

The “paradise destroyed” by “the just war”: A dialogue between Las Casas and Vitória in the concealment of indigenous people by European colonizers

O “paraíso destruído” pela “guerra justa”: O diálogo entre Las Casas e Vitória na ocultação de povos indígenas por colonizadores europeus

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Abstract

The domination and consequent exploitation of Amerindians did not occur, nor does it occur by chance. It is a continuous process that has come since the arrival of the European in the Americas, who believed that it was possible to explore such indigenous bodies due to their (lack of) humanity and rationality, having as a point of comparison the European being itself. Regarding this process of conquest of the Americas and, therefore, of the Amerindians, which culminated in their domination and concealment, there are two Spanish thinkers who stand out: Francisco de Vitoria and Bartolomé de Las Casas. Thus, the objective of this study is to establish a link between the speeches of the aforementioned authors, seeking to heighten the influence of the same way in which the original peoples were treated and, equally, if their thoughts can still be used as a way of "downgrading - them", as observed in Brazil. Therefore, a deductive study is carried out by, first, highlighting the thoughts of Vitória and Las Casas, so that the reflections of their opinions on the treatment of Americans today can be stressed. Thus, insofar as the cited authors thoughts serve as a basis for the reflections of the current scenario, the analysis of the objectives follows the descriptive and explanatory method. In the end, through this bibliographical research, it is concluded that the problems presently faced by indigenous peoples in Brazil do derive from the coloniality that remains from the arrival of the European, which insists on concealing native peoples despite the normative instruments existing today that, in fact, are aimed to increase plurality through the recognition of their rights.

Keywords: Francisco de Vitoria; Bartolomé de Las Casas; Amerindians; Concealment; Domination.

Resumo

A dominação e a consequente exploração de Ameríndios não ocorreu e nem ocorre por casualidade. Trata-se de um processo contínuo que advém desde a chegada do Europeu nas Américas, o qual entendia ser possível explorar tais corpos indígenas em função da sua (falta de) humanidade e racionalidade, tendo como ponto de comparação o próprio ser europeu. Acerca desse processo de conquista das Américas e, logo, dos Ameríndios, que culminou na sua dominação e no seu encobrimento, há dois pensadores espanhóis que se destacam: Francisco de Vitoria e Bartolomé de Las Casas. Assim, com esse estudo, objetiva-se estabelecer um elo entre os discursos dos citados autores,



procurando avultar a influência dos mesmos na forma como os povos originários foram tratados e, igualmente, se os seus pensamentos ainda podem ser utilizados como forma de “rebaixá-los”, tal como se observa no Brasil. Para tanto, parte-se de um estudo dedutivo, avultando o pensamento de Vitoria e de Las Casas, para que, posteriormente, os reflexos de suas opiniões sobre o tratamento dos Ameríndios na atualidade. Assim, na medida em que o pensamento dos autores citados serve de base para as reflexões sobre o tempo corrente, a análise dos objetivos segue o método descritivo e explicativo. Ao cabo, através da presente pesquisa bibliográfica, conclui-se que os problemas enfrentados na atualidade pelos povos indígenas no Brasil derivam, sim, da colonialidade remanescente da chegada do Europeu, a qual insiste em colocar os povos originários em segundo plano, apesar dos instrumentos normativos hoje existentes terem, de fato, almejado avultar a pluralidade através do reconhecimento de seus direitos.

Palavras-chave: Francisco de Vitoria; Bartolomé de Las Casas; Ameríndios; Ocultação; Dominação.



Introduction

In 1492, in a time of expansion of territory and in the craving of hegemony over other people, Christopher Columbus, on behalf of the Spanish Crown, missed his way because of the storms to the Indies, arriving in a different continental region, which came to be called America and its inhabitants of indigenous. It was from this that a whole process of domination and exploitation began, based on a coloniality of power, knowing and being, and has generated numerous debates, mainly about the humanity and rationality of those who do not represent the image of European colonizer – in the present case, indigenous peoples.

Among the discussions about the rational status of indigenous people, there are two Spanish thinkers who approached the (in)justice of wars during the process of conquest of the America: Francisco de Vitoria and Bartolomé de Las Casas. Therefore, the object of the present text is to establish a link between their discourses as it could be seen as the beginning of the concealment of indigenous population in Latin America, since they have influenced the way, these peoples were treated (and still are). As Wallerstein (2007) puts it, these are the arguments used to (1) justify all the “civilized”/European military intervention in the modern world in non-civilizes areas, and (2) spread the universal values (in European universalism theoretical basis).

More precisely, from the dialogue between the two theologians, the problem that this study addresses is about the *process of concealment* of indigenous peoples by European colonizers, considering that, on the one hand, Las Casas, despite accepting indigenous rationality, in the condition of “virgin souls”, sought by peaceful means their catechization so that they could acquire Christian faith, maintaining nevertheless the notion of domination; and, on the other hand, Vitoria that considered wars legit even though validating indigenous humanity in order to dominate the native people for not undergoing a liberal free-market capitalist system.

The questions that are asked here are the consequences of such considerations and influences of both authors, specifically if it possible to say that, even after more than 500 years, this same thought of “downgrading” indigenous peoples either peacefully or (literally) forcefully has been maintained. Hence, a bibliographic study is carried out. And for the purpose of addressing the said problem, the deductive method of approach is used in order to, first, bring about the thoughts of both Vitoria



and Las Casas will be exposed so that, afterwards, the reflexes of their opinions on the treatment of indigenous populations nowadays, especially in Brazil, are debated. The analysis of the cited authors will serve as a basis for the reflections that follow, thus, the analysis of the objectives follows the descriptive and explanatory method.

1. Francisco de Vitoria's perspective on indigenous peoples and 'Just War'

Francisco de Vitoria was a Spanish theologian who lived in early XIX century and founded the 'School of Salamanca' philosophical branch, which led many discussions on international law, especially on the sources and limits of the ecclesiastical power that ruled international order until mid-XVII century; and some early human rights arguments regarding humanity and equality, even though based on a theological approach, deriving from Thomas Aquina's (and, thus, Aristotle's) thoughts (BUCCI, 2014, p. 48-49).

He is normally known from his contradicting arguments regarding indigenous peoples as in the same way he intended to protect the natives, especially regarding their rights as human beings, just as the Europeans had; he also denied them their rights to the land since he defended the legitimacy of waging wars in cases of unjust injuries such as violations perpetrated against other people, and the denial of free circulation within the land. Regarding the first approach, that is, the defense of indigenous people as equals to the Europeans, it is imperative to highlight his writings in *De Indis et de Jure Belli Relectiones* (VITÓRIA, 2006), where he argued why the "barbarians" (indigenous peoples) were once considered of property of the Spanish, and why such possessions/titles should be reconsidered.

It should be recalled that, as a disciple of Aquina and, thus, Aristotle, many of his arguments derived from a dialogue with such authors. Bearing this in mind, Aristotle has argued on the existence of natural servitude, where those who are absolutely incompetent of governing each other, being, thus, compared to abrupt animals, could be naturally and rightfully considered as servants (LASMAR, 2014, p. 31; RUIZ, 2002, p.117-118).

Hence, in his book, Vitória (2006) has argued that indigenous peoples could not be considered as natural servants based on their supposed dementia, since they had



their own way of expressing rationality, which could be clearly seen in their way of life, as they had their own laws, family structures, leadership and even cults. In other words, he admitted to the possibility of indigenous peoples being land owners just as Europeans due to their human similarities (RUIZ, 2002, p. 88), and, thus, being also subject to the *Ius Gentium* (CASELLA, 2012, p. 618).

Besides that, deriving from Aquina's assumptions, Vitória wonders whether the indigenous peoples could lose their civil status (as the condition of possessing goods) by "failing God", since the heretic do not lose such condition (and either do the Jews or Saracens), only suffering from a possible confiscation of goods when committing an offense – and not by disbelieving in God (LASMAR, 2014, p. 32-33; BUCCI, 2014, p. 51-52; DE MACEDO, 2009, p. 225). As a consequence, he understands that such reflection – barbarians as natural servants – is illegal, as they should not be seen as rational beings before God.

That said, in the second part of his book, Vitória (2006) turns to a more vivid discussion regarding the illegality of the titles of the Spanish over the Amerindians. First, following into Aquinas's beliefs, the natural understanding of men is that all are born free, and that possession of one to another is a human derivation – not a divine one. Consequently, all sorts of domination derive from a "constructed" right (by men), meaning that one could not argue that the indigenous belonged to anyone due to a divine title, as the Spanish did, supposedly, because of the emperor's rights (which are made by men – not God – and applied only in regard to jurisdiction – and not to possession). This means that, divinely, men could not be the property of another, but only submitted to another jurisdiction.

This argument also leads to Vitória's contention to Spanish appropriation of land in the Americas, as he "proposes in a controversial way the limitation of one of the main foundations of the inheritance of America by the Spanish, through the papal donation by the *Bula Inter Coetera* of May 4th 1493" (LASMAR, 2014, p. 34). In his opinion expressed in another book, *De Potestate Ecclesiastica* (apud LASMAR, 2014, p. 35), land property could not be transferred through it, after all, if Christ did not have domain over the globe during his time, how could the Pope then have?

In this sense, considering that human laws could not trump divine laws (BUCCI, 2014, p. 49), he stars the third part of the book (VITÓRIA, 2006), claiming that the usage of the *res nullis* argument regarding legit occupation over a supposedly inhabited



territory is faulty as the Amerindian were the ones who possessed the territory. In this sense, the Spanish could not legally take it over – not even when arguing the Amerindians were committing a sin for distrusting God’s words, since, in accordance to his readings of Aquina’s, they were simply and honestly uneducated for not believing in God (LASMAR, 2014, p. 36). And even if they had the opportunity of converting themselves after listening to the catechists, but have decided not to do so for any reason, their land cannot be transferred to the Spanish (through violence/war) as a consequence of a (*divine*) sin, as explained in the first part of his book, as it constitutes an improper title (VITÓRIA, 2006, p. 66-73; LASMAR, 2014, p. 37).

This means that they could not be obliged to convert themselves to the Christian faith through war, as that *would not be just*. In his opinion, just war was a possibility only when committing “a *natural* sin, as eating men flesh, constituting indiscriminate concubinage with one’s parents or siblings” and sacrificing innocent people (LASMAR, 2014, p. 38 and 41-42), but that is limited to making the indigenous peoples give up such practices or even to allow the Spanish to *simply preach* the gospel (even if it was not accepted by them afterwards)¹ – never for the sole purpose of transferring of the land due to the divine sin of disbelief (LASMAR, 2014, p. 41).

Another possibility for legally waging war in accordance to Vitoria’s thoughts is the impoliteness/discourteousness towards immigrants, since it would be inhuman, as he wrote in in another book, *Institutiones* (*apud* LASMAR, 2014, p. 39). In other words, it would be possible to use violence when someone, like the Spanish, wanted to travel to and through the territory of another or even there stay as long as they did no harm to locals, and this was made impossible for them (VITÓRIA, 2006). The theologian based this assumption on the fact that it was not possible to break or suppress *communication* between men², and if the Amerindians did so, it was in the right of the Spanish to fight for *parts* of it (never entirely!) (LASMAR, 2014, p. 39).

¹ Note that Vitoria’s notion of just war also incorporated the defense of those who were catechized in face of those who potentially wanted them to disbelieve after they have done so. Thus, the defense of the believers though violence was considered just, and, in cases where already a *majority* were Christian, the Pope could even properly appoint a new leader to a certain region (in jurisdiction terms) in order to protect the correct “application” faith (LASMAR, 2014, p. 41). However, that could be read the other way around, meaning that the Amerindians could also have their own leaders (VITÓRIA, 2006, p. 56-57) and the Spanish could not disagree with that - if the former had allowed preaching in its jurisdiction beforehand by all means.

² Communication between men (*inter gentes*) is the bases of the *Ius Gentium* for Francisco de Vitoria. However, it is important to say that men, in this case, are peoples (nations) – and not only individuals themselves. In accordance to L. H. C. Azevedo (2008, p. 17-25), it is because of this that Vitoria’s concept of



Moreover, such communication would involve the exchange of goods as well, meaning that local leaders – or the Spanish³ – could not bar the interexchange of goods that were rare to each region (LASMAR, 2014, p. 40). Not only that, communication would also allow the participation of foreigners in the exploration of such goods (as the extraction of silver and gold, fishing, sawing wood, etc.) if they were abundant (as they were). After all, the abundance of certain goods did not cause damage to locals, being the causation of harm to Amerindians⁴ the *only* possibility of making this third type of communication an illegal reason for war and partial occupation (LASMAR, 2014, p. 40).

Hence, what can be stipulated from Vitória's thoughts is that he did not deny war; he, in fact, allowed it even considering that it caused unnecessary cruelties, as seen above, in very specific cases, and, for that, he is to be considered very innovative (VITÓRIA, 2006, p. 126-133 and 145). However, by allowing 'just wars' in those scenarios, one cannot but to consider the concealment of native people he sustained through his arguments.

After all, it does not consider the plurality of cultures around the globe – and, in fact, it sustains the superiority of Catholicism, covering tragic events such as the genocide of indigenous populations in the Americas (ANNONI, 2016, p. 11). Besides, though the prohibition of legitimate defense when it comes to the exploitation of the Europeans of the territory thought Vitória's theory, it can be argued that it sustained the colonial powers throughout the XVII up to the XX Century, which invariably led to the current World-System (WALLERSTEIN, 2004).

Ius Gentium is very important, as he considered the international community formed by different peoples, regardless of whether they were Christians or not. Besides he signals the existence of an international solidary order that prescribes the possibility to intervene in name of certain protected/common rights, for instance, as the possibility of the Spanish to protect the Christians beyond national frontiers (which, in fact, did not even firmly exist at that time). See also Vitória, 2006, p. 93-105.

³ This happens because of the reciprocity principle, which was considered a pillar of his *Ius Gentium* (CASELLA, 2012, p. 319-620).

⁴ It should be recalled that Vitória believed that the placement of birth confers one's citizenship, meaning that if children of Europeans were born in the Americas, they were as much owners of the goods as the native peoples (VITÓRIA, 2006, p. 93-98). Besides, other forms of citizenship common to each locality, as "take women" (or any other that existed), could also grant Europeans the same rights (LASMAR, 2014, p. 40).



2. Bartolomé de las Casas' humanist view and his debate with Juan Ginés Sepúlveda

Bartolomé de Las Casas, whom Josaphat (2000) calls the mouthpiece of social justice and the prophet of all rights for all in America, came to the world in 1474, in the city of Seville, Spain. A student of law at the University of Salamanca, Las Casas belonged to the Spanish middle class, so his father participated in Columbus' second voyage to the New World, bringing an Indian slave as a gift to his son, who accompanied him for many years, arriving in the Americas in 1502 along with two thousand and five hundred men under the command of Nicolás de Ovando, the creator of the *encomiendas* system⁵ (BUENO, 2008).

In 1511 he became *encomiendero*, having received in the region of *Concepción de La Veja* his first division of Indians, influenced at that time by Friar Antônio Montesinos, who was part of a renewing and progressive branch of the Order of the Dominicans, an organization Las Casas belonged to in 1522, which denounced in its lectures the inhuman questions of the *encomiendas* and bluntly criticized Spanish colonization (JOSAPHAT, 2000).

Until the year of his death in 1566, when he was 92 years old, Las Casas dedicated himself to such fight, obtaining, in practice, two great achievements: the *Leyes Nuevas*, enacted in 1542, which determined the closure of the *encomiendas* system (WALLESTREIN, 2007); and the “victory” against Sepúlveda in the Valladolid debate, against the the Aristotelian “natural servitude” of the indigenous peoples.

The Spanish emperor, Charles V, in 1550 ordered the creation and convening of a meeting of 14 theologians in the city of Valladolid, aiming at assessing whether the Spanish conquest in the New World was fair or not (WALLESTREIN, 2007). At first, the Spanish Crown ordered the suspension of all expeditions, convening an extraordinary meeting to discuss the catechization of the Amerindians as well as their conquest. Thus, the debate between Las Casas, defending the end of the use of force as a means of introducing the Gospel to the “virgin souls”, and Juan Ginés Sepúlveda, a theologian and philosopher (JOSAPHAT, 2000).

The debate had as its background the indigenous inferiority, which, in accordance to Sepúlveda, would be justifiable because the indigenous people were in

⁵ According to Wallestrein (2007, p. 31), the *encomiendas* system consisted of the division of Indians "as forced laborers among the Spaniards who administered the agricultural, pastoral or mining properties".



between men and animals, either because there was no individualism in the (inter)relations among themselves with respect to objects, such as the inexistence of private property, or because of their traditions, seen as pagan, as cannibalism (SILVA FILHO, 1996).

To sustain his argument, Sepúlveda, just as Vitória, used Aristotle's philosophical thoughts to legitimize the bloody process of domination, treating it as an emancipatory act, capable of liberating the indigenous people from their own barbarism, thus, endorsing the use of both irrational violence and just war (WALLESTREIN, 2007). Moreover, Sepulveda, in a political approach, identified the indigenous peoples of the New World as natural servants, following the Aristotelian conception, considering them as “full barbarians”, what made just war plausible.

On the other hand, Las Casas understood not only that indigenous people were not natural slaves, because of their high degree of social organization, which manifested their rationality (WALLESTREIN, 2007), but also that the natives were “virgin souls” with “Christian virtues”, so that they could be considered faithful (to God) – just the opposite of the Spanish, since they were in favor of war, and, thus, “infidels”.

Although a defender of indigenous rationality, Las Casas, using assimilationists aspects, defended an ecclesiastical action, as he intended to establish a consensus with the indigenous peoples so that the spiritual dominion of the Church could be established without the process of subjugation which had been already established. For him, this would happen through relationships in which mutual understanding was its basic element.

The Dominican friar also based his assumptions in the Aristotelian philosophy to relativize the notion of barbarian/barbarism and conceptualize it as a communicative incapacity between peoples, since the natives, for example, did not speak Spanish but another native language. Moreover, with the intent of validating his actions, he inaugurated the “religious perspectivism”, as “each one loves God in his own way” (SOUZA FILHO, 1996, p. 179). Such thought led Las Casas to abandon its mission of catechizing Amerindians, authorizing them to decide themselves their path, even arguing that the King should wage war against the conquerors.

In addition, Las Casas defended the absence of Spanish jurisdiction over those “infidels” who do not live in the Christian faith and who have their own “masters”, as it was the case with the indigenous peoples, who had never known the Gospel of Christ,



neither have they waged war against the Christians, nor occupied their territories. That is the reason why they did not offer a just cause for war to the Spaniards even though disbelieving God, and, as a consequence, neither the Church nor the emperor could punish them for a crime, as they were not subjects of the great Christian empires.

It is precisely in this sense that Las Casas opposed to the argument of punishment by idolatry, as Christians had no jurisdiction over the Indians to punish them, after all, they lacked the vassal condition among them. Thus, war would represent a far greater evil than a simple practice of cannibalism, since it would do far more victims than the unknown irregularity of such conduct (LAS CASAS, 1984).

Finally, Las Casas defended the possibility of peaceful colonization under the scope of the missionaries, in a way that it was possible to build some sort of protection to the rights of indigenous peoples, allowing their autonomy. However, colonization, with its model of social stratification of power, ends up maintaining colonialities that oppress, generate subalternities and reproduce prejudiced stigmatizations even though not being physically violent.

3. Reflexes of Las Casas and Vitoria's thought on the current indigenous people treatment in Brazil: the continuous acculturation and some paradigm break attempts

The process of colonization imposed by the Iberian empires brought with it a new impression of the world, which, through the exercise of power, was based not only in the exploitation of bodies, knowledge and natural resources, but also what Maldonado-Torres (2007) calls the coloniality of being, that is, a pattern of domination in which those dominated are subjected to a systematic negation/concealment of its existence, therefore, being the colonized the binary negative image of the colonizer.

Quijano (2005, p. 118) understands that this new pattern of power was established by the determination of differences between conquerors and the conquered, structured by the idea of race, that is, "a supposedly distinct biological structure that placed some people in a natural situation of inferiority in relation to others". In his opinion, this construction produced the main element of (hierarchical) relations of power. Consequently, the formation of these social relations based on the



idea of race created identities that had not existed before, such as those of the indigenous peoples, as well as redefined others.

It is, therefore, possible to say that, unlike a more humanized view, as it was to some extent proposed by part of the existing literature, colonization, in the words of Césaire (2000), was configured as the process of colonization of the bodies of the colonized; and, as a result, not being related to the preaching of the Gospel or some philanthropic project determined by God.

Besides, as a derivation of the theories presented by both theologians here addressed, it is possible to conclude that the identity of the indigenous people before Brazilian society can be seen in three different perspectives. The first concerns the role that the Indian played in the "discovery" era, appearing as a "savage", cruel, "primitive", "anthropophagic", and even as lazy⁶, in order to demonstrate how superior and "civilized" the Portuguese colonizers were (ROCHA, 2009). Such illustration of the Amerindians remains to this day, being also fed by the media, individuals and economic groups that have direct interests not only for their lands, but also for the natural resources their native areas offer.

The second role that is sustained by the "western white" vision deriving from such thought (and that guided all the integrationist indigenous policy in Brazil until the 1988 Constitution) is the romanticized perception of catechization. In this action, the Indian is regarded as "childish", "innocent", a "virgin soul", so that he needed faith and religion to be protected, to be saved (ROCHA, 2009), that is, to be subjected to the process of acculturation and evangelization, so that he could be considered – and only because of that – as a human being (LAS CASAS, 1991).

The third perspective that can be seen coincides with the process of re-democratization of the Brazil in the 1980s. Such a view comprises the indigenous people as subjects of law and, consequently, as possessors of citizenship (LUCIANO, 2016). However, the citizenship in question refers to the one which is based on specific rights, which allows indigenous peoples, on the one hand, to maintain their own culture and way of life and, on the other, to ensure their right to access other cultures, technologies and worldviews, ending up (partly or fully) vanishing their own perspective of life.

⁶ The indigenous peoples were regarded as slothful or lazy for the simple fact that they resisted working as slaves for the colonizing exploiters who usurped their lands. Rocha (2009, p. 18-19), ironically, points out that such refusal is nothing more than a sign of mental health, but that the colonial Eurocentric system has always distorted the image of the one who denies it.



Therefore, it is important to highlight that, predominantly, Brazilian society, adopting an evolutionary and discriminatory conception of the history of humanity, persists in considering the indigenous population as being at a lower stage culture, in a way that allows their integration and assimilation to global culture. This scenario tends to generate a sense of inferiority in comparison to the natives, and ends up making them face two aspects: (a) confrontation by self-affirmation of their identities, and (b) recognition of rights.

It should be emphasized that the homogenization of "uncivilized natives" in Latin America⁷ by the peoples of the West points to a clash between the discourse of "us versus them", in which the figure of "we" refers to the Europeans and the "they" to the savage, barbarian peoples, the natives of those lands, who were (and still are!) excluded and disqualified for being distinct from the "we", since, according to Magalhães (2012, p. 26-28), "in the 'invasion' of America the modern device manifests itself for the first time in its radicality: the non-recognition of the other as a person; the non-recognition as the other." And even when "they" try to join "us", through what has already been cited as "integration", the ruling class ends up acculturating, disregarding its entire identity, culture and incorporating Western values, homogeneous and universal relations of a hegemonic imperialist society that disrespect the others just for being different.

An example of this is article 1 of the Brazilian Indian Statute, whose main objective is the *integration* of the indigenous people into "national community", that is, as Ramos (2016, p. 704) explains, "what was called harmonious integration of the indigenous people was actually imposed, in a true process of assimilation, by which their status of Indians was transitory", since such condition was something that even the natives themselves wanted to deny, becoming fully integrated, after all there was (and there is still) a conception that white Western society was/is superior, evolved and more developed.

Having that said, although the before mentioned Indian Statute has been a step forward in the protection of the rights of indigenous peoples one of the most

⁷ Beltrão (2014) notes that, for indigenous peoples, "the territory is the socio-spatial base that traditionally belongs to an ethnic group and with which the members of that group maintain ties of belonging and from it express cultural and socially removing or not from this territory all, part or very little of what is necessary for their survival". That is, the indigenous existence is directly conditioned to the land. It is through and because of their relationship with nature that the indigenous can develop their identity in a way that is consistent with their worldview and culture.



important Indian legislations (along with the 1988 Federal Constitution and ILO 169 Convention), it ends up sustaining a discriminatory and oppressive discourse by trying, to be worthy of humanity, to withdraw from the natives the right to be themselves, to remain Indians, to maintain their ethnic identity.

There are those, like Vitorelli (2016), who understand that the Brazilian legislator, at the time of the Statute, was still linked to international thinking about traditional communities, in the sense that the International Labor Organization (ILO) kept Convention no. 107, which prescribed that it was up to the native peoples to integrate themselves, enacted, although it had brought indigenous peoples' to the debate, what shows a clear discourse of a hierarchy of cultures and of imposition of Western culture over traditional ones.

In 1989, however, a new version of the Convention was adopted, now under the number 169, on Indigenous and Tribal Peoples, replacing and repealing such integrationist vision, focusing on fighting discrimination and defending equality among peoples. This normative instrument was only ratified by Brazil in 2002 and internally incorporated, through Decree no. 5.051 of 2004.

Along with the debate on indigenous issues in the Convention, the Brazilian Constitutional Assembly began the discussions to introduce the first democratic citizen's Constitution in 1988. Thanks to the organized movement of native peoples as well as to the process of re-democratization of the country, indigenous participation in the drafting of the 1988 Constitution was fundamental in order to make a significant advance on the matter, recognizing them no longer with the assimilatory purpose of being integrated into society, but to accept them as they are and with their particularities, as new collective subjects, in accordance to the 169 ILO Convention.

In light of this, the new constitutional order introduced after the promulgation of Brazilian 1988 Federal Constitution is deemed multiethnic and multicultural, as in article 231, the indigenous people are given recognition of maintaining their social organization, customs, languages, beliefs and traditions, as well as the original right over the lands they traditionally occupied, so that it is the responsibility of the State not only to demarcate them, but to protect them and their property. That is, 1988 Political Charter ends up considering cultural diversity as an element of value to be sustained and protected (PEREIRA, 2002).



It is understood from the reading of the Constitution⁸ that there is a central concern to bring to the legal sphere the question of the “other” when compared to the one established by the western society – the male, white, civilized, and Christian subject. Because of this, in accordance to article 215 and its paragraph 1, the State has the duty to guarantee the full exercise of cultural rights to everyone, contemplating full appreciation and diffusion of popular, indigenous and Afro-Brazilian cultures, and of other groups participating in the national civilizational process, being this essential for each traditional community to exercise their way of life.

It is worth noting, however, that although the 1988 Federal Constitution's innovation regarding the issue of self-determination, the acceptance and validation of their cultural diversity, as well as the recognition of land rights, there is *no significant change* in the reality lived by indigenous societies, as they largely depend on State affirmative actions and public policies, especially in regard to the demarcation of their lands, to make their rights fulfilled.

In fact, what happens in reality is that, in addition to not being effective, several attempts are made to elude the system in order to leave the demarcation procedure on the hands of the “ruralist” counterpart of the National Congress⁹, making the State long before a guardian of rights, its (main) violator¹⁰.

⁸ Souza Filho (2008, p. 357) recalls that, despite the fact that the Constitution of 1988 prevails for otherness and recognition of cultural identities different from the Western, "most legal actors remain insensitive to this change of perspective. The Civil Code of 2002, despite of not reproducing the text of the Civil Code of 1916 regarding relative incapacities of the 'silviculturalists', refers to the issue to be addressed by special legislation. However, in many cases, the Indian Statute of 1973 continues to be considered as this special legislation, omitting, in an unfortunate practice in Brazilian law, the constitutional text and its advances.

⁹ See, for instance, PEC 215, which is being processed by the Congress, that intends to transfer responsibility for the demarcation of indigenous lands from the Executive to the Legislature, as well as to redefine those already carried out. For more information, see <http://www.cimi.org.br/pec2015/cartilha.pdf> (accessed on May 30th, 2021). This topic is also being discussed within the Brazilian Supreme Court under case no. RE 1.017.365 which is under meticulous scrutiny precisely because it can - if the Legislative Branch does not approve the aforementioned constitutional amendment - increase or decrease the discretion of the government - that is, the Executive Branch - in the demarcation of indigenous lands. For more information on the case and the rights involved, see <https://www.conectas.org/noticias/marco-temporal-entenda-a-importancia-do-julgamento-no-stf-para-os-indigenas/> (accessed on September 30th, 2021).

¹⁰ Despite being more prominent in the current (political) situation in Brazil (that is, under Bolsonaro's presidency), this is not a situation “of the present”, but a repeated practice of abuses and occultations that, unfortunately, have not stopped with the 1988 Constitution, as mentioned, but surpassed its enactment. Take the not so recent example of the construction of the Belo Monte Dam, which flooded indigenous lands and led to their relocation without prior consultation as required by the ILO Convention 169, duly ratified by Brazil (Squeff, 2016). Nevertheless, it can be argued that, indeed, under the present government, indigenous peoples have been under great pressure when it comes to their rights, specially, the right to their land. See, for instance, the innumerable attempts of Bolsonaro's government to release mining operations in these spaces at <https://g1.globo.com/politica/noticia/2020/02/05/bolsonaro-assina-projeto-de-lei-para-regulamentar-mineracao-e-geracao-de-energia-em-terras-indigenas.ghtml> (accessed on June 25th, 2021).



Thus, even though there is some (inter)national concern regarding the safeguard of indigenous rights, the clear universalization of human rights and its reading deriving from a Constitution that still vouches for a developmental and occidental approach in a veiled way, ends up creating a bigger domestic problem because of the overlook of plurality and the particularity of indigenous peoples – especially when it comes to their biggest/current agenda, i.e., the demarcation of lands, which is not yet materialized, making it possible to say that the thought of Vitória and Las Casas are in a certain way still present, helping in the concealment of the indigenous people.

Final remarks

Francisco de Vitoria is considered one of the founders of International Law and is known for his just war theory. Despite of the fact that he saw both indigenous people and European as the same before God, that is, no more as beasts or animals, but people with little education, infantilized, who had to be catechized, he did vouch for the approval of the use of force against them, as he understood that the only way to protect innocent victims, from many sorts of violence such as cannibalism and human sacrifice, as these actions gave legal basis for waging war against indigenous peoples (SILVA FILHO, 2008).

In other words, he legitimated just war in order not only to catechize indigenous people where preaching was not allowed, but also for them not to perpetrate such devious conducts; and, moreover, to confirm the economic and political domain of Europeans over indigenous land, since, in his opinion, they were unable to administer a state on their own because of their childishness. In addition, based on free trade, to supports the licit war of the Spanish against the natives in America, who would become subject of slavery as they rejected the right of free circulation and catechization, Vitória did not recognize indigenous resistance as legitimate defense.

On the other hand, Bartolomé de Las Casas, in a more humanistic view, was against all the reasons for the practice of the just war, considering them illegitimate, as well as positioning itself as contrary to the use of force to evangelize the peoples and judging just and legitimate the indigenous resistance against the aggressions of the European conquerors. Las Casas considered both indigenous and Europeans as human



beings, even before the catechization of the former. In his opinion, there was not a natural hierarchy among “barbarians” and “the Spanish” that could justify such violent domination, thus, considering all the wars conducted by the Spanish illegitimate – including those wars engaged in order “to save” innocent victims. After all, for him, no violence could be considered legit, as, in his understanding of God’s words, it could not be spread with arrows (WALLERSTEIN, 2007). Besides that, war also generates hatred instead of love; therefore, indigenous population should be introduced to Christian faith with kindness and charity.

Hence, from the dialogue between the two theologians as exposed, and in light of the problem that this study intended to address on the possibility of their discourses as the basis of indigenous concealment due to their influence on the way indigenous populations were and are still treated within American states, first it can be affirmed that Las Casas humanistic approach did not “win”, as war did break down in Latin America, initiating a true genocide before this crime was even defined under International Law.

Normally, however, authors as Wallerstein (2007) say another author’s ideas prevailed Bartolomé de Las Casas ones when it comes to the use of violence against “barbarians” and the moral duty to catechize them trumping any possible illegality, as Juan Ginés de Sepulveda. But it should be said that Sepulveda bases a great part of his work on Francisco de Vitoria just war theory, which, at the end, confirms the need for intervention through war, instead of a pacific introduction to God, and, thus, why the argument to contradict Las Casas should be Vitoria’s (and not Sepulveda’s).

In any event, from this analysis, it can be said that all this discussion made by the Spanish theologians, in fact, served as a basis for the process of concealment of the indigenous peoples, for the following reasons: (1) because it confirmed the idea that indigenous population was considered inferior to Europeans as they lacked Christian faith and their customs were quite different from what was defined as normal or moral to the civilized world (that is, European); (2) because it confirmed the role that the white, male, European had in saving the indigenous people from themselves (since they are seen as “wild”/“barbarians”), asserting the “universal” moral values they carried were the ones to be considered and, thus, taken as a pattern to be followed.

As an example, in Brazil, there is a governmental authority that regulates indigenous affairs controlled by white, male, non-indigenous people, confirming such



concealment. Besides that, there is a specific legislation that regulates the rights and guarantees of indigenous peoples, called the Indigenous Statute. Such legal instrument aims to the integration of the indigenous into the national community, that is, the white, patriarchal, capitalist, western culture, disregarding themselves and their culture, and, consequently, treating them as inferiors.

Finally, it should be mentioned that such victory of Francisco de Vitoria's argument was dropped in the 1960's with the establishment of the United Nations Declaration on Independence of Colonial Territory's as it confirms the right of self-determination, and – chiefly – the 169 International Labor Organization Convention that defends the application of culture to the limit of national and international basic human rights in article 8, leading to an overturn on this dialogue, marking Las Casas and his non-violence theory ascendance (WALLERSTEIN, 2007).

However, there are two considerations to be made regarding this “overturn”. Despite of the fact that such declaration validated Las Casas discourse, it also allowed the colonized to see all injustices and limitation they suffer from the current Global North, (still) leading to a violent outcome as the northern hemisphere will not easily let go of their influence over such part of the world. Besides, not even international law can be fully seen as an equal platform of speech as it also allows interventions in name of the protection of human rights, especially after the end of the Cold War and the beginning of the ‘Responsibility to Protect-based interventions, which are also set by male, white, Christian individuals from the global north.

To conclude, in the beginning we asked if it were possible to say that, even after more than 500 years, the thought about indigenous people has been maintained; and we can say, unfortunately, that it could. Indigenous peoples continue to suffer from the imposition of a model of life different from their own, with the denial of their existence as their own culture, that is, there is still concealment, because of all this conception of inferiority. Brazil is, regrettably, an example of this, since, insistently, native peoples are placed concealed, despite the normative instruments existing today that are, in fact, aimed to increase plurality through the recognition of their rights.



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