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Matías De Paz and the Introduction of Thomism in the *Asuntos De Indias*: A Conceptual Revolution

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Abstract

Most of the writings dedicated to assessing the contribution of the Spanish Second Scholasticism to the controversial issue of infidels' dominion began their analyses with the well-known Francisco de Vitoria's *Relectiones* (1532). This article offers a reconstruction of the history of the theological and juridical debates on this key issue on the Iberian Peninsula since the late 13th century. Special attention is paid to friar Matías de Paz, who was asked to offer his advice on the early patterns of rule and domination imposed on the Native Americans at the *Junta de Burgos* (1512), introduced to the discussions about *asuntos de Indias* the Thomist conceptual framework later employed by Vitoria, Soto, Suárez and many other prominent members of the so-called School of Salamanca. The article shows that it was, in fact, De Paz who first considered the Amerindians infidels affected by an »invincible ignorance«, and he tried to curb some of the many abuses committed against them by applying the distinctions between different types of *dominium* and *principatus*.

Keywords: School of Salamanca, Thomism, infidels, dominion, rule, just war, conceptual history



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Introduction. Early Salamancian approaches to infidelity, the right to dominion and just war (15th century)

Even if most of the studies dedicated to the School of Salamanca's contribution to the theory of just war in the early modern period begin with an analysis of Francisco de Vitoria's famous *Relectiones*, the reflections focusing on infidelity, the right to dominion and just war at the University of Salamanca, and by teachers and pupils of the prestigious Castilian University, belong to a long tradition going back at least to the mid-15th century, a crucial period for the Iberian expansion in Africa.

In previous writings,¹ I focused on the support given to the expansionist politics of the Castilian monarchy by jurist Alfonso de Cartagena and theologian Bernardino López de Carvajal. With his *Allegationes super conquesta insularum Canarie contra Portugalenses* (1435),² Alfonso de Cartagena supported the rights of Juan II of Castille to the dominion over the Canarian archipelago, minimising the titles alleged by other Christian-European princes – especially the one alleged by the Portuguese. On his own, as early as April 1493, Bernardino López de Carvajal was the first orator to refer

to the discoveries of Columbus »on the road to the Indies« and to ask for the dominion of the territories discovered in the Western Atlantic on behalf of the Reyes Católicos before Pope Alexander VI and the College of Cardinals.³

Contrary to what would be the distinctive and influential approach of Francisco de Vitoria, both of them completely overlooked any hypothetical claim of the indigenous pagan populations of the Canary and Antillean islands to the dominion over the territories they inhabited for centuries. As we stated in the above-mentioned publications, while Alfonso de Cartagena declared the Canary Islands »vacuae per respectum ad superioritatem«⁴ before the arrival of Castilian expeditioners, López de Carvajal – carried away by the joy of the recent victory over the Muslims of Granada (in January 1492) – simply ignored any rights to dominion of the peoples »discovered« by Columbus, taking for granted that the overseas territories reached by Columbus were now part of the large Castilian crown.

The juridical and political vocabulary found in the writings of Cartagena, López de Carvajal and other Salamanca jurists and theologians – just like the one employed by contemporary Portuguese⁵ and Italian⁶ learned men writing about dominion

1 EGÍO/BIRR (2018a); EGÍO/BIRR (2018b).

2 CARTAGENA, A. DE [1435]. Contemporary Latin-Castilian edition by GONZÁLEZ ROLÁN, T. (et al.) (1994). Some interesting juridical and political perspectives on the *Allegationes* in: SUÁREZ FERNÁNDEZ (1963), RUMEU DE ARMAS (1960, 1986), PÉREZ VOITURIEZ (1958), PÉREZ EMBID (1948), VILLACAÑAS BERLANGA (2009), ROJAS DONAT (2011).

3 In a sermon delivered only one month after the arrival of Columbus to Lisbon, after his first successful expedition to the Caribbean islands, LÓPEZ DE CARVAJAL [1493] [s. p.]. »Subegit quoque sub eis Christus Fortunatas Insulas, quarum fertilita-

tem mirabilem esse constat. Ostendit et nuper alias incognitas versus Indos, quae maxime ac plene omnibus mundi preciosis existimantur, et Christo per regios internuntios brevi pariturae creduntur«.

4 »[...] et intelligo vacuitatem non per respectum ad habitatores, sed per respectum ad principem catholicum, nullus erat catholicus princeps qui in eis quasi possideret supremum dominium«, CARTAGENA [1435] (1994) 134.

5 A good and synthetic account of the Portuguese juridical positions concerning the dominion exerted by the Pagan populations of the Canary Islands and Guinea can be found in MARCOCCI (2012) 43–71. Important

Portuguese sources on this matter are, among others, the theological treatise *Horologium fidei*, written by the Franciscan André do Prado around 1450, PRADO (1994), the 15th-century chronicles written by Gomes Eanes da Zurara, EANES DE ZURARA (1915, 1997), and the many chronicles written by his follower Rui de Pina, who at the beginning of the 16th century wrote accounts of the life and accomplishments of the Portuguese kings from the late 12th century (reign of Sancho I) to the late 15th century (reign of Joao II). The chronicle dedicated to the reign of Duarte I is especially important with regards to the juridical debates about the dominion over the Canary Is-

and infidelity in this period – inherited without significant changes the conceptual framework constructed by Pope Innocent IV⁷ and Enrico di Susa – usually called [H]ostiensis⁸ – in the 13th century.⁹

Even if the Iberian ›discoveries‹ in Africa and Asia represent for most historians the turning point between the Middle Ages and the early modern era, the first theological and juridical discussions about the status of those ›infidel‹ peoples newly ›discovered‹ by Christian expeditionaries appear to be, in fact, a clear and direct continuation of the Late Middle Ages approach to the relationship between dominion and faith.

Hispanic Thomism before Vitoria (13th–15th centuries)

Within this general and ancient framework,¹⁰ the emergence of a new theoretical and conceptual approach has to be seen as one of the many indirect

and unexpected results derived from the introduction of the *Summa theologiae* as the handbook for the students of theology in Christian Western universities, a process of substitution of the *Sententiarum libri quatuor*, which, initiated at the University of Paris around 1509,¹¹ took place gradually at the University of Salamanca.

As many scholars have noticed, the teaching of Francisco de Vitoria – since 1526, holder of the chair of *Prima de teología* at the Faculty of Theology – represented a significant contribution to the introduction of the Thomist theological perspective at Salamanca, influencing the adoption of the *Summa theologiae* as the official manual for the students of theology in the *Estatutos of 1561*.¹² Nevertheless, contrary to the usual perspective among the scholars who have dealt with Vitoria's writings and legacy, it is important to take into account that he was not the first great Iberian master who appreciated and applied Aquinas' thought to different issues.¹³ On the contrary,

lands, PINA (1914). King Duarte himself wrote a moral treatise in which the wars against the infidels were justified, DUARTE I [1438] (1942). On Chapter XII of the treatise *De Republica Gubernanda per Regem*, written by the jurist Diogo Lopes Rebelo at the end of the 15th century, we find a kind of synthesis of the ideas about dominion, infidelity and just war that were common at the Portuguese Court in the Late Middle Ages, LOPES REBELO [1496] 138–147. See also the interesting and informative pages dedicated to this chapter by the contemporary editor MOREIRA DE SÁ (1951), XXXII–XXXIX.

6 Two Italian jurists working for the Roman Curia, the civilist Antonio Minucci da Pratovecchio and the canon lawyer Antonio de Roselli, wrote in the 1430s – at request of Pope Eugene IV – juridical advices concerning the Iberian ambitions over the Canary Islands. Both treatises examined the theological and juridical status of the native inhabitants carefully. MINUCCI DA PRATOVECCHIO/ROSELLI (1963).

7 In his commentary to X 3.34.8. Innocent IV's commentaries on the *Decretals*, written around 1245, were first printed in 1478 and later on in many subsequent editions, INNOCENT IV [1245] (1570).

8 Commenting the same chapter of the *Decretals* around 1253. The first printed edition of Hostiensis' commentaries date back to 1473. HOSTIENSIS [1253] (1473).

9 This is the case for López de Carvajal, who in earlier writings celebrated the last Christian victories against the Muslims of Al-Andalus and encouraged a prosecution of the military campaigns in Northern Africa. In these writings Hostiensis serves as the main juridical authority: ›Haec est victoria quae vincit mundum: fides nostra. Pro cuius intelligentia & introductione problema nobis disputabile exponitur: Utrum videlicet apud infideles sint vera iura domini Principatus & regni an non. In quo sunt qui affirmative sentiant: sunt qui negative [...]. Verum dominus Ostiensis sentit negative in problemate: cum quo ego hodie magis convenio‹, LÓPEZ DE CARVAJAL [1490] (1995) 82.

10 A canonical and theological framework that has been thoroughly analysed by scholars such as MULDOON (1979) 3–28 and CONDORELLI (1960).

11 As Vitoria himself stated referring to the courses of his master, Pieter Crockaert; see GARCÍA VILLOSLADA (1938) 278.

12 BARRIENTOS GARCÍA (2006) 215, 221–222.

13 CELADA LUENGO (2001) 45. García Villoslada dedicated Chapter XI of his influential *La Universidad de París durante los estudios de Francisco de Vitoria O. P. (1507–1522)* to retracing the growing European notoriety of Aquinas and the progressive implementation of his work as a handbook for theologians, first in the Dominican Colleges (14th–15th centuries) and later on (since the beginning of the 16th century) in most of the European universities. Nevertheless, the information that García Villoslada provided about the Hispanic Thomist theologians of this period is incomplete and extremely biased. Although García Villoslada offered a distorted image of Spain as always devoted and faithful to St. Thomas, in contrast with the surrounding ›polluted‹ European nations (›Que en España reinaba el tomismo, mientras que en Alemania, Inglaterra y Francia hacía estragos el Nominalismo ockamista, era cosa reconocida aún más allá de los Pirineos y de los Alpes‹, GARCÍA VILLOSLADA (1938) 301–302), and even if unacceptable expressions such as ›el ala izquierda del ockamismo‹ (García Villoslada [1938] 288) are found in his book, his perspective and biased information have been uncritically adopted by many later scholars.

Vitoria's undoubtedly original and systematic approach to Aquinas' writings has to be understood as the culmination of a long Iberian tradition of dialogue with and around Aquinas' authoritative positions. It was above all in the discussions concerning infidelity and the attitude(s) that Christians should adopt vis-à-vis different kinds of infidels that Aquinas' voice strongly resonated throughout the former religiously split Iberian Peninsula.

As we will see in the last part of this article, Matías de Paz, Dominican friar and teacher of Theology and Holy Scripture in Valladolid and Salamanca in the 1510s, had resorted to a conceptual framework regarding infidelity very similar to the one that Vitoria employed in his famous *Relectio de Indis* two decades later. Just like Vitoria,¹⁴ we observe in his *Libellus circa dominium super indos* that De Paz takes conceptual definitions, clarifications of nuances and development of typologies as starting points for his own reflections about a specific controversial issue; in this case, the same kind of dilemmas regarding Castilian colonisation and Christian missionary strategies that worried Vitoria some years later.

We do not have to wait until the early decades of the 16th century to find other substantial milestones in the expansive and missionary impulses that distinguished Castile, Aragon and Portugal from the 13th century. Already within Aquinas' lifetime, Iberian Dominican friars such as Raimundo Martí (c. 1230–c. 1286) – who had a good knowledge of Arabic and Hebrew and dedicated

his life to the theological debate with Muslims and Jews – were in close contact with Aquinas, sharing reciprocally ideas about the different kinds of infidels.¹⁵ In fact, a *Pugio fidei* and a *Capistrum Iudaeorum*, written by Martí in the 1260s, would have been written in close dialogue with Aquinas, who at this time was writing his *Summa contra gentiles* (also most probably completed in the 1260s)¹⁶ and the *Summa theologiae* (written from 1265 to 1273).¹⁷ The library catalogues from Dominican monasteries such as the one in Barcelona – where Martí spent most of his life – attest to the fact that manuscript copies of several of Aquinas' writings were already available for loan and widely circulated in the 1260s.¹⁸

Aquinas' reputation continued to grow in the Hispanic kingdoms in the 14th century, especially capturing the interest of fellow Dominicans such as Vicente Ferrer and Nicolas Eymerich. Ferrer, who studied logic and theology at the Dominican *Studia* of Barcelona, Lérida and Toulouse,¹⁹ made annotations to the *Summa theologiae* in the second half of the 14th century²⁰ and is said to have taught the *Summa sententiarum* from a Thomist perspective at the University of Valencia (1385–1390).²¹ Within the literature, it is now commonplace to think of Ferrer as a Thomist thinker.²² The works about different kinds of infidels (Heretics, Jews, Muslims, Pagans) written by other Iberian Dominicans – the most well known being the *Directorium inquisitorum* (c. 1376) and the *Tractatus brevis super iurisdictione inquisitorum contra infidels*, writ-

14 Not only in *De Indis* but in most of his *Relectiones*. For example, the starting point of *De Matrimonio*, the first *Relectio* dictated by Vitoria, is the definition of the institution: »Et quia secundum Ciceronem I. Officiorum, omnis quae a ratione suscipitur de aliqua re institutio, debet a definitione proficisci: idea ante omnia quaeritur quid sit matrimonium [...]«, VITORIA (1557) 428.

15 Martí wrote a *De Seta Machometi* in the 1250s, and later on he wrote *Pugio fidei* and *Capistrum Iudaeorum* (1267). A contemporary account on his life and writings can be found in RAGACS (2015).

16 Because of the doubts concerning the date of composition of both the *Summa contra gentiles* and the *Pugio fidei* (which was previously dated to 1578), there is still a discussion about

whether Aquinas influenced Martí, or whether it was Martí who influenced Aquinas. Most of the literature about the topic points to Aquinas having influenced Martí: HUERGA (1974); GUY (1998) 14. Nevertheless, there is no unanimous agreement on this point among scholars. In his critical edition of the *Summa contra gentiles*, Paul Marc advocated for the consideration of Martí polemical writings as its principal source of inspiration and quoted passages from Martí that are almost identical in the *Summa contra gentiles*, MARC (1967) 53–72. In the absence of solid evidence regarding the exact date of composition of both books, ROBLES SIERRA (1986), who reviewed the whole discussion some years later, preferred to speak about treaties written under a reciprocal influence.

17 CELADA LUENGO (2001) 10.

18 ROBLES SIERRA (1986) 77.

19 COLL (1955) 10–29; DAILEADER (2016) 12.

20 His annotations to the *Summa* were only printed in the 18th century, after the recovery of a manuscript by friar Tomás Madalena in the Dominican monastery of Alcañiz. See MADALENA (1719).

21 GALLEGO SALVADORES (1974), ESPONERA CERDÁN (2007) 230.

22 For a recent account about the influence of Aquinas in Ferrer's logical thought as well as his political and ecclesiastical ideas, see DAILEADER (2016) 14–15, 22–23. See also BEUCHOT (1995).

ten by the General Inquisitor of Aragon, Nicolaus Eymerich (c. 1320–1399) – are also thought to closely follow Aquinas' ideas about dominion, infidelity and just war.²³

The consolidation of the Faculty of Theology at the University of Salamanca, after the impulse coming from Benedict XIII (with the bull *Sincerae devotionis*, 1416),²⁴ who removed the restrictions imposed by preceding popes regarding the concession of official degrees in theology at Castilian and Aragonese universities – later extended to Valladolid (1418) and other Spanish universities²⁵ – led to a vigorous and increasingly deep commentary on Aquinas' writings in the Hispanic kingdoms in the 15th century. Juan de Casanova, Luis de Valladolid, Lope de Barrientos, Juan de Torquemada (the most influential theologian and jurist of this period) and the members of what a recent historiographical trend likes to call the First School of Salamanca (Juan de Segovia, Alonso de Madrigal »El Tostado«, Pedro de Osma, Fernando de Roa, etc.) are usually regarded – with a certain degree of exaggeration – as the Thomist scholastics who preceded Vitoria.²⁶ Contrary to Vitoria, neither of

these theologians wrote a systematic commentary on the *Summa theologiae*. However, all of them commented on Peter Lombard's *Sententiarum libri quatuor*, closely following many of the doctrines and interpretations of Aquinas. Osma and Roa, both chair holders of the *cátedra de prima de Teología* in the second half of the 15th century,²⁷ quoted Aquinas hundreds of times in their main writings and usually followed his theological criteria. They should be considered as important contributors to the introduction of Thomism as a kind of official paradigm at the University of Salamanca.²⁸ Nevertheless, they dare to contradict the great Doctor of the Church whenever they considered it necessary, as it was the case for previous Iberian theologians influenced by Aquinas.²⁹

Although the topic is rarely mentioned outside the historiography concerning the history of the universities in Late Medieval and early modern period, when Vitoria introduced the *Summa theologiae* as the theological handbook to be used at the University of Salamanca,³⁰ Aquinas' writings had long ago transcended the walls of the Dominican convents. In the closing years of the 15th century,

23 HEIMANN (2015), especially 151–154.

24 GARCÍA Y GARCÍA (2002) 51.

25 PEÑA GONZÁLEZ (2011) 132.

26 HERNÁNDEZ MARTÍN (1998)

1127–1141. From my perspective, Hernández Martín overgeneralises in his article about the medieval Hispanic Thomism. The increasing influence exerted by Aquinas over later theologians is presented by Hernández Martín as a reflection of what he portrays as a consolidated medieval philosophical and theological school to which he also ascribes almost every single prominent intellectual figure on the Iberian Peninsula during the 14th and 15th centuries. In fact, it is a matter of dispute whether Aquinas at this stage was already the leading reference for many of the theologians mentioned by Hernández Martín (as Marco Toste also considers in a paper about 15th-century Salamancian Thomism, forthcoming in a volume about Thomism), or if the consideration they paid to Aquinas should be equated to the credibility they assigned to other ancient and medieval authorities. I am particularly grateful to Toste for the information and critical comments he provided about

Late Medieval Thomism while writing this article.

27 BELTRÁN DE HEREDIA (1970) 239.

28 An idea strongly defended by the main specialist on this First School of Salamanca, José LABAJOS ALONSO (2012). Labajos edited some of the writings by ROA (2007) and OSMA (2010). Most of the writings by Osma were never printed and were circulated only in manuscript form. »Pedro de Osma veía en santo Tomás la síntesis o el resumen de los *sancti doctores*, y por ello quiere promocionar su doctrina; y lo hace por un doble camino: por una parte, defendiéndole frente a las acusaciones personales y doctrinales que le hacen los verbosistas y escotistas como Pedro de Caloca y Pedro de Ocaña. Por otra parte, citándole en sus escritos [...]. Fernando de Roa mantiene la misma línea que su maestro respecto a la implantación del tomismo. En sus tres *Repeticiones* cita un centenar de veces a Santo Tomás, principalmente la *Suma* y el *Comentario a las Sentencias*, y con menos frecuencia la *Suma contra gentiles*, las cuestiones *De veritate* y las *De virtutibus*. En estas referencias a santo Tomás utiliza di-

versas denominaciones; pero las más frecuentes son: »Sanctus doctor o Doctor sanctus, Sanctus Thomas y Divus Thomas«, LABAJOS ALONSO (2012) 161–162.

29 The eschatological thought of Vicente Ferrer appears, for example, as a critical approach of the writings of Aquinas denying any possibility of foreknowledge about what will happen when the world ends, MENSA I VALLS (2017).

30 On the way in which Vitoria progressively replaced the *Sentences* with the *Summa*, see LANZA/ TOSTE (2015) 418–419.

some Western European Faculties of Theology³¹ already had Chairs dedicated to St. Thomas. In documentation related to the organisation of theological studies in the Hispanic realm, we find references to Chairs of St. Thomas and to some of their holders at the University of Alcalá³² – where the *Constituciones* of Cisneros established the creation of a Chair of St. Thomas in 1510³³ – and University of Valencia – where there are remarks about a St. Thomas Chair since 1514.³⁴ This does not detract, of course, from the fact that Vitoria's lectures on the *Summa* are by far the most extensive and elaborated in Spain during the 1520–40s.

It is also important to mention that, long before the arrival of Vitoria at the University of Salamanca, the important Castilian theologian Pedro Sánchez Ciruelo – the first holder of the Chair of St. Thomas at the University of Alcalá (1510–1512; 1516–1523) – wrote a long – but not printed – *Paraphrasis* to the *Summa theologiae*,³⁵ which is almost contemporary with the more systematic and much better known *Commentaries* written by

Cardinal Cajetan and printed in Venice from 1508 to 1523.³⁶ In this period, many other writings concerning the theological production of Thomas Aquinas were written or published in the Hispanic kingdoms. The treatises published by Diego de Deza figure among the most representative.³⁷

Matías de Paz. Biographical approach to a *converso* Dominican theologian facing *limpieza de sangre* and *despoticus principatus* in the early 16th century

Among these early Castilian commentators of Aquinas appears also the mysterious figure of Matías de Paz (Matthias a Pace), whose *De dominio Regum Hispaniae super Indos* will be analysed in the following pages. Contrary to Vitoria, whose biography has been meticulously reconstructed in hundreds of contemporary books, Matías de Paz's life, for the most part, still remains obscure. We owe the fragmentary information concerning his life

31 It is a topic which was already mentioned by García Villoslada, even if his habitual confusions between Universities and Dominican convents can follow to misunderstandings, GARCÍA VILLOSLADA (1938) 290–301. More recently, Harm Goris has pointed to the University of Vienna as the institution in which »the *Summa Theologiae* was first used as a university textbook in theology«, GORIS (2002) 23. According to Jacob Schmutz it would have been the University of Pavia – in which Cajetan taught since 1497 – the first European University »to have accepted the *Summa* as textbook«, SCHMUTZ (2018) 226. Lanza and Toste are strong proponents who consider Vitoria and the University of Salamanca as the main agents of this important revolution related to the histories of thought and knowledge production. LANZA / TOSTE (2015). With regards to the French context, see BONINO (2000).

32 The famous theologian Pedro Sánchez Ciruelo, doctor at the University of Paris was the first holder of the Chair of St. Thomas at the University of Alcalá (1510–1512; 1516–1523), ANDRÉS MARTÍN (1979) 275–276; ANDRÉS MARTÍN (1961) 136; BELTRÁN DE HEREDIA (1916).

33 JIMÉNEZ DE CISNEROS (1510).

34 In June 1514, the authorities of the city of Valencia ordered the holder of the Chair of Scotus, Luis Savater, to combine the teaching of the philosophy of the Doctor Subtilis with Aquinas' perspectives, GALLEGO SALVADORES (1975b) 293. Two years later, in August 1516, a Chair of Thomist theology was officially created at the University of Valencia. Juan de Salamanca (1516) and Luis Castelloli (1516–1521) were the first holders of this Chair in Valencia, GALLEGO SALVADORES (1975b) 294; FEBRER ROMAGUERA 334. Even if the Chair of St. Thomas – as many others – was suppressed during the last phase of the revolt of the *Germanies* (1522–1523), the pacification of the region of Valencia led to a reorganisation and period of splendor of its university, FEBRER ROMAGUERA (1996) 26–33. From 1525 onward, we find the prestigious eclectic theologian Juan de Celaya, Doctor of Theology at the University of Paris (1522), contrasting the *via beati* Thomae with *the via* realium and the *via nominalium* at the University of Valencia, GALLEGO SALVADORES (1975b) 302; FELIPO ORTS (1993) 33. The attempt to conciliate these three different and, in most cases, opposing theological perspectives is explicitly mentioned

in the title of his main writings.

ALONSO ARRIBAS (2001) 90–92; ANDRÉS MARTÍN (1979) 444.

35 SÁNCHEZ CIRUELO (1510?), *Paraphrasis in Summam Divi Thomae Aquinatis*, Biblioteca de la Universidad Central de Madrid, Antiguo Fondo del Colegio de San Ildefonso, mss. 60 (nowadays lost) y 61 (commenting on questions 44–117 of the *Prima Secundae*). Short remarks on this early exegetical approach to the *Summa theologiae* in MELQUIADES ANDRÉS (1961) 137 and ALBARES ALBARES (1996) 185–186.

36 CAJETAN (1508–1523).

37 DEZA (1491), *Defensionium doctoris angelici S. Thomae Aquinatis contra invectivas Mathiae Dorink in replicationibus contra Paulum Burgensem super Bibliam*, Seville; DEZA (1517), *Novarum defensionum doctrinae doctoris angelici S. Thomae super quatuor libros sententiarum quaestiones profundissimae ac utilissimae*, Seville. See FUERTES HERREROS (2006) 527–529.

and writings to the classical repertory of Dominican writers authored by Quétif and Échard (1721),³⁸ to the history of the Dominican college written by Arriaga in 1928 and to Cuervo's history of the Dominican monastery of San Esteban (1914).

The few publications concerning De Paz's *De dominio Regum* provide only a few brief details about the academic trajectory of this work's author and the Junta de Burgos of 1512 – as a result of which the treatise was written and submitted to King Fernando el Católico³⁹ – and they do not even exploit the few biographical references about De Paz provided in the above-mentioned classical monographs.

Since some important episodes about De Paz's life – important, if one wants to understand his treatise on dominion and infidelity in the proper context – have been overlooked, I will reconstruct his life in the following pages, above all trying to emphasise how a *converso*⁴⁰ who dared to fight for the rights of others was branded with the same label. The life and writings of this Dominican friar revolved around infidelity and conversion.

We know from Arriaga and Cuervo – who as many religious writers dealing with famous *conversos* in the 19th and early 20th centuries hide or dissimulate Matías de Paz' Jewish origins – that De Paz, born around 1470, made some early studies at the Dominican College of San Gregorio (Valladolid) and later on (1490–96) went to Paris to deepen his theological knowledge. Back in

Castile, in January 1497, De Paz entered the Dominican College of San Esteban, where he was assigned his first teaching tasks. In 1502, the Provincial Chapter that the Dominican Order held in Jerez instituted De Paz as *maestro* of Theology in San Gregorio. Since 1505, different General Chapters nominated De Paz as regent of the *Studium* of Valladolid, an office that he later (since 1513) exerted also at the *Studium* of San Esteban in Salamanca. Matías de Paz was also assigned two university chairs in the final period of his short life. First, he obtained a Chair of Theology at the University of Valladolid (1511), and shortly after (in 1513) he won the Chair of Bible at the prestigious University of Salamanca.

It was during this period – when De Paz was, so to say, at the height of his fame – that his fellow Dominican Antonio de Montesinos, the man responsible for the bitter sermon given in Christmas of 1511 before the *encomenderos* of La Hispaniola,⁴¹ proposed to King Fernando to choose Matías de Paz as one of the members of the *junta* of jurists and theologians that would meet in Burgos (1512). This *junta* was tasked with clarifying the abuses committed against the *indios* and suggesting solutions concerning the demographical decimation in the Antilles as well as the administrative and fiscal disorder they were subjected to. As I will show in the following sections, De Paz's main concern in the *Junta de Burgos* was to oppose the idea that the King of Spain could »supra dictos indos regere despotico principatu«.⁴² The existing literature

38 »Matthias a Pace«, in: QUÉTIF / ÉCHARD (1721) Vol. II, 38.

39 This is the case for the recent re-edition of *De dominio Regum*. The »Introduction« written by José Carlos Martín de la Hoz dedicates only 30 lines to the biography of Matías de Paz. MARTÍN DE LA HOZ (2017) 18–19.

40 His condition as *converso*, or descendant from converted Jews, is attested by contemporaries such as Domingo de Valtanás in his *Apología de los linajes* [1557]. Opposing the increasing marginalisation of the descendants of Jews and Moors, Valtanás listed some of the many brilliant theologians and churchmen that since Pablo de Santa María (early 14th-century erudite rabbi converted to Christianity and father of Alonso de Cartagena) had given glory and prestige to the Spanish Church. He iden-

tified as *conversos* not only Matías de Paz and his brother Diego but also Francisco de Vitoria and many other Dominicans: »Lo mismo fray Alonso de Burgos, Obispo de Palencia, que fundó el colegio nuestro de San Gregorio en Valladolid. Y fray Matías de Paz, y fray Alonso de Peñafiel, y fray Francisco de Vitoria, catedrático de la Universidad de Salamanca, y fray Hierónimo de Peñafiel, fray Diego de Paz, fray Pedro de Cuevasrubias, fray Gregorio Pardo, fray Nicolás de Polanco, fray Tomás de Guzmán, fray Alejo. Todos los sobredichos fueron maestros en teología, frailes de santo Domingo en nuestros tiempos, personas de san Pablo, y semejantes a él, no sólo en el espíritu, sino aun en la carne«, VALTANÁS [1557] (1963) 157. The credibility of the information provided by Valtanás is attested by

many experts on the debates about the politics of *limpieza de sangre* and recognised even by the most orthodox experts on The School of Salamanca, see BELTRÁN DE HEREDIA [1953] (1972) 33–34.

41 Which, according to the inherited historiographical perspective, initiated the debates about the legitimacy and conditions of the Castilian domination over the American peoples. Among the most interesting historical reconstructions of the echoes of Montesinos' sermon and the debates of Burgos, see CASTAÑEDA (1996) 357–392; PAGDEN (1986) 47–56.

42 DE PAZ (2017) 56.

about the *Junta de Burgos*⁴³ and De Paz's intervention in it draws on the detailed account provided by Bartolomé de Las Casas in his *Historia de las Indias*. Apart from mentioning the name of the dozens of jurists who took part in the deliberations – underlining the role played by Palacios Rubios⁴⁴ – Las Casas identified Tomás Durán, Pedro de Covarrubias – both Dominican friars – and the clergyman *licenciado* Gregorio [Lita] as the theologians who, together with his fellow Dominican Matías de Paz, acted as theological advisers in this important *junta*. While referring to De Paz, Las Casas accords him the same kind of intellectual preeminence among the theologians that he had accorded to Palacios Rubios among the jurists. In his opinion, Montesinos and Fernando el Católico agreed on Matías de Paz being called to the *junta* because «por aquellos tiempos era estimado por más señalado letrado el padre fray Matías de Paz, catedrático de teología en la Universidad de Salamanca».⁴⁵

Another important episode in his life, usually overlooked in the approaches to De Paz's biography, is the active role he played shortly after the *Junta of Burgos* in another crucial implication of the debates about infidelity in contemporary Castile: the attempts to ostracise converted Jews and descendants of converted Jews; expelling them from all ecclesiastical offices and impeding their access to the religious habits and Holy Orders.⁴⁶

Resolutely facing the anti-*converso* campaign initiated by his fellow Dominican (former General Inquisitor and Archbishop of Seville) Diego de

Deza – who, shortly after giving support to the partisans of an anti-*converso* reform of the *estatutos* concerning the admission of novitiates in the Order of St. Jerome in 1514, tried to extend the scope of this reform to the Dominican monasteries – De Paz tried to obtain the support of important and learned churchmen of his time. His intervention was respectful not only of the theological and canonical framework with which the Church had historically supported the conversion of Jews and their integration in the Christian society, but also of the tradition of *convivencia* maintained by old Christians and *conversos* in the colleges and monasteries of Valladolid and Salamanca.

Bishop Alonso de Burgos, who founded the College of San Gregorio (Valladolid) in 1487, where De Paz later studied and taught, was himself a descendant of *conversos* and stated in a very explicit and vehement way in the first *Estatutos* of the College – written and approved in the last decade of the 15th century – that no candidate to the admission in San Gregorio would be discriminated according to the religious adscription of his ancestors.⁴⁷ Meaningfully, the second statute mentioned Matías de Paz and his brother Diego as students of the College, and in Statute 59 they are granted the privilege to remain in the College – together with Rector fray Andrés – their whole life.⁴⁸

Within this conflict, we can see a first link between the Thomist approach to infidelity and contemporary political and juridical debates: As a printed edition of the *Opuscula* of Cajetan (1562)

43 There is much more literature about the Laws of Burgos (1512–1513) resulting from the *Junta* than about the *Junta* and the discussions that took place in it. Some notices on De Paz's positions during the debates can therefore be found in classical writings of legal historians about this laws (Altamira, Ballesteros Gaibrois, Hanke, Muro Orejón, Rumeu de Armas, Simpson, etc.). In 2012, on the occasion of the 5th Centenary of the Laws of Burgos, two commemorative volumes were published. Their contributors reviewed the previous historiography and offered new insights on the early questioning and regulation of the Castilian dominion over the Western Indies, MARTÍNEZ DE SALINAS ALONSO/SAGARRA GAMAZO/

LEÓN GUERRERO (2012); SÁNCHEZ DOMINGO/SUÁREZ BILBAO (2013). This last publication has been denounced as partially plagiarised.

44 Whose *Libellus de insulis oceanis quas vulgus indias appellat*, written by Palacios Rubios during the debates of 1512, is carefully examined in Christiane Birr's contribution to this issue of *Rechtsgeschichte* and in the joint publications to which I have previously referred, EGÍO/BIRR (2018a), EGÍO/BIRR (2018b).

45 Las Casas seems to anticipate De Paz's promotion to the Chair of Bible at the University of Salamanca, which, according to the historical documentation, took place the following year. His words are, nevertheless, a good indication of the prestige that the

men of this period associated to the Salamancian theological Chairs, LAS CASAS [1559] (1956) L. III, C. VII, Vol. III, 26.

46 According to Arriaga, not only Matías de Paz but also his brother and fellow Dominican Diego de Paz, theologian, canon lawyer and rector of the College of San Esteban in 1501–1502, would have also been actively implied in the resistance against the projected anti-*converso* modification of the *estatutos* of this and other Dominican Colleges, ARRIAGA (1928) 181.

47 In paragraph 6 of the *Estatutos*, DÍAZ IBÁÑEZ (2016) 60–61.

48 DÍAZ IBÁÑEZ (2016) 59, 64.

informs us, having to face such a powerful churchman as Diego de Deza – who is considered to have been the most important Hispanic Thomist theologian of his time – Matías de Paz asked for help from one of the few men whose learned authority could be considered even greater than that of Deza, the most famous Thomist scholar of the early 16th century, Cardinal Cajetan. De Paz intended to use Cajetan's opinion as a barrier against the projected exclusion of *conversos* to the novitiate and religious profession.⁴⁹ De Vio answered De Paz on 21 September (»in die Sancti Matthaei Apostoli«) 1514.⁵⁰ On the one hand, from a very Thomist theological perspective,⁵¹ he considered this kind of *estatutos de limpieza de sangre* »unreasonable« (*irrationabile*) inasmuch as they seem to be an obstacle to the conversion of the Jews to the Christian religion.⁵² On the other hand, pragmatically counterbalancing Deza's reasoning and the partisans of »blood cleansing«, Cajetan first stated that some customs and circumstances – such as the general hatred of the »Jewish nation« and the hypothetical tendency of many Jews of this time to false conversions and apostasy – could temporally justify

their exclusion from the novitiate and religious profession.⁵³ To the Thomist theological arguments encouraging a cordial welcome of converts in the religious orders and secular Church, Cajetan opposed not only the weight of circumstances and customs but also – secondly – the canonical framework excluding other kinds of men »sine eorum culpa«, that is to say, the illegitimate sons which at this period could not enter religious orders *ex defectu natalium*. Apart from equating the conditions of *conversos* and bastards, Cajetan confusingly appealed to other legal prescriptions permitting a free and without fault rejection of certain people from the profession during the first year of novitiate.⁵⁴ According to his interpretation, these canons granted the administrators of colleges and monasteries a similar right to prevent unwelcome novices from entering the profession and to even impede attaining the status of novitiate. The prelates were not obliged to give any kind of explanation for this kind of refusal, and even if the rejection was due to the extended hatred or suspicion against *conversos*, they did not commit any kind of *peccatum mortale*.⁵⁵

49 QUÉTIF / ÉCHARD (1721) Vol. II, 38; ARRIAGA (1928) 177.

50 »Ad R. Patrem F. Matthiam de pace Sacra Theologia Salmaticensem Regentem. SUMMA. Tametsi in quibusdam locis mortale peccatum nullum sit negare religionis ingressum natis Iudaeis, alias ad religionis ingressum & professionem idoneis, hoc tamem illaudabiliter faciunt«, CAJETAN (1562) T. I, Tract. XXXI, Responsio VI, 130. As Nieva Ocampo considers, the formulation of the question by De Paz clearly reflects his position against the marginalisation of converts. De Paz wanted to emphasise that their *converso* origins were the only defect that could be attributed to those candidates to the religious habits, NIEVA OCAMPO (2011) 46–47.

51 In his *Contra doctrinam retrahentium a religione*, C. 4, Aquinas dealt with other arguments that were alleged in the 13th century – and at least since the times of Vigilantius, in the late 4th century – in order to deny recent converts or descendants from converts the entry into religious life. Aquinas considered the ideas according to which converts should be re-

jected »absurd« and »insane«, AQUINAS [1271] (2013).

52 »Et quamvis ita esse mihi videatur: irrationabile tamen mihi videtur, perpetuum statutum aut opus huiusmodi refutationis respectu illorum, qui nulla alia suspicionis nota sunt affecti, nisi quod originem ex Iudaeis traxerunt [...]. Tum quia occasio daretur Iudaeis, ut at fidem non convertantur, dum intelligent conversorum filios in generatione & generatione repulsos a religione«, CAJETAN (1562) T. I, Tract. XXXI, Responsio VI, 130.

53 See the analysis of Cajetan's reasoning in PÉREZ GARCÍA (2017) 175–177.

54 »Constat autem ex sacris canonibus, ut patet extra de regu. cap. statuimus. Novitium posse libere intra annum probationis redire ad priorem statum: igitur religio potest novitium libere a se excludere«, CAJETAN (1562) T. I, Tract. XXXI, Responsio VI, 130.

55 The somewhat contradictory and equidistant answer by Cajetan have led the few scholars interested in this episode of De Paz's life to completely opposite interpretations. Nevertheless, while the partisan confessional historiography of the early 20th cen-

tury interprets Cajetan's *Responsio* as strongly supporting the policy of *limpieza de sangre*, recent articles written by legal historians such as Díaz Ibáñez, Pérez García and Nieva Ocampo cast doubt on the traditional historiographical account and offer a more nuanced lecture of Cajetan's intervention in this contemporary polemic. The most absurd and malevolent lecture is, without a doubt, the one offered by Justo Cuervo O. P. Cuervo not only biasedly deduced from Cajetan's consideration of the refusal to admit the *conversos* not being a *peccatum mortale* an enthusiastic support of Cajetan to the new *estatutos*, but also inverted the historical facts and presented Matías de Paz as a prominent promoter of the statutory anti-Jewish reform in Valladolid an Salamanca: »Y de esta consulta se infiere que ya en aquel tiempo se comenzaba a tratar de hacer el estatuto con que hoy se gobierna el Convento, y acaso el principal inventor de este gobierno fue este P. Maestro [Matías de Paz], y con esa intención consultó al Cardenal Cayetano«, CUERVO (1914), Vol. I, 624–625. Written shortly before the outbreak

The third line of argumentation⁵⁶ that, according to Cajetan, could be legitimately invoked by the ecclesiastical authorities in order to justify these kinds of ›undesirable‹ and ›irrational‹ exclusions depended indirectly on the authority of Thomas Aquinas, who is, in fact, the only authority named in the *Responsio*. Even if including Aquinas seems a little bit artificial, the fact that he is mentioned in the text is very important because he represents a theological authority to which all parties (Deza, on the side of the partisans of *limpieza de sangre*; De Paz, on the side of the converts and their many supporters) wish to lay claim and acknowledge as carrying more weight. Cajetan, who after printing the *Commentaries* to the *Summa* had achieved the highest level of reputation that a learned theologian of his time could enjoy, acted as the oracle tasked with giving voice to the ancient *magister* and common reference in this dispute. Cajetan referred in particular to Aquinas' *Quaestiones quodlibetales* and to *Secunda secundae* in order to deny that the admission of any individual or kind of individuals – in this case, the converts – in a mendicant order could be considered as an obligation of justice or as a precept of charity.⁵⁷

These bitter disputes concerning the status of converts and his teaching assignments at the University of Salamanca kept Matías de Paz busy during the last year of his short life. According to the Early Modern chronicles of the Dominican order, later rewritten by 20th-century Dominican historians such as Cuervo and Arriaga, De Paz died before turning 50 (on 30 September 1517) while at the monastery of San Esteban.⁵⁸ By chance, his

death coincided with the divulgation of the *Theses* posted by Luther at the All Saints' Church of Wittenberg one month later; an event that – just like the American discoveries – would subvert the medieval conceptual framework regarding infidelity and dominion in the following years.

In order to clarify the many doubts concerning Matías de Paz's life and intellectual achievements, it would be useful to read carefully the multiple Early Modern sources in which De Paz and his writings are mentioned.⁵⁹ This approach, which is important for every contemporary author, seems to be all the more necessary in the case of De Paz, whose life and works are still read and studied through the radically biased lens and approach used by Cuervo, Arriaga and the 20th-century Dominican historiography.

Concerning Matías de Paz's literary production, there are even more gaps and inaccurate information to deal with than with regards to his biography. In this particular case, we are almost completely in the dark. Despite several speculative efforts, the only written work that seems to have survived until the 21st century is his *Libellus circa dominium super indos*.⁶⁰ Quéatif and Échard⁶¹ – and, following them, some of the existing literature about Dominican writers and the reception of Aquinas' *Summa*⁶² – mentioned that De Paz wrote an entire *Commentary to the Summa* (*Commentaria in universam S. Thomae Summam*), some *Lectures on the Holy Scriptures* (*Relectiones sive repartitiones in totam sacram scripturam*) and several other works (*Conciones aliquos*). In any case, in the absence of reliable information concerning these hypothetical

of World War I, Cuervo's *Historiadores del convento de San Esteban de Salamanca* – the source of information and mistakes for many later scholars working on The School of Salamanca – reflects the religious intransigence that distinguished Spain and Europe at this time. Cuervo considers the statutory reform of San Esteban as an event having increased ›la honra y autoridad de este Convento‹, CUERVO (1914), Vol. I, 625.

56 The first one if we follow the order of appearance of the arguments in the *Responsio* of Cajetan.

57 CAJETAN (1562) T. I, Tract. XXXI, Responsio VI, 130.

58 His permanent residence after his nomination as Chair of Holy Scrip-

ture at the University of Salamanca in 1513.

59 Cuervo and Arriaga mentioned and used some of these sources, but they did so in a non-critical fashion, which further reinforced its original hagiographic character. It would be extremely useful to review in detail sources such as the *Cronica de la Orden de Predicadores* (Lisboa, 1567) written by Juan de la Cruz – mentioned by CUERVO (1914) 633. Other early modern chronicles to be considered are OLMEDA [1546] (1936), CASTILLO [1584–92] (2002), LÓPEZ/MARIETA [1613] (2003). This last chronicle is mentioned as an important source by ARRIAGA (1928) 177, who also refers to the writings of Bartolomé de Las

Casas, Cajetan and other Spanish and foreign authors: ›Históricale el Cronologio de la Orden, el Obispo de Chiapa, el de Monópoli, el Cardenal Cayetano, Alfonso Fernández, Antonio Senense y Fray Juan de Marieta‹.

60 In two 16th-century manuscripts: Academia de la Historia de Madrid, Colección Murillo, E-33-8; Biblioteca Universidad de Sevilla, 333-166-1.

The treatise was first published only in 1933: DE PAZ [1512], *De dominio Regum Hispaniae super Indos*.

61 QUÉATIF / ÉCHARD (1721) Vol. II, 38.

62 MICHELITSCH (1928) 45.

writings by De Paz, and considering that they were not printed during his lifetime or afterwards – something probably linked to its early death⁶³ – it is highly probable that Quétif and Échard did not mention the works that De Paz actually wrote but instead the works that a holder of a university chair in Theology at this time should or could have written.

The lecture *De dominio Regum Hispaniae super Indos* makes clear that its author was very familiar with the text of the *Summa theologiae* and with the biblical excerpts related to topics such as the nature and limits of secular and ecclesiastical authorities, infidels' and Christians' rights to dominion, etc. Thus, it would be no a surprise to find manuscript commentaries to the *Summa*, or to some biblical books written by De Paz or by some of his disciples, similar to the ones written by Vitoria and later authors from the School of Salamanca. If this is the case, we would be able to explain some obscure passages in De Paz's treatise on the *asuntos de Indias* and to make the same kind of combined approach to his conceptual apparatus that has been applied to Vitoria.⁶⁴

De dominio Regum Hispaniae super Indos, first Thomist defense of infidels' dominion

The important contribution made by the Salamanca's jurists and theologians to the popularisation of Ostiensism in the 15th century – to which I refer in the first section of the article – is another confirmation of the relatively late reappraisal of Aquinas' *Summa* at the University of Salamanca, which I dealt with in the second section of the text. At the service of the Castilian monarchy and benefiting from bishoprics, diocesan incomes and other royal offices (as ambassadors, orators and royal preachers), former Salamancian students and teachers such as Cartagena and López de Carvajal – to mention only a few representative indi-

viduals who authored relatively original approaches – write functional, circumstantial and repetitive technical reports following the dictates of their masters.

Following, for example, the sermons that other ambassadors of the Castilian kings held before the pope and the College of Cardinals in the second half of the 15th century, we can observe the strong continuity of a theological and juridical discourse that never abandon the conceptual framework constructed by Innocent IV and Hostiensis and reiterates again and again the arguments of the Italian canonist and cardinal denying any kind of dominion to infidels. In 1462, Rodrigo Sánchez de Arévalo, who also studied at the University of Salamanca and was Alfonso de Cartagena's disciple, celebrated the birth of the long-awaited offspring of Enrique IV and the conquest of Gibraltar in several rousing expansionist sermons given in the presence of Pope Pious II.⁶⁵ Later ambassadors of the Catholic kings in the Roman Curia such as Pere Boscà⁶⁶ and Alessandro Geraldini⁶⁷ followed a similar jubilant and belligerent Ostiensism in the 1480s. The Vatican Apostolic Library holds rare copies of these and other sermons and speeches whose interest for the history of the thought on dominion and infidelity has not been sufficiently taken into account.

Hostiensism was so popular before the critical *Junta de Burgos* (1512) that in 1510, King Fernando – acting as King of Aragon – instructed his ambassador in Rome, Jerónimo de Vich, to obtain a pontifical bull allowing him to make war and conquer any territory dominated by infidels:

»[...] porque dicen que de derecho no es permitido a los príncipes cristianos facer guerra en todas las tierras de todos los infieles, salvo en el reino de Jerusalem, sino en caso que los dichos infieles fagan la guerra a los cristianos, o que la guerra sea declarada contra ellos por el Sumo Pontífice (...) querríamos que, desde luego,

63 Matías de Paz does not appear in the recent repertory of *Books published in Spanish or Portuguese or on the Iberian Peninsula before 1601*, WILKINSON (2010).

64 The recent approaches by Simona Langella to the Vitorian concepts of *lex* and *dominium* are paradigmatic of a combined study of his *Relectiones*

and lectures on the *Summa theologiae*, LANGELLA (2015), LANGELLA (2017).

65 *Sermo [...] in graciaram actionibus [sic] ob natiuitatem primogenite serenissimi et potentissimi principis domini Henrrici regis Castelle et Legionis; Oratio super recuperatione ciuitatis de Gibraltar.*

López Fonseca and Ruiz Vila have recently published a critical bilingual

edition (Latin-Spanish) of some of Sánchez de Arévalo sermons and speeches during reigns of Juan II and Enrique IV, SÁNCHEZ DE ARÉVALO (2013).

66 BOSCA (1487).

67 GERALDINI [1486].

procurasedes de ganar de nuestro muy Santo Padre una bula en que generalmente declarase la dicha guerra contra los infieles, y diese a Nos, para Nos y nuestros sucesores reyes de Aragón, todo lo que con ayuda de Dios Nuestro Señor conquistásemos de las tierras de los infieles».

The instructions addressed to Jerónimo de Vich can be seen as a further example of a juridical contention, which, presented in the erudite canon law terms of Innocent IV and Hostiensis, had, on the one hand, gained increased importance due to the Iberian expansion in Africa, Asia and America, and, on the other hand, became so relevant and popular that a man of action such as King Fernando – who probably never heard about the relevant authorities within this dispute – could easily synthesise the opposite opinions of Pope Innocent and Hostiensis and stand for the most favourable position for his own interests.

Taking into account both what appears to be a Salamancian tradition of unrestricted hostility towards the Pagans and its context of enunciation in the early 16th century, which was very adverse toward infidels of any kind, the treatise *De dominio Regum Hispaniae super Indos* – often neglected by scholars lacking a proper diachronic perspective and a good knowledge of the way in which similar issues were discussed in the Late Middle Ages⁶⁸ – can be seen as a true milestone. Matías de Paz's willingness to confront the explicit royal ambition supporting the right of infidels to dominion did not come about simply due to the hostile context that I presented; instead, it had to do with the rephrasing of the debate for the first time using Aquinas' complex and nuanced theological vocabulary – whose *Summa*, rich in references to the relationship between Christians, infidels and converts as well as to the political central issue of *dominium*, De Paz was commenting on while at the University of Valladolid. De Paz opened up new perspectives in what was, up to this point, a deadlocked debate of diametrically opposed opinions.

As I will show, there were above all subtle internal divisions regarding the most problematic concepts under dispute – dominion and infidelity – which allowed De Paz to find a salvific path through the previously messy and inextricable forest.

In order to evaluate how De Paz overcame the old conceptual framework regarding dominion and infidelity, I will show that even if his treatise abounds with references to the classical perspectives of Innocent IV and Hostiensis, later revisited by other jurists and theologians – some of whom are also mentioned in the *Libellus* – he tends to express a clear dissatisfaction towards inherited schemas, considering them conceptually confusing. As we will see, for De Paz, the terms in which the rights of infidels to dominion have been evaluated were so inconsistent that he felt himself obliged to significantly redefine the most elementary concepts of the dispute: infidel, kinds of infidels, dominion, types of dominion, ignorance, etc.

Denouncing the limitations of the inherited conceptual framework

Traditional legal and theological perspectives did not necessarily deny dominion for infidels. Even if, under the pressure of kings eager to expand to the southern Mediterranean, previous Salamancian masters had favoured the so-called Hostiensist opinion, many other 15th-century learned men⁶⁹ had followed Innocent IV and made clear that infidelity, related to divine right, could not override dominion, related to human right and according to human reason. If the truth of this minor premise is accepted – and that was the case for every jurist and theologian, according to an extremely optimistic De Paz – then the major premise should also be accepted: that infidel lords and princes who convert to the Christian religion (which holds in general for all forms of conversion) retain their rights to *dominium* in the fullest

68 Although very famous and widespread, *The fall of natural man*, written by Pagden, can be seen as paradigmatic of this frequently distorted perspective. Ignoring the medieval background of the polemic on the Indies, Pagden rashly and wrongly considered the contemporary treatise

written by Palacios Rubios to be more interesting and original than that of Matías de Paz, rushed through in three lines of his book, PAGDEN (1986) 50.

69 For example, the above-mentioned Minucci da Pratovecchio and Roselli, who opposed the arguments of Ibe-

rian colleagues with regards to the natives of the Canary Islands.

sense (whether these dominions were principalities, public offices, lands, rents, houses or, simply, their own bodies). This was connected with the idea that it was somehow evident that conversion to Christianity – echoing the Iberian internal disputes with regards to the condition of Jews and Muslim converts – should not worsen the condition of former infidels:

»Quod sic probatur: primo, si princeps infidelis cum suis subditis convertatur non videtur esse peioris conditionis quam antea, ut visum est. Sed antea habuit verum dominium super illos, ergo et post non debet sibi auferri [...]. Et maior est nota, quia quod est rectae rationi conforme non aufertur per gratiam nec per ius divinum. Sed quod unus homo habeat dominium super alium, saltem post lapsum primi hominis, est conforme rectae rationi, alias enim periret res publica. Minor tenetur communiter apud omnes tantum theologos quam iuristas, ut postea patebit, quod infideles habent verum dominium.«⁷⁰

Although minimising somehow the arguments and influence of Hostiensism, De Paz considered that these two points – i. e. that the infidels were true masters and possessors, and that they could not lose their offices and properties after converting to the Christian religion – had been made clear enough within what we could call the traditional paradigm. In his *Libellum circa dominium super Indos*, he appears to be unsatisfied with this classical perspective and complaints repeatedly about the inherited conceptual framework at different points in his treatise.

The first reason for De Paz's dissatisfaction was that the two very general conclusions mentioned above were clearly not sufficient in order to give an appropriate and detailed answer to the many dilemmas that were arising as a result of the surprisingly great discoveries in the Western Atlantic as

well as the rapid process of disordered conquests that followed. While De Paz could partially rely on the tradition and find in the most important authorities of theology and canon law answers to the very first questions raised in his treatise – that is, whether the infidels had a true right of pre-emption (*ius praelationis*), and whether they kept this right after the coming of Christ (contrary to Hostiensis)⁷¹ – the new kind of infidels who had been ›discovered‹ overseas could hardly be said to fit in a framework of concepts and norms constructed to support an unrestricted expansion of Christians over infidels in a context of mutually open hostility.

Unlike Muslims, Jews and ancient Pagan European peoples, the Pagans that, according to the reports of the missionaries, had been found within the confines of *la Mar Océano* happily welcomed the Christian missionaries, and those who had not been mistreated were ready to receive the Gospel.⁷² Neither their friendly and hospitable attitude – something that Vitoria also emphasised in his *Relectiones* – nor the tremendous distance existing between their provinces and the Christian republics seemed to justify *a priori* the application of the same kind of harsh actions against them used by Christian magistrates and soldiers in the Mediterranean sphere. Nevertheless, relying on the obsolete approaches that canon lawyers and theologians had developed since the 13th century, the issue was by no means clear. Profiting from this kind of normative and regulatory impasse, the amphibological use of the older concepts of infidel, *dominium*, *hostis*, etc.⁷³ was tragically starting to spread and began to prevail in the legal reasoning and argumentation of conquerors asking for Indian slaves as *mercedes* for their deeds at the service of the crown.

Given the lack of correspondence between concepts and realities, the deliberately hostile infidels referred to in the inherited conceptual framework and the kind of friendly ignorant infidels that

70 DE PAZ [1512] (2017) 78–80.

71 DE PAZ [1512] (2017) 198.

72 Depicting the natives according to the information that Pedro de Córdoba, Bartolomé de Las Casas and other early Dominican missionaries in the Antilles brought with them, De Paz considered their inhabitants to be meek, obedient, generous and loyal, that is to say, to have the kind of

political virtues required for a peaceful conversion and subjection under the authority of the King of Spain.

»Sunt tamen (ut fertur) in aliqua ipsorum patria homines mansuetissimi, non cupidi, non avari nec maliciosi, et valde ad fidem ductiles atque dociles, si charitative tractentur«, DE PAZ [1512] (2017) 90. Those ideas are repeated several times in the treatise.

73 A perverse use of language and tradition that Las Casas will bitterly denounce in his writings, LAS CASAS (1956) L. III, C. 34, 129. On the concept of amphibology and its implications in the *asuntos de Indias*, see GIMÉNEZ FERNÁNDEZ (1960) 472–481.

suddenly appeared before the eyes of the Europeans, not only Innocent IV and Hostiensis but also the theological authorities on this matter – more prized by De Paz than canon lawyers⁷⁴ – could dubiously be invoked as sure points of reference.

Among the many questions that remained open and unresolved after the first 20 years of Spanish presence in the Western Atlantic, and with regards to which former leading voices were powerless, the most important questions concerned the legality, permissibility and morality of what was *de facto* happening in America – namely, a succession of wars and plunders committed against infidels having lived in peace before the arrival of the Spaniards and not being *hostes* of the Christians.⁷⁵ As a theologian, De Paz should not only and primarily enlighten the King and his counsellors at the *Junta de Burgos* about the legality of the kind of actions and *dominium* until then exerted over the King's American vassals, but he also should state whether the kind of actions mentioned above were sinful, and whether, in this case, their perpetrators were obliged to restitute the goods and persons illegally seized. Even the king could be obliged to restitute all the incomes coming from the imposition of an illegal despotic and slavish domination over the Indians, a point that De Paz insinuates calling upon an unspecified pontifical decree.⁷⁶

The second important reason De Paz considered the approaches of his predecessors⁷⁷ to be unsatisfactory was that they were too general and radical in evaluating infidels' claims to dominion. Generally speaking, they provided categorical answers that either totally rejected infidels' dominion

or provided excessive support to infidels' entitlements, especially with regards to jurisdiction (*dominium iurisdictionis*). Both extremes were for De Paz reprehensible: in the first case, learned men incited Christians to a never-ending war against every kind of infidel and to commit sinful deeds such as massacres and plunders. For its part, the second option – promoted by Innocent IV and some of his followers – created additional obstacles and barriers to the already difficult and onerous task of spreading the Gospel in remote areas and left their Christian vassals to the mercy of infidel lords.

In order to confront the existing confusion and ambiguity, not to mention to close the gap between these highly contested perspectives, De Paz tried to find a middle ground between Hostiensis and Innocent IV. More than this intermediate position, and De Paz's detailed answers to the many specific questions concerning the government and Christianisation of the Western Indies that had arisen after two decades of Spanish presence – whose full analysis would exceed the limits of a review article – what is of interest to us is the methodological strategy to which he resorted in order to suture the above-mentioned theoretical wound. The existing confrontation between Christian perspectives and the resulting ambiguity required, in his opinion, a complete redefinition of the main assumptions and premises in which the debate had been launched. Conceptual clarification appeared therefore as a necessary prior step before entering into the wild jungle of arguments and conclusions that had to be evaluated at the *Junta de Burgos*:

74 As Vitoria, he shows some contempt for canon and civil law and considers theology »caput et domina scientiarum«, trying to reduce the dubious role played by the jurists in the early American conquests, DE PAZ [1512] (2017) 106.

75 »Si autem quaestio intelligatur de his infidelibus qui quiete vivunt nec molestant christianos et habent regna et provincias a nostris separatas, et ibidem iurisdictionem exercent et omnia tenent, utrum liceat illis christianis illis volentibus in pace vivere bella movere, et bona eorum occupare sine peccato?«, DE PAZ [1512] (2017) 106.

76 These questions are the ones De Paz answered last in his *Libellum*, showing that although a general framework of concepts and arguments were at the disposal of the jurists and theologians meeting in Burgos, its specific application for the extraordinarily new realities of the Indies could not be easily deduced or proposed. »Quintum: an liceat principibus christianis contra omnes infideles bellum indicere. Sextum: utrum hoc fuerit expediens specialiter contra memoratos indos. Septimum: an isti mox capti efficiantur servi debeantque regi sub despotico principatu. Octavum: utrum ipsis conversis ad

fidem cum eorum dominis Rex noster possit illos in perpetuum tenere, ut vasalli et gubernari principatu reali etsi non despotico. Ultimum: videndum est de restitutione oblatorum propter regimen despoticum et servile ad quam etiam materiam multum confert Breve Summi Pontificis Alexandri Sexti, sub hac forma: Alexander, etc.«, DE PAZ [1512] (2017) 198.

77 That is to say, the theologians, canon and civil lawyers that had previously evaluated the dominion exerted over the Indians by the Spanish king or over other Pagans subjected to the authority of Christian kings.

»Et ita manent ambae quaestiones pro utraque sui parte ambiguae. Pro quarum quidem dilucidatione, tria per ordinem facere intendo; primo declarare aliquos terminos; secundo ponam aliquas conclusiones et earum corroboraciones; tertio ad adducta respondendum erit quae contra illas videbantur.«⁷⁸

The first crucial conceptual distinction Matías de Paz made was between ignorant /innocent infidels and aware /guilty ones; a theological classification, already outlined in Aquinas' *Summa theologiae* (IIa-IIae, q. 10, a. 3), which had remained a kind of erudite and academic disquisition until it was filled with actual content and put into practice in the early modern American context. Even if, following an uncritical and erroneous statement⁷⁹ made by Bartolomé de Las Casas in his *Historia de las Indias*,⁸⁰ Cajetan has been long considered by most scholars⁸¹ the first theologian to make this translation of ideas between the Old and New World,⁸² it was at the *Junta de Burgos* where the above-mentioned key excerpts of *IIa-IIae* were reread and actualised for the first time in order to distinguish the case of the islanders ›discovered‹ in

the Western Atlantic from the condition of other infidels encountered by Christian in previous centuries. As I will show in what follows, at the meeting of Burgos, not only Matías de Paz but also the famous civil lawyer Juan López de Palacios Rubios – also called by Fernando el Católico to give a learned juridical opinion about the rule of the Indies – made use of Aquinas' classification between different types of theological ignorance and infidelity.

A second conceptual differentiation used in *Libellus circa dominium super Indos* is the one between *dominium possessorium* and *dominium iurisdictionis*, which Matías de Paz uses to refer to as *dominium praelationis*. It is, however, a further conceptual clarification that will allow Matías de Paz to satisfy Fernando el Católico's desire for an irrefutable recognition of his fair *dominium* over the Indies, without betraying the courageous fight of his fellow Dominicans against the tyrannical abuses of slavers and *encomenderos*. That is also the objective and motivation behind the third transcendental clarification to which I will refer below: the distinction between *principatus despoticus* and *principatus regalis*.

78 DE PAZ [1512] (2017) 82.

79 Cajetan referred to this issue only in 1517, that is to say, five years after the *Junta de Burgos*. In fact, in his commentaries to IIa-IIae, q. 10 (»De infidelitate in communi«) there are no references to the American infidels. AQUINO / CAJETAN [1517], (1895) 78–96. Cajetan specified their status while commenting a later article of the *Summa theologiae* (IIa-IIae, q. 66), in which he condemned the plunders committed against the kind of infidels to which belonged the recently discovered Pagans, a kind of »pagani qui nunquam imperio Romano subditi fuerunt, terras inhabitantes in quibus christianum nunquam fuit nomen« and who, consequently, »nec de iure nec de facto subsunt secundum temporalem iurisdictionem principibus christianis«, AQUINO / CAJETAN [1517] (1897) 94. Contrary to the historiographically mistaken perspective mentioned above, the opinion that Cajetan provided at this point is neither original nor theological. His classification between kinds of infidels is, in fact, the juridical distinction that Innocent IV had al-

ready operated with in the 13th century. Cajetan's sources are exclusively legal ones, and the theological considerations regarding different types and causes of *ignorantia fidei*, so important in Aquinas and De Paz, plays no role at all in his *Commentarii*.

80 Where he stated that it was Cajetan who, after having been informed by Pedro de Córdoba of the many abuses committed against the Indians in a meeting of Dominicans held in Rome and »porque por aquel tiempo escribía sobre la *Secunda secundae* de Santo Tomás, acordó de escribir contra esta tiranía en la cuestión 66, sobre el art. 8, donde halló el propio lugar para la material; la cual en muy pocas palabras, con cierta distinción de infieles hizo, dio luz a toda la ceguedad que hasta entonces se tenía, y aún hoy, por no mirar o por no seguir su doctrina, que es verdadera y católica, se tiene«, LAS CASAS [1559] (1956), Cap. XXXVIII, 143.

81 CARRO (1951) 600; BEUCHOT (1994) 119–120.

82 The fact that De Paz and Cajetan were in contact with one another during the debates aroused by the attempts

to block access of the converts and descendants of converts to monasteries and Holy Orders makes a further dialogue between the masters regarding the American dilemmas plausible. Cajetan might have been informed by De Paz of the controversial issues that shocked the conscience of their Spanish fellow Dominicans. Which of the two first ›remembered‹ and applied the Thomist conceptual framework to the emergent American polemic is still unclear. In any case, the first public references to Aquinas' kinds of infidels in the context of the *asuntos de Indias* date from the *Junta de Burgos*.

Thomist approach to guilty and innocent infidels. Ignorance as a touchstone

The first concept to be thoroughly redefined in *Libellus circa dominium super Indos* is the concept of infidelity. Before the kind of *dominium* that the Spanish kings can legally exert over their ›newly discovered‹ subjects can be determined, De Paz states that the juridical and theological condition of these subjects has to be defined. As he explicitly claims, the task amounts to nothing less than the definition regarding the kind of people that the so-called Indians are, a central mission that the Dominican friar successfully achieved with the help of St. Thomas' teaching:

»Tertio: declarandum est, quae gens sit supra-dicta indorum. Pro quo est notandum, quod sunt aliqui infideles ad quorum notitiam pervenit fides vera Redemptoris nostri, ut iudaei, sarraceni, turci, haeretici. Et isti habent peccatum proprie infidelitatis, non tantum privative sed et positive, et ita est maximum peccatum, ut sanctus Thomas probat in II.II, q. 10, a. 3. Alii vero sunt ad quorum notitiam forte nondum venit fides nostra, et si forsitan aliquando pervenit, nunc tamen non est in memoria illorum qui illam patriam inhabitant, talem fidem esse in orbe terrarum.«⁸³

As we can see, De Paz applies to the American natives the distinction between kinds of infidels that we can find in Aquinas' *Summa*; a distinction used by De Paz to declare the kind of people the Indians were, that is, to precisely define their theological status and avoid previous biased perspectives, in which their blameless infidelity was merged into a perverse *totum revolutum* with other types of inexcusable unbelief. Relying on what St.

Thomas stated in his IIa-IIae, q. 10, art. 3 and previously in art. 1 of this same question, De Paz focused on the clearly different theological status of Jews, Saracens, Turks or Heretics (who had ›the sin of infidelity positively‹) and infidels such as the ones of the New World, who either never had contact with the Christian religion or, if they did during the Apostolic Age, they have completely forgotten it over the centuries. Following closely the Thomist conceptual framework and approach, De Paz considers this ›privative‹ infidelity resulting from ignorance to be more a punishment than a sin. In any case, inasmuch as it could not be considered an informed, conscious and deliberate opposition against the faith, no theologian and jurist could blame the Indians for their infidelity.

Denying that this type of infidelity is a ›peccatum actuale‹ at all, De Paz cancelled what was until the *Junta de Burgos* the theological alibi used by the crown to justify an unrestricted and brutal overseas expansion. The Dominican friar appears to be conscious of the strength of his conceptual finding and its utility to avoid precedents ›errores‹. Thus, he constantly reiterates and draws attention to this particular point throughout his treatise.⁸⁴

The key point in De Paz's reasoning is also inferred from another one of the sharp conceptual distinctions to be found in *Summa theologiae*, namely the differentiation between ›vincible‹ and ›invincible‹ ignorance in Ia-IIae, q. 76, arts. 2 and 3. As Marco Toste's contribution in this same issue of *Rechtsgeschichte* and some recent public lectures by Jacob Schmutz show,⁸⁵ the debates concerning the possibility of an ignorance of the primary and secondary precepts of natural law, and even of the existence of God, were already intensely debated long before Aquinas wrote his *Summa*. As we read in Toste's contribution, the topic had been addressed by earlier theologians such as Peter

83 DE PAZ [1512] (2017) 86–88.

84 »Et de talibus dicit Sanctus Thomas in quaestione allegata a. 1 quod habent dumtaxat infidelitatem privative, quae non potest dici peccatum, sed potius poena peccati. Quod dictum oportet sane intelligi alias esset magna erroris occasio. Quod sic intelligo videlicet quod non sit in talibus peccatum commissionis contra fidem, quod ratione praecise talis ignorantia ut sic non habeat peccatum actuale [...]. Indi autem supra memorati, ut

communiter omnes asserunt qui ad patriam illorum profecti sunt, de numero errant istorum infidelium non autem de primis. Unde maxima vis pro hac material in hoc est facienda, ut postea ostendam«, DE PAZ [1512] (2017) 88–90.

85 JACOB SCHMUTZ, »The Most Gentle Nation on Earth: Late-Medieval Theology and the Conquest of Brazil«, XIV International Congress of the Société Internationale pour l'Étude de la Philosophie Médiévale (SIEPM),

Porto Alegre, 28.07.2017; JACOB SCHMUTZ, »Barockscholastische Debatten zur *ignorantia iuris* – was gibt es Neues im Vergleich zum Mittelalter?«, Frankfurter Rechtshistorische Abendgespräche, Max-Planck-Institut für europäische Rechtsgeschichte, Frankfurt am Main, 02.05.2018.

Lombard (Book II, dist. 22), whose postulates and evident application to the American infidels were thereafter discussed by Juan de Celaya in the late 1520s.

De Paz precedes both Celaya and Vitoria in the consideration that the recently ›discovered‹ Pagans could be affected by such an »invincible« ignorance. His reference to this issue is not Lombard but Aquinas, and of the three Spanish contemporary theologians – all of whom studied in Paris – De Paz is clearly the most orthodox Thomist. While he does not explicitly mention *Ia–IIae*, q. 76, he nevertheless seems to have in mind its contents and refers to another one of Aquinas' writings in which the possibility of an invincible ignorance was advanced: *De Veritate*, q. 14, a. 11.⁸⁶ Following Thomas, De Paz considers that while the ignorance of the Indians could not excuse them from a total theological ignorance and from the violation of the first principles of natural law – an inseparable content of human reason⁸⁷ – it had an exculpatory force with regards to some of the most elementary precepts that were called upon while waging war against the infidels:

»Tamen talis ignorantia iuste potuit eos excusare quoad homines invadentes terram, ut iuste illam possent defendere, etsi invasores essent christiani, cum illi non defenderent se tamquam pugnantes contra Christum, aut cultores eius, ut faciunt turci et sarraceni, sed dumtaxat contra invasores patriae propriae, quam iustum est quem piam defendere donec scirent illos esse cultores veri Dei, atque proinde Redemptoris omnium [...]. Et supradicta definitione de ignorantia vincibili circa fidem, quae non excusat, et invincibili contra bellatores quae excusat, pro hac materia est valde memoriae commendandum.«⁸⁸

The contemporary wars in the Western Atlantic were for De Paz totally new conflicts to which

former regulations and customs could not be honestly applied. In his opinion, the isolation of America's natives was so absolute that even their occasional attempts to resist the entry of Christian soldiers and preachers could not properly be considered intentional and guilty, but rather a result of their ignorance and misunderstandings. Not knowing and not having had the opportunity to know that *conquistadores* and friars were, in fact, the servants of the True God and the agents of their soon redemption, they could not be blamed for regarding and resisting them as invaders, at least until they realised who the foreigners actually were. Henceforth, theological ignorance is not a topic that could be restricted to a purely religious sphere and concerning only the salvation of the Indians' souls, but is understood by De Paz as a part of a civilising gap with many political and juridical implications. Some of the most important are the ones concerning the regulation of war and the conditions under which a war against infidels could be considered a *bellum iustum*.

De Paz's work on the recently discovered realities of the American continent and, above all, the unexpected thousands of Pagan *gentes* seems to fill Aquinas' previously empty conceptual schemas regarding infidelity with content. Native Americans illustrate much better than the remote possibility of the *homo silvestris* mentioned in *De Veritate* or the cases of the crazy and mentally handicapped men envisioned by Aquinas (in *Summa theologiae Ia–IIae*, q. 76, art. 3⁸⁹) this category of innocent infidels not equatable with Jews and Muslims. In turn, Aquinas' theoretical mastership sheds light on what were, until then, blind and dispersed intuitions⁹⁰ by some theologians and jurists, thus allowing Spaniards and Europeans to perceive the Indians in a new and clear light and as they theologially and legally really were, instead of perversely confusing them with other kinds of infidels.

The new theoretical developments coming from the field of theology did not imply that De

86 DE PAZ [1512] (2017) 88–90.

87 Insofar as Aquinas had in mind a person reared in the forest or raised by animals (*De Veritate*, q. 14, a. 11) – if the isolated person were to follow the dictates of natural law and the natural inclination to the good, he would be helped by means of revelation or an angel sent by God to know the things necessary for salvation. Somewhat

curiously, but completely consistent with this Thomist perspective, De Paz suggests that God himself is behind the expedition sent by the Spanish kings to the distant Indies, having inspired and gained the will of the Reyes Católicos in order to reward most of the Indians for their life according natural law, DE PAZ [1512] (2017) 90.

88 DE PAZ [1512] (2017) 174.

89 AQUINAS/CAJETAN [1511] (1892) 55.

90 If I may call upon Kant's famous *dictum* in this context, KANT [1787] (1998) 193–194.

Paz neglected or rejected the juridical science and its concepts and criteria. In fact, among the authorities quoted by De Paz to clarify the infidels' right to dominion, we find also Innocent IV. If Aquinas is the main theological reference for De Paz with regards to infidelity, Innocent IV is the canon lawyer who acts as a reliable guide in most of the juridical precisions introduced by De Paz in his attempt to clearly profile the legal status of the Indians. De Paz agrees completely with Pope Innocent's opinions stating that infidels could only be fought, deprived of dominion and expelled from the lands they inhabited if they were usurpers of the Holy Land or other territories that were once under the jurisdiction of the Roman Empire, or if they mistreated and oppressed Christians.

Such an intense theological and juridical focus on the concept of infidelity and its types represents a great innovation in the Hispanic realm, especially if we compare the rich and detailed analysis of De Paz with the poor and careless approaches to infidelity found in the treatises written by previous Salamancian masters such as Alonso de Cartagena⁹¹ and Bernardino López de Carvajal.⁹² Both of them seem to have intentionally avoided this kind of precision in order to easily dismiss any possible native claim to *dominium* in the case of the Canarian and other African Pagans, whose theological status was, in fact, very similar to that of the Indians.

Reappraisal of Aquinas' doctrines on infidels' dominion and the distinction between *dominium possessorium* and *dominium praelationis* (*iurisdictionis*)

Just as important as the distinctions between different kinds of infidels and types of ignorance,

we also find in *Libellus circa dominium super Indos* the key references to the difference between the *dominium* that individuals (private persons) exert over their goods and own bodies, referred to by De Paz as *dominium possessorium*, and the *dominium* exerted by kings and other public authorities (public persons) over vassals or citizens. While other theologians and jurists used to refer to this second kind of *dominium* as *dominium iurisdictionis*, De Paz prefers to speak of a *dominium praelationis*, that is, the right of preemption.

The term *dominium praelationis* is found in Aquinas' *Summa* (IIa-IIae, q. X, a. 10, «Utrum infideles possint habere praelationem seu dominium supra fideles»⁹³) and in other theological manuals written in the mid-13th century.⁹⁴ Even if this last term did not crystallise into one of the capital notions that would appear and be discussed in later treatises and lectures on *asuntos de Indias*, it is nevertheless a notion that fits well with the kind of political structures that the Spaniards had found up till then in the Western Atlantic, that is, a clear hierarchisation of societies – for instance, the pre-eminence of certain men, women or families – but whose proper exercise of jurisdiction was not clear or appeared to be very different from the European one.

Never having been in the overseas dominion and forced to rely on contradictory reports of conflicting parties, it is a problematic topic that Matías de Paz cleverly avoids. Thus, we do not find in *Libellus circa dominium super Indos* the kind of pseudo-ethnological approach that is very common in other juridical and theological writings of this period. While in Vitoria's or Palacios Rubios' treatises the political, economic and juridical institutions of the «discovered» peoples used to be equated with apparently similar European institutions and are also considered as civilisational

91 There are only two brief references to the concept of *infidelitas* in Cartagena's *Allegationes super conquesta insularum Canarie contra Portugalenses*. Instead of being explicative, they are of a more offensive nature (Cartagena speak about «infideles resistentes», and «provinciae et insulae in rebellionem ac infidelitate», CARTAGENA [1435] [1994] 72, 152.

92 The same kind of negative connotations in López de Carvajal commemorative sermon after the conquest

of Baza. He supports the right of the pope and Christian princes to attack and seize the *dominia* of «infideles infesti christianis», «infideles contra iura naturae agenda», and «infideles non recognoscentes iugum Ecclesiae» and, according to the classical doctrine, leave it to the discretion of the Church to tolerate or dismantle the *dominium* exerted by «infideles qui recognoscunt iugum et servitutem Ecclesiae», LÓPEZ DE CARVAJAL [1490] (1995) 82–86.

93 AQUINAS/VIO [1517] (1895) 91.

94 For example, the *Summa universae theologiae* of Alexander of Hales, which after being first printed in 1481–1482 HALES [1245] (1481) appears as a common reference in De Paz's *Libellus*. On the *dominium praelationis* in Hales, see SCHWARZ (1977) 101. A general perspective over the notion of *dominium* of Hales in ZORROZA (2016).

achievements granting the natives future political rights under the Spanish kings, De Paz does not consider it a relevant issue. In his attempt to determine the juridical status of the natives, the only important factor seems to be the natives' positive attitude toward receiving the Gospel. De Paz's preference for the term *dominium praelationis* reflects both this uncommitted and inattentive view of the indigenous *policía* as well as his preference for theological argumentation in his attempt at profiling the status according to which the Indians will be ruled.

As had been the case for the differentiation between types of infidels, the appearance of the distinction between *dominium possessorium* and *dominium praelationis* takes place in the *Libellus* after an exhaustive review of previous juridical and theological opinions concerning infidels' dominion. After determining that the multiple canons of the *Corpus Iuris Canonici* that could be considered pertinent to this issue were clearly contradictory, De Paz proceeds to verify that canon lawyers had not been able to give a clear and unified answer to the many dilemmas arising from the relations between Christian and infidels. Instead of adopting a common position with regards to the infidels, canon lawyers had either remained powerless before the *selva intextricabilis* of the pontifical decrees or fought each other. The most paradigmatic example of this disagreement was to be found in the problematic master-disciple relationship existing between Innocent IV and Hostiensis, whose opposing opinions are explained by De Paz at length.⁹⁵

Somehow forced to give his first impressions about the arguments of Innocent IV and Hostiensis, De Paz concludes the opinion of Pope Innocent to be truer than that of Hostiensis, whose multiple

contradictions are manifest.⁹⁶ It is important to note that, in this initial step, De Paz supports Innocent's position because Hostiensis' contrary position seems to him »absurdum« and because some of the most respected canon lawyers of the 14th and 15th centuries (Petrus Ancaranus, Antoninus Florentinus, Nicolaus de Tudeschis) have given him reason to doubt it. The rational arguments in favour of infidels' dominion, which will later appear in Vitoria's *Relectio de Indis*, are also taken into account by De Paz.⁹⁷ Bringing together the most sound reasons and authorities, Innocent IV's opinion on the matter is preliminary accepted »salvo meliori iudicio«. This better judgment appears shortly thereafter in his treatise. It consists, again, in a salvific appeal to the theological authority of Aquinas; that combined with the conceptual distinction between private and public dominion will allow the kings' counsellors to get rid of the belligerent and absurd Hostiensis once and for all, yet without constraining, on the other hand, the Spanish expansion in the Indies to the rigorous framework built by Innocent IV to protect pacific infidels as non usurpers of former Christian lands.⁹⁸

After the somewhat disappointing review of canonical authorities, De Paz examines the opinions of theologians and observes that, even if they rarely share such a total denial of infidels' dominion as the one found in Hostiensis' writings, they do not agree on the conditions under which they can exert *dominium*, a sign of the difficulty of the matter in dispute according to De Paz.⁹⁹ While Peter Lombard, in one of the distinctions of his *IV Books of the Sentences* (*Summa sententiarum*, II, d. 44) and some of the later commentators of this *distinctio* (Durand, Thomas de Argentina) had proved arguments to shield the *dominium* exerted

95 »Unde est notandum quod apud famosos patres canonistas scilicet Hostiensis et Innocentius fuere opiniones et controversiae utrum scilicet apud infideles rerum dominia et iurisdictio et possessiones possent esse sine peccato«, DE PAZ [1512] (2017) 106.

96 »Et quamvis opinio Hostiensis esset vera, videtur quod bona infidelium habeantur pro derelictis et ita occupantibus concedantur, et ita non committunt christiani furtum, quod videtur absurdum. Et pro tanto, salvo meliori iudicio, crederem opinionem Innocentii veriore«, DE PAZ [1512] (2017) 118. Other contradictions of

Hostiensis' argumentation are denounced in p. 126.

97 »Dominus ad ipsorum usum et nostri cuncta creavit temporalia, qui solem suum oriri facit super bonos et malos«, etc., DE PAZ [1512] (2017) 122.

98 In his commentary to X 3.34.8, Innocent IV acknowledged the dominion exerted by some categories of infidels and over some specific lands, that is to say, the dominion over territories, which had never been under the jurisdiction of the Church, by infidels who did not deserve to be attacked according to the traditional casuistry of *iustum bellum*. A strict

adherence of his position would have allowed only a limited expansion of the Spanish monarchy in Muslim Africa and Asia. INNOCENT IV [1245] (1570) 572.

99 »Sed his dimissi [canonistis], transeo ad theologos, inter quos etiam de dominio infidelium videtur aliqua esse controversia, et ita est signum difficilis quaestionis«, DE PAZ [1512] (2017) 128.

by infidels, even for the case of a *dominium* exerted by infidels over infidels, Aquinas (in *Ila–Ilae*, q. 10, a. 10¹⁰⁰) considered this kind of subordination undesirable and troublesome. According to Aquinas – whose criteria in this matter was followed by De Paz – being derived from natural reason, *dominium* was independent of grace and could not be abrogated. The Church could, nevertheless, take actions in order to prevent infidels from an exercise of *dominium* contravening Christian faith. That implied the liberation of Christian vassals under the authority of an infidel king or magistrate whenever the pope considered it convenient, and even the preventive dethroning of any prince representing a present or future threat to the spreading of the Gospel. The power of decision concerning why, when, were and against whom to intervene felt under the exclusive competence of the Church:

»Ex hoc mihi videtur verum quod. S. Thomas asserit immo quod plus est teneo (salvo tamen meliori iudicio et absque temeraria assertione) hanc conclusionem: quod Ecclesia iuste potest spoliari omnes principes propter solam infidelitatem dominio suo dato, quod subditi non convertantur ad fidem. Quam etiam visus est tenere Hostiense, sed non ita generaliter.«¹⁰¹

As we can see, the authority of Aquinas is clearly the element that allows De Paz to transcend the chasm that had split canon lawyers for centuries. Resorting to Aquinas' opinion on infidels' dominion, De Paz strikes an acceptable balance between two previously irreconcilable fronts. Henceforth, Salamancian masters will interpret in different ways *Ila–Ilae*, q. 10, a. 10 and will still disagree on different issues related to infidels' dominion. In any case, the step made by De Paz clearly opened the door for an important reorientation of the debates that, in the future, will no longer be blocked by the Innocent IV–Hostiensis dispute and will be increasingly oriented toward theology.

The difference between the public and private dimensions of *dominium*, emphasised by De Paz in the last part of his argumentation, is the icing on the cake in this innovative approach to infidels'

possessions and reigns. With this new distinction, De Paz affirms his intention to remediate many confusions derived from the two general approaches to *dominium* found in the writings of many jurists:

»Et ad id quod iuristae dicunt, quod oportet in hoc imitare Deum, »qui solem suum facit oriri super bonos et malos, dando eis bona temporalia et ita dat eis dominia, notanda est hic valde quaedam definitione, cuius ignorantia multos fefellit. Dicit, enim, est duplex dominium: scilicet, possessorium et praelationis. Concedo quod habent infideles vere dominium possessorium, id est bonorum temporalium suorum, et quod propter solam infidelitatem non possunt illo ab Ecclesia privari [...]. Aliud verum est dominium, quod est propie praelationis, super multitudinem populi, quod vocatur regimen, et tali merito suae infidelitates possunt privari, ut S. Thomas dicit, immo dico, ut dixi, quod illud non habent nisi quantum Ecclesia permittit, itaque ab Ecclesia iuste possunt spoliari.«¹⁰²

Even if jurists were any easy target for De Paz, making them appear as ignorant, incompetent and, ultimately, responsible for the chaos in the government of the Indies, the fact is that with this conceptual precision, the Dominican friar is correcting the ambiguity and imprecision with which *dominium* used to be addressed in the writings of the theologians. For the jurists in the service of the Hispanic overseas expansion, the dual dimension of *dominium* was clear enough since, at least, the Late Middle Ages. For example, referring to the Canary Islands, Alonso de Cartagena had already distinguished between a »dominium in rebus suis« and a »dominium quantum ad iurisdictionem« or »superioritatem«.¹⁰³ Dealing with similar issues, neither López de Carvajal nor previous Spanish theologians have demonstrated such a level of precision. Looking back in time, the problem could even be appreciated in Aquinas' reasoning about infidels' *dominium*. In *Ila–Ilae*, q. 10, a. 10, the doctor of the Church confusedly equated *dominium* with *praelationis*. Aquinas did not specifically address possession of temporal goods but,

100 He also quotes the works *Contra errores Graecorum*, cap. 65 and a part of

De regimine Principum, lib. 3, cap. 10, 101 DE PAZ [1512] (2017) 142.

102 DE PAZ [1512] (2017) 156–158.

103 CARTAGENA [1435] [1994] 144.

a book attributed to Aquinas.

while justifying with a brief remark the releasing of Christian slaves possessed by Jews, he seemed to leave the door open for an unrestricted freedom of action by the Church with regards to any kind of infidels' goods.¹⁰⁴

Making a clear distinction between the two dimensions of *dominium*, the disciple (De Paz) surpasses the master (Aquinas) and considers the topic in greater depth. The theoretical development is important for the history of Thomism and the School of Salamanca inasmuch as it allows us to see that, from the early reception of Aquinas' thought at the University of Salamanca and its first application to the American controversies, the Salamancian masters not only uncritically reproduced Aquinas' concepts and approaches but also corrected and adapted them to the new emerging realities that were unknown to Aquinas.

This last distinction is also factually relevant. We can see it as a strategy adopted by De Paz to protect the natives from enslavement, tyrannical servitude and the theft of their relatives and belongings, without giving the impression that he – and by extension his ›disruptive‹ fellow Dominicans, led by Montesinos and Las Casas – were trying to deny, reduce or even limit the political authority of the Spanish kings over their newly acquired dominions. In a sense sacrificing the *caciques* – perceived as a potential threat to the complex process of indoctrination of their vassals – De Paz tried to curb instances of theft and enslavement¹⁰⁵ as well as to oppose the complete annihilation of the indigenous *dominium* that Hostiensis and, following him, most of De Paz's contemporaries straightforwardly supported.

Regulating Spanish rule with normative concepts: *principatus despoticus* and *principatus regalis*

The last conceptual distinction that I would like to mention before proceeding to the conclusions of this article is, in fact, the first in order of appearance in De Paz's *Libellus*. The distinction between *principatus despoticus* and *principatus regalis* is an old and well-studied distinction within political philosophy. It dates back at least to Aristotle's *Politics*, a crucial influence, in turn, on Aquinas' political thought, who revisited almost every Aristotelian idea. Its influence was also particularly strong in the case of one of the most prominent disciples of Aquinas, Ptolomey of Lucca, who in the early 14th century wrote the treaty *De regimine principum*, a fierce attack against the tyrannical rule that circulated under the name and authority of Thomas Aquinas until the 20th century,¹⁰⁶ quoted at length by De Paz in his treatise. The great reputation enjoyed by Aquinas in the Late Middle Ages contributed to making this neo-Aristotelian conceptual framework a kind of official paradigm in political thought, only contested by princes, flatterers and, later on, by independent thinkers such as Machiavelli, who during the *Junta de Burgos* was indeed writing his *Principe* outside the academic channels of his time.

Political neo-Aristotelism enjoyed great influence and success at the University of Salamanca in this period. The greatest 15th-century Salamancian theologians elaborated commentaries on Aristotle's *Politics* and/or wrote political treatises under its influence.¹⁰⁷ This is the case for Alonso de Madrigal ›El Tostado‹, who delivered the *Repetitio De optima politia* at the University of Salamanca in 1436,¹⁰⁸ and for Pedro de Osma and Fernando de Roa, who in the third quarter of the 15th century commented at length on the *Politics*.¹⁰⁹

104 »Nec in hoc iniuriam facit Ecclesia: quia, cum ipsi Iudaei sint servi Ecclesiae, potest disponere de rebus eorum«, AQUINAS/CAJETAN [1517] (1895) 92.

105 He followed here the republican criteria justifying the sacrifice of the freedoms and positions of certain individuals if, by means of this sacrifice – even if unjust – to some extent, it could result in an improvement in

the conditions for the majority, that is to say, if it represented a good for the commonwealth.

106 A brief account on Ptolomey of Lucca *De regimine principum* focusing on the distinction between types of rule in BLYTHE (1994) 94–117.

107 See FLÓREZ MIGUEL (2012), FERNÁNDEZ VALLINA (2012).

108 First printed in 1529. TOSTADO [1436] (1529).

109 The manuscripts were first edited by José LABAJOS in 2006. OSMA/ROA [1470?] (2006).

Consequently, Matías de Paz did nothing other than recall a well-established tradition when, at the core of his *Libellus*, he defined the term *principatus regalis* with the same kind of normative purpose that Aristotle, Aquinas, Ptolomey of Lucca and former Salamancian masters had fostered with regards to other periods and reigns:

»Secundo: declarandum est quid sit regi principatu regali. Dicendum quod proprie liberi dicuntur regi tale principatu, qui licet dominis suis obediant tamen sunt sui iuris, et reguntur ad utilitatem et commodum ipsorum potius quam ad utilitatem regentis. Alios enim, si eos regit ad sui commodum et non ipsorum, potius tiranis erga tales quam rex censendus est, ut innuit Philosophus in lib. 8, *Ethicorum*, et in sua *Politica*, et Sanctus Thomas in I–II, q. 9, a. 2, ad 3, et q. 17, a. 7, et q. 105, a. 1, et in multis aliis locis, ut in II–II, q. 61, a. 3, et opúsculo 2, *De regimine principum*, I, c. 1–3, et in aliis capitulis.«¹¹⁰

Just as in the case of his definitions of *infidelitas* and *dominium*, conceptual clarity is the decisive factor allowing the Dominican friar to provide a set of red lines that the conquerors and the royal authorities should not transgress if they do not want to be considered robbers, murders or tyrants and suffer eternal damnation.¹¹¹ Even if for the history of concepts this last distinction between *principatus despoticus* and *principatus regalis* is not as innovative as the one previously mentioned, it is nevertheless the distinction that frames the content and the tone of De Paz's discourse from the very beginning. In fact, the very first lines of the *Libellum* tell us that the Dominican friar reformulated and synthesised the questions that Fernando el Católico and his counsellors had addressed to the jurists and theologians present at the *Junta* in the Aristotelian-Thomist conceptual framework:

»Circa dominium Catholici atque Invictissimi Regis Hispaniae super indos, quos Altissimus atque Omnipotens Deus eiusdem Regis imperio in diebus nostris mirabiliter subegit, a nonnullis fidei cultoribus virisque religiosis, dubia aliqua exorta sunt. Primum: utrum Rex noster Christianissimus possit supra dictos indos regere despotico principatu. Secundum: an liceat eos tenere sub principatu regali.«¹¹²

Bringing the participants of the meetings to his point of view, De Paz tried to determine in advance that the issue of the discussions held at Burgos would at last be a small victory for the friars advocating the stop of the abuses (thefts, violations, massacres, illegal enslavement, dispersion of families, etc.) and that the tyrannical and chaotic fiscal system established by Juan Rodríguez de Fonseca, Nicolás de Ovando and Diego Colón (among others) would be replaced by a proper political and royal form of administration and rendering of justice.

De Paz shows himself to be well informed about the kinds of crimes being committed overseas. His account is not all that different from the one Las Casas 40 years later provided and that brought fame to him and to his *Brevísima destrucción de las Indias*, including the terrible news about the abortions practiced by desperate indigenous women.

»Immo plus dico quod licet possint habere eos ut servos, not tamen possent eos modo sic habere, quia ut experientia docet propter tale servitium in illa patria hactenus, habitum fides dimittitur, et nomen Domini blasphematur, et mulieres antequam pariant et faciant fetus suos, ne in talem servitutem redigantur (quod est valde horrendum et facimus omnino detestandum) necant. Propter quod teneo quod, ex praecepto caritatis, etiamsi iuste essent sclavi deberent in libertatem poni supposito, ut dixi,

110 DE PAZ [1512] (2017) 86.

111 »Ne ergo anima Christianissimi Regis in tanta amplitudine terrarum detrimentum patiat, sed magis in aeternum vivat cum Christo, ampliare, dilatare, magnificare fidem ipsius in partibus illis quaerat et animarum illorum salutem, potiusquam dominare aut ditare [...]. Quod fiet si ad illas partes episcopos atque etiam pastores zelo fidei munitos anima-

rum, sitientes salutem miseris, qui non tantum verbo sed etiam exemplo ut veri sectatores Iesu Christi et Apostolorum suorum, gregem Domini cum pascant [...]; similiterque viros saeculares in vero regimine et zelo fidei approbatos, qui ea quae sunt rei publicae magis quam propria quaerant non cupidos, non raptos, aut avaros, nec permittantur blasphemii et magni scelerati illic habi-

tare«, DE PAZ [1512] (2017) 194–196. De Paz proves to be well informed about the kinds of people who were sent to the Indies over the course of the previous 20 years and about the many abuses they committed and their scarce evangelising zeal.

112 DE PAZ [1512] (2017) 58.

quod fides non augmentatur, sed potius diminuitur propter talem servitutem, et si dimitterentur liberi magis ac magis augetur.¹¹³

As a final remark, it is important to emphasise the multinormative¹¹⁴ character of De Paz's approach to the acute dilemmas and the issues that were at stake in the Western Indies. As we have seen throughout this article, written laws and legal prescriptions are very important for De Paz. In paragraphs such as the one just quoted, he assumes and cannot say more than, according to contemporary regulations concerning *ius belli*, that many natives could have been legally made slaves, either because they abruptly attacked the unfamiliar friars and soldiers or because they resisted the Spaniards after having promised obedience. Nevertheless, the cultural distance and lack of knowledge of the ›recently discovered‹ Pagans, derived from his millenary isolation, was for De Paz so great, that he suggests putting on hold or, at least, to reduce the rigor of these and other legal prescriptions in order to give preference to the religious precept of charity and to the religious imperative of increase in faith.

Conclusions

Contemporary scholars presented a uniform view as to the relationship between infidelity and the right to dominion espoused by the theologians and jurists who studied and taught at the University of Salamanca in the Early Modern Period. Within most studies,¹¹⁵ the crucial figure seems to be that of Francisco de Vitoria, often considered the theologian who pioneered the identification of the historical dilemmas arising from the ›discovery‹ of new non-Christian peoples on Atlantic islands.¹¹⁶ Nevertheless, the complexity of the ideas underlying this rich debate can be understood only

if studied as part of a broader perspective. Unfortunately, there is an almost complete lack of literature about the real connections existing between the thought of Vitoria and previous Salamanca Dominican masters such as Matías de Paz.

As I have shown in this article, even if the historiography about the School of Salamanca is used to portray Vitoria as a pioneer in the introduction of Thomism at Salamanca and in the Thomist approach to the *asuntos de Indias*, De Paz should be considered a precursor in all these respects. Being a *converso*, like Vitoria, in a period in which *linaje* was alarmingly gaining significance, De Paz wrote *De dominio Regum Hispaniae super Indos* as a man deeply concerned about the many legal and theological issues concerning infidelity, conversion and Christianization that at this crucial period were at stake both inside and outside the Iberian domains of the Hispanic monarchy. As was the case for Vitoria, the main object of concern for these men living under the shadow of an indelible infidelity but, at the same time, with access – somewhat paradoxically – to the higher instances of administration and government in the kings' counsels, was the juridical statute that the monarchy would accord to its *converso* subjects, namely were they descendants from Jews, Muslims or Pagans. Matías de Paz initiated a fight that – brilliantly prosecuted some decades later by Francisco de Vitoria – was in fact, a defense of a millenary theological and juridical tradition, the benevolent treatment and even warm welcome that the missionary Christian Church has given to converts since its foundation.

More than the specific answers that De Paz offered to the questions that were put to him at the *Junta de Burgos* (1512), much more refined in Vitoria's later approach, it is De Paz's innovative conceptual reframing and refocusing of the discussion of the *dominium* exerted by and over infidels – a true conceptual revolution in the

113 DE PAZ [1512] (2017) 184–186.

114 For a definition of multinormativity from a legal and historical perspective, see DUVE (2017).

115 Since at least BROWN SCOTT's pioneer writings, BROWN SCOTT (1934). For a very recent example of the longevity and vigor of this perspective up to the present day, see some of the contributions in BENEYTO/CORRI VARELA (2017).

116 Vitoria himself expressed this idea at the beginning of his *Relectio De Indis prior*: »Nec satis scio an unquam ad disputationem et determinationem huius quaestionis vocati fuerunt theologi digni, qui audiri de tanta re possent«, VITORIA [1532] (1917) 222. It is difficult to determine if he actually ignored or simply pretended to ignore the important debates that took place in the *Junta de Burgos* in

1512. As I have shown, there are important connections between the arguments delivered by both Salamanca masters and a great part of Vitoria's *Relectio De Indis prior* conceptual and theoretical framework seems to have been taken or inspired by De Paz's previous approach. Even the authorities quoted by De Paz figure among the most important references in Vitoria's writings.

history of ideas – which allow us to consider him as the clear initiator of the Thomist approach to the debate on the *iusti tituli*. It is a topic of tremendous interest for the internal history of the School of Salamanca, especially given that the just titles polemic, at the core of the general debates on the Spanish domination over the New World, is one of the most genuinely Salamancian focuses of interest;¹¹⁷ a topic about which hundreds of thousands – or maybe millions – of pages have been written, but very often in such a repetitive and non-critical way that we are still lacking a clear genealogy of the way in which this and other topics of concern and controversy appeared and were progressively addressed.

The importance given to concepts and conceptual clarification is what above all distinguished De Paz's learned advice from previous approaches to infidels' dominion and to contemporary treatises on the affairs of the Indies. For example, while Palacios Rubios, who was also asked to write down his opinion after the *Junta de Burgos*, circles around the traditional conceptual framework and is consequently driven to close his treatise with an ambiguous conclusion reflecting his own persistent doubts on the matter he was called to clarify – something that Christiane Birr's contribution in this same issue of *Rechtsgeschichte* sharply brings into view – Matías de Paz first offers precise definitions of the most elementary terms that will be used in his reasoning. Once this first step is complete, he is then able to proceed rapidly and surely in his argumentation and to arrive at several brief and sharp conclusions.

In other words, even if Palacios Rubios demonstrates a considerable knowledge of the *Summa theologiae* and other writings by Aquinas – even using key excerpts from *Ila–Ilae*, allowing him to classify the native Americans as infidels who had never heard of Christ and the Gospel¹¹⁸ – he does not develop Aquinas' categorisation to its full potential. Giving Aquinas the same value as the

more than 130 authorities quoted in his *Libellus de Insulis Oceanis*, Palacios Rubios seems to become paralysed by the heavy burden of the tradition (sources, authors, codes, etc.) he tries to synthesise, and he ends up not moving an inch from the classical framework previously built up by those civil and canon lawyers and papalist theologians (Andrea, Augustinus Triumphus, Bartolus, Baysio, Antoninus of Florence, Giovanni d'Ancona, Hostiensis, Innocent IV, etc.) later strongly criticised by Vitoria in his theological writings. Trapped inside the ambiguities of the sources he uses, Palacios Rubios clearly ended up repeating Giovanni d'Ancona's flagrant contradictions concerning infidels' *dominium*¹¹⁹ and therefore left the door open to the continuity of the *status quo* in the Indies.

Without engaging in the same kind of bitter criticism Vitoria did, De Paz demonstrates enough independence of thought to keep a salutary distance from the sources he is reviewing.

Contrary to Palacios Rubios, De Paz's conceptual precision and much more balanced criteria of selection and use of authorities allow him to draw sacrosanct red lines, not hesitating – as Las Casas and later denouncers of the abuses committed against the natives will do – to threaten his fellow countrymen with perpetual torments and God's anger. Nevertheless, De Paz also grants an undeniable legitimacy to the *dominium* of the Spanish kings over the newly discovered lands,¹²⁰ apparently put into question by the Dominicans supporting Antonio de Montesinos. Inasmuch as this *dominium* was already being exercised *de facto* by the Spanish king and royal officers, and that the Spanish presence and domination appeared to be as an irreversible fact and that a hypothetical abandonment of the recently subjugated territories would cause a tremendous harm to the Christian religion, leaving native neophytes in the lurch – all of them, elements that Vitoria took also into account in the last sentences of his *Relectio De Indis prior*¹²¹ – De Paz makes a realistic and strategic

117 See DUVE (2018).

118 And were therefore affected by a kind of *infidelitas privative*, which is to be distinguished from the *infidelitas positiva* for which other kinds of infidels (Muslims, Jews, etc.) could be blamed, according to Aquinas, PALACIOS RUBIOS [1512] (2013) 86–88.

119 On this issue, see the analysis by Christiane Birr in EGÍO/BIRR (2018a).

120 Who under the pressure of the surrounding Pagan environment and having still not acquired a solid knowledge of all the salvific truths will soon fall into apostasy.

121 VITORIA [1532] (1917) 268.

proposal in order to redirect and regulate the way in which the Spaniards ruled the natives.¹²² As I argued in this article, conceptual innovations and the new *nuances* introduced with regards to traditional terms were the tools with which Matías de Paz tried to apprehend and regulate a changing and dramatic reality. Here we are dealing with a

kind of intellectual attitude and strategy that, already present in Aquinas' attitude towards facts, would distinguish the juridical and political thought coming from Salamanca in the centuries to come.



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122 Similar considerations were made by Anthony Pagden in his characterisation of Vitoria's writings, which were considered more an attempt to legitimise, regulate and improve a *de facto* domination than a proper »fight for justice«. Pagden undertook a critical revision of the anachronistic and legitimist accounts made by Hanke, Carro, Losada, Marcos and many other previous scholars. The most

elaborated version of this historiographical criticism is found in the introductory remarks to the Spanish edition of *The fall of natural man*. »He sostenido en este libro que los crueles argumentos que siguieron a la conquista no pueden ser comprendidos como (por utilizar el término de Hanke) »una lucha por la justicia« – aunque claramente se refiere a la *ius-titia* en sentido amplio –, sino que

sólo pueden entenderse como una búsqueda de legitimación (en el sentido weberiano del término). Es decir, se trataba de discusiones sobre cómo explicar y al explicarlo hacerlo inteligible, un hecho real que, como Vitoria señaló, era ya irreversible desde la década de 1530«. PAGDEN (1988) 18.

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