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FRANCISCO DE VITORIA ON HUMANITARIAN INTERVENTION. A SPECIAL CASE OF JUST WAR

FRANCISCO DE VITORIA Y LA INTERVENCIÓN HUMANITARIA. UN CASO PARTICULAR DE LA GUERRA JUSTA

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Abstract

In his lecture *De Indis*, Vitoria advances a moral argument for justified violence against indigenous peoples in cases of humanitarian intervention. Here, he asserts the permissibility of intervening in the affairs of other peoples, if necessary, through military force, to protect human lives from immoral practices such as human sacrifice and cannibalism. This legal title is particularly notable because its legal foundation derives from natural law rather than from religious difference, as it seeks to address practices that violate the principles of the *ius gentium*.

This paper examines how Vitoria justifies humanitarian interventions within a normative framework that generally permits only defensive war as just. It addresses the nature of humanitarian intervention, its compatibility with the Just War tradition, and the extent to which it constitutes an exceptional case of just war.

Keywords

Just War; Humanitarian Intervention; Francisco de Vitoria; *De Indis*; Cannibalism

Resumen

En su reelección *De Indis*, Vitoria presenta un argumento moral para justificar la violencia contra los pueblos indígenas en casos de intervención humanitaria. En este contexto, Vitoria afirma la legitimidad de intervenir en los asuntos de otros pueblos, si es necesario mediante el uso de la fuerza militar, con el fin de proteger vidas humanas frente a prácticas inmorales como el sacrificio humano y el canibalismo. Este título es particularmente relevante porque su fundamento jurídico se apoya en el derecho natural, y no en la diferencia religiosa, ya que busca abordar prácticas que vulneran los principios del *ius gentium*.

Este artículo examina cómo Vitoria justifica las intervenciones humanitarias dentro de un marco normativo que, por lo general, solo reconoce como justa la guerra defensiva. Se analiza la naturaleza de la intervención humanitaria, su compatibilidad con la tradición de la guerra justa y hasta qué punto constituye un caso excepcional de guerra justa.

Palabras clave

Guerra justa; intervención humanitaria; Francisco de Vitoria; *De Indis*; canibalismo

1. Introduction

Since the end of the twentieth century, humanitarian intervention has become a familiar concept for employing military force to protect civilian populations in territories that gravely violate human rights. But the idea of humanitarian intervention is not only a contemporary phenomenon, which started with UN and NATO operations e.g., in Kosovo, Libya or Central African Republic.¹ As early as the beginning of the sixteenth century, the legality of the Spanish conquests in Central and South America was highly debated among scholars of the School of Salamanca. Theologians and jurists discussed, among other issues, whether war might be waged lawfully.² Francisco de Vitoria, one of the founders of the school of thought, initiated certain moral debates at the time. In this article, I examine how Vitoria, situated within the legitimisation discourse of sixteenth-century Spain, provides the conceptual foundations for the later idea of humanitarian intervention.

¹ For an overview on humanitarian interventions of the 20th and 21st centuries, see Alex J. Bellamy, *Just Wars. From Cicero to Iraq* (Cambridge: Polity Press, 2008).

² In Just War Theory, the fundamental premise is that acts of war may, under certain conditions, be morally justifiable. The term “just” is understood not as morally ideal but as morally permissible, meaning it falls within the boundaries of what moral norms allow in situations of war. It designates an action that satisfies the moral criteria for permissibility. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2006), 14–15.

Vitoria addressed the legality of the Spanish occupation in his lectures *De Indis recenter inventis*³ and *De iure belli*⁴ (1539). In these *relectiones*,⁵ he examined the question of whether Spain could claim dominion over the subjugated peoples of South and Central America. Vitoria first dismissed seven unjustified claims to Spanish sovereignty over indigenous peoples, such as the authority granted by papal bulls or the argument that indigenous populations lacked ownership of their land. In a second step, he articulated eight further claims, so-called legal titles of dominion. The fifth legal title he discusses in the latter deals with protection against tyranny and bears strong resemblance to today's notion of 'humanitarian intervention'.⁶ Intending to save innocent people from death, he justifies (violent) interference in cases of life-threatening customs such as cannibalism and human sacrifice. In doing so, he establishes the moral basis for intervention and makes a significant contribution to both historical and contemporary debates.⁷ His moral argument has been described as "an advance in the moral consciousness of mankind".⁸

In this paper I will address the permissibility of offensive war—if and how interventions can be justified according to Vitoria. Just wars are typically understood as

³ Abbreviated as *De Indis*. For the purposes of this paper, the Latin original as well as the English and German translations served as primary sources. Francisco de Vitoria, "On the American Indians", in *Political Writings*, edited by A. Pagden and J. Lawrance (Cambridge: Cambridge University Press, 1991), 231-292, abbreviated as *On the American Indians*; Francisco de Vitoria "De Indis. Über die Indianer", in *Vorlesungen II. Völkerrecht, Politik, Kirche = Relectiones*, translated by H. Ulrich, edited by Justenhoven and J. Stüben (Stuttgart/Berlin/Köln: Kohlhammer, 1997), 370-541, abbreviated as *De Indis*.

⁴ Francisco de Vitoria, "On the Law of War", in *Political Writings*, edited by A. Pagden and J. Lawrance (Cambridge: Cambridge University Press, 1991), 293-327, abbreviated as *On the Law of War*; Francisco de Vitoria, "De iure belli. Über das Kriegerrecht", in *Vorlesungen II. Völkerrecht, Politik, Kirche = Relectiones*, transl. by H. Ulrich, edited by H.G. Justenhoven and J. Stüben (Stuttgart/Berlin/Köln: Kohlhammer, 1997), 542-605, abbreviated as *De iure belli*.

⁵ While *lecturae* were part of the regular curriculum and primarily addressed theology students, *relectiones* at the University of Salamanca were extraordinary public lectures held on special occasions. These were open to a wider audience beyond the student body and often included contemporary debates around urgent legal, political, and moral questions. Anthony Pagden: "Conquest and the Just War", in *Empire and Modern Political Thought*, edited by S. Muthu (Cambridge: Cambridge University Press, 2012), 32; Anthony Pagden: "The School of Salamanca", in *The Oxford Handbook of the History of Political Philosophy*, edited by G. Klosko (Oxford: Oxford University Press, 2010), 248; Ulrich Horst, "Leben und Werke Francisco de Vitorias", in *Vorlesungen I. Völkerrecht, Politik, Kirche = Relectiones*, translated by H. Ulrich, edited by H.G. Justenhoven, J. Stüben (Stuttgart/Berlin/Köln: Kohlhammer, 1995), 115.

⁶ Vitoria himself does not label the fifth legal title as humanitarian intervention, nor does he assign this argument any other specific name. The association with this concept emerged later, through the work of scholars such as James Muldoon, "Francisco de Vitoria and Humanitarian Intervention", *Journal of Military Ethics* 5/2 (2006): 128-143; Johann Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne* (Weilerswist: Velbrück, 2009).

⁷ Alex J. Bellamy, "Francisco de Vitoria (1492-1546)", in *Just War Thinkers. From Cicero to the 21st Century*, edited by D.R. Brunstetter and C. O'Driscoll (London: Routledge, 2017), 88.

⁸ Schelkshorn, *Entgrenzungen*, 294.

defensive wars. However, interventions, as the term suggests, involve active interference in another commonwealth's sovereignty. Such actions count as offensive wars, which Just War doctrine initially prohibits by specifically excluding them as a just cause. How, then, does Vitoria's notion of humanitarian intervention circumvent this difficulty? I first outline Vitoria's Just War framework, describing the criteria on how wars can be justified. Secondly, I will examine Vitoria's fifth legal title, the notion of humanitarian intervention, in more detail. Thirdly, I will delineate the similarities and differences between just wars and humanitarian interventions, highlight the distinctive characteristics of humanitarian interventions, and demonstrate how Vitoria navigates the problem of legitimising offensive violence.

1.1. *Francisco de Vitoria*

Francisco de Vitoria (1483-1546) was a sixteenth-century Dominican who held the academic chair of theology at the University of Salamanca from 1526 to 1546. Together with other theologians and jurists of the School of Salamanca, such as Domingo de Soto, Francisco Suárez, and Luis de Molina, he sought to clarify moral and political questions regarding engagement with indigenous populations overseas. These scholars debated various normative issues surrounding the colonial conquest of Latin America, including whether slavery was permissible, the extent to which missionary activity was allowed, and whether, as well as under which circumstances, violence could be used against indigenous peoples.⁹

Twentieth-century scholars were often concerned about whether Vitoria could be regarded as the father of modern international law.¹⁰ I do not wish to engage with that question here, but rather I focus on the innovation in his war ethics. He contributed significantly to the moral reflections on the justice of the Spanish conquests.¹¹ Referring to traditional Christian values, Thomas Aquinas' and Augustine's traditions of Just War, as well as applying scholastic methods,¹² sometimes obscured his novel ideas, such as

⁹ The legitimisation debate continued after Vitoria's death in 1546. At the Junta de Valladolid in 1550-51, Bartolomé de las Casas and Juan Ginés de Sepúlveda debated legal and moral guidelines for treating indigenous peoples in the New World. See Anthony Pagden, "Conquest and the Just War", in *Empire and Modern Political Thought*, edited by S. Muthu (Cambridge: Cambridge University Press, 2012), 33-35.

¹⁰ Andrew Fitzmaurice, "The Problem of Eurocentrism in the Thought of Francisco de Vitoria", in *At the Origins of Modernity. Francisco De Vitoria and the Discovery of International Law*, edited by J.M. Beneyto and V. Corti (Cham: Springer, 2017), 80; Bellamy, *Just Wars. From Cicero to Iraq*, 50; and Peter Haggemacher, "La place de Francisco de Vitoria parmi les fondateurs du droit international", *Actualité de la pensée juridique de Francisco de Vitoria*, edited by Antonio Truyol Serra et al. (Bruylant, Bruxelles, 1988), 128-142, provide overviews on this discussion.

¹¹ Bellamy, "Francisco de Vitoria (1492-1546)", 86.

¹² Joseph Höffner, *Kolonialismus und Evangelium* (Trier: Paulinus, 1969), 348.

humanitarian intervention.¹³ Although it is not necessary to see Vitoria as revolutionary, he uniquely applied Just War Theory and international law to the novel conditions of his age.¹⁴ Among Vitoria's lectures, through which he gained renown for his contributions to martial law, were *De Indis* and *De iure belli*, both delivered in 1539 at the University of Salamanca. In these highly topical lectures, he addressed Spanish dominion over indigenous peoples and political issues like the missionary enterprise, the rights of travel, causes of war, international law, and the doctrine of just war. The lectures are only one example of Vitoria bringing theology closer to the social and historical problems of his time.¹⁵ For example, while Cicero had already discussed *ius gentium*, Vitoria went further and applied it to the New World.¹⁶ The Dominican theologian extended international law to the territories subjected to European expansion. However, the scope of Vitorian doctrine on war was limited to the topicality of the sixteenth century.¹⁷ His ethics are far from secular, yet moral theology should seek to solve contemporaneous problems from an ethical perspective. Vitoria's significance thus lies in the systematic application of Just War Theory and *ius gentium* to the Spanish conquest of the Americas.¹⁸

2. Vitoria on the Justification of Violence

There are several moral problems with justifying violence.¹⁹ In this paper, I will only sketch two of them: first, the justification of violence *tout court*; second, the justification of *offensive* wars. The first moral problem concerns the long-standing Christian question of whether violence can ever be justified in the first place. Recall that the justification of force under Just War doctrine is by no means a blank cheque for its use—it can, without doubt, lead “to questionable justifications of military force”.²⁰ Violence and war are always sins: Christians, as a peaceful people, should not resort to force.²¹ So, how does Vitoria move from the Christian prohibition on violence to legitimising intervention?

In seeking to resolve this dilemma, Vitoria advances a realist claim:

¹³ Schelkshorn, *Entgrenzungen*, 291.

¹⁴ Höffner, *Kolonialismus und Evangelium*, 346–347.

¹⁵ María del Carmen Rovira Gaspar, *Francisco de Vitoria. España y América. El poder y el hombre* (San Ángel: Mexico, 2004), 114–119.

¹⁶ Heinz-Gerhard Justenhoven, *Francisco de Vitoria zu Krieg und Frieden* (Köln: Bachem, 1991), 63.

¹⁷ António Truyol y Serra, *Die Grundsätze des Staats- und Völkerrechts bei Francisco de Vitoria* (Zürich: Thomas-Verlag, 1947), 94.

¹⁸ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 81, 113.

¹⁹ For example, it has been argued that Just War Theory often serves instrumentally to uphold merely the appearance of morality, while in fact masking underlying imperialist ambitions (Anghie, “Francisco de Vitoria and the Colonial Origins of International Law”, *Social & Legal Studies* 5/3 (1996): 321–336).

²⁰ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 267.

²¹ Vitoria, *On the Law of War*, §1.1, 296.

It is a mark of utter monstrosity to seek out and rejoice in causes which lead to nothing but death and persecution of our fellow-men, whom God created, and for whom Christ suffered death. The prince should only accede to the necessity of war when he is dragged reluctantly but inevitably into it.²²

While not rejecting the prohibition of violence, he frames war as a sin against divine law.²³ Vitoria does not interpret this prohibition in the strictest sense. Drawing on Christian values such as charity, and by portraying war as a last resort available to a prince, he derives an exception to the ban on violence and permits the use of force under very strict conditions.

A second challenge Vitoria encounters in justifying violence lies in the fact that, within the exception-based framework, self-defence is generally recognised as the sole just cause for war. Consequently, only defensive wars would qualify as just. How, then, does Vitoria respond to this problem? He distinguishes between defensive and offensive wars: defensive wars are a response to an attack, while offensive wars initiate aggression. Defensive wars can be a potentially just reaction to injustice, since it is permissible to resist violence with violence.²⁴ Offensive wars, however, often serve the aggressor's self-interest,²⁵ seeking glory or territorial gain, and are unjust.²⁶ But when a ruler wages war to right a prior injustice and with the aim to restore peace,²⁷ that remains an offensive war, which may be waged for a good cause. Vitoria thus concludes that Christians may undertake both defensive and offensive wars,²⁸ provided that offensive wars are redressing an injustice.²⁹

Vitoria appears to strike a middle ground between an absolute renunciation of violence and a realist view that wars may be waged in a people's interest by placing clear limits on warfare: ordinarily, only defensive wars are legitimate. Yet, under exceptionally severe circumstances and subject to stringent conditions, even offensive wars can be justified. Reasons alone do not make a war just; several conditions posit normative grounds that make a war just.³⁰

²² Vitoria, *On the Law of War*, §60, 327.

²³ Vitoria, *De temperantia*, 7; VO II, 353.

²⁴ Vitoria, *De iure belli*, 1,2; VO II, 547.

²⁵ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 88.

²⁶ Vitoria, *De iure belli*, 3,2-3; VO II, 557-559.

²⁷ Vitoria, *De iure belli*, 1,2; VO II, 547.

²⁸ Francisco de Vitoria, "De bello" in *Kann Krieg erlaubt sein? Eine Quellensammlung zur politischen Ethik der Spanischen Spätscholastik*, translated by U. Horst, edited by H.G. Justenhoven and J. Stüben (Stuttgart: Kohlhammer, 2006), 79.

²⁹ Vitoria, *De iure belli*, 3,4; VO II, 559.

³⁰ Fabre suggests distinguishing between varying degrees of the fulfillment of Just War criteria: a restrictive interpretation requires that all conditions be met, whereas a permissive interpretation demands that only the most crucial ones are satisfied. See Cécile Fabre, *Cosmopolitan Peace* (Oxford: Oxford University Press, 2016), 13-14.

2.1. *The League of Nations During Times of War*

Humanitarian interventions are matters of martial law; closely tied to international law. This chapter will therefore examine in greater detail what international law entails and what role Vitoria's concept of a league of nations (*totus orbis*) plays within martial law. First, I will outline the fundamentals of Vitoria's notion of international law; then, I will explore its role regarding violations of that law.

A fundamental concept in Vitoria is the *totus orbis*, developed in his lecture *De potestate civili*³¹ and applied within his martial law. It is similar to a league of nations, but a better description would be a *natural community* that systematically includes all peoples, Spaniards and Non-Spaniards, thus, indigenous peoples as well.³² According to Vitoria, at the very beginning of human history, goods, land, seas, and natural resources were held in common with peace and security being the most important common goods.³³ Only with the emergence of private property did inequalities, political structures, and distinct commonwealths arise.³⁴ Yet these later differences never stripped any people of their original rights as members of the *totus orbis*.³⁵ Although this primordial unity is no longer apparent in the political structures of the sixteenth century, it nevertheless endures as a legal reality. Under their common origin in the Creation, all peoples remain equal and continue to form a legal community, united by common natural law.³⁶ The *totus orbis* is non-hierarchical, global, and bound by law and history, rather than a shared religion.³⁷

Vitoria assumes an “essential equality of human beings based on their community of nature and destiny”.³⁸ Human reason is the basic prerequisite of natural law—it applies

³¹ Francisco de Vitoria, “On Civil Power”, in *Political Writings*, edited by A. Pagden and J. Lawrance (Cambridge: Cambridge University Press, 1991), 1-44, abbreviated as *On Civil Power*; Francisco de Vitoria, “*De potestate civili*. Über die politische Gewalt”, in *Vorlesungen I. Völkerrecht, Politik, Kirche = Relectiones*. Translated by U. Horst, edited by H.G. Justenhoven and J. Stüben (Stuttgart/Berlin/Köln: Kohlhammer, 1995), 114-161, abbreviated as *De potestate civili*.

³² Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 281; Vitoria, *De Indis*, I,3,1; VO II, 461.

³³ Horst, “Leben und Werke Francisco de Vitorias”, 90; See the sixth and seventh proof on the purpose of war being peace and security, the common goods of the whole world. Vitoria, *On the Law of War*, §1, 298.

³⁴ Horst, “Leben und Werke Francisco de Vitorias”, 89f.

³⁵ Vitoria bases the first legal title, the right of free entry, in *De Indis* on this idea. He explains that Spanish rule in Latin America was based on the natural community of communication and was thus legitimate. Vitoria, *De Indis*, I,3,1; VO II, 461.

³⁶ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 62.

³⁷ Kirstin Bunge, “Das Verhältnis von universaler Rechtsgemeinschaft und partikularen politischen Gemeinwesen. Zum Verständnis des *totus orbis* bei Francisco de Vitoria”, in *Die Normativität Des Rechts Bei Francisco De Vitoria. Politische Philosophie und Rechtstheorie des Mittelalters und der Neuzeit*, edited by K. Bunge, A. Spindler and A. Wagner (Stuttgart: Frommann-holzboog, 2011), 202.

³⁸ Vitoria, *De potestate civili*, 5, 125-127.

where human beings possess reason.³⁹ Vitoria presupposes that every peoples can derive binding norms of international law through common, natural reason: “What natural reason establishes among all peoples is called international law.”⁴⁰ It follows that indigenous peoples are legally equal to Spaniards because of their common human nature.⁴¹

The *totus orbis* is not only the natural order of society, but is sometimes interpreted as a legal institution with decision-making power.⁴² It functions like a global legal institution; it can pass laws, has the power of command, and the capacity to act.⁴³ Although not understood as a global governance, this league of nations does become its own legislator when committing itself to peace and a common universal law. It is not necessary for all people to agree to the law.⁴⁴ The majority's consent is sufficient for binding decisions.⁴⁵

The *totus orbis* seeks to restore the original state of human history, in which peace and equality prevailed among all peoples. How does Vitoria ensure that every commonwealth is invested in this primordial peace? He endows the *totus orbis* with a restorative authority, empowering the universal community to punish violations of international law: A violation of international law endangers the order of the community of nations.⁴⁶ Therefore, punishing the communities that have previously violated international law may be legitimate to prevent further injustice, protect the *totus orbis*, retaliate for the crimes committed, and restore global peace.⁴⁷ Punishment also serves to deter further violations of international law. Martial law comes into play when international law is violated. The denial of international rights thus provides a reason for

³⁹ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 65; Jeff L. Holzgrefe, “The Humanitarian Intervention Debate” in *Humanitarian Intervention. Ethical, Legal, and Political Dilemmas*, edited by J. L. Holzgrefe and R. O. Keohane (Cambridge: Cambridge University Press, 2003), 26.

⁴⁰ Vitoria, *De Indis*, I,3,1; VO II, 461.

⁴¹ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 60.

⁴² Norbert Campagna, *Francisco de Vitoria: Leben und Werk. Zur Kompetenz der Theologie in politischen und juristischen Fragen* (Münster: Lit, 2010), 60.

⁴³ Josef Soder, *Die Idee der Völkergemeinschaft. Francisco de Vitoria und die philosophischen Grundlagen des Völkerrechts* (Frankfurt am Main: Metzner, 1955), 55-56.

⁴⁴ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 67; Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 281.

⁴⁵ Vitoria initially discusses the theoretical force of majority consent in *De potestate civili* (see Vitoria, *On Civil Power*, §14, 30) and later applies this principle in *De Indis*, where he tests the validity of such laws in relation to the whole world: “But even on the occasions when it is not derived from natural law, the consent of the greater part of the world is enough to make it binding, especially when it is the common good of all men”, *On the American Indians*, 3.1, §4, 281.

⁴⁶ The natural community of nations is not a contractual community. It persists in times of war as well as in times of peace. Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 108; Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 286; Vitoria, *De Indis*, I,3,3; VO II, 467.

⁴⁷ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 72.

war.⁴⁸ According to international law, if A are entitled to free entry, in this case into the territories of B, and A is denied this right, then B is in violation of international law. A single violation may not be a sufficient reason for war, as a reasonable prince should not see war as a proportionate response. But if A is continuously treated unjustly, despite their amiability, they have the right to subjugate B. A, under martial law, is then allowed to apply violence. Vitoria does not place any restrictions on the types of violence permitted—permissible means extend as far as the occupation of cities, having the right to domination, captivity, and robbery.⁴⁹ To restore the original peace of the *totus orbis*, B must be punished for their wrongs; however, under Just War conditions.

2.2. Just War Conditions

Vitoria formulates strict conditions governing the *ius ad bellum*—the justification, conditions, and reasons to launch a war: several preconditions are to be examined to test the legitimacy of violence:⁵⁰ Firstly, just cause and right intention deal with the question what justifies going to war. Secondly, the legitimate authority condition questions who may legally wage war. Thirdly, the last resort and proportionality condition asks how to decide whether to launch a war and which kind of violence is permissible.

2.2.1. Just Cause and Right Intention

In the Just War doctrine before Vitoria, peace was an unconditional prerequisite for war. War could only be waged with the right intention—to create peace. At first glance, Vitoria agrees with Plato and Aristotle regarding their view of the goal of war when he says that peace is the goal of every war.⁵¹ On closer examination however, Vitoria takes the concept of peace further, as he strives towards a global peace. The right intention of applying violence is then the preservation of the original peace between all commonwealths of the *totus orbis*.

In the third part of *De Indis*, Vitoria deals with the just causes of war. He lists three reasons that do *not* constitute just causes for war. In the next step, Vitoria emphasises that only one reason justifies war—a received injustice:

⁴⁸ Höffner, *Kolonialismus und Evangelium*, 411.

⁴⁹ Vitoria, *De Indis*, I,3,5-6; VO II, 469-471.

⁵⁰ From a contemporary perspective, additional criteria such as a reasonable chance of success and public declaration of war are part of *ius ad bellum*, see Helen Frowe, *The Ethics of War and Peace. An Introduction* (New York: Routledge, 2015), 52. A public declaration of war reinforces *ultima ratio* by providing a final warning and an opportunity for peaceful resolution. The success condition aims to ensure justified and swift interventions; without it, action against a stronger power would needlessly endanger troops. Vitoria omits this condition, likely presuming Spain's military dominance over indigenous peoples.

⁵¹ Vitoria, *De iure belli*, I,2; VO II, 547.

First, *difference of religion cannot be a just cause*. [...] Second, *enlargement of empire cannot be a cause of just war*. [...] Third, *the personal glory of convenience of the prince is not a cause of just war*. [...] Forth, *the sole and only just cause for waging war is when harm has been inflicted*.⁵²

He therefore only legitimises defensive wars as possible just wars. As sketched earlier, humanitarian intervention stands in tension with the just causes for war. Under a narrow interpretation, it could not qualify as a just war, as it does not fulfil any of the recognised just causes. Under Vitoria's framework, offensive wars in forms of humanitarian interventions are permissible if they serve either to deter enemies from doing wrong or to punish wrongs done by enemies.⁵³ In other words, if another commonwealth has committed a wrong, it may be punished for it in the interest of the common good, so that global peace can be restored.⁵⁴

2.2.2. Legitimate Authority

Who has the legitimate authority to decide on entering a war? The *totus orbis*, as explained earlier, possesses a punitive power through which it can take action against violations of international law. However, due to the lack of a world monarch,⁵⁵ there is no institution to protect the universal common good. Therefore, princes are given the power to protect the community of nations—a punitive power of self-defence, by which they can ward off injustice, deter, and punish wrongdoers:⁵⁶

If, for example, one city attacks another in the same kingdom, or if a duke attacks another duke, and if the king fails, through negligence or timidity, to avenge the damage done, then the injured party, city or duke, may not only defend itself, but may also carry the war into its attacker's territory and teach its enemies a lesson, even killing the wrongdoers.⁵⁷

Legitimate authorities, thus the political rulers, have the task of restoring the order of nations.⁵⁸ The decision to initiate a war and in which manner war is to be waged are subject to political power.⁵⁹ Secular rulers, e.g., princes, dukes, and kings, bear the

⁵² Vitoria, *On the Law of War*, §10, 3,1; 302-303.

⁵³ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 36.

⁵⁴ Vitoria, *De iure belli*, 1,2, VO II, 547.

⁵⁵ Since interventions are a matter of international law, the Pope is not listed as the world monarch, as he only has ecclesiastical and not secular power. Francisco de Vitoria, "I On the Power of the Church", in *Political Writings*, edited by A. Pagden and J. Lawrance (Cambridge: Cambridge University Press, 1991), 1.1, §3, 50.

⁵⁶ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 73.

⁵⁷ Vitoria, *On the Law of War*, §9, 302.

⁵⁸ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 71.

⁵⁹ Vitoria, *De iure belli*, 2,3; VO II, 551-553.

responsibility for waging war.⁶⁰ They have as their task both the defence against external attacks and the fight against crime.⁶¹

Rulers have to be the ones declaring war, and are allowed to use force if the intention of the fight is based on defence and the fight against crime.⁶² They may wage defensive wars and also have the power to declare aggressive wars that fight injustice,⁶³ but at the same time have the responsibility to maintain moral conditions: “Since princes have the authority to wage war, they should strive above all to avoid provocations and causes of war.”⁶⁴

Before making decisions about war, sovereigns are expected to consult those with expertise in moral matters. Vitoria states that priests or the church, as experts of morality, are the legitimate authority to decide on the legitimacy of a war: “one must consult reliable and wise men who can speak with freedom and without anger or hate or greed.”⁶⁵ Reasons for war must be examined by scholars for their justice and appropriateness: “First, in every case of doubt there is a duty to consult with those competent to pronounce upon it, since otherwise there can be no security of conscience, regardless of whether the action concerned is really lawful or unlawful.”⁶⁶ It is upon the theologians to determine the legitimacy of war.

2.2.3. Last Resort and Proportionality

Vitoria stresses that diligence is indispensable in moral matters: the reasons for war and justice must be scrupulously examined, because a mistake in matters of war is unforgivable.⁶⁷ First of all, one must try to solve conflicts with words before taking action.⁶⁸ Punishing wrongdoers by all means is not justified. Vitoria calls for a proper balance between the wrong and the punitive damage caused by war. The use of violence must thus be a last resort.⁶⁹ Not all violations of international law must be punished. The last resort condition includes that one must invoke the possibility of enduring the injustice committed and not going to war: “No war is just if it is established that it is waged

⁶⁰ Vitoria, *De bello*, 1,3, 81.

⁶¹ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 31.

⁶² Truyol y Serra, *Die Grundsätze des Staats- und Völkerrechts bei Francisco de Vitoria*, 34-35.

⁶³ Vitoria, *De iure belli*, 2,3; VO II, 553.

⁶⁴ Vitoria, *On the Law of War*, §60.1, 327.

⁶⁵ Vitoria, *On the Law of War*, §20.1-2, 306.

⁶⁶ Vitoria, *On the American Indians*, Intro §1, 237.

⁶⁷ Although not stated explicitly, he likely has the Last Judgment in mind, argument see Truyol y Serra, *Die Grundsätze des Staats- und Völkerrechts bei Francisco de Vitoria*, 78.

⁶⁸ Vitoria, *De iure belli*, 4,6; VO II, 567.

⁶⁹ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 86.

with greater harm than good and benefit to the community, however many legal titles and grounds for just war there may otherwise be.”⁷⁰

The last resort condition is present amongst other in *De iure belli*, where Vitoria states the example that force may only be used in the case of strong resistance under certain conditions, for example, after peaceful exertion of the natural right of communication, trade, or mission has proved fruitless—as an *ultima ratio*:⁷¹ “if one of the two claimants is willing to negotiate a division of the territory or compensation for part of it, then the other prince must accept the negotiation, even when he is stronger”⁷² This leaves a last option to reconcile by peaceful means before war is considered as a last resort.⁷³

Another condition linked to the last resort is proportionality—violence must be proportional to the degree of the injustice done.⁷⁴ It is not permitted to extend war arbitrarily. The severity of the injustice suffered and the expected war damage must be in proportion to each other.⁷⁵ Actions must be weighed against each other, by the consequentialist lesser evil principle: waging war should be the option where one achieves a lesser evil than if no war were waged. The use of force would fulfil the condition if the prince sees the necessity of averting greater damage. If, for example, the devastation of cities and the killing of people were necessary to regain a single city, the prince would be obliged to abstain from war by the proportionality condition, because the means are not justified or proportionate to achieving the goal of reimplementing global peace.⁷⁶ Or, another example: A must not immediately take up arms as soon as entering B’s territory, even if then threatened as an enemy. First, reason-based, peaceful resolution must be sought, through, for example, a trade. If B prevents A from exercising their legitimate universal rights, A has a just cause for starting war.⁷⁷ In summary, following the proportionality and last resort conditions, war must be the last necessary option to preserve the common good.

3. The Right to Intervene

In this chapter, I will first outline what Vitoria means by humanitarian intervention⁷⁸ and how he derives its moral and legal foundations from natural law. Then I will show

⁷⁰ Vitoria, *De potestate civili*, 13; VO I, 139.

⁷¹ Horst, “Leben und Werke Francisco de Vitorias”, 92.

⁷² Vitoria, *On the law of war*, §28, 310.

⁷³ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 94.

⁷⁴ Vitoria, *De iure belli*, 3,5; VO II, 561.

⁷⁵ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 87.

⁷⁶ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 93.

⁷⁷ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 283-284; Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 104.

⁷⁸ While the scope of this article remains within the idea-historical conception of Vitoria’s notion of intervention, several philosophers have taken the next step by critically engaging with his thought in light of contemporary challenges: María Beneyto: *Empire, Humanism and Rights*:

how he integrates humanitarian intervention into his vision of a universal community, demonstrating how the right to protect innocents follows from the *totus orbis*.

3.1. Humanitarian Intervention

Vitoria in *De Indis* states two distinct forms of humanitarian intervention: firstly, direct interventions and secondly a more protective form of intervention. The first type is envisioned as a temporary measure designed to save lives and addresses urgent threats. The second type goes beyond the immediate relief of suffering by seeking to help indigenous peoples establish stable political institutions and a lasting framework for self-government. It aims to reshape the political order itself, making it a more enduring undertaking. Both target the polity of indigenous peoples, their customs and religious rites but not their religion per se, as I will explain in this chapter.

Vitoria lays the foundation for humanitarian intervention by defining the sins against nature in his lecture *De temperantia* 1537 – unfaithful sins such as sodomy or extramarital sex⁷⁹. He views these not sufficient grounds for war against indigenous peoples⁸⁰, because, as explained before,⁸¹ not all sins under the proportionality condition are sufficient to start a war. Then, he classifies stronger sins, referring to practices that put innocent people in danger, and mentions specifically the practice of cannibalism and human sacrifice⁸². He already addresses the idea that cannibalism could constitute a just cause for war in *De temperantia*, a point he would later revisit in *De Indis* in 1539:

Can the Christian rulers, by virtue of their position, make war on people who have the sacrilegious custom of eating meat of his kind, or of offering nefarious sacrifices of this kind, as do these barbarians who were encountered in the province of Yucatán.⁸³

Vitoria assumes that eating human flesh is not only harmful to the development of a people, but specifically a violation of an individual's right, which should not be done even in extreme need.⁸⁴ It not only disturbs the Christian idea of repose of the dead and the right to burial, but also violates the natural equality of mankind among themselves.⁸⁵ He thus sees cannibalism as contrary to natural law.⁸⁶

Collected Essays on Francisco de Vitoria (Cham: Springer, 2022); Peter Hilpold, *The Responsibility to Protect (R2P): A New Paradigm of International Law?* (Leiden: Brill-Nijhoff, 2013); Stefan Knauß, *Von der Conquista zur Responsibility while Protecting: die Debatte zur humanitär gerechtfertigten Kriegsführung aus lateinamerikanischer Perspektive* (Frankfurt am Main: Peter Lang, 2016).

⁷⁹ Vitoria, *De temperantia*, 6; VO II, 341.

⁸⁰ Höffner, *Kolonialismus und Evangelium*, 290-291.

⁸¹ Bellamy, "Francisco de Vitoria (1492-1546)", 80.

⁸² Vitoria, *De temperantia*, 5, VO II; 337.

⁸³ Own translation, Vitoria, *De temperantia* 7; VO II, 353.

⁸⁴ Vitoria, *De temperantia* 7; VO II, 351.

⁸⁵ Vitoria, *De temperantia* 5; VO II, 339.

⁸⁶ Vitoria, *De temperantia* 6; VO II, 341.

In *De Indis*, Vitoria justifies intervention in rites such as cannibalism and human sacrifice based on natural law:

... this next title is also seriously put forward by those who say that,⁸⁷ although the barbarians may not be invaded because of their unbelief or their refusal to accept the Christian faith, war may nevertheless be declared on them for their mortal sins, which according to the proponents of this argument are manifold, and very serious to boot. [...] But others, such as cannibalism, incest with mothers and sisters, or sodomy, are [sins] against nature; and for these sins they [the barbarians] may be invaded and compelled to give them up.⁸⁸

Based on this concern, he states:

... in lawful defence of the innocent from unjust death, even without the pope's authority, the Spaniards may prohibit the barbarians from practising any nefarious custom or rite. [...] This applied not only to the actual moment they are dragged to death; they may also force the barbarians to give up such rites altogether.⁸⁹

Vitoria emphasises in this argument that indigenous rites and customs, more specifically human sacrifice and cannibalism, may be prevented to save human lives. Both are violations of natural law because the natural right to life is violated.⁹⁰ It serves to save innocent people from tyrannical deaths and does not constitute a punishment of indigenous peoples.⁹¹ However, it may also be carried out against the will of the potential victims.⁹² Vitoria advocates for humanitarian intervention if indigenous rulers fail to implement basic natural rights. In these cases, intervention to help the innocent is appropriate.⁹³

⁸⁷ By using the phrase “those who say,” Vitoria signals that the described customs are based on second-hand accounts rather than direct observation. The European narrative here reflects a selective and often distorted account of the facts. The historical reports of Spanish conquistadors such as Christoph Columbus and Hernán Cortés recount Aztec sacrificial practices, thereby reinforcing terrifying images of the alleged savagery of indigenous peoples. These accounts exhibit a considerable degree of imaginative exaggeration and contributed to a distorted perception of foreign cultures within Spain (Heidi Peter-Röcher, *Kannibalismus in der prähistorischen Forschung: Studien zu einer paradigmatischen Deutung und ihren Grundlagen* (Bonn: Habelt, 1994), 187). Vitoria relied on such reports in his writings. As he never visited Latin America himself, his moral assessments were based entirely on written testimonies from conquistadors and members of the religious orders.

⁸⁸ Vitoria, *De Indis*, I,3,21; VO II, 449.

⁸⁹ Vitoria, *On the American Indians*, §15, 288.

⁹⁰ Bunge, “Das Verhältnis von universaler Rechtsgemeinschaft und partikularen politischen Gemeinwesen. Zum Verständnis des totus orbis bei Francisco de Vitoria”, 220.

⁹¹ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 290.

⁹² Vitoria, *De Indis*, II,8; VO II, 503.

⁹³ Vitoria, *De Indis*, II, 2,2; VO II, 493.

He also elaborates on the more radical, protective type of intervention in the fifth title as well:

If there is no other means of putting an end to these sacrilegious rites, their masters may be changed and new princes set up. [...] It makes no difference that all the barbarians consent to these kinds of rites and sacrifices, or that they refuse to accept the Spaniards as their liberators in the matter.⁹⁴

Here, he states that out of charity, Spaniards must help indigenous peoples build a well-structured commonwealth in political matters.⁹⁵ Spaniards must help them in political matters so that they can build a functioning polity without rites and sacrifices and reach political maturity.⁹⁶ Vitoria sees the responsibility of civilised commonwealths to use their knowledge to teach political manners for the benefit of the ‘uneducated’.⁹⁷ Muldoon notes that Vitoria was faced with the challenge of justifying the civilisation of non-Christians. He describes the title as permission to move inhabitants of another territory from a primitive to a civilised lifestyle. Intervention, he notes, also manifests itself in helping to build political structures. It is the moral responsibility of Christians to civilise the indigenous social order⁹⁸ for the benefit of the inhabitants.⁹⁹

3.2. *Humanitarian Intervention – A Demand of the Totus Orbis*

Vitoria derives this responsibility from natural law, specifically as a demand of the *totus orbis*. While Christian values such as love of one's neighbour and missionary right could form the motivation to intervene, they rather play a subordinate role in his argumentation, as he attempts to justify his theory of war outside of his Christian doctrine, in terms of natural law.¹⁰⁰

Following Vitoria, barbarism and cannibalism are not phenomena which only appear in indigenous cultures: “For it is reported that in the region of the Black Sea and the Danube there were savage people who delighted in meals made of human flesh.”¹⁰¹ Because humanitarian intervention is claimed as a natural right that derives from *totus orbis*, it is a right of both sides. Just as the Spaniards can prosecute barbarity, the

⁹⁴ Vitoria, *On the American Indians*, §15, 288.

⁹⁵ Truyol y Serra, *Die Grundsätze des Staats- und Völkerrechts bei Francisco de Vitoria*, 66; Vitoria, *De Indis*, I,3,17; VO II, 485; Horst, “Leben und Werke Francisco de Vitorias”, 92.

⁹⁶ Vitoria, *De Indis*, I,3,17; VO II, 485.

⁹⁷ Muldoon, “Francisco de Vitoria and Humanitarian Intervention”, 132-136.

⁹⁸ Here, it was seemingly not taken into account that some indigenous societies had very complex communities.

⁹⁹ Muldoon, “Francisco de Vitoria and Humanitarian Intervention”, 133.

¹⁰⁰ Justenhoven, *Francisco de Vitoria zu Krieg und Frieden*, 177.

¹⁰¹ With reference to examples such as the Sidonians along the Danube, the Indian Massagetae and indigenous peoples in Latin America, the latter referred to by Vitoria as ‘barbarians’. Vitoria, *De temperantia* 5; VO II, 339.

indigenous peoples are (theoretically) equally allowed to prosecute the Christian princes if they violate natural law.¹⁰²

The fifth legitimate legal title derives its right of intervention from natural law: “To sacrifice men to God, as the barbarians do, is forbidden by divine as well as by natural law.”¹⁰³ Because of the common human nature, other peoples possess a responsibility towards the innocent. Since human sacrifice and cannibalism are, following Vitoria, tyrannical customs and therefore violations deriving from natural law,¹⁰⁴ someone is permitted to intervene in violations of natural law, to come to the aid of all innocent people. Interventions pursue the goal of reintegrating enemies into the *totus orbis*.¹⁰⁵ While following the principle of restorative justice, an intervention does not serve as a punishment as war does, but aims to serve to save the innocent in urgent matters.

Humanitarian Interventions do not serve to punish people for their religious practices, because wars whose reasons are based on differences in belief have been explicitly claimed unjust.¹⁰⁶ They do not serve to prevent indigenous peoples from their rites per se or to stop their religious customs in the first place.¹⁰⁷ However, although human sacrifice and cannibalism could be religious practices, Spaniards must not start a war for religious reasons. In doing so, Vitoria would be contradicting himself, as he insists earlier that war based on differences of religion is not a just cause for war.¹⁰⁸ Intervention does not punish the practice of religion, but “the barbarians for sins against nature”.¹⁰⁹

While religion is not a just cause for war, committed wrongs could be considered part of the indigenous religion and thus “proof of their godlessness”.¹¹⁰ While the cause

¹⁰² Carmen Rovira Gaspar, *Francisco de Vitoria. España y América. El poder y el hombre*, 207.

¹⁰³ Vitoria, *De temperantia* 7; VO II, 353.

¹⁰⁴ From Vitoria’s perspective, interventions in religious and cultural practices are justified by universal natural law, a claim that can be challenged from a particularist standpoint. Practices he condemns as violent or barbaric may constitute meaningful elements of specific cultures, revealing how he applies ostensibly universal norms through an external Christian lens. Anghie criticizes Vitoria for legitimizing humanitarian interventions that punish cultural difference. While this reading overlooks key aspects of Vitoria’s reasoning, it nonetheless highlights the close link between natural law and Christianity in his account of universal law. Cavallar (2008) and Fitzmaurice (2017) pursue similar aims of viewing Vitoria as either a cosmopolitan or as an accomplice to colonialism, but offer more nuanced analyses. See Antony Anghie, “Francisco de Vitoria and the Colonial Origins of International Law”, 321-336; Georg Cavallar, “Vitoria, Grotius, Pufendorf, Wolff and Vattel: Accomplices of European Colonialism and Exploitation or True Cosmopolitans?”, *Journal of the History of International Law* 10/2 (2008): 181-209; Andrew Fitzmaurice, “The Problem of Eurocentrism in the Thought of Francisco de Vitoria”, 77-93.

¹⁰⁵ Muldoon, “Francisco de Vitoria and Humanitarian Intervention”, 135-137.

¹⁰⁶ Vitoria, *On the Law of War*, §10, 3,1; 302-303.

¹⁰⁷ Vitoria, *De Indis*, I,3,10; VO II, 475.

¹⁰⁸ Vitoria, *De iure belli*, 3,1; VO II, 557.

¹⁰⁹ Vitoria, *De Indis*, I,3,14; VO II, 479.

¹¹⁰ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 292.

cannot, the motives of the interveners may well be religious.¹¹¹ Charity and fraternal correction, for example, are religious motives for Christians to intervene to end human sacrifice.¹¹² Vitoria illustrates with reference to Prov 24:11: “deliver them that are drawn unto death, and forbear not to deliver those that are ready to be slain.”¹¹³ He urges moral action by referring to Christian values like charity, since every human being has a responsibility for their fellow human beings. While the rescue of the innocent is indeed derived from a religious-moral responsibility, intervention serves the goal to protect the innocent and is not based on religion, but on natural law solidarity.¹¹⁴

3.3. Humanitarian Intervention – A Special Case of Just War

Humanitarian interventions, while subject to most Just War criteria, represent a special case and therefore require a slightly different treatment to Just Wars. What, then, are the key similarities and differences between humanitarian interventions and Just Wars?

To Vitoria, wars are military actions with the primary purpose of punishing the perpetrators of injustice.¹¹⁵ Their primary purpose is to punish those who have committed prior injustices. Interventions, by contrast, follow a different logic. Rather than retribution, they are conceived as forms of guardianship rooted in moral concerns. Interventions are urgent matters in life-or-death situations, aiming to protect individuals from grave wrongdoing. While humanitarian interventions interfere in harmful practices; more radical interventions succeed by taking over local leadership structures.¹¹⁶ Both rights to intervene are grounded in moral law rather than in a strict obligation; they constitute a permissive, not a mandatory, norm. Nonetheless, because interventions rely on the use of force, they raise similar ethical concerns regarding the legitimacy, proportionality, and consequences of violent action. Therefore, even if their intent is protective, interventions must follow the same moral standards as any other use of force.

An important difference between humanitarian interventions and defensive just wars lies in the concept of legitimate authority. In the case of humanitarian intervention, this requirement becomes more flexible, as the urgency of protecting innocent lives outweighs the formal procedures required in conventional warfare. In interventions, every human being bears a moral responsibility to act. In fact, the fifth legitimate legal title marks an exception to the general rules of war: when it comes to rescuing the

¹¹¹ Vitoria, *De Indis*, I,3,14; VO II, 479.

¹¹² Vitoria, *De Indis*, I,3,8; VO II, 473-475.

¹¹³ Vitoria, *On the American Indians*, §15, 288.

¹¹⁴ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 289-291.

¹¹⁵ Vitoria, *De iure belli*, 1,2; VO II, 547.

¹¹⁶ Vitoria, *De Indis*, I,3,8; VO II, 473.

innocent, intervention does not have to wait for the authorisation of a sovereign.¹¹⁷ Rather, it is grounded in the conscience of the intervener. As Vitoria writes, “anyone, and especially princes, may defend them from such tyranny and oppression.”¹¹⁸ With this provision, Vitoria expands the responsibility to intervene beyond rulers to all individuals who recognise a moral right to act in the face of violations of natural law. Another difference concerns whose rights are at stake: interventions are grounded in individual rights to life, whereas justifications for war rest on collective reasoning. Just wars address the wrongs of an entire people, leading to the punishment of the collective rather than of individuals.¹¹⁹

A most significant similarity between just wars and humanitarian interventions lies in their function as responses to injustice. Vitoria famously stated that “there is only one reason for a just war, namely injustice received”.¹²⁰ The same logic applies to humanitarian interventions: they are triggered by severe violations of law and morality. In both cases, the use of force is only justified when a prior injustice has occurred. Preventive or pre-emptive strikes, in the absence of a concrete wrong suffered, cannot be legitimised within Vitoria’s framework.¹²¹ Vitoria emphasises, however, that while following the principle of restorative justice, unlike defensive wars, the right to intervene is not intended as a form of punishment against indigenous peoples.¹²² Wars and other violent means are, in his view, inappropriate tools for deterring people from sin or for encouraging religious conversion.¹²³ The aim of intervention is to protect and save the innocent rather than to penalize wrongdoing. If the use of force becomes necessary in such exceptional cases, violence may be tolerated, but only as short-term means of safeguarding those who are vulnerable.¹²⁴

An important feature of humanitarian intervention is its character of exceptionalism and urgency. It is important that intervention remain exceptional and limited to only serious violations of law, because intervening in a foreign political matter is also a legal violation. The principles of natural law would have to have been seriously abused for violent interventions to be proportionate, e.g., the case of a massive injustice such as mass

¹¹⁷ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 290.

¹¹⁸ Vitoria, *On the American Indians*, §15, 288.

¹¹⁹ Muldoon, “Francisco de Vitoria and Humanitarian Intervention”, 133-140 examines this argument in greater detail.

¹²⁰ Vitoria, *De iure belli*, 3,4; VO II, 559.

¹²¹ In *De iure belli*, Vitoria considers the example of Saracen children: though harmless and innocent, they will likely grow up to be soldiers and thus future enemies. He nonetheless concludes: “It is quite unacceptable that a person should be killed for a sin he has yet to commit”, *On the Law of War*, §38, 316.

¹²² Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 290.

¹²³ Vitoria, *De temperantia* 7; VO II, 353-355.

¹²⁴ Carmen Rovira Gaspar, *Francisco de Vitoria. España y América. El poder y el hombre*, 110.

killings.¹²⁵ Urgent responses must serve the only goal of saving innocent people.¹²⁶ They adopt a narrower understanding of moral laws such as the *proportionality* and *ultima ratio* condition. In line with these rules, they are at first not permitted to kill in enforcing the commandment.¹²⁷ Only “if there is no other means of putting an end to these sacrilegious rites”¹²⁸ may the interveners escalate: they could then employ greater force, wage war, or even proceed to the more radical form of intervention by establishing new political authorities.

4. Conclusion

In the legitimisation discourse, defensive war already constitutes an exception to the Christian imperative of nonviolence. Humanitarian interventions go even further, as they are by nature offensive in character. While Vitoria generally rejects offensive wars, he makes a notable exception for humanitarian interventions under strict conditions. Rather than asking “When may I employ force?”, Vitoria would reframe the question as “Under what circumstances may one make exceptions to the prohibition on force?”. Vitoria introduces this subtle but important shift when he discusses the second moral problem: humanitarian intervention as a morally exceptional case for offensive wars. My concern has been with Vitoria’s account of an offensive, yet morally justified warfare and whether this specific type of offensive war can qualify as an exceptional case of just war.

In summary, the fifth legal title from *De Indis* states that Spaniards may use military force, if necessary, to save innocent people from tyrannical rites such as human sacrifice and cannibalism. Humanitarian intervention is only permitted if almost all the conditions for a just war are met, but leaves room at the same time for a different legitimate authority due to its urgency. Interventions are also bound by Just War conditions. In order for interventions to be just, they must: firstly, have a just cause for entering war (*iusta causa*), secondly, be conducted by a legitimate authority (*legitima auctoritas*), and thirdly, force must only be the last resort (*ultima ratio*) after peace efforts have already been made. Additionally, they must also pursue the goal of restoring peace.

What makes humanitarian intervention a special case of war? I first argued that humanitarian intervention is a double exception: first, an exception from nonviolence, then an exception from the just causes for war, which usually only allow defensive wars. Secondly, I showed that humanitarian intervention rests on natural rights, not on punishments for religious rites. The *totus orbis* principle of restorative justice is different in humanitarian interventions because everybody can save innocents without having to wait for force to be legitimised by the right actors. Thirdly, I argued that all other conditions need to be met: last resort, proportionality, *ultima ratio*. What is distinctive

¹²⁵ Truyló y Serra, *Die Grundsätze des Staats- und Völkerrechts bei Francisco de Vitoria*, 67–68.

¹²⁶ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 298.

¹²⁷ Schelkshorn, *Entgrenzungen. Ein europäischer Beitrag zum Diskurs über die Moderne*, 291.

¹²⁸ Vitoria, *On the American Indians*, §15, 288.

about Vitoria's notion of humanitarian intervention is that he does not ground interventions in religious difference but in natural law. The legitimacy of this intervention derives from the broader context of the *totus orbis*, the universal community of peoples, which Vitoria conceptualizes as a foundation for mutual responsibility and shared moral obligation.¹²⁹ This universal framework creates a form of reciprocal legal standing, in which all peoples, regardless of origin, are both subjects and potential guarantors of justice. By extending the principle of solidarity beyond cultural and political boundaries,¹³⁰ Vitoria articulates an early form of global ethics that advocates for saving individuals in need, whether of Hispanic or indigenous origin.

Scholars have argued that Vitoria was among the first thinkers to conceptualize what we now call *humanitarian intervention*.¹³¹ His careful delineation of strict conditions for morally permissible offensive war makes him a valuable precursor of current debates.¹³² Since Vitoria, the ethical discussion surrounding humanitarian intervention has remained relevant. While his concern was with specific indigenous practices such as human sacrifice and cannibalism, contemporary interventions are generally aimed at preventing serious human rights violations and genocide. What remains ethically pressing, then as now, is the question of the scope and limits of moral responsibility. Vitoria's framework allows for offensive war, but limited, short-term humanitarian interventions on a strict moral basis of just war criteria, which must be distinguished from wars of interest or political expediency.

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¹²⁹ Johann Schelkshorn, *Rethinking European Modernity: Reason, Power, and Coloniality in Early Modern Thought* (London: Bloomsbury Academic, 2023), 175-177.

¹³⁰ Joseph Höffner, *Christentum und Menschenwürde* (Paderborn: Ferdinand Schöningh, 2017), 493.

¹³¹ E.g., Muldoon, "Francisco de Vitoria and Humanitarian Intervention", 129.

¹³² See María Martín Gómez (ed.), *El pensamiento vivo de la Escuela de Salamanca. Filosofía y guerra* (Granada: Comares, 2024).