

# Fictions in Political Thought

## *Las Casas, Sepúlveda, the Indians, and the Turks*

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Fictions seem to make political thought work. In this paper,\* I will try to substantiate this claim by offering a new interpretation of a (relatively) well known episode in the history of European political thought: the dispute between Bartolomé de las Casas and Juan Ginés de Sepúlveda over the rights of indigenous peoples in the newly discovered America. I will argue that lying behind their different stances was a shared conception of what was the »Turk«, which structured their response to the Indians. Where Las Casas tried to prove that the Indians were not »Turks« and should be treated differently, that is peacefully, Sepúlveda extended the European attitude towards the Turks to the treatment of the Indians.

That the *imago Turci* underpinned the European debate over the Indians may seem surprising. However, in the creation of European identity, the image of the »Turk« lay at the core. The mental framework within which Europeans related to a new outer world, was – to a large degree – shaped by the interaction of Medieval Western Christianity with the World of Islam.<sup>1</sup> But the creation of European identity is not at issue here.<sup>2</sup> My point here is rather that an intimate link existed, in European imagination, between the two outer worlds<sup>3</sup> – the muslim world and what came to be called the *Mundo Nuevo* – and, moreover, that European attitudes towards the »Turks« were at the heart

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<sup>1</sup> What I have in mind is what we would today call political attitude, not geographical and »anthropological« ideas feeding on (often vulgarized) Hellenistic and Roman sources. Cf. Hay, *Europe*; Hodgen, *Early Anthropology*; Elliott, *Spain and Its World*.

<sup>2</sup> I discuss this in *Islam and Creation of European Identity*.

<sup>3</sup> There was also a third world, Africa, from which Las Casas proposed exporting Negro slaves to America to spare Indians the heavy labour destroying them. However, the occupation of African lands and islands was originally seen as instrumental for crusading warfare against muslims. Cf. Muldoon, *Popes, Lawyers, and Infidels*, pp. 89 sq., 137 sq.; Rein, »über Bedeutung«, p. 32; Staedler, »Die westindischen Investituredikte«, p. 326.

of their response to the Indians. Twentieth-century discussions of the debate over the rights of Indians have tended to overlook this link.

Once we see how much the image of the »Turk« determined the sixteenth-century debate over the Indians, it becomes clearer how much our own story of the discovery of the New World, overlooking as it does that central, fictitious, figure of the Turk, continues to be wrapped in fictions. In historians' accounts of European debates over the New World, Las Casas and Sepúlveda themselves often turn into fictions. We have the fiction that their debate was about the rights of Indians; the fiction of the discovery of America as the turning point in European history and, once again, the fiction that there was no imagined Turk in the story. This absent/present fiction is shared by today's historians with the sixteenth-century disputants they study – and is shared by our late modern with the early modern world.

In order to approach the question of how fictitious are our past and present worlds, and thus to approach the subject of this paper, it may be helpful to see how Europeans' view of the world outside was represented in fiction. Let us take as a starting point Daniel Defoe, a great master in giving literary expression to obsessions of his age. One of those obsessions was travel to the known and unknown lands. A century and a half after Las Casas and Sepúlveda met, Defoe published his *New Voyage Round the World*. Perhaps not surprisingly, the novel is an eposée to commerce. At the disposal of Defoe's trading flotilla, whose crew is composed of the leading European nations, is nothing less than the whole globe. Only gale could prevent these merchants from acquiring wealth, not the peoples on shores, »wild, naked, black, barbarous, perfectly untractable, and insensible of any state of life being better than their own«.<sup>4</sup>

Most telling is Defoe's description of the sailing merchants' encounter with the Ceylonese. »The people here we found willing to supply us with provisions; but withal so sharp, imposing upon us their own rates for everything, [...] that we were often provoked to treat them very rudely. However, I gave strict orders that they should not be hurt upon any occasion, at least till we had filled all our water-casks and taken in what fresh provisions we could get.« However, the natives were provocative beyond all patience, and the peace was finally broken. When a Ceylonese ran away with some fowls that had been already sold, two of Defoe's seamen »were so enraged to be so served, that they took up their pieces, for they had both fire-arms with them, and fired immediately after him, and aimed their shot so well, that though the fellow flew like the wind, he shot him through the head, and he dropped down dead upon the spot.« And because his fellow countrymen failed to show under-

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<sup>4</sup> *De Foe's Works*, Vol. VI, p. 256.

standing for what had happened, more were killed.<sup>5</sup> Political theory could hardly present the problem better than this novel from the pen of a great ideologist of the new world order. Those writing theoretical fictions expounded ideas similar to those found in Defoe's *New Voyage*.

Halfway between Defoe, on the one hand, and Las Casas and Sepúlveda, on the other, émeric Crucé published his *Le nouveau Cynée*, a work that occupies a prominent place in the *canon* of European pacifism, and which won its author praise as a precursor of liberalism. In this treatise, men travelled, communicated, and traded freely across borders. The earth, in Crucé's vision of free trade, became one big commonwealth. Yet his commercial cosmopolitanism stumbled over »savages« – peoples whom he saw as making »no use of their reason«. Their mere existence, the author feared, could hinder commerce and welfare. If they continued to live in their brutish way, they would provoke civilized peoples who would, by a general consent, »attack them and kill them like wretched beasts in their dens. War against them,« Crucé declared, »will always be a good thing if it will not be possible to bring them to reason«. They represented a just object of war.<sup>6</sup>

The sixteenth-century Spanish controversialists did not speak commercial language,<sup>7</sup> but many of them would also call natives in lands beyond the sea wild beasts. These were not abusive words, but concepts. And what they had in common with Crucé, the early ideologist of the freedom to trade who did not yet feel obliged to hide the warlike face of the »pacific commerce«, was their concern with just war. The issue of just war played a key role in searching for an answer to the question of how to deal with the peoples Europeans encountered in the »Age of Discovery«, and it was prominent in both Las Casas' and Sepúlveda's reasoning.

In what follows, I will first briefly present the controversy between Las Casas and Sepúlveda, focusing on what I see as the thrust of their arguments. In the next section, I will then try to show that the views of these controversialists on

<sup>5</sup> *Ibid.*, pp. 257-8.

<sup>6</sup> *Le Nouveau Cynée*, pp. 51, 65-7; cf. pp. 33, 35.

<sup>7</sup> Vitoria and his pupils addressed the question of the »right to trade« in the framework of the *jus gentium*, under the title of the »right of society and natural communication«. See Pagden, »Dispossessing the barbarians«, p. 86 sq. A different language was spoken by the Genoese Capelloni who, soon after the dispute between Las Casas and Sepúlveda, in a reflection of direct relevance for my subject here, complained that the discovery of America had been very detrimental to the Christians and beneficial to the Turks: »Mais ce qui importe le plus, c'est que la plus grande quantité de cet or [brought to Spain from America] court ordinairement es endroits ou il y en a le plus. Et cestui là est celui qui iadis estoit continuellement porté & puisse encore aller en Leuant: Et en fin reduit de tout point au thresor du Turc, sans auoir esperance qu'vn seul ducat retourne iamais de cñ.« *Les divers discovrs*, pp. 276[b]-277.

the Indians were shaped by the tradition of thought in which Latin Christendom articulated its attitude towards the Muslims.

### *I. The dispute between Las Casas and Sepúlveda*

The dispute between Las Casas and Sepúlveda can be seen as the culmination of the debate in Spain triggered by the discovery of America. The two disputants presented their views to a *junta* of learned men, summoned by the Emperor Charles V at Valladolid, in 1550-51. The controversy is said to be a unique episode in the intellectual history of Europe because »then for the first, and doubtless for the last, time a colonizing nation organized a formal enquiry into the justice of the methods used to extend its empire«. <sup>8</sup> Such an approach has been contrasted to the methods employed by other European nations that, in their colonial policy, were not troubled by the voice of conscience (»a Las Casas did not appear in the French or English colonies in America«), and the debate at Valladolid has been interpreted in a broader framework of the »Spanish struggle for justice in the conquest of America«. <sup>9</sup>

The *junta* of Valladolid, and the two controversialists in particular, were to »inquire into and establish the manner and the laws by which our Holy Catholic faith can be preached and promulgated in the New World [and to examine] in what form those peoples may remain subject to His Majesty the Emperor without injury to his royal conscience, according to the bull of Pope Alexander.« <sup>10</sup> The dispute before the *junta* of Valladolid has been characterized as a debate over the rights of Indians, yet it was at least as much a debate over the emperor's right to a quiet sleep. In this sense, it was a debate over what Christians could do with, and to, infidels and pagans and still feel just and virtuous: an internal dialogue of Europeans with themselves »in the last century of faith and logical reasoning«. <sup>11</sup> Yet the debate did not only touch upon matters of conscience but also upon questions of faith. Christian Europe was divided into bitterly opposed religious camps, and the »over-arching concern« of the Spanish debate over the rights of Indians was to refute the Lutheran theory of *dominium* and sovereignty. <sup>12</sup> In this, other, sense, the Indians were pawns in arguing out the European confessional conflict.

<sup>8</sup> Hanke, *Aristotle and the American Indians*, pp. ix-x.

<sup>9</sup> Carro, »The Spanish Theological-Juridical Renaissance«, pp. 241 *sq.*, 245-6; Hanke, *The Spanish Struggle for Justice*.

<sup>10</sup> Giménez Fernández, »Fray Bartolomé de Las Casas«, p. 109.

<sup>11</sup> »[...] as opposed to 'la Raison'«. Bell, *Juan Ginés de Sepúlveda*, p. xi.

<sup>12</sup> Pagden, »Dispossessing the barbarians«, pp. 83, 97.

The question posed to Las Casas and Sepúlveda was phrased clearly and precisely; neither of them questioned the framework in which they were to argue. Their suggested solutions to the problem, however – if we stay within the dominant interpretation of the debate – were diametrically opposed. Las Casas, who had a conversion experience in the Indies and entered the Dominican order, has acquired the reputation of a great defender of the Indians because he was resolutely opposed to the use of violence against the indigenous peoples in the newly discovered world. He passionately denounced the *conquistadores'* atrocities and cruelty of the *encomienda* system; held the Indians to be civilized and rational beings; and contended that only the peaceful, nonviolent, spread of Christianity was just and permissible. Sepúlveda, a notable scholar of his time and a translator of Aristotle, is understood to have applied the philosopher's theory of natural slavery to the Indians. Because of their depravity of reason and civilization, he is said to have argued, it was right that the Indians be governed by those who were by nature their superiors, *i.e.*, the Spaniards. He is furthermore said to have argued that should the Indians refuse to submit to Spanish rule and continue to live in their brutish ways, sinning against nature, it would be just to wage war against them and to subdue them by force.<sup>13</sup>

Such an interpretation has constructed the figure of Sepúlveda as the one who »stepped forward to give comfort to Spanish officials and *conquistadores* by proclaiming the conquest just«; while Las Casas becomes »an apostle who burned with a fierce zeal on behalf of those newly discovered Indians and who defended them with all the weapons at his disposal«.<sup>14</sup> But such a simplifying interpretation has also created problems: its predominantly moralistic character has often diverted discussion away from analysis of the main characters' theoretical positions.

On the one hand, Las Casas' deserved reputation of a Human Rights Watch activist *avant la lettre* has obscured the theoretical dimension of his work; it has had to be stressed that he should also be considered »a political thinker«.<sup>15</sup> Sepúlveda, on the other hand, was a renowned scholar, but one involved in political controversy. And while engagement in *vivere politico* is to be expected of a good humanist, perhaps it was his involvement with what has become the wrong side that cast a shadow not only over him but also over what

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<sup>13</sup> See, for example, Hanke, *Aristotle*; and Skinner, *The Foundations*, Vol. 2, pp.142, 168 sq. A good summary of the dispute, not neglecting theoretical arguments involved: Losada, »The Controversy«, and »Introducción« to Sepúlveda/Las Casas, *Apologia*; the official summary of the dispute: Soto, »Controversia«.

<sup>14</sup> Hanke, *The Spanish Struggle*, pp. 114, 155.

<sup>15</sup> *Ibid.*, p. 153.

he actually said.<sup>16</sup> Thus, in short, we need to look closer at the arguments of both Las Casas and Sepúlveda.

If we first define Sepúlveda's theoretical position *per negationem*, he was not an Erasmian. His polemics with Erasmus – which gave occasion to portray Sepúlveda as a defender of »scholasticism, dialectics, of all that which the Erasmian wit had scorned as sheer logomachy«<sup>17</sup> – is of no immediate interest here. What is relevant is the popular understanding of Erasmianism as uncompromisingly rejecting war.<sup>18</sup> It is in this context that Las Casas can be seen as a »genuine Spanish Erasmian«,<sup>19</sup> and Sepúlveda's argument in *De convenientia militaris disciplinae cum christiana religione dialogus qui inscribitur Democrates* – that military profession and Christianity are not exclusive of each other and that Christians are allowed to wage war – as running contrary to Erasmian irenism.<sup>20</sup> Erasmians did not respond to Sepúlveda's challenge, and the argument itself put forward in *Democrates* had by then had a long life in the Christian doctrine, yet Sepúlveda nevertheless felt he had to defend his position. That defence, *Democrates alter* (followed by *Apologia*), already belonged to the Valladolid controversy.

Sepúlveda's views on war were of obvious relevance for the »Indian question«. Describing these views simply as an attempt to legitimize either the ethics of martial society, or the military spirit then already in retreat before commerce; or as an apology of one of the »aspectos del vivir hispánico« (with arms in the noble hands),<sup>21</sup> loses sight of this relevance. A much more promising approach is to see Sepúlveda in the framework of classical humanism.<sup>22</sup>

Sepúlveda's central concern was *vita activa*. He brought »the moral virtues fully within the social and political order inseparable from the *civitas*' scope«, and »possibly the single most constant feature of Sepúlveda's thought« was the relevance he ascribed to the laws, »the truest backbone of any common-

<sup>16</sup> Losada, »Introducción« to Sepúlveda, *Demócrates segundo*, p. xvi, has argued that Las Casas' (and his partisans') »machinations« silenced Sepúlveda's voice; and Bell, *op. cit.*, wrote »an apology [...] long overdue to a great man too often misunderstood and misinterpreted«. (But Las Casas, too, has been defended against his »detractors«: Comas, »Historical Reality«.)

<sup>17</sup> Bataillon, *Érasme et l'Espagne*, Vol. 1, p. 442.

<sup>18</sup> For a critique of such view, see my *Islam*.

<sup>19</sup> Losada, »Introducción« to *Apologia*, p. 26.

<sup>20</sup> Bataillon, *op. cit.*, Vol. 2, p. 254-5, has pointed out that the words Sepúlveda, in *Democrates alter*, put into the mouth of Leopoldus, the literary adversary, were reminiscent of *Querela pacis*.

<sup>21</sup> *Ibid.*, Vol. 1, p. 673, Vol. 2, p. 254; Hanke, *Aristotle*, pp. 13 sq., 128-9, n. 6.

<sup>22</sup> Fernández-Santamaría, *The State, War and Peace*, Ch. 7.

wealth«. As the law common to all men he understood natural law, constituted by *recta ratio*, acceptance of duty, and the obligations of virtue.<sup>23</sup> The light of right reason enabled the good man to discern what was good and just, from what is evil and unjust. This Sepúlveda held true not only of the Christian but of everyone who had not corrupted *rectam naturam* with depraved, perverse behaviour.<sup>24</sup> Thus Sepúlveda contained that »if the governance of a republic is to remain healthy it must take care not to exclude from its midst any form of natural law. To do otherwise would be barbaric and contrary to that human nature which is held in high esteem precisely because of its reasoning powers.«<sup>25</sup>

These principles were the basis on which Sepúlveda passed his judgement on the *vita activa* of the Indians. He found the life of the American natives »savage«, »comparable to that of the beasts«; he castigated, as »crimes damned by natural law«, human sacrifice (»their execrable and prodigious immolations of human victims to demons«), cannibalism, and »the custom of burying alive the wives of prominent men with their dead husbands«.<sup>26</sup> And because the Indians violated the law of nature, the Spanish humanist doubted their rationality. However, what Sepúlveda judged were institutions; what he passed his judgement on was what we could call Indian polities. »Seeking to dispel possible doubts that he may have been influenced by religious considerations Sepúlveda is at pains to stress that he is evaluating the *vita activa* of the Indians and not judging their spiritual shortcomings. Thus he points out that the natives' paganism is not the reason why they must be ruled by the Spaniards.«<sup>27</sup> The ground for the Spanish claim for *imperium* over America was the civic deprivation of the Indians, their lack of civility. The proto-civility of the Indians implied that they were »in a state of improvable backwardness«,<sup>28</sup> that they were perfectable, and humanism inspired – or sought to inspire – the Spaniards with the care for the welfare of those barbarians.

Because Sepúlveda saw reason as the *sine qua non* of civility – while the possession of Christian truth was not »a prerequisite to the emergence of sound political institutions«<sup>29</sup> – the American natives should, under the Spanish parental guidance, be led out of their sinful condition into civic existence based on reason and obedience to natural law. The humanist imperial program

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<sup>23</sup> *Ibid.*, pp. 196-8.

<sup>24</sup> *Demócrates segundo*, pp. 11-12.

<sup>25</sup> Sepúlveda, *De regno*, quoted in Fernández-Santamaria, *op. cit.*, p. 197.

<sup>26</sup> *De regno*, quoted *ibid.*, p. 202.

<sup>27</sup> Fernández-Santamaria, *op. cit.*, p. 202-3.

<sup>28</sup> Losada, »Controversy«, p. 287.

<sup>29</sup> Fernández-Santamaria, *op. cit.*, p. 209.

was civic education. *Barbaras et inhumanas gentes* should be for their own good subjected to the rule of more humane and virtuous nations or princes, so that by the latter's example of virtue, laws, and prudence; they could be taught to embrace a more humane life, milder manners, and to cultivate virtue.<sup>30</sup>

Should the barbarians, whose natural condition demanded that they obey those embodying civic perfection, reject the magnanimity of the Spanish kings who did not want to punish their sins but desired their correction (*emendatio*), salvation and public well-being,<sup>31</sup> war could be justly waged against them. »By means of a just war we also seek to establish *imperium* over those after whose welfare we care, so that the barbarians – once deprived of their license for sinning, their customs contrary to natural law uprooted, exhorted toward a more humane way of life through a civil form of government – be kept reasonably within the boundaries of their duties.«<sup>32</sup>

Las Casas – if we do not overlook that »under the fire and brimstone of his sulphurous invective lay a closely reasoned structure of thought based upon the most fundamental political concepts of medieval Europe«<sup>33</sup> – differed from Sepúlveda in that he predominantly based his arguments in defence of the Indians from the violence of the *conquista* on the ecclesiastical legal tradition. He »marshalled a corps of medieval jurists to march for his cause«.<sup>34</sup> But he did not defend the Indians from the Spanish *imperium* over them. Like Sepúlveda, he did not question the right of the Spaniards' imperial presence in America. When Las Casas came to consider the justice of Spanish title over American lands, the central authority he referred to was *donatio Alexandri*, Pope Alexander VI's bull that invested Spain with *imperium* over America. For him, it was in papal bulls where the supreme and fundamental reason for Spain's imperial enterprise in America was to be found.<sup>35</sup> In his view, »[t]he kings of Castille and León have the most just title to imperial and universal sovereignty over the whole world of what is called the Indian Ocean and are justly sovereign and supreme princes, and universal lords and emperors over

<sup>30</sup> *Demócrates segundo*, p. 22. Fernández-Santamaria refutes the thesis that Sepúlveda advocated natural servitude for the American natives, and argues instead that the form of government he recommended for the natives of the New World »does not significantly depart from that recommended for the mass of the population in the Old«; and Sepúlveda's ideal imperial agents were men »modeling their lives after the Ciceronian ideal of public service«. *Op. cit.*, pp. 234, 233.

<sup>31</sup> *Demócrates segundo*, p. 43.

<sup>32</sup> *De regno*, quoted in Fernández-Santamaria, *op. cit.*, p. 218.

<sup>33</sup> Hanke, *The Spanish Struggle*, p. 153.

<sup>34</sup> Pennington, *The Prince and the Law*, p. 272. But Pagden has called Las Casas' defence of the Amerindian peoples »quasi-legal tracts«. *European Encounters*, p. 56.

<sup>35</sup> Carro, *op. cit.*, p. 271.

the natural kings and lords thereof, by virtue of authority, grant and donation [...] of the apostolic Holy See [...]. And this, and nothing else, is the juridical and substantial foundation upon which rests and is placed this title in its entirety.«<sup>36</sup>

In Las Casas' opinion, the Spanish crown had no legal ground to claim *dominium rerum* in America, but it had the right to *dominium jurisdictionis*.<sup>37</sup> Accepting and justifying Spain's sovereignty over the Indians, Las Casas strove to make the Spanish *imperium* as good and humane as possible.<sup>38</sup> He argued for imperialism with a human face. Taking seriously the noble idea of the Spanish kingdom (as expressed, for example, in the testament of Queen Isabella and in royal *cédulas*), he wished to purge the *conquista* of the evils that were done, he believed, against the will of the monarchs and their legislation. He was convinced that the principal aim of Spanish presence in America – the spread of the true faith, »la predicación y plantación de la sancta fe« – could be, and could only be, achieved with peaceful methods. His conviction was also that Spanish imperial sovereignty over the newly discovered lands was not detrimental to the rights and freedom of the Indians and their princes, »who could govern themselves as long as they complied with their duties and did not hinder the missionaries and the Indians' conversion or practice of the Christian religion«.<sup>39</sup> The acceptance of the Spanish King as their *universal señor* would make it possible for the Indians »to cleanse away the defects from which their commonwealths suffer, that they might enjoy a better liberty«.<sup>40</sup>

Thus cleansing away evil did not apply to the conquerors only, but to the conquered as well. And Las Casas' view of the conquered – framed in the admired declaration that »mankind is one, and all men are alike in that which concerns their creation and all natural things«<sup>41</sup> – was that »the savage peoples of the earth may be compared to uncultivated soil that readily brings forth

<sup>36</sup> Las Casas, »Tratado comprobatorio«, p. 352. On key categories – *auctoridad, concesión* and *donación* – see Staedler, *op. cit.*, p. 322.

<sup>37</sup> See Pagden, *Spanish Imperialism*, pp. 13-36; Pennington, *op. cit.*, p. 273.

<sup>38</sup> »Far from seeking to remove Spain and her kings' sovereignty from the New World, [...] Las Casas wished to improve the work of Spain to make it a greater work of unique grandeur.« Carro, *op. cit.*, p. 273.

<sup>39</sup> *Ibid.*, pp. 274-5.

<sup>40</sup> *Ibid.*, p. 274; Las Casas, »El octavo remedio«, p. 93.

<sup>41</sup> Hanke, citing Las Casas' *Apologética historia*, sees here his author »at his best«. Aristotle, p. 112. »Las Casas, in his bid to make the Indians familiar to his European reader, tries to erase difference and create a suitable natural and human environment for Cicero's 'republic of all the world'.« Pagden, *European Encounters*, p. 59.

weeds and useless thorns, but has within itself such natural virtue that by labour and cultivation it may be made to yield sound and beneficial fruits«. <sup>42</sup>

Las Casas' imperialism is usually seen as benign because he rejected the empire of conquest for empire of conversion.<sup>43</sup> But his metaphor comparing the »savage peoples« to uncultivated soil represents the Indians as even more passive than in Sepúlveda's argument. In contrast to the latter's civic education design, what we have here is a cultivation project: instead of education, *cultura*; instead of parental guidance, tilling the uncultivated mind.

Las Casas was as arrogant as Sepúlveda in his belief that the Spaniards and, generally, Christians, were »on the path of truth«. <sup>44</sup> At an early stage in his career he proclaimed as »the basic concept which was to guide all his action on behalf of the Indians«, <sup>45</sup> that »[o]ur Christian relation is suitable for and may be adapted to all the nations of the world, and all like may receive it«. <sup>46</sup> On declaratory level, *plantación* of the true faith, as Las Casas made it clear time and again, excludes violence. If the argument behind Sepúlveda's civic education was the sword, what pertained to Las Casas' cultivation was the symbol of peace, ploughshares. But ploughshares can easily be beaten into swords,<sup>47</sup> and even Las Casas himself envisaged the Spaniards in America building fortresses and argued that a limited number of soldiers should remain there to protect the missionaries.<sup>48</sup>

The Spanish debate over the »rights of the Indians«, it has been argued, was not provoked »solely by intellectual or moral disquiet but by peremptory need to organize – politically, socially, and economically – the new colonial empire«. <sup>49</sup> How much the two disputants served those pragmatic needs is difficult to ascertain. Las Casas is said to have influenced the spirit of the basic law of 1573,<sup>50</sup> that proscribed the word »conquest« and replaced it with the politically

<sup>42</sup> *Apologética historia*, quoted by Hanke, *ibid*.

<sup>43</sup> Hirst, »The evolution of consciousness«, p. 62.

<sup>44</sup> The phrasing is pope Innocent IV's, denying to the Muslims the right, which he claimed for the Christians, to preach the faith among non-believers: »cum ipsi sint in errore et nos in via veritatis«. Apparatus to X 3.34.8, in Appendix to Kedar, *Crusade and Mission*, p. 217.

<sup>45</sup> Hanke, *Aristotle*, p. 17.

<sup>46</sup> Quoted *ibid*.

<sup>47</sup> Cf. The oration of cardinal Bessarion, the humanist pope Pius II's aide, a century before the Valladolid dispute: »Now those who blaspheme against the Holy Ghost and commit the unforgivable sin of denying by word and sign that Christ is the Son of God must be punished by God's right hand, Now ploughshares must be beaten into swords, now the tunic must be sold and the sword bought [...]«. Piccolomini, *The Commentaries*, book VIII, p. 539.

<sup>48</sup> Carro, *op. cit.*, p. 275; Pagden, »Dispossessing the barbarians«, p. 96.

<sup>49</sup> Friede, »Las Casas and Indigenism«, p. 129.

<sup>50</sup> Hanke, *Aristotle*, p. 86.

correct »pacification«. How much such laws determined the behaviour of the Spaniards in America is another question. Yet as ideas, Las Casas' humanitarianism and Sepúlveda's humanism would have had equally devastating effects on the indigenous population if put into practice.<sup>51</sup> They expressed the fundamental attitude of what was by then Europe, towards the world outside populated by infidels and pagans. I will now turn to the question of how Las Casas and Sepúlveda related to the intellectual tradition in which this attitude had been elaborated.

## II. The Indians and the Turks

Intellectual life in the sixteenth-century Spain was dominated by the Spanish theological and juridical renaissance. Las Casas and Sepúlveda are usually discussed in the context of this renaissance, with some commentators questioning how representative they were of that intellectual milieu. Thus, for example, it has been argued that »Las Casas was not the central figure of the tradition in question, and indeed lacked the standing to be such«; and that Sepúlveda represented »the old European ideology, superseded in Spain by men like Francisco de Vitoria and Domingo de Soto«.<sup>52</sup>

Such qualifications may help us to better understand Las Casas and Sepúlveda. But it is misleading to see Sepúlveda as »ill advisedly« entering an »alien field« and arguing »alien ideas that he simply borrowed from the old Europe«.<sup>53</sup> On the one hand, the theologico-juridical renaissance in Spain (to which Sepúlveda was indeed alien) was itself rooted in medieval intellectual traditions: it is only the stress historians have laid on what was – or seemed – new in that renaissance that have disappeared its medieval lineage from our sight. On the other hand, Las Casas and Sepúlveda themselves extensively referred to, and embedded their arguments within, doctrines and ideas of medieval Europe.<sup>54</sup> They both quoted, in support of their disparate positions, Pope Alexander VI's bull *Inter caetera*,<sup>55</sup> thus invoking a tradition running back to the eleventh century.<sup>56</sup> They backed their arguments with the *auctoritas*

<sup>51</sup> Menéndez Pidal characterized the Valladolid controversy as the struggle between the humanitarianism of Las Casas and the humanism of Sepúlveda. Hanke, *Aristotle*, p. 95. (More than four centuries later, Serbian humanists designed a war of conquest against Bosnia; and Serbia's Western allies are waging humanitarian aid against the unfortunate country.)

<sup>52</sup> Carro, *op. cit.*, p. 247.

<sup>53</sup> *Ibid.*

<sup>54</sup> »Las Casas exploited a tradition supporting his contention in the writings of medieval jurists that stretched back to the thirteenth century.« Pennington, *op. cit.*, p. 272.

<sup>55</sup> See Staedler, *op. cit.*; Muldoon, *op. cit.*, p. 137 sq.

<sup>56</sup> »Las Bulas Alejandrinas de Partición, de 1493, constituyen una de las últimas aplicaciones

of pope Innocent IV and Hostiensis, not to speak of lesser figures central to the development of Christian doctrine regarding the non-Christians. In short, the Valladolid disputants did not borrow »alien ideas« from »the old Europe«. Rather, the three centuries from Innocent IV and the Spanish debates over the Indians »formed a coherent period in the development of European attitudes toward non-Europeans«. <sup>57</sup> Those ideas were not »alien« to the world in which Las Casas and Sepúlveda lived; and the discovery of a new world did not simply turn the medieval Europe into »the old Europe«. The opposite was, rather, true: there was a prominent presence of the middle ages in the conquest of America. <sup>58</sup>

The basic structure of the argument regarding the extra-European worlds and peoples, canonically formulated in the mid-thirteenth century, was not shaken by the discovery of America. The discovery was not a break with the past. The immediate impact of the *descubrimiento* on Europe was all but revolutionizing. Elliott has convincingly argued that, »at least so far as fundamental political transformations are concerned« – »[t]he refusal of states to accept the continuance of any form of subordination to a supra-national ecclesiastical authority; the absolutist tendencies of sixteenth-century princes; the development of new theories and practices to regulate relations between independent sovereign states – all these developments are entirely conceivable in a Europe which remained in total ignorance of the existence of America.« <sup>59</sup>

It appears to me that the idea of the centrality of discovery of America for European history is less a result of the discovery itself than a product of the rise of the »Atlantic World« and its dominance over the globe, sealed by the American and French revolutions. The centrality of the discovery of America was a work of interpreters – among whom historians played a key role – not discoverers and conquerors. Francisco López de Gómara's statement, offered up to the Emperor Charles in the dedication to his *Hispania victrix* (1552), that the discovery of America had been the greatest event since the creation of the world (save the incarnation of God), <sup>60</sup> was merely the opening peal of the history workshop accompanying the formation of the Atlantic-centred world.

prácticas de una vieja y extraña teoría jurídica, elaborada explícitamente en la corte pontificia a fines del siglo XI [...] conforme a la cual *todas las islas* pertenecen a la especial jurisdicción de San Pedro y de sus sucesores, los pontífices romanos, quiénes pueden libremente disponer de ellas.« Weckmann, *Las Bulas*, pp. 32-3.

<sup>57</sup> Muldoon, *op. cit.*, p. 153.

<sup>58</sup> Weckmann, »The Middle Ages in the Conquest of America«.

<sup>59</sup> *The Old World and the New*, p. 79; cf. *Spain and Its World*, Part I.

<sup>60</sup> »Muy soberano Señor: La mayor cosa después de la creación del mundo, sacando la encarnación y muerte del que lo crió, es el descubrimiento de Indias.« Quoted in Hanke, *Aristotle*, p. 124 n.7; cf. Pagden, *European Encounters*, Ch. 3.

A history workshop that dumped European history upon Others who had no reason to be concerned with it, but were used by Europeans to construct an encounter with themselves.<sup>61</sup> (To what avail is not at issue here.)

When Las Casas and Sepúlveda exchanged arguments in Valladolid, America was still of little interest to Europe. European history, as *European* history (that is, the self-awareness of that new collective entity that had succeeded the *respublica christiana*), was at its core a history of imaginary and real warfare against Islam. What Europe, then, was far more interested in than America, was the Orient, the Muslim world, the representation of which had become the »Turk«. Far from being a break with that history, the discovery of America was caught into its symbolic nets. In more than one sense, the discovery was »an indirect byproduct of the crusading movement«,<sup>62</sup> and the argument that the fall of Constantinople is to be seen as a more decisive »turning point« in European history than the discovery of America, is not to be too easily dismissed.<sup>63</sup> The results of Atkinson's study of the sixteenth-century French literature may be seen as indicative not only for France. The study showed that there were far more books published on the Turks, and also on the East Indies and Asia, than on America; that there were twice as many publications on the Turks as on the New World; and four times as many books devoted to the Turks and Asia, than to America.<sup>64</sup> However, for my argument here, this is circumstantial evidence.

Closer to my subject is the evidence of how much the *conquista* was seen, also from within, as a continuation of the *reconquista*.<sup>65</sup> That Spain had been »the land of perennial crusading« was not inconsequential.<sup>66</sup> And because the

<sup>61</sup> »[T]here is a real sense in which the most important encounter made by Europeans in the age of Enlightenment was the encounter with themselves, with their pasts and with their own historicity, so that it was into these highly sophisticated and even self-critical schemes of historiography that they sought to integrate, or gave up trying to integrate, the cultures with whom they came in contact. The Others found all the problems of European history dumped upon them [...]« Pocock, »Nature and History«, p. 8.

<sup>62</sup> Atiya, *Crusade*, p. 128. Cf. Villey, *La croisade*, p. 265: »Qui sait dans quelle mesure la notion de croisade n'éclairerait pas l'histoire d'Espagne, jusqu'à une époque tardive, y compris celle des Grandes Découvertes?«

<sup>63</sup> For example, Toffanin, »Introduzione«, p. ix. But already the occupation of Jerusalem by the crusaders was glorified in words very similar to Gómara's (see n. 60): »But apart from the mystery of the healing cross, what more marvelous deed has there been since the creation of the world than that which was done in modern times in this journey of our men of Jerusalem?« I quote Riley-Smith's translation of Robert the Monk, *Historia Iherosolimitana*, in *The First Crusade*, p. 140.

<sup>64</sup> Atkinson, *Les nouveaux horizons*, pp. 10-11. Cf., especially, Göllner, *Turcica*, Vol. III; Rouillard, *The Turk*; also Elliott, *The Old World*, p. 12; Hanke, *Aristotle*, p. 2.

<sup>65</sup> Muldoon, *op. cit.*, pp. 137, 152; Hirst, *op. cit.* p. 53.

<sup>66</sup> Weckmann, »The Middle Ages«, p. 130.

*reconquista* had often been perceived as an integral part of the great enterprise of the »recovery of the Holy Land«,<sup>67</sup> it is not surprising that Columbus, when he discovered the earthly Paradise, estimated the grandeur of the wealth there with eyes turned back East: as big enough to finance a huge army which could retake possession of the Holy Sepulchre.<sup>68</sup> The *conquistadores* self-consciously and explicitly acted out heroisms of El Cid; they were helped by crusading saints; and in their celebrations in New Spain they knew to stage the siege of Rhodes by the Turks.<sup>69</sup> Yet the point I want to make is that the »Turks« functioned as an organizing principle in the internal economy of Las Casas' and Sepúlveda's reasoning.

In 1529, Sepúlveda wrote a small treatise addressed to Charles V, exhorting the Emperor to wage war against the Turks. He deplored Turkish tyranny<sup>70</sup> and argued that war against the Turks was an indisputable example of just war. Compared to this war, all other wars in which Christians were engaged, paled: »It is neither glory nor wealth that is at stake here but fatherland, home, liberty, salvation, and religion.«<sup>71</sup> And as already the title shows, *Ad Carolum V ... ut fac'a cum omnibus Christianis pace bellum suscipiat in turcas*, Sepúlveda firmly anchored his *Cohortatio* in the ideological matrix that had by then long been the European spiritual common good: that peace had to be made within Christianity so that Christians could go to war against the Turks.<sup>72</sup> *Democrates primus*, written a few years later, was Sepúlveda's response to a student protest that he had witnessed when visiting the Colegio de San Clemente, an elite Spanish school in Bologna where he himself had studied. At a time when Spain was at war with the Turks, the students claimed that »all war, including defensive war, is contrary to the Catholic religion.«<sup>73</sup> Sepúlveda, in his first *Democrates*, refuted this, to his mind, scandalous opinion. The views he formulated in this context he would later, in *Democrates alter*, apply to the Indian question, extending the treatment that Europeans and their Christian republican predecessors had conceived for the Muslims, to the Amerindians. There is no doubt, as an expert has concluded, that Sepúlveda »used the

<sup>67</sup> See Villey, *op. cit.*, p. 193 *sq.*, especially p. 199, on the *reconquista* seen as »une seconde marche vers Jérusalem«.

<sup>68</sup> Weckmann, »The Middle Ages«, p. 132. »Columbus himself was deeply rooted [...] in the medieval crusading tradition.« Muldoon, *op. cit.*, p. 136.

<sup>69</sup> Pagden, *European Encounters*, pp. 78-9, *cf.* 62; Weckmann, »The Middle Ages«, pp. 133-4.

<sup>70</sup> »Sepúlveda, unacquainted with the ways of modern income taxation, considered this an intolerable tyranny: 'O novum genus tyrannidis et prioribus saeculis apud humaniores gentes inauditum! O avaritiam intolerabilem!« Bell, *op. cit.*, pp. 8-9.

<sup>71</sup> Fernández-Santamaria, *op. cit.*, pp. 219-20.

<sup>72</sup> See Mastnak, *op. cit.*

<sup>73</sup> Losada, »Controversy«, p. 281.

arguments for the war against the Turks to justify the war against the Indians.«<sup>74</sup>

Las Casas' argumentative strategy was less linear. While sharing basic premises with Sepúlveda, he desired to get to the opposite conclusion. He held the same views of the Turks as did his adversary, but unlike him he claimed that the Indians were not »Turks« and should therefore not be treated like Turks. The construction of difference between the Muslims and the natives of America was the axis of his reasoning, and if one speaks of his love for the Indians, one should also speak of his hatred of the Turks. Indeed, his love for the former fed on his hatred of the latter.

It has been argued that Las Casas, in his insistence on the difference between the Indians and the Turks, was more typical of Spanish political discourse of the age than Sepúlveda; that the Spaniards' attitude towards the American Indians looked »remarkably mild« compared to their attitude towards other non-Christians known to them;<sup>75</sup> and that it was »fortunate for the Indians that Las Casas, along with Francisco de Vitoria and Domingo de Soto, emphasized the great distinction between wars against the Indians and those against the Moors and Turks«. <sup>76</sup> Given the prominence of the just war theory in those times, the fundamental distinction between wars was that between just and unjust wars. Because a necessary condition of a just war was that it be conducted by legitimate authority,<sup>77</sup> the nature of Christian wars against non-Christians depended not only on crimes of which non-Christians were deemed guilty and could be considered just causes of war; but also on whether Christian rulers could claim legal authority over particular non-Christians. Las Casas' desire was to prove that just war could not be waged against the American Indians. Thus he had to demonstrate that the Indians were to be exempted from those cases in which the Church and Christian princes thought that they could claim juridical authority over non-Christians.

Las Casas assertion was that the Church gives all hope of salvation, and that, in this sense, »all the infidels hope for the Church's power of exercising jurisdiction, but in a very different way, depending on their genus or species«. He also

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<sup>74</sup> *Ibid.*, p. 301.

<sup>75</sup> With regard to the »hate speech«, the Laws of Burgos (1512) forbade that an Indian be called *perro* (dog), but another curse, *perro moro* (Moorish dog) seems not to have been proscribed. (Cf. Hanke, *Aristotle*, p. 15.)

<sup>76</sup> *Ibid.*, p. 107. He should have added the persecution of the Jews. The year of the discovery of America was also the year of the fall of Granada, followed by the expulsion of Moors and Jews, so that a decade later Spain was religiously cleansed. Cf. Shannon, *Visions*, p. 12.

<sup>77</sup> »The most crucial issue in any just war theory is the locus of authority capable of waging war.« Russell, *The Just War*, p. 68.

made it clear, however, that the Church did not exercise jurisdiction over all infidels.<sup>78</sup> Following this leading idea, Las Casas classified infidels into, firstly, those who lived under, and were subjects of, Christian princes, such as the Jews and the Moors; secondly, those who lived in kingdoms subjected to infidel princes, such as the Moors, Turks, Scythians, Persians and Indians; and, thirdly, heretics. The first and the third class, he argued, were under Christian jurisdiction,<sup>79</sup> but not the second. Consequently, neither Church nor Christian princes might castigate pagans living under their infidel princes for their idolatry and crimes, because Christian rulers did not have juridical authority over them.<sup>80</sup>

Las Casas then constructed another tripartite classification to consider exceptions to the rule that where the Church had no jurisdiction over infidels it had no right to punish. In two out of these three classes the Church had jurisdiction over infidels, yet of a different nature. The first class of this scheme were those infidels who lived and worked within Christendom and were therefore »subjects of the Church or of a member of the Church, for example, of a Christian prince«.<sup>81</sup> Over them, the Church had actual legal authority, but not over the third class that fell under the title of »voluntary jurisdiction« – the jurisdiction, that is, which could not be exercised over any person against his will. Such was the jurisdiction of the pope, the vicar of Christ, whose mission was to preach gospel to all the people of the world. This jurisdiction was voluntary because no one could be compelled by the Roman pontif to accept the faith; they could only peacefully and gracefully be exhorted and invited to accept it.<sup>82</sup> This third class could be easily translated – with far reaching consequences – into *jus gentium*, with the right to travel, *jus peregrinandi*, and the right to preach, *jus praedicandi*, as central tenets.<sup>83</sup> Yet this is another subject. Of interest here are exceptions to the second class. To this class belonged the infidels who were not under Christian authority but over whom (as Las Casas claimed) the Church could exceptionally assume jurisdiction, which was almost synonymous with the right to make war.

Las Casas divided these exceptions into six cases: First, when infidels possessed dominions that they had unjustly taken from Christian peoples, espe-

<sup>78</sup> *Apologia*, pp. 229-30. In original, fol. 110v: »Omnes ergo cuius generis aut species existant infideles ad iudicium spectant ecclesiae: sed multum differenter. [...] non omnes infideles esse de ecclesiae iudicia vim potestate.«

<sup>79</sup> *Ibid.*, pp. 145-6.

<sup>80</sup> *Ibid.*, pp. 158, 164, 182.

<sup>81</sup> *Ibid.*, p. 192.

<sup>82</sup> *Ibid.*, p. 306.

<sup>83</sup> Cf. Pagden, *Spanish Imperialism*, p. 21 sq.

cially if Christians still lived in those territories. Second, when pagans practised idolatry in provinces that had been in former times under Christian jurisdiction, and (in Las Casas' words) infested with their nefarious and abominable vices regions which had been consecrated by the sacrifice and blood of Christ; where the true God had been worshiped and sacred sacraments administered.<sup>84</sup> Third, when infidels blasphemed against Christ or saints, or consciously spoke maliciously and contemptuously, with hatred and scorn, against the Christian truth.<sup>85</sup> Fourth, when pagans hindered the propagation of the faith »de per se« and not »per accidens«, and with word or deed attacked those who wished to embrace, or had embraced, the faith; and when they understood what was preached to them and still mistreated the preachers.<sup>86</sup> Fifth, when infidels with their armies invaded Christian provinces or infested Christian littoral, and in great numbers, like the Turks, molested, attacked and troubled Christendom, or, like Saracens, made frequent incursions into Christian territory.<sup>87</sup> Sixth, when infidels unjustly oppressed innocent persons, the Church had the right to exercise coercive jurisdiction to liberate the victims.<sup>88</sup>

The careful formulation of these exceptions made it relatively easy to prove that Christians had no right to make war on the Indians. The first and the second case were an obvious description of the situation in the Holy Land, as seen through European eyes. The infidels Las Casas had in mind in the third case were Jews and Saracens, whom he saw as blaspheming Jesus Christ with the intention of preventing the acceptance, and impeding the spread, of the Christian faith. The fourth case, like the third, was an infringement of the right to preach. But while the Muslims were supposed to know what was preached to them,<sup>89</sup> their assumed ignorance saved the Indians from Christian coercion. While the fifth case left no doubt about Indian innocence, it took some ingenuity for Las Casas to prove his sixth case: that the notorious Indian human sacrifices did not constitute just cause for war against them.

Las Casas' demonstration that war against the Indians was illicit rested on his bellicosity against the Turks, Moors and Saracens. It has been pointed out that he was »in no sense a pacifist«, because he considered some wars just: those,

<sup>84</sup> *Apologia*, pp. 193-5.

<sup>85</sup> *Ibid.*, pp. 230-1.

<sup>86</sup> *Ibid.*, pp. 232, 234.

<sup>87</sup> *Ibid.*, p. 244.

<sup>88</sup> *Ibid.*, p. 247 sq.

<sup>89</sup> That was not a completely groundless supposition, for »Oriental studies«, as maid servants of the *recuperatione Terrae Sanctae* enterprise, had been by then more than two centuries old – if we accept that Ramon Llull was their »father« (Atiya, *The Crusade*, p. 86). But see Smith, *Christians and Moors*, Vol. II, p. 60 sq., on the study of Arabic in the thirteenth century.

for example, against Mohammedans and heretics.<sup>90</sup> But only common sense sees a contradiction between belliciosity and pacifism. Las Casas was a spokesman of a world that uses war and peace as alternate means of subjecting Others. Why he chose peace for the Indians is a question I will not try to answer here; my point is that he could argue for peaceful treatment of the Indians because he accepted the justice of war against the Muslims.

In Las Casas' views of the Muslims, we can discern a mentality hostile to the »Turks« that he shared with his world, and a formal expression of that mentality that was all his own. On the one hand, Las Casas did not spare invectives when talking of Muslims whose impiety was, in his and his contemporaries' opinion, adverse to divine and natural law.<sup>91</sup> He also used the Muslim name as invective, for example, when he charged Sepúlveda with the desire to spread the faith with »Mohammedan method«, that is, »with death and terror.«<sup>92</sup> (But he did not shrink from authorizing the use of methods he called Mohammedan against the Mohammedans themselves.) There is nothing surprising about this. This mentality, not specific to Las Casas, simply provided substance to the formal structure of his argument.

His argument, on the other hand, is surprising. On the road to proving that just war could not be conducted against the Indians, Las Casas ended up with a general rejection of the idea of conquest as such. He postulated that »there should be no talk of conquest, as if the Indians were African Moors or Turks, but only the preaching of the gospel of Christ 'with gentle and divine words'«. <sup>93</sup> He argued that the very term conquest was »tyrannical, Mohammedan, abusive, improper and infernal« and that, consequently, conquest could be conducted only against »Moors from Africa, Turks, and heretics who seize our lands, persecute Christians and work for the destruction of our faith«. <sup>94</sup> For the argument to stand, it had to be backed by a formal authority. What is surprising is that Las Casas chose, in support of his vindication of the rights of the Indians, an *auctoritas* who denied that infidels had any rights at all.

The legal question central to the Church doctrine regarding infidels was whether they possessed the right to lordship and property – that is, whether they were rightful owners of the lands they inhabited and whether they could

<sup>90</sup> Losada, »Controversy«, p. 283, who is happy to note that, with regard to the Muslims, Las Casas agreed with Sepúlveda (p. 293).

<sup>91</sup> *Apologia*, pp. 222, 231, 353

<sup>92</sup> *Ibid.*, pp. 338, 342. Hanke, *Aristotle*, p. 91, called attention to Franciscan Juan de Silva who »argued, like Las Casas before him, that preaching the faith under the protection of the sword was to adopt the methods of Islam«.

<sup>93</sup> Carro, *op. cit.*, p. 275.

<sup>94</sup> Pagden, *European Encounters*, p. 79, citing »Memorial de los remedios« (1542).

legitimately rule themselves. In canonical tradition, there was a sharp division on this issue between Innocent IV, who maintained that by the laws common to all men, private property and self-government were the right of all men (*pro omni rationabili creatura*); and Hostiensis who asserted that »with the coming of the Christ every office and all governmental authority and all lordship and jurisdiction was taken from every infidel lawfully and with just cause and granted to the faithful through Him who has the supreme power and who cannot err«. <sup>95</sup> The implications of the two positions are clear for the question: Was it or was it not licit to invade lands possessed by infidels and establish Christian rule over them? Hostiensis himself concluded that, »according to the law, the infidels have to be subjected to the faithful«. <sup>96</sup>

Las Casas chose to positively refer to Hostiensis. That was not an obvious choice. For it was rather in the tradition of Innocentian doctrine that Vitoria, and later Suárez, restrained the right of the Spaniards to make war against the Indians. <sup>97</sup> While Hostiensis formulated an integralist theory of holy war, »opposing without mercy one religion to other religions«, and declared that war against infidels is always just; <sup>98</sup> for Innocent and his followers, war against the unfaithful was just only under certain conditions. <sup>99</sup> Nor was Las Casas' choice opportunistic: Hostiensis had been discredited more than a century ago. <sup>100</sup> Yet it was nevertheless a good choice or, at least, one Las Casas knew how to make good. His comment that Hostiensis' opinion »does not apply indiscriminately to all infidels but to those only who existed in Hostiensis' own time«, <sup>101</sup> let him have all he wanted: war and peace.

The paradox of Las Casas' legalism is that he had to find an extra-legal

<sup>95</sup> »Mihī ... videtur quod in adventu Christi omnis honor et omnis principatus et omne dominium et jurisdictio de jure, et ex causa justa, et per illum qui supremam manum habet nec errare potest, omni infideli substrata fuerit et ad fideles translata.« Hostiensis, *Lectura*, quoted in Villey, *op. cit.*, p. 31 (English translation in Muldoon, *op. cit.*, p. 16). Generally on the subject: Muldoon, *op. cit.*, Ch. 1; Russell, *op. cit.*, especially p. 199sq.; Brundage, »Holy War«, pp. 121-2.

<sup>96</sup> »Unde constanter asserimus, quod de jure infideles debent subijci fidelibus.« Hostiensis, *l. c.*

<sup>97</sup> Cf. Villey, *op. cit.*, p. 35.

<sup>98</sup> *Ibid.*, p. 32.

<sup>99</sup> In case the Saracens »terras christianorum invasissent vel occupatas tenerent, vel christianos hostiliter impugnarent, tunc tam per ecclesiam quam per principes ... potest eis justum bellum indici.« Innocent IV, *Apparatus*, cited *ibid.*, p. 35. Cf. Russell, *The Just War*, pp. 199-200.

<sup>100</sup> As a result of the dispute between Paulus Vladimiri, speaking for the Polish King, and the Teutonic Knights in the council of Constance, »Hostiensis' views on *dominium* were no longer acceptable«. Muldoon, *op. cit.*, p. 119. Russell, »Paulus Vladimiri's Attack«, p. 253, has noted that the problems Paulus addressed – the legitimacy of infidel dominion and the just war – »would soon resurface with the European conquest of America«.

<sup>101</sup> *Apologia*, p. 194.

existence for the Indians in order to be able to defend their peaceful treatment. His choice, and interpretation, of Hostiensis, »the father of the juridical theory of crusade«,<sup>102</sup> was ingenious. His argument that Hostiensis' law was still in force with regard to the Muslims implied that the crusade was not *passée*, but that it did not apply to the Indians.

A further paradox lies in Las Casas' reference to the crusading tradition – the materialization of an attitude towards the Muslims that was ultimately outside the realm of law. From the very beginning, there was a tension between canon law and the crusade: »So alien was the crusade ideology to the thinking of the canonists that it was not until the thirteenth century that it was incorporated into the canon law tradition of the just war.«<sup>103</sup> The moment of that incorporation, personified in Hostiensis, was Las Casas' reference point. Yet the question remains of how much the canon law had actually tamed »the fanaticism of the crusade« (only »distantly stirred by Augustine's anti-Donatist writings«).<sup>104</sup> The »Turkish question«, the solution for which was the crusade, could not be wholly captured by law. It was the surplus that evaded legal codification, the *imago Turci*, that made it possible for Las Casas to preach war against the Muslims and peace for the Indians.

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<sup>102</sup> Villey, *op. cit.*, p. 257. Cf. Russell, *The Just War*, pp. 201 *sq.*, 206.

<sup>103</sup> Gilchrist, »The Erdmann Thesis«, p. 38.

<sup>104</sup> Russell, *The Just War*, p. 36.

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