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Henry R. Wagner
with Helen Rand Parish

The New Laws

Bartolomé de las Casas (1474-1566) was a great and controversial figure in New Spain. As a practical reformer he waged a half-century crusade for the rights of the Indians in all of the Americas. His central achievement was the instigation and defense of the New Laws of the Indies, which today are cited frequently by various ethnic movements in the Southwest. The first full-scale modern biography of Casas is The Life and Writings of Bartolomé de las Casas, by Henry R. Wagner with the collaboration of Helen Rand Parish (University of New Mexico Press, 1967), from which the following excerpts are taken.

CASAS' WORK FOR THE INDIANS in 1541-1543 led to the famous New Laws of the Indies. Some modern writers have tried to minimize his influence, but I find it fully substantiated.

As a matter of fact, Fray Bartolomé put on a sensational campaign along three main lines. He denounced the "destruction" of the natives in lurid detail. He apparently charged members of the Council of the Indies with venality. And he presented significant proposals for reform legislation. On the "destruction" and the "remedies," his actual memorials have survived, in abbreviated form, as two of his most celebrated tracts. Furthermore, the events leading to the New Laws are reported by a number of sixteenth- and seventeenth-century chroniclers—Gómara, Herrera, León, etc.—all of whom stress Casas' decisive role.

The most elaborate contemporary account is given by Alonso de Santa Cruz, the royal cosmographer, in his *Crónica del Emperador Carlos V*. Santa Cruz begins with a special chapter About a certain account given by a friar named Bartolomé de las Casas, concerning the destruction that the Christians had wrought on the Indians of the West Indies. And how the Emperor ordered an investigation of the members of his Council of the Indies:

"In this year [of 1542] Fray Bartolomé de las Casas, of the Order of St. Dominic, came to court. He had been more than forty years in the West Indies, from the time that Don Christopher Columbus discovered them (although he was not then a friar). And he informed His Majesty in a comprehensive summary of the great cruelties and destructions which the Christians had visited on the Indians.

"The Emperor, wishing to be more completely informed of those matters, ordered Doctor Guevara and Licentiate Figueroa, of his Council [of Castile], along with the Grand Commander of León [Francisco de los Cobos], to join with the Council of the Indies to hear what the friar had to say. This they did for many days at a fixed hour, till Casas had read to them completely a certain very copious account that he had in writing." And he also informed them orally of many things pertaining to the welfare of the Indians.

At this point Santa Cruz pauses to resume this "very copious account" at considerable length—his sketch corresponds closely to the celebrated *Brevissima relación de la destrucción de las Indias* that Casas himself printed in 1552. Here, in abbreviated form, is the familiar blood-curdling tale of Indian extermination in region after region conquered by the Spaniards. But the chronicler gives details not found in the published version. Thus, in Santa Cruz's summary, the "tyrants" are carefully named—Pedrarias, Cortés, Guzmán, Alvarado, Montejo, Lerma, Heredia, Ortal—showing that Fray Bartolomé charged them personally with crimes before the Emperor's expanded Council, whereas in the printed tract the names are prudently omitted. Again, near the end of the *Brevissima relación*, Casas says he finished it at Valencia on December 8, 1542. That was three weeks after the signing of the New Laws, so the date can refer only to this abridgement written after the oral presentation, and given to young Prince Philip by his tutor. The original memorial, Santa Cruz informs us, was presented at the start of the proceedings in 1542.

"And after Casas had given this relation to the Emperor," Santa Cruz's narrative proceeds, "he also gave his advice about what should be ordered to remedy matters for the future. . . . He advised that all the Indians should be taken away from those Christians who held them under encomiendas, and should be put under His Majesty." Thereby the King would obtain many millions in revenue, and the natives would be well treated and instructed in the faith.

This corresponds precisely to the fundamental Eighth Remedy that Casas himself later printed as another of the 1552 tracts, *Entre los*

remedios. There, Casas described the "eighth" as the essence of all the remedies, without which none of the others would accomplish anything. In brief, it was to put all the Indians under the Crown and abolish the encomienda system of private allotments. Santa Cruz evidently saw the original memorial, for he gives not only this major remedy but a number of minor ones as well: total abolition of Indian slavery; opening of roads for carts, so the Indians would not be loaded as carriers; resettlement of natives from densely to sparsely populated regions; and the erection of fortresses at specified places on the mainland, such as the Río Dulce and the Marañón, Yucatán, and Florida.

In addition, the chronicle continues, Casas and other God-fearing persons charged certain councilors with venality, and Licentiate Figueroa was ordered to conduct a secret judicial inspection of the Council of the Indies.

As a result of all this, the Emperor promulgated the New Laws. Santa Cruz devotes a full chapter to the text of these famous ordinances signed at Barcelona on November 20, 1542. . . .

THE ORIGINAL ORDINANCES

As originally signed on November 20, 1542, these reform ordinances fell far short of Casas' proposals. Even so, they were epoch-making and deserve to be analyzed in some detail.

They began mildly enough, with a series of measures for administrative reform. After laying down some rules for the handling of business by the Council of the Indies, the Emperor then enunciated those for the various audiencias and the rights of appeal from their judgments—instituting new audiencias for Peru and the combined region of Guatemala and Nicaragua. He also ordered the courts and audiencias to be most particular about the good treatment of the Indians and the enforcement of the ordinances to that end. And now, mounting to a crescendo, followed the reform laws dealing with the natives.

First came a flat edict forbidding all taking of Indian slaves in the future. "Furthermore: we order that henceforth, neither by war nor by any other means, even if it be under the guise of rebellion, nor by barter, nor in any other way, shall any Indian whatsoever be made a slave, and we wish them to be treated as vassals of the Crown of Castile, for such they are. No person may use the Indians as *naborías* or *tapias*, nor in any other way against their will." [*Naboría* meant a household servant, and *tapia*, a watchman.] As for existing Indian slaves, the audiencias were to make a swift inquiry: whenever owners could not show a legiti-

mate title, the slaves should be freed, and advocates should be named at royal expense to represent the slaves at the hearings.

Furthermore, *Indians could not be used as carriers*, except in some places where this was unavoidable, and then they had to be paid and not be overloaded nor used against their will. Similarly, about *pearl fishing*, it was ordered that no Indian be taken thereto against his will.

After these preliminaries came the real bombshell—the laws abolishing the encomienda system by slow stages:

For the present, all encomiendas held by officialdom were revoked outright, and these Indians were ordered placed under the Crown at once. Thus, the following were to lose their Indians even though they might beg to keep them and resign their offices: all public officials from the viceroy down, the clergy, monasteries, hospitals, the mint, the treasury, etc., also private encomenderos who held Indians without due title or had mistreated them. Furthermore, in Peru, the “principal persons” involved in the recent rebellion were to be deprived of their Indians forthwith. In New Spain, the excessive encomiendas of certain persons—nine are named particularly—were to be reduced to a moderate size; and from the tribute of the Indians thus removed and placed under the Crown, some support should be paid to the “first conquistadors” without encomiendas.

For the future, all private encomiendas were to be suppressed by a gradual process—no new encomiendas could be created, and all existing ones would escheat to the Crown on the death of their holders. The crucial law was most explicit. “Furthermore: we order that from now on viceroy, governor, or audiencia, discoverer, or any other person can put Indians in encomienda, neither by our royal provision nor by renunciation nor donation, sale nor any other form, nor by vacating title nor inheritance—but when the person holding the said Indians dies, these shall be put under our royal Crown.” [Italics added.] Any surviving widow or children or other heirs could, upon examination and report by the audiencia, be paid a moderate pension, if necessary, from the tribute of the escheated Indians.

All Indians thus put in the Crown must be well treated and instructed in the faith. In appointing their *corregidores* or Spanish superintendents, preference should be given to qualified first discoverers and married colonists:

Following this climax, the ordinances wound up with a sort of final shock wave about explorations.

There was a series of new regulations for expeditions of discovery, with special regard to the treatment and tribute of the Indians: Discoveries could be made only under license of the audiencia, and no slaves could be brought back nor anything taken from the natives except by barter. Religious must go along, and discoverers must report back and start settlements only when authorized. No viceroy or governor could take part in future discoveries. In discoveries now in progress, moderate tribute and personal services of the Indians were to be assessed forthwith, to be turned over to the encomendero where there is one. But Spaniards were expressly forbidden to have power over the Indians or to make any use of them—they must enjoy only the tribute. Those holding contracts for discovery were obliged to conform to all these new ordinances and to suitable instructions from the audiencias.

Lastly, the surviving Indians in Española, Cuba, and Puerto Rico were to be exempted from all tribute and royal or personal services, so that they could rest and multiply.

Casas apparently was not satisfied with the New Laws as originally promulgated. For the rest of his life, he worked for the strengthening of some desirable aspects and the elimination of those he considered undesirable.

WHEN HE WAS NEARING NINETY, Casas completed his last major writings: a Latin tome *On the Treasures of Peru* and a Spanish *Tract of Twelve Doubts* based upon it. Since they embody his final thinking on the Indies, I shall examine them in some detail.

Both works apparently grew out of problems submitted to him by Peruvian missionaries. Very possibly this custom had started with the letter of his former co-worker, Fray Tomás de San Martí. Anyhow, the first treatise was addressed to the specific question of who owned the vast treasures found by the colonists in Inca sepulchers. As for the second, the Argument told how a longtime Dominican missionary to Peru, appalled by conditions there, returned to Spain and propounded his doubts to the learned of various faculties, starting with the former Bishop of Chiapa. So Casas probably composed this answer for Fray Domingo de Santo Tomás, who had come from Peru before 1559 to work with him on the caciques' counteroffer and was back there in 1562 as the new Bishop of Charcas.

Yet in content, *The Treasures of Peru* and *Twelve Doubts* are really concluding summaries of Casas' total doctrine—he himself called them

his "bequest" and "codicil." Thus, in his dedication to Philip, he said that he had only a little while to live, and in order to complete his mission after fifty years' work he had to divulge an important secret that would correct a dangerous past error:

This I wrote in Latin, in a treatise entitled *De thesauris*, which I proposed to offer Your Majesty as though I were bequeathing you much wealth in my last testament, if perchance I had the wherewithal to do so. . . . While I was awaiting the time and opportune season to present it . . . a certain friar of the Order of St. Dominic, desirous of learning the justice or injustice of this matter . . . and of serving Your Majesty in relief of those Indies . . . required me to answer twelve doubts of great importance. . . . So, what I had said in sum in the treatise *De thesauris* in Latin, I explained particularly in Spanish. . . . And it is this [Spanish tract] that can serve almost as a codicil to it.

And of this "codicil" he declared further that

Bartolomé de las Casas . . . resolved twelve doubts . . . concerning the welfare of the consciences of the Kings of Castile and León and of the Spaniards living now and in the future of the Indies, and the spiritual health and good government and preservation of the Indians, native inhabitants of those lands.

So I feel that Casas wrote these works not primarily as Peruvian tracts, but as basic guides for all Indies reformers. In fact, I think he intended his *De thesauris* and *Doce dudas* to be circulated among American friars and select officials, as was his *Del único modo*. The Latin of *De thesauris* suggests a monastic audience, and at least three manuscript copies are known of both works, including several made by or for Fray Alonso de la Veracruz. Perhaps Casas also expected his two last treatises to be read in the lecture halls of the University of Mexico, just as his other books were read in the courses of Alcalá and Salamanca and Valladolid. Anyhow, there is evidence that these final views of his were backed by the new group of Mexican missionaries who worked with him at court.

What was this concluding doctrine on which Casas labored so hard in his great age? *De thesauris* has not been published, and I infer that it contained some material of a historical nature not found in the shorter

work. But in *Doce dudas*, as he himself assures us, Fray Bartolomé reiterated all that he had to say on the subject.

The *Twelve Doubts* opens with a scathing review of the Spanish conquest and exploitation of Peru, and a series of questions or "doubts" on the restitution of the wealth thus obtained: Atahualpa's ransom, tributes to encomenderos, gold and silver from the mines, tomb and temple treasures, and so forth. Casas, as might be expected, resolves these doubts by insisting on the restitution to which all, even the King, are bound. He does so by laying down eight guiding principles on Indian rights, Spain's title to the Indies, and her conduct there:

1-2. By natural and divine and human law, the Indians—as infidels of the fourth category who never harmed nor were subject to Christians—freely possess and rule their own lands, and no King or Emperor or Pope can make just war upon them.

3-6. The papal Bull of Donation was issued solely for the conversion of the Indians and did not dispossess the native lords. Rather, the Spanish kings must pay the costs of this conversion, and they need the free consent of the natives to acquire justly the sovereignty granted them over the Indies.

7-8. From the beginning till now (January 1564), Spain's entire invasion and misgovernment of the Indies has been wrong and tyrannical; and from 1510 on, no Spaniard there can claim good faith as an excuse for wars, discoveries, the slave trade, or the munitions business.

Applying these rules, Casas develops his final doctrine—a reaffirmation of his lifelong views, but brought to their logical conclusion. For instance, he denounces the *encomienda* system as he did at the start of his crusade in 1515, and he reiterates his continuing opposition to all conquests. But the doctrine of restitution, though dwelt upon in some of his earlier writings, is here carried further than ever, indeed to a point almost entirely impossible of realization.

As before, he insists that all encomenderos are bound to restore tribute collected from the natives. But now he follows this tribute from the encomenderos to their doctors, merchants, wives and children, masons, carpenters, tailors, and even priests who had accepted money to say masses for the souls of the departed. Missionaries alone are exempted; their services in spreading the faith entitled them to some moderate support. But the rest had endangered their souls and should not be absolved until they had made restitution.

I find this unrealistic, though no doubt many were moved over the years by Casas' entreaties and threats. A number of conquistadors did give up their Indians and join monastic Orders; in 1554, one Rebolledo who had an *encomienda* in Nata, wrote to Casas that he was making restitution to his Indians of three thousand pesos worth of cattle. But these were isolated cases, and apparently Casas still hoped to force universal restitution by means of his confessional.

Even more extreme were his final views on the necessity of restitution by the Crown itself. Casas contended that the Spaniards had unjustly deprived the native lords of their sovereignty, and the King was therefore obliged to restore the living heirs of the last Inca ruler to positions of authority over the land and the people. These heirs were hidden in the Andes, but had expressed willingness to become Christians in return for freedom and maintenance. Casas accordingly proposed to send to the Titi a Cuzco priest who knew him, armed with sealed letters from the King. A province where the Incas could live safely was to be assigned to Titi and his followers, and the Inca was to recognize the King of Spain as his overlord. The inhabitants were to be returned to the Inca gradually, Crown towns first and then *encomiendas* on the death of their holders; and for his part the Inca was to pay an annual royal tribute to the King of Castile, who could thus legally acquire sovereignty.

One doubtful problem in this visionary scheme was how full restitution could be made for the gold and silver taken from the temple in Cuzco and later from the mines and tombs. The Spaniards, of course, had to give back everything. But the King had received one-half or more of the tomb treasures and the royal fifth from war and mining. In view of the impossibility of His Majesty sending back all the wealth shipped to him and his predecessors in Spain, Casas suggested that the Inca remove the entire royal burden of restitution. The King, however, was obliged to pay the cost of missionaries to the Indians, and the natives should not be subjected to church tithes.

In this treatise, then, Bartolomé de las Casas set forth the culmination of his long career. His successive ideas are echoed here—extinction of the *encomienda*, illegitimacy of conquest, Spanish title based on peaceful conversion and the consent of the governed, full restitution, restoration of native lords—all carried to their logical if extreme conclusion. A few points deal especially with Peru, notably the vast wealth "stolen" from Inca tombs, since the Spaniards had found only negligible amounts in the tombs of New Spain and what is now Ecuador and Colombia. Of course, Casas thought these tomb treasures should be

returned to the natives—perhaps he specified the Inca, when elaborating the topic earlier in *De thesauris*. But in general, the questions and conclusions treated here could apply to the Spanish occupation of Mexico or the other territories. So I have no doubt that Casas was here laying down his parting guidelines for the future use of all Indies reformers.

CASAS' DEATH AND WILL

Fray Bartolomé's final writings had a more direct goal, too, though it was not pursued till he lay on his deathbed. By means of them, this venerable old man hoped to instigate one last royal junta to reform the Indies.

Both works were addressed to the King, and there is evidence that Casas finished *De thesauris* in 1563 and *Doce dudas* at the start of 1564. I infer the nonagenarian Bishop of Chiapa became seriously ill around that time, for he drew up his will at the end of February; and on March 17, 1564, he delivered it, sealed and before witnesses, to a notary who came to the monastery. Anyhow, the two treatises were apparently not presented to Philip till 1566. That is my conclusion from a petition of Casas to the Council in the latter year, referring to his two books given "these past days" to His Majesty, and renewing his request that a junta be convoked to consider the principles set forth and take appropriate action.

In his dedication, Casas had asked Philip to summon theologians and jurists to consider his treatises and then end the destruction of the Indies. Now, in this last memorial to the Council, a sort of epilogue to the *Twelve Doubts*, he formally repeats his request. Rehearsing the two-fold tyranny whereby Spain has devastated the Indies, i.e., conquests and encomiendas, and the duty of restitution that burdens the consciences of King and Council, he begs for the appointment of a junta such as the Emperor used to convoke. Let this commission, he cries, examine the eight conclusions he has prepared for the purpose and proved in the books he gave His Majesty:

1. All the wars called conquests were and are most unjust and truly tyrannical.
2. We have usurped all the kingdoms and lordships of the Indies.
3. The encomiendas or allotments of Indians are most iniquitous, evil per se and therefore tyrannical, as is such a form of government.
4. All who grant them sin mortally and those who hold them are always in mortal sin and cannot be saved unless they give them up.

5. The King our lord, whom God prosper and keep, with all the power God gave him, cannot justify the wars and robberies against these people, nor the said allotments or encomiendas, any more than the wars and robberies of Turks against Christians can be justified.

6. All the gold and silver, pearls and other riches, brought to Spain and traded among Spaniards in the Indies—all is stolen, save perhaps a very little that came from the islands and places we have already depopulated.

7. Those who stole it and today steal it by conquests and allotments or encomiendas, and who participate therein, cannot be saved unless they restore it.

8. The natives in any or all the regions we have invaded in the Indies have acquired right to make just war upon us and erase us from the face of the earth, and this right will last until the Day of Judgment.

If these conclusions are declared valid, confessors in the Indies can be so advised—and thereby Spaniards brought to themselves, the Indians freed, the King made in fact universal lord of the Indies, and Spain spared from divine punishment. "With this supplication to Your Honors at the end and close of my life, and the said conclusions in the two treatises I gave His Majesty, I believe I have fulfilled the mission given me by God."