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The Valladolid Controversy Revisited: Looking Back at the Sixteenth-Century Debate on Native Americans While Facing the Current Status of Human Embryos

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THE VALLADOLID CONTROVERSY REVISITED: LOOKING BACK AT THE SIXTEENTH-CENTURY DEBATE ON NATIVE AMERICANS WHILE FACING THE CURRENT STATUS OF HUMAN EMBRYOS [*]

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I. INTRODUCTION

During the last 20 years, law reviews in the United States have addressed in more than 6,500 articles, notes, and comments on the debate on human embryos, trying to determine if they should be understood as persons or things. In 2006, approximately 470 contributions were published, reflecting that almost every American law review has addressed the topic.[1] The LSU Law Center was no exception to this phenomenon.[2]

This paper will help the readers examine the debate on human embryos through an interdisciplinary perspective, by focusing on a debate regarding Native Americans that took place in the Spanish city of Valladolid during the 16th century.[3] Readers will be provided with a historical viewpoint, which will not provide a perfect and suitable solution or forecast for the current debate on human embryos (that would be the work of oracles or fortune tellers), but which will help them understand and learn from past

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1. Information extracted in May 2007 from the electronic databases of Westlaw.

2. The *Louisiana Law Review* dedicated several pages to the topic. See the following recent papers that addressed some aspects of the debate: Katherine Shaw Spaht, *Who's Your Momma, Who Are Your Daddies - Louisiana's New Law of Filiation*, 67 LA. L. REV. 307 (2006); and J.-R. Trahan, *Glossae on the New Law of Filliation*, 67 LA. L. REV. 387 (2006).

The *George W. & Jean H. Pugh Institute for Justice* organized a conference by Jane Maienschein and Jason Scott Robert which was entitled *Where Biology Meets Society?* (LSU Law Center, February 2nd, 2007).

The Fourth Session of the *Civil Law Workshop Robert A. Pascal Series* broke the ground when speaking of human, animal, and chimerical embryos [*Human Embryo, Animal Embryo, Chimerical Embryo: What Legal Status?* by Laurence Brunet and Sonia Desmoulin (Fourth Session, Civil Law Workshop Robert A. Pascal Series, LSU Law Center, March 20th, 2007). See their paper in 1 JCLS 69].

3. Information (in Spanish) of the history of the city of Valladolid is *available at*, Historia de Valladolid, http://www.ava.es/modules.php?name=Historia&file=Historia (last visited November 6, 2008).

experiences. The main point of the paper is to demonstrate that society has faced many moral and social debates before facing the current debate on human embryos, and society always has been able to find a solution. Among some of those previous debates, and moving backwards in time, are to be found: abortion,[4] "civil death,"[5] and finally, the human "monsters" in Rome at the Tarpeian Rock.[6] At some point in the 16th century, it is possible to

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4. The following recent works on abortion may be mentioned from the abundant literature: ALBIN ESER, ABORTION AND THE LAW: FROM INTERNATIONAL COMPARISON TO LEGAL POLICY (Emily Silverman trans., 2005); and BELINDA BENNETT, ABORTION (2004).

5. Civil death may be defined as "the state of a person who though possessing natural life, has lost all his civil rights, and as to them is considered as dead." Proceso Gonzales Sánchez, The Nature and Consequences of Civil Death 1 (1909) (unpublished LL. M. thesis, Yale Law School). In addition, *see,* William Walton Liles, *Challenges to Felony Disenfranchisement Laws: Past, Present, and Future*, 58 ALA. L. REV. 615, 616 (2007); George Brooks, *Felon Disenfranchisement: Law, History, Policy, and Politics*, 32 FORDHAM URB. L.J. 851, 852 (2005); and Alec C. Ewald, *"Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1059 (2002).

For further readings in Spanish about civil death (*muerte civil*), *see* 1.3 ALBERTO G. SPOTA, TRATADO DE DERECHO CIVIL 57-75(1961).

For further readings in French about civil death (*mort civil*), *see,* 1 MARCEL PLANIOL, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL 152-153 (12th ed. 1939).

6. During the Roman period, the babies born with extreme physical malformations (referred to as "monsters") were killed by throwing them from the top of the Tarpeian Rock in Rome, a few hundred feet from the *Capitolium*. These executions were also done in Sparta, from the Taygetus mountain range, in the Peloponnesus. MIGUEL ANGEL RIZZI, TRATADO DE DERECHO PRIVADO ROMANO (1936).

Digest 1.5.14 reads in Latin:

> *Paulus libro quarto sententiarum*
> *Non sunt liberi, qui contra formam humani generis converso more procreantur: veluti si mulier monstrosum aliquid aut prodigiosum enixa sit.*

Y. Lassard & A. Koptev, The Roman Law Library, http://web.upmf-grenoble.fr/Haiti/Cours/Ak/ (last visited May 10, 2008).

Digest 1.5.14 reads in an English translation:

> Paulus, Sentences, Book IV.
> Those beings are not children who are born formed in some way which is contrary to the likeness of the human race; as, for instance, where a woman brings forth something monstrous or unnatural.

THE CIVIL LAW (translated by S. P. Scott), *available at* http://www.constitution.org/sps/sps02_j2-01.htm (last visited May 10, 2008).

stop in the city of Valladolid, and analyze the events that occurred during the so-called *controversy*[7] between Bartolomé de las Casas and Juan Ginés de Sepúlveda.

To provide a historical perspective, this paper will first explain what a human embryo is, what a stem cell is, and the applicable legislation and case law in the United States. Secondly, it will explain the legal status of the Native Americans in the Spanish Colonies during the 15th to 17th centuries, focusing on the legislation and the work of Francisco de Vitoria. Thirdly, it will describe the Valladolid Controversy, its main players (i.e. Bartolomé de las Casas and Juan Ginés de Sepúlveda), their arguments, and the outcome. Finally, some conclusions will be provided to the readers.

II. THE CURRENT DEBATE ON HUMAN EMBRYOS AND STEM CELLS[8]

An embryo starts its existence after the spermatozoid fertilizes the ovum.[9] The first embryonic stage is that of zygote, [10] and if the embryo continues with its regular development for a period of

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Eric H. Reiter also addressed "monsters" in his presentation entitled *Rethinking Civil-Law Taxonomy: Persons, Things, and the Problem of Domat's Monster* (Seventh Session, Civil Law Workshop Robert A. Pascal Series, LSU Law Center, November 1st, 2007). See his paper in this same volume of the JCLS, at 189.

7. The following terms have also been used to define the events that took place in Valladolid during the 16th century: Debate, Tournament, Meeting, Sessions, *Junta*, Disputation, and Trial.

8. The section on human embryos, developed during the Fifth Session of the Civil Law Workshop, resulted in publications in Argentina [Agustín Parise, *El status legal de los embriones humanos en la jurisprudencia de los Estados Unidos de América*, (2007-F) LA LEY 1088] and Canada [Olivier Moréteau, Agustín Parise & Aïssatou Sylla, *La vie humaine, de la conception à la mort: Les hésitations de la jurisprudence américaine*, 9 REVUE DE LA COMMON LAW EN FRANÇAIS 287 (2007)]. Thanks are due to the medical doctor Miguel Luis Podestá III.

9. Laura S. Langley & Joseph W. Blackston, *Sperm, Egg, and a Petri Dish Unveiling the Underlying Property Issues Surrounding Cryopreserved Embryos*, 27 J. LEGAL MED. 167, 171 (2006).

10. Patrick Lee, *Embryonic Human Beings*, 22 J. CONTEMP. HEALTH L. & POL'Y 424, 426 (2006).

eight weeks, it will evolve into the fetal stage.[11] Science knows of two different kinds of embryos: animal and human.[12] The first kind is used in important scientific research, which will have impact in human medicine.[13] The second is the result of the fertilization of the ovum of the human female by the spermatozoid of the human male.[14]

Human fertilization may occur in two ways: *in vivo* or coital, and by means of *in vitro* fertilization (IVF).[15] It is by means of human fertilization that the cells that make up the human embryo start to multiply and to create the characteristics of a human being.[16] Since 1978 more than one million humans were born with the assistance of IVF.[17] IVF takes place in laboratories, specifically in Petri dishes.[18] Approximately 15 to 20 ova are fertilized, and kept for the future, in the event that the implantation

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11. 1 ENCYCLOPEDIA OF HUMAN DEVELOPMENT 453 (Neil J. Salkind & Lewis Margolis eds., 2006).

12. Finally, other kinds of embryos exist as a result of chimerism, i.e. a combination or mutation between human and animal embryos. *See* D. Scott Bennett, *Chimera and the Continuum of Humanity: Erasing the Line of Constitutional Personhood*, 55 EMORY L.J. 347, 351 (2006).

There is great expectation in this field of study and early limits are sought to avoid excess by scientists. *See* Catherine Arcabascio, *Chimeras: Double the DNA-Double the Fun for Crime Scene Investigators, Prosecutors, and Defense Attorneys?*, 40 AKRON L. REV. 435, 447 (2007); and Stephen R. Munzer, *Human-Nonhuman Chimeras in Embryonic Stem Cell Research*, 21 HARV. J.L. & TECH. 123 (2007).

See also the work by Laurence Brunet and Sonia Desmoulin in this same volume of the JCLS, at 79.

In May 2008, the UK took an important step towards allowing research with chimerical embryos, *see* Mark Henderson & Francis Elliott, MPs back creation of human-animal embryos, http://www.timesonline.co.uk/tol/news/politics/article3964693.ece (last visited November 6, 2008).

13. Chad West, *Economics and Ethics in the Genetic Engineering of Animals*, 19 HARV. J.L. & TECH. 413, 414 (2006).

14. Langley & Blackston, *supra* note 9, at 171.

15. Langley & Blackston, *supra* note 9, at 171.

16. Patrick Walsh, *Stemming the Tide of Stem Cell Research: The Bush Compromise*, 38 J. MARSHALL L. REV. 1061, 1063 (2005).

17. Amber N. Dina, *Wrongful Death and the Legal Status of the Previable Embryo: Why Illinois is on the Cutting Edge of Determining a Definitive Standard for Embryonic Legal Rights*, 19 REGENT U. L. REV. 251, 252 (2007).

18. Paul Berg, *Brilliant Science, Dark Politics, Uncertain Law*, 46 JURIMETRICS J. 379, 382 (2006).

is not successful and does not result in a birth. Human embryos are therefore cryopreserved in liquid nitrogen and reach a stage known as *suspended biological state*.[19] It is said that embryos could be kept in optimum conditions for an indefinite period of time, although, after five years they are generally discarded by the donors. Currently, in the United States there are at least 400,000 human embryos that are cryopreserved in liquid nitrogen and waiting to be used.[20]

One of the stages that the embryo reaches while evolving in that eight week period is that of blastocyst.[21] Within the blastocyst is the stem cell. These cells are of great importance for medical science,[22] for they can be totipotent or pluripotent, and have the potential to generate a great variety of cells within the human body.[23] These stem cells are called embryonic stem cells (hereinafter, ESC).

Research has shown that the ESC may help replace defective tissue and develop cells that could defeat diseases by means of regenerative research.[24] Such studies have shown that ESC are effective in treating—among others—cardiovascular diseases, diabetes, osteoporosis, Parkinson's disease, and Alzheimer's disease, which affect 128 million people in the United States alone.[25] In addition, research with ESC would be of great value for testing drugs and lessening research on animals. Finally,

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19. Langley & Blackston, *supra* note 9, at 174.

20. Lauren Thuy Nguyen, *The Fate of Stem Cell Research and a Proposal for Future Legislative Regulation*, 46 SANTA CLARA L. REV. 419, 422 (2006).

21. MOSBY'S MEDICAL DICTIONARY 225 (Tamara Myers ed., 7th ed., 2006).

22. The Nobel Prize for Medicine 2007 was given to Mario Capecchi, Martin Evans, and Oliver Smithies due to their research with stem cells. *See* The Nobel Prize in Physiology or Medicine 2007, http://nobelprize.org/nobel_prizes/medicine/laureates/2007/ (last visited November 6, 2007).

23. Charles I. Lugosi, *Conforming to the Rule of Law: When Person and Human Being Finally Mean the Same Thing in Fourteenth Amendment Jurisprudence*, 22 ISSUES L. & MED. 119,123 (2007).

24. Walsh, *supra* note 16, at 1065.

25. Michael S. Mireles, Jr., *States as Innovation System Laboratories: California, Patents, and Stem Cell Technology*, 28 CARDOZO L. REV. 1133, 1134 (2006).

research with ESC would assist medical doctors in understanding birth defects.[26]

In order to extract the ESC from the blastocyst, it is necessary to destroy it, and it is at that point that the debate on the rights of the human embryo takes a significant role.

The United States does not have a federal law that regulates entirely the specific activities with ESC.[27] On August 9th, 2001 President George W. Bush made an announcement regarding the subsidies of the federal government for the research with ESC. He said that at that time, 60 lines of ESC had been extracted from blastocysts and that the decision had already been made in those cases. He rejected the idea of deciding to destroy or not to destroy the blastocysts in the remaining cases of human embryos kept in *suspended biological state*.[28] Currently, there are even fewer ESC in the hands of specific laboratories holding them in a monopolistic way.[29] In absence of Federal legislation, since the early 1980s at least 35 states have enacted legislation in favor of or against research with ESC.[30] The states of Connecticut, Illinois, Maryland, and New Jersey, among others, strongly support this kind of research. For example, in November 2004, the state of California adopted Proposition 71, by which almost three billion dollars will be allocated to research with ESC over a ten-year period.[31] On the other hand, states such as Indiana, South Dakota, and Louisiana oppose investigation with ESC.[32]

The US Supreme Court has not yet faced the opportunity to decide whether human embryos should be considered persons or

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26. James M. Wood et al., *Product Liability Protection for Stem Cell Research and Therapies–A Proposal*, 18 No. 1 HEALTH LAW 1, 3 (2005).

27. Joanna K. Sax, *The States "Race" with the Federal Government for Stem Cell Research*, 15 ANNALS HEALTH L. 1, 2 (2006).

28. *See* http://www.whitehouse.gov/news/releases/2001/08/20010809-2.html (last visited November 6, 2007).

29. Ryan Fujikawa, *Federal Funding of Human Embryonic Stem Cell Research: An Institutional Examination*, 78 S. CAL. L. REV. 1075, 1089 (2005).

30. Ann A. Kiessling, *What is an Embryo?*, 36 CONN. L. REV. 1051, 1067 (2004).

31. Mireles, *supra* note 25, at 1134.

32. Roger G. Noll, *Designing an Effective Program of State-Sponsored Human Embryonic Stem Cell Research*, 21 BERKELEY TECH. L.J. 1143, 1145 (2006).

things.[33] In 1973, in the case *Roe v. Wade*,[34] and following the opinion of Justice Blackmun, the Court did not resolve the question of when human life begins.[35] Justice Blackmun noticed that the question would stay unanswered for a future occasion, for it is not the duty of judges to decide such a matter, but the duty of experts in medical sciences.[36] Notwithstanding the silence, and while waiting for a decision of the US Supreme Court, several State courts have been filling that gap. Some courts claim that human embryos are persons;[37] other courts believe they are things;[38] and finally, an eclectic group of courts believes they are something in between, which should be subject to special treatment.[39] In late November 2007, the information came out that two teams of scientists had turned human skin cells into stem cells, without having to produce and to destroy embryos. This research development could terminate the debate about the morality of destroying the blastocyte, because no embryo would be jeopardized.[40] This creates no incentive for legislatures to abandon their wait and see attitude. However, courts of justice may still have to decide on the matter.

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33. Ann Marie Noonan, *The Uncertainty of Embryo Disposition Law: How Alterations to Roe Could Change Everything*, 40 SUFFOLK U. L. REV. 485, 491 (2007).

34. Roe v. Wade, 410 U.S. 113 (1973).

35. Leslie Leazer, *"Brother Can You Spare a Cell?" The Ethical and Moral Minefield Surrounding Stem Cell Research on US and International Law*, 13-SUM CURRENTS: INT'L TRADE L.J. 38, 41 (2004).

36. *Roe*, 410 U.S. at 160.

37. *See* Davis v. Davis, Not Reported in S.W.2d, 1989 WL 140495 (Tenn.Cir.Ct.); and Miller v. Am. Infertility Group, No. 02-L-7394, slip op. at 6 (Cir. Ct. Cook County, Ill. Feb. 4, 2005) (order denying motion to dismiss claims brought under Illinois' Wrongful Death Act).

38. *See* Del Zio v. Presbyterian Hospital, No. 74-3588 (S.D.N.Y. Nov. 14, 1978); York v. Jones, 717 F. Supp. 421, 422 (E.D. Va. 1989); Davis v. Davis, Not Reported in S.W.2d, 1990 WL 130807 (Tenn.Ct.App.), 59 USLW 2205; and Kass v. Kass, 696 N.E.2d 174 (N.Y. 1998).

39. *See* Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992), cert. denied, 507 U.S. 911 (1993); and AZ v. BZ, Mass. Law. Wkly. No. 15-008-96, slip op. at 28 (Mass. Prob. & Fam. Ct., Mar. 25, 1996) (order granting preliminary injunction).

40. *See* Gina Kolata, *Scientists Bypass Need for Embryo to Get Stem Cells*, N.Y. TIMES, November 21st, 2007, *available at* http://www.nytimes.com/2007/11/21/science/21stem.html?_r=1&pagewanted=all&oref=slogin (last visited November 6, 2008).

III. BRIDGING THE PRESENT WITH THE PAST

The debate on human embryos currently faced by legal scholars is not the first of its kind in history. Legal scholars have for a long time been encountering the following questions: Should we first seek to settle the moral aspects of potential developments and then face the developments? Or should we first seek to settle developments and then face their moral aspects?

Similar questions were faced by scholars of the 16th century. The European legal community then was facing a strong debate regarding the rights and capacities of the Native Americans in the Spanish possessions in America. Should they first analyze the moral aspects of conquering the Native Americans, and then move forward with the conquering process (e.g. treat them as members of the local society or as extra-societal laborers)? Or should they first conquer the Native Americans, and then face the moral consequences that would derive from such a conquest?

Paolo Grossi, from his chair at the University of Florence (Italy),[41] encouraged scholars to change their spectacles before looking back in time, and to try to answer those questions through a historical perspective.[42] If they do not do so, the outcome of their view could be deformed or out of focus, with the current perspective. In the present case, scholars should remove the spectacles they use for the 21st century, and do their best to put on the ones that would help them see the 16th century. Grossi describes this activity as *consigning the archetype to the history books* (*historificar el arquetipo*).[43] The best way for a legal historian to change spectacles is to work with primary sources (i.e. letters, correspondence, manuscripts, and first editions of books in their original language or good translations). In this process many

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41. *See* Grossi, Paolo, http://www.giuris.unifi.it/index.php?module=PostWrap&page=docenti (last visited November 6, 2007).

42. PAOLO GROSSI, LA PROPIEDAD Y LAS PROPIEDADES: UN ANÁLISIS HISTÓRICO 34 (Ángel López y López trans., 1992) (Original Title: LA PROPRIETÀ E LE PROPRIETÀ NELL'OFFICINA DELLO STORICO).

43. GROSSI, *supra* note 42, at 34. *See* also, Agustín Parise, *Mercedes de Tierras y Solares: Aspectos de la Institución en la América Hispana Meridional Durante los Siglos XVI y XVII*, 43 REV. DER P.R. 181, 181 (2004); and Agustín Parise, *El Asilo Eclesiástico. Consideraciones sobre su Recepción en la América Hispana Colonial*, 15 IURIS TANTUM 125, 126 (2004).

ghosts may appear, but those *ghosts* will help legal historians in their process of discovery.[44]

IV. NATIVE AMERICANS IN THE SPANISH TERRITORIES

In 1492, when Spaniards arrived in America, an estimated 13 million Native Americans lived there.[45] With their arrival, Spaniards started to interact with clans of Native Americans that lived in the Antilles.[46] One year later, on May 4th, due to the papal bull *Inter caetera*,[47] Pope Alexander VI granted exclusive powers to Portugal and Spain to pursue their missionary activities in the new continent.[48] Accordingly to the papal bull, an imaginary north-south line was drawn 100 leagues west of the Azores islands, dividing the possessions between Spain and Portugal. On June 7th, 1494, and according to the provisions of the Treaty of Tordesillas, the imaginary line was relocated 370 leagues west from the Cape Verde islands.[49]

As early as 1493, it was not clear if Native Americans in the Spanish colonies were human beings or beasts. The different Spanish expeditions had been encountering different tribes and

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44. The term *ghosts* was borrowed from Paul R. Baier, who while communicating with his students at LSU, several times reaches into his archives and brings to life some ghosts by means of pictures, video and audio recordings, or even theatrical representations.

45. 1 ALFONSO GARCÍA-GALLO, MANUAL DE HISTORIA DEL DERECHO ESPAÑOL 719 (1984).

46. Among the Native Americans of the Arawakan and Caribe clans, that inhabited the Antilles, it is possible to mention the social groups of *naborias, taínos*, and *nitaínos* which were under the control of a *cacique*. *Id.* at 730.

47. For an English translation of the text of the papal bull visit, Pope Alexander VI—The Bull Inter Caetera—4 May 1493, http://www.catholic-forum.com/saints/pope0214a.htm (last visited November 6, 2007).

48. RICARDO LEVENE, MANUAL DE HISTORIA DEL DERECHO ARGENTINO 55 (4th ed. 1969).

49. *Id.* at 55.

The Spanish crown also tried to document its rights. On November 4th, 1605, a notarial act drafted in Valladolid stated that the King of Spain had bought from the descendents of Moctezuma, represented by Don Juan de Toledo, all the pretentions they had and could have over the Empire of current Mexico. The King granted a pension in consideration, and that amount was paid until the year 1820. SILVIO ZAVALA, LAS INSTITUCIONES JURÍDICAS EN LA CONQUISTA DE AMÉRICA 20 (1935).

settlements, and their reports were sent to the authorities back in Spain.[50] Hence, some scholars affirmed Native Americans were rustic persons with limited knowledge of their rights (vulnerable like widows, the sick, or the miserable);[51] while others argued that Native Americans were beasts or lesser creatures, with humanoid external form but lacking mental and moral capacity.[52]

Even though Spaniards had not decided if Native Americans were persons or things, they had to provide legislation that would regulate the activities concerning Native Americans. Therefore, a legislative framework came together with the conquering expeditions. While the debate waited to be settled, the Spanish Crown created, in 1503, the *encomienda* system, by which the activities of the Native Americans would be regulated.[53]

The *encomienda* was a very important element of the Spanish conquest.[54] The system consisted in the division (*repartimiento*) of the Native Americans into groups, and by assigning each group to a Spanish landlord (*encomendero*) for work in his or her land.[55] The Native Americans were kept in "deposit" by the *encomendero*, and by 1513, it was determined that that deposit would last for two lives (i.e. the life of the Native American and that of his son or daughter).[56] The *encomenderos* were obligated to pay the Native Americans a wage for their day of work and for their maintenance, and starting in 1509, they were obligated to instruct them in the Holy Catholic faith, and to teach them how to read and write. Finally, the *encomenderos* had to pay as taxation one *peso* in gold for every Native American that belonged to the *encomienda*.[57]

The *encomienda* also had a negative impact in society, because of the abuses of the *encomenderos*. On December 14th, 1511, the Dominican Antonio de Montesinos, in a speech at Santo Domingo,

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50. James Muldoon, *Spiritual Freedom--Physical Slavery: The Medieval Church and Slavery*, 3 AVE MARIA L. REV. 69, 88 (2005).

51. 2 ABELARDO LEVAGGI, MANUAL DE HISTORIA DEL DERECHO ARGENTINO 104 (1986).

52. Muldoon, *supra* note 50, at 89.

53. 1 GARCÍA-GALLO, *supra* note 45, at 723.

54. *See generally*, SILVIO A. ZAVALA, LA ENCOMIENDA INDIANA (1935).

55. 1 GARCÍA-GALLO, *supra* note 45, at 723. *See* also, Guillermo Floris Margadant, *Offical Mexican Attitudes Toward the Indians: An Historical Essay*, 54 TUL. L. REV. 964, 967 (1980).

56. 1 GARCÍA-GALLO, *supra* note 45, at 724.

57. *Id.* at 724.

in the island of Hispaniola,[58] raised the following questions: "are these [Native Americans] not men?" "have they not a rational soul?" "are you not bound to love them as you love yourselves?"[59] The result of Montesinos's speech was the annoyance of the *encomenderos*, who were afraid of losing their cheap labor.[60]

Even though the speech of Montesinos had a negative impact among the *encomenderos*, the Spanish Crown was not able to ignore his comments. In 1512, the Laws of Burgos (*Leyes de Burgos*)[61] were enacted, and ordered that some limits should be imposed on the *encomienda* system.[62] The opposition of the *encomenderos* was not long in coming, and the *Leyes de Burgos* were not obeyed.[63]

One year later, and until 1556,[64] the reading of the "requirement" (*requerimiento*) was mandatory whenever new groups of Native Americans were discovered and encountered.[65] The *requerimiento* was a document to be read before the Native Americans, trying to explain the reasons for the presence of the Spaniards and their acts. The initial address read:

> On behalf of the very powerful and very catholic defender of the Church, always winner and never defeated, the great King Ferdinand V of Spain, of the Two Sicilies, of Jerusalem, and of the Islands and Lands of the Ocean Sea, etcetera, tamer of the barbarians, and of the very high and powerful lady the Queen Juana, his very loved and cared daughter, our Masters, Me, Pedrarias Dávila, his servant,

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58. 1 ABELARDO LEVAGGI, MANUAL DE HISTORIA DEL DERECHO ARGENTINO 149 (1986); and 2 ALFONSO GARCÍA-GALLO, MANUAL DE HISTORIA DEL DERECHO ESPAÑOL 654 (1984).

59. LAURENTINO DÍAZ LÓPEZ, EL DERECHO EN AMÉRICA EN EL PERÍODO HISPÁNICO 214 (1989).

60. DÍAZ LÓPEZ, *supra* note 59, at 215.

61. For an English translation of the text of the Laws of Burgos visit, 1512-1513: The Laws of Burgos, http://faculty.smu.edu/bakewell/BAKEWELL/texts/burgoslaws.html (last visited November 6, 2007).

62. DÍAZ LÓPEZ, *supra* note 59, at 108.

63. *Id.* at 109.

64. Robert A. Williams, Jr., *The Medieval and Renaissance Origins of the Status of the American Indian in Western Legal Thought*, 57 S. CAL. L. REV. 1, 93 (1983).

65. Muldoon, *supra* note 50, at 88.

> messenger and captain, notify you, and let you know, **to the best of my abilities** . . . [66]

The debate on persons or things apparently was finished by a papal bull of Paul III. In 1537, the pontific made public the papal bull *Sublimis deus sic dilexit.*[67] According to the papal bull, the Native Americans were rational beings capable of understanding and receiving Christian faith and sacraments.[68] In addition, supreme rights were given to the church and legality to the Spanish presence and religious duty in America.[69] The papal bull read in part:

> We, who, though unworthy, exercise on earth the power of our Lord and seek with all our might to bring those sheep of His flock who are outside, into the fold committed to our charge, consider, however, that the Indians are truly men and that they are not only capable of understanding the Catholic faith but, according to our information, they desire exceedingly to receive it. [70]

After the papal bull, a new attempt to finish with the *encomienda* system was made by the Spanish Crown. In 1542, the

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66. The Spanish text read:

> De parte del muy alto e muy poderoso y muy católico defensor de la Iglesia, siempre vencedor y nunca vencido, el gran rey Hernando el Quinto de las Españas, de las dos Cicilias, de Iherusalem y de las Islas e Tierra Firme del Mar Océano, etcétera, domador de las gentes bárbaras, y de la muy alta y muy poderosa señora la reina Doña Juana, su muy cara e muy amada hija, nuestros señores, Yo, Pedrarias Dávila, su criado, mensajero y capitán, vos notifico y hago saber **como mejor puedo** . . . (Bold added)

2 GARCÍA-GALLO, *supra* note 58, at 655.

67. For an English translation of the text of the Bull visit, Sublimus Dei, http://www.papalencyclicals.net/Paul03/p3subli.htm (last visited November 6, 2007).

68. 2 LEVAGGI, *supra* note 51, at 104.

69. Bonar Ludwig Hernandez, The Las Casas-Sepúlveda Controversy 1550-1551, http://userwww.sfsu.edu/~epf/2001/hernandez.html (last visited November 6, 2007).

70. MCNUTT, BARTHOLOMEW DE LAS CASAS, HIS LIFE, HIS APOSTOLATE, AND HIS WRITINGS 429 (1909) cited by Felix S. Cohen, *The Spanish Origin of Indian Rights in the Law of the United States*, 31 GEO. L. J. 1, 12 (1943).

New Laws (*Leyes Nuevas*) were enacted.[71] The *Leyes Nuevas* were unsuccessful.[72] Opposition by the *encomenderos* was stronger than the church's assertion that Native Americans were people.[73]

In 1680, the Compilation of Indian Laws (*Recopilación de Leyes de Indias*) was enacted, and intended to regulate completely the issues related to Native Americans.[74] The *Recopilación de las Leyes de Indias* was divided into nine books, and Book Six was devoted completely to the treatment of Native Americans within the Spanish colonies.[75] In addition, Book IV, Title I, Law VI read: "That in the *capitulaciones*[76] the word *conquer* is avoided, and that instead the words *pacification* or *settlement* are used."[77] Finally, Book III, Title IV, Law 9 read: "We order that no war is to be made against Native Americans to teach them the Holy Catholic faith, nor to make them obey us, nor for any other purpose."[78]

V. SPANISH SCHOLASTICS

The change to a more benign treatment of Native Americans by the Spanish crown, which was generated in the period of 150 years (between the enactment of the *Leyes Nuevas* and the enactment of the *Recopilación de Leyes de Indias*), was attributable mainly to the Spanish Scholastic movement. The Spanish Scholasticism of the 16th century, also called Neo-

71. Michel J. Godreau & Juan A. Giusti, *Las Concesiones de la Corona y Propiedad de la Tierra en Puerto Rico, Siglos XVI-XX: Un Estudio Jurídico*, 62 REV. JUR. U.P.R. 351, 451 (1993); and Hernandez, *supra* note 69.

72. Ruth Kerns Barber, *Indian Labor in the Spanish Colonies*, 6 PUBLICATIONS IN HISTORY 112 (1932).

73. DÍAZ LÓPEZ, *supra* note 59, at 110.

74. 1 RECOPILACIÓN DE LEYES DE LOS REYNOS DE LAS INDIAS 62 (Cultura Hispánica ed. 1973) (1681).

75. 2 RECOPILACIÓN DE LEYES DE LOS REYNOS DE LAS INDIAS fs.188-275 (Cultura Hispánica ed. 1973) (1681).

76. Contract between crown and *adelantado* setting out the grant of wealth, powers, and honors to be given upon successful discovery or settlement of new territories. M.C. Mirow, *Latin American Legal History: Some Essential Spanish Terms*, 12 LA RAZA L.J. 43, 51 (2001).

77. "Que en las capitulaciones se escuse la palabra conquista, y usen las de pacificacion, y población." *See supra* note 75, at fs. 81.

78. "Mandamos que no se pueda hacer, ni haga Guerra á los Indios de ninguna Provincia para que recivan la Santa Fé Catolica, ó nos dén la obediencia, ni para otro ningún efecto." *Id.* at fs. 25.

Scholasticism, was a unique production of minds, something not seen before in legal history.[79] The impact of the production of the Spanish Scholastics may be compared to the impact of the production of the Roman period of Justinian (e.g. Gaius, Paulus, Ulpian); and more recently, to the impact of the Germanic School of the 19th century (e.g. Georg Friedrich Puchta, Friedrich Carl von Savigny, Anton Friedrich Thibaut). The Neo-Scholastics advocated a close connection between law and theology. Acts were judged exclusively by their moral significance. Issues were appraised not solely from a social or political perspective, but as cases of conscience.[80] Among the main exponents of the Spanish school of thought were: Alfonso de Castro, Bartolomé de las Casas, Juan de Mariana, Luis de Molina, Domingo de Soto, Francisco de Vitoria, Juan Ginés de Sepúlveda, Francisco Suarez, Gabriel Vázquez, and Fernando Vázquez de Menchaca.[81]

Francisco de Vitoria (1485-1546),[82] called by many the founder of international law,[83] was one of the main exponents of Spanish Scholasticism.[84] He was an authority in legal affairs in his time,[85] and very popular throughout

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79. They were studied, among others, by Ángel Losada, James Brown Scott (who translated *Las Partidas* into English), and Lewis Hanke. *See* G. C. Marks, *Indigenous Peoples in International Law: The Significance of Francisco de Vitoria and Bartolome de las Casas*, 13 AUST. YBIL 14 (1990); and Lewis Hanke, *Mi vida con Bartolomé de las Casas 1930-1985*, *in* EN EL QUINTO CENTENARIO DE BARTOLOMÉ DE LAS CASAS 11-19 (Instituto de Cooperación Iberoamericana ed. 1986).

80. 1 FEDERICO DE CASTRO Y BRAVO, DERECHO CIVIL DE ESPAÑA 174 (3ed. 1955).

81. 1 ABELARDO LEVAGGI, MANUAL DE HISTORIA DEL DERECHO ARGENTINO 104 (1986).

82. FRANCISCO DE VITORIA, POLITICAL WRITINGS xxix-xxx (Anthony Pagden & Jeremy Lawrance eds., 1991). For further reading on de Vitoria, *see* Coleman Phillipson, *Franciscus a Victoria (1480-1546)*, 15 J. SOC. COMP. LEGIS. N.S. 175, 176 (1915).

83. *See* Phillipson, *supra* note 82, at 197; James Brown Scott, *Note*, 22 AM. J. INT'L L. 139 (1928); and William Renwick Riddell, *Book Review*, 23 GEO. L. J. 904, 904 (1935).

84. For a biography (in Spanish) of de Vitoria, *see* Bárbara Díaz & Idoya Zorroza, Francisco de Vitoria, http://www.unav.es/pensamientoclasico/autoresyobras/Vitoria.html (last visited November 6, 2007).

85. The influence of the theories of de Vitoria extended even to decisions of the US Supreme Court during the 19th century. The Marshall Trilogy regarding rights of Native Americans to the land in the US used the theories of de Vitoria,

Europe.[86] De Vitoria was a Dominican priest who occupied, starting in 1526,[87] a chair of Theology[88] in the University of Salamanca[89] (Spain), and who had never been in

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even when they did not cite him directly. *See* Kenton Keller Pettit, *The Waiver of Tribal Sovereign Immunity in the Contractual Context: Conflict between the Ninth Circuit and the Alaska Supreme Court?*, 10 ALASKA L. REV. 363, 366 (1993).

In 1823, in the case *Johnson v. M'Intosh* (21 U.S. 543), it was decided that through the discovery theory, the US could extinguish by conquest or just war; and therefore, Native Americans could transfer valid land title only to the US. In 1831, in the case *Cherokee nation v. Georgia* (30 U.S. 1), it was decided that Native Americans were sovereign peoples, but not to the same extent as foreign states. Native Americans were domestic, dependent sovereigns to whom the US owed a special duty of care. Finally, in 1832, in the case *Worcester v. Georgia* (31 U.S. 515), the court used the history of Britain's relations with Native Americans to further develop the duty of care. *See* Angela R. Hoeft, *Coming Full Circle: American Indian Treaty Litigation from an International Human Rights Perspective*, 14 LAW & INEQ. 203, 210 (1995).

For further readings on the Marshall Trilogy, *see* Rachel San Kronowitz et al., *Toward Consent and Cooperation: Reconsidering the Political Status of Indian Nations*, 22 HARV. C.R.-C.L. L. REV. 507 (1987); Stephanie Dean, *Getting a Piece of the Action: Should the Federal Government Be Able to Tax Native American Gambling Revenue?*, 32 COLUM. J.L. & SOC. PROBS. 157, 161 (1999); Jason Kalish, *Do the States Have an Ace in the Hole or Should the Indians Call their Bluff? Tribes Caught in the Power Struggle between the Federal Government and the States*, 38 ARIZ. L. REV. 1345, 1348 (1996); Rosemary Sweeney, *Federal Acknowledgement of Indian Tribes: Current Bia Interpretations of the Federal Criteria for Acknowledgment with Respect to Several Northwest Tribes*, 26 AM. INDIAN L. REV. 203, 204 (2002); Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth Century Origins of Plenary Power Over Foreign Affairs*, 81 TEX. L. REV. 1 (2002); David Wilkins, *Quit-Claiming the Doctrine of Discovery: A Treaty-Based Reappraisal*, 23 OKLA. CITY U. L. REV. 277(1998); and Blake A. Watson, *John Marshall and Indian Land Rights: A Historical Rejoinder to the Claim of "Universal Recognition" of the Doctrine of Discovery*, 36 SETON HALL L. REV. 481(2006).

86. Even Henry VIII of England referred to de Vitoria about his divorce. Phillipson, *supra* note 82, at 177.

87. Ramon Hernandez, *The Internationalization of Francisco de Vitoria and Domingo de Soto*, 15 FORDHAM INT'L L.J. 1031, 1031 (1992).

88. De Vitoria occupied the chair of theology at Salamanca from 1526 to 1546. Phillipson, *supra* note 82, at 176.

89. The University of Salamanca had been created in 1212 by Alfonso IX (grandfather of Alfonso X the Wise). By the mid 16th century, 5,000 students attended courses there, and 70 professors occupied chairs. *Id*. at 176.

America.[90] While delivering his lectures (*lecciones*) in Salamanca, his students and disciples[91] drafted class notes that turned out to be valuable documents called *relecciones*.[92] The first and the last *relecciones* are missing, but thirteen have survived.[93] The best known *relecciones* are entitled *On the American Indians* (*De indis*) and *On the Law of War* (*De indis relectio posterior, sive de iure belli*), dictated in January and June 1539.[94]

As a result of these two *relecciones*, de Vitoria stated that Native Americans were the true owners of the lands, and that they had rights to own property.[95] He provided two main arguments for his position: (i) Native Americans possessed natural legal rights as free and rational men;[96] and (ii) the Pope's grant to Spain of title to American possessions was baseless, and could not affect the inherent rights of the Native Americans.[97] To sustain his first argument he used Roman Law, Thomistic philosophy, Canon Law, and Holy Scriptures.[98] For the second argument he cited Aquinas, and said that according to Natural Law, the Pope lacked temporal authority over the Native Americans, and thus, the Pope could not give something he had no control, possession, or dominium over.[99] Finally, he argued that the law could not bind Native Americans, who were not previously subject to it.[100]

Notwithstanding these two arguments, de Vitoria spoke of a reciprocal *jus inter gentes*[101] or law of nations: a law of nations

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90. Blake A. Watson, *John Marshall and Indian Land Rights: A Historical Rejoinder to the Claim of "Universal Recognition" of the Doctrine of Discovery*, 36 SETON HALL L. REV. 481, 504 (2006).

91. By the year of his death at least 24 renowned professors had been his disciples. Hernandez, *supra* note 87, at 1041.

92. Phillipson, *supra* note 82, at 177.

93. Hernandez, *supra* note 87, at 1039.

94. DE VITORIA, *supra* note 82, at 231, 293.

95. Williams, *supra* note 64, at 68-92.

96. *Id.* at 70.

97. De Vitoria said that it was not possible for the Pope to have temporal dominium over the newly discovered lands. He said that if Jesus had not had it, then the Pope, who was his vicar, also would not have it. LEVENE, *supra* note 48, at 56.

98. Williams, *supra* note 64, at 71.

99. *Id.* at 75.

100. *Id.* at 75.

101. It is said that de Vitoria was the first to use the technical term *jus inter gentes*. James Brown Scott, *Asociación Francisco de Vitoria*, 22 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 139 (Jan., 1928).

that not only forced a pact or agreement among men, but also created the force of law for the world as a whole.[102] De Vitoria claimed that transgressions to that law of nations by the Native Americans could serve to justify the Spanish conquest and hegemony in the Americas.[103]

According to the *jus inter gentes*, some basic duties were imposed (universally binding) on the Native American societies.[104] Among them were: (i) that to respect natural society and fellowship,[105] by which Spaniards should be allowed to travel, if they did no harm, within the American territories;[106] (ii) that to permit a free and open commerce within the Americas and the European immigrants (i.e. if a Native American could dig for gold, the Spanish also should be allowed, as long as they did no harm);[107] and (iii) that to propagate Christianity, by allowing the preaching of the gospel.[108] After an analysis of the situation, de Vitoria concluded that if Native Americans did not obey the basic duties, Spaniards had the right to declare a just war on them.[109]

VI. THE EVENTS AT VALLADOLID

Two other important Spanish Scholastics were Bartolomé de las Casas and Juan Ginés de Sepúlveda. They both defended their positions towards Native Americans during the events that took place at the Controversy, in the Spanish city of Valladolid, starting in the year 1550.

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102. Williams, *supra* note 64, at 77.

103. *Id.* at 70.

104. *Id.* at 79.

105. *Note benne*, one of the articles of the *Digest of the Civil Laws Now in Force in the Territory of Orleans* of 1808 (antecessor of the current Louisiana Civil Code) also read in relation to the law of nations:

> Wild beasts, birds and all the animals which are bred in the sea, the air, or upon the earth, do, as soon as they are taken, become instantly by the law of nations, the property of the captor; for it is agreeable to natural reason, that those things which have no owner, should become the property of the first occupant.

Digest of 1808 Online, Book 3, Title 20, Article 4, in Digest Online, www.law.lsu.edu/digest (last visited November 6, 2007).

106. Williams, *supra* note 64, at 79.

107. *Id.* at 80.

108. *Id.* at 82.

109. *Id.* at 83.

A. De las Casas & Ginés de Sepúlveda

Fray Bartolomé de las Casas (1474-1566),[110] Bishop of Chiapas and *Defender of the Indians* by official decree of the emperor,[111] was well known for his activities in favor of Native Americans.[112] He had crossed the Atlantic Ocean on twelve occasions,[113] and was therefore a firsthand connoisseur of the life of Natives in America. During his early years in America, he had been an *encomendero*,[114] and by the time of the speech of Montesinos in 1511, he decided to dedicate his life to the just treatment of the Natives. Although de las Casas was not a philosopher, theologian, jurist, politician, or a man of government,[115] he was a very prolific author.[116] He wrote many books, monographs, and papers; among them: *Brief Account of the Devastation of the Indies* (*Brevísima Relación de la Destrucción de las Indias*),[117] *History of the Indies*, and *Apologetic History*.[118]

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110. G. C. Marks, *Indigenous Peoples in International Law: The Significance of Francisco de Vitoria and Bartolome de las Casas*, 13 AUST. YBIL 18 (1990).

111. Ángel Lozada, *The Controversy between Sepúlveda and Las Casas in the Junta of Valladolid*, *in* BARTOLOMÉ DE LAS CASAS IN HISTORY: TOWARD AN UNDERSTANDING OF THE MAN AND HIS WORK 279 (Juan Friede & Benjamin Keen eds., 1971).

112. He was also known as the *Champion of the Indians*. LEWIS HANKE, BARTOLOMÉ DE LAS CASAS 1474-1566: BIBLIOGRAFÍA CRÍTICA Y CUERPO DE MATERIALES xiii (1954).

113. Lewis Hanke, *Las Teorías Políticas de Bartolomé de las Casas*, 67 PUBLICACIONES DEL INSTITUTO DE INVESTIGACIONES HISTÓRICAS, FACULTAD DE FILOSOFÍA Y LETRAS UBA 8 (1935).

114. Susan Scafidi, *Old Law in the New World: Solórzano and the Analogical Construction of Legal Identity*, 55 FLA. L. REV. 191, 198 (2003).

115. LORENZO GALMÉS, BARTOLOMÉ DE LAS CASAS: DEFENSOR DE LOS DERECHOS HUMANOS 178 (1982).

116. DANIEL CASTRO, ANOTHER FACE OF EMPIRE: BARTOLOMÉ DE LAS CASAS, INDIGENOUS RIGHTS, AND ECCLESIASTICAL IMPERIALISM 14 (2007).

117. De las Casas has been criticized because of exaggerating the facts and the cruelty of Spaniards. For example, he said that in a twenty-year period, 24 million Native Americans were killed. An author analyzed that information and said that 3,500 killings per day were impossible at that time, because of the weapons that were used and the number of Spaniards that lived in America. VICENTE GAY, LEYES DEL IMPERIO ESPAÑOL: LAS LEYES DE INDIAS Y SU INFLUJO EN LA LEGISLACIÓN COLONIAL EXTRANJERA 24 (1924).

118. EN EL QUINTO CENTENARIO DE BARTOLOMÉ DE LAS CASAS 186-192 (Instituto de Cooperación Iberoamericana ed. 1986).

Juan Ginés de Sepúlveda (1490-1573), on the other hand, was known as a defender of the *encomenderos* and of the Spanish Empire.[119] Like de Vitoria, he had never been in America,[120] but was well known because of his strong philosophical, theological, and canonical formation.[121] His erudition seated him in meetings with Pope Clement VII, King Charles V, King Philip II, Hernán Cortés, Alejo Venegas, and Honorato Juan; and drove him to debates with Martin Luther and Erasmus of Rotterdam.[122] His writings in law, philosophy, and history were also very important in his time. Among his works, it is worth mentioning his translations of the main literature of Aristotle,[123] and his books entitled *Chronicles of Charles V*, *Chronicles of Philip II*, *Chronicles of the Spaniards in the New World*, *Of Glory*, *Of Marriage and Dispensation of Marriage*, and *Of Testimony and Witnesses*.[124]

In 1533, Ginés de Sepúlveda had finished writing his book entitled *Of the Conformity of the Militia with the Christian Religion* (*Democrates primus*), by which he justified the warfare activities of Charles V, even if those were religious wars;[125] that is to say, that war was consonant with the doctrines of Christianity.[126] In 1544,[127] he applied the ideas expressed in *Democrates primus* to the wars in the Hispanic American territories, and wrote *Of the Just Causes of War against Indians* (*Democrates secundus*),[128] which included a dialogue between the two main characters (i.e. Democrates and Leopoldus).[129] The second book, whose original manuscript comprised 68 folios

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119. JUAN GINÉS DE SEPÚLVEDA, DEMOCRATES SEGUNDO O DE LAS JUSTAS CAUSAS DE LA GUERRA CONTRA LOS INDIOS ix (Ángel Losada ed., 2d ed. 1984).

120. Watson, *supra* note 90, at 508.

121. GINÉS DE SEPÚLVEDA, *supra* note 119, at ix.

122. *Id.* at xi ; and AUBREY F. G. BELL, JUAN GINÉS DE SEPÚLVEDA 30 (1925).

123. In 1522, he started to translate the *Meteorum* and the *De Ortu et Intu*, and in 1548, the *Politica*. Hanke, *supra* note 113, at 44.

124. GINÉS DE SEPÚLVEDA, *supra* note 119, at xii.

125. *Id.* at xii.

126. FRANCIS AUGUSTUS MACNUTT, BARTHOLOMEW DE LAS CASAS: HIS LIFE, HIS APOSTOLATE, AND HIS WRITINGS 286 (1909).

127. It is believed that it was written during the Fall semester of 1544 and the Fall semester of 1545. GINÉS DE SEPÚLVEDA, *supra* note 119, at xiv.

128. *Id.* at xiii.

129. *Id.* in general.

without enumeration,[130] did not receive royal approval for publication in Spain. De las Casas had been one of the main opponents to the publication of the book and contributed to its banning.[131] Ginés de Sepúlveda then sent the *Democrates secundus* to Rome (where the censorship was less severe) together with an *Apología*. The *Apología* was printed in 1550, while the *Democrates secundus* had to wait for approval.[132]

B. The Controversy

On April 16th, 1550, King Charles V of Spain suspended all conquering activities in America, until he decided whether or not Spaniards were entitled to wage war on Native Americans.[133] He then called for the two main actors of each side to debate before a group (*Junta*) of jurists.[134] By 1550, Ginés de Sepúlveda was identified as supporting the way in which the Spaniards ran their activities in America; whereas de las Casas was identified as opposing the activities of Spaniards and the publication of the *Democrates secundus*.[135]

In August or September 1550, the *Junta* of jurists met[136] in the city of Valladolid.[137] Ginés de Sepúlveda took the stand first, for

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130. *Id.* at xxvii.

131. *Id.* at xvi.

132. MACNUTT, *supra* note 126, at 287; and GINÉS DE SEPÚLVEDA, *supra* note 119, at xviii.

133. GALMÉS, *supra* note 115, at 173.

134. A strong controversy had existed between moralists and theologians on the one side, and the *encomenderos* and conquerors on the other hand. CASTRO, *supra* note 116, at 128.

135. De las Casas was not alone in his opposition to the doctrine of Ginés de Sepúlveda. In 1547, the Dominican theologian and bishop, Melchor Cano had written against that doctrine; and in 1549, the Spanish lawyer and member of the *Second Audiencia* of Mexico, Alonso de Maldonado, supported de las Casas in a petition to the king. LEWIS HANKE, ARISTOTLE AND THE AMERICAN INDIANS: A STUDY IN RACE PREJUDICE IN THE MODERN WORLD 31 (1959).

136. Soto, Carranza, Cano, Rodrigo, Pedro Ponce de León, Anaya, Mercado, Pedraza, Gasca. GINÉS DE SEPÚLVEDA, *supra* note 119, at xxi.

Another author mentions that the *Junta* comprised 15 jurists. GALMÉS, *supra* note 115, at 173.

Other authors say that the *Junta* consisted of 14 members: ARTHUR HELPS, THE LIFE OF LAS CASAS THE APOSTLE OF THE INDIES 265 (1896); and AUBREY F. G. BELL, JUAN GINÉS DE SEPÚLVEDA 46 (1925).

137. GINÉS DE SEPÚLVEDA, *supra* note 119, at xxi.

three hours,[138] before the *Junta.*[139] He commented on and summarized his treatise (i.e. *Democrates secundus*),[140] claiming that Native Americans were inferior, and that therefore, Spaniards were entitled to wage war on them.[141] Not having been in America, when referring to the situation of natives in America, he had to rely on the book *General History* (*Historia General*) by the chronicler Fernandez de Oviedo.[142]

He gave at least four main arguments for his position:[143]

(i) Firstly, he said that Native Americans were barbarians and should be ruled by their superiors.[144] In this first argument he cited, among others, the theory of Aristotle on natural slaves,[145] followed by Saint Augustine;[146] and the theory of Saint Thomas Aquinas.[147]

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138. Lewis U. Hanke, *The Great Debate at Valladolid, 1550-1551, in* THE ROMAN CATHOLIC CHURCH IN COLONIAL AMERICA 48 (Richard E. Greenleaf ed. 1977).

139. MARCEL BRION, BARTOLOMÉ DE LAS CASAS "FATHER OF THE INDIANS" 165 (1929).

140. LEWIS HANKE, ALL MANKIND IS ONE: A STUDY OF THE DISPUTATION BETWEEN BARTOLOMÉ DE LAS CASAS AND JUAN GINÉS DE SEPÚLVEDA IN 1550 ON THE INTELLECTUAL AND RELIGIOUS CAPACITY OF THE AMERICAN INDIANS 68 (1974).

141. Hernandez, *supra* note 69.

142. Lozada, *supra* note 111, at 280.

143. GINÉS DE SEPÚLVEDA, *supra* note 119, at 19-85; and Marks, *supra* note 110, at 25.

144. The Latin expression that summarized the first argument read: "*Ij, quorum ea condition naturalis est, ut aliis parere debeant, si eorum imperium recusant. Hoc enim bellum iustum lege naturae Philosophorum maximi testantur."* GINÉS DE SEPÚLVEDA, *supra* note 119, at 19; and also SILVIO ZAVALA, LAS INSTITUCIONES JURÍDICAS EN LA CONQUISTA DE AMÉRICA 15 (1935).

145. He cited Aristotle who had said: "It is natural the seeking of wealth through war, . . . to be applied not only to beasts, but also to those men who were born to obey and refused to be subjected, and such a war is then by nature just." GINÉS DE SEPÚLVEDA, *supra* note 119, at 22; and Marks, *supra* note 110, at 25.

146. He cited Saint Augustine who had said: "Act, even against his will, because although suffering, the pain is necessary for his salvation." GINÉS DE SEPÚLVEDA, *supra* note 119, at 23.

And: "God granted a very delicate and glorious Empire to the Romans for them to prevent all the serious evils that existed in many groups that in seeking glory, had desires for richness and many other vices." *Id.* at 31.

147. He cited Saint Thomas Aquinas who had said: "You will tolerate the sin of the prince if he cannot be punished without a scandal to the community,

(ii) Secondly, he claimed that Native Americans had committed crimes and sins against natural law, and therefore, Spaniards were entitled to stop them and punish them.[148] He cited, among others, Deuteronomy,[149] the readings of Saint Cyprian,[150] and Saint Augustine.[151]

(iii) Thirdly, he claimed that Spaniards were obliged to prevent Native Americans from oppressing and killing other innocent Native Americans.[152] He cited, among others, Sirach,[153] the Book of Proverbs,[154] and the writings of Cremes of Terence.[155] He also used the examples provided by the exaggerated stories about cannibalism that were very popular in Europe at that time.[156]

(iv) Finally, he argued that Native Americans were infidels of the Roman Catholic faith, and needed to be instructed in that faith

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unless his sin is of a nature that would cause more spiritual or temporal damage to the community than the scandal that would be generated." *Id.* at 25; and Hanke, *supra* note 113, at 46.

148. The Latin expression that summarized the second argument read: "*Alteram causam attulisti, vt tollantur humanarum epularum portentosa flagitia, quibus plurimum rerum natura violator, neue quod iram Dei maxime lacessit, daemonia pro deo colantur, idque prodigioso ritu humanas victimas immolandi."* GINÉS DE SEPÚLVEDA, *supra* note 119, at 84 and 57; and also Marks, *supra* note 110, at 25.

149. He cited Deuteronomy that read: "When offering to the gods their children and throwing them to the fire, they did many different atrocities, which God dislikes." GINÉS DE SEPÚLVEDA, *supra* note 119, at 40.

150. He cited Saint Cyprian who had said: "If before the arrival of Christ those precepts in favor of God and against idolatry were kept, then, after his arrival, there is even more reason to keep them." *Id.* at 42.

151. He cited Saint Augustine who had said: "If we delay the punishment or the vengeance of those serious offenses against God, we will be exhausting his patience, and he will get angry." *Id.* at 43.

152. The Latin expression that summarized the third argument read: "*Quod me iudice permagnam uim et pondus habet ad huius belli iustitiam asserendam, vt graues iniuriae a plurimis innocentibus mortalibus, quos barbari quotannis immolabant arcerentur, quas iniurias a quibusuis hominibus repellere cunctos homines si possint, lege diuina iuberi docuisti." Id.* at 84; and also Marks, *supra* note 110, at 25.

153. He cited the Sirach which read: "God entrusted to each man the care for his fellow man." GINÉS DE SEPÚLVEDA, *supra* note 119, at 59.

154. He cited the Book of Proverbs which read: "Free those which are sent to death [free of guilt and in an unfair way]" *Id.* at 61.

155. He cited Cremes of Terence who said: "I am human, and I believe there is nothing human that is indifferent to me." *Id.* at 59.

156. Hanke, *supra* note 113, at 47.

by Spaniards (i.e. evangelization).[157] He cited, among others, the teachings of Saint Gregory,[158] Saint Augustine,[159] Saint Ambrose,[160] and Saint Paul.[161] He also mentioned that he felt uneasy about the things that could happen to the priests sent unarmed to evangelize in Florida.[162]

The doctrine of de Vitoria regarding just wars was applied against Native Americans by Ginés de Sepúlveda. He tried to make clear that Native Americans could not, because of their sins, under any circumstance, wage a just war against Spaniards.[163]

After Ginés de Sepúlveda spoke, de las Casas began to speak, and took five days[164] to read entirely his *Apología* (*In Defense of the Indians*)[165] which comprised 90 quad demy

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157. The Latin expression that summarized the forth argument read: "*Quarto loco posuisti, ut Christiana Religio, qua se aditus ostendit, longe et late conuenientibus rationibus per euangelicam praedicationem dilatetur, aperta via praedicatoribus morumque, et religionis magistris munita, atque ita munita, vt non solum ipsi tuto valeant euangelicam doctrinam tradere, sed etiam a popularibus barbaris omnis timor, suorum principum, et sacerdotum remouetur, quo libere, et impune liceat persuasis Christianam religionem accipere."* GINÉS DE SEPÚLVEDA, *supra* note 119, at 84; and also Marks, *supra* note 110, at 26.

158. He cited Saint Gregory who had said: "The one that is not liberated with the water of regeneration will stay chained to the first obligation of atonement for sins committed." GINÉS DE SEPÚLVEDA, *supra* note 119, at 55.

159. He cited Saint Augustine who had said: "There are still people that are distant, even when they are few, to whom the Gospel has not been preached." *Id.* at 55.

160. He cited Saint Ambrose who had said: "In some remote areas of the World, people have not been illuminated by the grace of God, but we have no doubts that there is a secret intention of God to give them a time in which they will listen and receive the Gospel." *Id.* at 55.

161. He cited Saint Paul who had said: "He made some of us apostles, others prophets, others evangelists, others shepherds and doctors, for the purification of saints and for the endeavors of his ministry, for the building of the body of Christ." *Id.* at 67.

162. *Id.* at 72.

163. HANKE, *supra* note 135, at 69.

164. MANUEL M. MARTINEZ, FRAY BARTOLOMÉ DE LAS CASAS "PADRE DE AMÉRICA:" ESTUDIO BIOGRÁFICO-CRÍTICO 316 (1958).

165. BARTOLOMÉ DE LAS CASAS, IN DEFENSE OF THE INDIANS: THE DEFENSE OF THE MOST REVEREND LORD, DON FRAY BARTOLOMÉ DE LAS CASAS, OF THE ORDER OF PREACHERS, LATE BISHOP OF CHIAPA, AGAINST THE PERSECUTORS AND SLANDERERS OF THE PEOPLES OF THE NEW WORLD DISCOVERED ACROSS THE SEAS (Stafford Poole trans., 1974). This book includes the text of the Latin translation, and has been generally accepted as dated some time after the debate took place. There are no surviving Spanish

pages,[166] was allegedly drafted between 1548 and 1550,[167] and was probably expanded before the *Junta* took place.[168] His *Apología* represented a voluminous encyclopedia of all his ideas, scattered throughout his previous books and monographs.[169] While doing so, de las Casas described the cruelty of conquerors and highlighted his firsthand experience (something that Ginés de Sepúlveda did not have). In addition, he claimed that the role of Spain was spiritual and not political or economic.[170] Finally, he strengthened his position by stating that Native Americans were truly men, capable of becoming Christians.[171]

De las Casas also gave his answers to the main arguments that Ginés de Sepúlveda had stated during the previous session. His principle sources were the Bible, the theologians (from the Spanish Scholastics he cited only de Vitoria), the texts on canon law, the *corpus iuris civilis*, and the writings of Aristotle:[172]

(i) To the first argument he answered that, according to Aristotle and Saint Thomas Aquinas, the term *barbarian* could be used in four different ways.[173] He claimed that from the fact that Native Americans were barbarians, it did not follow that they were incapable of government and had to be ruled by others, except for

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copies of the original *Apología*; and the only surviving Latin manuscript of the *Apología*, which is in the National Library of Paris (France), is comprised of 253 folios divided into 63 chapters without headings or summaries. *Id.* at xiv-xv.

166. ANTONIO MARÍA FABIÉ, VIDA Y ESCRITOS DE DON FRAY BARTOLOMÉ DE LAS CASAS OBISPO DE CHIAPA 546 (1879). The English quad demy size is similar to the Spanish *pliego* size, which is understood generally as 1000 mm x 800 mm.

167. DE LAS CASAS, *supra* note 165, at xiv.

168. *Id.*

169. Lozada *supra* note 111, at 280.

170. Hernandez, *supra* note 69.

171. DE LAS CASAS, *supra* note 165, at 42.

172. *Id.* at xvi.

173. He said Aristotle addressed the four types of barbarians in Books 1 and 3 of *Politica*, and Book 7 of *Etica*. *Id.* at 28.

The first type of barbarian included any cruel, inhuman, wild, and merciless man acting against human reason. The second included those who did not have a written language that corresponded to the spoken one, and did not know how to express in it what they meant. The third included those who because of their evil character or the barrenness of the region in which they lived, were cruel and strangers to reason. The fourth included all those who did not acknowledge Christ. *See* respectively *id.* at 28, 30, 32, and 49.

their evangelization.[174] He believed that Native Americans had more developed skills in the mechanical arts; [175] and were more developed than ancient people (e.g. Egyptians, Romans, and Greeks) in religion, maybe even more than the Spaniards.[176]

(ii) To the second argument regarding crimes against Natural Law, citing among others Saint Augustine,[177] he said it was necessary to have jurisdiction to punish them.[178] He understood that the King and the Pope had no jurisdiction over Native Americans, because Natives were not Christians (just as the Moors of Africa, the Turks, and the Persians were not), and hence, they could not take cognizance of their acts or punish them.[179] Also, he stated that Native Americans were different from heretics, who were guilty because, having been baptized, they did not obey the precepts of the Church.[180]

(iii) To the third argument, he said that not all Native Americans oppressed and killed other natives,[181] and there was a risk that, while trying to prevent the death of few innocents, an immense multitude of persons (including other innocents) could be killed or never would want to hear the name of Christ.[182]

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174. *Id.* at 42.

175. *Id.* at 44.

176. HANKE, *supra* note 135, at 55.

177. De las Casas said: "Augustine believes that the punishment of crimes committed by pagans or idolaters is reserved to divine judgment." DE LAS CASAS, *supra* note 165, at 86.

178. De las Casas said: "We can punish the sins of unbelievers or that they can punish ours, either when we are their subjects or when they are ours or come under our authority. Now this can happen for four reasons. The first is dwelling or habitation; for example if they should live among Christians . . . Second, by reason of origin . . . Third, a person is considered our subject if he is a vassal and has taken an oath of fidelity . . . The fourth reason is a crime committed in someone's jurisdiction, either against the ruler himself or against the property or persons who are his subjects." *Id.* at 54.

179. *Id.* at 55.

180. *Id.*

181. *Id.* at 186.

182. *Id.* at 190.

He cited, among others, Aristotle,[183] Deuteronomy,[184] and a commentary of Saint Augustine about Genesis.[185]

(iv) To the fourth argument, he said that Native Americans should be evangelized, but not by means of a war.[186] He believed that they would be called by Christ in the same way as other men (e.g. Europeans) were led to him.[187] He cited, among others, the writings of Saint Chrysostom,[188] Saint Thomas Aquinas,[189] and Saint Augustine.[190]

De las Casas also mentioned the legal doctrines of de Vitoria. He claimed that de Vitoria had been misled, due to false information and wicked lies, to believe that Native Americans had committed the alleged crimes; therefore, there was no just title for Spaniards to start a war against them.[191]

One of the members of the *Junta*, Domingo de Soto, was appointed to draft a summary of the contentions.[192] De las Casas

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183. De las Casas said that Aristotle teaches that in his *Etica*: "According to the rule of right reason when we are confronted by two choices that are evil both as to moral guilt and we cannot avoid both of them, we ought to choose the lesser evil. For in comparison with the greater evil, the choice of the lesser evil has the quality of a good." *Id.* at 191.

184. He cited Deuteronomy that read: "Fathers may not be put to death for their sons, nor sons for fathers. Each is to be put to death for his own sin." *Id.* at 193.

185. He cited Genesis that read: "If you offer rightly, but do not rightly distinguish, have you not sinned?" *Id.* at 188.

186. *Id.* at 267.

187. *Id.* at 271.

188. He cited Saint Chrysostom who had said: "Just as there is no natural difference in the creation of men, so there is no difference in the call to salvation of all of them, whether they are barbarous or wise, since God's grace can correct the minds of barbarians so that they have a reasonable understanding. He changed the heart of Nebuchadnezzar to an animal mind and then brought his animal mind to a human understanding. He can change all persons, I say, whether they are good or bad: the good lest they perish, the bad so that they will be without excuse." *Id.*

189. He cited Saint Thomas Aquinas who had said when referring to the wedding parable of Saint Luke: "That compulsion which Saint Luke mentions in chapter 14 is not one of force but one of effective persuasion, as, for example, through harsh or gentle words." *Id.*

190. He cited Saint Augustine who had said: "O happy necessity which compels one to what is better." *Id.* at 273.

191. *Id.* at 341.

192. GINÉS DE SEPÚLVEDA, *supra* note 119, at xxii.

and Ginés de Sepúlveda did not appear together before the *Junta*. Notwithstanding, the members of the *Junta* seem to have discussed the positions of each contender separately with them. In addition, the members of the *Junta* held discussions among themselves.[193]

A second debate took place on April or May 1551,[194] but few records were kept of it. Ginés de Sepúlveda had asked for permission to reply to the statements of de las Casas according to the summary of de Soto.[195] As a result, Ginés de Sepúlveda found twelve objections and gave his answers to those objections.[196] Subsequently, de las Casas answered to those twelve objections,[197] and Ginés de Spúlveda made no further rejoinder because he saw no necessity.[198]

C. The Outcome

The Controversy had neither immediate winners nor losers. No official records were kept of the debates of the *Junta*, or they have not yet come to light.[199] Historians currently work with what Bartolomé de las Casas and Juan Gines de Sepúlveda wrote after the debate. On the one hand, de las Casas wrote *Here is included an Argument* (*Aqui se contiene una disputa*),[200] in 1552, including his main arguments, the summary of Domingo de Soto, the 12

193. HANKE, *supra* note 135, at 39.
194. GINÉS DE SEPÚLVEDA, *supra* note 119, at xxi.
195. *Id.* at xxii.
196. *Id.*
197. *Id.*
198. HANKE, *supra* note 140, at 68.
199. Hanke, *supra* note 138, at 50.
200. The complete Spanish title was: *Aqui se contiene una disputa, o controversia: entre el Obispo don fray Bartholome de las Casas, o Casaus, obispo que fue de la ciudad Real de Chiapa, que es en las Indias, parte de la nueva España, y el doctor Gines de Sepulveda Coronista del Emperador nuestro señor: sobre que el doctor contendia: que las conquistas de las Indias contra los Indios eran licitas: y el obispo por el contrario defendio y affirmo aber sido y ser impossible no serlo: tiranicas, injustas y iniquas. La qual question se ventilo y disputo en presencia de muchos letrados theologos y juristas en una congregacion que mando su magestad juntar el año de mil y quinientos y cincuenta en la villa de Valladolid.*
Text available in Spanish at, Aquí se contiene una disputa, o controversia http://digicoll.library.wisc.edu/cgi-bin/IbrAmerTxt/IbrAmerTxt-idx?type=header&id=IbrAmerTxt.Spa0035&pview=hide (last visited November 6, 2007).

objections of Ginés de Sepúlveda, and the 12 answers of de las Casas.[201] On the other hand, and contemporarily, Gines de Sepúlveda allegedly[202] wrote *Rash, Scandalous, and Heretical Propositions* (*Proposiciones temerarias, escandalosas y heréticas*),[203] that included his position regarding the outcome of the debate.

Both Bartolomé de las Casas and Juan Gines de Sepúlveda claimed that they were winners.[204] They did so according to the opinions of their friends and those who shared their opinions.[205] For example, Ginés de Sepúlveda sent a letter to Martín de Oliva, dated October 1st, 1551, in which he stated:

> Nevertheless, it cannot be said that I stood right on my two feet after the first encounter . . . Hence, in a short period of time, I was able to return the misled judges to the path of truth, and make them approve my thesis, to which I had dedicated many years of my life. Then, all without exception were convinced that the war on Native Americans was a way of bringing them to the fold of Christ. [206]

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201. *Id.*

202. The expert Ángel Lozada mentions that the referred work is attributed to Ginés de Sepúlveda. GINÉS DE SEPÚLVEDA, *supra* note 119, at xiii.

203. *Id*. at xx.

The complete Spanish title was: *Propossiçiones Temerarias, Escandalosas y hereticas que noto el Doctor Sepulveda en el libro de la Conquista de Indias que Fray Bartholome de las Casas Obispo que fue de Chiapa hizo imprimir sin liçencia en Sevilla año de 1552 cuyo título comienza Aquí se contiene una disputa o controversia.*

See, an interesting reference in Spanish, at: http://www2.uah.es/cisneros/carpeta/images/pdfs/249.pdf (last visited November 6, 2007).

204. Hernandez, *supra* note 69.

205. MARTINEZ, *supra* note 164, at 316.

206. The letter in Spanish read:

> No obstante, no puede decirse que salí muy bien parado del primer encuentro . . . Así, en poco tiempo conseguí que aquellos jueces, antes tan descarriados, volvieran al camino de la verdad y aprobaran mi tesis cuya defensa tantos años de mi vida había yo gastado. Todos, pues, sin excepción se convencieron de la licitud de la guerra contra los Indios como medio de atraerlos al redil de Cristo.

EPISTOLARIO DE JUAN GINÉS DE SEPÚLVEDA 156 (Ángel Losada ed., 2d ed. 1979).

In the long run, the results were different. On the one hand, the book of Gines de Sepúlveda, that had generated the rivalry between the two scholars (i.e. *Democrates secundus*), was not published until 1892,[207] when Marcelino Menéndez y Pelayo published it in Madrid.[208] On the other hand, the *encomienda* system, to which de las Casas had dedicated countless days and nights to fight against, continued until the 18th century, at which time it was formally abolished.[209]

VII. SOME COMMON DENOMINATORS BETWEEN EMBRYOS AND VALLADOLID

It has been shown that when society faces new developments or discoveries, it always faces controversies, debates, or questions. Different approaches to those controversies can be made, from different angles and perspectives. Among some of the perspectives, it is possible to mention firstly religious beliefs or the belief in a supernatural energy. Religious beliefs have been present in almost all controversies, and are strongly linked to morality. Religion tends to shape the conduct of men, and its postulates constantly are challenged by the new discoveries. The Roman Catholic faith was present at the Valladolid events; and it is also present, together with other religious beliefs, in the current debate on human embryos, by means of press releases or from the preachers' pulpits in many congregations.

Economic endeavors may also create another perspective when looking at developments. Back in the Hispanic possessions in America, and at the time of the Valladolid debate, the *encomenderos* were able to succeed in economic endeavors because of the inexpensive work force provided by the uncertainty of the status of Native Americans, and by the grants of land that the Spanish king had made to them. In addition, goods and objects made by craftsmen were produced for the Spanish empire at a very low cost. Currently, human embryos have the potential to cause a revolution in the health industry worldwide, because of the massive development of palliatives to diseases. In addition, the

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207. GINÉS DE SEPÚLVEDA, *supra* note 119, at xxv.

208. Lozada, *supra* note 111, at 280.

209. Lesley Byrd Simpson, *Book Review*, 16.1 THE HISPANIC AMERICAN HISTORICAL REVIEW 49, 49 (1936).

controversial creation of banks of human organs for transplant may affect the current situation of tissue replacement. Finally, the patent law scheme also may be affected by the new challenges that laboratories and research centers may create.

Culture is another perspective that may be used when approaching controversies. The mix of races, generated by the Spanish presence in the Americas, turned out to be the Latino race, which varies considerably in each region of the Americas, but which mainly consists of the interbreeding of Native Americans, Blacks from Africa, and Whites from the Iberian Peninsula. At the time of the Valladolid controversy, there was exploitation of Native Americans, not only as a work force, but also as members of society at large. Currently, the experimentation with human embryos may result in clones or chimeras, which may tend to change family contexts or races.[210] In addition, exploitation of women and embryos (in the event the reader understands embryos as persons) could also coexist.[211]

Science and technology may also be considered when facing developments or discoveries. After the Spanish conquest, many developments in science occurred due to the interaction of European developments in the Americas. The research with human embryos may generate new discoveries in science and technology.[212]

Law, being a social science, is always present when facing discoveries or developments. Necessary legal frameworks derive from those developments, and try to catch up with the new trends. The Spanish presence in America generated a body of legislation to be applied in the new colonies. In addition, it was shown that the Valladolid debate influenced the provisions of the *Recopilación de las Leyes de Indias*. On the other hand, the debate on human embryos will generate legislation that will help regulate all the different aspects of such development. Also, judicial decisions of the highest courts are expected (e.g. the US Supreme Court),

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210. Lori B. Andrews, *Is There a Right to Clone? Constitutional Challenges to Bans on Human Cloning*, 11 HARV. J.L. & TECH. 643, 656 (1998).

211. Francesca Crisera, *Federal Regulation of Embryonic Stem Cells: Can Government do it? An Examination of Potential Regulation through the Eyes of California's Recent Legislation*, 31 HASTINGS CONST. L.Q. 355, 361 (2004).

212. Christopher L. Logan, *To Clone or Not to Clone: Should Missouri allow Cloning for Biomedical Research?*, 73 UMKC L. REV. 861, 874 (2005).

helping to settle the controversial matters in the common law jurisdictions.

VIII. CLOSING REMARKS

The challenges that society currently faces with human embryos have been also faced, *mutatis mutandis*, in many other instances, for example at Valladolid during the 16th century. The view of the past may help us understand the present. Considering what happened in the past, we can now expect regarding human embryos that legislation, case law, and some main actors will occupy a leading role in the years to come, and will help society define positions regarding the debate. As in the case of Valladolid, when the Native Americans were not present during the debates, the leading roles with human embryos will be occupied by others other than the human embryos themselves. History seems to have shown us that it is a fact impossible to avoid.

Society may sit and wait for a consolidated decision about human embryos: will they be seen as persons? Will they be seen as things? Or will they deserve a special intermediate treatment? Once those questions are answered, legislation and case law will face new questions, the first of which may be: what rights and obligations will they have, if any? Like when facing the status of Native Americans, this takes us to fundamental questions: What is a human being? Where does humanity begin and end? Times of great discoveries are also times of great interrogations.