

## **“All Mankind Is One”: The Libertarian Tradition In Sixteenth Century Spain**

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It would probably be looked upon as unusual to associate sixteenth century Spain with the libertarian tradition. However, during that time there arose a school of natural law thinkers and activists who espoused a universal ethic of freedom, which they saw as applicable to all mankind. Sixteenth century Spain was the golden age of Spanish culture and humanism. Unlike other European countries of that age, the Spaniards were vitally concerned with the moral problems of conquest, conversion, and the government of heathen peoples.<sup>1</sup> What constituted justice and how it could be achieved were everywhere concerns of the Spanish theologians, jurists, and statesmen. To these Spaniards, the basis for the just title by which they ruled the Indies was a palpable question through much of the sixteenth century.<sup>2</sup> Although the Spanish natural law thinkers never truly broke outside the feudal-statist mentality of their culture to become anarchists, they did elaborate a doctrine of natural rights based on both divine and human reasoning. In a very broad way, and using very typical libertarian logic, they elucidated a proprietary theory of justice by which they denounced the violent invasion and conquest of the New World and supported the rights of the native inhabitants. This was one of the greatest attempts the world has ever seen to make natural law precepts prevail in relations between peoples. Such was the Spanish concern for justice in its colonizing efforts, that its monarchs organized several major inquiries into the methods used to extend their empire. Spain is probably one of the few nations that, after having searched its “royal” conscience in light of natural law and Christian teachings, ever revised its colonial policy in order to correct and punish abuses.<sup>3</sup>

Within the context of the libertarian tradition, natural law is an ethic that is applicable to all mankind. When libertarians think of freedom, they think in terms of all men, women, and children being free from the coercive interference of other persons.<sup>4</sup> Libertarians extend freedom to everyone. “All mankind is one”—in the

libertarian sense that all people have individual rights, regardless of their age, sex, religion, geographical location or other particulars.<sup>5</sup> Such rights are derived from the fact of their bodily existence, which implies the existence of a self-ownership and homesteading axiom. The vitality and brilliance of the sixteenth century Spanish jurists was that they were objective and logical enough to apply these principles to the Indians of the New World, even when it meant going against the vested interests of the Spanish Crown. They could have become apologists for government intervention, justifying enslavement, forced labor, and illegitimate property titles in the land violently wrested from the Indians. Well-known European advocates, such as Ginés de Sepúlveda and other Spanish imperialists, actually defended the Conquest. Yet others, such as Francisco de Vitoria, Domingo de Soto, and Bartolomé de las Casas, fought for and established the rights of the natives on the basis of their having a common human nature with Europeans. These men displayed a keen insight into the essentials of justice and right, based on the scholastic writings of earlier centuries.<sup>6</sup> Without exception, all the Spanish theological-jurists "defended the doctrine that all men are equally free; on the basis of natural liberty, they proclaimed their right to life, to culture, and to property."<sup>7</sup>

The Spanish colonial enterprise was unique in world history because it rested on a theological-juridical foundation which gave a special character to the Laws of Burgos, the Laws of the Indies, the Conquest, and the Christianization of America. The principal architect of the Spanish theological science was St. Thomas Aquinas (1225?-1274), and the followers of St. Thomas were particularly well represented in Spain by members of the Dominican order.<sup>8</sup> The first Dominican missionaries arrived in the New World in 1510, intent upon carrying out the late Queen Isabella's hopes of converting and civilizing the Indians. When they personally witnessed the violence and outrages being committed by the Spaniards and conquistadores upon the natives, their consciences compelled them to speak out against such abuses. After mature deliberation, the small Dominican community on the island of Hispaniola decided to voice its protest during a religious festival at which Diego Columbus and other high Spanish authorities would be present. The sermon was written out beforehand and was delivered by Father Antonio Montesinos.<sup>9</sup>

This sermon, delivered in December 1511, took as its text, "I am the voice of one crying in the wilderness." After Montesinos completed his introduction and said something about the subject of the religious holiday, he began to emphasize the aridity of the Spanish consciences on the island of Hispaniola, and the ignorance in which the Spaniards on the island lived. After pointing out that he, Montesinos, was the voice of Christ in the "wilderness" of the island, he warned his audience that they "are all in mortal sin and live and die in it, because of the cruelty and tyranny they practice among these innocent peoples."

Tell me, by what right of justice do you hold these Indians in such a cruel and horrible servitude? On what authority have you waged such detestable

wars against these people, who dwelt quietly and peacefully on their own land? Wars in which you have destroyed such infinite numbers of them by homicides and slaughters never before heard of? Why do you keep them so oppressed and exhausted without giving them enough to eat or curing them of the sicknesses they incur from the excessive labor you give them, and they die, or rather, you kill them, in order to extract and acquire gold every day?<sup>10</sup>

The sermon, which fell like a bombshell on the Spaniards, brought forth protests from all the leading men of the island, including Admiral Diego Columbus and the royal representatives of the king. They all agreed to rebuke the Dominicans for preaching such a new and unheard of doctrine, which condemned them all. After haughtily meeting with Montesinos' superior, Fray Pedro de Córdoba, they calmed down enough to present their complaints. The Admiral asked "why that father had dared preach things in such disservice to the king and so harmful to the whole land, by affirming that they could not possess Indians after the king, the lord of all the Indies, gave them to them—especially since the Spaniards had won those islands with great hardships and had subjugated the pagans who held them. And since that sermon had been so scandalous . . . they had decided that that father should retract everything he had said; if not, they would undertake to arrange a fitting remedy."<sup>11</sup> After further beseeching and argument, the Dominicans finally agreed that Father Montesinos would return to preach the next Sunday and would go back over his subject "and say what seemed best to him about it, and, as much as possible, would try to satisfy them and explain everything he had said. This having been agreed upon, the officials departed, happy in this hope."<sup>12</sup>

When the hour for the next sermon came, Father Montesinos mounted the pulpit and announced as his text for the basis of the retraction a saying from St. Job, "I will go back over my knowledge from the beginning and I will prove that my discourse is without falsehood." That is, "I will go back to rehearse from the beginning my knowledge and the truths which I preached to you last Sunday and I will show that those words of mine which embittered you are true." He began to elaborate with more arguments and facts what he had affirmed before:

that those oppressed and exhausted peoples were held unjustly and tyrannically. He repeated his understanding that the Spaniards could certainly not be saved in the state they were in, and therefore in time should heal themselves. He made them know that the friars would not confess a man of them, any more than they would confess highway robbers, and that the Spaniards might proclaim and write that to whomever they wished in Castile. In all this, the friars considered it certain that they were serving God and doing the king no small favor.<sup>13</sup>

The news of these two sermons arrived in Spain, very much distorted and much to the discredit of the conscientious Dominicans. King Ferdinand, astounded by the reports of infidelity and treason among the Dominicans, summoned the pro-

vincial of the Order, who similarly shared the surprise of the king and wrote a long and famous letter to the missionaries of Hispaniola. However, the friars themselves were not passive in the face of falsehood and slander. Montesinos and Córdoba returned to Spain to present their case to the king. The king's officials tried to prevent this and went so far as to send a Franciscan missionary to court to counteract the reports of the Dominicans. However, Montesinos was able to convince the Franciscan and bring him over to his point of view. It was then that the king, shocked by what he now heard of Spanish atrocities, said, "Is this possible?" Having been properly informed of Spanish outrages against the Indians, Ferdinand summoned the juntas of Burgos and Valladolid, in which, together with other jurists and theologians, five Dominicans took part. From these juntas came the Laws of Burgos of 1512 and those of Valladolid of 1513.<sup>14</sup> These codes were promulgated by Ferdinand in an attempt to limit the demands of the Spaniards upon a conquered people.<sup>15</sup>

This controversy over the treatment of the Indians, and the eventual formulation of the much celebrated Laws of the Indies in 1542, could never have come about without the theological-juridical and Thomist tradition of the Dominican order. Those first missionaries did not protest solely from the natural and Christian impulse of humanity and compassion; they were learned men formed in Salamanca and other centers of Dominican instruction in Spain. Their protests stemmed from the theological and juridical theses reflected in the report of Father Montesinos: "Are the Indians not men? Do they not have rational souls? With what right do you keep them in servitude? With what authority have you waged these detestable wars against these peoples who lived peacefully in their own lands?" To the credit of all the Spanish monarchs, Ferdinand, Charles I, and Philip II, they all sought to make their work in America conform to the doctrines of the Dominican missionaries and theologians, such as Vitoria and de Soto. Although their efforts may have failed owing to improper enforcement and the greed of themselves and their officials, "no other theological-juridical problem of sixteenth century Spain revealed such an unanimity of opinion among Spanish thinkers, as that displayed in the problems arising from the Conquest and Christianization of America." The Laws of the Indies serve as proof.<sup>16</sup>

Francisco de Vitoria (1483?-1546) was probably the most noted scholastic scholar in all of Spain during the first half of the sixteenth century. He was literally a teacher of teachers at the University of Salamanca from 1526 till his death, during which time the University produced most of the great theologians and missionaries for America. In 1532, he delivered lectures, subsequently published under the title *Relección de los Indios*, or *Readings on the Indians and on the Law of War*, which set forth certain fundamental principles of law in the course of analyzing and defending the rights of the Indians. Vitoria has been referred to as the father of modern international law. He examined and rejected the various alleged justifications for the subjugation of the Indians, maintaining their rights

to the lands they occupied and their freedom from any compulsion in the acceptance of Christianity, and limiting the intervention of the Spaniards to the organization of a government on behalf of the welfare of the Indians.<sup>17</sup>

The Thomist tradition formed the central part of Vitoria's system. From St. Thomas, Vitoria received these two fundamental principles:

1. The divine law, which proceeds from grace, does not annul human law, which proceeds from natural reason.
2. Those things that are natural to man neither are to be taken from nor are to be given to him on account of sin. In other words: That which is natural, be it called law or right, faculty or power, is so consubstantial with the being of man that it remains immutable in every class of men and he cannot lose it or acquire it through sin, whether he be Christian or pagan, black or white.

Using these postulates, Vitoria analyzed and offered his solution to the colonization problems of the Indies. His analysis of the justice of the situation resolved itself into three questions: "By what right have the barbarians or natives of the recently discovered New World been placed under Spanish rule? What temporal and civil power do the Spanish kings have over those natives? What are the limits of the power of the Spanish monarchs, or the church or the popes, over the Indians in what pertains to spiritual or religious matters?"<sup>18</sup>

Vitoria ultimately reduced his preliminary questions to one fundamental issue. Were these barbarians or natives of the New World true masters of their countries, and hence true owners of their properties and capable of having legitimate princes or rulers? Vitoria's answer inevitably flowed from the two Thomistic principles stated above, "and dealt a crushing blow to the medieval errors that presented the Indians as barbarous, savage, indolent, and incapable of governing themselves. Following the classic custom of theologians, Vitoria first enumerated the arguments of his foes, which constituted a synthesis of the contemporary ideology and its classical citations from Aristotle," defending two forms of human nature—the slave and the master.<sup>19</sup>

"Vitoria's reply to these arguments was incisive: Mortal sin does not deprive a man of his civil rights, of his true dominion over himself and his property.<sup>20</sup> In other words, the dominion or right of a man, of all men without distinction of race or culture, to use inferior objects as his own is a natural right which is not annulled by mortal sin, paganism, or the vices of the barbarian, uncouth peoples." Domingo de Soto, Vitoria's comrade at Salamanca, corroborated this thesis: "Those who are in the grace of God are not a whit better off than the sinner or the pagan in what concerns natural rights."<sup>21</sup> Vitoria also cited the opinion of St. Thomas: "Paganism annuls neither natural rights nor human rights." The Indians did not lose their rights because of their backwardness or sins against

nature or their savage condition. From all this, Vitoria concluded in his *Relección de los Indios* that the Indians of the New World were without doubt true owners, publicly and privately, of their lands and estates, whether they were princes or private persons, just as Christians were in their own lands, and could not be stripped of these rights. Vitoria strongly defended the equal rights of all men. Anticipating and elaborating on both the self-ownership and homesteading axioms, he did not consider discovery as the sufficient basis for ownership of new lands. If the Indians of the New World are owners of their land by natural and human right, as Vitoria claimed, the arrival of foreign navigators and seamen meant nothing. From this point of view, the Spaniards had no more right to America than the Indians would have had if they had discovered Spain and the rest of Europe. The title was false because this had not been a discovery of deserted, ownerless land. The Indians were the owners of their lands by the same right that Spaniards owned their land in Spain.<sup>22</sup>

Thus did Dominicans assert "the Thomist principle that natural rights come before all other rights, divine, positive, ecclesiastical. Natural law is at the base of all other laws; its provisions take precedence over the provisions of the laws of nations, international law, and the various national civil laws. To be sure, a man might lose his rights, even his natural rights, but not through sinning qua sinning—only through the commission of crime, of injury, by offending society and the natural and human rights of other men." The Spanish theologians preached these verities without consulting the interests of their monarchs or country. Their integrity and respect for the truth as they understood it shines out above all. "The Spanish monarchs were not offended, nor did they halt these controversies when they were told the truth. On the contrary, they made these doctrines their own and sought to make their laws conform to them." The formulation of the Laws of the Indies in 1542 was largely based on the arguments of such men as Vitoria and Bartolomé de las Casas.<sup>23</sup>

The integrity and renunciation of worldly interests by the Spanish theologians is perhaps best represented by Bartolomé de las Casas (1474–1566). His "chief merit consists in having had the courage to renounce all material interests" and to have embraced "the justice and truth espoused by the first Dominican missionaries" and teachers "and to have defended these principles on behalf of the Indians for over half a century."<sup>24</sup> It is important to understand that las Casas, known as the Apostle or Protector of the Indians, was only one of the many Dominicans who took an interest in the affairs of the Indians. He defended their proprietary rights and demanded restitution for the violation of their liberty and property. While he could not rise to the theoretical insights of a Vitoria or de Soto, he did write and publish many, many theses and books in defense of the Indians, such as his well-known *History of the Indies*. Bartolomé de las Casas is important to us because he represented a set of ideas systematized by men like Vitoria and de Soto and because he gave his body and soul to the defense of such

ideas without fear of adversity, censure, intrigues, or calumnies.<sup>25</sup> From this point of view he is without an equal.<sup>26</sup>

Las Casas clearly reflects the thinking of the Spanish Renaissance scholars of natural law. In all his treatises, he affirmed the natural liberty and dominion of the Indians and their princes to their lands, by virtue of their being men with all the natural and human rights that entailed.<sup>27</sup> Las Casas received a good Latin education in Spain and was greatly influenced by the discovery of the New World. His father and two uncles sailed with Columbus on his second voyage, and when they returned in 1498, las Casas was presented with a young Taino Indian, who was to be his servant. In early 1502 las Casas, himself, embarked on his first trip to the New World. He was commissioned a *doctrinero*, which meant that his Latin ability afforded him an opportunity to instruct the Indians in Christian doctrine. In Hispaniola, las Casas lived like the other colonists, received an *encomienda* and helped to put down Indian uprisings against the Spaniards.<sup>28</sup> The *encomienda* system was based on the "giving" or "commendation" of the Indians to the Spaniards, who became *encomenderos*. This grant by the Spanish crown gave the Spaniards the right to exact labor or tribute from the Indians; in return, the *encomenderos* were obliged to provide religious instruction and protection.<sup>29</sup>

During the years 1506–1507, las Casas traveled back to Europe and visited Rome, where he was advanced to a deaconate. He was back in Hispaniola by 1511 and apparently was a firsthand witness to Father Montesinos' sermon (the only contemporary historical record of this event is found in his *History of the Indies*). However, it was not until several years later, that the impact of the sermon reached las Casas' consciousness. In 1513, he served as a chaplain during the Spanish conquest of Cuba. He was awarded another large *encomienda* and with the help of his partner, Pedro de Renteria, prospered in farming and trade. A year later, while preparing a sermon, las Casas came across the Biblical saying, "Tainted his gifts who offers in sacrifice ill-gotten goods" (Ecclesiasticus 34). Having witnessed the Spanish slaughter of the Indians in Cuba, as a literal blood-bath, las Casas was troubled about the justice of his holdings. Were his offerings derived from Indian lands and Indian labor actually ill-gotten goods? What he had heard from Father Montesinos and the other Dominicans on Hispaniola only served to reinforce his doubts. Moreover, another Dominican priest had refused to hear las Casas' confession because he was holding Indians.<sup>30</sup>

After spending a few days with these thoughts and having each day become more sure "from what he read of natural and divine law, and from the events he witnessed—applying the first to the second—he decided for himself, convinced by truth, that everything done to the Indians in these Indies was unjust and tyrannical."<sup>31</sup> Finally he decided to preach this message in his sermon, but not before giving up his holdings in land and Indians. In order freely to condemn the *encomenderos* and the enslavement of the Indians, he felt it necessary to cleanse

his own hands of such injustices. He thus decided to consult his partner and surrender his lands and Indians back to the governor, who was to consider them unclaimed and do with them what he would.<sup>32</sup> Las Casas thereupon preached a number of sermons against his fellow Spaniards, which shocked them as much as they had been shocked by the sermon of Montesinos. Henceforth, las Casas devoted his life to the Indians, and in every book he read, "whether in Latin or Spanish, he found additional reasons and authorities to prove and corroborate the justice of those Indian people and to condemn the robbery, evil, and injustice committed against them." Las Casas was to follow this path, chosen in his fortieth year, for the remaining fifty years of his life. It is not too much to say that the struggle for justice for the Indians would have been much less stoutly and persistently fought without him.<sup>33</sup>

After undergoing this change of mind and heart, las Casas recrossed the ocean, arriving in Seville in October 1515. His intent was to present his case to King Ferdinand, but he was foiled by the monarch's untimely death. Nevertheless, he was able to present his case against the Spanish conquest to Secretary Lope Conchillos, who tried to offer him favors in the New World if he would call off his campaign on behalf of the Indians. He also spoke to Bishop Juan Rodríguez de Fonseca, the overseer of Indian affairs in Spain, who listened impatiently to las Casas' account of Indian sufferings and scornfully inquired, "What is this to me?" "What is it to your lordship and to the king that those souls die?" retorted the "choleric" las Casas. "Oh great and eternal God! Who is there to whom that is something?"<sup>34</sup> During the following years, until his departure for the New World again in 1521, las Casas continued his campaign for Indian justice undismayed. He hatched various schemes of colonization to serve as alternatives to the *encomienda* system, and one of his efforts to establish a utopian colony in Venezuela was dramatically unsuccessful.

In 1522, las Casas entered the Dominican novitiate at Santa Domingo and, one year later, became a professed Dominican. For the next eleven years, in his own words, he "to all appearances, slept," while the tide of Spanish conquest swept over Mexico and Peru. During these years he devoted himself to contemplation and the study of theology and law. In 1527, he founded the Dominican monastery at Puerto de Plata on the north end of Hispaniola. Here, as prior, he refused to grant absolution to Spanish colonists unless they would make restitution for goods and services taken from the Indians.<sup>35</sup> He also began work on his famous *History of the Indies*. In 1537, in response to the papal bull "Sublimis Deus", which affirmed the Church's conviction in the rationality of the Indians and in their ability to receive the faith, las Casas wrote in Latin, *The Only Method of Attracting People to the True Faith*. In this work he refuted the arguments that armed conquest was a necessary preliminary to conversion of the Indians. Las Casas demonstrated the inexpediency and injustice of all wars against the Indians and pleaded for their peaceful conversion. "War also fills every place with highwaymen, thieves,

ravishers, fires, and murders," wrote las Casas. In true libertarian style, he asked, "Indeed what is war but general murder and robbery among many?"<sup>36</sup> To prove the merits of his arguments, in 1537, he undertook the peaceful conversion of fierce Indian tribes living in an area called the Land of War in northeast Guatemala.

Finding the need for more missionaries in Guatemala, las Casas journeyed to Spain in 1540. He recruited Dominicans for his mission and won the support of his superiors for his view that the Indians should not be baptized en masse. He received permission to remain in Spain until Charles V returned from war with France, hoping thereby to present anew his complaints against the methods of the conquistadores. He wrote the first version of his *Very Brief Account of the Destruction of the Indies* and read it at court to shock his hearers with lurid details of Spanish cruelty. He charged members of the Council of the Indies with corruption and argued in favor of abolishing the *encomienda* system and placing all Indians under the trusteeship of the Crown. The New Laws of the Indies, promulgated in 1542, were partly a response to las Casas' campaign at court. Confirming the hostility of Charles V to the development of a neofeudalism in the New World, the New Laws announced that no more Indians were to be enslaved, officials were to be deprived of their *encomiendas*, and all other *encomiendas* were to be transferred back to the Crown upon the death of their holders.<sup>37</sup>

Hoping to see his efforts ripen in the New World, las Casas sailed for Peru in 1544. News of the New Laws had already reached Mexico and Peru, and had set off protests against its provisions. When las Casas announced to the Spaniards in Chiapa, Mexico, where he accepted a bishopric, that he would refuse absolution to any Spaniard who did not free his Indian slaves or make restitution of wealth gained from the *encomiendas*, he was nearly forced out of the colony. Owing to the widespread revolt against the New Laws, in 1545 Charles revoked the key law of inheritance, which had provided for the phasing out of the *encomiendas*. In June 1546, while preparing to depart from Mexico City for Spain, las Casas composed his "confesionario" or rules for confessors to be applied in his own diocese. The contents of his "Confesionario" created a scandal and caused las Casas to be accused of treason. He insisted that every penitent free his Indian slaves and make full restitution before receiving absolution—no matter what heirs were waiting for his property—because the penitent's wealth had been unjustly acquired.<sup>38</sup>

When las Casas reached Spain, he found himself on the defensive. He had to spell out his theory of Spain's title to the Indies, which was that Pope Alexander VI had granted Spain only the right to evangelize the natives, not to conquer and make slaves of them. He also encountered, for the first time, the well-known champion of the conquistadores' point of view, Ginés de Sepúlveda, who was the emperor's chronicler and Renaissance humanist. In 1548, las Casas had helped prevent the Spanish publication of Sepúlveda's *Democrates Alter*, which defended wars of conquest. In return, Sepúlveda played a part in the government's con-

fiscation of las Casas' "Confesionario." Las Casas tried to stem the reaction by redoubling his protests against Spain's exploitation of the Indian. Finally Charles V became so troubled by las Casas' criticisms that he ordered all conquest in the New World halted. This was in 1550, and soon thereafter a commission of theologians jurists was appointed to hear Sepúlveda and las Casas debate the justice of the conquest and to decide on the most lawful method of carrying out the Spanish occupation of America.<sup>39</sup>

The great debate took place in 1550, between July and September, in Valladolid, and was heard by many of the great university theologians and jurists of Spain. Sepúlveda argued that the Indians' vices justified war against them and that they were also an inferior race needing Spanish tutelage. They were "slaves by nature" in the words of Aristotle's *Politics*. Las Casas replied by defending the Indians' rationality and liberty.<sup>40</sup> Without recounting their arguments, it is not too much to say that Sepúlveda's ideas failed to win official approval. Spain, through the mouth of las Casas, made a substantial contribution toward the development of one of the most important hypotheses ever set forth—the idea that the Indians discovered by Spain in the New World were not beasts, not slaves by nature, not childlike creatures with a limited understanding, but rather men capable of becoming Christians, with the right to enjoy their property, political liberty, and human dignity, who should be incorporated into the Spanish and Christian civilization rather than being enslaved or destroyed. "When las Casas spoke at Valladolid for the American Indians, his argumentation . . . strengthened the hands of all those who in his time and the centuries to follow worked in the belief that all the peoples of the world are human beings with the potentialities and responsibilities of men."<sup>41</sup>

Though the judges never rendered a formal decision, las Casas was inspired by the successes he had accomplished in Spain. There was still much work to be done on behalf of the Indians, and since he felt it could best be done in Spain, in 1551 he arranged for lifetime residence in the Dominican monastery at Valladolid. This gave him the leisure and time to devote to his studies and writings about the New World and the Indians. He now became permanently and universally recognized as "Protector of the Indians." During 1552, he published seven treatises at Seville. They included his controversial "Confesionario," two treatises on Spain's title to the Indies, an attack on Indian slavery, an attack on the *encomienda* system, a summary of his debate with Sepúlveda, and his already written *Very Brief Account of the Destruction of the Indies*. Between 1554 and 1560, he fought his last major battle on behalf of the Indians. Peruvian conquistadores were making an effort to have their *encomiendas* made perpetual by offering the new Spanish monarch, Philip II, some 7–9 million ducats. Las Casas arranged to get powers of attorney from the Peruvian tribes and offered to better the bid of the conquistadores by 100,000 ducats. Eventually the proposal was dismissed, but

not before las Casas had written of the Spaniards in the New World: "The best thing imaginable would be to cast them, the Spaniards, all out, except a few chosen ones."<sup>42</sup>

Instead of gracefully or even gradually retiring, las Casas kept on campaigning for recognition of Indian rights almost to the day of his death. During the last decade of his life, he followed the regal court about clamoring for justice for the Indians—and most often obtaining it.<sup>43</sup> "The old holy man" was both an Old Testament prophet and a canon lawyer.<sup>44</sup> In true libertarian style he became more radical as he grew older.<sup>45</sup> If anything, his final positions hardened.<sup>46</sup> He became more rigid on his insistence of restitution to the Indians.<sup>47</sup> In the years after the failure of the New Laws, las Casas became more and more determined and energetic. His earlier view of considering the conquest and the *encomienda* system as abuses by individual Spaniards could not be continued when the Crown itself supported them. "Then it was that las Casas began to abandon his ancient regalism to give himself over to the defense of his thesis, even when it was contrary to legal decisions of the king, finding support for his views in the Thomistic theory of natural law." Earlier, "las Casas had recalled to Philip II that the prince could not make just by his laws what natural law held to be unjust. The regalism of las Casas now seems to disappear entirely when he sees that the Crown has decided on a matter involving conscience in the light of its own material interests."<sup>48</sup>

Las Casas carried on extensive correspondence with his disciples throughout Spain and the New World. He represented many of the Indian tribes at court under powers of attorney. In 1559 he completed his *Apologetic History*, and by 1564 had finished his *History of the Indies*. The latter work is a pioneer study in anthropology, containing detailed descriptions of the Indians' lands, social and political organization, and customs. Las Casas also made a very important contribution to New World historiography by preserving the single greatest document on the discovery of America, the journal kept by Columbus as he proceeded westward on his first voyage. The journal, which has not survived, was transcribed by las Casas and used in writing his *History*.<sup>49</sup>

A few days before his death in Madrid in 1566, he had a colleague present a petition concerning Indian rights to the Council of the Indies. Less than three weeks before, he had prevented certain Indians of Guatemala from being given in an *encomienda*. In his will, dated March 17, 1564, he described his vocation and told how he had labored for fifty years for his people, the Indians:

In His goodness and mercy, God considered it right to choose me as his minister, though unworthy, to plead for all those peoples of the Indies, possessors of those kingdoms and lands, against wrongs and injuries never before heard of or seen, received from our Spaniards . . . and to restore them to the primitive liberty of which they were unjustly deprived. . . . And I have

labored in the court of the kings of Castile going and coming many times from the Indies to Castile and from Castile to the Indies, for about fifty years, since the year 1514, for God alone and from compassion at seeing perish such multitudes of rational men, domestic, humble, most mild and simple beings, well fitted to receive our Catholic faith . . . and to be endowed with all good customs.<sup>50</sup>

Las Casas was truly a heroic figure; today, throughout much of Latin America, he is considered a true saint. There is only one blotch on his escutcheon, yet even this stain serves to demonstrate his concern for justice and right. In his *History of the Indies*, las Casas tells that at the beginning of his crusade, and with the object of securing freedom for the Indian, he had advocated that the Spaniards be permitted to bring Negro slaves to the New World. He states that later he came to regret this, having realized the injustice of the ways in which the Portuguese took blacks and made them slaves. From that time onward, he spoke of Negro enslavement as being equally unjust and tyrannical as that of the Indians, because Negroes possess the same powers of reasoning as do Indians.<sup>51</sup>

Las Casas did not ultimately reject the institution of slavery, but he did demand that its legal requirements be fulfilled.<sup>52</sup> This was in line with the thinking of other Dominicans, such as Vitoria, who claimed that those Negroes enslaved in legitimate war, among themselves, could be sold as slaves to the Europeans. The case of the Indian was different, from las Casas' view, because the Spaniards had entered into unjust wars against them. Therefore no legitimate slaves could be taken. In his memorial of 1543, las Casas offered to prove that not even a single Indian could lawfully be enslaved. In another treatise, las Casas wrote that all men are free "if the contrary is not proved" and that their natural freedom can be lost only by accident or special circumstances—not by nature as Sepúlveda maintained.<sup>53</sup> Several Spanish thinkers, besides las Casas, anticipated the English and American antislavery movement of the nineteenth century. An interesting episode is related by Friar Tomás de Mercado, a Spaniard, in 1569. He relates that the theologians of Seville and Castile asked the theologians of Lisbon whether they approved of the African slave trade, which was taking place under the Portuguese emperor. The latter replied by asking whether the Sevillians and Castilians thought that theology in Lisbon was different from theology in Seville, and saying that they, in Lisbon, condemned the slave trade just as much as the Spanish theologians did.<sup>54</sup>

As Protector of the Indians, las Casas came to advocate restitution, whereby the Spaniards would have to return to the Indians the land and property stolen from them. The requirements of full restitution were contrary to the interests of the Spanish colonists, as evidenced by their rejection of the New Laws of 1542. However from las Casas' point of view, open or even covert refusal to make restitution to the Indian was equated with cases of simple theft, which in conformity with the norms of Christian doctrine barred the offending *encomendero*

from absolution by a priest. The same was true of an *encomendero* who had not paid Indians for their work, or had sent them illegally to the mines, or taken their goods without payment. According to the rules of las Casas' "Confesionario," such offenses deferred absolution until the delinquents had made reparation. They had the recourse of complaining or litigating in the Council of the Indies, but they could not receive absolution or make their peace with the church because they had not repaired the mischief done and had retained property that belonged to others.<sup>55</sup> "The restitution of Indian property and other rights was represented as the collective obligation of all the participants in the Conquest." Las Casas also "insisted on the perpetual right of the Indians to wage war against the Spaniards, until the just cause of such war disappeared. . . . He asserted that the Spaniards could not collect tribute without committing mortal sin" and he "reminded confessors that they had no right to collect as much as a penny for performance of their duties if they did not exhort and persuade those who had robbed the Indians to make restitution. Nor could the church collect tithes or accept alms that had originally been 'stolen.' Anyone who took gold from the native temples or graves committed robbery. No Spaniard could gain salvation if he did not return all the lands he had taken from the Indians."<sup>56</sup>

Las Casas often referred to restitution, especially in his later years, and he had even written a treatise on the subject, which has not survived. In a "representation" of 1542, las Casas wrote: "All the goods that all the conquistadores in all the Indies possess were robbed and taken with enormous violence from their owners, the Indians. All the world knows this, and the conquistadores themselves recognize and admit this. . . ."<sup>57</sup> He proposed that the pope be requested to order "a general composition" of goods or riches whose owners or heirs were dead or unknown. Las Casas requested that in the case of properties

whose owners or heirs are alive, Your Majesty should order their restitution to their proper owners. . . . But in the case of those who are dead or have not left heirs, using the said license and authority of the Pope, Your Majesty is obliged to order the best and most favorable restitution possible, to the people of the said lands. . . . And this Your Majesty must not fail to do, with all your power, for restitution of stolen property or for injuries done to the innocent is commanded by both natural and divine law, which Your Majesty cannot set aside or weaken.<sup>58</sup>

Las Casas maintained that the King, who had received a large share of the booty of the conquistadores, should waive his rights to all future tribute from the Indians. Las Casas specifically required restitution from three classes of persons: those who had taken or still took up arms as conquistadores; *encomenderos* who held Indians in *encomienda*; and merchants who supplied arms and material for wars against the Indians.<sup>59</sup> None of these people were innocent of wrong doing. In sum, las Casas thought that all the Spaniards had done in the Indies was null and legally invalid because it had been done without the authority of their king and without natural justice.<sup>60</sup>

Las Casas' restitution theory had a definite impact in Latin America, especially in Peru where the archbishop of Lima, Fray Geronimo de Loaysa, gave it serious attention. First, a junta of theologians was summoned, later, the second council of Lima, over which Loaysa presided, considered the significance of restitution to the Indians. The council decreed that "those who have gravely injured the Indians must cease their oppression and restore what has been unjustly taken from them, since the sin continues if restitution is not made." The decree explained how restitution was to be made if the injured parties were not known or had left no heirs, and it admonished notary publics to propose to testators just means for making good the injuries they had caused. Las Casas' doctrine on the strict application of the Christian norms of restitution of unjustly acquired property deeply penetrated the Church in Peru. "The trail of las Casas can be recognized with the most absolute certainty, especially in the rigorous condition that restitution must be specified in a public instrument that was made out before confession by conquistadores and *encomenderos*."<sup>61</sup>

There is no question but that the natural law theories of a Vitoria and the demands for restitution by las Casas fall within the libertarian tradition. The central thrust of that tradition is to oppose any and all forms of invasion against property rights of individuals in their own persons and in the material objects they have voluntarily acquired. Adopting the criminal metaphor, we may say that governments are like organized gangs of banditti, negating property rights and surviving by imposing territorial jurisdiction and taxation on those they conquer.<sup>62</sup> This description aptly fits the history of the Spanish conquest in the New World. The scholastics of sixteenth century Spain saw that the Indians were deprived of their personal liberty, their lands, and their moveable property. Without a doubt they were forerunners of later groups comprising the libertarian tradition: the Levellers and opponents of Charles II in seventeenth century England, the American rebels revolting against England in the eighteenth, and the English and American antislavery radicals of the nineteenth century. These Spaniards were unable to envision the existence of a truly libertarian society and free market, given the semifeudal state they lived in, but they did realize that legitimate property titles were essential to defining justice in any given situation. Only by inquiring into the justice of property titles, which they rightfully grounded on homesteading and self-ownership, and demanding rectification of injustices wherever they were found, could these Spaniards rest easy with their consciences. The entire Third World concern with land reform today points back to the same concerns of these sixteenth century Spanish clerics and jurists.<sup>63</sup> At the base of their theological-juridical system was a fundamentally libertarian postulate. Humanity, in their eyes, was a single universal society—by natural law. Although we might not accept their theology, they maintained that God, lord of the universe, created man in order to people the world and exploit its natural resources. Natural law makes men—all men without distinction of frontier or race—members of this world com-

munity by birth. "Man is a citizen of the world by natural law."<sup>64</sup> "All mankind is one" as we have stated, in the sense that all peoples of the world have individual rights. What more beautiful illustration of the libertarian tradition at work in sixteenth century Spain could one ask for?

### Notes

1. *Encyclopaedia Britannica*, 15th ed., s.v. "Spain, History of."
2. Lewis Hanke, *Bartolomé de las Casas, An Interpretation of His Life and Writings* (The Hague: Martinus Nijhoff, 1951), pp. 2, 4, 48.
3. Venancio D. Carro, "The Spanish Theological-Juridical Renaissance and the Ideology of Bartolomé de las Casas," in Juan Friede and Benjamin Keen, eds., *Bartolomé de las Casas in History* (De Kalb: Northern Illinois University Press, 1971), p. 245.
4. Murray Rothbard, *For a New Liberty* (New York: Macmillan, 1973), p. 43. For more on the libertarian tradition, see Carl Watner, "The Criminal Metaphor in the Libertarian Tradition," *Journal of Libertarian Studies*, 5, no. 3 (Summer 1981).
5. This expression was used by Lewis Hanke in his book by the same title, "*All Mankind Is One*": *A Study of the Disputation Between Bartolomé de las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indian* (De Kalb: Northern Illinois University Press, 1974). See also p. xi of this book.
6. J. Martin Littlejohn, "The Political Theory of the Schoolmen and Grotius" (Ph.D. diss., Columbia University, 1896), pp. 7-8.
7. Hanke, "*All Mankind Is One*," p. 142, quoting Pereña Vicente.
8. Carro, "Spanish Theological-Juridical Renaissance," pp. 248-49. Carro's essay has been invaluable in writing this paper and is highly recommended.
9. The next several paragraphs dealing with Montesinos are based on selections found in George Sanderlin, tr. and ed., *Bartolomé de las Casas, A Selection of His Writings* (New York: Knopf, 1971), pp. 81-86.
10. *Ibid.*, p. 81.
11. *Ibid.*, p. 83.
12. *Ibid.*, p. 84.
13. *Ibid.*, p. 85.
14. This paragraph is based on Carro, "Spanish Theological-Juridical Renaissance," p. 245.
15. *Encyclopaedia Britannica*, 15th ed., s.v. "Indies, Law of the."
16. This paragraph is based on Carro, "Spanish Theological-Juridical Renaissance," p. 245.
17. See *ibid.*, generally, and also *Encyclopaedia Britannica*, 15th ed., s.v. "Vitoria, Francisco de."
18. This paragraph is based on Carro, "Spanish Theological-Juridical Renaissance," pp. 251-52.
19. *Ibid.*, pp. 252-53.
20. *Ibid.*, p. 253 (unless otherwise noted).
21. Carro refers to his work, *Domingo de Soto y su doctrina jurídica* (Madrid, 1944), pp. 207-50. Referring to de Soto's work on *Justice*, Carro writes: "Domingo de Soto always answered in the negative mode and supported the first principles of right [referring to the question of whether the state might not sacrifice one of its citizens, even if innocent of any wrongdoing, in order to save the remainder]. The city or Republic is not the owner of life and may not sacrifice, even indirectly, any citizen even if it is the only means proper for the defense of the rest. Even if the existence of the nation depended on the life of one innocent man, it would not be legal for the State to sacrifice his life. . . . Vitoria and de Soto exploded the argument that one should sacrifice one's arm or leg to save the rest of one's body from infection [as a justification for the Republic's sacrifice of one innocent citizen]. Sacrificing a citizen to the public good was not the same as amputating your leg. The two examples had no parity. The innocent person has a personality of his own, even though he is a member of the public, whereas our arms or legs do not have their own distinct personalities and are incapable of having rights separate from the rest of the body" (my translation, pp. 211-12). I am sure one could find many more libertarian arguments based on natural rights in the works of these authors.

22. See Carro, "Spanish Theological-Juridical Renaissance," pp. 254-58, especially p. 256.
23. This paragraph is based on *ibid.*, pp. 253-54.
24. *Ibid.*, pp. 247-48.
25. *Ibid.*, p. 264.
26. Las Casas' biography is reminiscent and serves as a forerunner of latterday antislavery radicals and crusaders, such as the Quakers, Ralph Sandiford, Benjamin Lay, and John Woolman. See Carl Watner, "The Radical Libertarian Tradition in Anti-Slavery Thought," *Journal of Libertarian Studies* 3, no. 3 (Fall 1979):311-12.
27. Carro, "Spanish Theological-Juridical Renaissance," p. 269.
28. For these and the following biographical details, see Sanderlin, *Bartolomé de las Casas*, pp. 4-24.
29. Hanke, *Bartolomé de las Casas*, p. 15.
30. Sanderlin, *Bartolomé de las Casas*, pp. 7-8. Sanderlin's "Introduction" has been invaluable in writing this paper.
31. *Ibid.*, p. 88, based on autobiographical writings of las Casas found in his *History of the Indies*.
32. *Ibid.*, p. 89.
33. Hanke, *Bartolomé de las Casas*, p. 21.
34. Sanderlin, *Bartolomé de las Casas*, p. 9.
35. *Ibid.*, p. 13.
36. *Ibid.*, p. 14.
37. *Ibid.*, pp. 15-16.
38. *Ibid.*, p. 18.
39. *Ibid.*, p. 19.
40. *Ibid.*
41. Hanke, *Bartolomé de las Casas*, p. 87.
42. Sanderlin, *Bartolomé de las Casas*, p. 21.
43. *Ibid.*
44. Henry R. Wagner, *The Life and Writings of Bartolomé de las Casas* (Albuquerque: University of New Mexico, 1967), p. 136; also Sanderlin, *Bartolomé de las Casas*, p. 21.
45. Sanderlin, *Bartolomé de las Casas*, p. 20. This reminds one of Murray Rothbard's description of Lysander Spooner, noted constitutional lawyer and individualist-anarchist: "He became steadily and inexorably more radical as he grew older." *Libertarian Forum* 6, no. 9 (September 1974):1.
46. Wagner, *Life and Writings*, p. 247.
47. Sanderlin, *Bartolomé de las Casas*, p. 20.
48. Hanke, "All Mankind Is One," p. 155, quoting Silvio Zavala. Here we readily note the implicit anarchist doctrine found in the natural rights theory of the libertarian tradition.
49. Sanderlin, *Bartolomé de las Casas*, pp. 21-22; see also Hanke, *Bartolomé de las Casas*, p. 53.
50. Sanderlin, *Bartolomé de las Casas*, pp. 22-23.
51. Silvio Zavala, *The Defense of Human Rights in Latin America, Sixteenth to Eighteenth Centuries* (Paris: UNESCO, 1961), pp. 47-48.
52. Juan Friede, "Las Casas and Indigenism in the Sixteenth Century," in Juan Friede and Benjamin Keen, eds., *Bartolomé de las Casas in History* (De Kalb: Northern Illinois University Press, 1971), p. 166.
53. *Ibid.*
54. Zavala, *Defense of Human Rights*, pp. 49-50.
55. Friede, "Las Casas and Indigenism," p. 190; see also Wagner's remarks on restitution in *Life and Writings*, pp. 234-36.
56. Friede, "Las Casas and Indigenism," p. 203.
57. Manuel M. Martínez, "Las Casas on the Conquest of America," in Friede and Keen, eds., *Bartolomé de las Casas in History*, p. 340.
58. Martínez, "Las Casas on the Conquest of America," p. 340.
59. *Ibid.*, p. 343.
60. *Ibid.*

61. *Ibid.*, p. 344.
62. See Rothbard, *For a New Liberty*, and Watner, "The Criminal Metaphor in the Libertarian Tradition."
63. Roy Childs, Jr., "Land Reform and the Entitlement Theory of Justice" (Paper delivered at the Libertarian Scholars Conference, Princeton University, Princeton, New Jersey, 1977). See Childs' "Conclusion," especially pp. 25-27.
64. Carro, "Spanish Theological-Juridical Renaissance," p. 258.