Jus gentium and the Transformation of Latin American Nature: One More Reading of Vitoria?

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Introduction

Francisco de Vitoria (1483–1546) is one of the main points of reference for studies of modern international thought and international legal historiography. This privileged place stems from the fact that his scholarship was a response to some of the most important transformations of the early modern world, providing sixteenth-century Christianity with a road map to navigate the turbulent waters of an expanding and changing orb.¹

The figure of Vitoria has been particularly relevant for recent critical studies on the history of international law.² Placing Vitoria in a colonial context, these works have shed light on how his legal doctrines facilitated Spanish political and economic power in Latin America. My intention is to continue this line of inquiry, albeit from a novel perspective, by exploring the other side of the coin of Spanish economic hegemony in Latin America: its power to redefine Latin American nature and transform its use. Adopting an environmental perspective to the study of the intellectual history of international law seems rather relevant at a time of deep environmental anxiety.

Christopher Columbus’ arrival at Latin America inaugurated a series of momentous transformations in world history. It has, for instance, been related to the emergence of a capitalist world-economy,³ the beginning of the scientific


revolution,\(^4\) and even to the origins of modernity\(^5\). The environment is one of the realms in which the enormous implications of the conquest of Latin America are more visible. Contemporary historians have, for instance, shed light on how it transformed the world’s trade and ecology,\(^6\) how it affected Latin American nature and environmental relations within the continent,\(^7\) and the way in which it set in motion a process of biological homogenization of planetary dimensions\(^8\).

Before the Spanish caravels appeared on the horizon, Latin America had been mostly hidden to and protected from the intrusion of outsiders. For centuries, its ecological, political, social, economic, and cultural reality evolved at a pace in step with the complex internal dynamics of the continent. That was to be radically changed.

Latin American nature was already described in Columbus’ diaries with an eye to the possibility of finding tradable commodities.\(^9\) The urgent need to make sense of Latin America, its nature, and peoples, stemmed mainly from a desire to exploit its natural wealth. It was also and to a large degree influenced by the self-appointed universal mission of the Crown of Spain of integrating ‘the Latin American reality’ within a Catholic understanding of the world. For a long time though, the conquistadores had the upper hand in defining the actual approach to the recently acquired overseas territories, hence shaping Latin American life. In their fervent zeal to acquire natural resources which could yield surpluses and a labour force to make them productive, the conquest of the continent became a two-edged sword which entailed the subjugation of its inhabitants on the one hand and the appropriation and commodification of nature on the other.\(^10\)


\(^9\) See John Cummins, *The Voyage of Christopher Columbus: Columbus Own Journal of Discovery Newly Restored and Translated* (Weidenfeld and Nicolson 1992) 103. Descriptions of the Latin American physical environment abound: some can be found in pages 100, 105, 125, 127, 139.

\(^10\) The definition of nature and the conceptualization of the relationship between humans and nature have been the focus of uncountable scholarly works, such as Michael P Nelson and J Baird Callicott (eds), *The Wilderness Debate Rages On: Continuing the Great New Wilderness Debate* (University of Georgia Press 2008). Both of these endeavours are far beyond the scope of the present work. When I use ‘nature’ in this chapter I am not referring to a romanticized idea of a pristine realm untouched by humans. Nature is continuously undergoing change, even without human intervention. In this article, nature refers to the phenomena of the physical world taken together, excluding humans and human creation. I will use interchangeably words such as nature, environment, the physical world, ecosystems, natural habitats, and non-human nature to refer to the same phenomena. Even though humans are part of nature, I will make an artificial separation for the sake of conceptual analysis. This understanding of nature sits comfortably with the general focus of this work on the human impact upon ecosystems and, specifically, on the ideological repertoire which served to legitimize the historical appropriation of nature that went hand-in-hand with European imperialism.
It was not long before the rapid disappearance of the colonized population drew some members of the Dominican order to question the ideological basis of the colonial enterprise and to denounce the ignominy of Spanish rule in Latin America. They explored in depth the nature of the relationship between the peoples of Latin America and their new Spanish masters. Ever conscious of the harshness of the conquistadores, they tried to protect the former from the latter.

One consequence of the search for a more legitimate and humane vision of the Spanish empire in Latin America was the development of a vocabulary of universal rights. Some of those rights had an economic nature. Articulated by Francisco Vitoria in his famous *Relectio de Indis*, they have been presented by critical scholars as having contributed to Spanish economic hegemony in Latin America. That being true, there is still a less obvious but equally important dimension of the economic rights that Vitoria recognized, which so far have been neglected.

Apart from enhancing the economic power of the Spanish Crown the rights to private property and trade entailed a novel understanding of the relationship between humans and nature in Latin America derived from a specific conception of the boundary between the natural and social spheres. The enjoyment of those rights in the context of a growing intercontinental trade fostered the privatization and commodification of natural resources, contributing to the exploitation of Latin American ecosystems. Accordingly, there is an environmental aspect of the theories of the Spanish scholastics that needs to be explored. In order to do that, it seems pertinent to examine the colonial arguments of one of the most distinguished intellectual Spanish figures of the period, Francisco de Vitoria, and to complement them to a certain extent with the ideas of his pupil Domingo de Soto (1494–1560).

The universalization of hegemonic economic practices and cultural categories during the age of Spanish imperialism is of foremost significance not only for its historical relevance but also because of important continuities with modern globalization. Private property and free trade are still the corner stone of a neo-liberal global order. Notwithstanding the great divergences between these periods, it is still possible to affirm that embedded in particular international legal doctrines, both have naturalized rather contested visions of the good life with detrimental effects on the environment. The process of global ideological and legal homogenization, which started with the conquest of Latin America and continues in a rather different guise in our times, has created as many opportunities for cooperation as exclusion.

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11 Finding the right term to refer to the societies that came under Spanish sway is not easy. I have avoided the use of words such as ‘Indians’, ‘aborigines’, and ‘natives’ due to their colonial ring. I have also rejected the term ‘indigenous people’ because it places colonized societies worldwide in one and the same abstract category. Referring to the colonizers as Europeans, despite the fact that this denomination is somewhat anachronistic, I have decided to refer to the colonized as ‘Latin Americans’; the population of Latin America’, ‘the peoples of Latin America’, etc. My aim is to place both colonizer and colonized on an equal conceptual level. The terms I have chosen have their own conundrums. First, ‘Latin Americans’ is also anachronistic as the term ‘Latin America’ was only used from the nineteenth century onward. Second, the Spanish extended their power too over regions of North America. Third, not all the societies that inhabited Latin America were colonized by the Spaniards during the period to which this article refers. Finally, the term Latin America was also a colonial creation as a whole continent was named in honour of a single individual: Americo Vespuccio.
and coercion. In this regard, knowledge of the past can be useful for understanding the historical roots of oppressive agendas that had contributed—if inadvertently at times—to great human suffering and environmental damage.

The Environmental Impact of Spanish Colonization in a Nutshell

Colonization set in motion a process of environmental change. In the new milieu of imperial expansion, Latin America's natural resources were of utmost importance. Latin American and African labour extracted gold and silver at a high human cost. These precious metals gave European merchants the resources they needed to trade in Asian markets, fostering Asian economies as a result. As Latin American riches were being drained, their monetary value went to the hands of the newcomers, their Latin American allies, or economic elites located in distant centres of power. At the same time, colonists’ demand for certain European commodities that could not be found in Latin America increased European exports. New needs on both sides of the Atlantic fostered the development of a transatlantic commercial chain controlled by an influential European merchant class.

The geographical expansion and intensification of trade had important environmental consequences. Spaniards were far more plunderous than Latin Americans when they decided to exploit a specific natural resource. The search for elements of the environment that could be turned into tradable commodities was a colonists’ obsession. The importance of two of these goods for the Latin American colonial enterprise, namely silver and sugar, overran that of any other product. The impact of their extraction and production on Latin American nature was deep and lasting.

The mining industry was one of the main engines of social and ecological transformation in colonial Latin America. Mines entailed the establishment of complex settlements and large populations, which attracted other economic activities, stimulating at the same time the growth of colonial agriculture and pastoralism. Trees were cut for timber to support shafts and tunnels in the mines. In addition, land was deforested in order to make room for cattle and cultivation. This produced

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15 See Murdo J MacLeod, Spanish Central Latin America: A Socioeconomic History 1520–1720 (University of Texas Press 2008) 47. See also Carole Shammas, ‘The Origins of the Transatlantic Colonization’ in Daniel Vikers (ed), A Companion to Colonial Latin America (Blackwell Publishing 2003) 25, 33; and Angus Mackay, Spain in the Middle Ages: From Frontier towards Empire 1350–1500 (McMillan 1977) 173.
severe localized impacts. In the mining town of Potosí in the Viceroyalty of Peru not a single tree grew around the city at the end of the sixteenth century. The tentacles of the mines reached as far as Chile, Paraguay, and Argentina, which were inserted in a provisioning network staggering in its size and complexity. Caribbean islands also lost a sizable part of their forest cover in order to provide wood for the construction of the ships that carried silver to Spain.

Notwithstanding deforestation, the most adverse impact of mines on humans was neither the consequence of axes nor burning, but mercury instead. It is quite likely that mercury pollution from silver mines in Mexico and Peru was the largest source of industrial pollution in the early modern era (1500–1800). As mercury accumulated in animal and plant tissue its effects spread far from the receiving source, creating long-lasting circles of toxicity. Unlike deforestation, the impact of mercury surpassed the continental reach. Nriagu claims that ‘it would seem likely that the Latin American silver mines were partly responsible for the high background concentration of mercury now being reported in the global environment’.

Sugar plantations reduced soil fertility and caused deforestation, having a harmful effect on the environment. Before sugarcane was planted, large portions of land had to be cleared. Therefore, sugar plantations became a rival to other uses of the land, including woodland. Furthermore, as the processing of sugar required large quantities of fuelwood, producers cleared forests that would otherwise have been left intact. The environmental consequences of sugar plantations were severe in the smaller Caribbean islands. In the Brazil coastal area the victim of sugar plantations and other activities associated with settlement was the 1.3 million square kilometres Atlantic forest, one of the most diverse and delicate ecosystems on earth, home to more than 60 per cent of all terrestrial living species.

Paradoxically and in spite of the clear ecological costs of mining and plantation agriculture, a process of environmental recovery followed the Spanish and Portuguese conquest. The lethal impact of colonization on the pre-colonial population of Latin America reduced the human pressure on the regions’ landscapes.

18 Ibid.
20 Richards, *The Unending Frontier* (n 16) 369.
21 Dore, ‘Environment and Society’ (n 19) 9.
24 Richards, *The Unending Frontier* (n 16) 413.
26 Carlos Galindo-Leal and Ibsen de Gusmão Câmara (eds), *The Atlantic Forest of South Latin America: Biodiversity Status, Threats and Outlook* (Island Press 2003) 3.
27 Dore, ‘Environment and Society’ (n 19) 7.
One and a half centuries after Columbus’ first voyage, the initial population of the continent of around 70 million was reduced to a tenth of its original figure. In other words, tens of millions of individuals perished. As a result of deforestation, soils, forests, water, and wild life, which had been under intensive use by the peoples of Latin America for millennia, were suddenly given some centuries to regenerate.

Taking into account the great environmental changes that followed Spanish conquest, Vitoria’s theories need to be re-examined in order to determine their environmental ramifications. An often overlooked but important consequence of Vitoria’s arguments in his *Relectio de Indis* was the possibility of appropriating Latin American nature for colonial ends. The Spanish right to war indirectly led to this result, as in the case of defeat it was legitimate to dispossess Latin Americans of their land and natural resources. This notwithstanding, the appropriation of Latin American natural resources and their transformation into exchangeable commodities was legitimized by the universal rights discourse that Vitoria recognized as part of *jus gentium*.

**Dominium rerum** and Trade in Vitoria and Soto: The Privatization and Commodification of Latin American Nature

Vitoria opened his *Relectio* by enquiring whether before the arrival of the Spaniards ‘these barbarians … had true dominion, public and private’. His purpose was to determine ‘whether they were true masters of their private chattels and possessions, and whether there existed among them any men who were true princes and masters of the others’. Vitoria took into account the economic and political aspects of Latin Americans’ power. It was not only important to ascertain whether the peoples of Latin America enjoyed private property rights but also whether they were the true lords of their own domains.

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29 Matthew Restall, *Seven Myths of the Spanish Conquest* (Oxford University Press 2003) 141. Importantly, germs travelled faster than conquerors, so in many areas the population of Latin America was declining even before direct contact with the Spaniards.

30 Miller, *An Environmental History* (n 7) 56.


32 Ibid, 1.1 s4 239. 33 Ibid.

With regard to ownership, Vitoria’s query established from the outset the legal foundations for all the ulterior discussion on the possible just titles whereby ‘we Christians were empowered to take possession of their territory’. So, while formulating the problematic he wanted to resolve, he already chose the legal angle from which to look at the matter. He could have alternatively posed the question of how Latin Americans related to their possessions. Did they, for instance, have a legal regime of common or private property or a mixed system? This may sound anachronistic, but we know that in Columbus’ first letter from Latin America the Admiral had stated that ‘he could not well understand whether’ the inhabitants of Latin America ‘had private property, or not’. Palacios Rubios had also written that they had no private property and that they farmed in common the few lands they cultivated. But Vitoria’s query assumed from the outset that *dominium rerum* was the institutional arrangement that represented the way in which the inhabitants of Latin America related to their territories.

With a simple question Vitoria had fit Latin Americans’ commonwealths in the legal mould that was in line with his and his contemporaries’ conception of the human relationship to the material world. His understanding of *dominium rerum* as a private power over material reality was based on a particular notion of ownership and use of land that (once universalized) was applied to the Latin American continent in disregard of the alternative ways in which its inhabitants may have related to nature. Regardless of Vitoria’s intent and political project, this neglect can largely be explained by contextual and structural conditions, such as the Eurocentric perspective from which the debate about the rights of the peoples of Latin America was conducted.

The increase of human power over the environment that the universalization of private property entailed is illustrated by Soto’s definition of *dominium* in his *De iustitia et iure* in contraposition to other types of power over nature. ‘*Dominium*’, he asserted, ‘is to be distinguished from possession, use or usufruct … for *dominium* is not simply the ability to use something and take its produce, but to alienate it, give it away, sell it or neglect it’. The law was the only limitation to the amplified power

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35 Vitoria, ‘On the Latin American Indians’ (n 31) 2. 251–52.
36 The First Letter of Christopher Columbus to the Noble Lord Raphael Sanchez Announcing the Discovery of Latin America (Reproduced in facsimile from the copy of the Latin Version of 1493 with a new introduction, Published by the Trustees 1891) 13.
that the owner had over his/her property.\textsuperscript{41} Similarly, Vitoria maintained that ‘wild beasts and all irrational beings are subject to the power of man’.\textsuperscript{42} Vitoria’s and Soto’s understanding of the process of formation of private property rights was related to their religious beliefs. According to Vitoria, God had conferred the world to humanity as a whole.\textsuperscript{43} Soto cited Genesis 1 to prove the original regime of common property.\textsuperscript{44} Under natural law, things remained common during the ‘natural state’, the historical period that span from the creation to the original sin.\textsuperscript{45} After the fall and due to the fact that natural law did not prescribe but just recommended common ownership, things were privately divided through human law\textsuperscript{46} and by consensus.\textsuperscript{47} This type of agreement had three important features. First, it could be imposed on a minority because, according to natural law, what the majority decided was the rule.\textsuperscript{48} Second, it was virtual, in the sense that everyone could take for their own use what had not been already taken.\textsuperscript{49} Finally, in order to have universal validity this virtual consensus was recognized as part of \textit{jus gentium}.\textsuperscript{50} So, \textit{jus gentium} was of foremost importance for the process of division and privatization of the world’s natural resources that had remained common before the fall.\textsuperscript{51}

For the Spanish scholastics this religious narrative was not a metaphor, but a description of reality. The expulsion from paradise marked the beginning of the world as they understood it. Once Vitoria accepted the institution of private property as the way of dividing the world that God had given to humanity in common, and once it became universally applicable by virtue of \textit{jus gentium}, it acquired a providential historical force and a totalizing geographical ambit difficult to resist.

Vitoria’s and Soto’s treatment of \textit{dominium} as control and power over material reality was at odds with Latin Americans’ complex and diverse conceptions of nature.\textsuperscript{52} This concept transformed their bond with their environment—with the lands they cultivated, the minerals with which they crafted handicrafts and jewellery, the trees they used for timber and construction, the animals they hunted,

\textsuperscript{41} Ibid.
\textsuperscript{42} Vitoria, ‘On the Latin American Indians’ (n 31) 1.4 s20, 248.
\textsuperscript{43} Francisco de Vitoria, \textit{De iustitia}, q62, a1, n10, 69, as quoted in Teodoro López, ‘Propiedad y Dominio en Francisco Vitoria’ in Cruz Cruz, \textit{Ley y Dominio en Francisco de Vitoria} (n 34) 71.
\textsuperscript{44} Soto, \textit{De iustitia} (n 40) Book IV, 3.1, 295.
\textsuperscript{45} ‘A principio mundi omnia erant communia’ (‘at the beginning of the World everything was common’) in Vitoria, \textit{De iustitia} (n 43), q62, a1, n9, 67 as quoted in López, ‘Propiedad y Dominio’ (n 43) 83. [translated by author].
\textsuperscript{46} Vitoria, \textit{De iustitia} (n 43) q62, a1, n20, 75.
\textsuperscript{47} Koskenniemi has noted that by ‘a distinction between binding and merely recommendatory provisions of natural law’ Vitoria presented the character of the \textit{divisio rerum} ‘in terms of private property’. See Koskenniemi, ‘Empire and International Law’ (n 1) 14.
\textsuperscript{48} For Vitoria, this was a way of maintaining peace: Vitoria, \textit{De iustitia} (n 43) q62, a1, n22, 79.
\textsuperscript{49} Ibid, q62, a1, n23, 79.
\textsuperscript{50} Ibid, q62, a1, n23, 79. See also Soto, \textit{De iustitia} (n 40) Book IV, 3.1, 297.
\textsuperscript{51} Brett contends that the division of \textit{dominia} was for Vitoria and Soto the main distinction between \textit{jus gentium} and natural law. See Annabel S Brett, \textit{Changes of State: Nature and the Limits of the City in Early Modern Natural Law} (Princeton University Press 2011) 197.
\textsuperscript{52} Vitoria argues that ‘we do not speak of anyone being the ‘owner’ of a thing (\textit{dominium esse}) unless that thing lies within his control’. Vitoria, ‘On the Latin American Indians’ (n 31) 1.4 s20 248. For Soto’s view see \textit{De iustitia} (n 40).
and so forth—into a material relationship between subject and object, owner and owned. The former term of these two opposites was active and related to the latter in terms of superiority. ‘Nature’, as expressed through the specific vocabulary of the *jus gentium*, became a material entity to be possessed. This stripped ‘nature’ of religious and cultural readings that were significant to Latin Americans. The idea of ownership reduced the content of Latin Americans’ relationship to their territories to a simplified economic version of what had previously been, while the institution of private property altered the form of that relationship to suit private interests. This paradigmatic shift towards the privatization of natural resources did not per se lead to environmental exploitation, but it furnished the legal apparatus that made it possible.

In his inquisition on possible grounds for denying Latin Americans the status of proprietors, Vitoria first dismissed allegations of sinfulness and their condition status as non-believers. Likewise, he then rebutted accusations of irrationality as unfounded. The proof was that their cultures were somehow developed. Accordingly, he concluded that ‘the barbarians undoubtedly possessed as true dominion, both public and private, as any Christians’. Soto was of the same opinion, namely, that the peoples of Latin America had rights of jurisdiction and property over their territories. Vitoria was well aware of the threat that a contrary conclusion would have posed to the well-being of the Latin Americans and the survival of the very population his Dominican order so fervently wanted to convert. His conclusion prevented Latin American colonization to be conducted in an unruly fashion. Anarchy suited the avid *conquistadores* but hindered peaceful evangelization. The legal certitude of Latin Americans’ right to property was a guarantee against the despoliation of the greedy conquerors’, which Vitoria deplored. As far as he was concerned, Spanish ‘men’ were no longer to operate in a legal vacuum of impunity in Latin America.

Besides, Vitoria was aware of the theoretical correlation between Latin Americans’ rationality, their having *dominium*, and the applicability of *jus gentium*. After all, property was one of the institutions that ‘learned men’ and royal lawyers for that matter most commonly associated with the presence of a civil society. Had he found Latin Americans irrational, they could not have had *dominium*. And without the capacity to hold property there was no chance of a political life and,
hence, legal protection against ‘invaders attempting to seize their lands’. If that was the case Vitoria could not have resolved the ‘Indian question’ by recourse to _jus gentium_, which in the face of the Lutheran challenge to the power of the Pope and the Emperor provided a timely and universally valid legitimization of Spanish presence in Latin America. It offered as well the possibility of peaceful evangelization, avoiding Lutheran charges against a corrupted and decadent imperialist Catholicism imposed by force.

Rationality and private property were the lynchpins over which Vitoria would later in his lecture build his arguments regarding _jus gentium_. Sanctioned by _jus gentium_, private property acquired universality and retrospectively defined the way Latin Americans related to their territories before the arrival of the Spaniards.

Having found that Latin Americans owned their territories, Vitoria maintained (in the third part of his _Relectio_) that their right to private property was not absolute. The rights that nations enjoyed under _jus gentium_ could limit it. By reference to _jus gentium_ he managed to reconcile an initial respect for Latin Americans’ property with the introduction of a series of legal entitlements that would eventually bolster Spanish economic/environmental power in Latin America.

The exceptions to Latin Americans’ ownership that Vitoria recognized were part of a series of rights that governed relations between different commonwealths. Some of those rights, like the rights to travel and sojourn, seemed a priori neutral. As important as these entitlements were, there was still the need for a further right—the right to trade—that would give the Spanish Crown access to Latin America’s wealth. The huge military and administrative expenses of keeping afloat the Spanish empire could only be covered by the revenues that were expected to derive from the ‘trips of discovery’. Vitoria’s right to trade nicely suited Spanish imperial ambitions.

Vitoria elaborated various arguments in order to justify trade. First, he looked at bilateral relations between the Spaniards and the Latin Americans. Based on reciprocity, he held that commerce benefited them both. The latter could import commodities they did not have in exchange for gold and silver. Mutual gain represented a reasonable foundation for international trade. But could Latin Americans understand the value that gold had for the Europeans? Columbus affirmed that gold was a treasure, the possessor of which could impose his will on the whole

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63 Pagden suggests that ‘Vitoria and his successors were far less concerned with the particulars of the Latin American case than they were with the opportunities it provided for the refutation of Lutheranism and, later, Calvinist theories of sovereignty’: ibid, 163.

64 See Alejandro Auat, ‘Soberanía en Vitoria: Claves Transmodernas para un Principio Cuestionado’ in Cruz Cruz (ed), _Ley y Dominio en Francisco de Vitoria_ (n 34) 233.


66 Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s3, 279.
world.\textsuperscript{67} Acknowledging the exaggeration of this claim, it is true that gold had a great value in European and Asian markets during the sixteenth century. Because the Spanish and not the Latin Americans were commercially operating on both sides of the Atlantic, only they could know and capture the value that concrete commodities had for different commonwealths. This information asymmetry was obscured by a language of rights that presumed the parity of both sides.

As a result of the introduction of the right to trade in Vitoria’s \textit{jus gentium}\textsuperscript{68} European merchants’ profitable preponderant place as intermediaries between Latin American and European markets received legal sanction. Vitoria was in principle opposed to profits derived from unequal trade because they amounted to the sin of avarice.\textsuperscript{69} However, the merchant’s personal enrichment could be acceptable as a way of compensating transportation costs.\textsuperscript{69} In other words, personal enrichment was justifiable if it enabled the development of commerce in cases in which it would have otherwise not been possible. Accordingly, it is unlikely that Vitoria would have condemned capital accumulation, as it was in fact European merchants and their ships that made that intercontinental trade possible in the first place.\textsuperscript{70}

Moving from bilateralism to cosmopolitanism, Vitoria invoked the fellowship of mankind as a further defence of trade.\textsuperscript{71} In the naturalist tradition trade was considered as one of the channels through which human knowledge could be shared between different communities.\textsuperscript{72} The absence of trade hampered the establishment of political, economic, and cultural ties between different polities. For this reason, Vitoria concluded that ‘the barbarians can no more prohibit Spaniards from carrying on trade with them, than Christians can prohibit other Christians from doing the same’.\textsuperscript{73} In addition, Latin American rulers were compelled by the law of nature to love the Spaniards and, hence, they could not ‘prevent them without due cause from furthering their own interests’.\textsuperscript{74} This justification of trade encapsulates perhaps, better than any other, the irony of the Spanish conquest. As Martti Koskenniemi has put it, love was ‘often difficult to distinguish from a desire to


\textsuperscript{68} See the discussion in Koskenniemi, ‘Empire and International Law’ (n 1) 19–20.

\textsuperscript{69} Ibid.


\textsuperscript{71} Vitoria was convinced that the fellowship of men was in consonance with natural law. Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s3, 280.

\textsuperscript{72} Pagden, \textit{The Fall of Natural Man} (n 37) 77. The social and political value of commercial ties was something that Latin American societies did also recognize. See Karen Olsen Bruhns, \textit{Ancient South Latin America} (Cambridge University Press 1994) 278.

\textsuperscript{73} Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s3, 280.

\textsuperscript{74} Ibid. In the Carnegie Series of Classics of International Law the expression ‘furthering their interest’ is translated as ‘making their profit’. See Francisco de Vitoria, \textit{De indiis et de iure belli relectiones} (Ernest Nys ed, John Pawley Bate tr, Carnegie Institution of Washington 1917) Sect III s3 152–53. This is also the understanding of Ileana Porras: see Porras, ‘Appropriating Nature’ (n 70) 649.
dominate’. Linked to sentiments of love and fraternity, commerce was internationalized, acquiring a positive cosmopolitan character that would be preserved in the law of nations in the following centuries. Coercion, the fact that it was imposed on the peoples of Latin America through the threat or the actual use of force by way of the right to war, remained invisible in Vitoria’s legal theories.

Vitoria’s right to trade exemplifies the shortcomings of the humanitarianism that often permeates cosmopolitan justifications of universal rules. The general interests of an abstract humanity were invoked as the basis of a right that ignored the particular interests of the concrete millions of humans that inhabited Latin America, whose opinion on this matter became irrelevant as a source of law. Cosmopolitanism cloaked the unequal colonial setting in which economic domination came about. But it would be misleading to think that cosmopolitanism displaced the individual rights of the peoples of Latin America. It was actually Spanish economic rights—dressed as universal—and their monetized market economy that had that effect.

At the very least Vitoria’s defence of free trade seemed to offer a choice of trading partners. According to him, Christian kings could not deter their subjects (turned merchants) from trading with other nations. However, this small niche of liberty within which Latin Americans could have freely manoeuvred clashed with the interest of the Spanish Crown in developing a trade monopoly in Latin America. This forced Vitoria to limit the freedom of commerce he had so firmly upheld before when later in the text he defended Spanish commercial monopoly stating that:

… And since it is the pope’s special business to promote the Gospel throughout the world, if the princes of Spain are in the best position to see to the preaching of the Gospel in those provinces, the pope may entrust the task to them, and deny it to all others. He may restrict not only the right to preach, but also the right to trade there, if this is convenient for the spreading of the Christian religion … Besides, the princes of Spain were the first to undertake the voyages of discovery, at their own expense and under their own banners; and as since they were so fortunate as to discover the New World, it is just that this voyage should be denied, and that they alone should enjoy the fruits of their discovery.

The authority of the Pope was enough to limit Latin American trade only if it was established that a monopoly on commerce was conductive to evangelization.

75 Koskenniemi, ‘Empire and International Law’ (n 1) 11.
76 A similar point is made in Emmerich de Vattel, The Law of Nations or The Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns (Vol III, Charles G Fenwick tr of the 1758 edn, Carnegie Institution 1916) Book II Ch II s25, 122.
77 For Brown, ‘One of the great changes of the Conquest, particularly within the former Inka Empire, was the introduction of the market system. Previously, the economy had been based on redistribution and reciprocity … the coming of the Spaniards, however, imposed the rule of an external social group with a totally alien economic culture in the form of monetised markets’: Jonathan C Brown, Latin America: A Social History of the Colonial Period (Thomson Wadsworth 2005) 205. For an overview of South Latin American systems of exchange before Spanish conquest see Bruhns, Ancient South Latin America (n 72) 278–89.
78 Vitoria, ‘On the Latin American Indians’ (n 31) 3.2 s10, 284–85. This contradiction is analysed in Brett Bowden, The Empire of Civilization: The Evolution of an Imperial Idea (The University of Chicago Press 2009) 139–40.
Vitoria knew, of course, that it was in the interest of the Pope to limit the presence in Latin America of those nations that had embraced the Reformation. This could play to the advantage of the Spanish Crown. A trade monopoly authorized by the Pope could be used not only against Protestant nations but also against Catholic rivals. But Vitoria was also aware that the Pope’s power was of no use against nations that no longer recognized his authority. Hence, he complemented the possibility of an exclusive Papal trade concession with the allegation that the burden of colonization had to be compensated by the exclusive enjoyment of eventual benefits. Here, Vitoria was reasoning like an investor. He understood that it was risky to advance financial resources without the security of returns. Yet, he presented the question of Spanish trade monopoly in cosmopolitan terms. It is ironic that he used one of the supreme cosmopolitan ideals—love—to justify free trade, whereas another—justice—served the contrary function of restricting it.

Vitoria’s right to trade was detached from the reality of the Spanish occupation of Latin American territories. From the outset, Spanish violence was a pervasive feature of conquest. Since Columbus and his ‘men’ landed in Hispaniola, they acquired and used the land and its fruits for their own gain and did so by all necessary means. The forceful apprehension of Latin American riches continued unabated as colonization intensified with the full involvement of the Spanish Crown soon afterwards and the defeat of the prosperous Empires of Anahuac and Tawantinsuyu.

Although the peoples of Latin America were allowed to carry on internal trade, the exchange of the main commodities—spices, gold, silver, and sugar—was under the absolute control of Spain. These goods were exchanged between Spain, which forcefully appropriated them in Latin America, and Spain, which gladly received them at home. Consequently, trade entered \textit{jus gentium} hiding a theft of continental proportions because it was predicated on the exchange between two theoretically equal trading partners.\textsuperscript{79} In practice, profitability derived from violent conquest and forceful imposition of Spanish terms. While apparently an exception to the general rule of Latin Americans’ ownership, trade became in reality an instrument for the enrichment of the Spanish and European merchant class.

The right to carry on commerce did not exhaust the Spanish economic entitlements sanctioned by \textit{jus gentium}. According to Vitoria, in case the Latin Americans had allowed other foreigners to extract natural resources (like gold inside the earth or pearls in the sea) from their lands, they were automatically compelled to offer the Spanish the same advantage.\textsuperscript{80} This sounded paradoxical considering Vitoria’s defence of a trade monopoly. How could Spain justly deny other nations what Latin Americans could not, namely participation in the exploitation of their own wealth? Without the capacity to decide with whom they were going to negotiate the use of their natural resources, Latin Americans’ sovereignty was considerably eroded. What is more, the limitation of Latin Americans’ alternatives operated under the dubious premise that they had willingly opened their resources to foreign

\textsuperscript{79} See Anghie, \textit{Imperialism} (n 2) 21.

\textsuperscript{80} Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s4 280.
exploitation to begin with. Again, the context in which Latin Americans’ consent was obtained did not matter.

In spite of its undeniable economic value, the right of participation in the commons assured the Spanish Crown and conquerors only a meagre part of Latin American mineral resources. Even if the Portuguese or the French enjoyed certain rights of extraction in Latin Americans’ territories, their value paled in comparison with what—so the Spanish rightly thought—lay unexplored and unoccupied.81 So, Vitoria complemented the right of participating in the commons with a right over unoccupied things. He affirmed that goods without owner (here he again mentioned gold and pearls) could be acquired by their first occupant whatever their location.82

The virtual consensus, from which private property stemmed, meant that the whole world had not yet been divided and many natural resources were still vacant waiting to be occupied. For Spain this right had a strategic economic value as it gave access to Latin America’s gold and silver with which to finance the costs of Empire.

Soto differed from Vitoria in this point affirming that the Spaniards had no right over Latin American unoccupied gold.83 The human race was geographically divided in regions so that the inhabitants of each region had a right over the common things that were within the confines of their particular realm.84 Moreover, in his lecture De dominio he asserted that ownerless goods belonged to the first occupant only in regard to their use but not their dominium.85 This meant that even in the case that some of the world’s lands had not yet been divided they could be used but not owned by the first occupant.86

When in his lecture Vitoria introduced the right over unoccupied things he made a reference to the law of wild beasts or ferae bestiae of the Roman Institutiones of Justinian, according to which: ‘Wild animals, birds, and fish, that is to say all the creatures which the land, the sea, and the sky produce, as soon as they are caught by any one become at once the property of their captor by the law of nations.’87 Based on the examples of the Institutiones and Vitoria’s own examples (gold, pearls, fish) it seems that the Dominican scholastic was referring only to movable things. However, at the end of his lecture he mentioned again the right of occupation stating that: ‘Item multa etiam sunt, quae ipsi pro desertis habent velt sunt communia omnibus volentibus occupare.’88 In this passage it is less clear that he is solely referring to movables.89 In principle, there is nothing to suggest that

81 El Dorado was the idealized incarnation of that certitude. See Jorge Magasich-Airola and Jean-Marc de Beet, America Magica: When Renaissance Europe Thought it had Conquered Paradise (Anthem Press 2007) 69–98.
82 Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s4, 280.
83 See Brett, Changes of State (n 51) 25. 84 Ibid.
84 Soto, Relección (n 59) s21, 121. 85 Ibid, s23, 127.
86 Justinian, Institutes, II. 1. 12.
87 Vitoria, De indis (n 74) Sect III s18, 268. ‘Also there are many commodities which the natives treat as ownerless or as common to all who like to take them’: ibid, Sect III s18, 162.
88 Whereas the English translation of multa in the Carnegie Series of Classics of International Law is ‘commodities’ (referring only to movable things), the Spanish translation of the same word is muchas tierras (lot of land) that are clearly immovable things. See respectively, Vitoria, De indis (n 74) Sect III s18, 162, and Francisco de Vitoria, Sobre el Poder Civil; Sobre los Indios; Sobre el Derecho de la Guerra (Estudio preliminar, traducción y notas de Luis Frayle Delgado, Tecnos 2007) 149–50. In Pagden and
multa could not be interpreted as including immovables in general and (deserted) land in particular.

On the one hand, Vitoria could just be referring to movables as earlier in his lecture he had restricted the Spanish right of occupation to that type of thing. Moreover, in his treatise De iustitia Vitoria explained that after the divisio rerum many things remained undivided and, therefore, belonged to the first who occupied them. And then he illustrates this statement by giving concrete examples and mentioning only movables such as animals, birds, and fish. In addition, in his commentary on Aquinas’ Secunda Secundae Vitoria stated that once the world was divided ‘those lands belong to those infidels, and … since therefore they are true owners, if they do not want to donate them, it follows that we cannot now retain or capture them. Just as, in the matter of the Indians, certainly no one can capture land from them’. But this conclusion was similar to his affirmation in the first part of his Relectio de indis that the peoples of Latin America were the owners of their territories, a conclusion that did not prevent the applicability of the law ferae bestiae and the appropriation of unoccupied goods.

On the other hand, in the second part of his lecture Vitoria makes clear in his dismissal of the right of discovery as legitimate title of Spanish power in Latin America that the territories or countries of the peoples of Latin America were within the scope of application of the law ferae bestiae. In other words, occupation could theoretically be applied to unoccupied lands. Again, Vitoria’s argumentation closed the possibility of applying the law ferae bestiae to the whole of Latin America’s natural products, movables and immovables. But as he later drew an exception related to unoccupied movables, it would be plausible that exceptionally deserted places would also fall within the scope of the right of occupation.

Vitoria’s doctrine created the possibility of seizing Latin America’s natural resources as long as they had not been previously exploited, creating an umbrella of legal possibility for the activities of Spanish conquerors and merchants who exploited every natural product of marketable value (animals, trees, plants with medical properties, minerals, fruits, fish, food plants, etc). Putting it simply, through this right the Spanish greatly expanded their power over Latin American natural habitats.

The ecological implications of the right to occupy were far reaching. Nature was placed under a logic of appropriation whereby its value was measured in relation to the commodities it offered and their economic value. Land, resources, and other natural elements of economic significance were potentially capable of being

Lawrance multa is translated as ‘possessions which they regard as uninhabited’. According to this interpretation, uninhabited places, and thus immovables, were included among the unoccupied things that the Spanish could seize. See Vitoria, ‘On the Latin American Indians’ (n 31) 3.8 s18, 291.

90 Vitoria, De iustitia, q62, a1, n25, 80 as quoted in López, ‘Propiedad y Dominio’ (n 43) 77.
91 Ibid, 81.
92 Vitoria, Comentarios a la Secunda Secundae, vol III, q. 62, a. 1, n. 28 as cited in Brett, Changes of State (n 51) 198.
93 Vitoria, ‘On the Latin American Indians’ (n 31) 2.3 s31 264–65.
94 Borah, Justice by Insurance (n 38) 38.
privately owned. This was not an inconsequential possibility on account of the huge profits to be made from the trade in Latin American goods. In theory, if Latin Americans did not rush to exploit vacant natural resources as intensively as the colonizers, they risked losing economic control over their environment. Independently of who was going to be its new owner and due to the possibility of appropriation, nature was to be exploited more than ever before.

Two factors contributed to increase the impact of the right of occupation. The Spaniards’ perception of Latin American nature was conditioned by their idea of wilderness. Portions of forest opened to attract game or certain agro-forestry systems\textsuperscript{95} to collect different kinds of nuts might have looked to their eyes as unoccupied grasslands for cattle, and idle trees waiting to be transformed into timber. Even if Latin Americans were actually using particular landscapes, Spaniards logically tended to presume lack of occupation in places where they could not detect the environmental impact of human activities. In this context, the Spaniards, who could impose their standard when judging the occupation or lack of occupation of a particular environment, enjoyed the upper hand in deciding how far their private property rights could encroach upon Latin American nature.

Another element that amplified the influence of the right of occupation was the fact that it entered the law of nations at precisely the historical moment in which Latin America became more depopulated and, hence, more unoccupied.\textsuperscript{96} Even if Vitoria was aware of this phenomenon when he formulated the doctrine of occupancy, he could not have fully comprehended its environmental implications. Following his reasoning, once nature bounced back, extending over places that had previously been cultivated or deforested, the only way Latin Americans could retain their historical rights of ownership over the environment was to occupy back those landscapes. This was a burdensome task for a rapidly shrinking population, whose freedom of movement became quite restricted as a result of conquest.

As a consequence of these two factors, wilderness enormously expanded both conceptually through the Spanish appropriation of its meaning and factually due to its application to particular geographical locations and the depopulation of the continent. As Latin Americans died land and commodities were plentiful for the taking.\textsuperscript{97} Nature blossomed and so did the economic possibilities of Spanish adventurers and those Latin Americans who rapidly adapted to and benefited from Spanish institutions.\textsuperscript{98} Moreover, the new conception of private property allowed neglect of one’s possessions.\textsuperscript{99} In consequence, there was actually no limit to the amount of land that the Crown could grant to the newcomers or that they could seize.\textsuperscript{100}

\textsuperscript{95} See Whitmore and Turner (n 39) 21. For Amazonian agroforestry systems see William M Denevan, \textit{Cultivated Landscapes of Native Amazonia and the Andes} (Oxford University Press 2001) 69–70.
\textsuperscript{97} Miller, \textit{An Environmental History} (n 7) 101.\textsuperscript{98} Borah, \textit{Justice by Insurance} (n 38) 38.
\textsuperscript{99} See Soto, \textit{De iustitia} (n 40) 280.
\textsuperscript{100} Borah, \textit{Justice by Insurance} (n 38) 38. In fact the Crown tried with little success to limit the seizure of new landholdings threatening to take the land if it was not productive. See JH Elliott, \textit{Spain, Europe & the Wider World 1500–1800} (Yale University Press 2009) 120.
One of the results of these changes in the conception of *dominium* once it was applied to the land was the formation and slow but steady consolidation of a new institution: the *latifundia* and a sort of land nobility that were to shape Latin American political, economic, and social life for centuries to come. But ‘land grabbing’ became only noticeable at the end of the sixteenth century and during the seventeenth century. At the time of Vitoria the economic value of land was minimal, not only because gold or silver were more profitable but also because there was just too much of it. The importance of the rights to trade and to acquire common or unoccupied natural resources can hardly be exaggerated. As far as movables are concerned, and for reasons not attributable to Vitoria, these rights transformed what seemed to be the rule at the beginning of Vitoria’s disquisition—Latin Americans’ ownership—in the exception. Most of the continent’s abundant natural resources were opened for European—mainly Spanish and Portuguese—acquisition. Besides, both rights were intertwined, reinforcing one another. The right of occupation was the basis of Spanish trade. Without the property of Latin American commodities, Spanish colonists would have had to buy timber, sugar, gold, or silver from the Latin Americans, considerably reducing their returns. Conversely, trade gave purpose and incentive to the right of occupation. The demand of Latin American commodities in international markets made the apprehension of natural resources extremely profitable.

The *jus gentium* legitimized the exercise of a very subtle form of environmental hegemony and economic violence of dispossession over the peoples of Latin America. Military force was the final guarantor and closure of the system. For Vitoria, the Spanish could only resort to war in order to protect themselves against Latin Americans’ desire to destroy them. This characterization of war as self-defence concealed the fact that the exercise of private economic rights by an external social group already constituted a sort of violence, less manifest than military confrontation, perhaps, but as destructive in the long run. The Spanish control of trade and encroachment on Latin American natural resources worked to the material disadvantage of the Latin Americans, imperiling their well-being. But this sort of structural economic violence was an invisible component of Vitoria’s system. Resistance against economic oppression was transformed by the law of nations into an attack that triggered the Spanish right to war.

Due to the fact that the economic rights of the Spaniards were part of the law of nations, any interference with their collective or individual enjoyment could be interpreted as a wrong, the only reason that according to Vitoria justified the

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103 Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s8, 283.
105 Vitoria affirms that men can wage war not only for personal protection, but also for the defence of ‘their property’. Vitoria, ‘On the law of war’ in Vitoria, *Political Writings* (n 31) 1.1 s1, 297–98.
waging of war.\textsuperscript{106} Moreover, once a wrong was committed the right to war legitimized an offensive use of force against one’s enemies.\textsuperscript{107} This type of war expanded Spanish economic power immensely. As Vitoria affirmed, it was ‘a universal rule of the law of nations that whatever is captured in war becomes the property of the conqueror’.\textsuperscript{108} By virtue of war the conquistadores acquired Latin Americans’ goods, territories, and even control of their bodies (by making them slaves).\textsuperscript{109} It was logical that as the Spanish carved a sphere of power which allowed them to move freely within the continent (right to travel) and control and exploit the economic resources of Latin America (right of trade and occupation), the Latin Americans would try even forcefully to oppose Spanish presence in their territories. But challenging Spanish economic power by all means created precisely the legal grounds to increase Spanish economic hegemony. Vitoria’s system justified a vicious circle of destitution and violence, which actually came about due to the conquistadores’ rapacious behaviour and the Crown’s economic interests in the mineral resources of Latin America.

The Religious Conception of Nature in Vitoria and Soto: A Counterbalance to Exploitation?

It is important from the outset to bear in mind that the way we look at nature today and the way Vitoria and Soto did are radically different. Our world and that of the Spanish scholastics are incommensurable. As Íleana Porras reminds us, concepts like ecosystems and wilderness are of novel currency and affect our perceptions and the implications we draw from the world.\textsuperscript{110} Vitoria and Soto looked at nature through their religious lenses. Today we wear different ones. So again, the point of analysis of Vitoria’s and Soto’s ideas is not to pass judgement on them, but rather to examine the kind of glasses they wear in order to ascertain the historical implications that the power attached to their ideas and worldview has had on the actual world.

Vitoria’s legal doctrines legitimized the introduction of economic practices that in the hands of the Spanish conquistadores had an adverse effect on the Latin American environment. First, under the right to private property nature became an object of privatization. Every natural element could be seized in order to serve the particular interests of its owner. For Soto, the distinctive feature of dominium was that the power of the proprietor over its property could be exercised solely for its own benefit.\textsuperscript{111} Second, the rights to participate in the commons and occupy vacant resources defined who was to be the main owner of Latin American natural resources. Both rights transferred innumerable natural resources—even though Latin Americans

\textsuperscript{106} Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s6 281–82 in combination with Vitoria 3.1 s13, 303.
\textsuperscript{107} Vitoria, ‘On the Latin American Indians’ (n 31) 3.1 s8, 283.\textsuperscript{108} Ibid.
\textsuperscript{109} Ibid.\textsuperscript{110} Porras, ‘Appropriating Nature’ (n 70) 645.
\textsuperscript{111} Soto, \textit{De iustitia} (n 40) Book IV, 1.1, 279–80 and Book IV, 1.2, 284.
still retained a fair amount of land for a long time—to the Spaniards, placing them under the control of those who most profited from their exploitation. Finally, the right to trade gave nature a new function. It served the purpose of satisfying individual consumption at the one end of the spectrum and the accumulation of capital at the other end. Whereas nature's commercial value increased in the *jus gentium*, the religious and cultural values that it had before became irrelevant.

All this notwithstanding, the economic rights that Vitoria acknowledged created the possibility of environmental exploitation in Latin America but not its necessity. They operated in a larger ideological context which could have offered a counter ideology that prevented the destruction of nature. After all, and despite the strong economic incentive to commercialize nature, nothing impeded the private owner to preserve it and use it sustainably. So, in order to ascertain whether there was a counterbalance to the exclusive economic value that nature acquired in the *jus gentium* it is important to consider the way in which Vitoria and Soto conceived nature and the human relationship with it.

There are few explicit references to nature in *De indis*. The first can be found in the discussion of whether sin was a reason for denying Latin Americans *dominium* over their lands. Vitoria's ideas about nature were influenced by his condition of religious 'man'. So, he cited Genesis in order to explain that *dominium* was founded in the image of God: 'Let us make man in our own image, after our likeness; and let them have dominion over the fish of the sea and over the fowl of the air, and over the cattle, and over all the earth …' This assertion was part of a larger argument, to wit, that sinners did not have *dominium*, which he rejected.

Vitoria's views were common among the Spanish scholastics, and particularly within the Thomist tradition. In the *History of the Indies*, Las Casas gave a similar explanation of the creation of the natural world and humanity's position in it. Explaining the topics he was going to cover in chapter 1 of the first book he stated: 'This chapter deals with the creation of heaven and earth—How God gave it, with all its lower creatures for human mastery—How this mastery diminished as a consequence of the original sin …' Similarly, he stated that God had created nature for the health and utility of human beings, describing it as a 'world machine' dedicated to mankind. For Soto, men's resemblance to God stemmed from the fact that they too had power over the world's irrational creatures.

At the time of Vitoria, the Christian interpretation of humanity, nature, and their mutual relationship was based on the creation of the world as narrated in Genesis.

112 Vitoria, ‘On the Latin American Indians’ (n 31) Sect I s5 121.
115 Ibid, Vol I Book I Ch 1, 23.
116 Ibid, 25.
117 Soto, *De iustitia* (n 40) Book IV, 1.2, 284. The control of human power over nature was extended by Soto to the four natural elements, namely air, water, land, and fire: ibid, Book IV, 2.1, 288.
At this seminal moment of human history, God’s mandate was clear: be fertile and increase, fill the earth and master it. The difficulty in deciphering the meaning of God’s will in this passage and, for that matter, in the Bible at large is that there is no fixed meaning attached to biblical words, which makes permanent interpretation necessary. So the biblical implications of human mastery over nature remained unclear. How should humanity relate to the environment?

There are two main interpretations of the way in which Christianity understood and fulfilled God’s mandate. According to one position, dominion over nature facilitated its actual domination and eventual exploitation, because the power conferred to humanity was unlimited. A more lenient view of Christianity holds that identifying dominion with domination misrepresents the function assigned to humans in the divine scheme. In reality, dominion over non-human nature could be interpreted as a responsible and restricted mandate, enshrined in the notion of stewardship. Humanity was assigned a superior position in regard to natural order to care and protect it and not to spoil it.

Vitoria did not explain his interpretation of the purpose of human dominium. He was silent as to the type of power that it entailed. Therefore, we cannot judge Vitoria’s ideas about humanity’s relationship to nature based solely on this statement. We can only know that his ideas were inspired by religious beliefs as later in the text he reiterated that dominium was based on man’s resemblance to God. Unlike Vitoria, Soto explicitly explained that the objective of human dominium was to create a right to subjugate the Earth and dominate animals and the natural elements.

Later in Vitoria’s lecture there is a more revealing reference to nature. He refuted the argument that even irrational creatures might have dominion, asserting that ‘… wild animals have no rights over their own bodies (dominium sui); still less can they have rights over other things. The major premise is proved by the fact that it is lawful to kill them with impunity, even for sport.’

Vitoria started his disquisition about animals claiming that they, as the rest of irrational creatures, could not be proprietors. In the Thomist tradition human resemblance to God implied that animals were ‘objects of human dominium rather than subjects of dominium themselves’. His position reflects the common anthropocentric theological assumptions of his time and the doctrinal legacy of Saint Thomas and Aristotle.
Vitoria granted humans a broad power over nature based on the opposition of proprietor/property and the right of possession, with the former over the latter. It is worth noticing that Vitoria included both domesticated and undomesticated animals within the same category. None escaped humanity’s reach. The Dominican scholar understood human ownership in absolute terms. Humans could resort to the ultimate way of controlling another entity: its destruction. In Soto we find the same right to kill animals as a prerogative of dominium. Even though both scholastics only referred to animals, the same treatment was extensible to the rest of non-human nature considering that animals occupied a higher place than flora or inanimate nature in the chain of being.

Vitoria’s and Soto’s views on human ascendency over animals make clear the kind of power that these authors derived from human dominium. For most authors of Second Scholasticism, human superiority over non-human nature was a necessary consequence of humans having been created in the image of God. Contrastingly, based on the same Christian premises, Las Casas arrived at the contrary conclusion. Humans could not use animals and other natural life as they pleased. They had to realize God’s plan for the fulfilment of nature’s perfection. For him, human superiority over the environment was limited by God’s programme, the content of which was, nonetheless, left undefined. These kind of limits are absent from Vitoria’s and Soto’s texts. In principle, humans did not need to justify unsustainable practices because the most extreme of them, the destruction of nature, could be freely performed—even for pleasure (according to Vitoria). Dominium demarcated a personal space of absolute power over one’s property. As far as human power over nature was concerned, being a proprietor was like being a semi-God.

Still we should be cautious when interpreting the views of Vitoria and Soto on human dominium as well as their environmental implications. Even if from a contemporary environmental sensitivity their views appear distinctly anthropocentric, there was still a clear limit to this anthropocentrism. For them the purpose of the absolute power that humans had over nature was not personal enrichment. The School of Salamanca was in principle opposed to the accumulation of capital. Human power over God’s creation resulted from the need of human

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127 For Soto as for Vitoria, dominium is the power over the very nature of the thing possessed. This entails destroying one’s property, as for example, killing an animal. Soto, De iustitia (n 40) Book IV, 1.1, 281.
128 Soto, De iustitia (n 40) Book IV, 1.1, 279.
129 This expression refers to a Christian belief whereby all creatures were ordered in a scale of perfection from the lowest to the most noble: God. Reference to the Chain of Being was common at the time of Vitoria. Las Casas, for instance, stated that: ‘Rational nature, after the angelic, is nobler and more perfect than any other created thing, and thus is the best and noblest part of the whole universe, to the extent that it has a greater resemblance to God.’ See Las Casas, Historia de Las Indias (n 114) Vol I Book I Ch I, 23. Soto refers to the Chain of Being without explicitly mentioning it in Soto, De iustitia (n 40) Book IV, 1.2, 284.
130 See also López, ‘Propiedad y Dominio’ (n 43) 82.
131 Las Casas (n 114) Book I Ch I, 24–25.
The satisfaction of basic human needs had become severely compromised after the fall because nature no longer spontaneously supplied humanity with its bounty. Therefore, the natural corollary of the need to transform nature more thoroughly in order to subsist was to grant humans the power to do so. It was the task of the Spanish scholastics to develop the legal institutions conductive to that end.

It is true that for Spanish scholastics there was no constraint to human power over nature and that, as Vitoria affirmed, it could even be exercised for mere pleasure. In this sense their views seem compatible and even conductive to the exploitation of nature. But still there was a limit to the scope of applicability of human environmental power based on the necessity of securing sustenance. But this limit—derived from a particular religious notion of human history—which could have acted as a counterbalance of the profit motive was never incorporated into the secular *jus gentium*.

**Concluding Remarks**

It is likely that without the Spanish obsession for fast wealth and the enormous dividends that Latin American natural resources gave to the Crown, the Latin American environment would have fared better. Unluckily, the *conquistadores* and the Spanish Crown had different ambitions regarding Latin American natural habitats. In the context of increasing material ambitions, the Spanish economic rights that Vitoria sanctioned were used to legitimize economic domination and environmental exploitation in Latin America. Ideas about nature provided the ideological background in which concrete economic practices flourished. At the same time, those practices and their value for empire shaped ideas, which eventually tended to conform more and more to the economic ethos of imperialism. In the context of an incipient but vibrant global economy, in which considerable power was accumulated, albeit in few hands, by the appropriation, extraction, and exchange of natural products, it was just a matter of time that the fragile non-legal limits that Vitoria and Soto had established to the exploitation of nature were once and for all transcended. In fact, following centuries would witness the ascent of other European powers and economic operators with similar dreams of wealth. In order to satisfy their ambitions they seized innumerable natural resources in Latin America, Asia, the Pacific, and Africa. The history of colonialism is also a history of economic elites (mostly of European origin) and their ascending power over nature worldwide.

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133 In his *relectio De Dominio* Soto distinguish between natural, divine, and human *dominium*, explaining that natural *dominium* is given by nature so that humans can eat and drink: Soto, *Relección* (n 59) 99. He then added that by nature humanity has a right over everything that is needed for its conservation: ibid, 13, 107.

134 Soto, *De iustitia* (n 40) Book IV, 3.1, 296.
Latin Americans had occupied, consumed, used, and traded natural resources for centuries. They had also shaped nature significantly and not always sustainably. However, the legal infrastructure provided by Vitoria allowed the privatization and exchange of nature-as-commodity on a continental scale and the use of that power to apprehend and exploit Latin American ecosystems entailed a substantial intensification of that pattern. In the absence of any limit to the materialization of Spanish economic rights, the fact that, for instance, the exploitation of timber or the establishment of mines and plantation agriculture displaced more sustainable uses of the same lands seemed not only legal but also progressive. Legitimized by the economic rights of *jus gentium*, the exchange economy of the sixteenth and seventeenth centuries (in which Latin American resources played a pivotal role) took shape, becoming one of the main factors of some the most significant and deleterious environmental changes of the Early Modern era.

Despite being aware of the novelty and importance of the moment in which he was writing, it would be disingenuous to make Vitoria responsible for the historical and ongoing human and environmental tragedy that has resulted from centuries of global wealth accumulation. Perhaps more striking than the historical construction of this drama at a time in which the world’s natural habitats seemed almost infinite is the continuation of human and environmental suffering in the face of today’s awareness of the dreadful impact on both people and landscapes of our global economic system. No intellectual endeavour seems to help humans wake up from the dream of owning nature and prizing what is freely (though not necessarily unlimitedly) at our disposal (air, water, food). It may be that it is not the brain but an organ situated in the chest of our persona that this message has not yet reached.

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