

Philos 117AC, Fall 2017

Main texts:

Francisco de Vitoria, *On the American Indians*

James Tully, *Locke in Contexts*, 5 “Rediscovering America: The *Two Treatises* and Aboriginal Rights”

Vitoria, *On the American Indians*:

What, if anything, could justify the Spanish conquest of the New World?

Argument: Indians did not own property or themselves:

- According to Aristotle, some human beings were “by nature” slaves.
- Aristotle meant that such human beings could not own property or themselves.
- Indians are of that sort of nature.

Vitoria replies:

- Aristotle meant only certain men “have a natural deficiency”—e.g., of intellect, judgment, self-control—“because of which they need others to govern and direct them,” not that they can’t own property or themselves.
- At most, if the Indians were so “foolish” or “mad” that they were “unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms,” then the Spaniards might be justified in subjecting them to their rule.
- Even so, Spanish rule must be “for the benefit and good of the barbarians, and not merely for the profit of the Spaniards.”
- And, in any event, it’s doubtful that the Indians *are* so foolish or mad.

Argument: Indians refuse to convert, even though we’ve told them to, like, a million times?

Vitoria replies:

- Granted, they sin if they refuse to listen to peaceful persuasion, or if they refuse to believe after being given good reason to believe.
- But, many have not refused, and many have been given good reason to believe. No “miracles or signs, nor of any exemplary saintliness of life sufficient to convert them. On the contrary, I hear only of provocations, savage crimes, and multitudes of unholy acts.”
- Even if they are sinners, that doesn’t justify conquest, any more than it does with sinners in Old World.

Vitoria concludes: The Indians can be subjected to Spanish rule only if one of the following:

- they consent to it, or
- most of them convert to Christianity and the Pope decides they should have a Christian ruler, or
- it is necessary to protect others (e.g., Spaniards) from having their rights violated by the Indians.

What sort of rights of Spaniards might the Indians violate?

- to travel among the Indians
- to dwell among them
- to trade with them
- to enjoy things held in common among the Indians
- to become a citizen of an Indian nation in which the Spaniard is born—*ius soli!*
- to preach the Gospel
- to practice Christianity

Even so, the response should be necessary and proportionate:

- First, try reasoning with them!
- If the Indians act only from understandable fear, then the most that the Spaniards can do is to defend themselves.
- “once the Spaniards have demonstrated diligently both in word and deed that for their own part they have every intention of letting the barbarians carry on in peaceful and undisturbed enjoyment of their property, if the barbarians nevertheless persist in their wickedness and strive to destroy the Spaniards, they may then treat them no longer as innocent enemies, but as treacherous foes against whom all rights

of war can be exercised, including plunder, enslavement, deposition of their former masters, and the institution of new ones.”

Tully on Locke

Locke, in his practical affairs,

- had a hand in the administration of American colonies and
- invested in the Atlantic slave trade.

To what extent did Locke’s own philosophical views support or condemn these activities?

Tully argues that Locke was mistaken in denying that there were established political communities *among the Amerindians*. While Amerindians may not have had written law or the same sort of coercive apparatus as European states, Tully points out, they often were self-consciously organized as communities, which could enter into treaties and resolve internal disputes.

True enough, but it isn’t clear why it matters. Even if Amerindians were not in a state of nature with one another, Locke might still have been factually correct that they *were* in a state of nature *with Europeans*. It’s that fact—that Europeans and Amerindians were in a state of nature with one another—that, within Locke’s political philosophy, would be particularly consequential. For it meant that:

1. Europeans may wage war against Amerindians, with the permission of any common political authority, for punishment of, and reparation for, violations of the law of nature.
 - Opponents may be enslaved. (Follows from punishment? From reparations?)
 - However, only if they indeed violated the law of nature.
 - However, their *children* may not be enslaved, since their children did not violate the law of nature.
 - Nor may their land be appropriated, since their children have a claim to it.
2. Europeans may appropriate land in the New World, by farming it, without the consent of Amerindians, even though the Amerindians had long hunted and gathered on that land. This is because:
 - Hunting and gathering does not “mix labor” with the land, in the sense of making it more productive by the application of labor. It mixes labor only with the things that were hunted and gathered.—Why not also with the land? Can’t *knowledge* of the land make hunting and gathering more productive?
 - By contrast, farming does mix labor with the land
 - Farming does not waste, given that there are markets for surplus.
 - Farming leaves enough and as good for others. Indeed, farming allows one to subsist with less land, so, in a sense, leaves more land available to others than would hunting and gathering.—Well, it leaves enough and as good to *farm*, but enough and as good for hunting and gathering?
 - Once Amerindians “consent” to money, then this system of property rights changes. But in a way that makes appropriation all the easier, by waiving the enough and as good condition and making it easy to satisfy the no waste condition.

Contrast the understanding that many Amerindians (and many peoples in other places and times) had:

- Land belongs not to individuals, but to groups (e.g., nations, clans).
- Moreover, this land cannot be alienated (i.e., given away, sold). (This may be in part for spiritual reasons. You trust a stranger to honor the burial places of your ancestors?)
- Moreover, the rights to land are rights to engage in certain activities on the land (e.g. fish there) rather than to the land itself or its products in abstraction from those activities.
- Smaller groups and individuals may own particular goods (e.g., tools, clothing). But the attitude toward ownership is casual, and there are norms of sharing and gift-giving.
- Even where Amerindians produced a surplus for exchange (e.g., the fur trade), they often did so without European-style agriculture and individual property rights in land.

Question: What does the fact that Amerindians had this understanding imply for Locke’s theory of natural property rights? Does it refute Locke’s theory straightaway? If not, what is its relevance for Locke’s theory?