

THE CHILDREN OF GOD: NATURAL SLAVERY IN THE THOUGHT OF AQUINAS AND VITORIA

JOSEPH E. CAPIZZI

[The author seeks to show the consonance of Thomas Aquinas's and Francisco de Vitoria's views of natural slavery in the context of developments in natural rights theories. Against two views, one of which indicts Aquinas, and the other, Vitoria, for an unchristian perspective on slavery, the article shows that neither Aquinas nor Vitoria had the theological resources to condemn slavery as we should.]

DID THE DOMINICAN theologian Francisco de Vitoria (1486?–1546) betray the best impulses of Thomas Aquinas and countenance slavery in a way that Aquinas would not have? Beginning with Michel Villey, a common allegation is leveled against the development of Thomistic political thought. According to this view, objective and subjective doctrines of rights are contrasted against each other in order to assert the supremacy of the former.¹ Two recent publications engaged the topic of the medieval Christian response to slavery within this context. One maintains that the

JOSEPH E. CAPIZZI received his Ph.D. from the University of Notre Dame. He is currently assistant professor of moral theology at the Catholic University of America. He specializes in the history of Christian political thought with emphasis on the just-war doctrine, on slavery, and on Catholic social theory. He has recently published articles in *Studies in Christian Ethics*, *Josephinum*, and *The Journal of Peace and Justice Studies* on ethical issues related to the wars in Iraq and Kosovo. He is now working on a monograph on the history of Christian attitudes to slavery.

¹ See Michel Villey, *La Formation de la pensée juridique moderne*, 4th ed. (Paris: Montchrestien, 1975; orig. ed. 1968); and, "Genèse du droit subjectif chez Guillaume d'Occam," *Archives de philosophie du droit* 9 (1964). An objective right is said to be the "right thing," (*ipsa res iusta*), while the subjective right is a moral power possessed by individual human beings. For a full-blown theory of subjective rights qua "rightful claims or powers held by individuals as subjects of rights" and the claim that this notion is present implicitly at least in all societies, see Alan Gewirth, *Reason and Morality* (Chicago: University of Chicago, 1978). Because my study is limited to the understanding of natural slavery in the context of the development of rights theories, I will not address, among others, Jean Porter's and John Finnis's thoughtful comments on Aquinas's and the Scholastics' conception of slavery. See Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (Grand Rapids: Eerdmans, 1999) and John Finnis, *Aquinas: Moral, Political, and Legal Theory* (New York: Oxford University, 1998).

subjectivist turn in modern rights theories (associated with Scholastic Spanish theology) resulted in incalculable suffering in the New World; the other defends the Spanish theologians and attributes to Thomas Aquinas an unchristian view of slavery. I address these charges, especially the cogency of the first claim. The claim that Spanish interpretation of Aquinas was a betrayal (or more moderately, a corruption) of his political doctrine is connected to the more general argument about the development of subjective rights out of the voluntarism and nominalism of William of Ockham. According to this general argument, Vitoria and Francisco Suárez (among others) contributed to a development of a theory of subjective rights that led to dire consequences in the New World.²

Against this view I argue that Vitoria's position does not contrast sharply with Aquinas's, but is in fact a faithful development of his views on natural slavery. I also maintain, however, that neither Aquinas nor Vitoria offers a defense of slavery that involves a betrayal of the best impulses of Christian thought.

ARISTOTLE AND SLAVERY IN THE NEW WORLD

The term "slavery" describes a relationship between two persons, where the master, or slaveholder, suppresses the will of the slave and directs it toward the master's own good.³ This benign description of it, belying the concrete experiences of slavery's brutality, often became the justification

² For other treatments of the development of subjective rights theories in this context, see Brian Tierney, "Aristotle and the American Indians—Again. Two Critical Discussions," *Cristianesimo nella storia* 12 (1991) 295–322; Tierney, "Villey, Ockham, and the Origin of Natural Rights," in *The Weightier Matters of the Law: Essays on Law and Religion*, ed. John Witte, Jr., and Frank S. Alexander (Atlanta: Scholars, 1988) 1–31. See also Annabel S. Brett, *Liberty, Right, and Nature: Individual Rights in Later Scholastic Thought* (New York: Cambridge University, 1997).

³ But while slavery can be adequately defined as a type of relationship between two persons, it also names a particular institution involving legal, economic, psychological, and social dimensions. Thus "slavery" has been notoriously difficult to define and study. "The more we learn about slavery," the Pulitzer Prize winning historian David Brion Davis wrote, "the more difficulty we have defining it" (*Slavery and Human Progress* [New York: Oxford University, 1984]). As a social institution, slavery has a history; it has evolved over time in subtle and radical ways. In interpreting slavery as a problem, then, one must beware its evolutionary nature (See Peter Kolchin, *American Slavery, 1619–1877* [New York: Hill and Wang, 1993]). My description of the nature of slavery between two persons follows Aristotle's view that "he who is by nature not his own but another's man, is by nature a slave" (Aristotle *Politics* 1254a 12; David Brion Davis, *The Problem of Slavery in Western Culture* [Ithaca, N.Y.: Cornell University, 1966] 31). I cite from the *Politics* in the Cambridge Texts in the History of Political Thought, ed. Stephen Everson, trans. Benjamin Jowett (New York: Cambridge University, 1988). Hereafter, *Pol.*

for the dispossession of native inhabitants from their lands. When Spain explored the New World, it brought a claim to the title of the lands held by the indigenous peoples. A papal donation gave the Castilian crown rights to any undiscovered lands inhabited by non-Christians. Pope Alexander VI's Bulls of Donation in 1493 should have eased the Spanish conscience about dispossessing the natives.⁴ Serious problems of legitimization remained, however. The crown was "overwhelmingly concerned with the need to defend its claims to sovereignty (*imperium*) and property rights (*dominium*) in America before an increasingly hostile world."⁵

The issue of the liberty of the natives arose immediately.⁶ A convergence of imperial and ecclesiastic policy complicated the Indian problem. Determining the capability of the Indians to receive the faith was inseparable from the needs and interests of the empire and the Church. The rights of the Spanish conquerors in the New World derived from their Christian duty to evangelize the Indians.⁷

In defending Spanish *imperium* and *dominium*, Spanish theologians made use of Aristotle's theory of natural slavery.⁸ In 1510, the Parisian conciliarist, John Mair (Johannes Maior) was the first to apply Aristotle's

For the *Nicomachean Ethics* (*NE*), I use Martin Oswald, ed. and trans. (New York: MacMillan, 1962).

⁴ Papal grants of imperial rights was common practice. Grants similar to Pope Alexander VI's had already been extended. For example, Pope Nicholas V in 1452 and 1454 granted to the Portuguese empire of King Alfonso V a "right of conquest" over the Saracens. See R. W. Carlyle and A. J. Carlyle, *A History of Mediaeval Political Theory in the West*, 6 vols. (London: W. Blackwood and Sons, 1903) 2.126 and 2.134.

⁵ Anthony Pagden, *Spanish Imperialism and the Political Imagination: Studies in European and Spanish-American Social and Political Theory, 1513–1830* (New Haven: Yale University, 1990) 13–14. *Imperium* and *dominium* refer respectively to sovereignty and property rights.

⁶ See Lewis Hanke, *All Mankind is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Intellectual and Religious Capacity of the American Indians* (Dekalb, Ill.: Northern Illinois University, 1974) 7.

⁷ Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (New York: Cambridge University, 1982) 3.

⁸ See Teresa S. de Salazar, "Aristoteles y Los Indios," *Anuario de historia*, vol. 3 (Mexico: Facultad de Filosofía y Letras Universidad Nacional Autónoma de México, 1963) 285–93; John L. Phelan, "El imperio cristiano de Las Casas, el imperio español de Sepúlveda y el imperio milenarista de Mendieta," *Revista de Occidente* 47 (1974) 292–310. Aristotle's views on slavery are often dismissed, even by his proponents, as indefensible cultural artifacts. Alasdair MacIntyre, for instance, believes Aristotle's mistaken views arise from a "general, though not universal blindness of his culture" (*After Virtue*, 2nd ed. [Notre Dame: University of Notre Dame, 1984] 159).

discussion of natural slavery to the Indians.⁹ Of the Indians, Mair stated: “As the Philosopher [Aristotle] says in the third and fourth chapters of the first book of the *Politics*, it is clear that some men are by nature slaves, others by nature free. . . . And this has now been demonstrated by experience, wherefore the first person to conquer [the Indians], justly rules over them because they are by nature slaves.”¹⁰

Aristotle’s position, advanced in *Politics* and mentioned in *Nicomachean Ethics*, posits the existence of persons, and perhaps even peoples, without full possession of the faculty of reason. Such people are often distinguished by bodily difference. “From the hour of their birth” some are intended to be slaves, others masters.¹¹ In *Politics* and *De Anima* Aristotle argues that outward bodily signs indicate the relative perfection of the nervous mechanism upon which the intellectual powers depend. Thus, he notes men with “hard skin” are intellectually defective compared to soft skinned men, the physical differences reflecting inner capacities.¹² The slave, often born with hard skin and a strong back, merely apprehends and does not possess true reason.¹³ He is capable of understanding, but not of *phronesis*, or practical reason, whereby he can initiate action, seeking out appropriate ends and the means of attaining them.¹⁴ The slave apprehends, but does not possess reason.¹⁵ Like women and children who suffered similarly, slaves could not engage in virtuous activity. Thus the slave cannot attain virtue and find happiness.¹⁶

Aristotle explores the possibility of the natural slave (*physei doulos*) in the opening of *Politics*. There he evaluates and rejects the thesis that the rule of master, king, householder, and statesman are the same. Aristotle believes this reasoning reduces the difference to quantity: “For example, the ruler over a few is called a master; over more, the manager of a household; over a still larger number, a statesman or king, as if there were no difference between a great household and a small state.”¹⁷ Aristotle intends to show that the difference does not reduce to quantity, even though quantity is an important factor. No, the critical difference must

⁹ Ibid. and Pagden, *The Fall of Natural Man* 38–39.

¹⁰ Pagden, *The Fall of Natural Man* 38.

¹¹ Aristotle, *Pol* 1254a 24.

¹² Aristotle, *De Anima*, trans. Hugh Lawson-Tancred (London: Penguin, 1986) book 2, chapter 9.

¹³ Aristotle, *Pol* 1254b 20–2.

¹⁴ Aristotle, *NE* 1143a 8–9.

¹⁵ Aristotle, *Pol* 1254b 22.

¹⁶ Aristotle, *NE* 1177a. See Ernest Barker, *The Political Theory of Aristotle and Plato* (New York: Dover, 1959) 365; and William Fortenbaugh, “Aristotle on Slaves and Women,” *Articles on Aristotle II: Ethics and Politics*, ed. Jonathan Barnes (London: Duckworth, 1977).

¹⁷ Aristotle, *Pol* 1252a 10–13.

reside in the kind of rule appropriate to different circumstances. Ruling those who ought to be free the same as those who ought to be slaves would be tyrannical. Because the different kinds of rule are not determined by the number of those ruled, the nature of those ruled is determinative. Aristotle thus proceeds from the simplest form of community, the household formed by the union of male and female to show the different characters of those ruled.¹⁸ The male rules the female, and he also rules the slave. But the rule of male over female differs from the rule of master over slave. “Nature has distinguished between the female and the slave,” Aristotle says. “For she is not niggardly. . . .”¹⁹ The “niggardly” character of the slave requires a different kind of rule than does the character of the wife.

We now have some sense why Aristotle attends to the natural slave. His much broader questions about political rule necessitate his study of the natural slave. There were slaves, and they were being ruled. The abolition of slavery was not in question. What was of interest was how to rule them. Appropriate rule of slaves was a question of justice. If all slaves were made and not born, then the rule of master over slave rested on force alone.²⁰ Slavery would always be painful and unjust. If, however, some were born slaves, then slavery would conduce to the welfare of the slave and master and could be just. Slavery, therefore, may be just only for those naturally inclined to servitude and when they are treated properly.²¹

KILLORAN’S CRITIQUE OF AQUINAS

In a collection of essays on medieval natural law theory, John Killoran criticizes Thomas Aquinas’s view of slavery. In “Aquinas and Vitoria: Two Perspectives on Slavery,” Killoran argues that Aquinas’s account of natural slavery is incoherent.²² The incoherence arises from Aquinas’s attempt to

¹⁸ Aristotle, *NE* 1162a 16–24.

¹⁹ Aristotle, *Pol* 1252b 1–2.

²⁰ Aristotle, *Pol* 1253b 20–23.

²¹ I have presented a partial (and benign) account of Aristotle’s view of slavery. In some places Aristotle remarks much less favorably about the slave. He often compares slaves to animals, for instance. See *Pol* 1252a 33, 1254b 16–25.

²² John B. Killoran, “Aquinas and Vitoria: Two Perspectives on Slavery,” *The Medieval Tradition of Natural Law*, ed. Harold J. Johnson, Studies in Medieval Culture 22 (Kalamazoo, Mich.: Medieval Institute Publications, Western Michigan University, 1987) 87. A final point on terminology. Throughout his essay, Killoran refers without distinction to “slavery.” This is worth noting for two reasons. First, the issue concerns natural slavery. Vacillating between “slavery” and “natural slavery” as Killoran does confuses the matter. Second, and more significantly, “slavery” cannot be invoked today without conjuring images of American chattel slavery. While chattel slavery did persist throughout the Middle Ages, most scholarship shows that chattel slavery was no longer widespread by the beginning of the elev-

blend the incompatible: Aristotelian justice and Christian belief.²³ Killoran believes Aquinas's considerations of slavery do not contradict the famous Aristotelian "natural slavery" position, and even support and advance it.²⁴ Contradict Aristotle they should, Killoran believes. Any notion of "natural slavery" is repugnant to Christianity.²⁵

Aquinas states in the *Commentary on the Politics* that enslavement of the vanquished in war is just by the *ius gentium* but adds, in good Aristotelian form Killoran informs us, this is so because of some natural deficiency exposed by the defeat. Losers were born that way, we might say; and winners too, because victory is a sign of preeminence in some virtue.²⁶ Killoran states: "In his *Commentary on the Politics*, [Aquinas] mentions that slavery according to the positive law—conventional slavery—is said to be of the *jus gentium* since it is universally acknowledged that those vanquished in war should be enslaved. But St. Thomas indicates further that victory in war is usually the result of some pre-eminence or excellence in virtue, suggesting that conventional slavery, which arises from subjugation in war, is somewhat akin to natural slavery."²⁷ So a convention—the enslavement of the vanquished by the victor—proves natural because revelatory of some natural excellence inhering in the victor. But this conclusion is surely a misreading of Aquinas attributable to an inattention to Aristotle's position. In *The Politics*, Aristotle ventures to scrutinize two views of the justification for slavery, one holding slavery permissible by nature, another affirming that "the rule of a master over slaves is contrary to nature, and that the distinction between slave and freeman exists by con-

enth century. Aquinas's comments on "slavery," to which Killoran refers, only occasionally imply chattel slavery, and more often connote the ameliorated form of servitude (from *servitus*, Aquinas's term) common to Aquinas's time. See Porter, *Natural and Divine Law* 277–78.

²³ Ibid. 87.

²⁴ Ibid. 89. In the *Ethics* and especially the *Politics*, Aristotle defended the thesis that "From the hour of their birth some are marked out for subjection, others for rule" *Pol.* 1253b. Curiously Killoran pays no attention to different interpretations of Aristotle's position, taking one as self-evident. There are, however, rather distinct positions on Aristotle's view of slavery. For a small sampling of such interpretations, refer to P. A. Brunt, "Aristotle and Slavery," in *Studies in Greek History and Thought* (New York: Oxford University, 1993); Ernest Barker, *The Political Thought of Plato and Aristotle* (New York: Russell & Russell, 1959); and William Fortenbaugh, "Aristotle on Slaves and Women," in *Articles on Aristotle*, vol. 2: *Ethics and Politics*, ed. Jonathan Barnes (London: Duckworth, 1977).

²⁵ St. Paul preached a "spiritual egalitarianism—that is, all persons, whether slaves or masters, are equal in the eyes of God; but the doctrine of natural slavery, as I have indicated previously, offends this spiritual egalitarianism" (Killoran, "Aquinas and Vitoria" 97).

²⁶ Ibid. 89.

²⁷ Ibid.

vention only, and not by nature. . . .”²⁸ Aquinas, in the *Commentary on the Politics*, joins Aristotle’s venture. Aristotle believes slavery to have arisen from the necessities of the household and thus be natural as other domestic relationships are. He removes brute force as a possible justification for slavery and shifts the justification to a rational and familial relationship. (He thus opposes Plato’s admonitions that slaves and masters should never relate in a friendly manner.) Conversely, conventional slavery did exist too; it needed to be explained. In those cases where force inaugurated and preserved the relationship it was possible that the victors were preeminent in some virtue, but it was also possible that those not born for slavery might be enslaved. In fact, Aristotle rejects the general view that preeminence in war exhibited some covert excellence in virtue. “Power seems to imply excellence,” Aristotle states, immediately before rejecting the implication.²⁹ These relationships would always be strained. There was, in other words, no implied convergence of slavery by nature and by convention. Aristotle sees these as divergent theories. The same is true, I believe, for Aquinas. Aquinas merely considers the possible association of power and virtue, before as Killoran admits, rejecting slavery by conquest as unjust.³⁰

Aquinas’s association of slavery with nature will, Killoran maintains, have drastic results. It distinguishes Aquinas markedly from Augustine, who held that slavery is unnatural because a consequence of sin.³¹ Thus, Killoran charges that Aquinas has pushed slavery dangerously close to the prelapsarian state. A person, he writes, “who accepts the Augustinian position on slavery could conceivably argue that, even though social inequalities abound in the sinful state, these inequalities have no basis in the natural order. This option is not open to the Thomist, and it was to Thomist arguments that those who argued for the enslavement of infidels, on account of their natural inferiority to Christians, turned.”³²

²⁸ Aristotle, *Pol* 1253b 20–23.

²⁹ Aristotle, *Pol* 1255a 12–22. Aristotle later rejects the association of power with excellence in his discussion of the tyrant. See *Pol* 1281a 23–24.

³⁰ Killoran never attends to the different contexts of Aquinas’s remarks about slavery. What Aquinas says about slavery in his commentaries on Aristotle will differ importantly from his comments in the *Summa contra gentiles* and *Summa theologiae*.

³¹ Killoran, “Aquinas and Vitoria” 87–88.

³² *Ibid.* 92. Killoran implies a departure by Aquinas from Augustine which is debatable, and then quickly shifts the “natural” slavery argument to religious faith and the matter of barbarism; a different, even if potentially related, issue. Against Killoran’s opinion that Aquinas buttressed Aristotle’s argument we could more easily construct a case defending the Augustinian qualification by Aquinas of Aristotle’s position. Such an argument would be based on Killoran’s important concession that Aquinas viewed slavery as a consequence of the Fall, much like Augustine. Slavery could thus only be natural in another sense than when we speak of

Straight away Killoran shows us how the Thomistic theory had drastic social consequence. Defenders of slavery and the exploitation of the Americas rushed to Thomistic arguments in support of the superiority of the Spaniards and their consequent right to domination. They could appeal to Aquinas to defend Spanish superiority as the way things should be. Just as Aquinas allegedly confused superior might with superior virtue, the Spaniards thought their superior might and cultural achievement exhibited their moral and intellectual ascendancy as well. The Indians ought to be enslaved by such men. Indeed, in the very same paragraph Killoran connects Aquinas's arguments to theories of racial superiority (the descendants of Ham argument) and to the position of Juan Gines de Sepúlveda, whose remarks bore a "disturbing similarity to those of St. Thomas."³³

KILLORAN ON VITORIA

Given what he writes about Aquinas, Killoran has to explain how Vitoria, overtly indebted to Aquinas, could have defended the Indians while remaining "Thomistic." How could Vitoria remain faithful to Aquinas and yet come to different conclusions about the morality of slavery? Vitoria achieves this, according to Killoran, by relying on Thomistic premises, not Aquinas's conclusions. "What is perhaps most interesting about Vitoria's arguments against slavery, though, is his reliance on Thomistic premises to demonstrate the immorality of slavery in the New World."³⁴ The premises are adequate and persuasive, the conclusions merely an expression of one man's biases. Vitoria is a better Thomist than Thomas.

Specifically, the defense of the Indians rests on Aquinas's analysis of

natural things in the prelapsarian condition. There is no doubt that Aquinas was uncomfortable with the kind of dominion often associated with slavery (see Finnis, *Aquinas* 184–85). According to Aquinas there are two ways of exercising authority (*dominium*): one for the sake of government (*ad regimen ordinatus*) and the other for the sake of domination (*ad dominandum*). Humans exercise authority in the second sense over animals; that form of authority was unnatural among persons. Men were not created to reign over other men in that manner. Slavery, therefore, in which the good of the slave is overwhelmed by the good of the master whom he serves, is repugnant to the natural law. Yet, Aquinas is clearly moved by the force of tradition (Christian and legal). Inasmuch as ecclesial and secular juridical communities permitted slavery, then there must be some reason for it. Aquinas therefore argues that slavery, like private property, while not natural (in the sense of part of the original creation) does not *oppose* the state of nature. It is not *contra naturam* by way of subtraction from the natural law (*mutatio legis naturae per subtractionem*), but is *praeter naturam*, an approvable addition to nature, like the wearing of clothing. Slavery, as with private property, is a legitimate contrivance of human reason designed to serve human society (see *ST* 1–2, q. 94, a. 5, ad 2).

³³ Ibid. Killoran provides no evidence of the purported "disturbing similarity."

³⁴ Ibid. 93.

property in *Summa theologiae* 2-2, q. 66, a. 1. There Aquinas shows that the right to possess property derives from man's creation in God's image and rational use of things for his development. This is where Vitoria begins. He desires to establish the *dominium* of the Indians over their property. Those wishing to despoil the Indians argued that their sinfulness vitiated their dominion. The Indians, the claim went, were not legitimate rulers. They did not really possess their property, and thus the Spaniards could lay claim to anything they found. " 'Dominion,' " Vitoria countered, " 'is founded on the image of God; but man is God's image by nature, that is, by his reasoning powers; therefore dominion is not lost by mortal sin.' " ³⁵ That the Indians are sinful does not vitiate their titles to dominion any more than it does similar Spanish titles. The Indians were rightful rulers before the arrival of the Spaniards and must be treated as such. "These claims," Killoran tells us, "preclude the possibility of natural slavery, for a being who has command over himself (and persons, whether Indians or Europeans, pagans or Christians, do have command over themselves) cannot be enslaved as he is made in the image of God." ³⁶ But as those familiar with Vitoria's work know, and as we will see below, this quite clearly misses the point. Vitoria does not deny that human persons are made in the image of God. Neither did Aquinas. The question becomes whether and in what sense the image of God might be "enslaved."

Killoran presses the view that Vitoria's rejection of slavery is not limited to slavery in the "natural" sense, by which is implied the kind of justification for slavery given by Aquinas. He tries to show that Vitoria easily avoids implying that certain fundamental inequalities may have existed in the Garden. But beyond this, Killoran claims Vitoria held that slavery in the fallen state could not be justified either. Motivated by pastoral concerns that did not seem to press on Aquinas as he mused about slavery, Vitoria emphasized "the relationship of the individual person with God. But this important aspect of Christianity is jeopardized," Killoran maintains, "if it is held that some people are unlikely to develop such a relationship because they lack certain spiritual and intellectual aptitudes." ³⁷ Here Killoran connects his smaller point about the invalidity of Aquinas's position directly to a larger failure: Aquinas's complete absorption of pagan Aristotelian philosophy. The theory of natural slavery, first posited by Aristotle but brought to fruition in the thought of Aquinas, offends the gospel, specifically the "spiritual egalitarianism" of St. Paul. The good work of Vitoria

³⁵ "Dominium fundatur in imagine Dei; sed homo est imago Dei per naturam, scilicet per potentias racionales; ergo non perditur per peccatum mortale" (*De Indis et De Iure Belli Relectiones* I, quoted in *ibid.* 100). Vitoria here turns for support to Augustine's *De Trinitate (et ex doctoribus)*.

³⁶ *Ibid.* 94.

³⁷ *Ibid.* 97.

then was to rebut the Aristotelian doctrine and “revive the Pauline and Patristic teaching on slavery.”³⁸

BRETT ON AQUINAS AND VITORIA

Having now witnessed the refutation by Vitoria of Aquinas’s doctrine of natural slavery, we turn to a rival account alleging a distortion of Aquinas’s teaching on equality and slavery. Interestingly, each account believes the idea of equality ultimately undermines the theory of slavery, yet each attributes that liberalizing idea to the opposite author. Killoran proposes Vitoria as the champion of the egalitarian cause in its Pauline form, while Brett backs Thomas as the true vindicator of equality. In the preface to his published dissertation, *Slavery and the Catholic Tradition: Rights in the Balance*, Brett makes the startling claim that “[g]enerations of slaves lost their rights because of theories upheld by well-meaning but critically inadequate scholarship.”³⁹ The inadequate scholarship is the work of Vitoria and his contemporary, Domingo de Soto. Their inadequate interpretations of Aquinas’s political theories crippled Christianity’s means of responding to the injustices occurring in the New World. It is not rare to find defenses of the view that ideas have social consequences; it is uncommon, however, to see such a strong connection made between the failure of an idea and the social consequences purported to have resulted from that failed idea. It behooves us, then, to explore with Brett the complete nature of his allegation, beginning with his interpretation of Vitoria’s development of Aquinas before moving to the ostensible consequences of that development.

Brett’s argument runs contrary to Killoran’s. Brett claims that Aquinas’s is the “balanced” exposition of modern rights, with most subsequent developments (except perhaps our own), deviations from Aquinas. Vitoria, then, did not restore Christian humanism to the theology of Aquinas, as Killoran would have us believe, he in fact may have removed it. Centuries would pass before Christians would again see through the haze obscuring the humanizing peaks of the genuinely Thomistic perspective. Thus, Brett is compelled to ask whether “the thought of Thomas [is] incompatible with modern considerations of human rights?”⁴⁰ Brett confidently replies that it is not, which, apparently, is a good thing.

³⁸ Ibid.

³⁹ Stephen F. Brett, *Slavery and the Catholic Tradition: Rights in the Balance*, American University Studies, Series 5, Philosophy 157 (New York: Peter Lang, 1996) ix.

⁴⁰ Ibid. See also 27. Brett is concerned in this work to advance the case for the compatibility of Aquinas’s thought with modern rights theory. Brett’s is part of a literature that reads Aquinas as either a prescient rights theorist or democrat. From

Brett analyzes Aquinas's argument on justice, or *ius*, as it relates to considerations of equality. He points to the high esteem Aquinas gives to equality. Thus, "[e]quality holds a special place in Thomas' consideration of the virtue of justice: it is the mean of the virtue of justice (*medium justitiae*)."⁴¹ Aquinas's emphasis "on equality as an inherent feature of justice," Brett continues, "would have been subversive of the rationale supporting slavery in the New World, which was clearly predicated upon an *unequal* status of master and slave."⁴¹ Rather than question Brett's interpretation of Aquinas on justice, we can move immediately to his criticisms of Vitoria based on the assumption that the Spaniard detoured from Aquinas's position.

Brett provides a long, detailed, and thoughtful exposition of Vitoria's views on *ius* and *dominium*. Before comparing them outright to Aquinas, Brett points to two factors that adversely affect Vitoria's interpretation of the Thomistic position. First is the "surge of nominalism" associated with Ockham, and its celebrated and notorious separation of reason from faith. Brett theorizes that the Spanish theologians of the 16th century diverted their attention from the moral problem of slavery because of the nominalist

John XXIII's *Pacem in terris* [no. 9] to John Courtney Murray, *We Hold These Truths* (New York: Sheed and Ward, 1960) to more recent invocations (such as Robert George, *Making Men Moral: Civil Liberties and Public Morality* [New York: Oxford University, 1993]), the claim has been advanced that in Aquinas one finds the proper foundation for human rights and/or modern democracy. In this way Brett follows the work of Jacques Maritain in *The Rights of Man and Natural Law* (New York: Scribners, 1943) and John Finnis, *Natural Law and Natural Rights* (New York: Oxford University, 1980). At the 1997 meeting of the Society of Christian Ethics, Paul Weithman presented a cogent and persuasive rebuttal of this approach in his "Complementarity and Equality in the Political Thought of Thomas Aquinas," (January 1997) Atlanta, Georgia.

⁴¹ Ibid. 18–19; emphasis in original. Here Brett fails to make a distinction so well made by Weithman in his essay. "[T]o settle the question of whether or not Aquinas was a democratic or, more plausibly a proto-democratic, thinker it is not enough to point out that he expressed a preference for monarchy in *de Regno* or for a so-called "mixed regime" elsewhere (I-II, 105, 1). Neither can the question be settled by going beyond constitutional matters to Aquinas's claim that human beings are equally made in God's image and likeness. This is because, though democrats are committed to political equality, the assertion of *human* equality does not entail one of political equality and there are democratic and undemocratic conceptions of political equality. The burden of proof is on Aquinas to show that the conception of human equality implicit in his claim that all are made in God's image is political and democratic rather than not" (Weithman, "Complementarity and Equality" 3). There is a significant gap dividing the recognition of human equality from a particular kind of governing relationship. The Spanish would not have been the first to have seen in their slaves the image of God and still have determined that slavery was no violation of that kind of equality.

influences of Ockham.⁴² They moved from the safe ground of Aquinas's metaphysics to "a system of legal 'titles'," that "exacted an incalculable price in human suffering."⁴³ Thus Brett believes Vitoria (he mentions Soto as well) was unable to appreciate Aquinas's insight that *dominium* excludes slavery. This resulted in the second factor, the "radically different," subjective meaning attached to *ius*. The father of this subjective theory of rights is taken to be William of Ockham, but in Brett's view Vitoria is a dutiful son.⁴⁴ Nevertheless "there is," Brian Tierney writes, "no consensus in modern writing about Vitoria's teaching on natural rights. . . . Some maintained that Vitoria and his followers, as good Thomists, did not teach a doctrine of subjective rights, but adhered faithfully to the objective sense of *ius* defined by Aquinas."⁴⁵ Against this is the school, to which Brett belongs, that follows Villey's accusations of betrayal. Here is taught the view that a new conception of rights as power (*potestas*) or faculty (*facultas*) inhering in the person emerged in Ockham's thought. The subjective conception of right proved irresistible to the Spaniards, according to this view.

What occurred, according to Brett, prevented the Spanish theologians from viewing slavery analogically, as Aquinas had. The consequence of Aquinas's analogical view was to prevent the unrestricted practice of slavery. The master-slave relationship was viewed in a series of analogies; like father-son, God-creation, agent over acts.⁴⁶ The relationship, in essence, determined what is right: one ought to receive what is due to one by virtue of holding a particular station. Slaves could expect a certain kind of treatment that resulted from the characteristics of the relationship, much as persons expected a certain kind of treatment by God. Conversely, slaves were responsible for the carrying out of particular duties, just as were persons. "This means that any form of human dominion which aspires to be authentic (viz., morally good and praiseworthy) must be analogous to the dominion which God exercises over creation."⁴⁷ The master-slave relation-

⁴² The "rupture" between Aquinas's work and the work of his Spanish commentators has often been marked as occurring primarily with Ockhamist nominalism. Vitoria and the later Salamancan theologians returned to Aquinas's thought, following the lead of Cajetan, precisely as an alternative to nominalism. See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (New York: Cambridge University, 1979) 22–24, 46.

⁴³ Brett, *Slavery and the Catholic Tradition: Rights in the Balance* 219.

⁴⁴ For a good look at Ockham's view of rights, see A. S. McGrade, "Ockham and the Birth of Individual Rights," in *Authority and Power: Studies on Medieval Law and Government Presented to Walter Ullmann on His Seventieth Birthday*, ed. Brian Tierney and Peter Linahen (Cambridge: Cambridge University, 1980) 149–65.

⁴⁵ Brian Tierney, *The Idea of Natural Rights* (Atlanta: Scholars, 1997) 257.

⁴⁶ Brett, *Slavery and the Catholic Tradition: Rights in the Balance* 196.

⁴⁷ *Ibid.* 193.

ship, in other words, is a kind of benevolent paternalism unfamiliar with the language of power and subjective rights associated with New World slavery. It would be just as nonsensical for God to abuse us as the master to abuse the slave; similarly, neither the slave nor we can claim personal rights against our masters on earth or in heaven.

The salience of Brett's argument should not go unmentioned. Here he joins those who find in the modern triumph of rights language a cause for suspicion.⁴⁸ But just as this argument is compelling, it also works in the other direction. If we grant to Brett that the development of subjective rights theories is damaging to the cause of the Indians, he still has to establish that Vitoria is a subjective rights theorist. What results then is an endeavor somewhat determined by a discussion external to Vitoria's analysis of natural slavery. The focus shifts from Vitoria to claims about the development of subjective rights and Vitoria's place in it. Then we might be more inclined to agree with those who find in Vitoria's theory a faithful attempt to return to Aquinas's more objective perspective as an antidote to the subjectivism of nominalism. Richard Tuck proposes just such a view in his important *Natural Rights Theories*.⁴⁹ Through his opposition to Gersonian rights theories which maintained that a person is free to enslave him or herself, Tuck states, Vitoria and his fellow Dominicans were actually able to undermine slavery by limiting the conditions under which men could become slaves.⁵⁰

Thus, Brett's position is underdeveloped. His main assumption appears to be that if Vitoria had been more faithful to Aquinas, he would have explored slavery as a moral question more thoroughly—and differently—and that these efforts would have reduced the incalculable price in human suffering. Both ends of this theory are questionable.

First, why should Brett be confident that Vitoria would have condemned an institution that Aquinas failed to condemn? Brett responds by qualifying *servitus* as understood by Aquinas. He believes Aquinas and Vitoria faced different institutions. "The kind of race-based slavery practiced in the New World after the arrival of Columbus and European colonialism was hardly what Aquinas meant when he wrote of *servitus*."⁵¹ And, "Thomas'

⁴⁸ Most famously, MacIntyre states unambiguously: "Natural or human rights then are fictions . . ." (*After Virtue* 70).

⁴⁹ See n. 42 above.

⁵⁰ Brett, *Slavery and the Catholic Tradition: Rights in the Balance* 49.

⁵¹ *Ibid.* ix. Brett's qualification of slavery also makes Aquinas appear ignorant of history and of his own environment. While, certainly, there are important differences between the slavery of ancient Greece and Rome and medieval Europe, Aquinas would surely have been aware of the atrocious nature of ancient slavery, which The Philosopher appeared to justify and which justification Aquinas does not appear to have censured. Further, Aquinas should have also been aware of the

reflections on what he saw in the medieval system, where a *servus* or bondservant was an integral part of a household, cannot logically be extrapolated to justify a system where the domestic economy had been replaced by a modern industrial society.”⁵² In other words, the kind of slavery to which Aquinas referred was more moderate than New World slavery. If he were faced with New World slavery, Brett implies, he probably would have condemned it. More importantly, Aquinas would have to, based upon the opposition of his egalitarianism to slavery as a kind of *dominium*. Here we see the convergence of Brett’s argument with Killoran’s. Both authors agree that Aquinas’s principles ought to provide a condemnation of slavery, even though they disagree about to whom such a condemnation should be attributed. But we should question Brett’s conclusion. Even if we grant Brett the kind of qualitative distinction among ancient, medieval, and New World forms of slavery, a presumption of serious academic controversy,⁵³ the medieval servile relationship is still a political relationship of unequals. There is no historical evidence that contradicts this point. Brett may hold Vitoria to a higher standard than he holds Aquinas. Grant Brett both sides of the historical equation: 12th-century servitude was moderate and 16th-century slavery cruel, and we still wonder why Aquinas did not provide a criticism of the 12th-century practice of institutional inequality. Or did he?

Brett anticipates this objection, offering Aquinas’s efforts to mollify the practice of medieval servitude as evidence of his healthy suspicion of the institution. Brett explains: “though St. Thomas was unacquainted with the harsh slavery of the New World . . . there is ample evidence that he was disposed to point out the inherent or inchoate opposition between the natural law and *servitus*, whether the relatively benign, medieval form akin to serfdom, or the virulent embodiment of it based on race.”⁵⁴ The supporting evidence cited by Brett breaks down into five citations from the

traffic in “real” slaves in his Italy and Southern Europe; a traffic that involved the buying and selling of human beings that surely should have aroused his ire.

⁵² Ibid. 27.

⁵³ David Brion Davis, for an important example, has shown that across cultures and ages there are fewer institutional differences than were commonly assumed and greater institutional continuity between ancient and modern forms of slavery (*The Problem of Slavery in Western Culture* 30–35).

⁵⁴ Brett, *Slavery and the Catholic Tradition: Rights in the Balance* 56. There is increasing evidence, provided by the leading scholars of comparative slavery, that New World slavery was not outstandingly “virulent” when compared to the relatively “benign” servitude of the Middle Ages. This kind of comparison is much too simple. Thomas Wiedemann made this point well, writing, “The most attractive way of dealing with the embarrassment of ancient slavery is to claim that it had in fact been abolished. Slavery is constantly referred to in the literature, philosophy, and legal writing of antiquity. By comparison, its place in the Christian religious writing

Summa theologiae. Admittedly, each of the citations Brett provides offers a restriction or limitation on slavery, including for example the notions that the dominion of one human over another will result in pain, that injury must not attend slavery, and that the slave must place God's will over that of the master.⁵⁵ In these ways and more (as shown by Killoran, too) Aquinas does articulate ways to dull the pain of the master-slave relationship.

Yet none of these is a criticism of the institution and none involves a rejection of the theory of natural slavery. They are, in fact, fairly standard expressions of the state of theology and canon law on the master-slave relationship. Most straightforwardly, no one, even the most virulent defenders of race-based slavery in the American South argued for a morally unrestricted slavery. Granted, some of them did not consider the slaves fully human, as Aquinas quite clearly did, but certainly this is not attributable to some perversion of Aquinas's thought occurring in the 16th century.

The other half of Brett's equation maintains that efforts more faithful to the tradition and the gospel would have mitigated the suffering in the New World. This is a historical claim and should be addressed as such.

Because Killoran and Brett have posed a historical question without doing any history, one way to address it is to go beyond the ideas expounded by Vitoria and Aquinas to the social climate in which they were presented and which they did or did not influence. In other words, we turn to a different angle on the problem: Did Vitoria influence Spanish imperial practice, from the point of view of the Indians, favorably or unfavorably?

There are at least two ways to engage this question. First, we can compare the activity of Spanish theologians on behalf of their Crown with other "court" theologians; with those theologians or philosophers in other historical contexts who have engaged the practices of their employers. Sec-

of the Middle Ages is minimal. It was easy, but fallacious, to conclude that there was a point where chattel-slavery disappeared and was replaced by medieval serfdom, a form of inequality that did not deny the dependent his humanity. . . . The evidence of the survival of slavery throughout the medieval Mediterranean world was simply ignored. For those who were concerned to prove that civilized people could not tolerate slavery, this purported disappearance of the institution from Western Europe in the fifth century A.D. could be interpreted as the culmination of centuries of humanitarian abolitionist effort. . . ." (Thomas E. J. Wiedemann, *Slavery*, *New Surveys in the Classics* 19 [Oxford: Oxford University, 1987] 2). Additionally, measuring the barbarity of slavery can rely on different criteria, each providing different conclusions as to which slavery was the worst. For example, one slave system may be judged moderate because of the high possibility of manumission, while according to another criterion (say, treatment of slaves), it may be immoderate or cruel.

⁵⁵ Brett, *Slavery and the Catholic Tradition: Rights in the Balance* 56–58.

ond, we can explore the individual situation in the Americas itself and try to gather whether the Indians were helped by Spanish theological intervention.

Historians of the period note the exceptional nature of the disputes over the legitimacy of Castilian colonization in the Americas. The disputes occurred at the highest level of public governance, and were not just sanctioned, but commissioned by the monarchs. For instance, just twenty years after the discovery of the New World,⁵⁶ King Ferdinand sought theological and canonical advice, on the basis of which in 1512–1513 he promulgated legislation designed to curb the abuses of the *encomienda* system. Vitoria and other Spanish intellectuals endeavored to prove the Crown the defender of universal Christendom. This they achieved by reminding the Crown of its responsibilities to religion, from which derived moral principles for treating its subjects. The “task of its theologians was to ensure that it acted, or was seen to act, on all occasions in strict accordance with Christian ethico-political principles.”⁵⁷ Convinced they were partially successful, historian Lewis Hanke wrote a book to “demonstrate that the Spanish conquest of America was far more than a remarkable military and political exploit; that it was also one of the greatest attempts the world has seen to make Christian precepts prevail in the relations between peoples.”⁵⁸ Many have echoed Hanke’s acclamation of the Spanish theologians, philosophers, and canonists. Historian Anthony Pagden writes, “The extent and the intensity of the struggle over the rights of Spaniards in America are, perhaps, unequalled in the history of European colonization.”⁵⁹ Philosopher Eduardo Andújar calls the disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda, “the clearest instance of an imperial power openly questioning the legitimacy of its rights and the ethical basis of its political actions.”⁶⁰

Acknowledging that such discussions occurred, and even that laws resulted from or were influenced by them, implies no particular outcome in the daily lives of Indians and *conquistadores*. Vitoria noted that rulers are “pragmatic beings compelled to ‘think from hand to mouth.’”⁶¹ While they

⁵⁶ There is no alternative term that at once escapes the “Eurocentrism” of “New World,” and conjures immediately the image with which we are concerned.

⁵⁷ Pagden and Lawrance, *Vitoria: Political Writings* xviii.

⁵⁸ Lewis Hanke, *Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania, 1949).

⁵⁹ Pagden, *Spanish Imperialism and the Political Imagination* 5.

⁶⁰ Eduardo Andújar, “Bartolomé de Las Casas and Juan Ginés de Sepúlveda: Moral Theology versus Political Philosophy,” in *Hispanic Philosophy in the Age of Discovery*, *Studies in Philosophy and the History of Philosophy* 29, ed. Kevin White (Washington: Catholic University of America, 1997) 87.

⁶¹ Quoted in Pagden, *Spanish Imperialism and Political Imagination* 5.

might call on and listen to their theologians and canonists, they were as likely to disregard their advice when pressed by more urgent concerns. Nonetheless, that King Ferdinand, and later, in 1542, Emperor Charles V promulgated legal reforms based on the arguments of these men is undeniable. Ultimately history judges these reforms ineffective, but there is reason to suspect their ineffectiveness results from rapacious men rather than bad ideas.

VITORIA ON NATURAL SLAVERY

De Indis divides into three sections exploring three questions. First, by what right could the Spaniards subject the Indians? Second, what powers did the Spanish possess over them in temporal and civil affairs? Third, what powers has either the monarchy or Church in regard to spiritual and religious affairs?⁶²

The first question pertains to the dominion of the “barbarians.”⁶³ Did the barbarians have genuine dominion before the Spaniards arrived?⁶⁴ Questioning the *dominium* of the Indians involved him in the natural slavery debate. The position against the Indians bases itself on the supposition that as barbarians like the Indians are natural slaves (*natura servi*). He sets out to prove, contrary to popular opinion, that prior to the arrival of the Spanish the Indians were authentic masters in the Indies. Vitoria’s response is evenhanded. He is well aware of the persuasiveness of both arguments. He knows well that “the matter is neither so evidently unjust of itself that one may not question whether it is just, nor so evidently just that one may not wonder whether it might be unjust. It seems to have arguments on both sides.”⁶⁵

Were the Indians rational enough to have rights of ownership (*dominium rerum*)? Based on the reports he heard of Indian behavior, Vitoria considered certain indications that the Indians were unfit for self-rule and

⁶² Vitoria, *De Indis*: “Circa quos praesens disputatio habebit tres partes. In prima tractabitur, quo iure venerint barbari in dicionem Hispanorum; in secunda, quid possint Hispanorum principes erga illos in temporalibus et in civilibus; in tertia, quid possint vel episcopi vel ecclesia in spiritualibus et <in> spectantibus ad religionem. . . .” I rely on the Latin text found in Ulrich Horst, Heinz-Gerhard Justenhoven, and Joachim Stüben, *Francisco de Vitoria: Vorlesungen II: Völkerrecht, Politik, Kirche*, Band 8, *Theologie und Frieden* (Stuttgart: Kohlhammer, 1997).

⁶³ “Barbari” is Vitoria’s term.

⁶⁴ Vitoria, *De Indis* q. 1, sect. 1. “Utrum barbari essent veri domini ante adventum Hispanorum?”

⁶⁵ Pagden and Lawrance, *Vitoria: Political Writings* 237. Vitoria, *De Indis*: “Ergo redeundo ad propositum negotium barbarorum nec est de se ita evidenter iniustum, ut non possit disputari de iustitia illius, nec rursus ita evidenter iustum, ut dubitari non possit de iniustitia illius, sed in utramque partem videtur habere speciem.”

thus enslavable. Reports of cannibalism, savage, animalistic behavior, and an apparent inability to govern caused many to view the Indians as “madmen” incapable of *dominium*. Vitoria responded somewhat differently. There are only five grounds, he maintains, on which it can be concluded that the Indians were not true masters prior to the arrival of the Spaniards. In other words, the burden of proof shifts to those who must justify their view that the Indians are either (1) sinners, (2) unbelievers, (3) irrational, (4) childlike, or (5) madmen. One by one Vitoria dismantles these accusations.

The first two he quickly dispatched. Even if the Indians are sinners, Vitoria responds, they could not lose their *dominium*. Scripture tells us David, Solomon, and Ahab were kings despite their sins. Neither unbelief nor sin nullified the *dominium* a person had over his or her acts. How strange it would be if sinners no longer were responsible for their sins! *Dominium* is inalienable; it cannot even be relinquished voluntarily.⁶⁶ This is a critical point differentiating Vitoria from Suárez. Gersonians and Molinists disagreed, viewing “liberty” as something over which the individual had dominion. Thus, an individual could decide to enslave him or herself. He does acknowledge later that the Indians could decide to accept the governance of the king of Spain, but this is a matter of civil law. Even in electing to do so, the Indians qua individuals do not forfeit their natural liberty over themselves.

Of the third possibility for enslaving the Indians, he defends the Indians on two grounds. It is self-evident, he charges, that the Indians do have use of reason: just look at their cities and governments, their marriages and laws, “all of which require the use of reason.” To this appeal to the presence of *ordo* in Indian affairs he adds the following cosmological fact. “God and nature never fail in the things necessary for the majority of the species, and the chief attribute of man is reason.” Thus, Vitoria uses Aristotle’s views to vanquish his opponents. Aristotelians must square the idea that races of people may be “mad” with the view that “nature never fails or does anything in vain.”⁶⁷ Nature equipped the Indian, like any other human, with the capacity for attaining his telos. If the Indians “seem to us insensate and slow-witted,” this is attributable to their “evil and barbarous education.” In this respect they do not differ from children or the poor of Europe. Vitoria provides the grounds by which the Indians are excluded from the class of slaves, even if he still provides justification for Indian subjection to the Crown; for as children, they require education. Vitoria adds that even though the Indians “might be governed partly as slaves . . .

⁶⁶ In *De Indis* q. 1, art. 2, and q. 1, art. 3 he discusses the first and second of these challenges. Neither sin nor unbelief removes *dominium*.

⁶⁷ Pagden and Lawrance, *Vitoria: Political Writings* 250.

that only applies if everything is done for the benefit and good of the barbarians, and not merely for the profit of the Spaniards.”⁶⁸ The rationale for the Crown’s policies, after all, was supposed to be missionary. The transparent conclusion of his survey is that “the barbarians undoubtedly possessed as true dominion, both public and private, as any Christians. That is to say, they could not be robbed of their property, either as private citizens or as princes, on the grounds that they were not true masters (*ueri domini*).”⁶⁹

Once he has established the legitimate dominion of the Indians Vitoria turns to an examination of the titles by which the Spanish might still legitimately take possession of their territory. The questions he asks are intimately tied to the justification of war against the Indians, unless the Indians voluntarily cede dominion to the Spanish. If Vitoria or other theologians judged that war against the Indians was just, then the primary cause of slavery, defeat in war, would be realized.⁷⁰

Vitoria rejects seven illegitimate titles, all of which were offered by other theologians.⁷¹ The illegitimate titles are: (1) that the Emperor is sovereign of the world; (2) “that the pope is monarch of the whole world, even in temporals;” (3) title by right of discovery (*in ueri inuentionis*); (4) that the Indians refuse to receive the faith of Christ, even after being taught it; (5) that they commit mortal sins that they should be compelled to give up; (6) that the barbarians freely choose to accept Spanish domination; and (7) that God has given the “damned” Indians to the Spaniards as the Canaanites once were delivered to the Jews (Num. 21:3).

Listing these unjust titles does not do justice to the mastery of Vitoria’s argumentation. Contemporary theologians and canonists supported these titles, and some, like the first two, found support in custom as well. Vitoria was not afraid to contradict the authorities. Indeed, in opposing the second ostensible title Vitoria engaged a theological discussion that occurred earlier at the Burgos Conference that produced the Burgos Laws of 1512 that Las Casas so despised.⁷² Further, his restriction of the sovereignty of the pope in *De Indis* 2.2 leads to later restrictions of Spanish sovereignty, such as in 2.5. He flatly states there that “Christian princes, even on the authority of the pope, may not compel the barbarians to give up their sins against the law of nature, nor punish them for such sins.” One of the reasons Vitoria offers for this is eminently practical. If the pope could compel

⁶⁸ Ibid. 291.

⁶⁹ *De Indis* q. 1, conclusion.

⁷⁰ See Gustavo Gutiérrez, *Las Casas: In Search of the Poor of Jesus Christ* (Maryknoll, N.Y.: Orbis, 1993) 321.

⁷¹ *De Indis* q. 2, a. 1–7; Pagden and Lawrence, *Francisco de Vitoria: Political Writings* 252–277.

⁷² See Gutiérrez, *Las Casas* 283.

Christian princes to halt the sinful activity of non-believers, could he not do the same for believers? But “the pope may not make war on Christians because they are fornicators or robbers, or even because they are sodomites; nor can he confiscate their lands and give them to other princes; if he could, since every country is full of sinners, kingdoms could be exchanged every day.”⁷³

In spite of Vitoria’s progressive and somewhat radical rejection of these titles, he does consider other titles “by which the barbarians could have come under the control of the Spaniards.”⁷⁴ After listing and analyzing seven different acceptable justifications for suppression of the Indians, Vitoria turns to an eighth, the “mental incapacity of the barbarians.” Here Vitoria returns us to Aristotle’s theory of natural slavery. Vitoria’s moderation leads him to admit some hesitancy in applying this argument. He presents this view “for the sake of the argument,” without confidence and without daring “either to affirm or deny [the barbarians’ mental incapacity] out of hand.”⁷⁵ In spite of his reluctance to judge the capacity of the Indians (which he had earlier deemed to be fitting of dominion), Vitoria does consider mental incapacity lawful and appropriate grounds for enslavement. “On [the ground of mental incapacity],” he writes, “they might be handed over to wiser men to govern.”⁷⁶

Whatever we may think of Vitoria’s response in this section, the theory of natural slavery as a justification for Spanish dominion obviously unsettled him. His concessions to the “sake of argument” indicate a willingness to be thorough, not to seek grounds for the subjection of Indians to the Spaniards. Further, even if he grants that natural slavery is a ground for enslavement, he does so conditionally. Toward the conclusion of this section he writes:

But I say all this, as I have already made clear, merely for the sake of argument; and even then, with the limitation that only applies if everything is done for the benefit and good of the barbarians, and not merely for the profit of the Spaniards. But it is in this latter restriction that the whole pitfall to souls and salvation is found to lie.

Vitoria’s conclusions would clearly prohibit chattel slavery. Indeed, here and in the introduction to which he refers,⁷⁷ Vitoria explains that “natural slavery” for Aristotle meant a rational deficiency that required some persons to be led by others. “Aristotle certainly did not mean to say that such

⁷³ *De Indis*, q. 2, a. 5.

⁷⁴ *Ibid.* q. 3, a. 1. By stressing the past, Vitoria shows that he believes the subjugation is no longer justifiable. The Spaniards had some legitimate grounds, but they were no longer available.

⁷⁵ *Ibid.* q. 3, a. 8.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.* q. 1, a. 1.

men thereby belong by nature to others and have no rights of ownership over their own bodies and possessions (*dominium sui et rerum*). Such slavery is a civil and legal condition, to which no man can belong by nature.”⁷⁸ Even there Vitoria surely demands that such subjection be done for the good of those subjected. In these ways we see that Vitoria did not reject Aristotle’s views as suggested by Killoran, but neither did he subject the Indians to maltreatment because of a misinterpretation of Aquinas.

In fact, Vitoria follows Aquinas rather closely here, interpreting Aristotle’s comments on natural slavery through a Christian perspective dependent upon Augustine. With Aquinas, Vitoria acknowledges a “natural” inequality of persons, as Brett suggests.⁷⁹ In the prelapsarian state persons would be distinguishable by intellectual and physical capacities. Differences in capacities lead to different responsibilities within human communities. But the subjection of the less to the more wise was not equivalent to a painful subjection stripping the Indians of their property. The painful subjection characteristic of most kinds of slavery is a consequence of human sinfulness.⁸⁰ Charitably, Vitoria interprets Aristotle to have meant the benign form. Natural slavery could not provide the basis for Spanish conquest.

CONCLUSION: BETRAYAL OF THE GOSPEL?

We have seen how modern interpreters of Aquinas and Vitoria differ on their contribution to the development of an attitude opposed to slavery. Killoran accuses Aquinas of incoherence and, more importantly, defending an unchristian form of slavery. Brett defends Aquinas and alleges his interpreters, including Vitoria, are responsible for their failure to condemn New World slavery. Both views presuppose a modern perspective on the evil of slavery. Slavery is almost universally condemned today. That near universal condemnation is the consequence of many factors, including slavery’s abolition (it is much easier to condemn something you are not required to live with) and various philosophical and theological developments.

It is a difficult task, however, to project a modern understanding of slavery’s evil backwards and start condemning or praising theologians by that measure. Aquinas and Vitoria argued in good faith on behalf of what they perceived to be the Christian doctrine of slavery, one grounded in

⁷⁸ Ibid. q. 1, a. 6. Vitoria is influenced by Aquinas. Vitoria thinks that civil law can permit the ownership of some by others; nature, however, provides no such grounds.

⁷⁹ Brett, *Slavery and the Catholic Tradition* 70.

⁸⁰ Vitoria thus follows Aquinas, whose position depends upon Augustine in *The City of God*, book 19.

Scripture and tradition. Both understood that the notion of Pauline egalitarianism to which Killoran appeals emerges in the same Scriptures that embrace slavery as a way of salvation.⁸¹ Scripture does not reject slavery outright, but censures or approves of conduct within the institution. Thus, slaves and masters are judged by their behavior, not their status.⁸² If we begin our assessment of Aquinas and Vitoria from a perspective closer to theirs we may understand better their apparent failings. We too may appreciate their contributions to the developments in human understanding that eventually enable us all to see that no child of God should be the slave of another.

⁸¹ See, e.g., Dale B. Martin, *Slavery as Salvation: The Metaphor of Slavery in Pauline Christianity* (New Haven: Yale University, 1990).

⁸² *Ibid.* 52.