

## DIRT, GREED, and BLOOD: JUST WAR AND THE COLONIZATION OF THE NEW WORLD

The proverbial verdict of history on Columbus and the legacy of the Spanish conquest has been at best ambivalent in this quincentenary year of the discovery of the new world. Last fall, a mock trial conducted at the University of Minnesota Human Rights Center sentenced Columbus to 350 years of community service and education following a guilty conviction on counts of slavery, torture, murder, forced labor, kidnapping, violence, and robbery. The chief prosecutor remarked that though Columbus was a man who lived by the standards of his times, modern persons must hold Columbus accountable for these various crimes against the indigenous populations.

Was it really the case that Columbus and those who shortly followed him to the new world lived by an "anything goes" morality? Consider the voice of protest raised in 1511 by the Dominican friar Antonio de Montesinos. Warning his Spanish audience that their conduct towards the Indians on Hispanolia (Haiti) risked mortal sin, Montesinos asked: "By what right or justice do you keep these Indians in such a cruel and horrible servitude? On what authority have you waged a detestable war against these people, who dwelt quietly and peacefully on their own land? ..." (17) Those questions of right, justice, and authority, defined the Spanish debate over the morality of the conquest of the new world for the next century. The standards of justice and authority were not anything goes, but were given substantive meaning through the application of the traditional moral framework of the "just war." Montesinos described the war on the Indians as "detestable"; others would not agree, but the framework of just war provided the substantive parameters for debate over the moral and theological justification of the conquest.

Born in the year of Columbus's first voyage, a Dominican theologian at the

University of Salamanca, Franciscus de Victoria developed the most influential and elaborate exposition of the just war concept for the context of the new world. In 1534, Victoria wrote in a letter that reports of Spanish brutalities in Peru "makes my blood run cold," and in 1536 he received a first-hand accounting of the Peruvian conquest from Vincent Valverde, a former student who had accompanied Pizarro. Within the next years, Victoria issued On Temperance, a stinging attack on the theoretical foundations for the conquest that proved so controversial that he destroyed all available copies, and then his classic *relectios*, On the Indians Newly Discovered and The Law of War. His influence reached far beyond the university; between 1539-1541, Victoria was consulted four times by the Emperor Charles V over moral matters relating to the conquest.

What Victoria brought to these discussions was an invigorated Thomistic view of natural law. Even as a new world was being explored and exploited, an old world order of Christendom was fragmenting forever. The Catholic-Protestant schism that was transpiring precisely during this period indicated that religion could not ensure social cohesiveness and stability. Thus, Victoria and others sought a basis for peaceable political communities and civil order in a faith in common human reason rather than a specific divine revelation. That faith brought the Spaniard and the Indian into one moral community with shared moral standards. The moral story of the conquest is then no less a story of the transformation of the idea of just war into a secular moral tradition, whose legacy is embedded in contemporary international law. That is, our moral and legal concerns about "cleansing" and "commerce" as grounds for war are shaped in part by a moral context of "dirt" and "greed" that Victoria encountered to justify the shedding of blood in the conquest.

### THREE TRADITIONS

The philosophical perspective of the just war tradition is constituted by two fundamental claims. The first is that in the pursuit of social justice and peace, it can be

morally justifiable to resort to war. In that claim, the just war tradition differs significantly from an important, if minority alternative, the pacifist traditions that emphasize non-violent means to effect social change. Pacifism was the dominant tradition in the formative centuries of the early Christian Church, due to the influence of the teachings and example of Jesus on non-resistance of evil, and love and forgiveness of enemies. This pacifist legacy was unavoidable for later theorists of just war; the first question such theorists had to address, to illustrate from Thomas Aquinas, was **whether** war was "always" sinful, or as Victoria puts it, "whether Christians may make war at all." (165) That is to say, the just war theorists shared with the pacifists a general presumption against the shedding of blood and the resort to war; the pacifists understood this prohibition to be absolute, while the just war theorists maintained the prohibition could be overridden provided certain conditions were fulfilled. These conditions, such as right authority, just cause, last resort, proportionality, and a right intention for peace, became the **jus ad bellum** criteria for a just war.

The pacifist alternative was not simply a relic of the Christian past; it was undergoing an important renewal in Europe precisely at the time the Spanish debated the morality of the conquest. The Protestant Reformation spawned several religious pacifist communities, including the Anabaptists and the Mennonites, who affirmed that "the sword is ordained of God **outside** the perfection of Christ," as well as the humanistic pacifism of Erasmus. The pacifist legacy thus lurked in the theological memory and political background of the Spanish debate, and sometimes, as with figures like Bartolome de las Casas, found eloquent voice.

The second fundamental claim of the just war tradition is that, while war is sometimes morally permissible, violence **in** war must be restrained or limited. This claim distinguished the just war tradition from the crusade or "holy" war tradition. A divine mandate for war, as in the crusades against the Muslims or against heretics during the Middle Ages, tended to lead to unlimited violence because its purpose was the

eradication of evil. This unrestrained spirit of the crusade idea was captured in a remark of a papal representative when asked how Christian soldiers besieging a city could distinguish between Catholics and heretics: "Kill them all, God will know which are his."

While the pacifist tradition looked to the New Testament, the holy war tradition cited the Old Testament for validation of a "conquest" paradigm. This drew on the biblical narratives of "conquest" of the land of promise by the Hebrews against the Canaanites and ongoing wars against idolatry undertaken in obedience to the divine command to "purify the land of abominations." The biblical record of the legendary battle of Jericho observes that the Israelites "utterly destroyed all that was in the city, both man and woman, young and old, and ox, and sheep, and ass with the edge of the sword." (Joshua 6; 1 Sam. 15). The historical analogue was not lost on some Spanish contemporaries of Victoria. In 1513, Martin Fernandez de Encisco argued persuasively before the crown's counselors that "the king might very justly send men to require these idolatrous Indians to hand over their land to him, for it was given him by the pope. If the Indians would not do this, he might justly wage war against them, kill them and enslave those captured in war, precisely as Joshua treated the inhabitants of Jericho." (p. 32)

Notwithstanding its scriptural status, the theorists of just war found it difficult to accommodate the biblical paradigm of "conquest" and unrestrained violence, and frequently claimed this required an exceptional divine dispensation. Historically, the theorists made efforts to limit when war could be fought, with what kinds of weapons (e.g., crossbows), and with whom. These efforts were not always successful, but gradually two kinds of limits on violence in war were acknowledged as the **jus in bello** of the just war tradition, the immunity of certain groups of "innocent" persons from attack, and that the methods of war had to be proportionate with the overall aims of war. What is clear is that the theorists did not subscribe to a model of "anything goes" in war, or that "all is fair in war." A just war incorporated what would later be called rules of "fair fighting" to restrain violence.

The themes of justification (*jus ad bellum*) and restraint (*jus in bello*) are the twin pillars of the just war tradition as it has come down to us today in the form of international law and various conventions. We have received it in this form, rather than as a marginalized religious ethic, however, because of the transformation the tradition underwent in the Spanish confrontation with the Indians.

#### DIRT: CLEANSING AND UNJUST WAR

The Thomistic

tradition of just war inherited by Victoria and his contemporaries identified three conditions for a war to be just, that it be commanded by a sovereign authority, that a just cause be present owing to some "fault" in the enemy, and that there exist a right intention to advance good or avoid evil. The supporters of Spanish conquest, be they prince, cleric, or conquistadore, believed that rightful authority resided in the papal pronouncement of Alexander VI in 1493 that Spain had just title to the Indies for the purposes of conversion to Christianity; wherein, however, lay the "fault" of the Indians that would provide a just cause for war? The customary answer to this question was refusal to accept the Christian faith, but this answer must be seen in a broader context of Spanish attempts to dehumanize the Indians.

Encisco's biblical paradigm of conquest provided the theological grounds for the infamous Requirement, issued under the authorization of King Ferdinand, in 1514. The Spanish were to inform the Indians they encountered of their dual obligations to acknowledge the dominion of Church, pontiff, and King, and to permit the preaching of Christianity. This invitation was accompanied by a warning that failure to comply would mean subjugation by force, enslavement of women and children, and despoilation of property; in short, the Spanish would "do all the harm and damage that we can, as to vassals that do not obey."

This was not an offer the Indians found too good to refuse, nor was it offered in

good faith in practice. According to royal historians, the conquistadores read the Requirement to trees and empty huts when no natives were encountered, mumbled it into their beards as they attacked a sleeping village, read it from the decks of ships, or after natives had been captured. Once removed from the theorizing of Spain, the Requirement became a recipe for license in the new world. Moreover, while the Requirement sought to give spiritual and moral legitimacy to the conquest, it was intertwined with a presumption that the Indians lacked the religious and natural capacities required of the Christian anyway. As Constantino Balye has observed: "What was wrong with the Requirement was that it was intended for men but read to half-beasts." (35)

The rhetoric of war historically dehumanizes or demonizes the stranger/enemy and the Spanish proved no less adept at this than any modern propagandist. The observations of the Spanish royal chronicler Gonzalo Fernandez de Oviedo, who accompanied the conquistadores and himself proclaimed the Requirement, audience or no audience, provides a representative portrayal of the perceived religious and natural deficiencies of the Indians:

*"They are naturally lazy and vicious, melancholic, cowardly, and in general, a lying, shiftless people. Their marriages are not a sacrament but a sacrilege. They are idolatrous, libidinous, and commit sodomy. Their chief desire is to eat, drink, worship heathen idols and commit bestial obscenities. What could one expect from a people whose skulls are so thick and hard that the Spaniards had to take care in fighting not to strike on the head lest their swords be blunted?" (p. 11)*

Oviedo's emphasis on idolatry, the sacrilege of marriage (polygamy) and sodomy are especially relevant to the biblical paradigm of conquest and holy war. Such practices had traditionally been designated as "abominations" in the sight of God and punishable by death. The theological language of "abomination" identified some act or practice that threatened the cosmic or social order. The person who performs the act is

rendered "unclean" and a potential source of pollution to the religious community. The community response to the presence of pollution can differ according to the location of the threat; if external to the community, the response may be either avoidance or extermination; if internal, some ritualistic form of "cleansing" may be prescribed, perhaps by ritual washings or sacrifices. In the context of the Spanish conquest, the alleged "fault" for just war is to be religiously impure or dirty, a fault that could be cleansed by the healing waters of baptism or eradicated by war.

The other form of dehumanization derived from classical philosophy rather than religious tradition. The Aristotelian notion that some persons are slaves by nature born to serve masters seemed embodied in the "natural" slovenliness and hard-headedness of the natives chronicled by Oviedo and others. This line of reasoning had long-standing influence on the internal Spanish discussion: Fourteen distinguished judges summoned by the emperor in 1550 to assess whether war could be justly waged against the Indians heard Juan Gines de Sepulveda cite the "natural rudeness and inferiority" against the humanistic reading of Las Casas. The natural slavery argument could thus be used to support the same conclusion as the religious abomination argument: A person who refuses to accept his social status as slave could be justly warred against by masters in the manner of hunting a wild beast or dog.

The dehumanization of the enemy intrinsic to warfare has a substantial normative implication: It not only offers a pretext for just cause but it relaxes the *jus in bello* restraints. Wild beasts are not given the same protections as human beings because they are not considered members of the moral community. And the tendency to dehumanization can be reinforced by distance: Sepulveda, unlike Las Casas, never visited the Americas. The challenge to the just war pillar of limited violence posed by this logic of dehumanization is **how the humanity of the enemy can be affirmed**. The difficulty is nicely conveyed in one of Bruce Catton's narratives on the Civil War, in which two officers in the Union Army climbed a mountain to scrutinize the Confederate

forces. Through telescopes, they saw the soldiers lounging in their shirt sleeves, smoking their pipes, washing their clothes, and playing ball. After some time, the officers put down their telescopes and one remarked to the other: "My God, they're human beings just like us."

The Spanish case for just war against the Indians then ran something like this: There is a monarchical authorization for war that derives ultimately from the papal bequeath of the Indies to the Spanish. The "fault" that supports a just cause is the natives' refusal to accept the dominion of the Spanish and the salvation of the Christian gospel. However, this fault is rooted in deeper faults or deficiencies in the nature of the Indians. They are either incorrigible idolaters who won't accept Christianity or slaves that by nature do not have the capacity to accept Christianity. Both arguments push in the direction of unrestrained violence because they invoke a biblical paradigm of conquest or the moral logic of dehumanization. The proclamation of the Requirement demanding either compliance or the commencement of hostilities would formally fulfill the just war criterion of declaration of intention, and though the Spanish failed to conform to this intent, the declaration was understood as a last resort warning prior to war. The ostensible function of the Requirement was to ensure that the conquest satisfied the demands of Christian conscience. (35)

That this conscience was never quite comfortable is evident from Victoria's opening line in the Law of War: "The seizure and occupation of those lands of the barbarians whom we style Indians can best, **it seems**, be defended under the law of war." (165) "Barbarian" is not a resounding affirmation of human dignity to 20th century ears attuned to equality, but in the context of 16th century Spain, a barbarian did have a distinctive status not open to persons defined by the categories of "heretic" (Protestant), "infidel" (Muslim, Jew) or "slave." However, the laws of war support neither the conclusions nor the supporting premises of the religious or natural deficiency argument

for just war. Given the fact accomplished of Spanish dominion in the new world, Victoria first asks "by what right" the native Indians came under such rule, a direct challenge to the Spanish claim of legitimate authority to rule and to wage war when their rule is resisted. The issue, as Victoria initially construes it, concerns the nature of ownership of property, and that takes him directly into the question of the capacities of owners, that is, the Aristotelian argument that natural slaves do not own property and are incapable of self-governance: "If there be any such, the aborigines in question are preeminently such, for they really seem little different than brute animals and are utterly incapable of governing, and it is unquestionably better for them to be ruled by others than to rule themselves."

But, Victoria finds this standard reasoning empirically unsound and to assume a mistaken account of normative humanity. Descriptively, Victoria draws attention to "the fact the people in question were in peaceable possession of their goods, both publicly and privately" (120) prior to the conquest. Moreover, drawing on the Genesis creation narrative, the normative "nature" of persons is constituted by the **imago Dei** (image of God) and it is this that confers dominion: "Dominion is founded on the image of God; but man is God's image **by nature**, that is by his reasoning powers." (122) This latter capacity was of course precisely what was disputed by defenders of the Aristotelian position, but Victoria staunchly affirms the common humanity of the Spaniard and Indian based on reason: "... they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops, and a system of exchange, all of which call for the use of reason; they also have a kind of religion. Further, they make no error in matters which are self-evident to others; this is witness to the use of reason." (127) Victoria's refutation of the application of the Aristotelian claim of natural slavery to the Indians relies, ironically, on the Aristotelian concept of a "perfect community," that is a community self-sufficient in law and civic order to meet the temporal needs of all its members (169). The Indians must therefore be treated as

owners in fact and in principle; the burden of proof falls to the Spaniards to show how this dominion was lost such that the Spanish could validly claim just title over the Indians.

The customary title of authorization that derived from papal sovereignty, as mediated through the Emperor and the Spanish monarchy, is "baseless" according to Victoria. The Spanish cannot appeal to papal authorization for title over the Indians because the pope exercises only spiritual, not temporal, dominion. In short, the Indies were not the pope's to give to Spain: "even if the barbarians refuse to recognize any lordship of the Pope, that furnishes no ground for making war on them and seizing their property. This is clear, because he has no such lordship." (137) This argument, the first denial of the papal grant of just title by a Spanish writer, is coupled with a claim about the limited temporal jurisdiction of the emperor. The emperor has no temporal dominion over communities that have not submitted to him, and in the Law of War, Victoria asserts as a point of consensus not even needing proof: "Extension of empire is not a just cause of war." (170) The obligation of Indian submission enunciated under the 1514 Requirement is null and void to Victoria.

This still leaves open a justification of the conquest based on the abominations of idolatry and/or "unnatural" sexual practices. Victoria acknowledges the presence of such practices among the Indians, but denies these provide a just cause for war, and he explicitly rejects the biblical paradigm of a conquest for "cleansing." A simple and yet stunning (given the times) proposition is offered that would transform just war theory: "Difference of religion is not a cause of just war." (170) The issue for Victoria is the standard of knowledge about religion and morality to which the Indians should be held accountable, and his approach implies several different levels of knowledge. Prior to the discovery, the Indians could not be held responsible for unbelief in Christ and the worship of other gods. This position draws on the traditional Catholic concept of "invincible ignorance," wherein a person **could not** know what he/she in fact **did not**

know. (142) The moral situation changes not an iota by a "simple declaration and announcement" of the faith to the natives, a clear allusion to the Requirement. The Indians cannot be held responsible for failure to accept Christianity with such rudimentary knowledge, for any evangelization must be accompanied by signs of the credibility and persuasive force of the message. Lacking these features, "the Spaniards cannot make [unbelief] a reason for waging war on them. ... They are innocent in this respect and have done no wrong to the Spaniards." (143)

Victoria does not draw out what is implicit in his claim here, namely, any war waged by the Spanish on the Indians under the Requirement was unjust. The point here is not academic; two major issues are at stake, both of which are developed more in the Law of War. First, subjects not only had a right but a duty to refuse to serve in a war that was manifestly unjust: "If a subject is convinced of the injustice of a war, he ought not to serve in it, even on the command of his prince ... for no one can authorize the killing of an innocent person." (173) What is binding on the soldier is the command of personal conscience, and this permits selective conscientious objection in cases of certainty about an unjust war so that soldiers may avoid bloody hands. Secondly, a duty of restitution for injuries inflicted applied to those who waged unjust war: "It is lawful to make good out of enemy property the expenses of the war and all damages wrongfully caused by the enemy. ... The enemy who has done the wrong is bound to give all this redress." (171) Victoria simply failed to apply the restitution requirement to the case of Spanish unjust wars, although others such as Las Casas did not.

The accountability of the Indians for "unbelief" does change, however, if the Christian faith is presented with "**demonstrable and reasonable arguments.**" The theological condition becomes that of "vincible ignorance," wherein a person is responsible for what they do not or refuse to know. The Indians risked mortal sin if they failed to accept Christian faith demonstrated "diligently and zealously" through preaching, the example of an upright life, and miracles. Evangelization through example

mandates a more elaborate process of conversion, as contrasted with a proclamation that is "done ... once only and perfunctorily," (144) a clear indictment of the Requirement.

This third standard, which leaves the Indians with no grounds for non-acceptance, is immediately qualified by Victoria to such an extent that it becomes an empty case. Victoria admits he is not assured that any audience of Indians has ever received this non-excusable demonstration of religious truth. Indeed, "I hear of no miracles or signs or religious patterns of life; nay, on the other hand, I hear of many scandals and cruel crimes and acts of impiety." (144) Far from exemplary evangelization, Victoria points sharply to the irony of the Requirement: "... war is no argument for the truth of the Christian faith." (145) The practical presumption that follows from this is that all Indians be treated as though their ignorance was invincible.

Moreover, even on a standard of vincible ignorance, Victoria denies the presence of just cause for war. A resort to war to create religious uniformity contradicts the very essence of faith. The faith of the believer is a free expression of the will to the invitation of God; belief that is coerced or compelled, by contrast, is "monstrous and a sacrilege." Victoria's view, to be sure, was not universally embraced at the time, but as Europe would gradually exhaust itself with a century of religious warfare, this idea would become a founding pillar of religious toleration.

The standards of knowledge and ignorance likewise inform Victoria's analysis of sins of "uncleanness" that violate the natural order: incest, sodomy, pedophilia, bestiality, lesbianism. Despite his use of the word "nature," Victoria seems unwilling to hold the Indians completely culpable for such practices. At some points, the standard of invincible ignorance seems to prevail: Beyond the general principles of natural law that a Catholic natural law moralist would have to hold as universally recognizable, very specific acts that violate natural law "can[not] be clearly shown to be such, at any rate to every one." (146) Indeed, Victoria observes that clearer proofs exist for the truth of

Christianity than that certain practices violate natural law. In other instances, this claim is coupled with a denial of papal or princely authority to **enforce** natural law against "barbarians, who have not that knowledge" that such acts are sinful. Nor can Victoria find support for a special divine mandate to cleanse and purify the new world of abominations; indeed, the biblical conquest of Israel had nothing to do with the threat of moral pollution but must be attributed to "either a special gift of God or because [Israel's] enemies had hindered their passage or had attacked them." (147) Victoria thus reads the biblical narrative through the lens of just war theory, a hermeneutic that also gives advance notice of the principles that do validate Spanish dominion.

#### GREED: "NO GOLD FOR BLOOD" AND FREE PASSAGE

Given Victoria's status as a trusted counselor to Charles V, it is interesting to speculate on the practical ramifications of his argument had it concluded with section 2 of Des Indies. He had "demolished" the conventional Spanish case for just war: "At the time of the Spaniards's first voyages to America they took with them **no** right to occupy the lands of the indigenous population." (138) Moreover, the alleged "faults" of the Indians, including irrationality, denial of dominion, idolatry, and uncleanness, had all been shown to be groundless as causes for war and Spanish title. Yet, the fact remained that the Spanish had established and was continuing to expand a colonial empire. Was this simply an incarnation of the "might makes right" maxim or could the Spanish claim of just title rest on other grounds? The search for those grounds transforms Victoria from critic of the conquest to apologist.

In this context, the theme of greed needs to be examined. Certainly, many of the conquistadores made no pretense about their motivations: Pizarro remarked of the conquest of Peru: "I have not come for [God and the faith]. I have come to take away from them their gold." Given that Victoria had argued that the Indians have just claims of ownership over their property, and his denial that extension of empire or princely

aggrandizement constitute just causes of war, one might expect a version of "no blood for gold" to influence his moral analysis. Ironically, however, his account gives more moral credibility to blatant commercial motivations for conquest than do the alleged faults of the Indians against God, nature, or reason.

The content of natural law is minimalistic in Victoria's treatment of illegitimate Spanish titles; yet, his arguments for legitimate title reflect traditional Thomistic claims about the unique characteristics of human nature. Thomas had argued that natural law inclines human beings to "know the truth about God and to live in society." This capacity for social relationality offers to Victoria his first justification for Spanish dominion, "**natural society and fellowship.**" If the Spanish had offered "fellowship" to the Indians, of course, the story of the conquest would have turned out much different; the potential for conflict arises when Victoria identifies the entitlements of the Spanish under this principle of natural law, some of which he notes are acknowledged in the *jus gentium* or law of nations. The first is a **right of free passage**: "The Spaniards have a right to travel to the lands in question and to sojourn there, provided they do no harm to the natives and the natives do not prevent them." (151) The mutual fellowship required by natural law also encompasses **friendship**, the **hospitable reception of strangers**, and even **love of neighbor**. (153) By contrast, denial of this right by exclusion or expulsion constitute "acts of war." (152) The content of natural law is no longer minimalist, but expansive.

The Spanish also have a right to **engage in lawful commerce** with the Indians, again with the proviso that no harm be done to the indigenous country. This encompasses "importing ... thither wares which the natives lack and by exporting thence either gold or silver or other wares of which the natives have abundance," a fair trade by the standard of any conquistadore. All parties also have a right to **expropriate the commons**, whether that be gold in the land or pearls from the sea. The Spanish have a right to anything treated as common to both citizen and stranger, including a claim of

**first occupancy** in acquisition of things for which there is no original title. The Spanish have no entitlement to the actual possessions of the Indians; in that sense, Pizarro's intent to "take" the Indians' gold "from" them is precluded. However, natural law offers no objection to Spanish occupancy over resources not yet possessed by any one, or to commercial exchange for gold and silver the Indians do possess.

The protection of these rights from violations by the Indians leads Victoria to first affirm a just cause of war. Any war must meet a criterion of last resort; that is, the Spanish have a burden of proof to display to the natives their peaceful ends and intent not to inflict harm. The war must also be responsive, in keeping with the tradition's notion of a "fault" by the enemy: "There is a single and only just cause for commencing a war, namely, a wrong received." (170) However, if efforts to secure peace and safety by recourse to reason fail, "the Spaniards can defend themselves and do all that consists in their own safety, it being lawful to repel force by force," and if necessary construct fortresses and defensive works. (154)

Thus, the moral justification of just war consists not in expansion of the dominion of Christianity or the emperor but rather is a last resort grounded in the natural law of self-preservation and self-defense. Yet, it is a puzzle how Victoria even gets to this conclusion. He had previously attributed invincible ignorance to the Indians on the question of unbelief and unnatural sin; yet, this argument for just cause seems to presuppose very detailed knowledge about rights equally founded in natural law, including passage, commerce, common expropriation, and occupancy. It should be clear what has happened in these different standards of natural law: Victoria has transported to the new world, under the guise of just war theory, the standards regulating commercial relations among Europe's states. A very telling illustration is Victoria's application of ambassadorial immunity to the Spaniards: the Spaniards are designated "ambassadors of Christian peoples" to the Indians, and as ambassadors are inviolable under the *jus gentium*, the natives are bound at the very least to give the

Spaniards a "friendly hearing." (156) The paradigm for Victoria's just war is not then the Israelite conquest of Canaan but the political and economic relations between Spain and France.

The affirmation of the rational humanity of the Indians, which Victoria had labored to defend against the Aristotelian doctrine of natural slavery, now displays its other side, a set of universal rights and obligations that, as participants in a global moral community the Indians are rationally bound to acknowledge. The theory of just war, which had previously refuted every Spanish rationale for using force to subjugate the Indians, now becomes a vehicle for cultural imperialism. The Indians knew nothing of requirements of free passage, commerce, or occupancy. Thus, the conquest of the new world becomes as much moral as military or commercial.

Still, Victoria is willing to err on the side of the Indians rather than the Spanish on a point that would eventually transform the entire tradition of just war. Citing the "natural timidity" of the natives (as contrasted to the bloodthirsty savage reported by the conquistadores), Victoria concedes the military garb, weapons, and massed power of the Spaniards could counteract their efforts of reassurance about peaceful intent. The Indians might then resort to war not because of a deliberate "fault," an intent to violate natural law, but due to the "influence of these [excusable] fears." Two crucial claims follow from this. The first is that though the Spanish could justifiably resort to measures of self-protection, the actual prosecution of the war must be very restrained. The Spanish could not enforce conventional rights of war pertaining to capture, enslavement, or seizure of property. "As the natives are **innocent** and justified in feeling afraid ... the Spaniards ought to defend themselves ... with the least damage to the natives." (155)

The question any reasonable Spaniard would be asking at this point is how to determine the level of innocence or blameworthiness of the Indians, and that issues in a second major implication: Both sides, Victoria observes, may have a just cause for war

under a doctrine that subsequently comes to be called "simultaneous ostensible justice." Victoria remarks: "Assuming a demonstrable ignorance either of fact or of law, it may be that on the side where true justice is the war is just of itself, while on the other side the war is just in the sense of being excused from sin by reason of good faith, because invincible ignorance is a complete excuse." (177, 155) While God's omniscience can determine which side has an objectively just cause for war, human finitude and fallibility renders us incapable of clear judgments.

The possibility that one's side (viz. the Spanish) may be mistaken about the **substantive** justice of the war necessitates for Victoria a **procedural** solution. Since a prince is incapable on his own of making a determination of just cause, he is bound to consult with the good, the wise, and the upright in a "careful examination ... of the justice and causes of the war," including listening to the reasons of those who oppose the war on grounds of equity. (173) This broadens the content of the right authority criterion of just war and is a prescription that Charles V apparently took seriously by consulting Victoria on several occasions.

The recognition of the excusable ignorance of the Indians, due to fear or intimidation, is thereby twofold: It can limit the occasions for resort to war in the first place, because of the need for care in examining the just cause, for careless treatment is "inexcusable." Second, the relative justifiability of a war is integrated with restraints on violence and the observance of scrupulous conduct in war, including the absolute immunity of noncombatants from attack. This becomes part of Victoria's modern legacy: The difficulty of making clear determinations about the **jus ad bellum** eventually culminates in an elaboration of the restraints and protections of the **jus in bello**, a predominance that continues to be reflected in contemporary international law.

If Victoria's first argument for just cause relies on the natural inclination of sociality, the second reflects the Thomistic interpretation that human beings have a

natural inclination to "know the truth about God." Victoria asserts what can be designated the **right of free preach**: "Christians have a right to preach and declare the Gospel in barbarian lands." (156) The teaching of truth is, for Victoria, associated with the rights of passage and commerce and so finds partial warrant in natural law, including that of "brotherly correction" and love.

Still, short of a continental conversion (a scenario Victoria does envision), it's hard to see how this right confers title to the Spanish. Victoria is cognizant of his repudiation of coerced conversion and his rejection of the conquistadore claim that failure to accept the faith constitutes a wrong of just cause. A wrong is suffered, however, should the Indians persistently prevent preaching and pose threats to missionaries, or persecute or harass native converts. The Spanish then have a right, though not a duty, to obtain "facilities and safety" to preach, which is based in the natural law of self-defense or the defense of innocent persons, rather than the sin of unbelief. "In favor of those who are oppressed and suffer wrong, the Spaniards can make war," and this extends to seizing lands and territory and deposing native princes. Such a war must be conducted according to the restraints of moderation and proportionality, and a rightful intention "directed more to the welfare of the aborigines than to their [the Spanish] own gain." (157-158). Victoria's assessment is that the Spanish have undoubtedly had to resort to arms to enforce the right to preach, but he also criticizes the Spanish for exceeding the standards of human and divine law. The response of punishment has to be proportionate to the offense or harm inflicted. In short, a justifiable war does not imply just conduct.

Victoria considers five other "possible" lawful titles, though it is clear he believes the case for just war rests on the natural rights of free passage and free preach. Among these latter, it is worth noting that he revisits the question of inflicting punishment for sins against nature, particularly native rituals that allow "the sacrifice of innocent people or the killing in other ways of uncondemned people for cannibalistic purposes." (159)

Victoria had explicitly referred to the presence of such practices among the Canaanites of the Old Testament, but denied they warranted just war. That context, however, involved his opposition to religious cleansing. Victoria now offers a duty embedded in natural law, "the rescue of innocent people from unjust death," as grounds for war to stop sacrificial rituals or cannibalism. (159)

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What Victoria accomplished in his discussion of just titles for Spanish dominion was the initiation of a secularized just war theory that presupposed a binding international law. The grounds for just war had to be found in natural law, not particularistic religious claims. All of Victoria's just titles reduce to principles of self-defense or protection of the innocent, principles that do not require religious convictions to command assent. That not only limits the occasions for just war, but as expressed in his concept of mutually ostensible justice, imposes limits on violence in war. The spirit of Victoria is expressed in the comment of contemporary historian Roland Bainton: "War is more humane when God is left out of it."