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Willing Assent and Forceful Jurisdiction in Bartolomé de Las Casas: a Provocation toward the Territorial Problem of Interreligious Human Rights Practice

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Abstract / Résumé / Resumen

Bartolomé de Las Casas (1484-1566) is commonly known for his defense of Native Americans rights and rationality. For this, Las Casas is revered as a patron of anti-colonialism and human rights. This paper shows how his *Defense of the Indians*, rather than being chiefly concerned with distinguishing Indians from racially different barbarians and natural slaves---the standard anthropological interpretation of modern interpreters---is understood as distinguishing Indians from religiously different Moors, Turks, Saracens, and Jews. It explores the jurisprudential context of the crusades in Las Casas's argument, and highlights the supreme importance of how a Christian's right to "contentious jurisdiction" over territory is exercised. Final comments urge the distinction of Las Casas's anthropological and territorial concerns, and encourage interreligious dialogue to better address the problem of territory.

Bartolomé de las Casas (1484-1566) est généralement connu pour sa défense des droits et de la rationalité des Amérindiens. Las Casas est donc vénéré comme patron de l'anticolonialisme et des droits humains. Cet article montre comment sa *Défense des Indiens*, plutôt que de se concentrer principalement sur la distinction entre les Indiens et les barbares de races différentes et les esclaves naturels – qui est l'interprétation anthropologique actuelle des commentateurs modernes – distingue les Indiens des Maures, des Turcs, des Sarrasins et des Juifs du point de vue religieux. Cet article explore le contexte jurisprudentiel des croisades dans l'argumentation de Las Casas et souligne l'importance suprême de la façon correcte d'exercer la « juridiction contentieuse » d'une loi chrétienne sur le territoire. Les observations finales exhortent à la distinction entre les préoccupations anthropologiques et territoriales de Las Casas et appellent à un meilleur dialogue interreligieux pour résoudre le problème du territoire.

Bartolomé de las Casas (1484-1566) es conocido por su defensa de los derechos y la racionalidad de los nativos americanos. Por ello, se venera a Las Casas como patrón del anticolonialismo y de los derechos humanos. Este artículo muestra cómo su *Defensa de los indios*, en vez de ser centrarse principalmente en distinguir a los indios de bárbaros

racionalmente diferentes y esclavos naturales –que es la interpretación antropológica actual de los intérpretes modernos– distingue a los indios de moros, turcos, sarracenos y judíos desde el punto de vista religioso. Este artículo explora el contexto jurisprudencial de las cruzadas en la argumentación de Las Casas y pone de relieve la suprema importancia de la forma correcta de cómo se ejerce la "jurisdicción contenciosa" de un Derecho cristiano sobre el territorio. Los comentarios finales instan a la distinción entre las preocupaciones antropológicas y territoriales de Las Casas y exhorta al diálogo interreligioso para mejor abordar el problema del territorio.

Key Words / Mots-clés / Palabras clave

Bartolomé de Las Casas, human rights, Spanish history, Atlantic world, canon law, church history, religious conflict, interreligious dialogue.

Bartolomé de Las Casas, droits humains, histoire d'Espagne, monde atlantique, loi canonique, histoire de l'Église, conflit religieux, dialogue interreligieux

Bartolomé de Las Casas, derechos humanos, historia de España, mundo atlántico, ley canónica, historia de la Iglesia, conflicto religioso, diálogo interreligioso.

A Brief History of Las Casas

Bartolomé de Las Casas (1484-1566)¹ was born into the center of Spain's quest for colonial expansion. His father was an investor in the Genoese Christopher Columbus's

¹ See Helen Rand Parish and H. E. Weidman, "The Correct Birthdate of Bartolomé de Las Casas," *Hispanic American Historical Review* 56, no. 3 (1976): 383-403.

first voyage, which landed at San Salvador (Bahamas) in 1492. At the impressionable age of nine or ten he would have witnessed from the window of his childhood home the Admiral's 1493 return, alongside Seville's Guadalquivir River². After accompanying Columbus on his second voyage, father Pedro made a very personal gift of his spoils to young Bartolomé: the service of a young Arawak slave, native of Hispaniola. The young Indian served Las Casas for nearly two years before being emancipated by decree of the scrupulous queen Isabel, who determined that there was no just cause for any Indian to be enslaved. We can already perceive in Bartolomé's early biography the matters, tender and grave, that would fuel him throughout his long life: conquest, slavery, restitution.

There was no way for anyone to go through this first encounter of Europe with the truly "other" and come out of it with morally clean hands. Drawn to the New World by his father's connections, Las Casas came to the Indies in 1502. After entering the priesthood he himself participated as a soldier and chaplain in the conquest of Hispaniola³. For his participation he was awarded an *encomienda*, a grant of land and natives to work it. With indigenous labor in field and mine he became comfortably well off. There is reason to believe he treated his Indian servants well, but he witnessed during and after the conquest many of the horrors that would he would put into print nearly forty years later as *A Brief History of the Destruction of the Indies* (1542). He continued to possess what were *de facto* slaves until as late as 1515, when, after finally being persuaded by the persistent and harsh words of the Dominicans, he renounced his *encomienda*. Soon after he began his career as the royally appointed "protector of the Indians," a title he would wear insistently thenceforth. In 1520, he attempted to establish his own peaceful colony on what is now the Venezuelan coast, but was thwarted by mutinous slave-hunting cohorts and the ensuing violent reprisals of the offended natives⁴.

After this failure, Las Casas took refuge with his Dominican mentors, donned their habit, and retired for several years of study and writing. Having determined that the root of Spain's moral folly was the system of *encomiendas*, he dedicated himself to undermining it with every authority and witness he could dredge up. Though he resumed his activism at the Spanish Court, then later served briefly

as Bishop of Chiapas, his reasons for freeing the Indians never altered from this early reflection. He found in canon law and in the political theology of Thomas Aquinas sufficient evidence to call the Spanish conquest as it had been carried out robbery and to demand full restitution of Indian life and property.

These basics are enough to understand the biographical and theological basis for his particular critique of Spanish colonization, and its politico-theological foundation.

Las Casas as Saint and Sinner of Christian Humanitarianism

Since his own lifetime, Las Casas has had a long train of enthusiastic supporters and virulent detractors. The *philosophes* of the Enlightenment praised his support of native freedom against imperial tyranny. His name was spread wide during Latin America's revolutions; Simón Bolívar himself wanted the capital of his pan-American democracy to be entitled "Las Casas," in honor of him⁵. A more modern admirer mentions that Las Casas "has a strong claim to be the founder of the modern human rights movement"⁶, one who applied universal standards of justice to all peoples⁷.

² Manuel Giménez Fernández, "Fray Bartolomé de Las Casas: A Biographical Sketch," in *Bartolomé de Las Casas in History: Toward an Understanding of the Man and His Work*, ed. Juan Friede and Benjamin Keen (De Kalb, IL: Northern Illinois University Press, 1971), 68-69.

³ Ibid., 70.

⁴ For the events leading up to and following this idealistic tragedy, see the exhaustive volume, Manuel Giménez Fernández, *Bartolomé de las Casas, Vol. 1 : Delegado de Cisneros para la reforma de las Indias, 1516-1517* (Sevilla: Escuela de Estudios Hispano-Americanos and Consejo Superior de Investigaciones Científicas, 1953).

⁵ Simón Bolívar, "Reply of a South American to a Gentleman of this Island [1815]," in *Selected Writings of Simón Bolívar*, ed. Vincente Lecuna and Harold A. Bierck, Jr. (New York: Colonial Press, 1951), 119.

⁶ Conor Gearty, "Doing Human Rights: Social Justice in a Post-Socialist Age" (presented at the Launch of Blackfriars Hall Las Casas Institute, Blackfriars Hall, Oxford, November 25, 2008), 1, http://www.bfriars.ox.ac.uk/casas_resources.php.

⁷ Fernando Ortiz, "La Leyenda Negra contra Bartolomé de Las Casas," *Cuadernos Americanos* 65, no. 5 (October 1952): 147.

More recent Christian moral thinkers, led by Gustavo Gutiérrez and his theology of liberation, have made Las Casas a model advocate for the poor and dispossessed⁸. These political hagiographers take his incessant nagging of the Spanish court an example for contemporary assertion of human rights over against the despotic, self-aggrandizing political classes. The recently founded (2008) “Las Casas Institute” at Blackfriars Hall, Oxford, for example, is dedicated to becoming a “fresh, open and influential centre for the development of rigorous scholarship, debate and new leadership” in the fields of “ethics, institutions, just governance and social justice”, and gets its primary inspiration from Las Casas, the “‘founder’ of human rights”⁹.

This last claim, that Las Casas was a champion for human rights, is perhaps the most often claimed about this great “defender of the Indians”. There is certainly plenty of impressive evidence of the brave, bold, prophetic spirit of denunciation in Las Casas’s career. But human rights are more than a cultivated and courageous standing up against the establishment.

There is one incident in Las Casas’s career in particular that challenges this close identification of Las Casas with our contemporary concept of “human rights”: his (admittedly brief) support for the importation of African Slaves to the Americas. It is this stain that forms the basis for the best-founded reservations about Las Casas’s character and program¹⁰. Las Casas’s most trenchant contemporary champion, Isacio Pérez Fernandez, has made a career defending Las Casas from this charge, compiling no fewer than three monographs to the subject¹¹. Pérez Fernandez has certainly put together an impressive defense, but his work draws a direct line between the sixteenth-century activist and the contemporary search for global justice. He lauds “the openness of [Las Casas’s] spirit to the defense of all those who suffer injustices, regardless of religion, race, or color” and laments that the friar Las Casas did not live long enough speak out against the enslaving and trading done by the English, Dutch, French, Swedish, Danish, and Germans. “Had he lived through three more centuries,” insists Pérez Fernández, “I am absolutely sure that he would have been denouncing them and crying out against such horrific activities”¹².

This speculation may be the truth. But more importantly, Pérez Fernandez’s sentiment represents a common attitude

in contemporary Christian moral reading of history: saints of the past are selectively read to uplift modern political thought and structures. Granted there is plenty of impetus to do this. Enlightenment democratic ideology, especially in nation-states dominated by Roman Catholicism, often made its way by distinguishing itself from the warring, hierarchical, elite-supported ecclesiastics. This is still somehow written into the script of popular discourse, where any ecclesiastical shortcoming is read as endemic to religion’s outdated structure or ideas. It was to counteract this prevailing sentiment, in fact, that Las Casas was resurrected from the ash-heap of history in the early 19th century: here was a churchman who fought *for* the masses, not against them. Juan Antonio Llorente, Las Casas’s first modern publisher, was an ardent churchman and an ardent revolutionary¹³. He saw in Las Casas’s activism the very anthropology that liberal democracy sought to protect and promote.

It’s not surprising then, as claimed by one recent study, that Llorente’s edition of Las Casas was conceived as one long defense of the friar from the charge that he supported black slavery¹⁴. Such a stain would remove the otherwise inspirational Las Casas from his singular role as ideological doyen of church-backed democracy. An interpretive

⁸ Gustavo Gutiérrez, *Las Casas: In Search of the Poor in Jesus Christ*, trans. Robert Barr (Maryknoll, NY: Orbis Books, 1993).

⁹ “Welcome,” n.d., http://www.bfriars.ox.ac.uk/casas_intro.php. Accessed 07/29/2010.

¹⁰ See Ortiz, “La Leyenda Negra contra Bartolomé de Las Casas.”

¹¹ Isacio Pérez Fernandez, “Estudio preliminar,” in *Brevisima relación de la destrucción de Africa: Preludio de la destrucción de Indias, Primera defensa de los guanches y negros contra su esclavización*, ed. Isacio Pérez Fernandez (Salamanca: San Esteban, 1989); Isacio Pérez Fernandez, *Bartolomé de Las Casas, ¿Contra los negros? Revisión de una leyenda* (Madrid: Mundo Negro, 1991); Isacio Pérez Fernandez, “Bartolomé de Las Casas y los esclavos negros,” in *Afroamericanos y el V centenario*, ed. José Luis Cortés (Madrid: Mundo Negro, 1992), 39-61; Isacio Pérez Fernandez, *Bartolomé de Las Casas: De defensor de los Indios a defensor de los Negros: Su intervención en los orígenes de la deportación de esclavos negros a América y su denuncia de la previa esclavización en Africa* (Salamanca: San Esteban, 1995).

¹² Pérez Fernandez, “Estudio preliminar,” 124-125.

¹³ See Francisco Fernández Pardo, *Juan Antonio Llorente, español “maldito”* (San Sebastián: [s.n.], 2001).

¹⁴ See Santa Arias, “Equal Rights and Individual Freedom: Enlightenment Intellectuals and the Lascasian Apology for Black African Slavery,” *Romance Quarterly* 55, no. 4 (Fall 1998): 279-291.

suffix to the anthology contains a piece by the revolutionary bishop of Blois, Abbé Grégoire, who apart from any reference to primary sources simply gainsaid any claim that such a generous humanitarian could possibly have conceived such slavery¹⁵.

But the fact that Las Casas *did* generate the kind of dissonance between the past and its interpretation that we should always pay attention to. In the nineteenth and twentieth centuries, imbued as they were with paternalistic colonial overtones, the question of race dominated. Interpreters of Las Casas rightly see him arguing for the full humanity of the Indians; this made him a convenient ally in the fight against racism and its exploitative connotations. But as race-based colonial domination has faded as an acceptable ideology, where does that leave Las Casas? What more can we take from his life's witness for the reformulated globalism of today?

In all the promotion of Las Casas, egalitarian, the whole structure of his most comprehensive statement, "In Defense of the Indians" (1551), has been glossed over¹⁶. The force of the myth hides to what degree Las Casas's search for justice—and by extension our own quest—is intimately tied to the idea of a universal, culturally Christian, jurisdiction of the West. For Las Casas promoted his own program for irenic Indian colonization by systematically showing how the supporters of violent conquest in the Indies confused the Indians with Turks, Saracens, and Moors. In other words, the main problem with Spain's sword-wielding expansion, according to Las Casas, was not that the Indians were considered sub-human, but that they were considered Muslims.

That's not to say Las Casas should be thrown out as a dead end. A contextual rereading will allow us to appreciate where Las Casas can help us as we think about the future of interreligious human rights discourse.

The Threat of Islam as Background to Bartolomé de Las Casas's Defense of the Indians

Lewis Hanke entitled his study of Las Casas's *Defense of the Indians* [also known by its Latin title, *Apologia*] with

a phrase that he felt was "the doctrine that undergirds all the battles [Las Casas] fought as Protector of the Indians," that *All Mankind is One*¹⁷. Hanke's synopsis is, in truth, not inaccurate, for it has as its foundation one significant argument made against Juan Ginés de Sepúlveda, humanist powerhouse, royal chronicler, and official translator of Aristotle under the patronage of the Spanish kings. Sepúlveda had circulated a rhetorically clever but small-minded work entitled *Democratus secundus*, which claimed that the Indians (based on the observations of his contemporary Juan Oviedo's *General History of the Indies*)¹⁸ were the clear intellectual and moral inferiors of the Spanish¹⁹. They were thus "obliged by natural law to obey those who are outstanding in virtue and character in the same way that matter yields to form, body to soul, sense to reason, animals to human beings, women to men, children to

¹⁵ Henri Grégoire, "Apologie de Don Barthélémy de Las Casas, évêque de Chiapas (22 floréal, an VIII-12; May 1804 [sic: 1800])," in *Œuvres de Don Barthélémy de Las Casas évêque de Chiapa, défenseur de la liberté des naturels de l'Amérique*, vol. 2 (Paris: A. Emery, 1822), 336-367.

¹⁶ The most up to date edition, from which I will cite, is: Bartolomé de Las Casas, *Apologia*, ed. Ángel Losada, vol. 9, *Obras Completas de Bartolomé de Las Casas* (Madrid: Alianza, 1989), hereafter referred to as *Apologia*. In addition to page numbers, which are somewhat confusing due to the parallel Latin-Spanish text, I cite by original folio number. Where possible, I take my translations from the very readable version of Stafford Poole: Bartolomé de Las Casas, *In Defense of the Indians*, trans. Stafford Poole (De Kalb, IL: Northern Illinois University Press, 1974), hereafter DI.

¹⁷ Lewis Hanke, *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda on the Religious and Intellectual Capacity of the American Indians* (De Kalb, IL: Northern Illinois University Press, 1974), xv.

¹⁸ The complete modern edition is Gonzalo Fernández de Oviedo y Valdés, *Historia general y natural de las Indias*, ed. Juan Pérez de Tudela y Bueso, 5 vols. (Madrid: Ediciones Atlas, 1992). Las Casas was probably responding to an earlier work: Gonzalo Fernández de Oviedo y Valdés, *Sumario de la natural historia de las Indias*. (México: Fondo de Cultura Económica, 1979).

¹⁹ Juan Ginés de Sepúlveda, *Democrates segundo*, ed. J. Brufau Prats and A. Coroleu Lletget, vol. 3, *Obras Completas de Juan Ginés de Sepúlveda* (Pozoblanco: Excmo. Ayuntamiento de Pozoblanco, 1995). The more often referred to work is Juan Ginés de Sepúlveda, *Democrates segundo; o, De las justas causas de la guerra contra los indios*, ed. Ángel Losada (Madrid: Consejo Superior de Investigaciones Científicas; Instituto Francisco de Vitoria, 1951). According to Hanke, *All Mankind Is One*, 70., "The *Defense*...responds to the summary made by Sepúlveda of the more complete argument he elaborated in *Demócrates Segundo*."

adults, and, finally, the imperfect to the more perfect, the worse to the better, the cheaper to the more precious and excellent, to the advantage of both”²⁰. These “betters” are, of course, the Spanish colonists. Resistance to this natural order, according to Sepúlveda, should be met with force, for inferiors do not know what is best for them. The courtier and translator called forth his ally Aristotle as his chief authority. The Indians were clearly “slaves by nature,” a concept he found in the *Politics* and which was promoted with much success²¹.

If the dismissive superiority of Sepúlveda is downright shocking to our ears, it can be found, without too much effort, under various guises in all colonial societies, right up to South African apartheid and beyond. Perhaps that is what makes Las Casas such a lively, enduring figure: we immediately recognize the patronizing xenophobia against which he fought as part of our own struggle to integrate the culturally different into our own world.

But to claim that the thesis of Las Casas’s *Defense* is “All Mankind is One,” as does Hanke, is misleading. It would be more proper to assign this subtitle to another of Las Casas’s work, the so-called *Apologetic History* of the Indies. This lengthy tome (over 1500 pages in three volumes in its modern edition) is indeed a detailed refutation, based on copious ethnographic evidence, of the rational and religious capacity of the peoples of Latin America²². But for both Sepúlveda and Las Casas the more pressing question addressed in their 1551 debates concerned not the equality of humankind but *the rights of the church and her servants over unbelievers*.

Though Aristotle’s category of “natural slave” thematically stands out for the modern reader in the sections of *Democrates secundus* dedicated to Indian “barbarity,” it’s not all philosophical authority for Sepúlveda the humanist. As a churchman he had to argue from church tradition. And so fathers from Cyprian, Augustine, and Gregory the Great to the very recent Alexander VI (promulgator of the infamous bull, *Inter caetera* [1493], which donated the Indies to Spain) are crucial to the jurisdictional aspects of his own case. And as for Las Casas’s response, only 18 of his *Defense*’s 236 double-sided folios deal directly with the question of what kind of “barbarians” the Indians are (or are not). The claim that Indians were a lower form of hu-

man was relatively quickly dismissed. The remaining 218 folios of his *Defense* follow a serpentine course through the church’s teaching on the Christian’s proper exercise of coercive power among non-Christian nations. And in late-medieval Iberia, this leads Las Casas right up against Jews and Muslims.

We mustn’t forget the providential date that Columbus planted the Spanish flag on the isle of San Salvador. The year 1492 also saw the fall of Granada, Islam’s last hold-out in Western Europe, and the final expulsion of confessing Jews from the newly united kingdoms of Castille and Aragon. If we put aside the intellectual fascination of the elite classes with the possible discovery of a new American “species” of human²³, the more practical question for Las Casas was less ensuring that the Indians were considered fully human than ensuring that they were *not* considered deserving of the same (mal)treatment as Muslims and Jews.

Las Casas’s *Defense* frequently refers to Muslims and Jews as foils. He does this because it is essential to his thesis that non-Christian rule over a particular territory is no just reason, in and of itself, for engaging in war against it. The opposite was, if not an explicit claim of Sepúlveda, his strong implication: the Spanish were justified in violently overthrowing foreign rule to enforce natural law²⁴, protect innocent victims of religious violence²⁵, and aid the spread

²⁰ *Apologia*, 57-58 (fol. 4); DI 11-12.

²¹ Specifically *Politics*, I.4-6 (1256b25). For a dated but still useful treatment, see Lewis Hanke, *Aristotle and the American Indians: A Study in Race Prejudice in the Modern World* (London: Hollis & Carter, 1959).

²² The simple thesis of this long work is that Indian civilization was *better* prepared to receive Christianity than classical culture and paganism. This work deserves much more attention for its rereading of classical culture into the pre-conquest Americas. It really is the first work of “comparative religion” in any recognizable form. See David Lupher, *Romans in a New World: Classical Models in Sixteenth-Century Spanish America* (Ann Arbor: University of Michigan Press, 2003).

²³ Which spawned an equally forceful attempt to locate old-world ancestors for American natives. See, for example Tzvetan Todorov, *The Conquest of America: the Question of the Other*, trans. Richard Howard, Harper Perennial. (New York: HarperPerennial, 2006), 210.

²⁴ *Apologia*, 58-59 (fols. 4v-5); DI 13.

²⁵ *Apologia*, 58-60 (fol. 5); DI 13-14.

of the gospel²⁶. Las Casas's response to this multifaceted rationalization of violence consists in refuting the simplified construction of *jurisdiction* offered by Sepúlveda in which what belongs to the church and her servants by right (*de iure*) can and should be brought into her realm in fact (*in actu*)²⁷. Las Casas responds: "It is necessary to distinguish: whether the infidels are subject to Christian princes, and what class of crime they commit; whether they are Jews, Saracens, heretics, or schismatics; whether they are infidels who possess territories that in another time belonged to the Christian Church; whether they carry out destructive invasions against a Christian populace"²⁸. The single most egregious and pervasive error Sepúlveda and his school have made is to confuse the Indians with the other types of infidel.

Las Casas's program for distinguishing various types of infidels comes straight from his great Dominican contemporary Thomas de Vio Cajetan, whose commentary on Thomas Aquinas's *Summa* II-II q. 10 (On Infidels) makes the following three-part typology of unbelievers²⁹.

1. Unbelievers who are *de facto* and *de iure* subjects of Christian princes;
2. Unbelievers who are *de iure* but not *de facto* subjects of Christian princes;
3. Unbelievers who have never been *de facto* or *de iure* subjects of Christian princes³⁰.

The Indians belong to this third category. But in the other two exist Jews, Moors, and heretics that have to be dealt with. Theirs is a different fate from that of the Indians.

In short, other than the fact that they are all unbelievers, Jews and Muslims are everything the Indians are not.

"Indians are completely ignorant of Christianity and are therefore understandably resist it"; "Jews and Muslims are aware of Christian doctrine, are recalcitrant in their unbelief, and do all they can to prevent the preaching of the Gospel."

Refusal to convert, Las Casas argues, must be met with patience, even when accompanied by violence, for it is "the

law of nature [that] the weapons of all peoples throughout the world are raised against their public enemies. So, to crush the insolence of such enemies, we take them captive, and by inflicting equal destruction we teach them to fear our men and to avoid injuring us, so that they pay for the injuries they have inflicted upon us. Acts of this kind are called 'natural defense' and are included under this maxim of natural law: 'It is lawful to repel force with force'³¹. But it is important to distinguish between those who know Christian dogma and those who are ignorant. While labeling as inappropriate the tactics of Albertus Pius who supported bellicose war against resistant infidels, Las Casas clarifies that this would have been valid "in reference to the Turks and Moors, who are not ignorant of our dogmas and who very effectively block the spread of our religion." Such war does not apply to "unbelievers in the absolute sense of the term but to unbelievers like the Saracens and Turks, who obviously bear an age-old hatred for the name of Christ"³².

Not only do various Muslims "effectively block the spread of our religion"; they attack Christians as a matter of principle. A Christian prince may "activate" his jurisdiction "when unbelievers break into our provinces or harass our shores with the accoutrements of war, either generally, as in the case of the Turks who daily harass, attack, and afflict Christian lands with their terrible armies, or particularly (as in the case of rather frequent sorties) by the Saracens"³³. In these cases, "the justification [for acting on potential jurisdiction] is clear"³⁴. But Las Casas clarifies with a quote from Thomas: "Unbelievers...should be compelled

²⁶ *Apologia* 5v; DI 14.

²⁷ *Apologia*, fol. 76; DI 118

²⁸ DI 322. *Apologia*, 322 (fol. 109-109v).

²⁹ Thomas's treatment is somewhat less tidy. Thanks to Mariano Delgado of the University of Fribourg, Switzerland, for this tip. Email correspondence, October 20, 2009.

³⁰ Cajetan's text can be found in Thomas Aquinas, *Summa Theologiae ad codices manuscriptos vaticanos exacta cum commentariis Thomae de Vio Caietani ordinis predicatorum s.r.e. cardinalis*, Sancti Thomae Aquinatis doctoris angelici opera omnia (Roma: Ex Typographia Polyglotta S.C. de Propaganda Fide, 1882), 8:90.

³¹ DI 184. *Apologia*, 354 (fols. 124v--125).

³² DI 183. *Apologia*, 352-54 (fol. 124).

³³ DI 184. *Apologia*, 354 (fol. 124v).

³⁴ DI 184. "Et ratio quae pro Ecclesia facit est clara." *Apologia*, 354 (fol. 124v).

by the faithful, if it is possible to do so, so that they do not hinder the faith by their blasphemies or by their evil persuasions or even by their open persecutions... *in order to force them not to hinder the faith of Christ*³⁵. Here we see that Las Casas has interpreted the correct use of force against the infidel as directed toward the free propagation of the faith.

“Indians do not offend God with their religious rites; Jews and Muslims desecrate and defile Christian holy places, and so impede the propagation of the Gospel.”

Because of their ignorance, Indians acted according to nature—even if corrupted by sin—when they worship idols and make sacrifices. Such is not the case with Turks and Saracens. Anywhere that “has been consecrated by the true sacrifice of the body and blood of Christ, that pure worship has been rendered to the true God, and that the holy sacraments have been administered”³⁶ has become a holy place and deserves protection from impurity. The church may justly authorize a war to keep such a land clean, namely “when, in provinces that were in other times subject to Christian jurisdiction, these [infidels] practice idolatry or infect a region with their nefarious and abominable vices against nature”³⁷. Nor can the Church tolerate the violation of its monuments or dishonor directed toward the Christian God: “By no means can the church rationally tolerate, if it can act in any way, such [a situation], for it overflows with opprobrium and insult for the name of Christ”³⁸. Such insult “against divine religion” is “a public crime against all persons,” according to Justinian’s “Codex”³⁹.

Such sacrilege is a very grave crime. Las Casas cites the interpretation of Pope Innocent IV of the above law from Justinian’s *Codex*, referring to the Saracens: “The Church should not make war against them if they do not stain Christian lands with their uncleanness”⁴⁰. But if they do “stain” (a stain that Las Casas affirms cannot be erased, for they are as Sodom and Gomorrah⁴¹) they should be destroyed. Here Las Casas cites many examples of God’s purifying anger in the Old Testament, ending with Elisha’s summoning of the bear from the forest to destroy the youths of Bethel (1 Kings 2:24). The important point to note is that these are violations of a purity already established by the “preaching of the name of Christ and [where]

it is known in a certain manner that divine worship had been established”⁴². For all practical purposes this meant the now-Muslim lands of the Mediterranean.

The Church may justly claim jurisdiction in lands that Muslims now occupy for they constitute a threat to Christian faith and a violation of consecrated territory. Should an infidel prince not allow the free preaching of the Gospel, Christians may fight with the sword for this privilege and punish the ruler for violating the Pope’s jurisdiction. In other words, as Las Casas defends the Indians against illegal *conquista*, he reasons consistently that regulations concerning Christian jurisdiction over infidel princes apply *only* to the situation of Christians under a belligerent encroaching Islam, that is, the *reconquista* of the crusades.⁴³ During this process, the Church has no authority to punish with the sword those who, according to their own foolish and impure rights, commit idolatry or even blasphemy within their own territories. “But it would be another thing if the Jews or Saracens, to insult our religion, crucified a person or perpetrated a similar crime. For this would constitute blasphemy that blocks the propagation of the faith. Crimes of this kind should be punished with war, as the well-informed theologian Francisco de Vitoria teaches in a very erudite form in his *lucubraciones*”⁴⁴.

“Indians inhabit lands never before ruled by a Christian prince; Jews and Muslims are unrighteous usurpers of Christian territory.”

The Moor and the Turk can be justly fought because they exercise a tyrannical, unjust rule over Christian territories and Christian peoples. Las Casas uses the example of Gregory the Great, who wrote in a letter to Genadius, the Exarch of

³⁵ DI 184, emphasis mine. *Apologia*, 354 (fol. 125). Quoting ST II-II, q. 10, a. 8c.

³⁶ *Apologia*, 354 (fol. 125). Las Casas cites as support Thomas Aquinas, *Summa Theologica*, 3, q. 63, a. 2, 3, 4, 6.

³⁷ *Apologia*, 354 (fol. 125).

³⁸ *Apologia*, 240 (fol. 77v).

³⁹ *Apologia*, 240 (fol. 77v), citing Codex 1, 5, 4.

⁴⁰ *Apologia*, 240 (fol. 77v), quoting his *De Dec.* 3, 42, 3.

⁴¹ *Apologia*, 240 (fol. 77v).

⁴² *Apologia*, 248 (fol. 80).

⁴³ *Apologia*, 248--54 (fol. 80--82v).

⁴⁴ *Apologia*, 328 (fol. 112v--113). Citing II-II, q. 10, a. 8.

Africa, commending him for his battles against encroaching Moors that “troubled the faithful and usurped properties belonging to the entire Church”⁴⁵. So Las Casas urges Christians to “pray vigorously that the Lord may give us daily help against the Turks and Moors who plague the Christian Church, not only that they may become Christians, but also because they inflict injuries on the Church and have a tyrannical hold over its lands”⁴⁶. This just war is not an attempt to make Christians of them but a holy crusade to *recapture* Christian territory: “Gregory praises Genandius not because he took up arms against the pagans in order to make them become Christians but because he reconquered provinces or places from them that had once belonged to the Christian Church”⁴⁷. Reestablished in its historical realms, “once those fierce foes were thoroughly subdued, the light of the gospel could be spread through the neighboring regions that had been occupied by them”⁴⁸. These lands are *occupied* territories “that had once been under Christian jurisdiction and in which Christians were perhaps still living”⁴⁹, under the repressive rule of pagan princes.

Las Casas clarifies: “Genandius is not praised for having used armed forces to subjugate Vandals, Moors, or other unbelievers in order that afterward the pagans might be converted through the preaching of the Gospel”⁵⁰. Armed force is only justified as a *response* to aggressive, predatory attacks by recalcitrant heretics or unbelievers who are knowledgeable of Christian doctrine, intent on claiming Christian provinces and forcing Christians into apostasy or compromise. These exceptions constitute the very ideology of crusading conquest.

According to Las Casas and his teachers, Christians have current rights over many lands where they do not currently rule; and it is the past religious history that determines this category. Las Casas articulates the condition as occurring “[w]hen [infidels] unjustly hold reigns they have unjustly taken from Christians, principally in which Christians are still living”⁵¹. His chief examples amounts to a list of all the crusades of the sixteenth century: “the Constantinopolitan empire, Rhodes, Hungary, Serbia [*Belgradum*], and Africa (all of which formerly worshiped Christ)”⁵². All these, as they formerly made up part of Christendom, are fair game.

But not unconditionally so. Just war (or better put, actualizing of rights) would require that unjust conquest of

Christ-worshipping reigns *in the past* be accompanied by continued injustice *in the present*: “When possessing said reign [the infidels] continue to do injury, and the jurisdiction that the church had over them traditionally [*in habitu*] can be brought to bear [*in actum deducere*] in recovering what was hers by force of war, should no other remedy exist”⁵³. The injustice of holding such reigns has largely to do with the treatment of Christians therein. Las Casas cites a number of authorities supporting the relative jurisdiction of the Church in said lands populated by Christians, whose ruler remains an infidel. He sums up his own position in the words of the moderating Thomas: “The Church may legitimately establish with its law, by [legal] sentence or decree, rights of dominion or oversight that infidel princes have over Christians, for on account of their infidelity they are worthy to lose their power over the faithful who have become children of God; however, [the Church] suffers such [princes] to avoiding a stumbling block [1 John 2:10]”⁵⁴.

Las Casas objects to the imprecise application of the word “infidel” to the natives of the Indies. But in doing so he accepts—carefully but without reservation—the application of said jurisdiction to Christian crusades against various Muslims. Muslims are the ones who, unlike “our Indians,” have “usurped Christian reigns” and “rule over Christians” and “have heard of our world.” It is the Turk or Saracen who “is obligated to recognize the dominion of the Church or be deprived of his reign”⁵⁵.

This is not to say that Las Casas is an unqualified proponent of crusade. Provided they stay in their territory, honor there the religious obligations of Christians, and do not

⁴⁵ DI 315. *Apologia*, 580 (fol. 218v).

⁴⁶ DI 315. *Apologia*, 582 (fol. 218v–219). Las Casas ideas are very like his teacher Cajetan. See note 35.

⁴⁷ DI 315. *Apologia*, 582 (fol. 219).

⁴⁸ DI 315–16. *Apologia*, 582 (fol. 219).

⁴⁹ DI 317. *Apologia*, 584 (fol. 220).

⁵⁰ DI 317. *Apologia*, 584 (fol. 220).

⁵¹ *Apologia*, 238 (fol. 76).

⁵² *Apologia*, 238 (fol. 76).

⁵³ *Apologia*, 238 (fol. 76).

⁵⁴ *Apologia*, 238–40 (fol. 76v); quoting Thomas Aquinas’s *Summa Theologica*, II-II, q. 10, a. 10.

⁵⁵ *Ibid.*, 240 (fol. 77).

prevent the free preaching of Christianity, Las Casas has every hope that even the most recalcitrant Turk may be won over by the beauty and humility of Christian truth. In many cases, Las Casas claims, Muslims and Jews have been prevented from accepting Christianity by hearing it from impure sources; it would be better if friars would be sent like sheep amongst these wolves as well. But he draws the line at Muslim expansion: Las Casas imagines a one-sided, Christendom-centered world where others should be “content with their native lands and reigns” and welcome the truth if it is properly presented⁵⁶. Christendom alone is expanding and it will certainly not contract.

“Indians are willing recipients of the Christian message; Jews and Muslims do everything in their power to prevent the propagation of Christian truth, including forcing Christians to recant”.

Las Casas argues against Sepúlveda’s authority John Major, whose *Commentary on the Sentences of Peter Lombard* was repeatedly invoked to claim that once a certain number of Indians have become Christian, perhaps even just one, the Indian prince could be forcefully deposed from rule over their lands simply for not being a Christian⁵⁷. Las Casas clarifies the authentic position of Thomas: “If a ruler should directly incite his subjects to hatred of the faith, he would be automatically deprived of his rule, or at least he could be judicially deprived of it by the Church because of the power entrusted to it by God”⁵⁸. Again, the purpose of the exception is to protect the faith of present Christians. It is applicable only to “a ruler who tries to make his subjects give up the faith of Christ”⁵⁹. Las Casas offers an interpretation of the authoritative Thomas at this point:

When the holy doctor said that the unbelievers merit the loss of their power over the faithful because of their lack of faith, he means this on the supposition that some condition is opposed to the progress of faith. Now since the Church, having learned from the experience of very many past centuries, presupposes the stubborn blindness of the Jews and the wicked harshness of the Saracens, who openly fight against Christ’s Gospel, [and counts them] among those unbelievers who are subject to the Church or its members, it will make a judgment that the slave of Jews or Moors gains freedom by acknowledging Christ’s truth⁶⁰. The reason is that the Church believes the

latter will do all they can to have the slave who has been converted to the faith abandon it. The Church could make the same decision about the slaves of Jews or Saracens who are not subject to us; yet, to avoid scandal, it does not do so⁶¹.

Thus the church protects its weakest subjects, slaves, from control over their souls. (Their bodies, apparently, can still be subject.)

The prospect of Christian slavery under the rule of an infidel was particularly worrisome. As Gratian states, “Lead to freedom without any dissimulation any Christian chattel which it is clear a Jew has amassed lest (God forbid!) the Christian religion should be desecrated by subjection to the Jews”⁶². To this citation, Las Casas adds his own expectations regarding Muslims: “And since, in the case of Turks and Saracens, the Church has learned from very long experience to consider as a condition totally fulfilled the fact that they are always ready to attack the faith and unsettle the Christian people, therefore it rightly and always has the power to invade them, even if they should stop their attacks for a few years”⁶³. When Thomas speaks of actualizing the rights of the church in foreign lands, Las Casas infers, the Indians are excluded but the Turks and Moors are not.

Thomas should be interpreted as speaking about the rulers of the Turks and the Moors, who, at his time, were known throughout the world as enemies of the Christians. For not only do they not allow their subjects to embrace the Christian faith, they also have a deep-seated wish that the whole religion of Christ had long ago been blotted out, and generally, in every locality and at all times, they do their utmost to perturb the lives of Christians. This is the true meaning

⁵⁶ “Contenti regnis et terris nativis suis...” *Apologia*, 300 (fol. 100v).

⁵⁷ Major was a repeated authority of the anti-Indian party, so-called, based upon a snippet from his popular *Commentary on the Sentences of Peter Lombard* (1509). See Book 2, ch. 44, q. 3. See DI 326.

⁵⁸ DI 334. *Apologia*, 614 (fol. 232v). Referring to Thomas, *Summa Theologica* II-II, q. 10, a. 10.

⁵⁹ DI 335. *Apologia*, 614 (fol. 232v).

⁶⁰ Citing Gratian c. 13, D. 54; c.15, D. 54; Decretals r, 6, 19.

⁶¹ DI 335. *Apologia*, 616 (fol. 232v--233).

⁶² DI 335. Poole notes “See Gratian c. 13, D. 54.”

⁶³ DI 335. *Apologia*, 616 (fols. 233-233v).

of Saint Thomas's words. Otherwise he would hardly be consistent in his other writings—which is not an accusation to be made against the teaching of the holy doctor⁶⁴.

“Indians are not, nor have they ever been, subject to a Christian prince; many Jews and Muslims are subject to Christian princes.”

Las Casas has no qualms whatsoever about the Iberian habit of expelling Jews and Moors. While they cannot be punished for idolatry, they may be expelled to protect Christians from their infectious teaching: “To such class of infidels [as deserve exile] belong also the Jews and Moors who are subjects of Christian kings”⁶⁵. This practice, he notes, is supported by the decretals and enacted also “in the Spanish language” in which “we have many laws promulgated by the kings of Castile with reference to Jews and Moors”⁶⁶. The abundance of legislation in Latin and Spanish authorize Christian kings “to exercise contentious jurisdiction (*iurisdiction contentiosa*) over them, that is, even against their will”⁶⁷. Only in this case it is not “compelling them to enter,” but “compelling them to leave” if they don’t convert.

Understanding Las Casas for Interreligious and Intercultural Dialogue

Las Casas is best understood as a Christian prophet, calling his own “people of God,” the Spanish, to account for their pact with God to evangelize the New World with the true Gospel. He should also be remembered as a faithful student of Thomas Aquinas in matters of faith and jurisprudence. When it came to articulating his own position, he consistently referred to his Dominican order’s chief light and witness.

In the first instance, Las Casas was among the first (if not the very first) coherently to articulate a Christian stance toward those wholly other people “of the Ocean Sea,” the “Indians” of the New World. They were to be considered full humans with free, rational wills capable of understanding and confessing the full Christian faith. Their own cultures and religious practices should be regarded as high expressions of “natural” humanity, worthy of as much—even more—respect and honor as those of pre-Christian

classical world. As such, in Las Casas’s thought, there was no possible justification for violent invasion, occupation, enslavement, or plundering of the natives’ persons or property. Moreover, his own advocacy in Indian affairs called for the unreserved restitution of all Indian wealth and life to proper self-jurisdiction, and the eternal punishment for those who refused to submit to this church teaching.

In the place of this violent expansion of a self-replicating Christian civilization, he proposed a peaceful, vulnerable teaching of Christian truth to natives who, he was convinced, would accept it were it to come from something other than swordpoint. Moreover, his favorite biblical phrase to describe evangelization comes from Matthew: “Behold, I send you like lambs among the wolves” (10:16). The faithful Christian servant has been warned that preaching Christian truth will bring persecution, and that our example should be Christ himself, who did not resist death by taking up the sword but willingly submitted to the cross. Evangelists should expect the same.

Though Las Casas is completely clear about the fact that the Christian faith, to be considered genuine, must be adopted willingly and without force of arms, he is certainly not a pacifist. There is ample room within his received Thomism for the protection of Christians from aggression. This didn’t so much apply to his thought with regard to the Americas, where Christianity was so young and little adopted by the natives. It had to do with the attitudes he expressed, in contrast, toward Muslim kingdoms. Now, to be fair, Islam was not a subject to which Las Casas devoted a great deal of reflection; his thoughts on the matter should be considered repetition of standard authorities, particularly Thomas.

And what Thomas has to say on the subject is rather curious. For everything that urges a peaceful religious expansion in New World, which has never heard the name of Christ, does not apply to the Old World. This is not “inconsistent” but rather formed by a reality that hovered menacingly in

⁶⁴ DI 336. *Apologia*, 618 (fol. 234).

⁶⁵ Ibid.

⁶⁶ *Apologia*, 618 (fol. 234).

⁶⁷ Ibid.

the background of the Dominican's thirteenth-century Italian world: the crusades. Driven to contradict a territorially expanding Islam, the battle to restore Jerusalem to Christendom did not treat the Muslim "other" the same way as the heathen "other" confronted by Las Casas. According to this tradition, Muslims had shown themselves hostile toward Christianity, unwilling to convert, and persecuting toward those who did not apostatize.

This is, of course, a caricature of Muslim attitudes towards Christians; the reality varied considerably from place to place and time to time. We can find in Islam the same insistence that submission to Allah be "willing" and not forced. But to fixate on the "willingness" or not of religious conversion is to miss the reality contradicted (but eventually reinforced) by the discovery of the Americas: that religion is basically territorial. Once a piece of land (or sea!) was won for Christ, it was always Christian, territorially, and should be forcibly maintained.

Conclusion

Las Casas judges that any act of the Church upon its *rightful* jurisdiction, but *without* taking into account the harm such acts of justice will incur upon the faith, is wrong-headed, "for the punishment of crimes is not an act of justice except insofar as the criminal returns to a better state of mind by reason of the punishment or except insofar as peace and quiet are restored to the state"⁶⁸. But clearing the way for preachers by military force can in fact be allowed if the Christian prince makes proper distinctions between types of subjects. Sepúlveda has failed, according to Las Casas, because he takes categories appropriate for "Moors and Turks" and applies them to Indians. Sepúlveda "fails to distinguish the four kinds of unbelievers. Some are unbelieving Moors and Jews who live under the rule of Christians. Others are apostates and heretics. Others are Turks and Moors who persecute us by war. Others are idolatrous unbelievers who live in very remote provinces"⁶⁹.

It would be a mistake to dismiss Las Casas because of his unsavory comments about Muslims and Jews. Las Casas did share, in an attenuated form, the general martial attitude of the Spanish towards Islam, as well as the other great Spanish concern to purify Christendom of stubborn Jews. And, true enough, Las Casas's main concern was justice for the Indians –a singleness of purpose that led him at times to overlook injustices done to other peoples. But this is to overvalue, as did Hanke, the anthropological element in Las Casas's *Defense*.

If we take as seriously as Las Casas not only the question of human equality but also of *jurisdiction*, then a different and perhaps ultimately more helpful emphasis of Las Casas's thought can emerge, especially regarding the widely forecast battle of civilizations between Christianity and Islam. If Western nations and their culture of human rights discourse were to admit the degree to which their constructs were positive, and not *natural* law, the reality of differing jurisdictions could be acknowledged. For though constructions of rights have assumed, since the Enlightenment, a universal domain, the reality is quite different –especially in the postcolonial era. Now, in addition to the secular tenets of post-Christendom, we are witnessing the emergence of different constructions of the secular that are proposing competing systems of universal rights: *shariah* being the most provocative, and indeed threatening (at least to non-Muslims), proposal.

Clearly we must part with Las Casas and his expansionist Christian state. But we, too, can acknowledge different jurisdictions. And more than that, we can work toward both having the moral authority to offer criticism *and* the solidarity and humility to work together.

⁶⁸ DI 213. *Apologia*, 408 (fol. 145v).

⁶⁹ DI 268. *Apologia*, 500 (fol. 185v).