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## **Part I**

# **Founding Silences: The Question of Humanity**



## 1

# ‘How oppression thrives where truth is not allowed a voice’: The Spanish Polemic about the American Indians

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## I. Voices crying in the wilderness

Hispaniola, December 1511. The Dominican Anton de Montesinos took as his text the words of John the Baptist ‘I am a voice crying in the wilderness’ for a sermon that has become a defining moment in the dominant narrative of the Spanish conquest of America. He attacked the colonists, accusing them of ‘living in deadly sin for the atrocities you tyrannically impose on these innocent people’. Montesinos claimed that they had no right to oppress or enslave the Amerindians, let alone work them to death or make war on them. Warming up to his theme, he asked: ‘Aren’t they human beings? Have they no rational soul? Aren’t you obliged to love them as you love yourselves?’ (Lunenfeld 1991: 201–4). As if in answer to these crucial questions, the first Article of the Universal Declaration of Human Rights asserts that ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’. Many contest this now, and it was even more problematic five hundred years ago. According to the account of Bartolomé de las Casas, the congregation reacted angrily and ‘not one was really convinced’. They complained to the king, alleging that the sermon had caused dissent among the Spaniards, encouraged the Indians to resist, and challenged royal authority by condemning the system of royal grants of forced Indian labour to the settlers (the *encomienda*). King Ferdinand ordered the clergy in America to avoid further disturbances and prohibited them from preaching against royal authority. This prompted Las Casas to comment: ‘you see how easy it is to deceive a King, how ruinous to the kingdom it is to heed misinformation, and how oppression thrives where truth is not allowed a voice.’ (Lunenfeld 1991: 204)

In fact, neither Montesinos nor Las Casas were silenced. Sermons and publications expounding their views continued to be produced and were widely disseminated. If their words were indeed true, then oppression was thriving irrespective of truth being given a voice. But were they telling the

truth? Ferdinand had not been duped. He had ordered a wide-ranging investigation into the allegations which repudiated some of the claims made by Montesinos and confirmed others. Las Casas, believing himself to be uniquely gifted by God with an understanding of the issues, would not accept contrary arguments and tried to make his voice triumph over all others (Pagden 1993: 74, 82), habitually denouncing his opponents as 'enemies of the Indians'. Yet many who dedicated their lives to the well-being of the natives rejected the accusations and claimed that most of the colonists were looking after the spiritual and physical needs of the natives. As one fellow cleric put it, the problem was that Las Casas 'thinks that all err and he alone is right' (Lunenfeld 1991: 212–13).

Over the centuries, however, Las Casas gained iconic status as 'the Defender of the Indians'. His place in the pantheon was confirmed in the twentieth century by the works of Lewis Hanke (1949, 1951, 1959, 1974). He continues to be widely regarded as the first, heroic exponent of human rights,<sup>1</sup> and has even been credited with opposing nationalism (López Sastre 1999). In consequence, his opponents, especially Juan Ginés de Sepúlveda, continue to be branded as greedy and evil, and their works are vilified or ignored. The Spanish monarchs, who often supported, but did not follow Las Casas slavishly, are variously depicted as inept or as Machiavellian figures exploiting divergent views to extend their power (Terraciano 1990). History largely lost sight of the fact that Las Casas was merely one participant in a widespread, wide ranging, complex and often vitriolic debate. Despite the dissemination of revisionary works by Losada (e.g. 1951, 1975) and especially Pagden (1982, 1987, 1990, 1993, 1995), as well as the balanced accounts of Elliott (1970, 1989, 2006), one voice has drowned the others. Nor has the relocation of the debate in the context of Ideas of Toleration made much impact (López Sastre 1999; Terraciano 1990). In part this is due to the overpowering influence of recent works focusing on the recovery of other, hidden voices: the indigenous groups. Valuable and fascinating as these insights have been, they have naturally increased sympathy for those Spaniards who recognized the Amerindians as human beings from the outset, and who condemned the conquest. Consequently, the simplistic narrative of one hero versus many villains; of good versus evil; of human rights versus oppression has been reinforced. The contestation of justice and the crucial arguments about humanity and human rights that were at the heart of the debate have been largely lost.

This chapter seeks to restore some of the lost voices of what Hanke called 'the most transcendental controversy that took place at the threshold of the Modern Age' (1974: 160). It is only by recovering the competing voices that we can make sense of the debate and appreciate its crucial contribution to human rights. We need to begin by understanding why Montesinos had to ask his audience whether the Indians were human, and then lecture them on human rights. The impact of the theories that emerged from

voicing these fundamental questions will be considered. Finally we shall briefly review why the debate survived in such a distorted fashion and why it is important to recover it today.

## II. Defining humanity and human rights

The Europeans who set out across the ocean in 1492 were ready to encounter exotic beings, including monsters and hybrid, part-human creatures. They were also ready to come across ‘natural slaves’ – which explains their inclusion in the first official documents (Pagden 1982: 29–30). What they encountered were beings and civilizations that they found difficult to categorize.

Columbus announced to the world in his First Letter – published in 1493 (<http://www.usm.maine.edu/~maps/columbus>) – that they had not found monsters, but he was uncertain how to label the natives. In colour they were neither white nor black and they had handsome, human forms. They exhibited intelligence as well as curiosity, generosity and friendliness. They confused Europeans with Gods, but he reckoned they would convert to Christianity. They went about naked and had no sense of the value of material objects. They had limited commercial exchanges, and canoes were the main form of transportation. Their houses were small and often communal, and their communities were scattered. They appeared to have no government, laws or even property. They engaged in very basic forms of warfare, both in the armaments used and in the lack of discernible strategy. Their propensity to run away from danger was interpreted as cowardice. Their lack of iron manufacturing was also put down to their inherent timidity and the absence of technological knowledge. He concluded that the islands would yield gold, spices, cotton, mastic gum and aloe wood, as well as slaves for the navy and an abundance of good servants.

Columbus’ contemporaries took from this eclectic mix of observations what they found most striking, but without fail they remarked on the nakedness of the natives. Apart from this, the most frequent comments related to the lack of government and laws, the absence of iron, and the limited mode of warfare (e.g. Tamalio 2006: 16–17). To understand why these elements were privileged, and why they made Christians question if the Amerindians were human, we need to appreciate that in 1492 humanity was defined by composite elements taken from the Bible, from classical works, and from philosophical and legal traditions.

The Bible was the most important of these. From this Christians understood that God had created man ‘in his own image’ and given him the right to command the earth. Humans had to love each other because they were God’s creatures. What aspects men shared of the divinity was not made explicit. By the late fifteenth century the chief attributes associated with man’s sharing of the divine essence were the immortality of the soul

and the use of reason and speech. Speech was often extended to include writing, hence the importance of literacy for defining humanity – something which was reinforced by its further association with complex political, moral and commercial processes. As for reason, it was believed that its ultimate purpose was to give man the capacity to understand God, which meant the Christian God. Reason was also associated with knowledge of all kinds, and linked to developments in the arts and technology, as well as the creation of political, commercial and economic structures. In this sense, reason and literacy were closely, even inseparably, linked. Organized warfare was the litmus test of a civilization's capacity in all these respects.

Humans acquired another attribute of divinity when the first humans, Adam and Eve, ate from the forbidden tree in Paradise. They could now distinguish between good and evil and make moral choices. Crucially, the first manifestation of this knowledge was a new consciousness. Before 'both went naked ... and thought it no shame', but as soon as they had eaten the fruit, 'the eyes of both were opened, and they became aware of their nakedness'. Aware and ashamed of it. God punished their transgression by casting them out of the Garden of Eden, making humans mortal and ordering them to toil and sweat to gather the fruits of the earth. In a final act of clemency, he clothed them. Nakedness played a crucial role in a further incident: when two of Noah's sons viewed his naked body, they and their descendants were punished, being sent to toil in the more inhospitable parts of the earth. The Bible made it clear that God sanctioned inequality: one state might subject another; woman was subject to man; children to their parents. Humans must obey God and the rulers he sanctioned or suffer penalties for their transgression including slavery, which individuals and whole tribes might suffer either temporarily or permanently. Thus while the Bible enshrined the universality of humanity, it also projected a world with varied civilizations and an uneven distribution of rights, as well as the exclusion of some humans from rights altogether.

The nakedness of the Indians, the inability of some to distinguish between gods and men, the perceived limitations of their societies, the scant exploitation of their abundant resources through work and trade were all strong indicators of lack of reason and thus of non-humanity. Other doubts over their status can be attributed to the ideas of humanity that Europeans garnered from Classical authors. They had fostered the identification of humanity with a distinct form of civilization founded on the exercise of reason, and argued that the true potential of human beings could only be realized in such an environment. (Hanke 1959; Pagden 1982: chs.1–3) Their notion of civilization was essentially a city-dwelling model, characterized by its complex social, political and commercial structures, buttressed by written laws, history, literature and the arts, as well as technological advances. Humans might form societies that did not follow these norms, but they were considered inferior and barbaric. Christians believed that such conditions

were essential also to realize man's moral capability, and added that a Christian polity was the highest form of civilization, conflating infidels with barbarians. It was also from classical antiquity that they acquired the tendency to define the rights that appertained to the human in terms of the rights of life and property. However, given the variety of sovereign states in Europe, wide differences in the degree of personal freedom and property rights were accepted, as long as these were enshrined in law – preferably written law – and followed established moral precepts. While the exact nature of these rights was contested, the principle that only some humans had rights was generally accepted. Certain groups of humans, such as barbarians, were not accorded human rights. As the bishop of Michoacán argued in 1535, property rights and personal freedom were rights that appertained only to civil men living in true civil communities (Pagden 1990: 25–7). Only if civilized could they make the transition into a world of rights as well as duties. Humans might also lose their rights if they became slaves. Civil slavery could be the result of captivity in a just war, choice (as an alternative to starvation, say), or as punishment for a serious infraction such as rebellion. Slaves could be bought and sold, ill treated and even killed at will, like chattel. Yet civil slaves were still accepted as humans and it was recognized that they might regain their human rights through manumission.

There was another category of slave, the natural slave, which was more problematic. These beings resembled humans physically, but were so lacking in the accepted characteristics of civil society that their humanity was in doubt. Scholars since classical times had debated the issue. 'Natural slavery' was absorbed by Europeans mainly through Aristotle's works, and by 1490s it was associated with barbarians and Black Africans sold by the Portuguese in European markets from the 1450s. Many people believed the Amerindians fell into this category (Hanke 1959: 15–19) and Columbus was clearly leaning in this direction. In the 1530s Francisco de Vitoria set out to demonstrate that even by Aristotle's definition 'natural slaves' were human but imperfect beings, as their capacity for reason was minimal. He also went on to argue that Amerindians were not 'natural slaves'. His lectures were widely disseminated in manuscript before publication in 1557 (Pagden 1982: 43–7) and he was highly influential. Yet many Europeans continued to think of natural slaves as non-human and of Amerindians as akin to natural slaves.

Traditions of natural law and the law of nations also influenced their assessment of humanity and when these coincided with Christian traditions they tended to generate particularly forceful reactions, as in the case of taboos against human sacrifice, cannibalism and sodomy. Natural law and the law of nations underpinned the universal belief that people had a right of communication with other humans, often expressed in terms of a right to trade and a right to Christianize. Resistance to either was considered sufficient to justify aggression. Some people considered missionary

activity a duty not a right, however. Centuries of cohabitation with pagans and with Islam in Europe made this a deeply contested area with ample traditions supporting both sides of the argument. Opinions ranged from those who would impose Christianity by force and if necessary through invasion, to those who counselled only gentle persuasion and even resignation if rejected by Infidels, since God had given man the capacity to choose between good and evil.

How an individual selected from these and other indications of humanity; how they interpreted certain actions; in sum, how they judged whether the Amerindians attained or fell short of humanity, depended chiefly on the individual's education, personal experience, aims and interests. For some, one element alone decided the issue whether the natives were human, ranging from the now seemingly trivial ones such as preparation of food or literacy, to more recognizable problems such as cannibalism or sodomy (Pagden 1982: 89–91, 93, 97). For the majority, it was a question of balancing multiple criteria. There is a tendency to assume that most colonists were predisposed to characterize the Amerindians as natural slaves or beasts on the assumption that this alone justified exploitation and legitimized the seizure of lands and goods. This is not the case. It is evident that many of the early colonists were greedy and some were violent. Columbus had serious problems controlling his crew once they realized how easily they could exploit the natives. Later, he complained of the unrealistic expectations of settlers, who did not want to work and expected natives to labour for them (Colón 1982: 236–7, 93). Such people, if they thought at all or needed to justify their actions, might well be drawn to these beliefs. However, the sources make it clear that exploitation was often the outcome of a difficult situation rather than arising from conviction, and crucially, that settlers habitually resorted to necessity to validate their behaviour and were also under enormous pressure to acknowledge the Amerindians as human.

Necessity alone sufficed for most to justify exploitation and appropriation; there was no need to resort to theories of non-humanity. Those granted Indian labour and lands in reward for their part in the conquest and the defence of settlements did not need further legitimacy either. When asked to justify their demand for further grants they resorted chiefly to arguments of native 'insufficiency' and rejection of Western civilization rather than non-humanity (Parry 1966: 175–86). The chief problems were the widespread rejection by indigenous societies of regular wage labour and the lack of surplus production which limited normal commercial exchanges and forced many early settlers to work in construction and food production to avoid starvation. Life was often harsh and survival tenuous and this engendered increasingly negative feelings towards the Amerindians. Some colonists turned to further conquest as a way out of their difficulties (Díaz del Castillo 1988). Columbus and others concluded that they must emulate

the Portuguese and trade in slaves (Colón 1982: 164, 224; Aguirre and Varela 2006: 188, 199–204, 230–2; Fernández Armesto 1991: 90, 95–6, 102, 108, 138–9; Díaz del Castillo 1988).

The Spanish monarchs, Isabella and Ferdinand, would not agree to this without further consultation. They also examined some natives who had been sent over. Crucially, they decided that the Amerindians were not natural slaves and in 1495 Columbus was refused permission to sell the Indians sent to Spain. Not long after he was jailed and tried for corruption and ill treatment of natives and Europeans. The charges, recently discovered by Isabel Aguirre, paint a picture of a paranoid man unable to cope with a situation where life hung in the balance for most colonists. He resorted to savage and sometimes arbitrary punishments against Europeans, and over-worked and sometimes enslaved natives. This was regarded as tyranny and he was removed and punished, though soon released (Aguirre and Varela 2006). The 1501 instructions the monarchs issued to the new governor in America, Nicolas de Ovando, stated unequivocally that the Indians were 'our subjects and our vassals' with the same rights and duties as other vassals. Slaving activities were prohibited and conversion was to be carried out without force (Pagden 1982: 31–4; Hanke 1974: 27).

There is every reason to suppose that the monarchs opted for the humanity of the natives from conviction, but the Spanish government may have been predisposed to find in their favour for other reasons as well. If the Indians were natural slaves they had no rights to life or property and whoever seized them and their land had right of possession. In other words, the colonists not the crown were the true lords. Similarly, church leaders had a vested interest in asserting the humanity of the Amerindians because if these beings lacked reason, there would be no souls to save and the church would not have a role to play. Only humans could be vassals and Christians. There were similarly powerful pressures on non-ecclesiastical settlers to believe in the humanity of the Indians. If the natives were not human, then copulation with them was tantamount to having sexual relations with an animal, which was a grave sin. Moreover, exploitation invariably nurtures indifference and inhumanity and stifles moral restraint. Effective and cultural restraints are often ineffective in uneven situations as that prevailing in the Americas in the early modern period. The casual brutality with which Michele de Cuneo treated the beautiful, young Caribbean woman that Columbus gave him was as repellent to many of his contemporaries as his boast that after raping her he had rapidly turned her into a whore (Lunenfeld 1991: 283). Such behaviour nurtured fears that the New World would destroy the moral, legal and political foundations of the Old. As Pedro de Quiroga commented: 'this land weakens our judgement, shakes our spirit, endangers and corrupts our good customs and encourages deviant habits, making men behave in a manner utterly contrary to their original intentions.' A royal judge commented in 1550 that even the clergy

'have become brutalized by these mountains, and must be civilized anew.' (Hanke 1974: 148–9)

Doubts over the humanity of the natives did more than corrode morals: it prevented the creation of the settled, family unit that is at the heart of Christian civilization. The problem arose even when the natives were thought of as human but so inferior as to be equated with civil slaves or children, for there could be no valid marriage nor legitimate offspring either from such unions. The Amerindian had to be considered fully human and converted to Christianity before a marriage was valid in law and in the eyes of God. Since conversion excluded natives from being allocated as forced labour, however, Columbus was reluctant at first to endorse such conversions (Aguirre and Varela 2006: 230–1) and tried to deter them. Partly out of conviction, and partly out of necessity, many settlers believed that if they converted their indigenous mistresses, they could cohabit with them without sin (Aguirre and Varela 2006: 203). The clergy rejected this, insisting that a regular church marriage between two Christians was the only way to save the souls of the settlers and their indigenous partners, as well as the only way to legitimize the children. But widespread confusion and doubt as to the full humanity of the natives continued to deter the creation of settled family units, and this was rapidly identified as a crucial impediment to the creation of an ordered, civilized society in America.

For this reason, both crown and church tried to encourage mixed marriages. In fact, the laws of Burgos in 1512 attempted to enforce full integration of Indians and Spaniards, not least because they believed it would rapidly lead to the Amerindians becoming Christianized and civilized (Rumeu de Armas 1969: 435–53). Try as they might, few colonists married indigenous women at this stage, and these were mostly high-status females (Boxer 1975: 35–7; Ots Cadequi 1957: 79–80, 83, 118–19). The overwhelming belief among colonists was that the natives were so far from full humanity that such unions were unnatural and would be either ridiculed or disapproved of by their kin. Consequently, most mixed-race children were rejected by the colonists. Among the few exceptions was a shipwrecked Spanish sailor who refused to be rescued partly because he would not abandon his Indian wife and children. 'Look how pretty my children are!' he told an uncomprehending Spanish cleric, who failed even to register their presence and admonished him not to lose his soul merely for the love of an Indian woman (Díaz del Castillo 1988: 103). A royal decree of 1533 ordered that children born of mixed marriages should live in Spanish areas and be given a Spanish education. It was impossible to police such measures, and the laws did little to change attitudes, particularly as new arrivals from Spain reinforced the obsession with the purity of Christian blood among Spaniards (Rodríguez-Salgado 1998: 244–9). In desperation, the government resorted to legalizing prostitution, hoping it would protect Indian women and save colonists from the sin of cohabitation (Boxer 1975: 38–9,

51; Ots Cadequi 1957: 122). These measures did not suffice. In 1547 Tomas de Casillas drew the government's attention to the numerous mixed race children in Indian settlements. He reported that the majority of colonists remained unmarried and 'living in sin' with native women, 'in consequence, they remain with one foot on the saddle. Their greed for temporal goods has made them lose their fear of God. Without the normal ties of wives and children and heritable property, they have lost their fear of justice too.' In his view, settlers had to be compelled to marry (Jiménez Fernández 1988: 153). Legislation continued to be issued to this effect, but it proved a blunt and ineffective instrument. Failure to accept the Amerindians as equals in humanity is at the heart of the violent and often lawless advance of the Europeans in Spanish America, but a worse situation attained in areas such as Brazil where they were regarded by the government as natural slaves.

Faced with the intractable problem of controlling the New World and protecting natives and settlers alike, the Spanish monarchs ordered numerous fact-finding missions and habitually called on 'expert' opinion – settlers, officials, clergy, philosophers etc. – for information and advice. After the Montesinos incident they set up the first of several special commissions charged to debate all issues relating to the conquest. Remarkably, this included the question whether the conquest itself was legitimate. In 1493 the pope, then the highest moral authority in Christendom, had declared it just, but many Spaniards denied that the pope had authority over such matters, and many questioned from the outset whether the conquest was either legally or morally justified. The freedom which the Spanish monarchs accorded to their subjects in the debates that ensued was due to their anxiety to fulfil their duty both to God and to their subjects. Their aims are succinctly summed up in a statement made by empress Isabel in 1532: 'We want to ensure that we act with the greatest rectitude and security ... putting the service of God above all other things, without burdening our consciences, and so as to maintain those lands and their people in our service and subject to us'. In her opinion, the main impediments to this were distance, the alien nature of indigenous cultures, and the contradictory and conflictive reports the government received daily from the New World (Jiménez Fernández 1988: 98). These were indeed grave problems, but the crux of the matter was that the crown's aims were themselves contradictory.

To act with rectitude and avoid burdening their consciences they had to establish beyond doubt a legitimate right to invade and possess America, and to govern it justly. If the Indians were human they had a right to freedom and possession, irrespective of the Pope's proclamation, and the Spanish government had no right to be there. The question of how to reconcile indigenous freedom with a perceived duty to impose Christianity also remained unanswered. Moreover, it was evident that survival for the

colonists was dependent on forced labour: freedom for the natives would lead to the collapse of the colonies. Most importantly, the Spanish conquest of America was organized as their expansion elsewhere, that is, as a partnership between the government and groups consisting of investors, soldiers and settlers. The crown claimed sovereignty over the lands and a percentage of the profits in exchange for legitimizing the enterprise and making some contributions. But the bulk of the finance and the military force came from the others, and all of them had a right to be rewarded. Their attitude is exemplified in one of Lope de Aguirre's messages to the king: 'you cannot take ... any benefit from this land where you risked nothing, without first giving due gratification to those who have laboured and sweated in it.'<sup>2</sup> One solution which many government officials favoured was for the crown to finance and control all future expeditions (Hanke 1974: 114). This was unrealistic given the scarcity of resources and the global commitments of the Spanish Monarchy.

Besides the contradictions inherent in the situation, the crown had to struggle with conflicting information and advice, and not just from the New World. All of the special commissions they ordered – in 1512, 1513, 1516, 1520, 1526, 1542 and 1550–1 – proved inconclusive. The experts disagreed so vehemently that no coherent policy could be grounded on their deliberations. Throughout, some maintained that the Indians were natural slaves or barbarians or even beasts. In 1535 García de Loaysa, then president of the Council of the Indies – the government department that dealt with America – likened Indians to parrots (Hanke 1974: 18). Others insisted they were imperfect beings incapable of running a true society. They were opposed by those who affirmed their humanity, enumerating their positive qualities and potential for civilization, and emphasizing their willingness to convert to Christianity. Some experts took refuge behind papal authority on such matters; others rejected it. Unable to determine the validity of the competing cases, the Spanish crown habitually asked for additional opinions and information and invariably got the same divergent results from equally creditable sources (Pagden 1982: 34–5, 47–56; Hanke 1974: 28–9).

Inactivity was not an option, however. The monarchs had a duty before God to act justly and to protect their vassals and they were anxious to extend their power. Without overwhelming proof that the conquest was unjust they were not likely to pull out, but if they remained, something had to be done to bring the area under control. As a result their policy was riddled with inconsistency. As noted, the crown asserted both its sovereign power over America and the humanity of the Indians, who were accorded full rights as vassals. Yet, they could not avoid rewarding settlers with forced Indian labour and lands. They tried to palliate the impact of this by constantly condemning slavery and making possession of land or labour conditional on settlers providing Christian instruction and civilizing the indigenous population. These contradictory directions can be seen in the

now infamous *Requerimiento* (1513–73), which settlers had to read out to natives prior to conquest or settlement. Historians usually quote only a short section of the document, where the monarch allows the enslavement of Indians if they rebel, presenting it as the legitimization of American slavery and further conquest, when in fact it was part of European law codes at the time. The document is more important and complex than it is made out to be. It was intended to force the settlers to admit and proclaim the humanity of the Amerindians and their rights as vassals of the crown and begins thus: 'the Lord our God ... created the Heaven and the Earth, and one man and one woman, of whom you and I, and all the men of the world, were and are descendants' (Lunenfeld 1991: 188–91).

Such declarations did little to change attitudes among the settlers, many of whom became increasingly hostile to the Amerindians, not least as a result of political and religious failures. The natives' inability to make a success of self-governing settlements along European lines, and their slowness to take up Christianity were both crucial in this respect (Hanke 1974: 11, 42). The conquest of Mexico by Hernán Cortés 1519–22, and of Peru by Francisco Pizarro in 1531–2 may have temporarily arrested this negative trend. It proved that some Amerindians had sufficiently developed reason to create impressive civilizations. Moreover, by then the colonists were habitually engaging in diplomacy and military alliances with existing Indian states (Hassig 1994; Díaz del Castillo 1988). The 1532 ecclesiastical council exemplified the new optimism when it declared that Indians were human and rational, able to govern themselves and to become Christians (Hanke 1974: 12–13, 17–19). The Spanish government started to dismantle the *encomienda* system (Parry 1966: 79–82) and prohibited the enslavement of Indians even in a Just War since this had been frequently abused (Ots 1934: 27). But many resisted these measures, and the incriminating evidence they brought to bear against these positive trends towards integration and normalization of relations proved extremely powerful. They pointed to human sacrifice, cannibalism, sodomitical and other 'deviant' sexual practices found even in these, the most civilized of Indian nations. These activities caused moral outrage and revulsion among Europeans and strengthened the conviction of some that even at their most developed, Amerindians were not fully human.

That was the conclusion reached by Fernández de Oviedo y Valdés, a royal official who had lived in the Indies since 1514. In 1535 he published an influential History of the Indies where he claimed that the Amerindians had not developed 'true polities' because of their limited capacity to reason. In his view, their passionate attachment to traditions that included bestial and inhuman habits, was evidence in favour of considering them natural slaves (Hanke 1974: 34–45). Vilified by Las Casas, Fernández de Oviedo is still often portrayed as a racist concerned merely to justify the exploitation of the Indians. Such simplistic and unproven assertions are based on the

refusal to accept that definitions of humanity have varied in the past and that it was perfectly possible to act from the highest moral principles and still believe that Amerindians were not fully human. Fernández de Oviedo certainly benefited from a system that was based on the exploitation of Amerindians, but he was also concerned to establish just government in the colonies and was an ardent advocate of conversion – without which there could be no integration. He believed that the benefits of Christianity and European civilization were so great that intervention and force were justified. It was possible to live among the Amerindians and care passionately for them and their welfare, while also expressing negative opinions of them as we can see in the case of the influential bishop of Michoacán, Vasco de Quiroga. He ardently defended the Amerindians and organized separate, model settlements for them. He condemned the ‘uncontrolled greed’ of many settlers and opposed slavery, arguing that the natives had a right to resist violence and tyranny. But he also argued in favour of retaining and extending the *encomienda* system because he did not believe that the Indians could exercise full dominion over their lands or themselves. They did not abide by natural law or have a true civilization. They worshiped false Gods; they lacked proper political systems; and while they lived in a state of nature, they lacked the capacity to understand the natural world – a capacity exercised only by truly civilized men. Quiroga argued that it was Spain’s duty to free them from their barbarous lives as well as to bring to them the benefits of Christianity (Quiroga 1992; Pagden 1990: 25–7).

By the 1530s all leading Spanish intellectuals were engaged in the debate over the Amerindians because it touched on the most fundamental political, philosophical and religious issues of the time. The views of Francisco de Vitoria were particularly influential and are worth noting. He had no doubt of the humanity of the Amerindian because he considered the potential to reason as the essence of humanity. Even a monstrous being without eyes, ears or legs, who lived in the dark, was human if he had an imprint of reason. Since the Amerindians were human, they must be accorded human rights to life and property and not even the pope could rule otherwise. Consequently, Spain had no sovereignty over America. Vitoria accepted that humans could not prevent trading or preaching, but asserted that the Amerindians had the right to choose and reject these approaches, and Europeans had no legal grounds for making war and invading on these grounds. However, Vitoria granted that the Amerindians, even at their most civilized, fell far short of the required levels of human behaviour and civilization. Of particular significance were the lack of written laws and magistrates, of literature and of the liberal and mechanical arts, as well as the absence of properly developed agricultural systems and division of labour. ‘Inhuman’ habits such as cannibalism, human sacrifice and deviant sexuality were also serious faults. He concluded that the

Amerindians were like infants: with full potential but so under-developed they could not create a true society unaided. The Spanish monarchy could govern them out of charity, which was a Christian duty, as long as it was done solely for the benefit of the indigenous populations, and only for as long as it took for them to reach their potential (Vitoria 1991: 233–327; Pagden 1982: 60–108; Lunenfeld 1991: 191–8). These arguments were as vehemently rejected by slave-owning colonists as by those who believed that human rights were inherent in humanity and not conditional upon a given civilization. Nor did the government draw unalloyed comfort from them. While they accepted the status quo they seriously challenged the power of the Spanish crown.

In 1537 the pope issued a public proclamation regarding the status of the Amerindians. He declared that they were human and rational beings, with full rights to property and freedom. Although widely regarded as a victory for ‘the defenders of the Indians’, the edict had limited impact, not least because the pope was then an enemy of Spain’s ruler, Charles V, and it was widely regarded as a hostile move to deprive Spain of its colonies. In addition, it disadvantaged most Amerindians by proclaiming that the essence of humanity was the willingness and capacity to convert to Christianity (Elliott 1989: 47–9, 2006: 70–2; Hanke 1974: 18–22).

By now, the Spanish government was alarmed at the extraordinarily divisive impact of the debate and the way it had turned into a wider discussion of the nature of sovereignty and the rights of vassals. They tried to silence the polemic by banning all papers and public discussion on the subject, and censoring publications. The measures were ineffective (Pagden 1982: 106–7). The only way to silence the competing voices was by bringing the situation under control. This they attempted to do through the New Laws of 1542.<sup>3</sup> The aim was to put an end to the slavery and exploitation of the Amerindians. The system of *encomiendas* was to be terminated without compensation. Las Casas could rightly take pride in having influenced the monarch and his government. Encouraged by all this he also asked for the revocation of all licences for conquest (Hanke 1974: 61). Not surprisingly, there was uproar in America – and not just from those colonists who would suffer from being deprived of lands and labour. Many of those without *encomiendas* supported the system, and some even slavery. It is evident from the response to the laws that the colonists were highly sensitive to their numerical inferiority and limited power, especially after the rebellions of 1540–1. They were afraid and frustrated by their failure to bring a large enough sector of natives into a wage economy, as well as with the limited progress of conversion. Such was the opposition that the government suspended most of the legislation (Parry 1966: 182–5; Hanke 1974: 60–1, 64) and decided to review the situation. In the midst of this crisis, another polemic flared up over the training of Amerindians for the priesthood (Hanke 1974: 22–6). To help him navigate through these turbulent waters,

the then president of the Council of the Indies, Fernando de Valdés, asked a leading scholar, Juan Ginés de Sepúlveda, to write a treatise and clarify the issues.

### III. The Valladolid Disputation, 1550–1

Sepúlveda is usually presented either as a hack whose task was to manufacture for the government spurious justification for Spain's domination of America, or as a puppet of the *encomenderos* (e.g. Jiménez Fernández 1988: xxix). This is inaccurate. Sepúlveda was not subservient to either camp. Nor did the fact that he had not gone to America disqualify him from a debate which had always included on an equal footing both eyewitnesses and desk-bound scholars in Spain. If anything, the distance was helpful in avoiding the extremes into which so many colonists fell. Besides, he had access to a great volume of literature on America and was in close contact with Hernán Cortés. He was a highly respected scholar, well qualified for the task (Elliott 1989: 41). His views are often taken from the brief summaries that his chief opponent, Las Casas, made of some points he selected for refutation (e.g. Wallerstein 2007: 4–5). Unsurprisingly, he often appears as both simplistic and utterly misguided.

Sepúlveda's assessment of the situation in the New World circulated in manuscript form under the title *Democrates Alter de Justis belli causis apud Indios* (ed. Losada 1951). He accepted the Amerindians as human, but considered them such a debased form of humanity that they were closer to natural slaves. They were 'barbarous, uncultivated, and inhumane' because they participated in abominable sacrifices 'in which they worship the Devil as God'. They breached human and divine law by eating human flesh, committing sodomy and even by communal living, all of which demonstrated that they were depraved and without shame or ability to control their emotions. For Sepúlveda it meant they had no capacity to distinguish between good and evil. Their lack of reason was conclusively proved by their resistance to Christianity. 'You will scarcely find any vestiges of humanness', he wrote, adding: 'these people possess neither science nor even an alphabet, nor do they preserve any monuments of their history except for some obscure and vague reminiscences depicted in certain paintings, nor do they have written laws, but barbarous institutions and customs.' They lacked a monetary economy and their working habits and attitudes contravened God's purpose for (and order to) humanity to toil and tame the earth. This convinced him 'they were born for servitude and not for the civil and liberal life'. Since they did not meet the criteria of civil beings they had no rights to sovereignty. Not even the glories of the Aztec empire could shake this conviction. It proved merely that 'they are neither bears nor monkeys and that they are not totally irrational' but confirmed that they were fundamentally flawed, since even at their most developed

and 'civilized' they were servile, accepting tyranny as barbarians habitually did. As inferior humans they could be subjected to the Spaniards who brought them the benefits of the true faith and civility. In his view, conversion could be undertaken by force, and conquest might precede missionary activity if this was the only way to save their souls and allow them to achieve their full potential as humans. He was also inclined to the view that their crimes against humanity and God justified making war on them. His opinions were backed by the best available authorities: the Bible, the classical authors, natural law theories and the views of those with long experience of the Americas (Losada 1951; cits. Lunenfeld 1991: 217–21; Pagden 1990: 27ff; Hanke 1959: 44–7, 52–3).

The clarity and conviction of the exposition, and the timing of his contribution, may account for the fact that while none of the arguments were novel, Sepúlveda's manuscript made a considerable impact. It circulated widely and he found himself in the eye of a storm that was not of his own making. The work was widely interpreted from the outset as a justification of Spain's conquest and support for forced labour and even enslavement of the Indians. Some colonists thought not only that they were vindicated but that he furnished them with ammunition to gain greater concessions (Hanke 1974: 61–2, 120; Pagden, 1990: 22–4, 30). Sepúlveda was proud to buttress the authority of the papacy 'and the justice and honour of our [Spanish] kings and nation' (Jiménez Fernández 1988: 168) but he had not intended to advocate nor support injustice. His aim was to civilize and Christianize the Amerindians. The dangerous implications of his views were immediately appreciated, however, and account for the fierce opposition he provoked. The government was not eager to reinforce the power of the colonists and so refused permission for its publication.

Their sensitivity was also due to the fact that they were engaged in a row over the illegal publication of Las Casas' *Confesionario*, a penitentiary for priests that had already provoked multiple denunciations from the Americas. The work stated unequivocally that the Spaniards had no right to subjugate the Amerindians, who, as full human beings had full rights over their lands, bodies, and minds. The conquest, the system of forced labour, forced conversions, slavery, etc., were all unjust, iniquitous and tyrannical, and all who took part were condemned to eternal damnation unless they made fitting reparations. Priests were ordered to refuse absolution unless Christians freed slaves and provided restitution – even if it left them and their heirs destitute (Jiménez Fernández 1988: 192–213, 155–68). Many a dying Christian agonised when forced to choose between hell and disinheriting their families. Radical clergy had been employing similar tactics since 1500 – Las Casas himself had been refused the sacraments in 1514 for enslaving and ill-treating Indians (Hanke 1974: 7). After he became a clergyman, he extended the practice. The publication of the penitentiary threatened schism and perhaps rebellion in America. To compound the

government's discomfiture, they received a report by Rodrigo de Navarrete on the Araucans and Trinidad which gave a vivid account of the widespread indifference and even rejection of Christianity in these regions, and of their violent resistance to Spanish rule (Hanke 1974: 28–9).

Concerned that the situation was getting out of control and that it had become a burden to his conscience, Charles V called for a new gathering of experts in April 1550 and suspended the conquest of Peru pending the outcome. He hoped they would provide guidance on the drafting of new legislation for the Americas that would allow 'the preaching of our Catholic faith and the control of subjects to royal authority' but 'justly and with security of conscience' (Jiménez Fernández 1988: xxxi, xxxiv; Hanke 1974: 65–6). Theologians, canon and civil lawyers and members of various royal councils met in Valladolid in July 1550. They decided to make things manageable by focusing on particular questions, starting with whether it was legitimate to use force to convert the Indians, and if so, whether conquest should precede conversion. They asked Sepúlveda and Las Casas to present their views on this in person (Jiménez Fernández 1988: xxxii). Sepúlveda gave a three-hour statement which effectively summarized the key points of his manuscript. Las Casas spoke for five days, at which point they refused to let him continue. He too reiterated earlier arguments (Jiménez Fernández 1988: 3–26; summarized by Hanke 1974: 73–112 and 1959: 44–73).

The starting point for Las Casas was that the Indians were human and not natural slaves, and that their humanity gave them inalienable rights that even the pope could not deprive them of. He asserted the right of the Indians to resist conversion and trade. As ever, his arguments were accompanied by an idealized description of the Amerindians that some found hard to credit. They were 'not ignorant, inhuman, or bestial. Rather, long before they had heard the word Spaniard, they had properly organized states, wisely ordered by excellent laws, religion, and custom. They cultivated friendship and, bound together in common fellowship, lived in populous cities in which they wisely administered the affairs of both peace and war justly and equitably, truly governed by laws which at very many points surpass ours.' They were also talented, quick to learn, and more receptive to Christianity than others and 'so skilled in every mechanical art that with every right they should be set ahead of all the nations of the known world on this score.' (Hanke 1974: 76, 82, 74) Using a novel, historical perspective and the concept of progress, he maintained that any imperfections they demonstrated were due to the fact that their society was not as old as European, Christian civilization. Of these, he was willing to admit that the lack of a written language was serious, but counterbalanced by the fact that there were beautiful languages in the region, and that Indians were capable of learning to write European languages.

To deal with the emotive issues of nakedness, sodomy, cannibalism and human sacrifice, Las Casas adopted a form of cultural and religious relativism. He argued that human beings were in thrall to tradition and impelled by the fundamental impulse to believe in a God. Amerindians were acting in good faith and showing their obedience to authority by worshipping other Gods, cutting the hearts out of living victims and going about naked, consequently force could not be used against them for these practices, even if it took hundreds of years of loving persuasion to wean them from actions others found profoundly offensive. What mattered was whether God was offended, in which case 'he alone will punish this sin'. (Hanke 1974: 95). It is important to note that Las Casas did not extend these arguments to Black Africans, whom he continued to exclude (along with most contemporaries) from the ranks of humanity (Pagden 1982: 32–3, 17; Hanke 1959: 9). He reiterated forcefully that the Spanish occupation of America was illegal, that they should withdraw and compensate the victims.

Hanke argued that Las Casas' arguments were rejected because they would have caused a revolution in America (1959: 96). The implications of his position were certainly grave and may well have caused an uprising if adopted, but it should be noted that he caused widespread offence in Spain too. As Pagden stressed, Spain was being asked to withdraw from America and make substantial reparations (1990: 32). Elliott emphasized the broader issues raised by both Las Casas and Vitoria. Their arguments demanded that people change 'from a narrow and primarily political definition of 'civility' towards a broader concept of 'civilization' which was not necessarily equated with Christianity' (1970: 44). Nor was this all. In the process of establishing the humanity of the indigenous population, fundamental, biblically-based beliefs about God and humanity were discarded. Gone was the association of nakedness with morality; of reason and Christianity. Gone was the comfortable measure of others in terms of that known entity, a European, Christian civilization. They were left with the belief that humans were God's creation and shared the same rights, but must accept that humanity might be expressed in a bewildering variety of societies and beliefs all of which had equal validity. Christians, who believed that there was only one God and one way to worship him, were being asked to accept that God was content that millions of humans chose not to believe nor worship him, and indulged in acts considered abominable by Christians. This run counter to the God they knew from the Old Testament, who inflicted savage punishments on people for far smaller transgressions. Paradoxically, in the process of protecting the Amerindians from European exploitation, Las Casas and his supporters justified the right of Amerindians to exploit, kill and even eat each other, while depriving Europeans of the right to intervene to prevent such atrocities. This was not a position many could take then, or now.

Given the prolix nature of Las Casas' testimony and the complexity of the arguments, the commission asked Melchor del Cano to make a résumé of the two submissions. A pupil of Las Casas, he may well have favoured his mentor who was sufficiently pleased with it to publish it illegally (Jiménez Fernández 1988: 3–26; summarized by Hanke 1974: 73–112, 1959: 44–73). Having considered these arguments, the commission refused to judge in favour of either. They must have appreciated the dangers of both positions both for government and society, but they were also profoundly divided. After two months of intense discussion, they decided by majority vote that conversion should not be carried out by force, and that conquest could not be justified as a prelude to conversion. The Amerindians had a right to choose their faith; they were free to choose between good and evil. This might appear as a victory for Las Casas, and he thought it as such, but we should note that this view had a long pedigree in Spain, where Christians, Muslims and Jews had cohabited for over 700 years previously. Sepúlveda was angry at the uneven allocation of time and demanded another hearing. When refused, he produced a set of twelve objections to Las Casas' 'frivolous' arguments. Las Casas immediately countered with a refutation of these 'execrable impieties' and asked for this 'venomous cancer' to be eliminated. They now accused each other of heresy (Jiménez Fernández 1988: 168–84; 213–60).

Although we know that only a minority within the commission supported a ban on further conquest, when they reconvened in April 1551 they proceeded from the basis that America would henceforth be partitioned between existing Christian-Amerindian polities and independent states still adhering to their own faiths and customs. Significantly, there was no mention of compensation of those who had been deprived and abused. What they set out to determine was whether Spaniards could use force of arms against Amerindian vassals and deprive them of their lands and liberty if non-subject Indians persuaded them to rebel. They also discussed whether and how they might protect missionaries in independent Indian states and whether it was morally acceptable to ally with one group of non-subject Indians who was at war with another such group. They wanted to determine if Spaniards could take possession of Indian lands and peoples in reprisal for attacks and if it was legitimate to use armed force if Indians refused to sell food to the settlers in exchange for payment, or to engage in commerce with Spain. If armed intervention was legitimate in any of these cases, who should execute the mandate – the settler-*encomenderos* or salaried soldiers under direct government control? Who would pay and provide these forces? They also set themselves the task of answering two fundamental questions: was it legitimate to use force to put an end to idolatry, cannibalism, human sacrifice, and sodomy? Did Spain have a duty to 'liberate' Indians so that they could receive the 'true faith'? (Jiménez Fernández 1988: 145–7).

The meetings became so conflictive that after two months the commission disbanded without a report. Given the passions it had provoked and the accusations of heresy and treason bandied about, it is not surprising that individual members resisted pressure to give an independent opinion as well. Under the circumstances, Charles V felt unable to devise new legislation. Weary of the arguments, viceroy Antonio de Mendoza wrote: 'Some will tell Your Majesty that the Indians are simple and humble folk, without malice or evil; others will represent the contrary, that they are very rich and are vagabonds who do not want to cultivate the land. Do not believe either group, but treat the Indians like any other people and do not devise special rules and regulations for them. There are few persons in these parts who are not motivated, in their opinion of these Indians, by some interest, whether temporal or spiritual, or by some passion or ambition, good or bad.' (Hanke 1974: 28) Charles V was not convinced. He suspended new conquests in New Granada in 1553, still complaining that his conscience was burdened by what was happening in America, but otherwise paralysed by his inability to harmonize moral and pragmatic requirements.

#### IV. Shrill voices and silence

By the mid-sixteenth century, the result of these contradictory pressures and views was stasis in government. The one thing they did was to silence the most radical voices. They refused both Sepúlveda and Las Casas permission to publish their submissions to the commission, and rejected other, similar publications (Pagden 1990: 33; Hanke 1974: 113–19). In this vacuum, both men claimed victory and wrote substantial new manuscripts, but the government held firm and refused licence to publish. Sepúlveda circumvented the Spanish censors by publishing a short book in Rome in 1550 which reiterated some of his arguments (Losada 1975: 51–82). Charles V promptly banned it in his lands (Hanke 1974: 63, 70, 114–18). Las Casas, prolix as ever, took time off from writing his massive volume to counter Sepúlveda's arguments to prepare nine treatises which he managed to get published in Spain without government licence in 1552–3 (Losada 1975: 85–417). Although only partially effective, government censorship was tightened and staunches the flow of publications at this crucial juncture. It had also limited their dissemination and succeeded in containing the broader polemic within university lecture halls and some pulpits. Attention now turned to other issues, and most notably the questions whether Indians should be trained for the priesthood, and whether the Bible should be translated into indigenous languages. Though important and far-reaching, these issues were less immediately relevant for most Spaniards and less dangerous to the government (Hanke 1974: 122–3).

Paradoxically, the polemic over indigenous priests helped the process of convergence of views about the Amerindians which would ultimately

facilitate the introduction of new legislation. This was because once it was suggested that indigenous men might become priests, many of the most ardent protectors of the natives expressed concern about the intellectual and spiritual capacity of the Amerindians. Many did not believe that Christian truths could be properly expressed in indigenous languages, and above all, the majority did not trust natives with the power of priesthood. By now, the limited success of the conversion programmes was apparent, and there were worrying signs of backsliding among converts and of the practice of combining Christianity with native religions (Hanke 1974: 22–7; Lunenfeld 1991: 303–7). This gave credence to more negative views of the Amerindians, as exemplified in the changing views of the Mexican clergy. Whereas in 1532 they praised the intellectual and spiritual qualities of the Indians, by 1565 they depicted them as wicked children; imperfect beings inclined to vice and requiring stern rule based on ‘fear more than love’ (Elliott 1989: 50–1). The collapse of Indian civilizations had, in the meantime, led to widespread brutalization and displacement of natives, making them closely resemble barbarians (Pagden 1982: 99–100). Secular and ecclesiastical officials were increasingly of one mind: it was imperative to impose a tough regime which disciplined the Amerindians while offering them protection and justice. Some colonists resisted this growing government control. The ensuing rebellion in Peru was firmly put down and while it made the government cautious about alienating the settlers, it also confirmed the king’s determination to stamp his authority over the region and extend government control.

The gradual convergence of views and awareness that new legislation had to be imposed favoured King Philip II, who came to power in 1556 determined to sort out America. Having selected some exceptional officials to go there and impose order at the start of his reign, he then gathered information systematically and consulted widely before issuing the new laws of 1573. The main thrust of the legislation was to limit and control future conquest and to regulate existing settlements. Pacification and obedience to church and state were key aims. War and violence were to be averted at all costs. The legislation asserted Spain’s duty to civilize and Christianize and stressed the benefits the Amerindians had already gained from Spanish rule, such as the prohibition of cannibalism and idolatry, the clothing of natives, and teaching them new arts and crafts as well as how to make money. The Spanish government was convinced that other Amerindians would regard the areas under Spanish control as such enviable examples of progress they would render force – either for conversion or cooperation – unnecessary in future. The laws reaffirmed the prohibition on slavery and exploitation, but retained the *encomienda* system and allowed its introduction to newly conquered areas (Digesto documental de Zacatecas 2000: 100–25). Elements from the arguments of both Las Casas and Sepúlveda were incorporated. Neither had won an outright victory. Fundamental

questions about humanity and dominion were set aside in favour of pragmatic solutions that controlled and contained aggressors and victims, settlers and natives. Spain's civilizing mission emerged reinforced, and inspired those who settled in North Africa (Rodríguez-Salgado 1998: 240–3).

Government censors allowed publications of all hues on the Americas in the second half of the sixteenth century, but interest in the debate about humanity dwindled, and once the new laws were in place, the urge to influence government policy diminished. The debate rumbled on and was crucial in laying the foundations for ethnographic studies. Some of its arguments would resurface in the seventeenth century in the context of religious and civil relations with countries such as China. But the reluctance of authors and readers to continue with many the lines of enquiry the original disputations had opened owed something to the fact that it had confronted them with deeply disturbing and unresolved questions about humanity, civilization, and the extent of political and religious authority. Many felt overwhelmed and inclined to retreat 'to the half-light of their traditional mental world' (Elliott 1970: 14, 18; 1989: 43). Having seen the dangerous way the debate developed, other European colonial powers were intolerant of such disputations when they started to colonize. Not one emulated the openness or soul-searching of the Spanish government, nor risked the dangerous challenge to its fundamental authority.

The Spanish polemic lived on mostly in a distorted fashion. Among the pamphlets Las Casas published illegally in 1552 was the *Breve resumen del descubrimiento y destrucción de las Indias* (ed.1981), a pamphlet which reduced Spain's activity in America to a series of brutal encounters. It is a brief but sickening account of gratuitous violence and inhumanity. Las Casas claimed, falsely, that he had witnessed most of these scenes or heard them from reliable sources. Some were true; others invented. While also mentioning the brutality of German settlers, he does not deal with the many Portuguese and Italians who also participated alongside Spaniards. He deliberately made it appear that Spaniards were uniquely cruel and savage, and had brought nothing but destruction on the Americas. The work was immediately taken up by the enemies of the Spanish Monarchy and used in a process of systematic denigration of Spain that went on for centuries and which is now known as The Black Legend. Rebels used it to justify their attacks on Spain, starting with the Dutch in the sixteenth century and ending with South American rebels over three hundred years later. The Dutch changed names and places and made it appear as if the atrocities had happened in the Low Countries. It proved easy enough since many of the incidents are generic scenes of savagery, commonplace in all violent polemic against the enemy for millennia (Arnoldsson 1960; Maltby 1971; Powell 1971; Gibson 1971; García Cárcel 1998). Bolívar was among those who used Las Casas for inspiration and to prove that Spaniards were

evil (Pagden 1990: chs. 4, 6). Spain's enemies and competitors reissued the pamphlet over the centuries, particularly the British and then the USA, to justify their own aggression against Spain and its colonies up to 1898, especially when there was scant or no justification for their attacks.

By the late eighteenth century the Spanish authorities were so concerned at the negative impact of the pamphlet and the histories describing their activities in the Americas they tried to commission a new history that would 'silence once and for all the voices of so many competitors and frenzied detractors'. Crown and Inquisition cooperated to stem the flow of negative publications and sermons in Spain (García Cárcel 1998: 304–12). It made little difference, and some Spaniards came to hate Las Casas as a result, blaming him unjustly for the prevalent anti-hispanism. Juderías' (1914) impassioned reassessment of the Black Legend in 1914 had limited impact. It was not until the USA realized in the 1940s that the denigration of all things Spanish was so profoundly engrained that it was hindering the government's efforts to devise an effective policy towards internal and external 'Hispanics', that some measures were taken there to counter the negative characterizations of Spain. The process accelerated in 1970s as concern grew that a Black Legend against the USA was being created (1971: Maltby, Powell, Gibson). More balanced accounts of Spanish conquest and settlement have been produced, but progress has been patchy, in part because of pressure from indigenous groups for whom the picture of evil oppressors and innocent victims is both convincing and invaluable, empowering them to claim aid and retribution. By 1990, with Las Casas for support, it became fashionable to accuse Spaniards of genocide and to equate the conquest with the Holocaust (e.g. Koning 1991: 9, 125–8; Wilson 1991: 189–90). The Spanish conquest is now included in a number of Genocide studies (e.g. Chalk and Jonassohn 1990: 173ff).

As ever, the endurance of myth and error, and the silencing of one voice or the privileging of another, is due in part to historians. Many espoused and fostered extreme positions on the topic and the subject remains highly polarized and politicized. Others contributed by their silence. Should this concern anyone but the professional historian anxious to redress an imbalance? Is there any point in putting the Spanish polemic over the Indians back in the curriculum? After all, the existing distortions are a fundamental part of a number of national narratives and the mainstay of some interest groups. Balanced reporting of the conquest and its debates would deprive groups as diverse as indigenous Americans and White Supremacists of vital material. It will make it more difficult for erstwhile dependencies from Italy to South America to continue to blame Spanish imperialism for the failure to create advanced political and economic structures. Is it worth challenging such strong vested interests and laying oneself open to false accusations of supporting violence, exploitation, colonialism and genocide, which is the usual fate of those challenging the received wisdom?

The answer is unequivocally: yes. As all who have studied it appreciate, the Spanish debate over the Amerindians was unprecedented in its wide-ranging character and in the freedom with which it was conducted. I would not go as far as Wallerstein (2007: 11) and claim that ‘nothing that has been said since has added anything essential’, but he is surely right to suggest that we would benefit by applying some of the criteria that Las Casas used when considering whether intervention and war are justified. Unlike him, however, I would not reject Sepúlveda, nor dismiss him as the incarnation of violent, Western colonialism. Some of the questions and criteria Sepúlveda used are equally valuable tools in our assessment of such complex situations. It is the whole debate that repays investigation. It wrestled with such fundamental questions as what a human being is, and whether human rights are universal or have a partial application. It debated the extent to which we should tolerate or repress abhorrent regimes and customs. It questioned the legitimacy of using force to intervene for ‘humanitarian’ purposes and to disseminate supposedly superior ideologies and civilizations. It exposed the gulf between ideal, theoretical concepts of humanity and reality; and the difficulty of sustaining a cogent philosophical position when complex, pragmatic solutions are required. It also gives us a better understanding of how our views of humanity and human rights evolved. By exposing their philosophical and religious underpinnings it forces us to consider whether we continue to believe in them or need to build new foundations. The debate underlines the inherent tensions between the rights of an individual and the power of states; between concepts of sovereignty and of humanitarian intervention. The polemic also forces us to confront the fact that our definition of humanity and human rights is built on an unstable and eclectic mix of philosophy, morality, emotion, biology and power-relations.

By making us more aware of these issues and by reflecting upon them, the debate makes us more sensitive to the existence of similar ambiguities in our own world view, and leaves us better equipped to deal not only with injustice, which until now has been the primary aim of many of those involved in human rights issues, but also with who or what deserves to have human rights. The current trend to use biological criteria to define humanity, for example, has opened the door to those behind the Great Ape Project, who stress the proximity of genetic imprint between man and Chimpanzee and Bonobo. Peter Singer has argued that it is so close we should ‘concede some basic rights to non-human great apes: life, liberty and the prohibition of torture’, adding that these creatures share other human features, such as intelligence, awareness of others, social and effective relationships (Singer 2006: 32). It is evident that even now, and even with something as concrete and measurable as genes, our definition of humanity and willingness to allocate human rights still depends on a host of other factors.

All definitions of humanity are problematic and entail limitations and dangers. Taking a long term view highlights the fact that problems and contradictions are not novel. This may appear to give credence to the belief that the human rights project itself is inherently contradictory and should be abandoned. The Spanish polemic serves as a useful corrective to this, allowing us to illustrate the logical consequences of such a position. Imagine the fate of the Amerindians if left entirely at the mercy of uncontrolled and brutalized young men with access to superior physical power. Without the pressure put upon the government by men such as Las Casas, and without the government's belief in its moral responsibilities for fellow humans, there would have been no attempt to control the violence and anarchy. Without the views put forward by Sepúlveda and many settlers, a functional solution would not have been possible. The result may be confused and riddled with contradictions, or even a prime example of 'accentuated casuistry' (Ots 1934: 12), but we would hardly be a better society if those involved had not had an ideal, or had failed to impose a solution that reconciled conflicting views and needs. Yet, by privileging pragmatic solutions, the Spanish debate on the Indians left unanswered many fundamental questions about humanity and human rights that we should now have the courage to confront. Studying how others fared in difficult circumstances is as good a starting point as any in the process of improving this difficult, controversial but surely essential project to extend human rights.

### Notes

- 1 <http://www.lascasas.org/index.htm>
- 2 <http://www.fordham.edu/halsall/mod/1561aguirre.html>
- 3 <http://www.fordham.edu/halsall/mod/1542newlawsindies.html>

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