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THE «SYMBOLIC POWER» OF IBERIAN ACADEMIA AT THE COLONIAL *JUS GENTIUM EUROPAEUM* FOUNDING MOMENT

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1. (Iberian) Academia and its «symbolic power»

Although this is but a fragment of a larger puzzle,[1] when asked to think about «European identity» in a legal academic context, and considering its nuclear pedagogical function, it is quite easy for one to recall Jacques Lacan's «mirror stage».[2] After all, Academia is the original space, and mirror, where the idea of the legal subject, the legal

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[2] See Jacques Lacan, "The Mirror-phase as Formative of the Function of the I", in Slavoj Žižek, ed., *Mapping Ideology*, UK: Verso, 1994, 93-99.

agent and the legal order are built and reproduced. It is a privileged «ideological state apparatus», to allude to the French philosopher Louis Althusser.[3] Or, to quote Hannah Arendt's proposition, one can speak about «Academia's authentically political meaning», as Plato had already noted,[4] concerning the highly-regarded discourses here produced. It is first-of-all within Academia that the many bricks that build the European legal identity and thought are shaped, giving the aspiring-jurist a role and characteristics to which he or she can identify with, as well as recognize on international standards. However, such recognition is sometimes grounded on «hegemonic» narratives, or even on «invented traditions», as Antonio Gramsci[5] and Eric Hobsbawm[6] have put it. «Modern legal mythologies»[7] built to reproduce orders of power, alienating or subordinating other historical or spatial views, burying previous «epistemicides»[8] or «memorycides».[9] Thus, what will follow here is just a brief effort to help fighting the «legal eurocentrism» and «orientalism»,[10] to challenge the epistemic "uni-versity" through "pluri-versity" and the decolonization of legal knowledge.

I would like to address the orthodox legal academic vision and power at the time of the so-called 'Colonial Encounter', five hundred years ago. My aim is to engage in a critical legal analysis of the «death of Columbus», the «irreversible colonization» that was Europe's «original sin», as the Portuguese philosopher Eduardo Lourenço wrote.[11] Therefore, this essay is about the founding myth

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[3] *Vide* Louis Althusser, "Ideology and Ideological State Apparatuses (Notes towards an Investigation)", in Slavoj Žižek, ed., *Mapping Ideology*, uk: Verso, 1994, 100-140.

[4] Hannah Arendt, *Verdade e Política*, Lisboa: Relógio D'Água, 1995 [1967], 56.

[5] *Vide* Antonio Gramsci, *Gramsci. A Cultura e os Subalternos*, Lisboa: Edições Colibri, 2012.

[6] *Vide* Eric Hobsbawm, "Introduction: Inventing Traditions", in Eric Hobsbawm / Terence Ranger, *The Invention of Tradition*, uk: Cambridge University Press, 2000 [1983], 1-14.

[7] *Vide* Peter Fitzpatrick, *The Mythology of Modern Law*, uk: Routledge, 1992; Id., *Modernism and the Grounds of Law*, usa: Cambridge University Press, 2001.

[8] *Vide* Boaventura de Sousa Santos, *A crítica da razão indolente. Contra o desperdício da experiência* [*Para um novo senso comum. A Ciência, o direito e a política na transição paradigmática — Volume 1*], Porto: Edições Afrontamento, 2002.

[9] *Vide* Bartolomé Clavero, *Derecho global. Por una historia verosímil de los derechos humanos*, Madrid: Editorial Trotta, 2014.

[10] *Vide* Ugo Mattei / Laura Nader, *Plunder. When the rule of law is illegal*, Singapore: Blackwell, 2008.

[11] Eduardo Lourenço, *A Morte de Colombo. Metamorfose e Fim do Ocidente como Mito*, Lisboa: Gradiva, 2005, 13, 163.

and episteme regarding the birth of modern European International Law, and subsequently its legal thought and identity. It is assumed that an «identity», the way European jurisprudence sees and builds itself, is necessarily deeply connected to the representation of an Other subject (and space), since that is at least a bilateral relation. *Ratione materiae*, this text will focus on three key-figures of the Iberian School of Natural Law, from the 15th to the 17th centuries, who theorized on the 'Colonial Encounter', and developed the correspondent natural law fundaments and legal framework. The aim is to expose some of their ambiguous contributions to the development of the modern, globalized, European legal mind. This can be observed through a contextualized reading of their works, taking notice of the expected legal effects from the «symbolic power» of the Iberian *homo academicus*, to use concepts from the French sociologist Pierre Bourdieu.[12] Since this was the time where the first dogmatic corpus regarding the *Ius Publicum Europaeum* was established — and therefore had an everlasting influence —, it is historically relevant in order to understand the development of the subsequent *Juristenrecht*.

However, there still is a generalized international lack of recognition regarding the Iberian School of Natural Law — also known as Neo- or Second-Scholastic, or still branded (quite problematically and polemically, in my point of view) as «Iberian School of Peace»[13] — albeit this is where the founding scholars of modern International Law lie. Such perspective stands in direct opposition to the hegemonic view that bestows Hugo Grotius in such role,[14] erroneously[15] taking as the mythological origin of the European *Ius Publicum* the 1648 Peace of Westphalia. But this pressing recognition is not something newly-fangled. Three international legal scholars should be pointed out as precursors of this revisionist view: the Belgian Ernest Nys,[16] in the 19th century; the North-American James Brown Scott,[17] in

[12] *Vide* Pierre Bourdieu, *Homo Academicus*, Portugal: Edições Molemba & Edições Pedago, 2016 [1984].

[13] *Vide* Pedro Calafate / Ramón E. Mandado Gutiérrez, dir., *Escola Ibérica da Paz: a consciência crítica da conquista e colonização da América — 1511-1694*, España: Editorial de la Universidad de Cantabria, 2014.

[14] And his *De iure belli ac pacis* (1625).

[15] *Vide* Richard Joyce, "Westphalia. Event, memory, myth", in Fleur Johns / Richard Joyce / Sundhya Pahuja, ed., *Events: The Force of International Law*, usa & Canada: Routledge, 2011, 55-68.

[16] And his *Les origines du droit international* (1894).

[17] With his *The Catholic Conception of International Law. Francisco de Vitoria & Francisco Suárez* (1934).

the 20th; and also, most famously, the German philosopher and jurist Carl Schmitt.[18] Nowadays, shaping theoretical trends as the Third World Approaches to International Law, the New Stream of International Law and the legal developments of Decolonial Theory, one should not ignore the works of critical legal scholars as the North-American Antony Anghie,[19] the Finnish Martti Koskenniemi,[20] and the Colombian José-Manuel Barreto,[21] among many others.[22] By accepting this revisionist and critical view, the Iberian School must also be depicted as an important precursor of Colonial Law, or even, according to some views (with whom I disagree, first of all due to historiographic reasons), of Human Rights.[23]

Nevertheless, it is without a doubt to the Portuguese and the Spanish legal thinking of those centuries, deeply connected with the Christian mind and Church, that the conception of a new

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[18] *Vide* Carl Schmitt, *The* Nomos *of the Earth in the International Law of the* Jus Publicum Europaeum, usa: Telos Press, 2006 [1950], from where it was gathered inspiration for the title of the present text.

[19] *Vide* Antony Anghie, "Francisco de Vitoria and the Colonial Origins of International Law", *Social Legal Studies*, 5 (1996) 321-336; Id., *Imperialism, Sovereignty and the Making of International Law*, usa: Cambridge University Press, 2004.

[20] *Vide* Koskenniemi, Martti, "Colonization of the «indies». The origin of International Law?", in Yolanda Gamarra Chopo, coord., *La idea de América en el pensamiento* ius *internacionalista del siglo xxi (Estudios a propósito de la conmemoración de los bicentenarios de las independencias de las repúblicas latinoamericanas)*, España: Institución «Fernando el Católico», 2010, 43-63; Id., "Empire and International Law: The Real Spanish Contribution", *University of Toronto Law Journal*, 61/1 (2011) 1-36; Id., "Vitoria and Us. Thoughts on Critical Histories of International Law", *Rechtsgeschichte Legal History* 22 (2014) 119-138.

[21] *Vide* José-Manuel Barreto, "Imperialism and Decolonization as Scenarios of Human Rights History", in José-Manuel Barreto, ed., *Human Rights from a Third World Perspective: Critique, History and International Law*, uk: Cambridge Scholars, 2013, 140-171; Id., "A Universal History of Infamy. Human Rights, Eurocentrism, and Modernity as Crisis", in Prabhakar Singh / Benoît Mayer, ed., *Critical International Law. Postrealism, Postcolonialism, and Transnationalism*, India: Oxford University Press, 2014, 143-166.

[22] As deductible, the approach pursued in this essay draws on these critical legal trends.

[23] *Vide e.g.* Oris de Oliveira, "Contribuição de Francisco de Vitoria ao Direito Internacional Público no 'Indis Recenter Inventis, Relectio Prior'", *Revista da Faculdade de Direito da Universidade de São Paulo*, 68/2 (1973), 361-384; Antonio García, "The Spanish School of the Sixteenth and Seventeenth Centuries: A Precursor of the Theory of Human Rights", *Ratio Juris* 10/1 (1997) 25-35; Manuel Maceiros Fafián / Luis Méndez Francisco, coord., *Los Derechos Humanos en su origen — La República Dominicana y Antón Montesinos*, Salamanca: Editorial San Esteban, 2011.

world legal order and the legitimization of global imperialism (with its indissociable exploitation of natural and human resources) are owed. After all, these were the two leading kingdoms responsible for the colonization of the so-called 'New World', which for a time have inclusively been merged under the same Crown, during the Iberian Union of 1580-1640. Thus, it was quite common then for scholars, who were all Latin-speakers and mostly clergymen, to teach in different universities in the kingdoms of Portugal and Spain. Since they were the vanguard of scribes of the ideological state apparatuses at the time, they are as accountable for the so-called 'revolutionary humanism' as for the development of Colonial Law. One does not occur without the other, «modernity» does not exist without «coloniality». Consequently, Iberian Academia keeps lacking the official acknowledgement of its responsibility regarding «the darkest side of Western Modernity», as the Argentinian semiotician Walter Mignolo puts it.[24] This might not be as plain as it sounds, since both countries were, until the 1970s, under fascist regimes, both supported by the Christian Church, following on a tradition of centuries of alliance between the Vatican and the Iberian political powers. As a result, the hegemonic legal academic episteme became quite conservative ideologically, and influenced by an extreme legal positivism, which deeply influences how to read History, to select sources, to interpret norms, and to judge facts.[25] Such watermarks take their time to be washed away.

2. Iberian Academia and the 'New World'

To begin with, it is crucial to highlight how important universities were in the 15th century. Funded by the Crowns, with most intelligentsia coming from the Church or Christian institutions alike, theologians had a political and pedagogical key-role. Being royal confessors and advisers, they were very well informed about State arcana and influenced decision-making, as the Portuguese legal historian Paulo Merêa recognized.[26] Being the most respected

[24] *Vide* Walter Mignolo, *The Darkest Side of Western Modernity. Global Futures, Decolonial Options*, usa: Duke University Press, 2011.

[25] Regarding the case of Portugal, cf. António Manuel Hespanha, *Cultura Jurídica Europeia — Síntese de um Milénio*, Mem Martins: Publicações Europa-América, 2003, 311-314, 328-331.

[26] Paulo Merêa, "A ideia de origem popular do poder nos escritores portugueses anteriores à Restauração", in *Estudos de Filosofia Jurídica e de História das Doutrinas*

lecturers, they played an essential ideological function, educating nobles and commoners, spreading the 'common sense' according to Crown and Church desires. This epistemological context became standard since the 'rediscovery' of the *Corpus Iuris Civilis*, in the beginning of the 12th century, thus turning the Common Law at the time of the Christian Republic a fusion of civil and canon law.

As Professor Mário Reis Marques states, at that time jurists made «a political management» of all the interests in conflict, since they were the ones who «draw a line between legality and illegality». They had an «autonomous power» regarding the «rationalization of social practices», which made them the «protagonists» of a discourse that relied on the importance and international authority of Common Law. As is well known, such privileged position was primarily dependent on a 'linguistic community' restricted to a very powerful language (because literally esoteric), Latin. Not easily accessible to the so-called «rustic»,[27] the legal language and the legal knowledge were officially breed solely at universities, ritualized spaces that operated through the reading of lectures and the reproduction of its contents in exams. Therefore, Faculties of Law and Canons had a colossal «symbolic power», turning themselves into «agents of imposition and control», through the development of a professional group that dominated over a specific and qualified discursive space, unachievable to most people. Furthermore, the modes of production and reproduction of this symbolic power, primarily based on repetition, fomented the lack of ideological debates, making the discussion or the integration of new elements quite difficult. Thus, it kept the structural organization of the medieval society safe, as well the position jurists occupied there. It also made the *Corpus Iuris Civilis* and the *Corpus Iuris Canonicis* the core of the medieval Common Law.[28] Consequently, the power to interpret such ancient field of knowledge also became the key--function regulating the international relations of the time.

This is an essential *topos*, since the legal agent was depicted *per definitionem* as a Christian, representing the infidels — namely

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Políticas, Lisboa: Imprensa Nacional-Casa da Moeda, 2004, 89-100 [1923]: 91; Id., "Suárez, jurista. O problema da origem do poder civil", in *ibidem*, 107-185 [1917]: 111-113.

[27] Regarding the key-opposition (because not only jurisdictional, but epistemological) between the «law of the scholars» and the «law of the rustics» (*ius rusticorum*), cf. A. M. Hespanha, *Cultura Jurídica Europeia*, 192-199.

[28] Mário Reis Marques, "Ciência e Acção: o Poder Simbólico do Discurso Jurídico Universitário no Período *Ius Commune*", *Penélope — Fazer e Desfazer a História* 6 (1991) 63-72.

Muslims — as inferior legal subjects, to whom it was essentially legitimate to wage (a just) war. It is imperative to recall that Medieval Christianity introduced the first global criterion regarding what is now called 'biopolitics', differentiating between 'pure' and 'contaminated' bloods, in order to hierarchize different people. Such biopolitics operated through Law and was essential in framing the legal link between the Iberian *Ius Commune* and the people then 'discovered', at the time also non-Christians. Actually, this issue had been particularly raised half-a-century before, when Portugal invented *de facto* the intercontinental slave trade, in 1444.[29] Not even a decade had passed when the Pope Nicholas V approved it, and even promoted it *de iure*, through the bulls *Dum Diversas* (1452) and *Romanus Pontifex* (1455), allowing the kingdom of Portugal to conquer and convert the infidels in Africa.

Deeply connected with this biopolitics was the issue of the legitimate appropriation of land, what Carl Schmitt called the «radical title» concerning that legal world order. We can trace such paradigmatic evidence to the notion of *ius gentium* itself given by Saint Isidore of Seville, in the 6th century. He states that «Common Law consists on land occupation, city and fortifications building, wars, imprisonments, servitude, reprisals, peace and war treaties, armistice, emissaries inviolability and the prohibition of marrying with a foreigner.»[30] This ancient notion of Common Law was clearly assumed in the previously mentioned 'rediscovery' of Roman Law, as it figures in the first part of the *Corpus Iuris Canonicis*, by the *Decretum Gratiani* (mid-12th century).

2.1. The Treaty of Tordesillas

In order to illustrate the international connection between Politics, Religion and Law, it is inevitable to recall the legal aftermath of the first voyage of Columbus, in 1492, two years after which the Iberian kingdoms celebrated the Treaty of Tordesillas (signed in June 7, 1494, between Ferdinand II of Spain and John II of Portugal). In this bilateral Treaty, a *raia* was drawn, a «global line» dividing

[29] Anthony Padgen, *Povos e Impérios*, Mem Martins: Círculo de Leitores, 2003, 106.

[30] *Jus gentium est sedium occupatio, aedificatio, munitio, bella, captivitates, servitutes, postliminia, foedera pacis, induciae, legatorum non violandorum religio, connubia inter alienigenas prohibita*. In *Etymologiae*, *apud* Carl Schmitt, *The* Nomos *of the Earth*, 44.

the 'New World' between the two Crowns to conquer it, with the official support of the Christian Church. As Carl Schmitt puts it, the spatial order was conceived according to the Christian mind, and therefore it was a space where Christians always had a superior right toward the non-Christians. Thus, this was a mere update from the Crusades. As long as Portugal and Spain accepted the authority of the Church, they had «the freedom to occupy», and equal rights to conquer the non-Christian 'New World'. Portugal had already been doing it for fifty years in Africa by now, hailed by the Church for how successfully the so-called infidels were being enslaved. Another very important novelty, introduced by the Tordesillas document, was that both Crowns abdicated from the Church jurisdiction, thus making it a truly modern treaty, independent of that international authority.

What needs to be highlighted, in my opinion, is that the Treaty of Tordesillas should be seen as the *first legal representation* and *colonial mapping* of the 'New World', where half of it is *legally exposed* to the colonial power of two kingdoms. Two nations who explicitly declared their plan, from the beginning, to exploit the natural and human resources of the lands soon to be occupied. As a matter of fact, this is precisely what was stated in the famous 1493 *Letter of Columbus*,[31] where the famous *Conquistador* announces to the Spanish Crown the new land and people discovered, and how easy it would be to conquer them. Consequently, and just by contextualizing the already consummated facts beforehand the correspondent legal theory was developed, it is already forecastable how the *Realpolitik* at the foundation of the Modern International Law was *formally* and *substantially* colonialist.

2.2. Francisco de Vitoria

There are three key-figures from the Iberian School of Natural Law that ought to be addressed, however briefly: the two best-known scholars, Francisco de Vitoria and Francisco Suárez, and the famous missionary and activist Bartolomé de las Casas. Thus, in a time when the Spanish Inquisition (1478-1834) could be *de facto* expected by everyone, clergymen owned a vast symbolic power, on civil and canon law, connecting both on the grounds of natural law, through the development of the teachings of Aristotle and Thomas

[31] *Vide* Cristóbal Colón, *La Carta de Colón anunciando el descubrimiento del Nuevo Mundo*, Madrid, 1956 [1493].

Aquinas. Indeed, the main academic branch in the 16th century was Neo-Thomism, or Neo-Scholasticism, noteworthily at Salamanca and Coimbra. Hence, the transition from Medieval to Modern Thought, after the Colonial Event, was made through such natural law conceptions, developed with the aim of solving practical problems, not theoretical speculations. This School of Natural Law gave then evidence of a deep Legal Philosophy, as the Portuguese legal philosopher Luís Cabral de Moncada recognized.[32] Their jurisprudence merged medieval Natural Law conceptions with Common Law prescriptions, giving birth to what became Modern International Law. Accordingly, a couple of decades after the Treaty of Tordesillas was celebrated, the entitlements concerning the occupation of land without a legal owner *(terra nullius),* and the waging of just war *(bellum iustum)* became two of the main issues then theorized.

It is from this background that emerges Francisco de Vitoria (1483-1546), a Dominican scholar who taught at Salamanca, but never set foot in the 'New World'. Today he is commonly known for having depicted the Amerindians as subjects of International Law, recognizing that they had the capacity to use Reason, although being limited like children — thus lacking guidance, namely from the Christian Spaniards. Accordingly, he is now acknowledged as a pioneer of modern Common Law, having deeply influenced Hugo Grotius. Vitoria understood Common Law as akin to Natural Law and natural Reason, therefore as a sum of legal rules and principles common to all organized communities, as «law between people», *ius inter gentes*. He wrote two important lectures that got known as *On the Indians (De Indis)*,[33] delivered on the academic year of 1538-39. In the first lecture, he not only recognized that Amerindians were able to use Reason and to be subjects of Common Law, but also that they were owners of their lands. Therefore, *against* the common opinion of the time, Francisco de Vitoria claimed that nor the Pope nor the Emperor had any rights over the whole world. He also argued that the Spaniards did not had any previous legal title to conquer those 'new' lands, since they were not *terra nullius*. Because of this, Vitoria

[32] Luís Cabral de Moncada, "Subsídios para uma História da Filosofia do Direito em Portugal (1772-1911)", in *Subsídios para a História da Filosofia do Direito em Portugal*, Lisboa: Imprensa Nacional-Casa da Moeda, 2003, 17-184 [1937]: 19-24.

[33] The lectures are *De Indis Noviter Inventis* (or *De Indis Relectio Prior*) and *De Jure Bellis Hispanorum in Barbaros* (or *De Indis Relectio Posterior*), and posthumously published in 1557 as *Franciscus de Victoria De Indis et De Iure Belli Relectiones*. *Vide* Francisco de Vitoria, *Relecciones sobre los Indios y el Derecho de Guerra*, Madrid: Espasa-Calpe, 1975.

is still considered a revolutionary humanist, since his argumentation was then unprecedented. He did make a radical critique of the standard legal view, stating that Amerindians were human beings, not irrational animals or things. And this is, indeed, the brighter side of his thought.

However, it is a mistake to read Francisco de Vitoria solely under this light. Because in those same lectures *On the Indians*, he elaborates on the legal and illegal titles to conquer the Amerindians, and about the indissociable *ius belli*, the right to wage war. There were three universal rights that, if violated, constituted a *casus belli*, a motive to wage just war: the right to do commerce *(ius commercii);* the right to travel *(ius peregrinandi);* and the right to preach the Christian faith *(ius praedicandi).* Here Vitoria uses a legal fiction, depicting the Amerindians as Muslims, consequently lacking the same legitimacy as the Christians, the only ones entitled to have sovereignty. Even so, the theologian puts on an equal legal level both Amerindians and Spaniards, and so formally, in abstract, they have the same rights and duties: if anyone violates one of those three rights, a just war could be waged. However, as it is, such theoretical construction manages to overlook the abyssal moat between the conqueror and the conquered in terms of weaponry: while the first had the most lethal army known to the European men of the time, the latter was militarily in a Neolithic condition.

In sum, Francisco de Vitoria had the genius of, while banishing Papal authority over the *Conquistadores* actions, legalize, through Christian natural law, the warlike and colonialist reaction of the Iberian Crowns against any opposition made by the Amerindians. Providing the much-needed new philosophic narrative after the Colonial Event, he recognized the Amerindians in the new Common Law in order to legally fight and subdue them. Therefore, I believe that we should depict Vitoria as a true supporter of the Spaniards' imperial aims, not as a defender of the Amerindians.

2.3. Francisco Suárez

A couple decades later, the most skilled theorist of the Iberian School of Natural Law would emerge. Francisco Suárez (1548-1617) was a Jesuit scholar who taught at Salamanca and Coimbra, among other Iberian universities, and who also never set foot on the 'New World'. As a clergyman who lived in the period of the Iberian Union, he was a fierce supporter of Spanish absolutism, and of Catholicism

against Protestantism. At a time when civil wars crossed Europe, and when there were many discussions regarding the origins of civil power and the right of resistance, the *Doctor Eximius* lectured and wrote about those themes, among others, and most famously in his 1612 book *On Laws (De Legibus ac de Deo Legislatore)*,[34] another influence on Grotius.

This master on Scholasticism argued that the power of kings derived from popular sovereignty, and that civil or political power was necessarily a divine institution, since it was connected with natural law. His argument, by which he is still praised nowadays, is that it is the community itself who has the political power, and it is according to its will that such power should be transferred or exercised. However, this must not be misinterpreted: Suárez was a profound critic of democracy and thought that communities would do much better in transferring their political power to a king. Namely a Christian absolutist monarch, just as the Spaniards and the Portuguese of his time did. Therefore, he only supported the right of resistance theories against tyrants who disrespected (the Catholic) natural law.

Regarding Common Law, the 'Master of the School of Coimbra' understood it as positive human law, developed in accordance with the consensus of all people, and recognized the importance of customs and traditions in *making* such Common Law. More than a law between people and nations (not only *ius inter gentes*, but also *intra gentes*), it should be taken additionally as a law between all men, *ius inter homines*. Consequently, it was a law directed to the entire globe, *ius totius orbis*. He set on the same foot Christian and Amerindian *communities* and *individuals*, recognizing that both were legally equal — as long as they were in accordance with Christian faith. However, if we follow his logic, the necessary conclusions are that Amerindian communities should embrace Christianity, and ought to transfer their civil power to the Spanish king, making their right of anti-colonial resistance basically devoid.

In face of this, I argue that Francisco de Vitoria and Francisco Suárez, although depicting a truly new legal world order with many progressive features, were mainly giving an *a posteriori* legal basis for the already ongoing Iberian imperialism. Even when Suárez

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[34] *Vide* Francisco Suárez, *Selections from Three Works of Francisco Suárez, S. J. De Legibus, ac Deo Legislatore, 1612. Defensio Fidei Catholicae, et Apostolicae Adversus Anglicanae Sectae Errores, 1613. De Triplici Virtute Theologica, Fide, Spe, et Charitate, 1621*, Vol. ii, James Brown Scott, ed., Oxford: Clarendon, 1944; and Francisco Suárez, *De Legibus. Livro i — Da Lei em Geral*, Lousã: Tribuna da História, 2004.

talks about the right of resistance — thus appropriating over such controversial discourse —, he only does so in order to benefit Spanish absolutism, scooping the emancipatory reaction from both Protestants and Amerindians. It is important to recall that this took place in a time when the violent *modus operandi* of the Conquests and the 'Discoveries' were already widely known.

2.4. Bartolomé de las Casas

Finally, on a different scale and living between the above mentioned two scholars, there is Bartolomé de las Casas (c. 1474-1566), a Dominican missionary in the Americas, who similarly shared the Iberian School of Natural Law theoretical background. He was not only the Bishop of Chiapas, in today's Mexico, but a historian and an activist for the Amerindian cause. And this is, in my opinion, the key-difference: he was on the field and became a witness. His best-known work is *A Short Account of the Destruction of the Indies (Brevísima relación de la destrucción de las Indias,* 1552),[35] a pamphleteer and legal report about the darkest side of Spanish colonialism. From someone who in his youth owned Amerindian slaves and took part on some conquering expeditions, Las Casas gave up of all his belongings and started a life of studying, traveling, writing and struggling. After getting acquainted with the genocidal methods used by Spanish conquerors and Portuguese slaveholders, he spent his life making appeals to the Spanish Crown and the Church, aiming to stop the inhumane treatment of Amerindians.

He was able to convince the Pope to enact the encyclical *Sublimis Deus* (1537), recognizing the full humanity of the Amerindians and condemning their exploitation. Las Casas even managed to influence the Spanish king to promulgate the *New Laws* (1542), by which the enslavement of Amerindians was prohibited and the *encomiendas* limited — a restriction lifted three years afterwards. Most noteworthy was his role in the symbolic 1550-51 Valladolid Debate, discussing the Justice of the Conquests, against Juan de Sepúlveda. Although the Debate did not have a conclusion and was merely a ceremonial procedure, Las Casas turned out to be the informal winner, spreading the view of how illegal the warlike strategy was, regarding the evangelic purpose of the Conquests. It

[35] *Vide* Bartolomé de las Casas, *A Short Account of the Destruction of the Indies*, UK: Penguin Books, 2004.

was not that the missionary was against the Conquests in themselves: he was against *how* they were being waged.

However, reaching the end of his life, Las Casas delivered in 1566 his conclusions to the Royal Council for the Indies. Considering the illicit titles, the thefts, the genocide, and all the systemic violence used by Spanish conquerors since the beginning, acting against divine, natural and civil laws, he concluded that the Amerindians had the natural right to resist the ongoing Spanish colonialism. So, in the end, and although being a supporter of an evangelic colonialism of the soul, Las Casas argued that the Amerindians were entitled to resist that form of Spanish colonialization.

3. Conclusion

All things considered, the symbolic power of the Iberian School of Natural Law was directly felt on both shores of the Atlantic Ocean. On one side as a relief for the conqueror's conscience, on the other as the justification for being conquered (and possibly for a relative resistance to such conquests). This symbolic power was the theoretical background to different legal worldviews, varying accordingly to the empirical knowledge and the inherent sensibility to it. Notwithstanding, it was always a Eurocentric view, deeming the Conquests as a religious mission, based on natural law. Due to theoretical developments as the ones *supra* described, and especially thanks to the activism of Dominican missionaries, some important measures were taken. Nevertheless, in my opinion, the Crown politics were dimly affected. It depends on how one looks at the historical facts.

This can be easily evidenced through four examples. In 1537, by the bull *Sublimis Deus*, the Pope Paul III stated as dogma that Amerindians were undoubtedly men, being able to receive sacraments and obtain salvation. Henceforth, Amerindians were no more 'sub-humans'; but they definitely got vulnerable to the right to preach the Christian faith. Regarding the Spanish Crown, in 1549 the Conquests were effectively suspended in order to the Valladolid Debate to take place. Nevertheless, the discussion was centred on how to conquer, and the colonization restarted soon after. Later, in 1566, the campaigns were indeed prohibited — unless there was no other way to annex the new territories to the Spanish Empire. Finally, on 1573, the Crown decreed the total prohibition of further conquests — with exception of the cases that might figure as legitimate defence, which basically constituted all the grounds for *casus belli*.

Thus, what by the end of the 15th century was announced in a religious narrative, as a mission by the most-Catholics King and Queen, was eighty years later a fully legalized imperial expansion, protected by the right to wage just war. The fact is that it took only around fifty years for the Spaniards to conquer the entire South- and Central-Americas, and part of the North, subjugating the Amerindians. In the end, following the Iberian School of Natural Law teachings, colonization of the soul was the only official motto and legal entitlement of the entire entrepreneurship. Accordingly, millions of Amerindian victims became vulnerable to the colonial and belligerent follow-ups of the rights to preach, to travel and to do commerce. To them, Academia's symbolic power had violent repercussions. The 'New World' fell under the dominion of the 'Old World'; the Renaissance put an end to the Dark Age; and the modern European identity was born over the fully-legalized colonization of the Amerindian and African subalterns. Re-thinking Europe and its juridical complex (Academia included) involves recognizing this historic underside. In other words, to recall Noam Chomsky and Howard Zinn, it means that that is also a «responsibility of the intellectuals» of today,[36] since «[no one] is neutral on a moving train»,[37] wherever the railroad goes.

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