria’s philosophy thus exemplifies that progress versus regress in terms of ethics cannot be measured in units of secularization (Habermas and Cronin 2010). In today’s world

where neither atheism, nor any one single religion can claim a monopoly on the interpretation of the shared life-world of all, the positivistic quest for a univocal ‘scientific’ answer to the ultimate queries of the human existence appears not infrequently more superannuated than the traditions it aims to suppress (Martin 2011). Given the vitality and plurality of religious beliefs all around the world, the advance of human development lies in interfaith dialogue rather than in the avoidance of all religious symbolism (Dierksmeier 1998). An ethics of inclusivity that welcomes the other in all his or her difference need not be restrained to secular arguments but can and should avail itself of rich religious traditions (Appiah 2006). A more appropriate arbiter for assessing the contribution of traditional texts (be they religious or secular) for the improvement of human life is not the question whether they are spiritually inspired but to what extent they can emancipate individuals and empower communities for a dignified life in responsible freedom. On this count, Francisco de Vitoria’s thinking is not only one of the first but must also be acknowledged as one of the most formidable contributions to a globalization ethics in the spirit of human liberation.

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