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**The Spanish Masters: The 16<sup>th</sup> Century Presence in the Universal  
Declaration of Human Rights**

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**The Spanish Masters: The 16<sup>th</sup> Century Presence in the Universal  
Declaration of Human Rights**

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## **Abstract**

# **The Spanish Masters: The 16<sup>th</sup> Century Presence in the Universal Declaration of Human Rights**

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The Universal Declaration of Human Rights (UDHR) was adopted in 1948 as a response to the atrocities of the Second World War. This analysis seeks to trace the influence of three Spanish masters of the 16<sup>th</sup> century, Las Casas, Vitoria and Suárez on the rights language and theory presented in the UDHR. Particular attention is given to the debates surrounding the Amerindians and the Spanish Conquest of the Americas, as well as burgeoning discussions of international relations in the emerging modern age. These debates provided the context in which the three theorists developed their understanding of rights and how the rule of the natural law was to be understood in the modern age. While the vision of the UDHR still remains to be achieved, the influence of the three masters is clearly recognized and much credit is due them for laying the foundation of modern human rights theory.

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## I. Introduction

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948 in response to calls across the international community for a more expansive and explicit rights charter. The United Nations Charter, signed in 1945, had "reaffirmed faith in fundamental human rights, and dignity and worth of the human person", and in signing it member states had committed to "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"<sup>1</sup>. But with the Holocaust fresh in the world's mind, the prevailing attitude of delegates to the General Assembly was the Charter alone was insufficient to prevent such horrific human rights abuses from happening again. Its major flaw was a lack of detail and definition. If nothing was done to remedy the situation, the resulting vagueness was a feature that presumably could be exploited by subsequent perpetrators of egregious human rights violations.

In response to this generalized perception, Trygve Lie, the Secretary-General of the United Nations, appointed John Peters Humphrey to chair a newly formed Commission on Human Rights and create an initial draft of what would ultimately become the Universal Declaration of Human Rights. The Humphrey draft was a preliminary list of rights to be included in the document and provided the initial framework from which the actual Declaration was to be constructed. It was the second draft, undertaken primarily by Rene Cassin, that would expand this list with fuller definitions and explanations, and provide the basic structure of the Declaration. Minor changes were undertaken after this

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<sup>1</sup> United Nations Charter, Preamble and Article 56.

point in two subsequent drafts, but for the most part the Cassin Draft remained as the foundation for the final document.

In Cassin's mind, the Declaration was to function as a temple<sup>2</sup>, serving as an entryway to something greater beyond; the Declaration itself was not the aim of their endeavor, but rather their goal was what kind of world it could lead to. Mary Ann Glendon describes the temple as follows:

In Cassin's image, the Preamble, with its seven stately clauses, represented the *courtyard steps* of the portico. The general principles of dignity, liberty, equality and brotherhood (Proclaimed in Articles 1 and 2) were the porticos *four foundation blocks*. The main body of the Declaration consists of rights arranged in *four columns*: rights pertaining to individuals as such (Articles 3 through 11); the rights of the individual in relation to others and to various groups (Articles 12 through 17); the spiritual, public and political liberties (Articles 18 through 21); and the economic, social and cultural rights (Articles 22 through 27). The Declaration is crowned by a *pediment* (Articles 28 through 30) linking the individual and society and placing the enumerated rights in the context of limits, duties, and the social and political order in which they are to be realized.<sup>3</sup>

Yet, while Cassin was the lead architect of this second draft, he was not its only author. Rather, the document that eventually became the Universal

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<sup>2</sup> Marc Agi, *Rene Cassin: Fantassin des Droits de l'Homme* (Paris: Plon, 1979), 317

<sup>3</sup> Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 174

Declaration of Human Rights was drafted by a commission of representatives from eighteen member states, a body that had been intentionally designed to represent a cross sample of nations, cultures and ethnicities, as well as political and economic alliances. The intention of having a global makeup on the commission was to garner such input as to create a document that would be acceptable across social, cultural, political and religious boundaries, and thus serve as a binding code on all member states, at least in a moral sense. The Declaration would not contain any explicitly binding provisions, but hope was that it would serve as the standard to which all member states might be held accountable, and something akin to a foundation from which a basic standard of global human rights could emerge.

In the sixty years since its drafting, a great deal has been written about the Declaration and the various influences that helped shape its constituent articles. Much of the attention has focused on Humphrey and Cassin as the sources of much of the rights theory outlined in the Declaration, and in addressing this situation, Mary Ann Glendon argues that no greater influence has been forgotten than that of the Latin American delegates. These were statesmen who had developed their own brand of natural rights theory based on the work of the late Medieval Spanish theologians and philosophers, several of whom are collectively known as the Spanish masters.<sup>4</sup> While now largely forgotten, the influence of Latin American human rights theory was vividly present during the drafting of the Declaration, and would not have been lost on observers or on the delegates themselves.

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<sup>4</sup> Mary Ann Glendon, "The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea." *Harvard Human Rights Journal* 16 (2003), 27

Following the decision to form a Human Rights Commission, Humphrey requested that his staff compile an exhaustive of the world's existing rights documents, and also to accept proposals from member states for proposed international bills of rights. The first three states to submit proposals were Panama, Chile and Cuba and after reviewing the complete collection of submissions, Humphrey took the Panamanian and Chilean submissions as his primary working model from which to construct his first draft of the Declaration.<sup>5</sup> It is not surprising that these two countries would produce such strong bills of rights, nor that they occupied two of Latin America's three seats on the Human Rights Commission, with the third going to Uruguay, for it was precisely at this time that Latin America was distinguishing itself as a rising leader in the modern human rights dialogue.

The Latin America members of the Commission were in a prime position to influence the content and construction of the Declaration, for they themselves were already seasoned veterans in the area of drafting cross-national individual rights legislation. As early as 1938, the Inter-American Conference, the precursor to what is today the Organization of American States, had adopted a "Declaration in Defense of Human Rights", which sought primarily to protect the rights of civilian non-combatants caught up in the midst of war, wherever in the world it should arise.<sup>6</sup> Seven years later, they gathered again in Mexico City and resolved to seek inclusion of "a transnational declaration of human rights in the UN Charter"<sup>7</sup>, which was then being drafted. So, by the time they arrived at the

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<sup>5</sup> *Ibid.*, 31

<sup>6</sup> *Ibid.*, 28

<sup>7</sup> *Ibid.*

initial meetings of the Human Rights Commission, several of the Latin American delegates were well experienced in drafting rights treaties and, more importantly, likely knew precisely what ideals and provisions they were there to work for.

At the time of the formation of the United Nations and the subsequent drafting of the Declaration, Latin American nations were a prime force in the movement for inclusion of individual human rights in international law. They held a unique place in the dialogue due in large part to the confluences of traditions that supported what was a quickly emerging as a particularly Latin American political thought. On one hand, it had been influenced by the philosophical thought of American Constitutionalism, with its special emphasis on individualism and distrust of authoritarian government. On the other, Latin American political thought had been influenced a great deal by the European Continental brand of Enlightenment philosophy, which itself was a mixture of rational, biblical, classical, feudal and Roman-law traditions.<sup>8</sup> The resulting mixture was a brand of political thought that believed strongly in the power and duty of the state to maintain the social order, but also in the power and ability of the individual citizen to demand recognition of their own inherent rights. The state was obligated to its citizens and existed in order to serve and protect not only the citizenry as a collective body, but also individual citizens.

At this point, it might seem that Latin American political thought arose as a hodgepodge of traditional human rights ideas, but this is far from the truth. The reality is that while the various traditions did help to formulate a distinctly

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<sup>8</sup> *Ibid*, 32

Latin American political thought, they served more as support system, helping to fill in and develop the core ideas of an already existing ideology. The core of Latin American political thought had been forged in the fires of the Spanish conquest of the Americas and had come from the minds of men who had been intimately acquainted with both the brute realities of conquest and the moral problems its elicited. Their words carried such power because they were not constructed in the abstract, but rather in the midst of a world wrestling with the consequences of morality gone mad.

In particular, it was three men from the 16<sup>th</sup> century who served to influence the development of a distinctly Latin American understanding of human rights, which in turn had such a drastic impact on the formation of the Universal Declaration of Human Rights and the formation of the modern idea of universal human rights. While they have largely faded from the world's memory, it was these men—Bartolomé de Las Casas, Francisco de Vitoria and Francisco Suárez—whose work led later theorists to understand human rights as something naturally inherent to the individual.

According to Brian Tierney, Las Casas and other Spanish Dominican philosophers laid the groundwork for a doctrine of natural rights that was independent of religious revelation "by drawing on a juridical tradition that derived natural rights and natural law from human rationality and free will, and by appealing to Aristotelian philosophy".<sup>9</sup> In no way does this mean that they believed in some secular source of rights, apart from God. They were all men of faith who had themselves each pursued a religious vocation—Las Casas and

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<sup>9</sup> Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625* (Atlanta: Scholars Press, 1997), 287, quoted in Glendon (2003), 33

Vitoria were Dominicans and Suárez a Jesuit—and their major contribution to the development of modern human rights theory came from their collective belief that man held inherent natural rights, and this could be proven and reasoned out apart from religious argument.

The purpose of this analysis is to consider the impact of Las Casas, Vitoria and Suárez on the development of the Universal Declaration of Human Rights. Mary Ann Glendon has laid the groundwork for much of this analysis by highlighting the forgotten legacy of the Latin American delegates to the first Human Rights Commission and their work in influencing the content of the Declaration, and for that I am indebted to her. But I hope to go one step further, and attempt to discover the roots of *their* beliefs, and through this understand the continuing influence of the Spanish masters on contemporary human rights.

Before I conclude, I want to highlight one incident that highlights the types of unique features and perspectives on human rights that were brought by the Latin American delegates. Sadly, however, this could not be included in the rest of this analysis, for the feature I am referring to never made it to the final Declaration, but is nonetheless fascinating. During the debates preceding the adoption of the Declaration, Hernán Santa Cruz, a member of the Chilean delegation and the principle advocate of social and economic rights on the Human Rights Commission, introduced the following amendment for consideration as an addition to the Declaration's article on the right to life<sup>10</sup>:

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<sup>10</sup> Glendon (2003), 36

*Unborn children and incurables, mentally defectives and lunatics, shall have the right to life.*

*All persons shall have the right to the enjoyment of conditions of life enabling them to live in dignity and to develop their personality adequately.*

*Persons unable to maintain themselves by their own efforts shall be entitled to maintenance and assistance.<sup>11</sup>*

No more direct call for the right to life for all persons from conception to natural death has been seen since. Santa Cruz called for the right of every individual to enjoy their life to their full capacity and not to be restricted by another from freely pursuing their potential. In the case of the unborn, the disabled and others who were unable to defend themselves, such defense and aid was to be provided. And while this amendment was ultimately defeated, it reflects the influence of the ideals championed by the three Spanish theologians on Latin American political thought: All men held inherent rights, not because of what they could do or what they believed, but because of who they were. It is to these three masters that our analysis now turns.

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<sup>11</sup> Glendon (2001), *supra* note 7, app. 3, at 282

## II. Bartolomé de Las Casas: In Defense of the Indians

Bartolomé de Las Casas was born in 1484 to a family of merchants who had migrated to Spain from France and likely were of *converso* heritage.<sup>12</sup> His father had sailed with Columbus, and only ten years after the initial voyage to the Americas, Las Casas would join the influx of settlers cross the Atlantic, settling on Hispaniola in 1502. His next few years were typical of those of a young, wealthy merchant of his day and included managing his *encomienda*. This a Spanish term with no direct translation, but which refers to a system that amounted to enslavement of the Native population under the auspices of tribute—in the form of labor, gold or other products—for teaching them Spanish and for providing protecting them from other warring tribes. In practice, the reality of slavery and life in an *encomienda* were hardly distinguishable.<sup>13</sup> If this was his life beforehand, how did this slaveholding merchant youth grow to become the man who man consider to become the most passionate and active protector of the Amerindian peoples during the Spanish Conquest?

The change began in 1513. By this time he was an ordained priest, but still held on to his *encomienda*. It was only after he had participated in the Conquest of Cuba, and witnessed widespread bloodshed, including the slaughter of the Ciboney and Guanahatabey peoples that his heart began to change. Reflecting on this incident in later life, Las Casas would recall that "I saw here cruelty on a

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<sup>12</sup> Henry Raup Wagner and Helen Rand Parish, *The Life and Writings of Bartolomé de Las Casas*, (Albuquerque: University of New Mexico Press, 1967), 1-3

<sup>13</sup> Junius P. Rodriguez, *Encyclopedia of Slave Resistance and Rebellion*, (Westport: Greenwood Press, 2007), 184

scale no living being has ever seen or expects to see."<sup>14</sup> With these incidents fresh on his mind, he retired to his study to prepare his Pentecost sermon. It was during this time of reflection, as he read from Sirach (Ecclesiasticus) 34:18-22<sup>15</sup>, that Las Casas was finally convicted of the injustice and illegality of all Spanish actions in the Americas; he resolved to release his slaves and dissolve his *encomienda*. He joined with the Dominicans who had come to island to build missions and who had become the strongest voices of denunciation toward the *encomenderos*. Las Casas would ultimately spend the rest of his days, some fifty-three years, fighting a losing battle for the protection of the Amerindian peoples against the ever-encroaching destruction of the Spanish Conquest.

Throughout his life, Las Casas was prolifically active both as a scholar and a vocational minister. The sheer output of his work is impressive, especially for someone who also carried the burdens of leading churches and, eventually, serving as bishop of Chiapas. But the most compelling feature of Las Casas' many works is the unique way in which he was able to combine philosophical analysis of the moral problems at hand with a passionate condemnation of Spanish atrocities, a criticism that stemmed directly from the conclusions reached during his moral analysis. Las Casas' writings were just as important in his own

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<sup>14</sup> Bartolomé de Las Casas, *Indian Freedom: The Cause of Bartolome de Las Casas, 1484-1566 : A Reader* (Kansas City: Sheedd and Ward, 1995), 146

<sup>15</sup> <sup>18</sup> If one sacrifices from what has been wrongfully obtained, the offering is blemished; the gifts of the lawless are not acceptable. <sup>19</sup> The Most High is not pleased with the offerings of the ungodly; and he is not propitiated for sins by a multitude of sacrifices. <sup>20</sup> Like one who kills a son before his father's eyes is the man who offers a sacrifice from the property of the poor. <sup>21</sup> The bread of the needy is the life of the poor; whoever deprives them of it is a man of blood. <sup>22</sup> To take away a neighbor's living is to murder him; to deprive an employee of his wages is to shed blood. (RSV-CE, 2005)

time because, as Lawrence Clayton explains, "Las Casas recorded a great deal of what he witnessed and this documentary evidence became source of the 'Black Legend,' the fiction or fact (depending on your point of view) that the Spanish were uniquely cruel and insensitive in the encounter with the Amerindians"<sup>16</sup>.

Of all of his works, the one that has come down to us as the most complete summation of his philosophical thought and political theory is his classic treatise *In Defense of the Indians*. It has its origins as the defense presented by Las Casas at the famous Valladolid debate against Juan Ginés de Sepúlveda, which concerned the treatment of the Amerindians and centered on whether they were entitled to the same rights as other human beings. While no transcript of the debate exists, and its conclusion (if one was reached) has been lost, Las Casas' treatise survives as essentially a retelling of his major ideas. It is in this treatise that Las Casas most poignantly articulates his theory of universal human rights.

Las Casas begins his work by explaining that the traditional justification given by the Spanish for the atrocities committed in the Americas is that the Amerindians were themselves barbarians and thus natural slaves; it was not only legal to rule them, but it was for their own good that they be ruled. This justification was said to rest upon Aristotle's assertion that some men were born "natural slaves", and so this is also the starting points for Las Casas' discourse. He begins by claiming that there are four types of barbarians, according to both Aristotle and Thomas Aquinas, and it is therefore necessary to distinguish these types before one can examine the situation of the Amerindians.

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<sup>16</sup> Lawrence A. Clayton, *Bartolomé de Las Casas and the Conquest of the Americas* (Chichester: Wiley-Blackwell, 2011), 6-7

The first type of barbarian is that kind of man that chooses to put of natural reason and moderation and "becomes hard, cruel and criminal and in so becoming the worst and wickedest of all animals."<sup>17</sup> These are men who become barbaric by their own will, choosing to give into "anger, hatred or some other strong feeling"<sup>18</sup> and suffer a temporary lapse of reason. In this sense all men could become barbarian, but this condition is not permanent, and does not provide any justification for conquest or rule. The second type of barbarian is those whom Las Casas labels as "barbarians by circumstance", in that they are simply ignorant of learning and uncultured. However, despite this condition, they can still possess wisdom, courage and prudence and are capable of leading a settled life. These, like the first type of barbarian, are clearly not the "natural slaves" that Aristotle discusses, because in both categories men have the ability to rule over themselves with rational judgment and will.<sup>19</sup> In his discussion of the second barbarian type, Las Casas highlights a key feature of his understanding of what makes someone human: the ability to govern yourself. Rationality and will combine to give man the unique ability to rule his own life. This idea will play an important role later on as he prepared to defend the Amerindians from claims that they are something less than human.

Las Casas' third type is those who "by evil or wicked character of the barrenness of their land" are barbarians. These are the true "natural slaves" of Aristotle, because they are men who lack any form of government or civic institutions to rule over them. They have no authority among them to promote

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<sup>17</sup> Bartolomé de Las Casas and Stafford Poole (trans.), *In Defense of the Indians* (DeKalb: Northern Illinois University Press, 1992), 28-29

<sup>18</sup> *Ibid.*, 29

<sup>19</sup> *Ibid.*, 31

virtue or restrain vice, and have no desire that a ruler be over them. As a result every man is controlled by his raw physical and emotional drive. Las Casas goes on to explain that they are "natural slaves" because they are so given over to the drive of their individual preservation that they have prevented reason and rational will from having any authority. However, while this type, in some instances, could be justifiably conquered, they are so rare and remote as to exclude the possibility of using this as an actual justification for the Conquest. In any case, the Amerindians have demonstrated a great deal of learning and self-government, both at the individual and communal level, as to preclude their placement in this third category. Instead, Las Casas argues that they should rightly be listed among the second type, "barbarians by circumstance", meaning that the Spanish Conquest was both indefensible and unjust.<sup>20</sup> The fourth type of barbarians are simply all non-Christian peoples and nations, but Las Casas' explanation of this group focuses more on religious argument and the nature of sin, rather than a direct discussion of their rights, and provides little additional material for our investigation.<sup>21</sup>

Outside of his direct discussion of nature and classification of barbarians, Las Casas presents a second perspective that adds a great depth to his conception of natural rights. Not only do men possess natural rights because of their innate capacity for rational thought and their ability to exercise self-governance but, additionally, they have been granted rights by a natural law that is above the law of men. This law is ordained by God into Creation and all men, by their very nature, are subject to it. Therefore, even if men were found who fit into the third

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<sup>20</sup> *Ibid.*, 32-33

<sup>21</sup> *Ibid.*, 49

classification of barbarians, which the Amerindians clearly did not, they would still possess natural rights as ordained by the natural law. Las Casas then concludes that because the natural law governs all men, as it always has, this means that the source of that law, namely God, serves as ruler. Thus, the Spanish cannot claim conquest over anyone because God is already ruling, and they are answerable to Him, through the natural law, just as any barbarian would be.<sup>22</sup> The conclusion, again, is that the Spanish Conquest of the Amerindians was unjust and, additionally, that it violated the natural law.

Brian Tierney, in his analysis of Las Casas' theory of individual rights, concluded that throughout all of his works Las Casas' prime emphasis was on the liberty of the individual, and that all of his other rights flowed from this principal right to liberty.<sup>23</sup> Working from this right, Las Casas elucidates many other particular rights that are also guaranteed by the natural law. For instance, Las Casas argues that the individual's right to property, as well as the right to have some part in choosing the secular authority that rules over him, are both guaranteed, as they necessary for a man to experience the fullness of his liberty. People were free from the beginning and masters of their own lives. Therefore, no other rules or laws could be instituted as binding upon them without their consent.<sup>24</sup>

Tierney explains that in describing such a right, Las Casas was explicitly invoking the principle of *quod omnes tangit* ("what touches all is to be approved by all") to argue that the Indians should have been given a right of consent or

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<sup>22</sup> *Ibid.*, 46-47

<sup>23</sup> Tierney (1997), 272

<sup>24</sup> Bartolomé de Las Casas and Luciano Pereña (Trans.), *De Regia Potestate*, (Madrid: Consejo Superior de Investigaciones Científicas, 1969), 2.8.5, 82 and 1.4.1-3, 60-62

refusal toward Spanish rule.<sup>25</sup> They were directly impacted, the most impacted of anyone involved, and unless they had been consulted and it was determined they were in agreement with Spanish rule, the Conquest was unjust. As Las Casas explains in *De Thesauris*:

Whenever a free person and, still more, a free people or community is to be obliged to accept some burden or pay some due and generally when it is a question of something prejudicial, especially to many, it is fitting that all whom the matter touches be called and their free consent obtained; otherwise what is done has no validity.<sup>26</sup>

Las Casas' conclusion, once again, is that the Spanish Conquest was unjust subsequent rule over the Amerindians without their consent was unjust. It should be noted that Las Casas never claimed that the Spanish presence in the Americas was itself unjust. He, like many of contemporaries, believed there were legitimate reasons that the Spanish and other European nations could explore and settle the Americas and, further, that there were good reasons to do so. What he took objection to was the way that this settlement had come in the form of conquest, and that great injustice had been done to many innocents in the process. Las Casas' final assessment was that liberty is a right instilled in all men, and this had been denied to the Americans by their Spanish conquerors. It is a message that he would repeat for the remainder of his life. And it is his analysis of this right, and all the rights that stem from it, which has passed down his own

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<sup>25</sup> Tierney (1997), 284

<sup>26</sup> Bartolomé de Las Casas, Angel Losada and Martín Lassègue (Trans.), *De Thesauris*, (Alianza, 1992), 196

theory of natural rights to us in the modern day. Las Casas' legacy is that all men have been endowed with particular individuals rights and that none can justly deny them these rights without their consent. It is these ideas will find their way into the larger human rights dialogue of the 20<sup>th</sup> century, inspired by Las Casas as well as the theorists who come after him and share many similar ideas.

### III. Francisco de Vitoria: Human Rights and the Natural Law

Francisco de Vitoria was born only a few years after Las Casas, in 1492. The two men shared a good deal in common, in their lives as well as their thought. Like Las Casas, Vitoria had a *converso* ancestry, both committed to the religious life of the Dominican Order, and both men are credited with helping spark the resurgence in interested Thomistic natural law theory that occurred in the 16<sup>th</sup> century. Even more so than Las Casas, Vitoria helped to reignite interest in Aquinas's work on natural law through his development of what would come to be known as the School of Salamanca. And like Las Casas, Vitoria found a special outlet for his natural law philosophy in taking up the cause of the Amerindians against the Spanish Conquest.

But while Las Casas and Vitoria shared much regarding their views on natural law and the state of the Amerindians, their chosen paths to this common point could not have been more different. Las Casas spent much of his life in the Americas, living and working among the very people he sought to defend in his works. He filled his writing with rhetorical flourish meant to convey the emotional gravity of the cruel injustices he saw carried out against the Amerindians and that he had experienced himself, as their defender and as an unwelcome religious presence in the Americas, among men who were motivated by dreams of wealth and glory. In contrast, Vitoria spent his life as an academic, devoting himself to reflection and teaching. He wrote no great treatise, for the Amerindians or for any other cause, and his teachings are known only from notes taken by his students during his lectures and later published posthumously. As specifically regards the Spanish conquest of the Americas,

Vitoria concerned himself with the moral problems that arose from the actions of the *conquistadors* and *encomenderos* in the Americas and the rights of the Amerindians that had been violated by the Conquest.

Vitoria's major reflections on the subject were collected by his students into the treatise *Relectio De Indis* ("On the American Indians"), a series of lectures that, according to tradition, had been delivered in Salamanca in 1532. In this work, Vitoria concerns himself chiefly with the question of what right the Spanish had to subjugate the Amerindians. Almost immediately, he concludes that it was doubtful that such a right existed. There is good reason, says Vitoria, to believe that the Amerindians were rational beings that could exercise their rationality over themselves and had not surrendered it to the Spanish.<sup>27</sup> To prove this, Vitoria turns his effort toward an investigation into the question of natural slavery. Vitoria arrives at a conclusion that will serve as one of the foundational ideas of early modern rights theory and that, not surprisingly, makes a strong reemergence in later human rights theory.

Vitoria centers his analysis on the issue of *dominium*, a legal term which connotes not only political dominion but also control and ownership, as in ownership of a piece of property. By utilizing this term, Vitoria is intentionally placing the entire debate surrounding the Conquest into a legal framework. This legal conception is carried on throughout his works, and it is very much in the style of a judge handing down a verdict that Vitoria will eventually conclude that the Conquest was in violation of the natural law. Thus, from the beginning, we

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<sup>27</sup> Francisco de Vitoria, Anthony Pagden and Jeremy Lawrance (Eds.), *Political Writings*, (Cambridge: Cambridge University Press, 1991), 238

see Vitoria deploying the legal language of rights that will become the norm in the 20<sup>th</sup> century.

With the concept of *dominium* in mind, Vitoria undertakes an analysis of the concept of natural slavery as it regards the Amerindians, and at many places matches Las Casas point for points. He proposes that if the Amerindians were indeed natural slaves, than the Spanish were completely justified in the Conquest and could rightly appropriate the Amerindians as slaves. However, he then states that there are only four possible reasons that they could be slaves by nature and if no case could be made to enslave any of these four classes, than the case for Spanish conquest is unjustified.<sup>28</sup> At almost every point, Vitoria intentionally uses the language of a legal indictment against the Conquest as a way of defending the Amerindians through the use of the natural law. Not only is the conquest unjust because it violates the inherent rights of rational men, as Las Casas asserted, but also because it violates a natural legal code engrained in all creation, and to which all men must answer.

For each of the four possible reasons, Vitoria presents the argument and answers with his own objections. Firstly, goes the argument, it was just to enslave the Amerindians because they were sinners and in rebellion against God. Vitoria answers that this claim is indefensible because dominion is a gift of God to all men, a natural right, that is not lost when one sins. Authority over oneself is given to all men equally, and this is evidenced by the fact that those who sin do not cease to control their thoughts and actions.<sup>29</sup> Second, some claim that the Amerindians were justly enslaved and conquered because they were unbelievers

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<sup>28</sup> *Ibid.*, 239-240

<sup>29</sup> *Ibid.*, 240-243

in Christian religion. Vitoria answers that this specific sin is no different than sin in general, and that his response to the first argument applies here also.<sup>30</sup>

Vitoria then proceeds to analyze irrational creatures and madmen, the third and fourth types of barbarians, respectively. Regarding the irrational, Vitoria agrees with Las Casas that such men cannot possess *dominium*, they can be freely conquered and enslaved without the worry of injustice being done to them. Just as no one would quibble over a person hunting a wild animal, since it has no right to its own body, so there is no problem with a man exercising control over an irrational creature.<sup>31</sup> But while Las Casas focused on the rationality of man as the basis for his rights, Vitoria again takes the argument one step further by appealing to the natural law, arguing that irrational men can be justly enslaved because, like the animals, they lack legal rights. They have no recourse granted them in response to an injustice. If there is no standard by which to judge an action against the irrational as just or unjust, no such distinction can exist.

However, before allowing the opponents to seize this argument in his mock debate, Vitoria quickly qualifies his argument by stating that children do not fall into the category of irrational men, for the very reason that even as children, men are granted legal protection. They can hold property, even if it is physically held in guardianship, and they can legally be victims of injustices committed against them. Therefore, the argument that they do not possess *dominium* over their own lives, since they have not reached the stage of life

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<sup>30</sup> *Ibid.*, 243-246

<sup>31</sup> *Ibid.*, 248

granting them a fully functional capacity of reason, is not valid.<sup>32</sup> The conclusion from this argument is that the Amerindians, despite features that might have been seen by some as "primitive", do not lack reason or a rational will, and so cannot be deprived of their *dominium*. The fourth type of barbarian, those who suffer from "incurable madness" can still, like children, claim legal rights against injustice. Therefore, just like children, they too possess *dominium*, and Vitoria quickly dispatches both the ideas that the Amerindians qualify as incurably mad or that such a madman could be justly conquered by another.<sup>33</sup>

Vitoria completes his analysis by returning to the original question of what right the Spanish had to conquer the Amerindians. He concludes that regardless of any potential deficiency in intelligence, a more primitive culture or lack of Christian religion, man by his very nature possess dominium over himself and this cannot be justly taken away from him. Applying this conclusion to the cause of the Amerindians, Vitoria answers the two major justifications for the Conquest, namely that the Amerindians had no ownership over the lands they occupied, and that even if they did, they were by nature slaves, as described by Aristotle, and could justly be conquered.

Answering the first justification argues that a man's *dominium* extends to his property as well as his person, and this also could not be taken from him against his will. And in answering the second question, Vitoria goes even farther than Las Casas in his interpretation of Aristotle. Whereas Las Casas allowed that his third type of barbarian was by nature a slave due to his irrationality, Vitoria asserts that such slavery is only a civil or political condition, and no man can

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<sup>32</sup> *Ibid.*, 248-249

<sup>33</sup> *Ibid.*, 249-250

belong to this state by nature. And, going further still, he concludes that even political slaves still held *dominium* and their masters have no right over their persons or possessions. In the end, in typical legal fashion, Vitoria presents a review of the evidence before announcing his verdict, that the Spanish conquest of the Amerindians was unjust and violated their natural rights as men.<sup>34</sup>

While his *Relectio De Indis* is the most germane of his work to this analysis, it is also useful to look at Vitoria's other works for a more complete understanding of his theory of natural rights. According to Brian Tierney, Vitoria, in his lecture *De Justitia*, repeats his argument that while irrational creatures possess no rights, God has given all men "right and dominion" by their very nature, and this that right belonged to individual men, and not only humanity in general.<sup>35</sup> Once again, Vitoria clearly reiterates his belief that all men have been granted legal rights by the natural law and that all men are answerable to it. Man, acting within the bounds of the natural law, is free to pursue those things that will bring happiness and fulfillment to his life, and it is the duty of the secular ruler to ensure that such freedom exists. As an example of such a right, Vitoria defends the right of men (and presumably women) to marry, or not to marry, as he so wishes. This is a personal choice that cannot be forced by any authority and which every man must make freely. Once undertaken, the marriage becomes a contract under the authority and protection of the state, but no authority can force this station on a man or deprive him of the right.<sup>36</sup> While it

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<sup>34</sup> *Ibid.*, 250-251

<sup>35</sup> Francisco de Vitoria and Vincente Heredia (Trans.), *De Justitia et Fortitudine*, (Salamanca: Spartado, 1935) 2.2ae.62.1, 69-70, 74 quoted in Tierney (1997), 263

<sup>36</sup> Francisco de Vitoria and Luis F. Delgado (Trans.), *De Matrimonio*, (Salamanca: San Esteban, 2005), 7

may seem too hyper-specific a right to include here, it will become extremely important further on, as precisely this right is found in the Declaration.

Elsewhere, Vitoria concludes that as an extension of their *dominium*, all men have the right to a choice in their ruling authority and that "the power of princes comes wholly from the community".<sup>37</sup> While far from a theory of representative democracy, Vitoria recognizes the inherent right of all men to have some amount of legitimate choice in their government while recognizing the duty of a ruler to his people and their right to keep him accountable. Additionally, Vitoria has concluded that the exercise of *dominium* has given men the right, as individuals and as a community, the right of self-defense against a tyrant who is imposing his will over and above their natural rights.<sup>38</sup>

Human rulers are not masters of men as a man is master of a horse. They are barred from taking the life of an innocent or forcing obedience to any law which might likely result in death.<sup>39</sup> Men have naturally ingrained protections against abuses by their rulers, and those who rule must recognize the limits of their power. In writing as much, Vitoria states explicitly that the ruler has an obligation to his citizens; his role exists to protect and ensure their rights, not to use them as instruments for his own benefit or advancement.

Unlike Las Casas, the question of the Amerindians did not occupy the entirety of Vitoria's reality. His primary pursuit was to develop a theory of natural law that was applicable to the rapidly changing world around him, and he spoke to the Conquest at the points where its problems and issues intersected

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<sup>37</sup> *Political Writings*, 103

<sup>38</sup> *On Law*, 1.2ae.105.2, 82, quoted in *Political Writings*

<sup>39</sup> *De Fortitudine* 1.2ae.125.4

the natural law debate. As is clear from this brief preceding analysis, Vitoria's theory of rights was developed throughout his career and amongst a wide variety of issues and concerns. But despite this wide spectrum, Vitoria was able to successfully develop a coherent theory of natural rights in line with his understanding of the natural law. According to Brian Tierney, this comes down to us as a "framework of individual rights within the larger structure of communal society"<sup>40</sup>, and it is precisely this framework that will inspire so much in the human rights dialogue of the 20<sup>th</sup> century, of which the Universal Declaration of Human Rights is a key component, and the vision of which seeks to define the rights of the individual in his role as a member of the global community.

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<sup>40</sup> Tierney (1997), 301

#### IV. Francisco Suárez: The Natural Law in a Changing World

Lastly, we come to Francisco Suárez, whose life and works serve as a fitting conclusion to this analysis of the three Spanish masters. Suárez not only comes last due his chronological relation to the others, having been born after Vitoria's death and in the twilight years of Las Casas' life, but also because, in a certain sense, he is the most distant from the events that initially drove this investigation. Las Casas had devoted his life to the cause of the Amerindians and Vitoria wrote a great deal about their cause in his larger exploration of the natural law. For both men, their foundational theories of natural rights were born out of the situation of the Amerindians during the Conquest. But for Suárez, his theory of natural law and natural rights arose from his own scholastic study, quite apart from the cause of the Amerindians. Yet he was nevertheless heavily influenced by Vitoria, his predecessor in the School of Salamanca, and as a theorist of the natural law in his own right, he is a vital component of any analysis of the impact that these men and their works had on the development of human rights in the 20<sup>th</sup> century.

The driving goal behind Suárez's work was to formulate a theory of individual sovereignty and the state that was based solely on human will and consent, and not on a divine grant to the ruler.<sup>41</sup> The state existed because of the will of individuals within the society, each of who has sovereign rights over their lives that had been conferred upon them by God through their very nature. Suárez was able to expand the conventionally understood notion of *ius* ("right") by concluding that it not only meant *ius in re* ("a man's right to a certain thing")

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<sup>41</sup> Tierney (1997), 301

but also that a man had a right to what was justly due him.<sup>42</sup> But while it was this expanded understanding of *ius* that allowed Suárez to recognize a wide variety of rights, it was never his goal to catalog or detail any sort of extensive list of rights, nor did he do so in any of his works. Instead, particular rights emerge only as he discusses the larger concepts and theories behind the natural law. But while there was no single collection or list of rights to reference, those rights that do manage to emerge from his larger work would go on to serve as the scaffolding upon which later Enlightenment philosophies of the individual would arise.

Before he could develop his broader theory of rights, Suárez first had to address the problems that he believed arose from the traditional understanding of *ius in re* ("a man's right to a certain thing"). He admitted that generally a man's right to something came from his use of it and that as long as he used it, he had a right to it. Defending this understanding, Suárez wrote that "anyone who plucked a fruit from a tree in order to eat it would acquire a particular right in the fruit that could not be taken away without injustice".<sup>43</sup> But he was not completely satisfied with this explanation, for he immediately considered the problem that would arise from applying this rule to a landowner. It was commonly understood that a man could own a piece of land, even while he was not actually working it. He recognized that there were tacit agreements between all men about particular station and situations in society that seemed to be governed by higher legislation on a wider scale than previously thought.

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<sup>42</sup> Francisco Suárez, Gwladys L. Williams and Henry Davis, *Tractatus de Legibus ac Deo Legislatore*, (Oxford: Clarendon, 1944), 1.2.4,24

<sup>43</sup> Francisco Suárez, *De Opere Sex Dierum*, Opera 3:5.7.13, 418, quoted in Tierney (1997), 308

It was problems such as this that led Suárez to develop what might be considered his greatest contribution, the application of natural law theory to the *ius gentium* ("the law of nations"). Whereas this had previously been understood to govern relationships between states, Suárez now asserted that the natural law could govern relationships between societies, as well as individuals within those societies, and that such an understanding would legitimate much of the tacit understanding that had grown up throughout human culture.<sup>44</sup> The result was an understanding of the *ius gentium* that would allow for the development of a diverse range of individual rights, including those that would appear one by one in Suárez's works throughout the rest of his career.

One such right, that would go on to inspire several Enlightenment philosophers, was the belief that a ruling power within a society came about by the consent of rights-bearing individuals. This was not a new idea, per se, but it was Suárez that would apply it to the modern world in a novel way, concluding that the sovereignty of the people was transferred to the sovereign upon their consent, but that they retained at least some part of that sovereignty over their ruler. The resulting situation would be such that, while they could not remove the ruler at will for just any reason, the individuals of a society did reserve the right to remove a ruler who was not working toward the common good.<sup>45</sup> And what was the common good, but the collective good of each individual man? Arguing that the common good arises when the individual good of each man is being met, Suárez concludes that the laws of a state should be aimed at

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<sup>44</sup> *Ibid.*, 3:3, 16, 9, 280

<sup>45</sup> *De Legibus* 5:3,4,6,43

protecting those rights of men that are granted him by the natural law.<sup>46</sup> Thus, like Vitoria before him, Suárez concludes that protections of individual rights should be built into the legal code of a state and that the state exists precisely for the protection of these rights; when the state (or its ruler) ceases to fulfill this duty, they become illegitimate.

The state, because it existed for the protection of individual rights, had no power to deprive a man of his rights. Magistrates did not have power over citizens as a master over a slave, but only jurisdictional power to ensure that the laws were followed. The state did have the right to impinge on an individual's freedom or liberty in cases where doing so would serve the common good, such as collecting taxes, but it could not do so without just cause.<sup>47</sup> And when the state, or its ruler, did act unjustly, Suárez asserts that the natural law grants the individual citizen several courses of action. If the unjust ruler was a tyrant who had usurped his power and began to act against the individual good of men within the commonwealth, anyone could justly take his life because he had placed himself in a state of war with the commonwealth.<sup>48</sup> But if he was a legitimate ruler that simply began to abuse his power, no individual could kill him unless it was in direct defense of his life against a violent act of the ruler.<sup>49</sup>

The recourse for this situation was to be found in the community, of both nobles and citizens, who had the natural right to depose an unjust ruler because

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<sup>46</sup> *Ibid.*, 1.7.3, 131

<sup>47</sup> *Ibid.*, 1:1,7,7,136; 2:2,14,18,36

<sup>48</sup> Francisco Suárez, Gwladys Williams and Henry Davis, *Defensio*,(Oxford: Clarendon, 1944), 6.4.13, 679

<sup>49</sup> *Ibid.*, 6.4.5, 676

he had ceased to serve the common good.<sup>50</sup> The idea of recourse to the authority of the community would become an important part of later human rights theory, as power was granted not to individuals for the own protection, but to political bodies, particularly at the international level, who would be charged with defending both individuals and communities against the injustices of their political leaders.

For Francisco Suárez, the major aim of his life's work was to explore the natural law and understand how it applied to the rapidly transforming world in which he found himself. To this end he explored a variety of questions on how the natural law spoke to the rights of individuals, but it was never his goal to define an exhaustive list of what rights a man did or did not have. Instead, when it became necessary to describe this right or that, as part of his larger reflection, he would do so. And it is precisely this medley of rights, gleaned from throughout his works that survives as his greatest legacy for modern human rights theory. In summing up his own analysis of Suárez, Brian Tierney has this to say:

Suarez did not present any ordered or extensive list of natural or civil rights. He did not construct a complete modern theory of rights and the state. But in various ways-through his definition of right as a moral faculty; and through his arguments that political societies were formed by the volition of free individuals, and that a right to liberty and an inalienable right of self defense persisted after a government was instituted-the Spanish master helped to

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<sup>50</sup> *Ibid.*, 6.4.15, 680

establish the substructure on which later theories of rights would be built.<sup>51</sup>

The final assessment on Suárez, for this analysis at least, is that he served as a bridge between the older Scholastic tradition and the emerging world of the Enlightenment. As such, he is able to reflect the influence that men like Las Casas and Vitoria had on the understanding of human rights and the natural law, but also to show how those ideas began to take on new shape as they were applied to the emerging modern world. In Suárez, we find many familiar ideas and concepts taking their initial shape, and many will continue to be developed and shaped as they make their way down the years to modern human rights theory in the 20<sup>th</sup> century. It is now to the capstone of this project, the Universal Declaration of Human Rights, that we come at last.

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<sup>51</sup> Tierney (1997), 315

## **V. The Spanish Influence on the UDHR**

The task now at hand is to understand the influence of these three Spanish masters on the principles, ideas and theories outlined in the Universal Declaration of Human Rights (UDHR). In drafting the UDHR, the first Human Rights Commission of the United Nations was careful not to cite any on overriding influence on their work. While the final document does reflect a great deal of Western democratic and republican thought, their overriding goal was to create a charter of rights that could be respected and adhered to by most nations, cultures and creeds.

It was well understood that some nations, particularly those with authoritarian political systems, were not going to adhere to every point that emerged in the final document. But nevertheless, the goal was to create an idea to which all nations could aspire and a standard that could be used in crafting future human rights legislation. In the following analysis, I have chosen to discuss those articles that most closely reflect the ideas and concepts discussed by the three men that have been our subjects up to this point. On another note, the following analysis takes the form of examining each relevant article and then attempting to identify the general influence of the three Spanish masters, rather than pointing to specific works or references. This is more in line with the approach taken by the drafters of the UDHR, to adopt general influences from many sources, and will be most helpful in our attempt to determine what influence, and to what degree, the UDHR reflect the influence of Las Casas, Vitoria and Suárez. With this in mind, let us now move on to examine the Declaration itself.

*Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*<sup>52</sup>

Both Las Casas and Vitoria explicitly use the natural state of man as a rational creature for their arguments against "natural slavery", and this predisposes that they believed men were endowed with such a nature. It was their belief that man, by nature, possessed rights as a rational being and that the natural law governed the way that these rights were to be recognized. Suárez would go on to expand this understanding by arguing that all men were obligated to the natural law, making them equal before its requirements and equal in their rights. And it is only one small step from claiming that all men have rights by nature, and there is a law over all men that governs these rights, to claiming that all men are thus obligated to relate to one another in a state of equality. Although these ideas are more fully developed in later thinkers like Grotius and Locke, the three Spanish masters were clearly early voices on which this thought would be built.

*Article 3. Everyone has the right to life, liberty and security of person*

*Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*

As with the arguments for freedom and equality, Las Casas and Vitoria are not the only ones at the time to be writing on the rights to life and liberty. While others contemplated these rights as well, it was the approach taken by Las Casas and Vitoria that would provide the foundation upon which later theorists would construct their ideas. Both Las Casas and Vitoria argue that every man has

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<sup>52</sup> All quotations from United Nations, Universal Declaration of Human Rights

been granted dominion over his own life and that his exercise of dominion cannot be restricted by another nor can it be taken away against his will. The idea of *dominium* would go on to influence later discussions about individual sovereignty, such as are found in Hobbes and Locke, and serve as the foundation for later rights theory that would emerge during the Enlightenment and then go on to directly influence Western political thought in the 20<sup>th</sup> century.

As regards the Article 5 prohibitions against torture and "cruel, inhuman or degrading treatment or punishment", these also arguably find some influence in Vitoria's discussion of an individual's exercise of *dominium*. The belief here is that regardless of a man's actions, there is a limit to the type of treatment he can receive at the hands of another man. A man may well forfeit dominion over his life by the commission of a crime, but that act does not signal a complete handing over of his individual dominion. Even criminals have rights, though greatly reduced from those enjoyed by the rest of society, and these are to be protected. This is explicitly dealt with in Vitoria's discussion of the classes of barbarians, where he refutes the idea that a man possessing *dominium* could be arbitrarily beaten or killed like an animal.

Security of person, a right spoken to in Article 3, is an issue dealt with most directly by Suárez, in comparison to the other two theorists. In discussing the rights of an individual against the ruling authority, Suárez concludes that a right to self-defense is one of the most basic rights and that an individual could kill even a legitimate ruler if his own life was being threatened. Here, then, we find an early example of how self-defense fits in a modern understanding of rights. It is on this basis—that a man has an inherent control and authority over

his life, and thus the right to protect his life and enjoy security – that the Article 3 protection is built.

*Article 6. Everyone has the right to recognition everywhere as a person before the law*

*Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*

The clearest inspiration for these rights among the three Spanish masters comes from Las Casas' discussion of the rights of the Amerindians under Spanish rule, and it is here that we can most clearly see the influence of Las Casas on the ideas behind the Universal Declaration of Human Rights. While his arguments for property rights or the right to choose one's ruling authority are both influential contributions to modern rights theory, it is his argument that all men are considered equal before the natural law, and should therefore be considered equal before all human law, that stands as his most abiding ideal.

Las Casas begins his inquiry by asking under what right the Spanish could have justly enslave the Amerindians and is led from this into a larger discussion on the nature of the Amerindians and what rights they inherently possessed as men, as has already been discussed at length. But it is within his discussion of liberty, the foremost among these rights, that Las Casas makes his claim that all men are equally under the burden of natural law and thus equal before one another, so that the laws men make which afford them certain protections could not be justly exempted from applying to others. Thus, even if he was ultimately unsuccessful in his mission to prevent the Conquest, Las Casas is able to convincingly argue that protections afforded to individuals by Spanish

law should be applied to the Amerindians as well, showing the clear injustice of the Conquest.

Similarly, the Declaration begins with a "recognition of inherent dignity and of the equal and inalienable rights of all members of the human family"<sup>53</sup>, claiming that there are rights granted to men above those given by human law. The Declaration overtly recognizes that it is before this higher law that all men are equal, and this equality consequently applies to all laws that flow from the higher law. While the Declaration does not explicitly conform the natural law tradition of Las Casas, his influence is nonetheless apparent.

*Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution  
(2) Marriage shall be entered into only with the free and full consent of the intending spouses  
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*

Each of the three clauses in Article 16 deals with the rights of individuals that pertain to marriage as a civil institution. What stands out most clearly at first reading is that both the right to marriage and the right to not be forced into marriage against one's will are protected, and that the family is affirmed as the fundamental unit of society. It could be argued that these rights are simply extensions of larger individual rights, such as general dominion and sovereignty, and do not necessarily owe much influence to the Spanish masters, and while this may be true, it is nevertheless a topic taken up in their discourses. Vitoria

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<sup>53</sup> United Nations, Universal Declaration of Human Rights, Preamble

specifically highlights marriage as a particular right that emerges as a result of the state's limited power of sovereignty over an individual, and he has good reason to set it apart as such. Marriage is a right in itself because it isn't simply a particular choice that a man makes while exercising his individual right to self-determination. Rather, marriage involves a contractual agreement between individuals in a private relationship.

And while most marriages are conducted under religious auspices as well as civil, it is particularly civil marriages that are being discussed both in Vitoria and in the Declaration. The driving ideal is that individuals are free to contract with one another, or not to, without the interference of the state. And the protection of this right to compact is clearly promoted in Vitoria, as an example of limited state sovereignty, as well as in the Declaration, with its recognition that the family, not the political state, is the fundamental unit of society. The conclusion, therefore, is that the state owes its existence to these free compacts and cannot freely interfere or impinge upon them. This is the conclusion reached by Vitoria in his analysis and one clearly shared by the drafters of the Declaration.

*Article 17. (1) Everyone has the right to own property alone as well as in association with others*

*(2) No one shall be arbitrarily deprived of his property*

As with many of the other rights discussed so far, inspiration for the Article 17 rights cannot solely be attributed to one person. However, these rights do get a direct and exhaustive treatment from Vitoria in his discussion of *dominium*. Vitoria concludes that property rights are granted by the natural law as the rational and logical consequence of his exercise of dominion over his life as

well as over those things in the world to which he applies his labor; if it has no natural owner, it belongs to the man who utilizes it for its purpose. Suárez adds to this understanding with his description of the *ius gentium*, arguing that men clearly recognize a right to property by their custom of allowing a man to keep that which is his even when its not in use. These two men are here laying the foundation for later property rights theory, which will go on to build upon the idea that a man's sovereignty is passed on to his property by his use. The fact that the Declaration recognizes an inherent right of all men, by nature, to own private property both on their own or in community clearly reflects the inspiration of the ideas put forth by Vitoria and Suárez. Some would argue that the inclusion of communal property ownership was meant to placate the Soviet Union and its allies, who could easily defeat the Declaration if they found an objectionable clause. While this is possible, it seems problematic, given that individual property rights are also protected in the same right. More likely, this right was mean to recognize the right of communities to organize around common property and protect their right to hold such property for community use.

*Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance*

The rights in Article 18 essentially come down to individual freedom of choice and practice in matters of religion and faith. Like many of the previous rights securing individual freedoms and liberties, this right has a solid foundation in Las Casas, as he takes up the issue of how to convert the Amerindians to Christianity. Las Casas was well known even in his own time for

his belief that no forced conversions were valid and that no could be forced to change his beliefs because of the threat of violence. His argument entailed the idea that individual choice was necessary for virtue to develop, and anything that lacked personal conviction was just a façade. His conclusion, then, was that the Spanish should let the Amerindians practice as they pleased and only prevent practices that would entail violence to others.

*Article 28. Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*

The idealized international order here referenced cannot rightly be said to be brainchild of any of the three Spanish masters, or of one man anywhere. But, nevertheless, much credit is due to Suárez for his work on relating the *ius gentium* to the natural law. It was his hope that the world would come to recognize an international order that was based on the natural law and where such law would come to rule as the authoritative structure between nations. He believed that since there was one law that ruled above all men there should also be one order in which that law could function. In this sense he contributed his vision, added and expanded by others later on, and helped to inspire the ideal order encapsulated in Article 28.

## **VI. Conclusion**

The preceding evaluation has sought to understand the various theories of Las Casas, Vitoria and Suárez regarding human rights and the natural law, and how those theories impacted particular tenants of the Universal Declaration of Human Rights. While their works are many, in none of those works did any of the three authors develop a comprehensive list of rights guaranteed by individuals or the human community. Instead, their rights theories came about as the result of their work on different pursuits that were more central to their own personal callings. For Las Casas, this was the crucible of the Spanish conquest of the Americas. For Vitoria and Suárez, this work was their investigation of the natural law and its implications for a transforming European society that found itself on the brink of entering a new global age.

As for the result of this analysis, the answer to our initial question is clear. While there is nothing in the Declaration itself that shows direct influence from the Spanish masters, their influence is present in the general language and foundational beliefs of the modern human rights dialogue. The Declaration itself is a document of compromise, aiming to incorporate rights from across a spectrum of cultures and traditions. The three Spanish masters did not directly influence the Universal Declaration of Human Rights and no idea, clause or statement contained within it can claim to have been directly inspired by their work. Nevertheless, this analysis has shown that Las Casas, Vitoria, and Suárez did in fact contribute a great deal to the prevailing Western understanding of human rights and individual freedoms, and it is from this tradition that the UDHR draws its major influence.

Of the three, Las Casas arguably has had the greatest general influence on a contemporary understanding of human rights. Every one of his particular theories can be traced back to his larger belief in the guarantee of individual liberty that is granted to every man by the natural law. From this theory of liberty he was able to define rights regarding political freedom, participation in government, property ownership, marriage, religious liberty and general self-determination as a protection against slavery, just to name a few. He was one of the first theorists to define a theory of individual rights that relied on human rationality and will, a key feature of later rights theories that sought to cut across particular cultural and national traits and beliefs.

Returning to the Declaration itself, it becomes clear that it faces the same problem as many other theoretical projects. The reality on the ground is far different than what was hoped for or imagined. The Declaration may well reflect a great deal of idealism, but in the more than sixty years since the adoption of the UDHR, it has accomplished relatively little in the way of real change. Men and women are still treated drastically different in most societies. Freedom of religious practice is far from guaranteed in most countries and while democracy has made some inroads into previously closed societies, but the situation is far from stable, particularly in developing nations.

The types of rights and liberties imagined by Las Casas are still far off, and the same could be said for the influence of the other two as well. Vitoria based his theory of rights on the concept of *dominium*, that each man was free to direct his own life. But again, the wide gulf in gender equality that still exists in most of the world shows this to still be far off. And with scourges like modern day slavery, with 27 million people still living in forced bondage globally and the

UN functionally ineffective in combating the problem, it could not be said that the right of *dominium* is recognized on a global scale. Even Suárez's *ius gentium* remains a goal to be achieved. He had hoped for an international system where men would all recognize the authority of the natural law and order their lives and relationships by it. But in our modern age, with the constant clash of worldviews across cultures, faiths and ideologies, little in the way of a cohesive recognition of the natural law or any prevailing universal authority has been achieved.

The final assessment of this analysis, then, is clear. The influence of Las Casas, Vitoria and Suárez on the modern conception of human rights is undeniable. And as one of the supreme expressions of that conception, the Universal Declaration of Human Rights bears much of their indirect influence. Yet, the UDHR still remains little more than a high ideal that has not been reached. Each of the three Spanish masters grounded their theories in the natural law and recognized that it was only when all men acknowledge its authority over them that they could agree on a cohesive understanding of their rights and privileges as individuals and as a community of men. In a world of conflicting worldviews and ideologies, the UDHR has sought to be that kind of law for all men. So far, it has failed in this regard. Only time will tell if it can be successful in this endeavor. If in fact it does triumph at the end of the day, much credit will be due to the three Spanish masters for their foundational influence on the modern human rights movement, through which they were able to lend their voices to its primary expression, the Universal Declaration of Human Rights.

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