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

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Abstract

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

Keywords: School of Salamanca, Thomism, infidels, dominion, rule, just war, conceptual history
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Introduction. Early Salamancian approaches to infidelity, the right to dominion and just war (15th century)

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

In previous writings, I focused on the support given to the expansionist politics of the Castilian monarchy by jurist Alfonso de Cartagena and theologian Bernardo López de Carvajal. With his Allegationes super conquesta insularum Canarie contra Portugalenses (1435), Alfonso de Cartagena supported the rights of Juan II of Castille to the dominion over the Canarian archipelago, minimising the titles alleged by other Christian-European princes – especially the one alleged by the Portuguese. On his own, as early as April 1493, Bernardo López de Carvajal was the first orator to refer to the discoveries of Columbus «on the road to the Indies» and to ask for the dominion of the territories discovered in the Western Atlantic on behalf of the Reyes Católicos before Pope Alexander VI and the College of Cardinals.3

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

The juridical and political vocabulary found in the writings of Cartagena, López de Carvajal and other Salamanca jurists and theologians – just like the one employed by contemporary Portuguese and Italian5 learned men writing about dominion

1 Egío / BIRR (2018a); Egío / BIRR (2018b).
3 In a sermon delivered only one month after the arrival of Columbus to Lisbon, after his first successful expedition to the Caribbean islands, López de Carvajal [1493] [s. p.]: «Subeget quoque sub eis Christus Fortunatus Insularum, quorum fertilita-
4 «[…] et intelligo vacuitatem non per respectum ad habitatores, sed per respectum ad principem catholicum, nullas erat catholicus princeps qui in eis quasi possideret supremum dominium», Cartagena [1435] (1994) 134.
5 A good and synthetic account of the Portuguese juridical positions concerning the dominion exerted by the Pagan populations of the Canary Islands and Guinea can be found in Marconcì (2012) 43–71. Important Portuguese sources on this matter are, among others, the theological treatise Horologium fidet, written by the Franciscan André de Prado around 1450, Prado (1994), the 15th-century chronicles written by Gomes Eanes da Zurara, Eanes de Zurara (1915, 1997), and the many chronicles written by his follower Rui de Pinta, who at the beginning of the 16th century wrote accounts of the life and accomplishments of the Portuguese kings from the late 12th century (reign of Sancho I) to the late 15th century (reign of João II). The chronicle dedicated to the reign of Duarte I is especially important with regards to the juridical debates about the dominion over the Canary Is-
and infidelity in this period – inherited without significant changes the conceptual framework constructed by Pope Innocent IV and Enrico di Susa – usually called [H]ostiensis in the 13th century.\(^7\)

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

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

Within this general and ancient framework,\(^8\) the emergence of a new theoretical and conceptual approach has to be seen as one of the many indirect and unexpected results derived from the introduction of the Summa theologiae as the handbook for the students of theology in Christian Western universities, a process of substitution of the Sententiarum libri quatuor, which, initiated at the University of Paris around 1509,\(^9\) took place gradually at the University of Salamanca.

As many scholars have noticed, the teaching of Francisco de Vitoria – since 1526, holder of the chair of Prima de teologia at the Faculty of Theology – represented a significant contribution to the introduction of the Thomist theological perspective at Salamanca, influencing the adoption of the Summa theologiae as the official manual for the students of theology in the Estatutos of 1561.\(^10\) Nevertheless, contrary to the usual perspective among the scholars who have dealt with Vitoria’s writings and legacy, it is important to take into account that he was not the first great Iberian master who appreciated and applied Aquinas’ thought to different issues.\(^11\) On the contrary,
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Vitoria’s undoubtedly original and systematic approach to Aquinas’ writings has to be understood as the culmination of a long Iberian tradition of dialogue with and around Aquinas’ authoritative positions. It was above all in the discussions concerning infidelity and the attitude(s) that Christians should adopt vis-à-vis different kinds of infidels that Aquinas’ voice strongly resonated throughout the former religiously split Iberian Peninsula.

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

We do not have to wait until the early decades of the 16th century to find other substantial milestones in the expansive and missionary impulses that distinguished Castile, Aragon and Portugal from the 13th century. Already within Aquinas’ lifetime, Iberian Dominican friars such as Raimundo Martí (c. 1230 – c. 1286) – who had a good knowledge of Arabic and Hebrew and dedicated his life to the theological debate with Muslims and Jews – were in close contact with Aquinas, sharing reciprocally ideas about the different kinds of infidels.15 In fact, a Pugio fidei and a Capitulum jurisdiccionis contra infidelis, written by Martí in the 1260s, would have been written in close dialogue with Aquinas, who at this time was writing his Summa contra gentiles (also most probably completed in the 1260s)16 and the Summa theologica (written from 1265 to 1273).17 The library catalogues from Dominican monasteries such as the one in Barcelona – where Martí spent most of his life – attest to the fact that manuscript copies of several of Aquinas’ writings were already available for loan and widely circulated in the 1260s.18

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

14 Not only in De Indis but in most of his Relectiones. For example, the starting point of De Matrimonio, the first Relection dictated by Vitoria, is the definition of the institution: “Et quia secundum Ciceronem I. Officiorum, omnis qua a ratione suspicitur de aliqua re instituto, debet a definitione proficiisci: idea ante omnia quaeritur quid sit matrimonium [...],” Vitoria (1537) 428.
15 Martí wrote a De Seta Macbometi in the 1250s, and later on he wrote Pugio fidei and Capitulum jurisdiccionis (1267). A contemporary account on his life and writings can be found in RAGACS (2015).
16 Because of the doubts concerning the date of composition of both the Summa contra gentiles and the Pugio fidei (which was previously dated to 1378), there is still a discussion about whether Aquinas influenced Martí, or whether it was Martí who influenced Aquinas. Most of the literature about the topic points to Aquinas having influenced Martí; HENRÍGUEZ (1974); GUY (1998) 14. Nevertheless, there is no unanimous agreement on this point among scholars. In his critical edition of the Summa contra gentiles, Paul Marc advocated for the consideration of Martí polemical writings as its principal source of inspiration and quoted passages from Martí that are almost identical in the Summa contra gentiles, MARC (1967) 53–72. In the absence of solid evidence regarding the exact date of composition of both books, ROBLES SIERRA (1986), who reviewed the whole discussion some years later, preferred to speak about treaties written under a reciprocal influence.
18 ROBLES SIERRA (1986) 77.
20 His annotations to the Summa were only printed in the 18th century, after the recovery of a manuscript by friar Tomás Madalena in the Dominican monastery of Alcañiz. See MADALENA (1719).
22 For a recent account about the influence of Aquinas in Ferrer’s logical thought as well as his political and ecclesiastical ideas, see DAILÉADER (2016) 14–15, 22–23. See also BEUCHOT (1995).
ten by the General Inquisitor of Aragon, Nicolaus Eymerich (c. 1320–1399) – are also thought to closely follow Aquinas’ ideas about dominion, infidelity and just war.23

The consolidation of the Faculty of Theology at the University of Salamanca, after the impulse coming from Benedict XIII (with the bull Sincerae devotionis, 1416),24 who removed the restrictions imposed by preceding popes regarding the concession of official degrees in theology at Castilian and Aragonese universities – later extended to Valladolid (1418) and other Spanish universities25 – led to a vigorous and increasingly deep commentary on Aquinas’ writings in the Hispanic kingdoms in the 15th century. Juan de Casanova, Luis de Valladolid, Lope de Barrientos, Juan de Torquemada (the most influential theologian and jurist of this period) and the members of what a recent historiographical trend likes to call the First School of Salamanca (Juan de Segovia, Alonso de Madrigal «El Tostado», Pedro de Osma, Fernando de Roa, etc.) are usually regarded – with a certain degree of exaggeration – as the Thomist scholastics who preceded Vitoria.26 Contrary to Vitoria, neither of these theologians wrote a systematic commentary on the Summa theologiae. However, all of them commented on Peter Lombard’s Sententiarum libri quattuor, closely following many of the doctrines and interpretations of Aquinas. Osma and Roa, both chair holders of the cátedra de prima de Teología in the second half of the 15th century,27 quoted Aquinas hundreds of times in their main writings and usually followed his theological criteria. They should be considered as important contributors to the introduction of Thomism as a kind of official paradigm at the University of Salamanca. Nevertheless, they dare to contradict the great Doctor of the Church whenever they considered it necessary, as it was the case for previous Iberian theologians influenced by Aquinas.28

Although the topic is rarely mentioned outside the historiography concerning the history of the universities in Late Medieval and early modern period, when Vitoria introduced the Summa theologiae as the theological handbook to be used at the University of Salamanca,29 Aquinas’ writings had long ago transcended the walls of the Dominican convents. In the closing years of the 15th century,

23 HERNÁNDEZ MARTÍN (1998), 1127–1141. From my perspective, Hernández Martín overgeneralises in his article about the medieval Hispanic Thomism. The increasing influence exerted by Aquinas over later theologians is presented by Hernández Martín as a reflection of what he portrays as a consolidated medieval philosophical and theological school to which he also ascribes almost every single prominent intellectual figure on the Iberian Peninsula during the 14th and 15th centuries. In fact, it is a matter of dispute whether Aquinas at this stage was already the leading reference for many of the theologians mentioned by Hernández Martín (as Marco Toste also considers in a paper about 15th century Salamancean Thomism, forthcoming in a volume about Thomism), or if the consideration they paid to Aquinas should be equated to the credibility they assigned to other ancient and medieval authorities. I am particularly grateful to Toste for the information and critical comments he provided about Late Medieval Thomism while writing this article.


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

28 On the way in which Vitoria progressively replaced the Sentences with the Summa, see Lanza / Toste (2015) 418–419.
some Western European Faculties of Theology already had Chairs dedicated to St. Thomas. In documentation related to the organisation of theological studies in the Hispanic realm, we find references to Chairs of St. Thomas and to some of their holders at the University of Alcalá – where the Constituciones of Cisneros established the creation of a Chair of St. Thomas in 1510 – and University of Valencia – where there are remarks about a St. Thomas Chair since 1514. This does not detract, of course, from the fact that Vitoria’s lectures on the Summa are by far the most extensive and elaborated in Spain during the 1520–40s.

It is also important to mention that, long before the arrival of Vitoria at the University of Salamanca, the important Castilian theologian Pedro Sánchez Ciruelo – the first holder of the Chair of St. Thomas at the University of Alcalá (1510–1512; 1516–1523) – wrote a long – but not printed – Paraphrasis to the Summa theologicae, which is almost contemporary with the more systematic and much better known Commentaries written by Cardinal Cajetan and printed in Venice from 1508 to 1523. In this period, many other writings concerning the theological production of Thomas Aquinas were written or published in the Hispanic kingdoms. The treatises published by Diego de Deza figure among the most representative.

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

Among these early Castilian commentators of Aquinas appears also the mysterious figure of Matías de Paz (Matthias a Pacce), whose De dominio Regum Hispanicæ super Indos will be analysed in the following pages. Contrary to Vitoria, whose biography has been meticulously reconstructed in hundreds of contemporary books, Matías de Paz’s life, for the most part, still remains obscure. We owe the fragmentary information concerning his life in the title of his main writings. Alonso Arribas (2001) 90–92; Andrés Martín (1979) 444.

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

32 The famous theologian Pedro Sánchez Ciruelo, doctor at the University of Paris was the first holder of the Chair of St. Thomas at the University of Alcalá (1510–1512; 1516–1523), Andrés Martín (1979) 273–276; Andrés Martín (1961) 136; Beltrán de Heredia (1916).

33 Jiménez de Cisneros (1510).

34 In June 1514, the authorities of the city of Valencia ordered the holder of the Chair of Scotus, Luis Saveret, to combine the teaching of the philosophy of the Doctor Subtilis with Aquinas’ perspectives, Gallego Salvadores (1975b) 294; Febrer Romaguerà 334. Even if the Chair of St. Thomas – as many others – was suppressed during the last phase of the revolt of the Germans (1522–1523), the pacification of the region of Valencia led to a reorganisation and period of splendor of its university, Febrer Romaguerà (1996) 26–33. From 1525 onward, we find the prestigious eclectic theologian Juan de Celaya, Doctor of Theology at the University of Paris (1522), contrasting the via beati Thomae with the via realium and the via nomina- lium at the University of Valencia, Gallego Salvadores (1975b) 302; Felippo Oris (1993) 33. The attempt to conciliate these three different and, in most cases, opposing theological perspectives is explicitly mentioned.
and writings to the classical repertory of Dominican writers authored by Quétif and Échard (1721), 38 to the history of the Dominican college written by Arriaga in 1928 and to Cuervo's history of the Dominican monastery of San Esteban (1914).

The few publications concerning De Paz's *De dominio Regum* provide only a few brief details about the academic trajectory of this work's author and the Junta de Burgos of 1512 – as a result of which the treatise was written and submitted to King Fernando el Católico, 39 – and they do not even exploit the few biographical references about De Paz provided in the above-mentioned classical monographs.

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

We know from Arriaga and Cuervo – who as many religious writers dealing with famous *conversos* in the 19th and early 20th centuries hide or dissimulate Matías de Paz' Jewish origins – that De Paz, born around 1470, made some early studies at the Dominican College of San Gregorio De Paz, born around 1470, made some early studies at the Dominican College of San Gregorio of Valladolid, and later on (1490–96) went to Paris to deepen his theological knowledge. Back in Castile, in January 1497, De Paz entered the Dominican College of San Esteban, where he was assigned his first teaching tasks. In 1502, the Provincial Chapter that the Dominican Order held in Jerez instituted De Paz as maestro de Theology in San Gregorio. Since 1505, different General Chapters nominated De Paz as regent of the Studium of Valladolid, an office that he later (since 1513) exerted also at the *Studium* of San Esteban in Salamanca. Matías de Paz was also assigned two university chairs in the final period of his short life. First, he obtained a Chair of Theology at the University of Valladolid (1511), and shortly after (in 1513) he won the Chair of Bible at the prestigious University of Salamanca.

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

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39 This is the case for the recent re-edition of *De dominio Regum*. The «Introduction» written by José Carlos Martín de la Hoz dedicates only 30 lines to the biography of Matías de Paz. Martín de la Hoz (2017) 18–19.
40 His condition as *converso*, or descendant from converted Jews, is attested by contemporaries such as Domingo de Valtanás in his *Apología de los Imagenes* (1557). Opposing the increasing marginalisation of the descendants of Jews and Moors, Valtanás listed some of the many brilliant theologians and churchmen that since Pablo de Santa María (early 14th-century erudite rabbi converted to Christianity and father of Alonso de Cartagena) had given glory and prestige to the Spanish Church. He identified as *conversos* not only Matías de Paz and his brother Diego but also Francisco de Vitoria and many other Dominicans. «Lo mismo fray Alonso de Burgos, Obispo de Palencia, que fundó el colegio nuestro de San Gregorio en Valladolid. Y fray Matías de Paz, y fray Alonso de Peñañuel, y fray Francisco de Vitoria, catedrático de la Universidad de Salamanca, y fray Hierónimo de Peñañuel, fray Diego de Paz, fray Pedro de Cuevasrubías, fray Gregorio Pardo, fray Nicolás de Polanco, fray Tomás de Guzmán, fray Alejo. Todos los sobredichos fueron maestros en teología, frailes de san Domingo en nuestros tiempos, personas de san Pablo, y semejantes a él, no sólo en el espíritu, sino aun en la carne», Valtanás (1557) (1963) 157. The credibility of the information provided by Valtanás is attested by many experts on the debates about the politics of *limpieza de sangre* and recognised even by the most orthodox experts on The School of Salamanca, see Beltrán de Heredia (1953) (1972) 33–34.
41 Which, according to the inherited historiographical perspective, initiated the debates about the legitimacy and conditions of the Castilian domination over the American peoples. Among the most interesting historical reconstructions of the echoes of Montesinos' sermon and the debates of Burgos, see Casteñeda (1996) 357–392; Pagden (1986) 47–56. De Paz (2017) 36.
about the Junta de Burgos and De Paz’s intervention in it draws on the detailed account provided by Bartolomé de Las Casas in his Historia de las Indias. Apart from mentioning the name of the dozens of jurists who took part in the deliberations – underlining the role played by Palacios Rubios – Las Casas identified Tomás Durán, Pedro de Covarrubias – both Dominican friars – and the clergyman licenciado Gregorio (Lita) as the theologians who, together with his fellow Dominican Matías de Paz, acted as theological advisers in this important junta. While referring to De Paz, Las Casas accords him the same kind of intellectual preeminence among the theologians that he had accorded to Palacios Rubios among the jurists. In his opinion, Montesinos and Fernando el Católico agreed on Matías de Paz being called to the junta because «por aquellos tiempos era estimado por más señalado letrado el padre fray Matías de Paz, catedrático de teología en la Universidad de Salamanca».

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

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

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

Within this conflict, we can see a first link between the Thomist approach to infidelity and contemporary political and juridical debates: As a printed edition of the Opuscula of Cajetan (1562)
informs us, having to face such a powerful churchman as Diego de Deza – who is considered to have been the most important Hispanic Thomist theologian of his time – Matías de Paz asked for help from one of the few men whose learned authority could be considered even greater than that of Deza, the most famous Thomist scholar of the early 16th century, Cardinal Cajetan. De Paz intended to use Cajetan’s opinion as a barrier against the projected exclusion of conversos to the novitiate and religious profession.40 De Vio answered De Paz on 21 September («in die Sancti Matthaei Apostoli») 1514.40 On the one hand, from a very Thomist theological perspective,31 he considered this kind of estatutos de limpieza de sangre «unreasonable» (irrationabile) inasmuch as they seem to be an obstacle to the conversion of the Jews to the Christian religion.52 On the other hand, pragmatically counterbalancing Deza’s reasoning and the partisans of «blood cleansing», Cajetan first stated that some customs and circumstances – such as the general hatred of the «Jewish nation» and the hypothetical tendency of many Jews of this time to false conversions and apostasy – could temporally justify their exclusion from the novitiate and religious profession.53 To the Thomist theological arguments encouraging a cordial welcome of converts in the religious orders and secular Church, Cajetan opposed not only the weight of circumstances and customs but also – secondly – the canonical framework excluding other kinds of men «sine eorum culpa», that is to say, the illegitimate sons which at this period could not enter religious orders ex defectu natalium. Apart from equating the conditions of conversos and bastards, Cajetan confusingly appealed to other legal prescriptions permitting a free and without fault rejection of certain people from the profession during the first year of novitiate.54 According to his interpretation, these canons granted the administrators of colleges and monasteries a similar right to prevent unwelcome novices from entering the profession and to even impede attaining the status of novitiate. The prelates were not obliged to give any kind of explanation for this kind of refusal, and even if the rejection was due to the extended hatred or suspicion against conversos, they did not commit any kind of peccatum mortale.55

49 Quétif / Échard (1721) Vol. II, 38; Arriaga (1928) 177.
50 «Ad R. Patrem F. Matthiæ de pace Sacra Theologia Salmaticensem Regentem. SUMMA. Tametsi in quibusdam locis mortale peccatum nullum sit negare religionis ingressum busdam locis mortale peccatum nul- gentem. SUMMA. Tametsi in qua se excludere», Caju- tinum et profissionem idoneis, hoc tarnem illaudabiliter faciunt», Caju- tan (1562) T. I, Tract. XXXI, Respon- sio VI, 130. As Nieva Ocampa considers, the formulation of the question by De Paz clearly reflects his position against the marginalisation of converts. De Paz wanted to emphasise that their converso origins were the only defect that could be attributed to those candidates to the religious habits, Nieva Ocampa (2011) 46–47.
51 In his Contra doctrinam retrodationis a religione, C. 4, Aquinas dealt with other arguments that were alleged in the 13th century – and at least since the times of Vigilantius, in the late 4th century – in order to deny recent converts or descendants from converts the entry into religious life. Aquinas considered the idea according to which converts should be re- jected «absurd» and «insane», Aquinas [1271] (2013).
52 «Et quamvis ita esse mihi videatur: irrationabile tam mihi videtur, perpetuum statutum aut opus huius- modi refutationis respectu illorum, qui nulla alia suspicionis nota sunt affecti, nisi quod originem ex Iudaeis traxerunt [...]». Tum quia occasio daretur Iudaeis, ut at fidem non con- vertantur, dum intelligent converso- rum filios in generatione & genera- tione repulsos a religione, Caju- tan (1562) T. I, Tract. XXXI, Respon- sio VI, 130.
53 See the analysis of Cajetan’s reasoning in Pérez García (2017) 175–177.
55 The somewhat contradictory and equidistant answer by Cajetan have led the few scholars interested in this episode of De Paz’s life to completely opposite interpretations. Nevertheless, while the partisan confessional historiography of the early 20th century interprets Cajetan’s Response as strongly supporting the policy of limpieza de sangre, recent articles written by legal historians such as Díaz Ibáñez, Pérez García and Nieva Ocampa cast doubt on the traditional historiographical account and offer a more nuanced lecture of Cajetan’s intervention in this contemporary polemic. The most absurd and ma- levolent lecture is, without a doubt, the one offered by Justo Cuervo O. P. Cuervo not only biasedly deduced from Cajetan’s consideration of the refusal to admit the conversos not being a peccatum mortale an enthusi- astic support of Cajetan to the new estatutos, but also inverted the histor- ical facts and presented Matías de Paz as a prominent promoter of the stat- utory anti-Jewish reform in Valladolid an Salamanca: «N de esta consulta se infiere que ya en aquel tiempo se comenzaba a tratar de hacer el esta- tuto con que hoy se gobierna el Convento, y acaso el principal inven- tor de este gobierno fue este P. Maes- tro [Matías de Paz], y con esa inten- ción consultó al Cardenal Cayetano», Cuervo (1914), Vol. I, 624–625. Written shortly before the outbreak of
The third line of argumentation\textsuperscript{56} that, according to Cajetan, could be legitimately invoked by the ecclesiastical authorities in order to justify these kinds of ›undesirable‹ and ›irrational‹ exclusions depended indirectly on the authority of Thomas Aquinas, who is, in fact, the only authority named in the Responsio. Even if including Aquinas seems a little bit artificial, the fact that he is mentioned in the text is very important because he represents a theological authority to which all parties (Deza, on the side of the partisans of limpiede de sangre; De Paz, on the side of the converts and their many supporters) wish to lay claim and acknowledge as carrying more weight. Cajetan, who after printing the Commentaries to the Summa had achieved the highest level of reputation that a learned theologian of his time could enjoy, acted as the oracle tasked with giving voice to the ancient magister and common reference in this dispute. Cajetan referred in particular to Aquinas’ Quaestiones quodlibetales and to Secunda secundae in order to deny that the admission of any individual or kind of individuals – in this case, the converts – in a mendicant order could be considered as an obligation of justice or as a precept of charity.\textsuperscript{57}

These bitter disputes concerning the status of converts and his teaching assignments at the University of Salamanca kept Matías de Paz busy during the last year of his short life. According to the Early Modern chronicles of the Dominican order, later rewritten by 20\textsuperscript{th}-century Dominican historians such as Cuervo and Arriaga, De Paz died before turning 50 (on 30 September 1517) while at the monastery of San Esteban.\textsuperscript{58} By chance, his death coincided with the divulgation of the Theses posted by Luther at the All Saints’ Church of Wittenberg one month later; an event that – just like the American discoveries – would subvert the medieval conceptual framework regarding infidelity and dominion in the following years.

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

Concerning Matías de Paz’s literary production, there are even more gaps and inaccurate information to deal with than with regards to his biography. In this particular case, we are almost completely in the dark. Despite several speculative efforts, the only written work that seems to have survived until the 21\textsuperscript{st} century is his Libellus circa dominium super indos.\textsuperscript{60} Quétif and Échard\textsuperscript{61} – and, following them, some of the existing literature about Dominican writers and the reception of Aquinas’ Summa\textsuperscript{62} – mentioned that De Paz wrote an entire Commentary to the Summa (Commentaria in universam S. Thomae Summam), some Lectures on the Holy Scriptures (Relectiones sive repartitiones in totam sacram scripturam) and several other works (Conciones aligios). In any case, in the absence of reliable information concerning these hypothetical...
writings by De Paz, and considering that they were not printed during his lifetime or afterwards – something probably linked to its early death – it is highly probable that Quétif and Échard did not mention the works that De Paz actually wrote but instead the works that a holder of a university chair in Theology at this time should or could have written.

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

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

The important contribution made by the Salamanca’s jurists and theologians to the popularisation of Hostiensism in the 15th century – to which I refer in the first section of the article – is another confirmation of the relatively late reappraisal of Aquinas’ *Summa* at the University of Salamanca, which I dealt with in the second section of the text. At the service of the Castilian monarchy and benefiting from bishoprics, diocesan incomes and other royal offices (as ambassadors, orators and royal preachers), former Salamancean students and teachers such as Cartagena and López de Carvajal – to mention only a few representative individuals who authored relatively original approaches – write functional, circumstantial and repetitive technical reports following the dictates of their masters.

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

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

»[…] porque dicen que de derecho no es permitido a los príncipes cristianos hacer guerra en todas las tierras de todos los infieles, salvo en el reino de Jerusalem, sino en caso que los dichos infieles fagan la guerra a los christianos, o que la guerra sea declarada contra ellos por el Sumo Pontifice (…) queríamos que, desde luego,
procurasedes de ganar de nuestro muy Santo Padre una bula en que generalmente declarase la dicha guerra contra los infieles, y diese a Nos, para Nos y nuestros sucesores reyes de Aragón, todo lo que con ayuda de Dios Nuestro Señor conquistásemos de las tierras de los infieles.

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

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

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

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

Denouncing the limitations of the inherited conceptual framework

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

68 Although very famous and widespread, The fall of natural man, written by Pagden, can be seen as paradigmatic of this frequently distorted perspective. Ignoring the medieval background of the polemics on the Indies, Pagden rashly and wrongly considered the contemporary treatise written by Palacios Rubios to be more interesting and original than that of Matías de Paz, rushed through in three lines of his book, Pagden (1986) 50.

69 For example, the above-mentioned Minucci da Pratovecchio and Roselli, who opposed the arguments of Ibe-
sense (whether these dominions were principalities, public offices, lands, rents, houses or, simply, their own bodies). This was connected with the idea that it was somehow evident that conversion to Christianity – echoing the Iberian internal disputes with regards to the condition of Jews and Muslim converts – should not worsen the condition of former infidels:

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

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

The first reason for De Paz’s dissatisfaction was that the two very general conclusions mentioned above were clearly not sufficient in order to give an appropriate and detailed answer to the many dilemmas that were arising as a result of the surprisingly great discoveries in the Western Atlantic as well as the rapid process of disordered conquests that followed. While De Paz could partially rely on the tradition and find in the most important authorities of theology and canon law answers to the very first questions raised in his treatise – that is, whether the infidels had a true right of pre-emption (*ius praclationis*), and whether they kept this right after the coming of Christ (contrary to Hostiensis)\(^71\) – the new kind of infidels who had been «discovered» overseas could hardly be said to fit in a framework of concepts and norms constructed to support an unrestricted expansion of Christians over infidels in a context of mutually open hostility.

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

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


\(^{71}\) De Paz [1512] (2017) 198.

\(^{72}\) Depicting the natives according to the information that Pedro de Córdoba, Bartolomé de Las Casas and other early Dominican missionaries in the Antilles brought with them, De Paz considered their inhabitants to be meek, obedient, generous and loyal, that is to say, to have the kind of political virtues required for a peaceful conversion and subjection under the authority of the King of Spain.

> Sunt tamen (ut fertur) in aliqua ipsorum patria homines mansuetissimi, non cupidii, non avari nec maliciosi, et valide ad fidem dutiles atque dociles, si charitable tractentur*, De Paz [1512] (2017) 90. Those ideas are repeated several times in the treatise.

\(^{73}\) A perverse use of language and tradition that Las Casas will bitterly denounce in his writings, Las Casas (1956) L. III, C. 34, 129. On the concept of amphibology and its implications in the *asuntos de Indias*, see GIMÉNEZ FERNÁNDEZ (1960) 472–481.
suddenly appeared before the eyes of the Europeans, not only Innocent IV and Hostiensis but also the theological authorities on this matter – more prized by De Paz than canon lawyers – could dubiously be invoked as sure points of reference.

Among the many questions that remained open and unresolved after the first 20 years of Spanish presence in the Western Atlantic, and with regards to which former leading voices were powerless, the most important questions concerned the legality, permissibility and morality of what was *de facto* happening in America – namely, a succession of wars and plunders committed against infidels having lived in peace before the arrival of the Spaniards and not being *hostes* of the Christians.\(^\text{74}\) As a theologian, De Paz should not only and primarily enlighten the King and his counsellors at the *Junta de Burgos* about the legality of the kind of actions and *dominium* until then exerted over the King’s American vassals, but he also should state whether the kind of actions mentioned above were sinful, and whether, in this case, their perpetrators were obliged to restitute the goods and persons illegally seized. Even the king could be obliged to restitute all the incomes coming from the imposition of an illegal despotic and slavish domination over the Indians, a point that De Paz insinuates calling upon an unspecified pontifical decree.\(^\text{75}\)

The second important reason De Paz considered the approaches of his predecessors to be unsatisfactory was that they were too general and radical in evaluating infidels’ claims to dominion. Generally speaking, they provided categorical answers that either totally rejected infidels’ dominion or provided excessive support to infidels’ entitlements, especially with regards to jurisdiction (*dominium iurisdictionis*). Both extremes were for De Paz reprehensible: in the first case, learned men incited Christians to a never-ending war against every kind of infidel and to commit sinful deeds such as massacres and plunders. For its part, the second option – promoted by Innocent IV and some of his followers – created additional obstacles and barriers to the already difficult and onerous task of spreading the Gospel in remote areas and left their Christian vassals to the mercy of infidel lords.

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

\(^\text{74}\) As Vitoria, he shows some contempt for canon and civil law and considers theology *caput et domina scientiarum*, trying to reduce the dubious role played by the jurists in the early American conquests, *de Paz* \([1512]\) (2017) 106.

\(^\text{75}\) *Si autem quaestio intelligatur de his molestant christianos et habent regna et provincias a nostris separatas, et ibidem iurisdictionem exercent et provincias a nostris separatas, et molestant christianos et habent regna in delibus qui quiete vivunt nec hostes*...

\(^\text{76}\) These questions are the ones De Paz answered last in his *Libellum*, showing that although a general framework of concepts and arguments were at the disposal of the jurists and theologians meeting in Burgos, its specific application for the extraordinary new realities of the Indies could not be easily deduced or proposed. *Quintum: an licetae principibus christianis contra omnes infideles bellum indiciere. Sextum: utrum hoc fuerit expediens specialiter contra memoratos indos. Septimum: an istmo capri efficaciter servi debantque regi sub despoticum principatu. Octavum: utrum ipsis conversi ad fidem cum eorum dominis Rex nos ter possit illlos in perpetuum tenere, ut vasalli et gubernari principatu reali eti non despotic. Ultimum: videntur sunt de restitution oblatorum...* \[1512\] (2017) 198.

\(^\text{77}\) That is to say, the theologians, canon and civil lawyers that had previously evaluated the dominion exerted over the Indians by the Spanish king or over other Pagans subjected to the authority of Christian kings.
Cajetan referred to this issue only in 1517, that is to say, five years after the Junta de Burgos. In fact, in his commentaries to IIa–IIae, q. 10 (»De infidelitate in communi«) there are no references to the American in- dians encountered by Christian in previous cen-
turies. As I will show in what follows, at the meeting of Burgos, not only Matías de Paz but also the famous civil lawyer Juan López de Palacios Rubios – also called by Fernando el Católico to give a learned juridical opinion about the rule of the Indies – made use of Aquinas’ classification between different types of theological ignorance and infidelity.

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

The first crucial conceptual distinction Matías de Paz made was between ignorant / innocent in-
fidels and aware / guilty ones; a theological classi-
fication, already outlined in Aquinas’ Summa theo-
logiae (IIa–IIae, q. 10, a. 3), which had remained a
kind of erudite and academic disquisition until it
was filled with actual content and put into practice
in the early modern American context. Even if,
following an uncritical and erroneous statement made by Bartolomé de las Casas in his Historia de las Indias, Cajetan has been long considered by most scholars the first theologian to make this translation of ideas between the Old and New World. It was at the Junta de Burgos where the above-mentioned key excerpts of IIa–IIae were reread and actualised for the first time in order to
distinguish the case of the islanders ›discovered‹ in
the Western Atlantic from the condition of other
infidels encountered by Christian in previous cen-
turies. As I will show in what follows, at the
meeting of Burgos, not only Matías de Paz but
also the famous civil lawyer Juan López de Palacios
Rubios – also called by Fernando el Católico to
give a learned juridical opinion about the rule of
the Indies – made use of Aquinas’ classification
between different types of theological ignorance
and infidelity.

»Et ita manent ambae quaestiones pro utraque
sui parte ambiguae. Pro quorum quidem dilu-
cidatione, tria per ordinem facere intendi; pri-
mo declarare aliquos terminos; secondo ponam
aliquas conclusiones et earum corroborationes;
tertio ad adducta respondendum erit quae con-
tral illas videbantur.« 78

78 De Paz [1512] (2017) 82.
79 Cajetan referred to this issue only in
1517, that is to say, five years after the
Junta de Burgos. In fact, in his com-
mentaries to IIa–IIae, q. 10 (»De in-
fidelite in communi«) there are no
references to the American infidels.
Aquino / Cajetan [1517], (1895)
78–96. Cajetan specified their status
while commenting a later article of
the Summa theologiae (IIa–IIae, q. 66),
in which he condemned the plunders
committed against the kind of in-
fidels to which belonged the recently
discovered Pagans, a kind of »pagani
qui nunquam imperio Romano sub-
diti fuerunt, terras inhabitantes in
quibus christianus nunquam fuit
nomen« and who, consequently, »nec
de iure nec de facto subsunt secun-
dum temporalem jurisdictionem
principibus christianis«, Aquino /
Cajetan [1517] (1897) 94. Contrary
to the historiographically mistaken
perspective mentioned above, the
opinion that Cajetan provided at this
point is neither original nor theologi-
cal. His classification between kinds
of infidels is, in fact, the juridical
distinction that Innocent IV had al-
ready operated with in the 13th cen-
tury. Cajetan’s sources are exclu-
sively legal ones, and the theological
considerations regarding different
types and causes of ignorantia fidei, so
important in Aquinas and De Paz,
plays no role at all in his Commentarii.

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

81 Carro (1951) 600; Beuchot (1994)
119–120.
82 The fact that De Paz and Cajetan were
in contact with one another during
the debates aroused by the attempts
to block access of the converts and
descendants of converts to monas-
teries and Holy Orders makes a fur-
ther dialogue between the masters
regarding the American dilemmas
plausible. Cajetan might have been
informed by De Paz of the contro-
versial issues that shocked the con-
science of their Spanish fellow Do-
inicans. Which of the two first re-
membered and applied the Thomist
conceptual framework to the emer-
gent American polemic is still un-
clear. In any case, the first public
references to Aquinas’ kinds of in-
fidels in the context of the asuntos de
Indias date from the Junta de Burgos.

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

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

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

As we can see, De Paz applies to the American natives the distinction between kinds of infidels that we can find in Aquinas’ Summa; a distinction used by De Paz to declare the kind of people the Indians were, that is, to precisely define their theological status and avoid previous biased perspectives, in which their blameless infidelity was merged into a perverse totum revolutum with other types of inexcusable unbelief. Relying on what St. Thomas stated in his IIa–IIae, q. 10, art. 3 and previously in art. 1 of this same question, De Paz focused on the clearly different theological status of Jews, Saracens, Turcs or Heretics (who had «the sin of infidelity positively» and infidels such as the ones of the New World, who either never had contact with the Christian religion or, if they did during the Apostolic Age, they have completely forgotten it over the centuries. Following closely the Thomist conceptual framework and approach, De Paz considers this «privative» infidelity resulting from ignorance to be more a punishment than a sin. In any case, inasmuch as it could not be considered an informed, conscious and deliberate opposition against the faith, no theologian and jurist could blame the Indians for their infidelity.

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

The key point in De Paz’s reasoning is also inferred from another one of the sharp conceptual distinctions to be found in Summa theologicae, namely the differentiation between «vincible» and «invincible» ignorance in Ia–IIae, q. 76, arts. 2 and 3. As Marco Toste’s contribution in this same issue of Rechtsgeschichte and some recent public lectures by Jacob Schmutz show, the debates concerning the possibility of an ignorance of the primary and secondary precepts of natural law, and even of the existence of God, were already intensely debated long before Aquinas wrote his Summa. As we read in Toste’s contribution, the topic had been addressed by earlier theologians such as Peter...
Aquinas had in mind a possibility of an invincible ignorance was advanced: *De Veritate*, q. 14, a. 11. Following Thomas, De Paz considers that while the ignorance of the Indians could not excuse them from a total theological ignorance and from the violation of the first principles of natural law – an inseparable content of human reason – it had an exculpatory force with regards to some of the most elementary precepts that were called upon while waging war against the infidels:

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

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

De Paz’s work on the recently discovered realities of the American continent and, above all, the unexpected thousands of Pagan *gentes* seems to fill Aquinas’ previously empty conceptual schemas regarding infidelity with content. Native Americans illustrate much better than the remote possibility of the *homo silvestris* mentioned in *De Veritate* or the cases of the crazy and mentally handicapped men envisioned by Aquinas (in *Summa theologiae* *Ia–IIae*, q. 76, art. 3) this category of innocent infidels not equatable with Jews and Muslims. In turn, Aquinas’ theoretical mastership sheds light on what were, until then, blind and dispersed intuitions by some theologians and jurists, thus allowing Spaniards and Europeans to perceive the Indians in a new and clear light and as they theologically and legally really were, instead of perversely confusing them with other kinds of infidels.

The new theoretical developments coming from the field of theology did not imply that De...
Paz neglected or rejected the juridical science and its concepts and criteria. In fact, among the authorities quoted by De Paz to clarify the infidels’ right to dominion, we find also Innocent IV. If Aquinas is the main theological reference for De Paz with regards to infidelity, Innocent IV is the canon lawyer who acts as a reliable guide in most of the juridical precisions introduced by De Paz in his attempt to clearly profile the legal status of the Indians. De Paz agrees completely with Pope Innocent’s opinions stating that infidels could only be fought, deprived of dominion and expelled from the lands they inhabited if they were usurpers of the Holy Land or other territories that were once under the jurisdiction of the Roman Empire, or if they mistreated and oppressed Christians.

Such an intense theological and juridical focus on the concept of infidelity and its types represents a great innovation in the Hispanic realm, especially if we compare the rich and detailed analysis of De Paz with the poor and careless approaches to infidelity found in the treatises written by previous Salamancian masters such as Alonso de Cartagena\(^{91}\) and Bernardino López de Carvajal.\(^{92}\) Both of them seem to have intentionally avoided this kind of precision in order to easily dismiss any possible native claim to dominium in the case of the Canarian and other African Pagans, whose theological status was, in fact, very similar to that of the Indians.

Reappraisal of Aquinas’ doctrines on infidels’ dominion and the distinction between dominium possessorium and dominium praelationis (jurisdictionis)

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

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

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

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

92 The same kind of negative connotations in López de Carvajal comme-morative sermon after the conquest of Baza. He supports the right of the pope and Christian princes to attack and seize the dominia of «infideles infesti christianis», «infideles contra iura naturae agenda», and «infideles non recognoscentes iugum Ecclesiae» and, according to the classical doctrine, leave it to the discretion of the Church to tolerate or dismantle the dominium exerted by «infideles qui recognoscunt iugum et servitutem Ecclesiae», LOPEZ DE CARVAJAL [1490] (1995) 82–86.

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

94 For example, the *Summa universalis theologiae* of Alexander of Hales, which after being first printed in 1481–1482 HALES [1245] (1481) appears as a common reference in De Paz’s *Libellus*. On the dominium praelationis in Hales, see SCHWARZ (1977) 101. A general perspective over the notion of dominium of Hales in ZORROZA (2016).
achievements granting the natives future political rights under the Spanish kings, De Paz does not consider it a relevant issue. In his attempt to determine the juridical status of the natives, the only important factor seems to be the natives’ positive attitude toward receiving the Gospel. De Paz’s preference for the term dominium praelectionis reflects both this uncommitted and inattentive view of the indigenous policia as well as his preference for theological argumentation in his attempt at profiling the status according to which the Indians will be ruled.

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

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

After the somewhat disappointing review of canonical authorities, De Paz examines the opinions of theologians and observes that, even if they rarely share such a total denial of infidels’ dominion as the one found in Hostiensis’ writings, they do not agree on the conditions under which they can exert dominium, a sign of the difficulty of the matter in dispute according to De Paz.99 While Peter Lombard, in one of the distinctions of his IV Books of the Sentences (Summa sententiarum, II, d. 44) and some of the later commentators of this distinction (Durand, Thomas de Argentina) had proved arguments to shield the dominium exerted...
by infidels, even for the case of a dominium exerted by infidels over infidels, Aquinas (in IIa–IIae, q. 10, a. 10) considered this kind of subordination undesirable and troublesome. According to Aquinas – whose criteria in this matter was followed by De Paz – being derived from natural reason, dominium was independent of grace and could not be abrogated. The Church could, nevertheless, take actions in order to prevent infidels from an exercise of dominium contravening Christian faith. That implied the liberation of Christian vassals under the authority of an infidel king or magistrate whenever the pope considered it convenient, and even the preventive dethroning of any prince representing a present or future threat to the spreading of the Gospel. The power of decision concerning why, when, were and against whom to intervene felt under the exclusive competence of the Church:

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

As we can see, the authority of Aquinas is clearly found in the writings of many jurists:

»Et ad id quod iuristae dicunt, quod opporpet in hoc imitare Deum, »qui solem suum facit oriri super bonos et malos, dando eis bona tempora- lia et ita dat eas dominia, notanda est hic valore quaedam definitione, cuius ignorantia multos sese est con- sideret hanc dominii subordination, id est dominium possessorium et praetationis. Concedo quod habent infideles vere dominium possessorium, id est honorum temporalium suorum, et quod propter solam infidelitatem non possunt illo ab Ecclesia privari [...]. Aliud verum est dominium, quod est propri praetationis, super multitudinem populi, quod vocatur regimen, et tali merito suae infidelitates possunt privari, ut S. Thomas dicit, immo dico, ut dixi, quod illud non habent nisi quantum Ecclesia permittit, itaque ab Ecclesia iuste possunt spoliari.«

Even if jurists were any easy target for De Paz, making them appear as ignorant, incompetent and, ultimately, responsible for the chaos in the government of the Indies, the fact is that with this conceptual precision, the Dominican friar is correct- ing the ambiguity and imprecision with which dominium used to be addressed in the writings of the theologians. For the jurists in the service of the Hispanic overseas expansion, the dual dimension of dominium was clear enough since, at least, the Late Middle Ages. For example, referring to the Canary Islands, Alonso de Cartagena had already distinguished between a «dominium in rebus suis» and a «dominium quantum ad iurisdictionem» or «superioritatem».

Dealing with similar issues, neither López de Carvajal nor previous Spanish theologians have demonstrated such a level of precision. Looking back in time, the problem could even be appreciated in Aquinas’ reasoning about infidels’ dominium. In IIa–IIae, q. 10, a. 10, the doctor of the Church confusedly equated dominium with praetationis. Aquinas did not specifically address possession of temporal goods but,
while justifying with a brief remark the releasing of Christian slaves possessed by Jews, he seemed to leave the door open for an unrestricted freedom of action by the Church with regards to any kind of infidels’ goods.\textsuperscript{104}

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

This last distinction is also factually relevant. We can see it as a strategy adopted by De Paz to protect the natives from enslavement, tyrannical servitude and the theft of their relatives and belongings, without giving the impression that he – and by extension his ›disruptive‹ fellow Dominicans, led by Montesinos and Las Casas – were trying to deny, reduce or even limit the political authority of the Spanish kings over their newly acquired dominions. In a sense sacrificing the caciques – perceived as a potential threat to the complex process of indoctrination of their vassals – De Paz tried to curb instances of theft and enslavement\textsuperscript{105} as well as to oppose the complete annihilation of the indigenous dominium that Hostiensis and, following him, most of De Paz’ contemporaries straightforwardly supported.

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

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

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

\textsuperscript{104} ‘Nec in hoc inuiuriam facit Ecclesia: quia, cum ipso iudaici sint servi Ecclesiae, potest disponere de rebus eorum’, Aquinas/Caftan [1517] (1895) 92.

\textsuperscript{105} He followed here the republican criteria justifying the sacrifice of the freedoms and positions of certain individuals if, by means of this sacrifice – even if unjust – to some extent, it could result in an improvement in the conditions for the majority, that is to say, if it represented a good for the commonwealth.

\textsuperscript{106} A brief account on Trolomey of Lucca De regimine principum focusing on the distinction between types of rule in Blythe (1994) 94–117.

\textsuperscript{107} See Flórez Miguel (2012), Fernández Vallina (2012).

\textsuperscript{108} First printed in 1529, Tostado [1436] (1529).

\textsuperscript{109} The manuscripts were first edited by José Labajo in 2006. Osma/Roa [1470?] (2006).

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


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

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

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

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

»Immo plus dico quod licet possint habere eos ut servos, non tamen possent eos modo sic habere, quia ut experientia docet proper tale servitium in illa patria factum, habitum fides dimittitur, et nomen Domini blasphematur, et mulieres antequam partant et faciant fetus suos, ne in talem servitutem redigantur (quod est valde horrendum et facimus omnino detestandum) necant. Proper quod teneo quod, ex praeccepto caritatis, etiam iuste essent sclavi deberent in libertatem poni supposito, ut dixi,


111 Ne ergo anima Christianissimi Regis in tanta amplitudine terrarum detrimentum patiatur, sed magis in aeternum vivat cum Christo, ampliare, dilatare, magnificare fidem ipsius in partibus ilius quærat et animarum illorum salutem, potiusquam domine aut ditare [...]. Quod fiet si ad illas partes episcopos atque etiam pastores zelo fidei munitos animarum, sitientes salutem miseris, qui non tantum verbo sed etiam exemplo ut veri sectores Jesu Christi et Apostolorum suorum, gregem Dominii cum pascant [...]; similiterque viros saeculares in vero regimine et zelo fidei approbatos, qui ea quae sunt rei publicae magis quam propria quaerant non cupidos, non raptores, aut avaros, nec permettantur blasphemi et magni sclerati illic habi-


De Paz proves to be well informed about the kinds of people who were sent to the Indies over the course of the previous 20 years and about the many abuses they committed and their scarce evangelising zeal.
quod fides non augmentatur, sed potius diminuitur propter talem servitutem, et si dimitterentur liberi magis ac magis augeretur.«

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

Conclusions

Contemporary scholars presented a uniform view as to the relationship between infidelity and the right to dominion espoused by the theologians and jurists who studied and taught at the University of Salamanca in the Early Modern Period. Within most studies, the crucial figure seems to be that of Francisco de Vitoria, often considered the theologian who pioneered the identification of the historical dilemmas arising from the discovery of new non-Christian peoples on Atlantic islands. Nevertheless, the complexity of the ideas underlying this rich debate can be understood only if studied as part of a broader perspective. Unfortunately, there is an almost complete lack of literature about the real connections existing between the thought of Vitoria and previous Salamanca Dominican masters such as Matías de Paz.

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

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

114 For a definition of multinormativity from a legal and historical perspective, see Duve (2017).
115 Since at least Brown Scott’s pioneer writings, Brown Scott (1934). For a very recent example of the longevity and vigor of this perspective up to the present day, see some of the contributions in Beneito/Corti Varela (2017).
116 Vitoria himself expressed this idea at the beginning of his Relectio De Indis prior: «Nec satis scio an unquam ad disputationem et determinationem huius quaestionis vocati fuerunt theologorum digni, qui audiri de tanta re possent», Vitoria [1532] (1917) 222. It is difficult to determine if he actually ignored or simply pretended to ignore the important debates that took place in the Junta de Burgos in 1512. As I have shown, there are important connections between the arguments delivered by both Salamanca masters and a great part of Vitoria’s Relectio De Indis prior conceptual and theoretical framework seems to have been taken or inspired by De Paz’s previous approach. Even the authorities quoted by De Paz figure among the most important references in Vitoria’s writings.
history of ideas – which allow us to consider him as the clear initiator of the Thomist approach to the debate on the \textit{iussi tituli}. It is a topic of tremendous interest for the internal history of the School of Salamanca, especially given that the just titles polemic, at the core of the general debates on the Spanish domination over the New World, is one of the most genuinely Salamancan focuses of interest;\textsuperscript{117} a topic about which hundreds of thousands – or maybe millions – of pages have been written, but very often in such a repetitive and non-critical way that we are still lacking a clear genealogy of the way in which this and other topics of concern and controversy appeared and were progressively addressed.

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

In other words, even if Palacios Rubios demonstrates a considerable knowledge of the \textit{Summa theologiae} and other writings by Aquinas – even using key excerpts from \textit{Ila-Ilae}, allowing him to classify the native Americans as inﬁdels who had never heard of Christ and the Gospel\textsuperscript{118} – he does not develop Aquinas’ categorisation to its full potential. Giving Aquinas the same value as the more than 130 authorities quoted in his \textit{Libellus de Insulis Oceanis}, Palacios Rubios seems to become paralysed by the heavy burden of the tradition (sources, authors, codes, etc.) he tries to synthesise, and he ends up not moving an inch from the classical framework previously built up by those civil and canon lawyers and papalist theologians (Andrea, Augustinus Triumphus, Bartolus, Baysio, Antoninus of Florence, Giovanni d’Ancona, Hostiensis, Innocent IV, etc.) later strongly criticised by Vitoria in his theological writings. Trapped inside the ambiguities of the sources he uses, Palacios Rubios clearly ended up repeating Giovanni d’Ancona’s flagrant contradictions concerning inﬁdels’ \textit{dominium}\textsuperscript{119} and therefore left the door open to the continuity of the \textit{status quo} in the Indies.

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

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

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\textsuperscript{117}See Duve (2018).
\textsuperscript{118}And were therefore affected by a kind of \textit{infidelitas privativa}, which is to be distinguished from the \textit{infidelitas positiva} for which other kinds of inﬁdels (Muslims, Jews, etc.) could be blamed, according to Aquinas, Palacios Rubios [1512] (2013) 86–88.
\textsuperscript{119}On this issue, see the analysis by Christiane Birr in Eclo/Birr (2018a).
\textsuperscript{120}Who under the pressure of the surrounding Pagan environment and having still not acquired a solid knowledge of all the salvific truths will soon fall into apostasy.
\textsuperscript{121}Vitoria [1532] (1917) 268.
\end{flushright}
Similar considerations were made by Anthony Pagden in his characterisation of Vitoria’s writings, which were considered more an attempt to legitimise, regulate and improve a de facto domination than a proper fight for justice. Pagden undertook a critical revision of the anachronistic and legitimist accounts made by Hanke, Carro, Losada, Marcos and many other previous scholars. The most elaborated version of this historiographical criticism is found in the introductory remarks to the Spanish edition of *The fall of natural man*. He sustained in this book that the cruel arguments that followed a conquest did not need to be comprehended as (by utilising the term of Hanke) ‘una lucha por la justicia’, — although clearly it refers to the institutio in sentido amplio —, sino que...

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