

Tmava University

PETER VYŠNÝ
ORCID: 0000-0001-5132-1291
petervysny@hotmail.com

The Cultural Otherness of the Indians as a Just Cause of the Spanish Conquest of the Americas*

Kulturowa odmienność Indian jako słuszny powód hiszpańskiego podboju Ameryki

INTRODUCTION

The Spanish crown, clerics, scholars belonging to the so-called Salamanca School¹, conquistadors and colonists of the various American territories, as well as officials of the administration of the Spanish colonial empire, based the legitimacy or, in the language of the time, the justice (*iustitia*) of the Spanish conquest of

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¹ The complex theological and philosophical school known as the Spanish, Second or Late Scholasticism is often called the Salamanca School (Escuela de Salamanca) after its original centre, the University of Salamanca, Spain, although its later, Jesuit representatives, such as Luis de Molina (1535–1600) or Francisco Suárez (1548–1617), were mainly associated with the University of Coimbra, Portugal. Various intellectuals living in the overseas colonial empire of Spain can also be included in the Salamanca School. On the Salamanca School, see e.g. A.A. Alves, J.M. Moreira, *The Salamanca School*, London 2009; A. Melquíades, *La teología española del siglo XVI*, Madrid 1976; A.-E. Pérez Luño, *La polémica sobre el Nuevo Mundo. Los clásicos españoles de la Filosofía del Derecho*, Madrid 1995; *The Cambridge History of Political Thought 1450–1700*, ed. J.H. Burns, Cambridge 1991; J.-T. Velasco Sánchez, *La Escuela de Salamanca. Concepto, miembros, problemas, influencias, pervivencias*, Madrid 2015.

America (1492 – the turn of the 16th and 17th centuries)² on various facts called *justos títulos* (just titles)³. Among the most prominent of these titles was the claim that the conquest (*conquista*) was a just war (*bellum iustum*) waged by the Spanish monarchy against the Indigenous peoples of the Americas, the Indians⁴, for some just cause (*iusta causa*).

There were two basic views of what should be considered a just cause for conquest. Some saw it in the cultural – and especially religious – otherness of the Indians. Others, however, rejected the idea that the cultural/religious otherness of the Indians was a just reason for waging war against them. In this paper, I briefly examine both views and show that their contradiction was only partial. The proponents of the first and second views differed on the question of the methods of carrying out the Spanish conquest of the Americas, but not on the belief that the conquest and its result, Spanish rule over the Americas, could have positive implications for the Indians: the supposedly ‘imperfect’ Indian societies would become an integral part of a supposedly ‘perfect’ European/Christian civilisation, represented by the Spanish monarchy.

CULTURAL/RELIGIOUS OTHERNESS OF THE ENEMY AS A JUST CAUSE FOR WAR BEFORE THE SPANISH CONQUEST OF THE AMERICAS

People who did not belong to the Greeks or Romans were collectively called ‘barbarians’ (*barbari*). As it is well-known, barbarism was understood as a sharp and very negative contrast to the civilised/political and rational way of life of the Greeks and Romans. Aristotle’s theory of natural slavery claimed that barbarians, being uncivilised and irrational and therefore somehow ‘imperfect’ people, were supposedly naturally destined to be slaves (or some kind of servants with a slightly better status than that of slaves) of civilised and rational and therefore ‘perfect’ people. According to Aristotle, this was the natural order of things, in which the imperfect submits to the perfect. Therefore, as Aristotle says, there may also be positive aspects for the barbarians if they find themselves under the rule

² The Spanish conquest of America roughly coincides with the so-called Golden Century (Siglo de Oro; c. 16th century), which was a period of Spain’s rise – Spain conquered America, transformed itself into a power significantly influencing events in Europe and beyond, and became a bastion of the Counter-Reformation (which was at the same time a process of internal reform of the Catholic Church), as well as a leading intellectual and cultural centre.

³ For example, see L. Hanke, *The Spanish Struggle for Justice in the Conquest of America*, Boston 1949.

⁴ For example, see A. de la Hera, *El dominio español en Indias*, [in:] I. Sánchez Bella, A. de la Hera, C. Díaz Rementería, *Historia del Derecho Indiano*, Madrid 1992, pp. 145–152.

of civilised and rational people – in time they may become civilised and rational themselves⁵.

In the Middle Ages, as well as at the time of the Spanish conquest of the Americas (i.e. in the early modern period), barbarians were identified with non-Europeans/non-Christians, referred to with terms such as ‘infidels’ (*infideles*) or ‘pagans’ (*pagani*)⁶. Their cultural otherness was conceptualised primarily as sinfulness. Since the sinfulness of the barbarians was, from the Christian point of view, extreme both quantitatively (the considerable extent and high frequency of sins committed by the barbarians) and qualitatively (the barbarians committed basically all the sins that Christians considered serious/mortal), the barbarians appeared to Christians as insufficiently rational and civilised people, and thus also as a kind of ‘less perfect’ people than Christians. Some even denied the barbarians’ rationality and civility altogether, and thus denied that they were real people (for them, barbarians were animals rather than humans)⁷.

The sinful way of life of the barbarians was a just cause for some Christians to wage war against them. For such a war could be presented as a holy war (*bellum sacrum*), i.e. a war waged by the will of the Christian God. By waging war against the barbarians in accordance with God’s will, Christians were spreading Christianity and at the same time both punishing the barbarians for their sinfulness and bringing them to the true faith and ‘civilising’ them.

Although the ideology of the holy war of Christians against non-Christians found its practical application in the Middle Ages (e.g. in the Crusades or in the process of Reconquista, which created the Portuguese and Spanish states in the Iberian Peninsula), it was not universally accepted. This was due to the existence of two opposing views on the justice of war waged by Christians against non-Christians on the grounds of their paganism, their lack or absence of rationality and civility, and their extreme sinfulness. These two views were still in vogue at the time of the Spanish conquest of the Americas.

According to the first view, war by Christians against non-Christians was permissible (i.e. just) because of their extreme sinfulness. This view was promoted,

⁵ Aristoteles, *Politika*, Bratislava 2009, p. 31 ff.

⁶ For example, see M. Křížová, *The Strength and Sinews of This Western World: African Slavery, American Colonies and the Effort for Reform of European Society in the Early Modern Era*, “Iberoamericana Pragensia. Supplementum” 2007, no. 21, p. 59 ff.; C.H.F. Meyer, *Nichtchristen in der Geschichte des kanonischen Rechts. Beobachtungen zu Entwicklung und Problemen der Forschung*, “Rechtsgeschichte – Legal History” 2018, vol. 26, pp. 139–160.

⁷ For more details, see e.g. N. Matsumori, *The School of Salamanca in the Affairs of the Indies: Barbarism and Political Order*, New York 2021, p. 54 ff.

e.g., by Aegidius Romanus (1243/1247–1316)⁸, Cardinal Hostiensis (1200–1271)⁹, and Alonso de Cartagena (1384–1456)¹⁰. These scholars largely identified the natural law applicable to all rational and civilised people of the world (even non-Christians, if they were sufficiently rational and civilised from a Christian point of view) with Christian values and norms, which was common in the Middle Ages, but also at the time of the Spanish conquest of the Americas¹¹. Therefore, any violation of natural law by non-Christians, in the form of idolatry, promiscuity, polygamy, homosexuality, tyrannical rule, human sacrifice to the gods, ritual anthropophagy, etc., were understood as grave sins against the Christian God and his will, reflected in the content of natural law, deserving of severe punishment, consisting in the deprivation non-Christians of the freedom, the right of self-government, territory, settlements, resources and possessions by Christians¹².

This attitude towards non-Christians was also supported by canon law through the principle, later abolished by the Council of Constance (5 November 1414 – 22 April 1418), according to which “no one can be a ruler and owner (*dominus*) under civil law while in a state of mortal sin” (*nullus est dominus civilis quam est in peccato mortali*), which implied to Christians that if they militarily deprived non-Christians of their freedom, right to their own government, territories, settlements, resources and possessions, they were in fact only taking what did not belong to non-Christians anyway¹³. In other words, according to the view we are now discussing, non-Christians did not have so-called *dominium*. The term *dominium* was then understood to mean not only property rights (*dominium rerum*) but also universal governmental power (*dominium iurisdictionis, subiectionis*¹⁴; in the latter, public law sense, *dominium* was in fact the precursor of the modern concept

⁸ Aegidius Romanus was a scholastic philosopher and theologian, an adherent of Thomism, an Augustinian (he was General of the Augustinian Order from 1292), and Archbishop of Bourges from 1295.

⁹ Cardinal Hostiensis was an eminent medieval canonist.

¹⁰ Alonso de Cartagena was a Catholic bishop, theologian, philosopher, diplomat, lawyer, educator and translator of ancient literature.

¹¹ This was linked to the conviction that natural law, although it operates globally, that is both inside and outside the Christian part of the world, is not completely secularised. Human nature (essence), of which rationality is the core, is the work of the Christian God, with the result that only Christians, and even more specifically only the Church, can know the content of natural law more deeply and more precisely, and formulate its norms authoritatively. See R. Lesaffer, *European Legal History: A Cultural and Political Perspective*, Cambridge 2010, p. 318; M. Scatolla, *Models in History of Natural Law*, “Ius Commune. Zeitschrift für Europäische Rechtsgeschichte” 2001, vol. 28, p. 104 ff.

¹² A. Rumeu de Armas, *El tratado de Tordesillas. Rivalidad hispano-lusa por el dominio de océanos y continentes*, Madrid 1992, pp. 41–43.

¹³ W.G. Grewe, *The Epochs of International Law*, Berlin 2000, p. 53.

¹⁴ H. Coing, *Europäisches Privatrecht*, vol. 1: *Älteres Gemeines Recht (1500 bis 1800)*, München 1985, p. 291.

of state sovereignty¹⁵). The absence of *dominium* had serious consequences for non-Christians. Their territories, settlements, resources and possessions were *res nullius*, whereas Christians could acquire them according to the principle of primary occupation (*res nullius cedit occupanti*)¹⁶.

According to the second view, Christians could not wage war against non-Christians because non-Christians, despite their paganism, lack/absence of rationality and civility, and extreme sinfulness, are entitled to rule. Thomas Aquinas argued that:

- Christians can only take from non-Christians by force those things which non-Christians have in unjust possession, which is not based on their being pagans and great sinners;
- non-Christians who could not accept Christianity because they did not know of its existence do not commit sin. But if they knew of its existence and did not accept it, they commit a sin for which Christians cannot punish them (by force) unless the non-Christians behave aggressively towards them;
- forcible propagation of the Christian faith in a non-Christian environment and forcible conversion of non-Christians to Christianity is unacceptable;
- non-Christian rulers are legitimate rulers (*domini*) because the basis of their rule is natural law, which applies not only to Christians but also to non-Christians, since non-Christians are (at least to some extent) rational and civilised people¹⁷.

CULTURAL/RELIGIOUS OTHERNESS OF THE ENEMY AS A JUST CAUSE FOR WAR DURING THE SPANISH CONQUEST OF THE AMERICAS

The possibility of waging a just war against the Indians on the grounds of their extreme sinfulness was strongly exercised in the early period of the Spanish conquest of the Americas. This resulted, e.g., from the belief that the Spanish conquest of the Americas was a continuation, by God's will, of the Reconquista in the sense of spreading Christianity¹⁸. The medieval Castilian concept of war,

¹⁵ A. Pagden, *Fellow Citizens and Imperial Subjects: Conquest and Sovereignty in Europe's Overseas Empires*, "History and Theory" 2005, vol. 44(4), p. 39.

¹⁶ L. Benton, B. Straumann, *Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice*, "Law and History Review" 2010, vol. 28(1).

¹⁷ Sancti Thomae Aquinatis, *Summa Theologiae*, <http://summa.op.cz/sth.php?&Q=10> (access: 7.09.2023), II-II q. 10.

¹⁸ M.F. Ríos Saloma, *El mundo mediterráneo en la Edad Media y su proyección en la conquista de América: cuatro propuestas para la discusión*, "Históricas. Boletín de información del Instituto de Investigaciones Históricas" 2011, no. 90, pp. 2–15.

contained in the principal source of Castilian law, *Las Siete Partidas*, was also an inspiration. This concept presented war as a means to achieve peace and considered the just causes of war to be the spreading of the Christian faith and the defeat of those who opposed it, the duty to fight for the lord on the basis of a pledge of allegiance and obedience to the lord, self-defence, and the aggrandisement and glorification of one's own country¹⁹. The infidelity of the Indians also allowed for harsh treatment in the event of war captivity. *Las Siete Partidas* distinguished two categories of prisoners of war: the *presos*, who could not be enslaved, and the *cativos*, who could be enslaved precisely because they were not Christians²⁰.

Thus, in the early period of the conquest, its justification was based on the propagation of the Christian faith, which could also be carried out militarily. Hernán Cortés, e.g., interpreted his conquest of the Aztec Empire (1519–1521) as a holy war in the sense of a means of spreading Christianity in the territories of non-believers, coupled with the occupation of these territories by Christians. An interesting point is Cortés' comparison of the conquest of America with the ancient Israelites' occupation of Canaan, which allows the conquest to be interpreted as both God's will and God's punishment – just as the Israelites once militarily defeated and punished the pagan and very sinful Canaanites, so the Spanish conquistadors militarily defeated and punished the pagan and very sinful Indians²¹.

Gradually, however, it was largely abandoned that the cultural/religious otherness of the Indians, and especially its most serious manifestation, the extreme sinfulness of the Indians, was sufficient to justify the Spanish conquest of the Americas, as contributed by the scholars of the School of Salamanca and the official (crown-appointed) 'protector of all the Indians' (*procurador de todos los indios*) Bartolomé de Las Casas (1484–1566). A notable exception was the Spanish humanist Juan Ginés de Sepúlveda (1490–1573), according to whom

mere infidelity is (...) not the reason for this most just war against the barbarians [Indians], but their shameless immorality, the mass sacrifices of human beings, the extreme harm they have done to many innocent people, the horrible cannibal feasts, the impious cults of their idols²².

¹⁹ *Las Siete Partidas del rey don Alfonso el Sabio, cotejadas con varios codices antiguos por la Real Academia de la Historia*, vol. 2: *Partida Segunda y Tercera*, Madrid 1807, part 2, title XXIII.

²⁰ *Ibidem*, part 2, title XXIX, law I. For more details, see F.J. Díaz González, *La normativa sobre los prisioneros y los cautivos en la España cristiana medieval*, "Revista de Estudios Histórico-Jurídicos. Sección Historia del Derecho Europeo" 2010, no. 32, pp. 281–308.

²¹ H.-J. Prien, *La justificación de Hernán Cortés de su conquista de México y de la conquista española de América*, "Revista Complutense de Historia de América" 1996, no. 22, pp. 11–31.

²² J. Ginés de Sepúlveda, *Tratado sobre las justas causas de la guerra contra los indios*, México 1996, pp. 132–133.

The justice of subjugating the Indians by war was thus derived, in Sepúlveda's mind, from the idea that Christians had a duty to punish the Indians for their extremely sinful behaviour and thus reform them.

In the context of questioning the cultural/religious otherness of the Indians as a sufficient reason in itself to wage war against them, the justice of the Spanish conquest of the Americas was placed on a different footing. The positive aspects of the outcome of the conquest – Spanish rule over the Americas – for the Indians began to be emphasised. These benefits included, above all, the conversion of the Indians to the one true faith, Christianity, and their integration into the Spanish monarchy and thus into a European Christian civilisation that was considered – even by those who otherwise pointed to the rationality and civility of the Indians (e.g. Las Casas) – to be far more perfect than the Indian societies had been.

The integration of the Indians into European Christian civilisation was also intended to enable them to properly exercise their so-called subjective natural rights²³, especially personal freedom and *dominium*. In fact, subjective natural rights, which can be seen to some extent as the precursors of modern human rights, were rights that could only be fully exercised by Christians because the natural law from which they derived had been Christianised. If the Indians wished to exercise them in this way, they had to adopt the Christian religion and way of life, which also meant submission to Spanish rule. On the other hand, there was also a view, based on Thomism, according to which natural law applied to all rational people in the world, including non-Christians, and therefore non-Christians (Indians) were entitled to the subjective rights derived from it just as much as Christians. In any case, contemporary efforts to make the exercise of natural subjective rights by Indians conditional on their Christianisation and raising their level of civilisation were not surprising. It was part of the Western universalist tradition, which operated on the notion of the existence of a certain unity of humanity, or the possibility and necessity of achieving it. This ideal was realistically fulfilled not by the integration of the world's cultures into a single whole that would preserve their plurality and diversity, but by their power and ideological overlay by a single European and Christian culture, whose expansion was part of the European colonial expansion. The concept of natural subjective rights belonging to Christians was then one of the tools used to justify colonial expansion as a means of spreading this concept²⁴.

The fact that the cultural/religious otherness of the Indians as such was no longer considered a just cause for war against them was reflected in the Spanish

²³ On natural subjective rights, see e.g. M. Šejvl, *Přirozená subjektivní práva mezi středověkem a novověkem*, "Právník" 2017, no. 5, pp. 416–452.

²⁴ A. Pagden, *Human Rights, Natural Rights, and Europe's Imperial Legacy*, "Political Theory" 2003, vol. 31(2), pp. 171–199.

Crown's paternalistic and protectionist attitude towards the Indians. It granted the Indians a measure of personal liberty and special rights/privileges, but at the same time placed them in the position of so-called *personae miserabiles*, supposedly dependent on the support, assistance and protection of a guardian or custodian, which was the Crown. Of course, the Crown's policy towards the Indians was not only for their welfare, but also for its own interests – by directly subjugating the Indian population, the Crown weakened its competitors in the colonies – the Church and the colonists, which also brought it some economic benefits, etc.²⁵.

On the other hand, contemporary discourse did not entirely abandon the idea that cultural/religious otherness, as well as the extreme sinfulness of the enemy, could be a just cause for war against him. This is evident, e.g., in the complex thinking associated with the Spanish conquest of America by Francisco de Vitoria.

THE CULTURAL/RELIGIOUS OTHERNESS OF THE INDIANS AND VITORIA

The Dominican Francisco de Vitoria (1483/1486–1546) was the founder of the Salamanca School.

Around 1539, two summaries (*relectiones*) of Vitoria's university lectures, known collectively as the *Lectures on the Indians* (*Relectiones de Indis*), were compiled. The first of these summaries is titled *First Lecture on the Recently Discovered Indians* (*Relectio prior de Indis recenter inventis*) and focuses on the just (legitimate) and unjust (illegitimate) titles of the Spanish conquest of the Americas, while also outlining the basic mutual rights and duties of the Spanish colonisers and the American Indians they colonised, which Vitoria believed should apply at a time when there was peace between the colonisers and the Indians²⁶. The second summary is titled *Second Lecture on the Indians, or on the Right of the Spaniards to Wage War against the Barbarians* (*De Indis relectio posterior, sive de iure belli hispanorum in barbaros*), and contains a theory of just war that is universal in character, since Vitoria applied it not only to wars waged by Spaniards/Christians against Indians and other barbarians (e.g. Ottoman Turks), but also to wars between Christian countries²⁷.

In general, Vitoria argued that the reasons for Christians to wage just wars did not lie in cultural/religious otherness, and therefore not in the (extreme) sinfulness of the enemy. However, as we shall see later, Vitoria did concede that certain

²⁵ For more details, see e.g. P. Vyšný, J. Puchovský, *Právne dejiny Latinskej Ameriky. Koloniálne obdobie a obdobie nezávislých štátov*, Trnava 2021, p. 40 ff.

²⁶ F. de Vitoria, *De los indios recientemente descubiertos. Relección primera*, [in:] *Relecciones del Estado, de los indios y del derecho de la guerra*, México 1985, p. 22 ff.

²⁷ Idem, *De los indios o del derecho de guerra de los españoles sobre los bárbaros. Relección segunda*, [in:] *Relecciones del Estado...*, p. 73 ff.

elements of the enemy's way of life, as well as certain forms of his behaviour, which derive from his culture or religion, could be just reasons for war.

According to Vitoria, a just cause for war was some injury (*iniuria*) inflicted by the enemy on the party which then waged a just war against him (unless the enemy himself remedied the injury in a timely and sufficient manner). In doing so, Vitoria considered only the injury actually suffered (*iniuria accepta*) to be just cause for war. Harm, even threatened but not yet actually inflicted, was not considered by Vitoria to be a ground for war, which implies that he did not consider the possibility that a just war could be preventive (waged to avoid inflicting harm), thus anticipating the modern prohibition of offensive warfare²⁸.

As Vitoria saw it, a just war was a legitimate retaliation by a just party against an enemy for causing harm. Indeed, the purpose of the war was to punish the enemy justly, in a manner commensurate with the extent of his wrongdoing. Specifically, punishment of the enemy consisted of military defeat, subjugation (e.g. the enemy could be taxed by the victor), moral satisfaction for the victor (e.g. the victor had the soldiers who proximately caused the injury for which the war was fought executed), and material compensation for the injuries, damages and expenses of the victor from the assets of the defeated enemy²⁹.

That a just cause for war is some kind of injury was implied by the *ius gentium* (law of nations), which was to some extent the precursor of modern international law. It regulated relations between Christian countries as well as between Christian and non-Christian countries. It also contained certain equal and reciprocal rights and duties of all the countries of the world, the violation of which by one country in relation to another country constituted a just cause for the latter to wage a just war against the former, the legitimate aim of which was to obtain just reparation for the injury caused to the former by the latter's violation of the said rights and duties. Thus, according to Vitoria, Spain could only carry out the military conquest against the Indians if the Indians had (seriously) violated certain rights that the Spaniards had towards them, or if the Indians had failed to fulfil certain obligations that they had towards the Spaniards³⁰.

Vitoria subsumed the mutual rights and obligations of countries arising from the *ius gentium* under the concept of the *ius naturalis societatis et communicationis*, which he understood as the right of every country in the world to have a relationship of partnership, solidarity and peaceful communication with all the other states of

²⁸ A. Gómez Robledo, *Introducción*, [in:] F. de Vitoria, *Relecciones del Estado...*, pp. LXXXIV–LXXXV.

²⁹ Cf. F. de Vitoria, *De los indios o del derecho...*, passim.

³⁰ J. Brown Scott, *The Catholic Conception of International Law. Francisco de Vitoria, Founder of the Modern Law of Nations. Francisco Suárez, Founder of the Modern Philosophy of Law in General and in Particular of the Law of Nations. A Critical Examination and a Justified Appreciation*, Clark 2008, p. 16.

the world. Specifically, according to Vitoria, the inhabitants of each country should have the right to travel to and through the territory of the other country, to reside in its territory and to settle there permanently (the exercise of this right, however, must not cause harm to the inhabitants of the other country), the right to trade with the inhabitants of the other country, the right to receive the necessary assistance from the inhabitants of the foreign country in certain situations (during their stay on its territory). For Vitoria, the *ius naturalis societatis et communicationis* was a cogent natural right that could under no circumstances be (even temporarily) restricted or abrogated, since the peaceful (= optimal) coexistence of the peoples of the world depended on its correct and continuous application³¹.

Similarly to Aquinas, Vitoria saw *ius gentium* as a certain development (concretisation) of natural law (the understanding of international law as positive law, deliberately created by the states of the world, i.a. through the conclusion of international treaties, and without systematic consideration of natural law, was only reached by Francisco Suárez). On the other hand, Vitoria also innovated the existing natural law conception of the *ius gentium* when he declared that the *ius gentium* arose, at least in part, from natural law through a hypothetical agreement of the greater part of the so-called whole world (*totus orbis*), i.e. of rational and civilised mankind³², on its content, implying (according to the principle of *pacta sunt servanda*) the binding character of this content for all countries of the world³³.

The mutual rights and duties covered by the concept of *ius naturalis societatis et communicationis* or *ius gentium* were globally binding. The violation of these rights and duties, causing injury and thus establishing a just cause for war, then affected not only the injured country but the *totus orbis* (the whole of humanity). The right to wage a just war and to punish the defeated enemy at its conclusion (after victory has been achieved) is exercised by the ruler in Vitoria's understanding: first, in accordance with natural law; second, on the basis of *ius gentium*; third, *totius orbis auctoritate*, as well as *ex fine et bono totius orbis*, i.e. by authority (of the will), in the interest and for the good of the *totus orbis*³⁴. It follows that Vitoria viewed the waging of a just war as a matter that concerns not only the particular state waging a just war and its enemy, but all of humanity (i.e. all the states of the world), since injury, for which a particular state wages

³¹ J. Thumfart, *Die Begründung der globalpolitischen Philosophie. Francisco de Vitorias Vorlesung über die Entdeckung Amerikas im ideengeschichtlichen Kontext*, Berlin 2012, p. 243 ff.

³² On Vitoria's concept of *totus orbis*, see A. Wagner, *Francisco de Vitoria and Alberico Gentili on the Legal Character of the Global Commonwealth*, "Oxford Journal of Legal Studies" 2011, vol. 31(3), pp. 565–582.

³³ For more details on Vitoria's concept of *ius gentium*, see e.g. idem, *Zum Verhältnis von Völkerrecht und Rechtsbegriff bei Francisco de Vitoria*, [in:] *Die Normativität des Rechts bei Francisco de Vitoria*, eds. K. Bunge, A. Spindler, A. Wagner, Stuttgart–Bad Cannstatt 2011, p. 255 ff.

³⁴ A. Gómez Robledo, *op. cit.*, pp. LXXXIII–LXXXIV.

a just war, the whole of humanity has suffered, since just war is an adequate and legitimate means of redressing that injury, and since the result of just war – the redress of the injury and the restoration of peace – is beneficial to the whole of humanity. It further follows that the right to wage just war belongs, according to Vitoria, to the *totus orbis*, and not to the individual states of the world, to which, however, the *totus orbis* delegates this right when necessary, thereby at the same time authorizing them to wage just war in a manner consistent with the rules for initiating, waging, and terminating this kind of war contained in the *ius gentium* (imaginatively) created jointly by all the states of the world (on the basis of natural law), and thus also (imaginatively) reflecting their common will.

As we have seen, the just cause of the war for Vitoria was the violation of certain rights or obligations by one country in the world, causing injury to another country. Cultural (religious) otherness, nor its main manifestation – the extreme sinfulness of the enemy, however, was not such a cause³⁵.

Vitoria argued that the barbarians/Indians were true (legitimate) and unlimited *domini*, i.e. rulers and owners of their territories, settlements, resources and assets, and therefore the Spaniards could not acquire Indian territories, settlements, resources and assets as *res nullius*, i.e. by primary occupation. Vitoria proved the above by refuting the claims which, if proved to be valid, could prove that the Indians were not *domini*. Specifically, there were three claims, namely that the barbarians, i.e. Indians, are sinners, infidels and madmen or idiots³⁶, i.e. mentally ill or mentally retarded.

Vitoria first proved that persons in a state of sin, including mortal (grave) sin, can be subjects of *dominium*, since biblical tradition and ecclesiastical history know many very sinful, even downright evil and corrupt people, to whom, however, God gave or did not take away royal or other offices, property or authority to validly perform religious ceremonies, and so on³⁷.

The thesis that infidelity deprives of *dominium* was convincingly challenged by Vitoria, e.g. referring to Aquinas' teaching, according to which *dominium* can be an institution of natural law as well as of human positive laws, while infidelity in itself does not derogate either of these types of law – and thus not the right of *dominium* established by them – which is related to the fact that both types of law are applied not only in the Christian environment, but also elsewhere, wherever people live who are able to recognize their content with their reason³⁸.

Finally, Vitoria using empirical arguments, i.e. by pointing out the essential elements of Indian societies, e.g. to the existence of permanent settlements

³⁵ F. de Vitoria, *De los indios o del derecho...*, p. 81.

³⁶ *Idem*, *De los indios recientemente descubiertos...*, pp. 30–33.

³⁷ *Ibidem*, pp. 28–30.

³⁸ *Ibidem*, pp. 30–33.

including real cities, a developed social, political and economic organization, or a certain law, he categorically rejected that Indians could be considered irrational and uncivilised people or as madmen or idiots. Moreover, Vitoria stated that even if the Indians were madmen or idiots, it would not be possible to completely deprive them of their *dominium* – it would only be permissible to limit their disposal with its object. Thus, according to Vitoria, the Indians were neither irrational and uncivilised people nor madmen and idiots, and therefore, according to him, they were subjects of *dominium*. On the other hand, Vitoria believed that Indians were less rational and civilised than Europeans/Christians³⁹.

If Vitoria claimed that Indians have a subjective natural right of *dominium*, he also indirectly stated that they have personal freedom as a necessary prerequisite for the possibility of having and exercising subjective natural rights. On the other hand, Vitoria allowed the enslavement of non-Christian prisoners of war, and even harsher treatment of them (including their execution) than Christian prisoners, which implies that Vitoria nevertheless attributed a certain importance to the cultural/religious otherness of the enemy in judging the justice of the military actions taken against him. However, it must also be taken into account that Vitoria was influenced by the aforementioned Iberian tradition of enslaving non-Christian prisoners of war (*cativos*), also justified by the fact that Muslims routinely enslaved Christian prisoners of war. In addition, the sale or work of enslaved non-Christian war prisoners contributed to the achievement of moral satisfaction and material compensation for the party that suffered injury and was thus forced to wage a just war⁴⁰.

Vitoria also allowed the conduct of a just war against the Indians even in situations in which the just reason for the war resulted from certain elements of the Indian way of life, or from certain forms of Indian behaviour which (elements and forms) resulted from Indian culture/religion. Let's take a closer look at these situations.

First, according to Vitoria, it was possible to wage a just war against the Indians, who would have prevented the free preaching of Christianity in their territories too vehemently or violently⁴¹.

Second, if in an Indian country a part of its inhabitants accepted Christianity, but the ruler or elites of this country tried to return them to their original faith by intimidation or violence, according to Vitoria, the Spaniards could subjugate that country by a just war, which would be understood, in this case, as help provided to fellow believers (Christians)⁴².

³⁹ *Ibidem*, pp. 33–36.

⁴⁰ *Idem*, *De los indios o del derecho...*, p. 94.

⁴¹ *Idem*, *De los indios recientemente descubiertos...*, pp. 65–68.

⁴² *Ibidem*, p. 68.

Third, Vitoria says that if a certain larger part of the Indians should accept and properly profess Christianity, the Pope may establish new Christian rulers for them, especially if their original rulers reject Christianity and suppress it among their subjects⁴³.

Fourth, if the tyrannical rule of the Indian rulers or the inhumane laws of the Indians would cause death or other suffering to innocent people. Vitoria saw in certain elements of the Indian way of life, especially the offering human sacrifices to the gods and ritual anthropophagy, a tyrannical and inhumane, and thus irrational and uncivilised treatment of innocent people that needed to be punished⁴⁴. Vitoria therefore argued that the Spaniards could ban human sacrifice without papal approval, as they had the right to protect the innocent from unjust death, as well as other (in their view) bad Indian customs, regardless of whether the Indians wanted/didn't want to obey their tyrannical rulers or were/were not aware of the inhumanity of their laws. In order to eliminate the bad elements of the Indian way of life, or to effectively protect the innocent Indians, the Spaniards could wage a just war against the Indians, depose their rulers, occupy their territories, etc.⁴⁵.

Fifth, Vitoria believed that there was a right for civilised people (Spaniards) to colonize territories inhabited by 'backward' (insufficiently civilised) societies (Indians) and take care of their members. However, he considered the legitimacy of this right debatable, although he admitted that the intellectual capacity and degree of cultural development of the Indians were lower than those of the Spaniards and that Spanish rule could be beneficial to the Indians. Thus, Spaniards could legitimately subjugate the Indians with the aim of generally improving their lives, bring them to Christianity, and thus to posthumous salvation, etc. In this case, according to Vitoria, the Spanish conquest of the Americas would be an act of merciful love (*caritas*), a useful help to the barbarians, whom Vitoria considered to be in relation of fellowship to Christians⁴⁶.

CONCLUSIONS

The importance of the cultural/religious otherness of the Indians and especially its main manifestation – the extreme sinfulness of the Indians as a just title of the Spanish

⁴³ *Ibidem*, pp. 68–69.

⁴⁴ For Vitoria, offering human sacrifices to the gods and ritual anthropophagy were part of the evidence that the Indians were less rational and civilised than the Europeans/Christians. He considered these religious practices of the Indians to be, i.a., a manifestation of insufficient development of the virtue typical of completely rational and civilised people – temperance, which leads these people, e.g., to avoid consuming human flesh. See M. Pastor, *La interpretación de los pecados de la carne en la Escuela de Salamanca*, "Iberoamericana" 2015, vol. 15(58), pp. 49–52.

⁴⁵ F. de Vitoria, *De los indios recientemente descubiertos...*, p. 69.

⁴⁶ *Ibidem*, p. 70.

conquest of the Americas gradually decreased in its course. On the other hand, even those who considered the Indians as rational and civilised people living in accordance with natural law recognized that the degree of their rationality and civilization was lower than that of the Spaniards (Europeans, Christians). Therefore, similar to those according to whom the degree of Indians' rationality and civilization was insufficient or even zero, they did not reject the Spanish rule over the Indians, as they saw in it a means of Christianizing the Indians and their integration into the European Christian civilization, which should fundamentally improve their lives. The one and the other did not differ completely even on the question of the methods of establishing the Spanish rule. Vitoria refused to allow war against the Indians because of their cultural/religious otherness and extreme sinfulness, considering them to be a relatively rational and civilized people, to whom personal freedom and dominium belong. At the same time, however, he argued that if the Indians did not respect their certain obligations towards the Spaniards or certain rights that the Spaniards had towards them, this would mean that the Indians did not respect the *ius gentium*. This law, as well as its basis – natural law, was common to all rational and civilised people, and therefore the Indians, as rational and civilised people, had to recognize its content. If this did not happen, Vitoria did not see it as a manifestation of the cultural/religious otherness of the Indians, but as an imaginary infliction of injure on the whole world (*totus orbis*), which could then authorize a specific state (Spain) to seek redress by waging a just war against the Indians. Similarly, the whole world could theoretically authorize Spain to wage a just war against the Indians if the Indians did not eliminate certain elements of their way of life that rational and civilised people should have evaluated as evil and inconsistent with natural law and *ius gentium*.

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ABSTRACT

The Spanish conquest of the Americas has been interpreted – and at the same time legitimized – in a number of ways. One of them was passing it off as a just war. There were two basic views on what should be considered a just cause of the conquest. For some, this cause was the cultural, especially religious, otherness of the Indians and its main manifestation – the extreme sinfulness of the Indians. Others, however, denied that the cultural/religious otherness or the extreme sinfulness of the Indians was a just cause for waging war against them. Both views are briefly explored in the study. The article also shows that their contradiction was only partial. Supporters of the first and second views differed on the question of the methods of carrying out the Spanish conquest of the Americas or the establishment of Spanish rule over America, but not in the belief that the Spanish conquest and rule could have positive effects for the Indians – the ‘imperfect’ Indian societies would become an integral part of the ‘perfect’ European Christian civilization, represented by the Spanish monarchy. The goal of the conquest was so important that even Francisco de Vitoria, who otherwise rejected the cultural/religious otherness of the Indians as a just cause for the war against them, allowed it to be conducted by the Spaniards for certain elements of the Indian way of life or forms of behaviour that resulted from the cultural/religious otherness of the Indians.

Keywords: Indians; Spaniards; conquest; just war; cultural/religious otherness; extreme sinfulness; Francisco de Vitoria

ABSTRAKT

Hiszpański podbój Ameryki był interpretowany – a zarazem usprawiedliwiany – na wiele różnych sposobów. Jednym z nich było przedstawienie podboju jako wojny sprawiedliwej. Istniały dwa podstawowe podejścia do tego, co rozumieć przez sprawiedliwą przyczynę podboju. Dla niektórych była to kulturowa, zwłaszcza religijna, odmienność Indian i jej główna manifestacja – skrajna grzeszność Indian. Inni natomiast zaprzeczali, że kulturowa/religijna odmienność lub skrajna grzeszność Indian stanowiły sprawiedliwą przyczynę wojny przeciwko nim. Oba punkty widzenia zostały krótko omówione w opracowaniu. Artykuł pokazuje także, że ich sprzeczność była tylko częściowa. Zwolennicy pierwszej i drugiej koncepcji różnili się pod względem metod przeprowadzenia hiszpańskiego podboju Ameryki czy też ustanowienia hiszpańskiego panowania nad Ameryką, lecz nie w przekonaniu, że podbój hiszpański i panowanie mogły mieć pozytywne skutki dla Indian – „niedoskonałe” społeczeństwa indiańskie stały się integralną częścią „doskonałej” europejskiej cywilizacji chrześcijańskiej, reprezentowanej przez monarchię hiszpańską. Cel podboju był tak istotny, że nawet Francisco de Vitoria, który w innych przypadkach odrzucał kulturową/religijną odmienność Indian jako sprawiedliwą przyczynę wojny przeciwko nim, pozwalał Hiszpanom prowadzić ją ze względu na pewne elementy życia Indian lub formy zachowania wynikające z kulturowej/religijnej odmienności Indian.

Słowa kluczowe: Indianie; Hiszpanie; podbój; wojna sprawiedliwa; kulturowa/religijna odmienność; skrajna grzeszność; Francisco de Vitoria