

The defence of human dignity in the New World

by **Fernando Murillo Rubiera**

Background

The spirit of discovery, which from 1492 led to the conquest of the territories beyond the ocean, lasted practically throughout the sixteenth century. However, those territories were not simply hitherto unknown lands waiting to be discovered and occupied. From the outset it was obvious that they were inhabited. The scenery was accompanied by the presence of man even on the islands of the first landfall.

This human presence had a decisive influence on developments over the first quarter century, corresponding to the West Indian phase. And from the initial exploration of the continental land mass — particularly with the major incursions into the mainland, first Pedrarías' expedition to Darién in 1514, followed by Cortes' venture in 1519 and Francisco Pizarro and Diego de Almagro's push towards Peru in 1528 — the human landscape of the New World unfolded before the Spaniards in all its tremendous complexity. From the very first day and increasingly thereafter, relations with the natives were seen as constituting the most crucial and difficult problem of the many which came with the surprise of having rounded the Earth; indeed, they lay at the centre of the new scheme of things and eventually coloured every aspect in one way or another.

Throughout the Middle Ages Europe had come across other human beings in distant regions outside the Christian world, and had even struck up trading and other relations with them. But it had never experienced the astonishment felt on meeting the peoples of the New World. The only comparable event was very close in time: the encounter with inhabitants of the Atlantic archipelago discovered in the mid-fourteenth century off the coast of the Sahara, namely the Guanches and Gomeros of the Canary Islands.

There Spain had had to deal with the three major problems of conquest and expansion: establishing the legitimacy of its occupation, examining the justice of wars of conquest and determining the fate of the conquered. So what happened in the Canary Islands constituted a precedent which very clearly explains what was to come in the New World.

Bulls handed down by Pope Clement VI in 1344 introduced the principle whereby it was for the Church to decide upon the legitimacy of ownership of land discovered by Christian princes, the sole purpose being to bring the faith to the inhabitants as a means of helping them achieve full human dignity. Moreover, war would be justified to prepare the way for evangelization, an assertion which was reinforced by the experience following the establishment by the same Pope in 1351 of the Bishopric of Telde (Grand Canary); this was entrusted to the Franciscans, who were subsequently wiped out by the Guanches. Such an outcome was seen as evidence that evangelization had to be based upon solid prior occupation. Finally, natives captured in a just war could be enslaved unless a special pact was agreed with the Christian princes — an age-old practice. The Church's doctrine, which evolved in a world where slavery was commonplace, laid down the principles — as a mere corollary to the affirmation of the origin and supernatural destiny of mankind — that all men are equal in dignity; that baptizing infidels means freeing them (Saint Augustine), and that regardless of faith all people have rights which cannot be disregarded (Saint Thomas). The latter principle, however, was challenged by a theocratic trend (Enrique de Susa, Cardinal of Ostia, and Egidio Romano) which upheld the legality of slavery when applied to infidels and idolaters.

Such, then, were the underlying ideas with which the Spaniards at the close of the fifteenth century, and those who followed them in succeeding years, faced the events which accompanied the discovery of America.

The precedential nature of the incidents in the Canary Islands must also be borne in mind when considering the Catholic Kings' response to the conquest. No sooner had the Spanish monarchs consolidated their rights over the islands in 1478 than Queen Isabella issued royal warrants banning slavery, announcing royal vigilance to prevent violence and abuses against the islanders (first in 1477 and then in 1490 and 1495) and instituting punishments for excesses committed by the rulers of the four lesser islands. To sustain the impetus of conquest and exploitation, they resorted to deals with trading companies (a common practice in those days), thus providing the opportunity for

those actually on the spot (the Crown's associates) to wash their hands of the evangelization to which they were committed by the occupation agreement and to incline more towards abuse and violence. The same situation was to arise in the New World, where the land grantees were under an obligation to indoctrinate the Indians placed in their charge.

All things considered, we can see that alongside the discoveries and conquests and throughout the sixteenth century there ran a parallel process which, while it seized the opportunity offered by the initial one, was of a very different nature: this was the defence of the Indians' human dignity and freedom, or what Lewis Hanke has termed the struggle for justice in the conquest of America. Only in the light of this second process can the first be seen in its true dimensions: epic events become the mere catalysts or opportunity for what was truly great and new in the American venture.

The beginnings

Concern about events in the Indies was already being voiced by the time Queen Isabella of Castile died on 26 November 1504. In scarcely a dozen years between the preparations for Columbus' second voyage in 1493 and the death of the Queen — who had placed so much emphasis on the primary importance to be given to spreading the gospel and expressed concern about the ethical purpose of the enterprise — a considerable change had come about.

The designs of slavery which Christopher Columbus entertained from the outset, as borne out by events and particularly by the cargoes brought back from Hispaniola (now the Dominican Republic and Haiti), were the main cause of his difficulties with the Crown. These were aggravated by inept administration and the confusion resulting from disputes between Spaniards, not to mention the ill-treatment to which the Indians were subjected.

Nothing yet called into question the legitimacy of Spain's discovery and conquest of the new lands; this was to come later, during the reign of Emperor Charles V. Justification for Spain's acts rested for many years on acceptance of the papal gift entitlement contained in bulls handed down by Pope Alexander VI in manifestation of the Church's powers. But in Spanish society and especially among thinking circles — the universities, monasteries and councils — discussions arose as to the way in which the inhabitants of the New World were being degraded and forced to work for the colonists. News of the depopulation of the islands and of killings and abuses

began to reach Spain. On both sides of the ocean opposing opinions were voiced as to the capacity of the Indians to receive Christian doctrine and live a civil life comparable to that enjoyed in Castile.

The decisions issued by the Crown always and unequivocally reflected the idea that the primary objective of the New World venture was to spread the faith, without prejudice to establishing settlements and engaging in trade relations with the inhabitants. This corresponded to the Church's doctrine, to which the monarchs were fully committed, and was supported by the predominance in Spain of the Thomist theological ideas which facilitated the stance subsequently adopted by the School of Salamanca when it started to take an interest in the matter. The decree issued by Queen Isabella in 1500 banning the taking of slaves and requiring the handing back of captive Indians on pain of severe punishment was in response to the same ideas, and was merely a continuation of what had been decided some years earlier in respect of the Gomeros in the Canary Islands.

However, it was one thing to hear news of the facts and form opinions based on various criteria, and quite another to come face to face with a substantiated accusation from an authoritative source. This did not happen until 1511, although a few years previously, in 1505, King Ferdinand had received one Cristobal Rodriguez, a sailor who had gone to Hispaniola with the earlier expeditions and brought back word from dissident elements in the new society. He had long lived among the Tainos, got on well with them, and was fluent in their language (he was nicknamed "the Tongue"), habits and way of life. Fully aware of the injustices being inflicted upon them, he took advantage of a journey to Spain to report the situation to the monarch, more by way of lamentation and in the hope of a remedy than as an accusation.

All that is known of his humane initiative is that he gained the King's support; we learn from him that he earned the hostility of Governor Ovando for having served against his instructions as an interpreter at weddings between Spaniards and Indians.

Yet the controversy about what was happening in the Indies was already under way and was bound to grow, unleashing as it did a process of profound self-examination marked with the greatness reserved for what is most noble and elevated in human motives, namely the desire for justice and for the restoration of human dignity.

That is the process which interests us here. Of all the examples offered by the historical phenomenon of the movement of peoples, this one enshrines the genuinely new element introduced by Spain's colonization of America. As for the other process, "the harshness of the

conquistadors and colonizers was”, in the words of Gregorio Marañón, “not Spanish but a universal illustration of the times”.

The vital spark

The first Dominicans to arrive in Hispaniola landed in 1510. They were four in number: three priests and a lay brother. Upon their arrival a colonist housed them in a hut in the yard adjoining his home, where they lived for the first part of their mission.

They soon realized what was going on. Within a year they had gained precise knowledge of the people living on the island and of the circumstances which had accustomed the colonists to live in a manner incompatible with the evangelizing mission that justified the Spanish presence there. Given the general climate of guilt over the treatment of the natives, they decided to accuse the land grantees publicly, in the presence of the island authorities, appealing to their consciences to accept responsibility for their behaviour. They resolved to do this in the one place where they were authorized to speak out, namely the modest church in which they exercised their ministry. Aware of the scandal they were about to unleash, they prepared the sermon which was to open the battle they were ready to fight, a sermon approved by all so that it should be taken as the common voice of their tiny community. Described as “the most choleric and extremely effective with words” by Bartolomé de Las Casas, to whom we owe all the details of the extraordinary events he personally experienced, Brother Antonio de Montesinos was charged with giving the sermon on the fourth Sunday of Advent, which fell on 30 November. And to ensure that the entire town would attend, with no absences at least from among the leaders of society, they invited Deputy Admiral Diego Columbus, the King’s officers and all the learned lawyers there, visiting each in his home and announcing that they would be giving their sermon in the main church on Sunday; they would be broaching a matter which affected the whole community and hoped that everyone would come to listen.

It is worth recalling the scene, in all its apparent simplicity, at that turning point for the history of the defence of human dignity, an occasion which may be regarded as the very first declaration of human rights. As the Cuban historian José María Chacón y Calvo put it, in those moments, in the humble abode of a few obscure monks, a new right was born.

Brother Anthony took as the theme of his sermon the biblical quotation "The voice of him that crieth in the wilderness". He bluntly outlined the situation prevailing on the islands, directly pointing to and condemning the inhumanity to which the settlers had become inured out of greed and in disregard of their fundamental reason for being there.

Bartolomé de Las Casas gives his own version of Brother Anthony's formidable accusing words: "With what right or justice are you holding these Indians in such cruel and horrible servitude? With what authority have you waged such detestable war on these peoples who were quietly and peacefully living in their own lands, where you have consumed so many of them with unheard-of killings and destruction? Are they not human beings? Do they not have rational spirits? Do you not understand that?"

After the sermon, Brother Anthony withdrew with head high and defiant. Behind him he left a sea of murmuring, followed shortly by a public outcry. The crowd headed for the hut where the monks lived and asked Pedro de Córdoba, the superior, to reprimand Brother Anthony for the terms in which he had spoken. The superior simply replied that what had been said had been approved by all of them because it was sound doctrine of which they were all certain, and that it had been said for the good of everyone on the island, including the Spaniards. He also announced that there would be a further sermon on the following Sunday. Instead of the retraction they were expecting, the settlers heard that absolution would be denied to all who confessed to holding Indians in subjection. They then demanded that the authorities expel the friars.

Political confusion

Letters were immediately dispatched by Diego Columbus to King Ferdinand and to the Dominican Provincial of Castile, to whom the friars were subject. The replies from the King and the superior have been preserved. They tell us that attention had been diverted, as a sure way of gaining royal support, to the legitimacy of Spain's presence in the islands and to the Crown's authority to allocate Indians to the colonists for work in agriculture and mining. Irritated, the King ordered the friars to keep silent.

In point of fact none of these issues had been raised by the friars, who had simply spoken out against outrages to the dignity of the natives and the flouting of their rights as individuals: they were human

beings with immortal souls and that essential quality gave them rights which could not be ignored whatever their ignorance, dishonesty or lack of Christian faith.

Fortunately, when the sharp strictures arrived in Hispaniola, Brother Anthony, who had been detailed to defend the friars' action, was already nearing Spain. Once there he was able to talk to the King and explain the situation as it was. Impressed by what he heard, the King immediately convened his advisers to a special assembly at Burgos, where he happened to be at the time; that assembly — which included Brother Anthony — marked the first official act in the process of revision which, set in motion by the Crown, was to occupy the coming years. The outcome was the Laws of Burgos issued on 27 December 1512; these contained 35 provisions, the first ever enacted to protect the Indians on the basis of the principle that they were free men. The content of the Royal Warrant of 20 June 1500 was thus ratified.

Dispute over freedom and peaceful evangelization

The revision process had only just begun. No sudden change could be expected. There was simply a shift in outlook intended to break deep-rooted habits and overcome obstacles anchored in the realm of ideas, in the concept of expansion and of the ascendancy of one people over others.

The Burgos Assembly was followed in 1513 by another at Valladolid. This was prompted not only by the inadequacy of what had been approved at Burgos, as pointed out to the King by Friar Pedro de Córdoba who had also arrived hurriedly to rebut the accusations contained in the letters from Spain, but also for the purpose of delaying the departure of the great armada which, under the command of Pedrarías, was preparing to sail to Castilla de Oro (Panama), until the problems raised by further conquest had received more careful consideration. The expedition was in fact held up — the first time such a thing had happened — until the following year, precisely the one in which the cleric and land grantee Bartolomé de Las Casas joined in the struggle.

Over the years leading up to the drafting of the New Laws of the Indies in 1542, the major problem was on the one hand to give practical form to the principle of Indian freedom within the civil order that had spontaneously resulted from expansion and settlement and, on the other, to confirm the efficacy of peaceful evangelization at a time

when the conquering urge was gaining irresistible momentum. On all this depended the steps to be taken and the political approach to be adopted with regard to dominions that were expanding at an astonishing pace, giving rise to extremely difficult problems at the political, religious and human levels. Between 1514 and 1535 the entire Central American isthmus had been overrun and joined up with the territories won from the Aztec empire in the constituted viceroyalty of New Spain (Mexico), and the Pacific coast had been settled as far south as the central regions of present-day Chile, following the fall of the Inca empire.

The period 1515-1519 was marked by the struggle that Las Casas and the religious orders — above all the Dominicans — was waging against those close to the court who sought to protect the land grantees. These were difficult moments in the political life of a great monarchy: King Ferdinand was dead and a dual regency was being exercised by Cardinals Cisneros and Adrian of Utrecht (who shortly thereafter was elected Pope). Young Charles had recently arrived in Spain and was surrounded by Flemish courtiers ignorant of Indian issues but, in some cases, not of the profits that could be extracted from the Indies; this explains the promptness with which they placed their influence on the side of the land grantees. It was an arduous task to enforce the provisions already handed down by the Crown, the royal warrants introducing peaceful evangelization in certain parts of the continent without armed assistance, according to the wishes of those who upheld Indian rights, and the ban on further land grants. This struggle consumed much energy and at times achieved exceptional significance, as during the dispute which arose in the Emperor's presence between Las Casas and Juan de Quevedo, the Bishop of Darién, at Molins del Rey while the court was in Catalonia. It was the first time the Emperor had seen the spokesman for the Indians and heard him arguing in favour of Indian liberties against a representative of those who advocated the contrary on the basis of Aristotle's theory of natural servitude.

Unfortunately, the first attempt at peaceful evangelization produced tragic results which demonstrated not the impossibility of the exercise itself but the criminal irresponsibility with which many colonists were acting, often with the connivance of the authorities. This led to the martyrdom of many clerics and the wasting of priceless opportunities for establishing peaceful relations with the natives. It even led Las Casas himself to enter religious orders; in his retirement (1522-1530) he began writing some of his most important works, particularly the *History of the Indies*, which he continued to work on almost to the end

of his days. In his "History" he left us a singularly important account of all that had happened in the New World up until the mid-sixteenth century, from the standpoint of someone who had witnessed many of the events reported.

Meanwhile, the process of revision had arrived at a stage where there was a direct need to review the very existence of the land grant system. The situation was particularly difficult in New Spain (Mexico), and it was there that an initiative was launched, the expression of an earlier desire, seeking a pronouncement by the head of the Church on the freedom of the Indians and their ability to receive the faith, one which by its very authority would prevail over those who insisted on ignoring Indian rights. Thus it was that Bernardino de Minava, the Prior of the Dominicans in Mexico, sailed for Spain in the hope of securing an audience with Pope Paul III, for whom he was carrying a letter from Brother Juan Garcés, the Bishop of Tlaxcala and a fellow Dominican, explaining the whole painful situation and its causes. The Emperor was away from Madrid, but he persuaded Queen-Empress Isabella of Portugal to give him a letter for the pontiff. Once he had it he set off on foot for Rome where he handed it to the Pope immediately on arrival. As a result of his efforts, three documents were handed down (June 1537) in connection with the religious situation in the New World, the most important being the bull "Sublimis Deus" in which the Church proclaimed as dogma the rationality of the Indians and their ability to receive the faith and the sacraments.

The circumstances that arose once the documents had been obtained were embroiled by those who feared the consequences of so momentous a pronouncement. They attempted to delay their publication and even, though in vain, to get Charles V to repeal them; in this they succeeded only in respect of the brief "Pastorale Officium" which accompanied the main document.

Meanwhile in Peru events were unfolding which brought about the collapse of the Inca empire and shortly thereafter started the civil wars that caused such concern in Spain and determined the evolution of Spanish colonization in that important part of the New World. Conversely, events in Guatemala took a very different turn: Las Casas skilfully reached a peaceful settlement with the Indians of Tuzulutlan, in what was known as "the Land of War" because it had proved indomitable despite successive armed expeditions.

The combination of these factors, namely the encouraging developments in Guatemala, which confounded the forecasts of his detractors, the moral support offered by the papal proclamation and the alarming news of what was happening in Peru, decided Las Casas to sail for

Spain and there fight the final battle that would lead to a total ban on land grants, which he saw as the root of all the trouble.

Concentrating their energies on this matter, Las Casas and those who went with him to Spain (the Dominican friar Rodrigo de Ladrada and the Flemish Franciscan friar Jacob of Testelt, a relative of the Emperor) hoping for an audience with Charles V, who was in Germany, secured various royal warrants in favour of the mission work in Tuzulutlan. They also requested and were granted by the theologians at Salamanca, including Francisco de Vitoria himself, an opinion endorsing their view of certain missionary and pastoral problems. Moreover, they sharpened their arguments on the issues they had to discuss with the Emperor: the inadequacy of legislation for the Indies and plans for remedying it, and denunciation of abuses and corruption on the part of judges and officials alike, both in America and in the very Council of the Indies and the *Casa de Contratación* (Chamber of Commerce).

They were fully successful in their petitions. The Emperor arranged a visit to the Council, which he opened in person, and decided to expel or punish those found guilty, starting with its Chairman, the powerful friar Garcia de Loaysa. The legislative reform led swiftly to the drafting of the New Laws, promulgated in Barcelona on 20 November 1542, which provided for an end to the conquests, the abolition of the land grant system and establishment of a trusteeship to ensure proper treatment of the Indians.

The theologians of Salamanca intervene

During those same years there came into play another factor which was to prove decisive and whose consequences would later have worldwide implications.

The founder of the School of Salamanca, friar Francisco de Vitoria, was not in Spain during the years when the process of revision started. In 1510 he had been sent to Paris to study and later teach at the Sorbonne. It was there that he learned of the first attempts to interpret the New World conquests, which naturally had Europe agog. So far as we know, it was in Paris that for the first time a professor expressed a doctrinal opinion as to the legitimacy of the conquest: he was the Scotsman John Major, Professor of Logic at Montaigu College which was dominated by the influence of the great thinker John Stan-dock. Vitoria learned of the assemblies at Burgos and Valladolid only upon his return to Salamanca in 1523; but St. Steven's Monastery,

where he lived with other theologians from the University, was a good place to hear what was happening, for many of the clerics bound for the Indies left from there and often returned.

Vitoria's death in 1546 also prevented him from experiencing the final phase of the process on which he had brought his wisdom and balance to bear.

In his early treatise entitled *De potestate Ecclesiae prior* he stated as a certainty that the universal rule of the papacy could not be affirmed, explaining that infidels were the true and legitimate owners of their own lands and property. During the regular courses he gave between 1534 and 1535, he touched on many points connected with Indian affairs and denied that force could legitimately be used to compel acceptance of the faith. In *De temperantia* (1537) he discussed the legal implications of armed intervention against barbarians who engaged in inhumane practices (cannibalism and human sacrifice). And in January 1539 he delivered his *De indis*, which dealt directly with the whole issue of the legality or otherwise of the conquest of the New World. Six months later (18 June) he turned his attention to the law of war in *De jure belli*.

Vitoria spoke in a context in which certain entitlements were being invoked to justify the occupation of the Indies, and when Spain's conduct vis-à-vis the natives was giving rise to concern and condemnation. His response was to demolish the false claims which for centuries had supported a dominant belief of theocratic or Caesarist inspiration and, after affirming the freedom of the Indians and the rights they enjoyed as human individuals, to point to ways in which relations between Spaniards and the natives could be maintained in keeping with morality and justice, even in the event of war.

The essential novelty of his contribution lay in the fact that his entire system, an extension of principles already affirmed, rested on a conception of the world which necessarily postulated the existence of a legal order peculiar to the international community as a universal fellowship made up of peoples and men of all races.

That view, which was valid for all time and had necessarily to be projected into the future, was made possible only by the historic opportunity created by a few events which, because of their scale and the weight of all that had happened in the course of human history, together with the spiritual and moral climate prevailing in Spain at the time, were bound to lead to the process under discussion.

The great controversy between Sepúlveda and Las Casas

The intensity with which the disputes over developments in the New World were followed in Spain in the mid-sixteenth century can be gauged by the violence of reaction to the New Laws. To the perplexity of Charles V, the order to apply them raised such protests in New Spain and Peru that in the latter territory it cost the head of the man who arrived with the order under his arm, demanding its enforcement. The land grantees sent emissaries to Spain — one of them was Bernal Diaz del Castillo, the protagonist of so many incidents during the first great conquests — to demand not only that the laws be repealed but also that the land concessions be granted in perpetuity. Las Casas, who had returned to his diocese in Chiapas following the promulgation, watched with horror as his triumph melted away, especially when he learned that the Emperor had reversed his position and, from Malines on 20 October 1545, revoked Law 35 which prohibited the granting of new concessions.

Given the circumstances, the Council of the Indies felt duty bound to convene a meeting of theologians and jurists to discuss these matters, which had become so serious that they were weighing heavily on the imperial conscience. On 16 April 1550, the Crown decided for the second time that all further conquests should be suspended until a group of leading advisers and theologians decided what was to be done. Las Casas and Juan Ginés de Sepúlveda, the Emperor's chronicler, offered to attend and, on the Emperor's instructions, the Council resolved that they should propound their conflicting views the same year in Valladolid, so that the Emperor and his advisers could make the necessary decisions in accordance with just doctrine.

Lewis Hanke has claimed that probably never before nor since has a powerful emperor — and in 1550 Charles V was, as Holy Roman Emperor, not only the most powerful ruler in Europe but also master of a great empire overseas — ordered that wars of conquest be halted while it was decided whether or not they were just.

In August and September 1550, and again in April and May of the following year, the two men faced each other to defend their opposing concepts of mankind and political power, relations between peoples and between individuals of different races and diverse levels of development, from the standpoints of Christian doctrine and reason.

The idea had been that in the light of so singular a dialectical argument the assembly would be able to decide what was the best, most humane and fairest way of efficiently spreading the faith. In

point of fact the two opponents became so carried away by the strength of their desire to uphold their respective positions that the discussion degenerated into a dispute as to whether or not force could be used to evangelize the Indians.

At that stage of the process this truly exceptional controversy was a mind-clearing exercise, a new approach to tackling the New World issues that for so long had burdened the Crown and aroused so much passion in Spain.

The new approach was to lead a few years later to the drafting of the Laws on the Discovery, Resettlement and Pacification of the Indies, which Philip II handed down in Segovia on 13 July 1573. The new laws officially halted the system of conquest and ushered in a policy consisting essentially of pacification based on co-existence between the inhabitants, both Spaniards and natives. This was to become the cornerstone of Spain's rule throughout Spanish America henceforth until the American provinces eventually secured political emancipation from the monarchy.

Fernando Murillo Rubiera

ANNEX

MILESTONES IN THE DEFENCE OF DIGNITY
AND BASIC HUMAN RIGHTS
IN AMERICA

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| 20 July 1500 | Royal decree addressed to the King's retainer Pedro de Torres , ordering the release and repatriation of Indians brought to Spain from Hispaniola. The historian Altamira considered this document as the "first acknowledgement of the respect due to the dignity and freedom of all men, however ignorant and primitive they may be". |
| 30 November 1511 | Fourth Sunday in Advent. Sermon delivered by Friar Antonio de Montesinos in the church on the island of Hispaniola, in the presence of Diego Columbus and other island authorities, denouncing the land grantees' inhumane treatment of the |