



# NORLIT 2011

Conference on literature and politics

ROSKILDE, AUGUST 4.-6. 2011

ISBN: 978-87-7349-818-7

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**“Early Globalization and Human Rights. On the Genreblending and Strategic Function of the Discourse on Human Rights in the Spanish Baroque”**

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To be presented in the session “Law, Literature and Politics”, NORLIT, Conference on Literature and Politics, Roskilde August 4.-6. 2011

*Laying out the ground*

In an article from 2003, Ulrich Beck states that the European understanding of humanity is anti-essentialist:

“The European conception of humanity doesn’t contain any concrete definition of what it means to be human. It can’t. It is of its essence that it be anti-essentialist. Strictly speaking, it is *a*-human, in the sense that one can be a-religious. The European idea of “man” was formed precisely by casting off all the naïve conceptions of what it meant to be human that had been imposed on it by religion and moralizing metaphysics”<sup>1</sup>

In Beck’s formulation, the European idea of man comes close to being empty. To specify what the concept means would immediately bring us within essentialism. Thus the idea has a paradoxical foundation: logically, it must encompass all human beings, yet it cannot be attached to any concrete human being. In principle, it must say something about a human being or human beings, yet to substantialize this either removes its general claim or detaches it from concrete reality. Therefore, as it is phrased in Ulrich Beck’s self-reflective language, its essence is that it is anti-essentialist. Despite the necessary abstraction of the conception of humanity, it has a very concrete origin in Ulrich Beck’s genealogy. It originates in the enlightenment period and it reaches its fullest expression in the Declaration of Human Rights just after World War II when the nations of Europe put aside their national interests in order to create transnational rules that would count for all and

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<sup>1</sup> Ulrich Beck: “Understanding the Real Europe” in *Dissent*, summer 2003, p. 33.)

everybody. This move rested upon an anti-essentialist idea of humanity. According to Beck, the European anti-essentialist idea of humanity is at the very heart of European cosmopolitanism<sup>2</sup>.

The question is how we can understand this anti-essentialism. In so far the aim is to avoid synthesizing philosophical ideas about the immanent human nature, we can sympathize with the aim. Also, the abstractness is positive because it makes it possible to avoid any cultural, ethnic or religious colouring of the idea of humanity. However, one may doubt whether it is possible to have a truly anti-essentialist concept of humanity. The anti-essentialism seems either to relegate the reflection on humanity to a rather abstract area of thought, purified of the historical context and any concrete ideas that shaped it or to put a break on any reflection at all. The anti-essentialist approach may revert us simply to historicity but despite the historical origin, Beck indicates that the anti-essentialist conception of humanity now works in a way that can be related to different new contexts. Beck's concept of a Cosmopolitan glass world more than hints to the positive function he attributes to the egalitarian function inherent in the anti-essentialist idea of humanity:

“The world seen through the Cosmopolitan eye is in a certain way a glass world. Here the differences, the conflicts, the borders must be defined and fixed while acknowledging the principle sameness of the Other.” (Beck, 2004, p. 17, My translation)<sup>3</sup>

International human rights are to be understood as a security net that ideally guarantees that we are treated equally despite our differences, and often in confrontation with national sovereignty. In Beck's conceptualization, the coordination between the differences and the sameness seems to work entirely peacefully but this is very far from reality.<sup>4</sup> Though we in the Western world seem to have elaborated a pragmatic consensus regarding human rights as a basically good idea, the courts in Hague and Strasbourg will testify to numerous negotiations between the actual formulation of the Declaration of Human Rights and the interpretation of these by different national states and inhabitants. This does not mean that the rights should be specified and explained in more

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<sup>2</sup> Beck refers to the article 6 of the *Charter of the International Military Tribunal* that mentions crimes against humanity as crimes that can legitimize an international or transnational intervention. They “created both legal categories and a trial procedure that went far beyond the sovereignty of the nation state”. In order to do this they reached back into the European history of ideas to find the European idea of man.

<sup>3</sup> See Ulrich Beck, *Der kosmopolitische Blick oder: Krieg ist Frieden*, Frankfurt a. Main: Suhrkamp, 2004, p. 17 (“Die Welt des kosmopolitischen Blicks ist in gewisser Weise eine gläserne Welt. Hier müssen die Unterschiede, Gegensätze, Grenzen im Wissen um die prinzipielle Gleichartigkeit der Anderen definiert und fixiert werden.”).

<sup>4</sup> Beck explains here that cosmopolitanism should not be seen as opposed to nationalism or regionalism. It is possible both to live in a local world and a global world, Beck, 2004, p. 13 ff.

essentialist terms but it does point to a remarkable asymmetry between the abstract rights and the concrete world surrounding them.

This asymmetry is not only an intellectual observation, it is also a concrete reality that has been criticized by people and organizations less optimistic than Beck. Just recently, Amnesty International gave out their annual report with an appeal to the world leaders to apologize for sixty years of human rights failure.<sup>5</sup> In the report the idea is repeated that political self-interest hinders the respect for human rights that are seen as unquestionable rights, above any concrete definition of humanity. The rights are emphatically universal rights but this does not necessarily help in the contingent cultural or political context.

The problem is that the anti-essentialism also makes it difficult to discuss human rights and to see them as results of concrete social and political battles. Though the rights are to be applied to a social reality they are themselves beyond this social reality, and as such they are untouchable and ‘naturalized’. Thus the anti-philosophical ambition of Beck’s anti-essentialism runs the same risk as the philosophical approach, namely that of isolating the rights from concrete reality which is filled up by both contingent particularities and essentialist ideas of what it means to be human. The discussion of the relationship between the universal and the particular seems unavoidable when we talk about human rights but instead of facing this dichotomy in its theoretical opposition, we gain substance by studying it in an historical context. As María José Fariñas Dulce recommends us to do:

“Summing up, the human rights should be understood as historical answers that are relative, instrumental, socially conditioned, and, sometimes, even “falsely” induced by power.” (My translation).<sup>6</sup>

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<sup>5</sup> The Report came out May 27, 08. See <http://www.amnesty.org/> for more information. The introduction to the report says the following “The foreword to Report 08 was written in solidarity with human rights defenders around the world in the 60th anniversary year of the Universal Declaration of Human Rights. World leaders owe an apology for failing to deliver on the promise of justice and equality in the Universal Declaration of Human Rights (UDHR), adopted 60 years ago. In the past six decades, many governments have shown more interest in the abuse of power or in the pursuit of political self-interest, than in respecting the rights of those they lead.” The report gives examples of abuse of the human rights also from ‘first world countries such as USA and a number of European countries, including Denmark.

<sup>6</sup> María José Fariñas Dulce, *Los derechos humanos: desde la perspectiva sociológico-jurídica a la “actitud postmoderna”*, Instituto de derechos humanos “Bartolomé e las casas”, Universidad Carlos III de Madrid, Dykison, 1997, s. 5-6. (“Los derechos humanos deben ser comprendidos, en definitiva, como respuestas históricas, relativas, instrumentales, socialmente condicionadas y, a veces incluso, “falsamente” inducidas por el poder.”).

Human rights have an historical origin and a contextual function. They cannot be understood outside of this context. Human rights need to be seen in their social and ideological context in order to demystify their contents but first and foremost so that they are seen as functionally related to the social battle that goes on continually through history. This makes the ground of human rights contingent but it enhances the possibilities of seeing the rights struggle in all its complexity and maybe also seeing the way this struggle develops as a negotiation of functionally very different concepts of what a human being is and what humanity is. This look upon human rights also makes it clearer that the negotiation of the rights is not so much about the right of the autonomous and inviolable individual as a reflection of different social groups' interests and understanding of human nature. Though we may wish that the human rights just count as neutral rules beyond any, yet applicable to every, social reality, history teaches us something different.

In order to clarify this view I will discuss the case of Bartolomé de las Casas; an unquestionable *Urvater* of the human rights who did not only have a philosophical and ethical understanding of the rights but also an anthropological, social and literary understanding: His whole life testifies to the social and discursive struggle that formed the early rights talk. It furthermore relates the human rights talk with a global context. The discovery of America and the Indians was the immediate reason that the Spaniards rethought their understanding of humanity. In this rethinking there was an intense negotiation between the particular and the universal.

It might be theoretically true, as Etienne Balibar reminds us, that it is impossible to make a critique of the universal without immediately taking the standpoint of the universal. Nevertheless, it is not meaningless to discuss the social rootedness of the different versions of universalism and not least its sister in spirit: cosmopolitanism.<sup>7</sup> For Ulrich Beck the European idea of human rights is at the very heart of its cosmopolitanism but seen from an historically viewpoint the order of cause and effect is exactly the opposite: Europe does not become cosmopolitan because it has invented human rights, Europe invents the human rights because a cosmopolitan or global experience forces her to reflect on humanity and she does so not only out of a moral imperative but also out of necessity and through violent social and discursive battles.

### *Law and literature. Codes and blending of discourses*

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<sup>7</sup> Etienne Balibar, "Constructions and Deconstructions of the Universal", in *Critical Horizons*, 7:1, Koninklijke Brill NV, Leiden, 2006, p. 2.

Law and literature differ in many ways but they have an equally big interest in the meaning of words and the codes that rule our life. In some especially dramatic historical situations this common interest becomes clearer. The conquest of America is just such a dramatic event.

Bartolomé de las Casas (1474-1566) the Dominican priest who was also a philosopher, a political thinker, an anthropologist, an adventurer, a pragmatic real-politician, and a prolific writer and who played an immensely important role for the creation of the laws of the Indies once stated that

“[...] in order to do justice to the grandeur and the dignity of the affairs of the Indies, which God has placed in the hands of the kings of Castile, the eloquence of Demosthenes would be needed, and to describe them the skill of Cicero.”<sup>8</sup>

The affairs of the Indies was not just a military or economic event, it was first and foremost an event that had to be addressed rhetorically. The event had a great impact, not only on America but also on Europe and its self-understanding and its development. Therefore it is not surprising that it generated a huge amount of diverse documents, travelogues, novels and poems, cartographic work, anthropological analyses, philosophical reflections and legal and political declarations. Reading these documents today, one notices the discrepancy between the ambition, detectable on every page of many of these documents, of telling the true version of the important event, *and* the apparent inadequacy of language to pinpoint the event, as can also be seen from the violent disagreements about its decoding.

Bernal Díaz, a footsoldier in Hernán Cortés' army who did everything he could to narrate the facts about the conquest of Mexico as objectively as he could, exclaimed when he saw the city of Moctezuma, Tenochtitlán that he could not find words to describe the reality that he saw. As rational vocabulary did not seem to fathom the strange reality, and European cities did not seem to have any relationship with this kind of city, he took refuge with a literary work: “the Aztec cities seemed like an enchanted vision from the tale of Amadis”. In this way reality and fantasy are woven together in new ways that will have consequences even hundreds of years later.

It is difficult to tell myth from reality in the stories about the conquest. The point is however, that the fantastic element did not grow out of an individual imagination but out of an exemplary rational attempt to come to terms with a reality that was new, strange, different and not

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<sup>8</sup> Las Casas, *Historia de las Indias*, I: 539, see Lewis Hange, *Bartolomé de las Casas*, The Hague: Martinus Nijhoff, 1951, p. 54

always ready to fit within European conceptualisations. This is true also of the European legal discourse. The encounter with these strange Indians, some of whom lived as barbarians, naked in the wilderness, some of whom lived in great and wonderful cities, made it necessary to revise the law.

In this revision, the foundation of European law was turned upside down and reevaluated. The creation of “laws of the Indies” should not be discussed only in relation to their direct relevance for the Indians but also for the conception of law in Europe. What was remarkable about the Spanish conquest was the degree to which the legal discourse was the mediator for the reevaluation of the understanding of the human being. Two of the leading figures in the debate, namely Bartolomé de las Casas and Juan Ginés de Sepúlveda were not lawyers. Yet the dispute between them had to be settled in the courtroom just as the legal discourse pervaded the whole conquest, even in its most military moments. According to Lewis Hanke, this was due to an extraordinary massive legal formalism of 16<sup>th</sup> Century Spain.<sup>9</sup> As Hanke writes about the Spanish, notaries were “as indispensable to their expeditions as friars and gunpowder”, and he goes on to quote a real anecdote from Bartolomé de las Casas: “The *Requirement* or proclamation to be read to the Indians before warring against them was probably the best example. So familiar did the Indians become with this habit that they fled at once upon observing Spaniards draw out a piece of paper, for bitter experience had taught them that such ceremonies usually portended an assault against them”.<sup>10</sup>

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<sup>9</sup> The great effort of Las Casas takes its point of departure in his Christian belief that all men are equal before God and free according to natural law. He then goes on to show how the Spaniards have perverted the natural and Christian principles. Everywhere he speaks against the violence used against the Indians, against the Spaniards’ right to take away their land and liberty from them, and especially he attacks the idea that the Indians could be Christianized by the sword. Basically he was in agreement with Pope Paul III who in the bull “*Sublimis Deus*” from the year of 1537 declares that “The Indians are truly men and [...] they are not only capable of understanding the Catholic faith but, according to our information, they desire exceedingly to receive it. Desiring to provide ample remedy for these evils, we declare .... that, notwithstanding whatever may have been or may be said to the contrary, the said Indians, and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ.” (Hanke, 1951, p. 24-25).

<sup>10</sup> The requirement referred to is the requirement decreed by Charles V in 1514. It contained the information that Pope Alexandre VI had given The Indies to Spain and asked the Indians to surrender to the Spanish people so that they may be Christianized. The document should be read in translation by the conquistadores before they attacked the Indians. If they surrendered peacefully, they should be allowed to live on the land as vassals. If not, it was also specified that the Spanish conquistadores had the right to make war on them. Hanke quotes also Bernal Díaz Castillo who relates how “Cortés explained to the Indians that “he had been sent to these countries to give them warning and to command them not to worship idols, nor sacrifice human beings or eat their flesh, or practice sodomy or other uncleanness” and urged the Indians to render obedience to the King of Spain. The Indians refused to give up their idols but “as to rendering obedience to our king, they were content to do so. And thus they pledged their word, but it was not done before a notary”. Hanke marvels at this story, and especially at the last comment that it was not done before a notary and asks: “Would a pikeman of any other European nation have noticed, let alone recorded, such a fact? (Hanke, 1951, p. 8).

Hanke is strongly impressed by the capacity for and the amount of legal reflections that were done by high and low in the Spanish society. Though the chronicles do not leave any doubt about the more prosaic wish for gold that guided the expeditions<sup>11</sup> no expedition was enacted without reflection about the legitimacy of it: what law could legitimise it? Was it the law of God, the law of the King or natural law? How should the Indians be treated? Were they rational beings or animals? Etc.

For the Spaniards it was important that their conquest was legitimate but as one can hear from the small anecdote above, the circumstances under which the law was presented to the Indians were not fit for making them experience this law as a legitimisation of the acts of the Spanish soldiers. It was more likely that they experienced the law as just one more weapon used against them.

### *Bartolomé de las Casas*

Bartolomé de las Casas engaged all his wit and enormous energy in the defence of the Indians. With his writing about how to understand the natural conditions of man and the protection of his rights and liberty he is a forerunner of modern natural law and enlightenment theory but he is also very much a man of his day, and as one critic said: no one today would probably agree with his world view.<sup>12</sup> However, the aim of this article is not to discuss this world view but rather to see how he, a man of the church, more specifically the Dominican order, judged it necessary to study legal philosophy, to develop anthropological analyses, to write the history of the Indies, to use literary means, - in short - mix a whole range of approaches in order to understand and defend the Indians. It was not enough to refer to the authority of God and the Pope. In fact, at some points, he comes dangerously close to opposing faith and church, and at various times, he challenges the strategy of the Spanish crown, the interest of the Spanish conquerors and the general public opinion.

In his *Historia de las Indias* that he began to write from 1527 and on (but which was not published until many centuries later), he described the famous Christmas sermon in the year of

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<sup>11</sup> See Bernal Díaz Castillo: "We came here to serve God and the king, and also to get rich" in *Historia verdadera de la conquista de la Nueva España*, I, México 1943, p. 228-229, Hanke, 1951, p. 8. Francisco Pizarro, when reproached for his violent warfare by one of his accompanying friars who claimed that the main reason for conquest was the winning of souls for God, he famously answered: "I have not come for any such reasons, I have come to take away from them their gold", quoted in Bernardino de Minaya, Archivo General de Simancas, Sección del estado, legajo 892, fol. 197 ff, Hanke, 1951, p. 8.

<sup>12</sup> In his "El poder de los reyes y los derechos de los subditos" Bartolomé de las Casas underlines liberty as the most fundamental and natural human right. For a discussion of Bartolomé de las Casas in relation to the tradition of natural law, see the introduction by Luciano A. and V. Abril to Bartolomé de las Casas, "El poder de los reyes y los derechos de los subditos", Madrid: Editora Nacional, 1974 and Mauricio Beuchot, *Los fundamentos de los derechos humano en Bartolomé de las Casas*, Madrid: Anthropos, Editorial del Hombre, 1994.



1511 by Fray Ant3nio de Montesinos. Beginning the sermon with the Biblical words: “Ego vox clamantis in deserto” (“I am a voice crying in the desert”) Montesinos denounced the cruel and selfish behaviour of the Spanish *encomenderos*<sup>13</sup> who put aside human consideration: “Tell me” –, said Montesinos with such terrible words that according to Bartolom3 de las Casas’s account, the crowd in the church was struck with terror and believed that they were already in the middle of doomsday, – “with what law and with what right do you hold these Indians in such a cruel and horrible servitude? With what authority have you led such despicable wars against these people who were living at their land kindly and peacefully; a war where you have destroyed so many of them with death and devastation?” (My translation).<sup>14</sup>

Bartolom3 de las Casas was at that time himself an *encomendero* in the new land owning Indian slaves. He did not ‘convert’ until 1514 but when he did, he sounded very much as an echo of Antonio de Montesinos, and like him he had an outspoken sense of dramatization which can be seen in several of his later books, for instance *In Defense of the Indians* (1548-1550)<sup>15</sup> and *Brev3sima relaci3n de la destrucci3n de las Indias* (1552) (Hereafter: *Brev3sima relaci3n*).<sup>16</sup> The latter was written from 1545 onwards with the aim of convincing the King of the cruelty of the Spanish conquest so that he may make it illegal and forbid the system of the *encomiendas*. In this ‘propagandistic’ book he intensifies the dramatic effect by exaggerating first the goodness of the Indians:

“God created these simple people without evil and without falsehood, very obedient and very faithful to their natural lords and to the Christians whom they serve; they are the most patient, peaceful and tranquil people in the world, they live without disputes and conflicts, are neither aggressive nor quarrelsome, are without rancour and hatred, and are not vengeful [...] They are also poor people; they do not possess, nor do they wish to possess worldly wealth, and therefore they are

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<sup>13</sup> The system of the so-called *encomiendas* made it possible for captains in the Spanish army to possess Indian slaves.

<sup>14</sup> *Historia de las Indias*, ed. Pedro a, M3xico: Fondo de Cultura Econ3mica, 1981 (1951), Vol. II, □Henriquez Uren Cap3tulo IV, p. 441. “Decid me”, - said Montesinos “¿con qu3 derecho y con qu3 justicia ten3is en tan cruel y horrible servidumbre aquestos indios? ¿con qu3 autoridad hab3is hecho tan detestables guerras a estas gentes que estaban en sus tierras mansas y pac3ficas; donde tan infinitas dellas, con muertes y estragos nunca 3idos, hab3is consumido?”

<sup>15</sup> The manuscript was written both in Spanish and in Latin. There are no known copies of the Spanish version, and only some of the Latin version, today available at Biblioth3que Nationale in Paris, Nouveaux Fonds Latin no. 12926. The version used here is the English translation, translated by Stafford Poole, ed. Martin E. Marty, Illinois: Northern Illinois University Press, 1992.

<sup>16</sup> *Brev3sima relaci3n de la destrucci3n de las indias*, ed. Consuelo Varela, Cl3sicos Castalia, Madrid: Castalia, 1999.

not arrogant, nor covetous [...]. It is certain, that these people would be the most blessed in the world, if only they knew God.” (p. 74-75) (My translation).<sup>17</sup>

After that he describes the cruelty of the Spanish by this heavily loaded metaphor:

“On these gentle sheep of the above qualities, bestowed on them by there Maker and Creator, the Spanish fell as soon as they saw them as wolves and tigers and lions that had become extremely cruel because of many days of hunger.” (p. 76) (My translation).<sup>18</sup>

During the rest of the book, Bartolomé de las Casas describes in much detail the cruelty of the Spaniards in all the regions of the new world. This *Brevísima relación* became one of the most read books of Bartolomé de las Casas and contributed very much to the creation of the so called Black Legend of the Spanish conquest. It was this book which was quoted by the English and the Dutch against the Spaniards in the years to come. However, it is also one of the most poorly written books by Bartolomé de las Casas, since the dramatic effect created at the beginning by exaggerating the opposing characters of Spaniards and Indians was undermined by the ‘banality’ of the scenario of evil versus good and not least by the repetitions of this throughout the book.

Ramón Menéndez Pidal, the famous Spanish historian (1869-1968) based his radical diagnosis of Bartolomé de Las Casas as a paranoid person on this book and especially on the *ernomizaciones*, that is the tendency in Las Casas to exaggerate, to use hyperboles and superlatives etc. However, while many scholars agree with some of Menéndez Pidal’s critique no one shares his view that Las Casas should be a sick man perverting his subject. Most critics are of the opinion that he exaggerates something which is basically true and that he does it with a good cause. One should also keep in mind that Las Casas met ferocious resistance and also had to suffer personal attacks during his lifetime which might have made him underline his cause. The book *Brevísima relación* was later forbidden by the Spanish inquisition (in 1659, thirteen years after its second Spanish reprint). But abroad it was eagerly studied. Between 1578 and 1648 (the Peace of Westfalia) among others: 21 Dutch, 8 Italian, 6 French, 4 German, 2 English and 2 Latin translations were published.

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<sup>17</sup> (“crió Dios las más simples, sin ores naturales y a□maldades ni dobleces, obedientísimas, fidelísimas a sus sen los cristianos a quien sirven; más humildes, más pacientes, más pacíficas y quietas, sin rencillas ni bollicios, no rijosos, no querulosos, sin rancores, sin odios, sin desear venganzas que hay en el mundo.[...] Son también gentes paupérrimas y que menos poseen ni quieren poseer de bienes temporales, y por esto no soberbias, no ambiciosas, no coubdiciosas. [...] Cíerto, estas gentes eran las más bienaventuradas del mundo, si solamente conocieran a Dios.”)

<sup>18</sup> (En estas ovejas mansas y de las calidades susodichas por su Hacedor y Criador así dotadas, entraron los espanoles desde luego que las conocieron como lobos y tigres y leones crudelísimos de muchos días hambrientos.”)

All in all 43 translations appeared in 70 years.<sup>19</sup> When Elisabeth ascended to the throne in England in 1558 the amity between Spain and England came to an end. One of the reasons was England's sympathy with the Dutch protests against the Spanish imperial power. For Holland, England, and France the translation of *Brevísima relación* served specific nationalistic political goals. It could be used in their different forms of antagonistic fight with Spain.<sup>20</sup> According to Consuelo Varela the book transformed itself into a regular "political weapon of the first order" ("un arma política de primer orden").<sup>21</sup>

*In Defense of the Indians* is from roughly the same period. It was written as a plea in the controversy of Valladolid in 1542 and it was read in front of the Council of Valladolid and Prince Philip, the son of King Charles. In the controversy, Las Casas was up against Juan Ginés de Sepúlveda, a royal historian and a renaissance humanist who had just recently translated Aristotle's *Politics* into Spanish. Sepúlveda enjoyed huge prestige and was backed up by different parties of interest. He spoke for one whole day, arguing that the Indians "are barbaric, uninstructed in letters and the art of government, and completely ignorant, unreasoning, and totally incapable of learning anything but the mechanical arts; that they are sunk in vice, are cruel, and of such a character that, as nature teaches, they are to be governed by the will of others."

After that Bartolomé de las Casas spoke for five days, reading his *In defense of the Indians* that was intended to show how Sepúlveda was wrong both "in law and in fact". First of all, Las Casas had travelled a lot through the Spanish colonies, he therefore argues very much on the basis of his knowledge, not only of the Spaniards's concrete ways of enacting tyranny but also on the basis of his knowledge of the Indian and his nature. This is an anthropological argument. Secondly, he had studied political and legal philosophy from Aristotle and onwards. Though he initially was not very much in favour of Aristotle, it certainly comes out as a strength in Las Casas that he knows of political and legal philosophy and some critics hold the opinion that it was because of his learned, philosophical reflections that gave weight to his arguments that his opponent could not win over him.

Though *In Defense of the Indians* is a much more learned book and entirely different from *Brevísima relación*, it also dramatizes the fight between the Spanish and the Indians as a fight between evil and good and it also suffers from a repetitious style. In his foreword Martin E. Marty

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<sup>19</sup>This information stems from Consuelo Varela, "Introducción" a *Brevísima relación*, p.50

<sup>20</sup> See Juan Friede and Benjamin Keen, *Bartolomé de las Casas. Toard an Understanding of the Man and His Work*, Illinois: Northern Illinois University Press, DeKalb, 1971, p. 10ff.

<sup>21</sup> Consuelo Varela, introducción a *Brevísima relación*, p. 50.

writes that when he read Las Casas's explosive and repetitive passages, he learned "not to be put off but to be enthralled: they have a kind of ritual, incantatory power that does not take away from the argument but reinforces it. Indeed, thinking of the paragraphs as musical themes a composer keeps developing is an appropriate way to be drawn into the still compelling case of the old Dominican." (p. XV). Besides being a key witness to the anthropological reality of the Indians and the conquest and a philosophical talent, Las Casas obviously also convinced by a certain rhetorical style.

According to Marty, the style does not take anything away from the argument. However, it does work in an entirely opposite direction since it does not invite reflection but emotional participation. In a certain way, he tries to repeat the massive impact on his listeners that friar Montesinos had in his Christmas sermon in 1511. Though the listeners in Valladolid in 1542 were not struck by terror, they were probably under the spell of what Marty calls the "incantatory power" of Las Casas's rhetorical style.

### *Spanish and universal human rights: global perspectives*

The main aim of the meetings in Valladolid<sup>22</sup> was to establish whether the Spanish warfare in America was just or unjust. King Charles V called for this meeting after some years where doubt had been raised regarding the legitimacy of the Spanish conquest and not least the legitimacy of the brutality of the Spanish conquest. Because of the critique the King had made the unusual step of forbidding further warfare until it had been settled in the court whether it was just or not. The meetings were therefore followed with huge public interest: The immediate outcome of the 'trial' was relatively poor. Both Las Casas and Sepúlveda declared themselves to be winners but the court was not able to reach a common decision. It was even difficult for the king to get the fourteen members to write their opinions.<sup>23</sup> By 1566, and after his father's death, King Philip II again issued licences to make new discoveries in America. However, according to Lewis Hanke, Sepúlveda did not win in the long run. One curious sign of this was that Sepúlveda was not allowed to publish any books while Las Casas published whatever he liked, including violent attacks on Sepúlveda. Another sign was that some of the new conquests were more peaceful and that the ordinance made

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<sup>22</sup> Las Casas and Sepúlveda never actually met in the courtroom. They presented their pleas individually before the fourteen members of the court. Las Casas's speech was so long that the court afterwards commissioned one of the members to make a resume of his main points.

<sup>23</sup> Lewis Hanke notes that as late as 1557, six years after the trial a note was sent to one of the members, Friar Melchor Cano, to immediately send his decision. Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America*, Dallas: Southern Methodist University Press, 2002 (1949), p. 129.

by Philip II in 1573 emphasizes the peaceful means by which any conquest must be made and furthermore decrees that the word “pacification” should be used instead of “conquest”.<sup>24</sup>

So what was the argument of Las Casas? Already in 1512, after the sermon of Montesinos, laws had been passed that were supposed to put a break on Spanish violence against the Indians and protect them against unjust treatment. These were the Laws of Burgos (*Leyes de Burgos*, 1512). But according to Las Casas these laws were far from good enough. There were 35 rules. The first one said that the Indians must live in villages close to the Spaniards in houses with 12 people in them and that in order to avoid that they move back to their home-villages, these should be burnt down”. Las Casas later noted that this rule was written as if it were referring to sheep or cows. He also protested against the fact that a pregnant woman could be sent to the mines though the law specified that she should not work in the mines after the first four month of pregnancy, and he protested against the law that permitted the Indian to make a loan of one gold peso every year, ridiculing it saying that for this amount of money you could only achieve a couple of combs and a mirror. But Las Casas did not protest against the laws that were to Christianize the Indians. Law number 4 meant that all Indians should be rehearsed in their knowledge of Christ every fourteen days, law number 10 says that all Indians must have a Christian burial when they die and law number 17 says that all sons of the caciques who were under the age of 13 should go for four years to the Franciscans in order to learn about God.<sup>25</sup>

Though the *Leyes deBurgos* from one point of view could be seen as a large improvement of the situation and as a legal attempt to stop the violence against the Indians, it was also in all its legalistic vocabulary an insult against the Indians who were reduced to subjects to the crown, slaves for the Spanish *encomenderos*, and worst of all – according to various accounts of their reaction – , subordinates to a new God.<sup>26</sup> Las Casas protests against the two first but not the last. He does not protest against the Christians right to christianize the Indians, he only argues that it should be done with peaceful means. As Daniel Castro has pointed out recently, Bartolomé de las Casas criticized the way of the conquest, but he was very much part of its power and ideologically he fully supported what Castro calls “ecclesiastical imperialism”.<sup>27</sup>

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<sup>24</sup> See Lewis Hanke, 2002. p. 130-131.

<sup>25</sup> See Andreas Wesch, *Kommentierte Edition und linguistische Untersuchung der Información de los Jerónimos, (Santo Domingo 1517)*, Tübingen: Gunter Narr Verlag, 1993

<sup>26</sup> See note no. 9.

<sup>27</sup> Daniel Castro, *Another Face of Empire, Bartolomé de las Casas. Indigenous Rights, and Ecclesiastical Imperialism*, Durham and London: Duke University Press, 2007, p. 10ff.

Las Casas stood solidly in Catholic ground. However, in *In Defense of the Indians*, every stone in this ground is turned in order to find the true and rational understanding of the human being. Las Casas is not anti-essentialist in the way that Ulrich Beck many years later understands that word but his essentialism is never a safe conceptual harbour where one can find rescue, it is rather a stake in the battle to be fought. He never comes even close to giving up the project of christianization of the Indians but his ideas of humanity as they develop in *In Defense of the Indians* are based on anthropology, Aristotle and logical argument not on confirmation of already established religious truths. He is occupied with the clash between universal nature and cultural difference, not with biblical authority.

In his *Historias de las indias*, Las Casas had already argued in favour of a universalist understanding of the human being with reference to basic phenomenological and moral aspects:

All the nations of the world are men ... all have understanding and volition, all have the five exterior senses and the four interior senses, and are moved by the objects of these, all take satisfaction in goodness and feel pleasure with happy and delicious things, all regret and abhor evil.<sup>28</sup>

In *In Defense of the Indians*, the general and the cultural argument come together in an intense and complex philosophical reflection on the status of the barbarian: the stranger that seems so different from us, yet in many ways is like us. Cultural and universalistic arguments are negotiated in this discussion.

First Las Casas says, if you by barbarian mean “inhuman, wild, merciless”, this kind of barbarianism is found in all cultures. This is the universalistic argument. Then, he says, if you by barbarian means “people who do not have a written language that corresponds to the spoken one”, this is not, he says an absolute definition but a relative one, and he quotes Paul: “If I am ignorant of what the sound means, I am a barbarian to the man who is speaking and he is a barbarian to me.”

The third definition of barbarians is that they are people who have an evil character and live in barren regions and are stupid and strangers to reason. They are not governed by any law, do not cultivate friendships and do not have any organized community. These are barbarians in an absolute sense and it is legitimate to try to subordinate them. However, for natural reasons there can only be very few of these, since otherwise the creation of God must be considered bad. They can

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<sup>28</sup> Las Casas, *Historia de las Indias*, lib. 2, cap. 58, se, Hanke, p. 82.

only exist as minor mistakes of nature and there cannot be a nation or a whole community of these barbarians. “Who therefore, except one who is irreverent toward God and contemptuous of nature, has dared to write that countless numbers of natives across the ocean are barbarous, savage, uncivilized, and slow witted, when, if they are evaluated by an accurate judgment, they completely outnumber all other men?” writes Las Casas. The sheer number of Indians makes it impossible for them to be barbarians.

Las Casas here handles the classical teodicé-problem by invoking his belief in the general goodness of humanity. But it is also clear that he underlines the goodness of man for strategic reasons. The person who had “dared to write that countless numbers of natives across the ocean are barbarous, savage, uncivilized, and slow witted” was Juan Ginés de Sepúlveda who here is turned into a blasphemous person, – an intolerable position for a man who considered himself a true Christian and who heavily leaned on the decree of the Pope Alexandre VI that had given the Indies to Spain. Though Las Casas sympathized with the Popes decree, he did not think that it in any way could legitimize the behaviour of the Spanish.

Finally the fourth definition is that barbarians are those who have a different culture than ours but who have a lawful, just and natural government. Though some of these communities are tyrannies there is no reason to doubt that they can rule themselves. This was also the case for many of the Indians. They had their own well-administered kingdoms, and Las Casas goes on to argue: “Do you think that the Romans, once they had subjugated the wild and barbaric peoples of Spain, could with secure right divide all of you among themselves, handing over so many head of both males and females as allotments to individuals”?

Las Casas thus develops his arguments with strategic shifts between universalist and relativist perspectives. Since the teleological character of his argument very much makes an alignment between the two different approaches, he does not necessarily see any contradiction between them. Seen from a modern standpoint, this may be one of the blind spots of Las Casas’s way of arguing. For us, it does not seem the same thing defending the Indians on the ground that they have a civilized and rich culture – richer than our own –, and defending them on the ground that they are human beings just like ourselves. There seems to be an unsolvable opposition between the cultural and the universal argument, unless you argue that it is a universal characteristic of all people that they are culturally rooted. This is in fact the anti-essentialist argument for universalism: we are all rooted in a cultural context: this is a universal fact but there is no way you can specify this cultural rootedness without leaving the universal ‘community’. However, for Las Casas it is

important that he should be able to discuss qualitative differences between the cultures: some cultures are more civilized than others and are based on a better idea of the human being than others. Though we may have to respect the sovereignty of a tyranny, the cultural rootedness is never only a relative or relativistic perspective just as the universal never can be essentialized beyond any cultural practice. In that sense, Las Casas can be seen as a forerunner of a modern dialectical way of founding human rights.

Las Casas is also modern in the sense that he is very conscious of the new global context for the understanding of humanity. I have made a point of underlining the anthropological approach of Las Casas, keeping in mind that not only did he consider himself to be one of the best eye-witnesses to the development in the New World; it was also the case that many of the Spaniards discussing the case had never even set foot in America. Before the meetings in Valladolid he had travelled for many years in America and made several practical experiments with introducing Christianity in the right way to the Indians. Despite all this, Daniel Castro points out in his recent critical portrait that, despite the travels, Las Casas did not know the Indians: he did not bother to learn their languages and he was not in direct contact with them. His project, says Castro, never leaves the Spanish circles:

Despite his good intentions and his supporters' claim to the contrary, it is apparent that the reformer was never able to bridge the cultural gulf that separated him, a Spanish *letrado* and a dweller of "the lettered city", from the inhabitants of that "stone-age" illiterate countryside where a New World was being forcefully erected. (Daniel Castro, 2007, p. 11).

Castro argues that because of this lack of real interest in the Indians, Las Casas's intervention becomes purely paternalistic. He is the "universal protector" of the all the Indians of America" as one of the titles bestowed on him says but he has no understanding for the Indians' world view and real situation.

His critique of the violence and especially his wish to forbid the *encomiendas* "meshed perfectly with the crown's desire to limit the power of its subjects in the American kingdoms, thus Las Casas either advisedly or inadvertently once again ended up serving as the battering ram of an imperialist center [...]", says Castro (Castro 2007 p. 153).

This may also help explain why the inquisition allowed the writings of Bartolomé de las Casas and prohibited the writings of Sepúlveda. Fifty years after the Conquest, the problem of



the king was not only how to gain wealth through the exploitation of the newly conquered land but also how to control the conquerors themselves. The Spanish Inquisition had been founded in 1480 by the monarchs Fernando and Isabella as an instrument not only for religious but also political control. Even though they focused mainly on the danger of Arabic influence, the inquisition served as a general political means of control in a period when Spain was establishing itself as a nation and a strong political power with a despotic regime. Even though Las Casas had written *Brevísima relación* which had given Spain such a terrible reputation abroad and protested publicly against the right of the king to subdue the inhabitants of the new world, his discourse could serve as one means of controlling the subjects in a chaotic period between conquest and colonial settlement, a means of reminding the *encomenderos* of the sovereignty of the king.

In posterity, las Casas has been known as the great humanist and as the *urvater* of human rights. Castro tries to paint an almost opposite image. Though he acknowledges Las Casas's good intentions and his hard work, he gives a devastating critique of the results of his work and he denies that he had the ability to understand the new situation in the world after the conquest and his own role within the imperialist project. Las Casas, says Castro, is more interested in arguing against Aristotle or Sepúlveda than in hearing what the Indians have to say.

Castro makes an important point which is relevant also for today's discussions of human rights and cosmopolitanism. If we understand our rights theory and cosmopolitanism as a European speciality we might be more interested in discussing with our own forefathers than with any real inhabitants of the global world. Still his critique also seems to stem from a rather idealistic evaluation of the historical development. He criticizes Las Casas for often being "incapable of grasping the dynamic dialectical process whereby a political, economic, cultural, and racial "New World" was being born in the midst of violence, exploitation, and neglect." (Castro 2007, p. 11) But dialectical processes are often only visible after they have taken place, since they contain also a 'prophetic' element.

After having seen the development of a multicultural, dynamic new world, we may wonder, why Las Casas could not see that it was developing right in front of his eyes. We may criticize him for being too much part of the Imperial centre but it would also be a mistake to believe that being global is only about knowing the particular cultures of the globe. It is just as important to analyse the dominant ideas and logics behind the powerful centre. One can question the knowledge of this centre about the Indians but it was definitely due to the confrontation with America that Spain did in fact start to rethink their understanding of humanity. What kind of ideas of humanity

grew out of the Empire and what kind of discursive logics ruled the talk of human rights? The case of Bartolomé de las Casas teaches us that it is difficult to take a bird's view on history and say something qualified of a general humanity but it also teaches us that we cannot help essentializing our own point of departure for understanding humanity. We may call this point of departure anti-essentialist but if it counts as the best in the world, it definitely occupies an essential place in our worldview.

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