The Debate at Valladolid, 1550

(1) Law after conquest
(2) Bartolomé de las Casas: “the Indians’ procurator”
(3) Juan Ginés de Sepúlveda
(4) The problem of “just war”
(5) After Valladolid
some terms:

requerimiento: “requirement” to announce a declaration of sovereignty

derecho indiano: “law of the Indians” based on royal decrees, judges’ decisions, deliberations of the Council of the Indies

repartimiento: a rotating labour draft to meet public needs
Bartolomé de las Casas 1484-1566

religious challenge?
moral challenge?
legal challenge?
Brevísima relación de la destrucción de las Indias, 1552

Las Casas’ copy of Columbus’ diary of his first voyage
Charles V of Spain

New Laws of 1542
Instructions for Valladolid:

(1) “to determine as far as you can whether the atrocities reported to me are true”

(2) “to recommend a suitable plan by which such evils might be avoided”
Instructions for Valladolid:

(3) “to inquire into and develop the forms and laws to preach our Holy Catholic Faith in the New World”

(4) “to examine how those people may be subjected to Us, without damage to Our conscience, according to the bull of Alexander.”
Juan Gines de Sepúlveda
1490-1573
jurist and royal historiographer

author of:
Democrates alter, sive De justis belli causis apud Indios
[A Second Democritus, or On the Just Causes of War against the Indians]
Just war:

*jus ad bellum*
“the right to go to war”

*jus in bello*
“right conduct in war”
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Salamanca school (Francisco de Vitoria 1483-1542)
*ius gentium*
“law of peoples”
common good greater than national good
(natural law)
Juan Gines de Sepúlveda’s four arguments:

(1) “that these people are barbaric, uninstructed in letters and the art of government, and completely ignorant, unreasoning, and totally incapable of learning anything . . .; are sunk in vice, are cruel . . .

“that the Indians are obliged by natural law to obey those who are outstanding in virtue and character. . .

“that if the Indians, once warned, refuse to obey this legitimate sovereignty, they can be forced to do so for their own welfare.
Juan Gines de Sepúlveda’s four arguments:

(2) “that the Indians, even though unwilling, must accept the Spanish yoke so that they may be corrected and be punished for their sins and crimes against divine and natural law . . . , especially their idolatry and the impious custom of human sacrifice. . .
Juan Gines de Sepúlveda’s four arguments:

(3) “that the injuries and extreme misery which the Indians used to inflict and... still inflict today on a great number of persons, whom they used to sacrifice each year to the evil spirit, should be stopped. . . .

“that all who can do so are held by natural and divine law to defend any and all persons from such injuries, for all men are neighbours to one another and brothers. . . .
Juan Gines de Sepúlveda’s four arguments:

(4) “that once those regions have been brought under control, the gospel of Christ can be preached by consecrated men safely and without danger. . . .

“that it is totally just, as well as most beneficial to these barbarians, that they be conquered and brought under the rule of the Spaniards, who are worshippers of Christ. . . .

“that Alexander VI . . . declared armed expeditions against the Indians to be just, that he allowed the Kings of Castile to conquer them and add them to their empire. . . .
Bartolomé de las Casas’ counter-arguments:

(1) “that it is unlawful to force the Indians to the faith by war, or by the misfortunes of war to make them hate the Christian religion, by whose preaching they see so many regrettable evils inflicted on them.
Bartolomé de las Casas’ counter-arguments:

(2) “that Alexander VI commended Ferdinand and Isabella’s proposal to subject the native and inhabitants to themselves and to lead them to the Catholic faith, . . .

“that they subjugate (that is, dispose) them for the faith in a way in which one should subjugate a most civilized, sincere, naked, docile, decent, and peaceful people . . .

“that “subject” should be interpreted as “dispose” . . . for it was very easy for our rulers to subject that people to their authority without the disturbances of war.
Bartolomé de las Casas’ counter-arguments:

(3) “The kings are commanded to have as their purpose leading the Indians to the faith. It is granted that subjection to their rule is fitting and helpful for attaining this purpose; still it must be proportionate and suited to that purpose, which is specifically the spread of the glory of the divine name and the conversion of those peoples. . . .
Bartolomé de las Casas’ counter-arguments:

(4) “War is not a suitable means for spreading Christ’s glory and the truth of the gospel. . . .

“Since war should not be waged unless there has first been a provocation by the person against whom warfare is being prepared toward the one who is waging the war, it follows that war against the Indians is unlawful.
Bartolomé de las Casas’ counter-arguments:

(5) The Kings of Castile can neither directly nor indirectly do anything that is opposed to the spiritual or even the temporal development of those peoples.

Therefore the word “subject,” as contained in the papal bull, has to be understood in a civilized and Christian way.

In the final rule of the rules of law, it is said that anyone who understands the words of the law and yet works against the will of the law violates the law. . . . The Pope’s intention was that those peoples be . . . led to the faith by meekness, charity, holy conduct, and the word of God, not by war, of which the Pope never dreamed. . . .
The Arguments at Valladolid

SEPULVEDA argued for the need for:

(1) external moral authority  
(2) corrective action  
(3) responsibility to protect  
(4) beneficial conquest

LAS CASAS argued for the need for:

(1) illegality of war without provocation  
(2) equal treatment  
(3) proportionality  
(4) right of independent development
Brevísima relación de la destrucción de las Indias, 1552
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Illustration by Joost de Winghe, published by Theodor de Bry (1596)
Brevísima relación de la destrucción de las Indias, 1552

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Article 2. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as:

(e) Forcibly transferring children of the group to another group.