

# Providence: Studies in Western Civilization

---

Volume 1  
Number 1 *Fall 1992*

Article 7

---

9-1-1992

## The Rights and Duties of Spaniards and Indians-A Declaration by Francisco de Vitoria

Luciano Pereña Vicente  
*Pontifical University of Salamanca*

Follow this and additional works at: <https://digitalcommons.providence.edu/dwcjournal>

---

### Recommended Citation

Vicente, Luciano Pereña (1992) "The Rights and Duties of Spaniards and Indians-A Declaration by Francisco de Vitoria," *Providence: Studies in Western Civilization*: Vol. 1: No. 1, Article 7.  
Available at: <https://digitalcommons.providence.edu/dwcjournal/vol1/iss1/7>

This Essay is brought to you for free and open access by DigitalCommons@Providence. It has been accepted for inclusion in Providence: Studies in Western Civilization by an authorized editor of DigitalCommons@Providence. For more information, please contact [dps@providence.edu](mailto:dps@providence.edu).

## The Rights and Duties of Spaniards and Indians-A Declaration by Francisco de Vitoria

by LUCIANO PEREÑA VICENTE

**T**HE DISCOVERY OF THE AMERICAS soon degenerated from an encounter of two cultures into a collision between two worlds that resulted in depopulation, exploitation and even repression of the indigenous peoples. The reaction by Spanish missionaries and moralists brought about the first crisis of national conscience in Spain. Spaniards were the first to denounce and condemn the abuse and cruelty of the early stages of the conquest of the New World. Nothing similar to this happened in Renaissance Europe.

Francisco de Vitoria began by denouncing the conquest of Peru, the assassination of the Inca Atahualpa, the plunder of gold and the distribution of land by Francisco Pizarro to the conquistadores. He demanded that restitution be made of everything that had been stolen and misappropriated. He was also afraid of being accused as anti-patriotic for disavowing the Emperor's orders, and as a religious dissident for speaking against the Pope's actions.

The teachers of the School of Salamanca continued to accuse the soldiers of theft and of the murder of Indians; the *encomenderos* of greed and exploitation; the colonial authorities of permissiveness and abuse of power; the Royal *Audiencias* of miscarriage of justice. The conquistadors were — to a great extent — responsible for Indian depopulation.

Finally, they denounced the official laws of *Requerimiento* that so

far had legitimized the conquest of America. Through a slow process of study and investigation they contested the theological bases of papal theocracy that was being revived in Pope Alexander's bulls. Although the Indians might refuse to recognize the sovereignty of the Emperor or Pope, it was not just or legal to engage in war with them or to take possession of their assets and territories. Nevertheless, it would also be unfair to exaggerate the seriousness of the denunciations and accusations that set in motion a program of vindications.

### *Program of Vindications*

The Program of Vindications consisted of five basic principles: (1) There was basic equality between Indians and Spaniards as human beings. (2) The backwardness of the Indians was the result of lack of education and their uncivilized customs. (3) Indians were the actual owners of their property, as Christians were of theirs and could not be deprived of it because of their lack of education. (4) Guardianship and protection of the Indians could be entrusted to Spaniards while Indians were in a condition of underdevelopment. (5) Mutual consent and free election by the Indians constituted, in the last analysis, the primary right for intervention and government.

Francisco de Vitoria and his School started by *vindicating* the nature of the Indians as human beings at a time when doubts in this respect were expressed by historians and politicians. This doctrine, which acknowledged the fundamental freedom of the Indians, was the basis for condemnation of the theologians and jurists who maintained, within the *Consejo de Indias*, that the King of Spain had the right to make slaves of the recently discovered Indians.

Vitoria *vindicated* the basic social and political freedom of the Indians against the system of slavery to which they had been subjected by the earlier conquerors and demanded from the Crown the proclamation and acknowledgement of such freedoms as well as intervention on behalf of the liberation of Indians, thus bringing

about the official abolition of slavery in all the territories of the Indies.

Always mindful of the policies of repression and exploitation, he *vindicated* for the Indians the right to be free from violence on the part of their conquerors, from the greed of *encomenderos*, from repression by the government, from injustice by judges and *Audiencias*, from the tyranny of their own chieftains, and the scandalous conduct of priests and gospel traffickers. He substituted for all these an authentic theology for liberation of the Indians.

He *vindicated* the right of Indians to live in peaceful coexistence, to defend and protect their national identity, to be educated and socially advanced, to be fairly taxed and receive equitable services, to be free to work and earn fair wages, to receive justice and fair treatment. He delineated the ethical principles that contributed so much to the policies of liberation by resorting to theology and conscience. Thanks to the efforts of the School of Salamanca there were many royal ordinances and canonical proposals in favor of the liberation of Indians.

Missionaries and theologians in Vitoria's School worked for the above vindications by pressing the Crown for proper measures. They tried to give the Indians a better idea of their rights and obligations, since their fundamental right as human beings carried with it the duty of improving themselves by abstaining from barbarous customs and certain atavistic instincts.

Based on this *Declaration of Vindications* the School of Salamanca defined the objectives of Spanish intervention in America, as well as the nature and conditions for the presence of the Crown as a political protectorate at the service of the Indians, now conquered and subjects of the Spanish King. Vitoria's disciples recognized the right of the King of Spain to intervene in areas of the Indies in which it was known that certain kings and chieftains of tribes recently discovered behaved as tyrants, but only when such subjects as victims of repression could not be liberated except by armed intervention and were unable to enjoy their rights to coexistence

unless the tyrants were removed.

The School recognized Spain's right over such territories and peoples of the New World, but only if native kings and leaders were despotic. In order to force them to desist from their crimes against humanity and free their victims from cannibalism and other indignities, it was acknowledged that the Spanish Emperor had the right legally to assume the government and remain in those territories until total elimination of repressive regimes and their crimes had been achieved.

Solely through the concession of free will of the Indian peoples, who were sovereign by their own right, or through a delegation of the community for the defense of innocent people, the Spanish Emperor had, or could have, some type of authority, sovereignty or jurisdiction over the peoples of the West Indies or over their Indian princes or chieftains.

Any form of power of the Castilian Crown over America that could be justified would be considered legitimate, in the final analysis, by the free will of Indians. Even the power of the viceroys and their subordinates, who were delegated by the Spanish Emperor to govern the various territories of the Indies, derived their authority from the Indian peoples themselves.

The Vitorian principle of respect for sovereign will was discussed particularly by Alonso de Veracruz, a disciple of Vitoria and a professor at the University of Mexico. The sovereign groups of Indians under the protectorate of the Crown of Castile were beginning to form a true community of peoples on the basis of mutual respect for political freedom, effective solidarity as it referred to mutual responsibilities, and the responsible coordination of limited sovereignty; all of these form a first condition in a political protectorate.

The principles of such a protectorate at a historical moment of colonial reconversion suggest the first European attempt at conciliation between the victors and the vanquished. Were it not for the pragmatism of economic interests that eventually predominated,

the model created by the School of Vitoria might have advanced the independence of American lands by several centuries.

While Francisco de Vitoria proclaimed the fundamental rights of Indians by confronting even Spaniards when they acted unjustly, he also justified intervention by Spain in America when required by solidarity and human advancement. The Spanish kings had assumed the burden of a mandate for the purpose of enabling natives of the Indies to integrate themselves into the community of civilized peoples, based on equal rights.

In the interests of lands discovered the Spanish sovereigns had the right to take charge of their administration by appointing the proper authorities and even imposing new governors in order to insure the progress and development of the inhabitants. Colonization, therefore, was evolving by giving priority to the right of protection of the native peoples, which is a second condition in a political protectorate.

The lands overseas had not been conquered with the aim that their riches should be used for development of the metropolis, or that their inhabitants should serve Spanish interests exclusively. Alonso de Veracruz added that it would be unfair for the Spanish government to transplant to the Indies the interests and privileges enjoyed by the Crown instead of considering the welfare of the native population. He thought that there would soon be an end to the exploitation, repression and extermination of the natives.

It is true that Vitoria vindicated the right of transfer and sharing of assets, and as a result of these two civil rights Spain intervened and occupied the territories in order to assist and defend the Indians; Spain had the right to uphold such occupation, but only as long as its presence was deemed indispensable for Indian advancement and political development.

The protectorate assumed the obligation to train the peoples by the appointment of capable authorities to insure skillful administration, missionaries to spread the Gospel, and teachers and colonists to instruct the natives in how to improve their lands with agricul-

tural equipment.

Vitoria acknowledged implicitly that Indians had the right to national integrity and sovereignty over their territories, as well as the fundamental right to dispose of their natural resources. As free and sovereign people, Indians could justly forbid the Spaniards to extract gold from their mines and pearls from their rivers. They could also limit and even prohibit the immigration of foreigners whose purpose was to engage in any kind of trade, business or exchanges that might be detrimental or harmful to the natives. Herein lay the third condition of a political protectorate.

The Crown upheld its sovereignty over many kings and peoples of the Indies. Its imperial power had to be compatible with the sovereignty of Indian nations. There were mutual rights and obligations that conditioned and limited the relations of Spaniards and Indians in the New World. For the School of Vitoria the right of intervention in America had its basis of legitimacy in a treaty of cooperation or in the mandate for protection and defense of human rights. Such rights should not cancel out political freedom. The protectorate had to be the means for protection and social development in Spanish America.

The aim of colonial reconversion should be independence. The colony would eventually turn toward self-government and deadlines were even set to end the mandate for protection. Consequently, the Crown had to restore to the Indian peoples their full traditional rights and grant them independence if and when their leaders attained a level of civic education that might reasonably be expected to result in a government based on fair and Christian principles. For the time being Francisco de Vitoria excluded this possibility because he believed it likely that the Indians would return to their traditional forms of paganism and despotism.

He admitted, however, that self-government, under protection could be freely demanded by the Indians at any time, provided they were capable and willing to engage in it, leaving them to decide when they had achieved sufficient development for the humane use

of their political freedom. The Crown assumed the duty of gradually promoting the progress of the people under its protection until they reached political maturity.

Former leaders of the Indians would eventually resume full authority with the rights that they had lost, insofar as such authority did not interfere with the sound government of the Indians or their cultural and spiritual development.

Colonial reconversion turned the former *encomiendad* into a true regime of social advancement that worked for the benefit of the Indians rather than for the Spanish *encomenderos*. They therefore ceased to be a means for exploitation and social slavery.

The economic product of the Indies would be invested primarily in the effort of civilization and Christianization assumed by the Crown, taking into account that papal donations and the international mandate were aimed principally at converting the Indians. The King did not have the right to divert the funds to other kingdoms in a manner that might be harmful to the people under its protection. But if the Spanish Crown could not, under such circumstances, legally abandon the Indian peoples, it could hardly fulfill its obligations as protector without the presence of Spanish soldiers and colonists and without the exploitation of precious metals, cultivation of the land, and trade and treaties with Spanish Empire; however, the Spanish sovereigns did not have the right to arbitrarily dispose of and transfer Indian territories.

They believed that the Spanish presence in America should not contain more Spaniards than were necessary to "support the land," or to carry on the process of evangelization, to administer justice, and to engage in reasonable use of the land. The School of Vitoria requested from the Crown stricter control over travelers to the Indies in order to avoid too great an influence of foreigners. They wished to avoid forcing the Indians to perform forced labor in the mines and farms for the exclusive benefit of Spaniards.

By 1560 the visitor, Tomás López proposed that Indians take the reins of their government gradually into their own hands. At the



end of the sixteenth century the creole Zapata y Sandoval, a professor of Mexico and Bishop of Guatemala demanded that the people of America be governed by Americans. Natives, either Indian, Creole or Mestizo, were capable of leading their own peoples and should have priority over Spaniards born outside the Indies.

Natives of those territories had deeper knowledge, greater interest and love for their land, and the capability of making sacrifices and performing services for the good of their people better than outsiders could. In addition, they were more anxious to resolve conflicts and problems.

These were the guidelines of the project for colonial "reconversion" as outlined by Francisco de Vitoria that the School wished to put into practice. Did this project remain in the realm of a utopian dream? Did the Crown even attempt its political application?

### *Official Proclamation of Freedoms*

Professors of the School of Salamanca demanded from colonial authorities respect for the human condition of the Indians, for their capacity for development, and even tolerance toward their historical and religious traditions regardless of their negative nature so long as they contributed to human progress. They demanded from the Spanish King progressive legislation that would inform Indians of the benefits of Christian faith and civilization. This program of vindications culminated in the official declaration of freedoms. It would seem that the guidelines of the School of Salamanca were being put into political practice.

Emperor Charles V enacted the *New Laws of Indies* on November 26, 1542, in response to urgent requests from the *Cortes* and other authorities of the Kingdom in order to put an end to the abusive and cruel behavior of the conquerors of America. This basic law was supplemented by the new *Proclamation of Freedoms*.

The Emperor proclaimed freedom as a fundamental right of the Indians, and slavery was abolished in principle.

Henceforth no Indian may be enslaved as a result of war, rebellion, ransom, or for any other reason. And as for those who may be slaves without reason or right of the existing provisions and instructions, we command that the *Audiencias* — known as 'Parts' — set them free immediately upon learning of their status and without any previous legal process upon learning of their status, if those who own them as slaves are unable to prove the legality of such ownership.

The Emperor proclaimed freedom of work for the Indians. They were forbidden to carry loads, except when required by the lack of animals or roads. Such burdensome work had to be voluntary, not forced and had to be performed without harm to their health. Those who forced Indians to perform hard and dangerous work in the fisheries could suffer the death penalty. Divers would be volunteers, but if the death rate should continue to be high, diving for pearls would be banned. "We regard the preservation of lives, as is logical, of much greater priority than the benefit derived from the pearls."

The Emperor proclaimed that Indians be free in choosing a place of residence and in disposing of their property. It was strictly forbidden to take anything from the Indians against their will. The law stipulated the tribute to be paid by the Indians to the Crown as subjects. They would be taxed moderately and the amount of their contributions would be lower than that paid by them to their chieftains and natural leaders. In order to promote demographic growth, the Indians of Hispaniola, Cuba and San Juan (Puerto Rico) were exempted from paying taxes and from servitude. Indians could not be forced to abandon their homes. They had the right to return freely to their place of origin.

The Emperor proclaimed the freedom of Indians to maintain their institutions and recover their property. Conflicts among Indians would be solved by legal process according to fair and acceptable Indian usage and customs. Severe punishment would be imposed

on anyone who killed, wounded, laid his hands on an Indian with harmful intentions, or took his wife or daughter or caused grievous offense to them. Chieftains were to be restored to their positions, and the *Audiencias* or reliable persons appointed by them would take charge of protecting the Indians from harm against their lives, their freedom, or their possessions. The structure of the New World was regulated.

The Emperor proclaimed the freedom of Indians to perform personal service. He revoked the regime of *encomiendas* as a form of repression. The granting of new *encomiendas* by any right of property or authority was forbidden. The *encomiendas* of viceroys, governors, judges, members of the Royal Treasury, bishops and other religious personnel and monasteries were abolished, as were *encomiendas* of persons guilty of involvement in the conflict between Pizarro and Almagro. These measures were supplemented by punishment for the abuses and mistreatment suffered at the hands of the *encomenderos*. All existing *encomiendas* would also be abolished at the death of the respective *encomendero*.

Thus did the Spanish crown define its new responsibilities within colonial policies. It made it the special duty of the *Consejo de Indias* to preserve and protect the Indians. It entrusted the Attorney General with the specific mission of defending and enforcing the law. The *Audiencias* were assigned the duty of protecting the natives by insuring strict compliance with the respective legislation. The position of General Defender of the Indians was created.

The development of this basic law took place over a period of transition that lasted about twenty-five years. Until the death of the Emperor in Yuste there were more than thirty revisions. The law marks the final break with the colonial policies of the earliest conquest. The law of 1542 was published in Alcalá and sent to the Indies in a large number of copies destined for the *Audiencias*, governors, judges and the people; missionaries were instructed to translate it into the various indigenous languages to make it accessible to the Indians. It was read publicly in all the towns from

authorized translations that were sent to the religious and to monasteries, asking them to try and make them understandable to the natives for whose benefit they were mainly intended.

In order to enforce the above rights and to continue with the process of colonial reconversion, the *encomiendas* were subjected to in-depth review during the Councils of 1542 and 1545 in Valladolid. It was then that the Emperor stated that he could not abandon the Indies. He had the right to pacify them and to insure the lasting presence of the Christian religion for the good of the Indians, but the Emperor urged conquerors and natives to arrive at an understanding in order to preserve the vast land that had cost so many lives in discovery and conquest. Pacification, population and advancement of Indians and Spaniards were the three fundamental bases of colonization. A series of reforms and corrective measures was introduced as an effective means for social advancement and reconciliation in the interests of conquerors, Indians, and the Crown.

Although the system of *encomiendas* was preserved, it was under condition that the principal cities and seaports of the kingdom be transferred to the Crown; that further privatization of the remaining land by individuals guarantee fair treatment of the Indians; and that no civil or criminal jurisdiction be invested in the *encomiendas*. They would no longer be regarded as a reward for conquest but rather as a means to insure social advancement, stability, and Crown security. This advancement of the Indians was precisely the basis alleged by the Emperor to legitimize a permanent Spanish presence in America. Continuity and control by the Crown, with all its rights and duties, were secondary to the primary objectives of peace and population growth.

The wars of conquest — another colonialist institution — were also subjected to an intensive process of colonial reconversion. The Emperor made a heroic effort of bringing armed conflict within the law, including abandonment of the system of armed conquest in the instructions addressed to Marqués de Cañete, Peruvian Viceroy.

This is the third proof of his testimony. Reasons of state and also of conscience brought about substantial changes in the existing judicial framework.

As early as the agreement signed in 1544 with Francisco de Orellana for the discovery of Nueva Andalucia it was stated that, "there shall be no manner of war against the Indians, or give cause for same, unless it is in self-defense and within the moderation that is possible in each case."

In the instructions given in 1546 to Governor Pedro de la Gasca for the pacification of Peru, he was forbidden to authorize new conquests. In a letter dated January 18, 1548 the Emperor asked his son Prince Philip to try anew to populate and reorganize the Indies. To this end he recommended that current and subsequent oppression by conquerors be made to cease. He asked for control of authorities who came to the colonies with evil intentions and took advantage of their position. He asked that the authority, superiority and preeminence of the Crown be upheld, and to see to it that Indians were protected so far as was just.

According to these new guidelines of colonial policies, by Royal Decree of April 29, 1549 the Emperor ordered the judges of the *Audiencias* and the Royal Chancellory of Nueva España that "now and henceforth none of you must be involved with fleets or with discoveries." By another decree of May 22 addressed to the President and judges of the *Audiencia* of Peru, the Crown recognized the need to abstain from abuses that had been committed up to that time. "When trying to take possession of land for future populations effort should be made to avoid injury to the natives living on such land, but that when such injury is unavoidable it shall be done only upon agreement with the Indians and within reason."

However, in its consultation with the Emperor on July 3 the *Consejo de Indias* admitted the impossibility of complying with the directives regarding conquest. It was conscious of its failure and is also aware of the controversy between Las Casas and Sepúlveda over the legitimacy of the conquest. For these reasons the *Consejo*

proposed that a meeting of theologians and jurists be convened for the purpose of studying how the conquest might proceed justly and with an untroubled conscience.

By a Resolution dated December 31, 1549, and following the recommendation of the *Consejo de Indias* the Emperor ordered that "no Spaniard or any other should dare to enter any island, or province, or another part of the said Indies, even with permission of our appointed authorities, under penalty of death or loss of all their possessions." And more precisely, by Royal Warrant of April 16, 1550 he expressly suspended the wars of conquest. "In order that they may be carried out with good reason and with a clear conscience we have ordered that the matter be discussed, and since no resolution is made on the manner in which such wars should be conducted, it is necessary to suspend them and the new discoveries that are being made at present."

The Council of Valladolid convened on July 7, 1550, resolved against the wars of conquest. On May 13, 1556, the emperor ordered the colonial government to pursue a policy of peaceful colonization rather than conquest.

The process of colonial reconversion initiated by Charles V in 1526 would culminate in these instructions being addressed to the Peruvian Viceroy Marqués de Cañete in 1556, later reiterated for the governments of Nueva Granada (1559), Nueva Galicia (1560), Quito (1563), Rio de la Plata (1563) as well as for Viceroy Francisco de Toledo in 1568.

In 1556 The Crown abandoned the policy of armed conquest for domination and exploitation, and substituted a system of peaceful expansion through the establishment of towns and colonies on the edges of unconquered territories. The presence of Spain in America was not renounced, nor was the right to remain in the Indies considered illegitimate.

The right to a just war was defined and applied exclusively to the defense of preachers and Indians converted to the Christian faith, and the aid and defense of natives victimized by tyrants. It was up

to the *Audiencia* to determine the need for the use of force, which in any case should be the reasonable minimum for self-defense when there was no other recourse, and always with the least possible harm to the Indians. The purpose was to populate the land and incorporate Indian welfare into all policies. This was to be achieved through persuasion, friendly relations, peaceful coexistence, trade and social collaboration. For reasons of state and conscience armed conquest was abandoned.

The Crown decided to colonize the Indians by peaceful means of negotiation, preaching and trade. The settling of Spaniards in America would be carried out through agreement with the Indians and respect for their good will. The aim was to achieve spiritual and material benefits by attracting Indians through good treatment, which was equivalent to reinforcing the Emperor's power by agreements for submission of the Indians.

### *Legal Hypocrisy of the Crown*

Despite the many distorted interpretations of the conquest of America, *nobody*, it would seem, has dared to deny the amazing greatness of the juridical work known as *Indian Law (Derecho Indiano)*. At most there have been attempts to discredit it and accuse it of being an ineffective form of political utopia.

The Uruguayan writer Eduardo Galeano accused the Crown of legal hypocrisy which, he says, had no limits. From the Spanish Court came an endless stream of ordinances that granted the Indians protection on paper and dignity in ink. The fiction of legality protected the Indians, but actual exploitation degraded them. Revisions introduced in the legal condition of Indian labor changed their real situation only on the surface. The law was accepted, but was not obeyed in practice.

Servando Teresa de Mier, theorist of the independence of America, made the Spanish Crown responsible for the extermination and destruction of the New World by its ineffective and utopian laws, as well as by the corruption and the repression imposed by colonial

authorities. The laws of the Indies, he said, existed only in name and in most instances only served to underscore the injustice and the abominable despotism under which all rights were crushed. It was a utopian declaration of rights where only the interests of the victors were considered. In his opinion the laws of the Indies were really a catalog of crimes due to the corruption of the authorities. Each law was passed in order to contain the criminal excesses of the conquerors. Most of the laws passed for the common good of America resulted in greater evils. The conquerors of the American Indians kept from them any knowledge of such crimes.

For Guillermo T. Raynal, encyclopedist and a critic of the conquest, the Crown was guilty of the extermination of Indians. The Spanish sovereigns were responsible for the crimes of their subjects because of their policies of exploitation and because of their tyrannical repression contradicting the utopian nature of Indian Law.

It would be difficult to deny the good legislative will of the Crown despite the obvious failure of some of its laws. Only three cases are claimed, which may be true but which are incompatible with the general intentions of the Crown.

On July 3, 1627, Philip IV wrote to the Viceroy and the *Audiencia* of Mexico:

I wish to have satisfactory explanations as to your treatment of my subjects; if this is not done and if suitable punishment is not applied to those who have disobeyed the law, I shall consider myself not properly served. You may be sure that if you do not take the necessary measures I shall do so myself and will regard even the slightest omissions as serious offenses against God and against me and as the total destruction of those kingdoms, whose natives I respect and love and must be treated as subjects who serve the Crown and who have so greatly contributed to its greatness.

The Council of 1566, presided over by Jerónimo de Loaysa, Archbishop of Lima, complained that even more tyrannical and



cruel depopulation continued in many areas of the Indies "because royal commands were not obeyed." The town of Popayán informed His Majesty in 1562 that no royal decree was obeyed despite the limitations that were imposed. "Due to vested interests, fear, human passions and other reasons, no royal decree of the many that have been issued by Your Majesty for this land has been obeyed and will not be obeyed, as experience has proved." The Crown was addressed in order to trouble the Emperor's conscience, since it was not sufficient to pass laws promoting repopulation and Indian advancement if they were not enforced and strictly obeyed. It was not enough to acknowledge the rights of the Indians and proclaim them officially to *Audiencias* and governors by new laws, royal warrants and provisions.

It is surprising to see the enthusiasm with which theologians and teachers of the School of Salamanca praised the warrants issued by the Crown for the good government of the Indies and emphasized all their reports and statements of vindications in defense of the Indians. The sovereigns were never accused of hypocrisy. It was believed that *Indian Law* as mandated by the Crown could be an effective tool for progress and that it could free the Indians from all manners of social, political and economic servitude if it were faithfully complied with by conquerors and authorities.

The fact is that royal laws and ordinances were not complied with either because of ignorance, permissiveness, outright disobedience or bad faith. Sometimes the laws did not reach conquerors and *encomenderos*, "who were as unaware of them as if they had never existed." Even López de Solís, in Quito, ordered that a catalog be made of all the forgotten laws for the defense of Indians, for the *encomiendas*, and for the conquest.

At other times Royal *Audiencias* and high authorities in the administration, who were specifically most responsible for the enforcement of the law, ignored it with unnecessary delays allowing and tolerating their non-compliance in collusion with the offenders.

Usually both conquerors and *encomenderos* engaged in civil dis-

obedience and refused to comply with ordinances from the Crown in agreement with local authorities. Uncontrolled greed and the ambition to return home laden with gold fostered bad faith and civil disobedience.

Luis Sánchez, who was secretary to Juan del Valle, Bishop of Popayán, ended up by identifying political responsibilities and those who were guilty of the evils committed in the Indies despite legislation and humane reforms introduced by the Crown.

Colonial administration was mainly responsible for the ineffectiveness and failure of the *Laws of Indies*. From Quito López de Solís denounced expressly from Quito the repression imposed by the authorities over the Indians, the fraudulent practices of protectors of the Indians, and the greedy complicity of administrators. The result was often economic exploitation, the failure of institutions, and the hypocrisy of political delegates.

These same witnesses from the School warned, however, that, in the final analysis the Crown was also responsible for the policies of its governors and administrators of the Indies and could not ignore such responsibility. In defense of the Crown Luis Sánchez spoke of the Indies as vast and very distant lands, about which information was lacking. Moreover, the reports received by the *Consejo de Indias* were contradictory and false. "Mistrust does not permit one to hear the truth when one does not know whom to believe." The visitor, Tomás Lopez Medel, associated in part the failure of the new laws with lack of knowledge of and adaptation to Indian reality. For this reason the Holy Council of Popayán (1558) held the emperor responsible for the incompetence of high officials, the failure of institutions to guarantee the Laws, and the delay or lack of measures to insure compliance with royal decrees. Juan de Zapata y Sandolval, Bishop of Guatemala and professor in Mexico, found no other solution but the appointment of Indians by the Crown to govern the Indies. It was an attempt to "Americanize" the government of America.

The spirit of Francisco de Vitoria has had profound influence, even today, on the common approaches to Latin America, which is

often criticized for lack of solidarity, fear and silence. The Charrúa Indians who represent Uruguayan indigenous cultures have expressed their respect and admiration for the ideas of Francisco de Vitoria which contributed so much to the defense of American Indians. During the Congress of Indigenous Cultures held in San Martín de los Andes, Chilean Indians formally invoked the authority of Francisco de Vitoria as fundamental to their present claims. More recently the Indians of the Calchaquí Valley in the province of Tucumán have reached an agreement with the Argentine government for the return of their lands. For this purpose they used, as their only recourse, the Royal Warrant of the Spanish Crown that was ignored by subsequent legislation during the period of independence.

It is true that Americans recognize that there were massacres and that the Church must admit its share of responsibility. To deny or try to ignore these facts would be naive. They do acknowledge, however, that there was some protection for the Indian; that whereas in North America the Indian was exterminated, in Spanish America the Indian mixed with the colonist. This biological and cultural formation of new national identities is what deserves and needs to be celebrated. Conquerors and politicians, teachers and missionaries, were engaged in a battle that was a mixture of extreme cruelty and infinite charity. Amidst the abuse and the crimes was born the new America in the name of the Gospel and human rights.

This is how many Spaniards and Americans wish to celebrate the 500th anniversary of the discovery and evangelization of America by remembering the message left by Francisco de Vitoria for peace and reconciliation, for human rights and dignity, for solidarity and sharing of resources, for denunciation of and rebellion against social injustice. They wish a celebration of his message of understanding and progress for all peoples, and believe that any other version or interpretation is a fraud against American conscience and a distortion of American history.

(Translated by Alexandra Tcachuk)

---

*Bibliography and Sources*

De Acosta, Jose. *De procuranda indorum salute*.

Madrid: Corpus Hispanorum de Pace, vol. XXIII, XXIV, 1984, 1987.

De la Peña, Juan. *Tractatus de bello contra insulanos*. Madrid: Corpus Hispanorum de Pace, vol. IX, X, 1982.

De las Casas, Bartolomé. *De regia potestate*. Madrid: Corpus Hispanorum de Pace, vol. VIII, 1984.

De Vitoria, Francisco. *Relectiones de indis et de iure belli*. Madrid: Corpus Hispanorum de Pace, C.S.I.C. 1967, 1981.

López Medel, Tomás. *Colonización de América: Informes y testimonios*. Madrid: Corpus Hispanorum de Pace, vol. XXVII, 1990.

Pereña, Luciano, and Baciero, Carlos, eds., *Carta Magna de los Indios: Fuentes Constitucionales*. Madrid: Corpus Hispanorum de Pace, vol. XXVII, 1988.

Pereña, Luciano. *La Escuela de Salamanca: Proceso a la conquista de América*. Salamanca, 1986.

\_\_\_\_\_. *The Rights and Obligations of Indians and Spaniards in the New World*. Salamanca, 1991.

\_\_\_\_\_. *La Escuela de Salamanca: Conciencia crítica de América*. Salamanca, 1992.

Pereña, Luciano, ed. *La Escuela de Salamanca: Etica en la conquista de América*. Madrid: Corpus Hispanorum de Pace, vol. XXV, 1984.

\_\_\_\_\_. *Doctrina cristiana y Catecismo para instrucción de indios*. Madrid: Corpus Hispanorum de Pace, vol. XXVI-1, XXVI-2, 1985, 1986.

\_\_\_\_\_. *Carta Magna de los Indios*. Salamanca: Catedra V Centenario, vol. I, 1987.

\_\_\_\_\_. *Inculturación del Indio*. Salamanca: Catedra V Centenario, vol. II, 1988.

\_\_\_\_\_. *La Protección del Indio*. Salamanca: Catedra V Centenario, vol. III, 1989.

\_\_\_\_\_. *Proceso a la leyenda negra*. Salamanca: Catedra V Centenario, vol. IV, 1990.

\_\_\_\_\_. *Descubrimiento y conquista Genocidio?* Salamanca: Catedra V Centenario, vol. V, 1991.

\_\_\_\_\_. *Utopía y realidad indiana*. Salamaca: Catedra V Centenario, vol. VI, 1992.