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TOWARDS A GLOBAL INTELLECTUAL HISTORY OF AN UNEQUAL WORLD



The Intellectual Foundations of Imperial Concepts of Inequality

Julia McClure

Department of History, University of Glasgow, Glasgow, UK

ABSTRACT

Political and economic discussions of inequality have boomed since the second half of the twentieth century, but concepts of equality and inequality are far older. Understanding the longer intellectual history of inequality helps deepen understandings of how the concept has changed over time, as well as across different societies, and how concepts of equality have been pre-figured to accommodate concepts of inequality. Concepts of equality have been informed by culturally relative theories of justice and beliefs about institutions that can help rationalise situations of inequality. This article examines how Scholastic examinations of equality in Europe during the Middle Ages came to focus both on the importance of property and proportionality, the need to differentiate between people of different status, and how this was developed by the so-called Second Scholastics during the emergence of the Spanish Empire in the sixteenth century and helped lay the foundations for the concepts of inequality that came to structure global imperialism.

KEYWORDS

Inequality; equality;
scholasticism; Spanish
Empire; property; natural law

1. Introduction

There is general consensus that human societies are unequal, but there is no consensus concerning what way they are unequal, to what extent, or what a society with full equality would look like. Concepts of inequality are relational, but the shape of inequality looks different depending upon what we compare. How societies have thought about inequality and its historical causes have changed over time. How societies have thought about equality, and its moral, political, and economic desirability, have also changed over time. Societal beliefs about equality and inequality have been entangled with beliefs about the boundaries of societies and the possibilities of inclusion or exclusion. The inequalities of the modern world are racial and gendered, but the social contours of inequality are often flattened in economic models of inequality that use aggregate metrics such as GDP. Inequality is often measured in economic terms, but economic transactions are not free-floating processes. How societies conceptualise the economy, how it functions, and how resources (such as

CONTACT Julia McClure ✉ julia.mcclure@glasgow.ac.uk 📍 University of Glasgow Room 401, 10 University Gardens G12 8QQ, Glasgow, UK

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subsistence consumables, commodities, or political freedom) should be distributed both between and within societies helps condition the pathways to inequality. This article examines how Scholastic debates about equality and inequality that developed in Europe during the Middle Ages influenced debates about which people could access which resources in the sixteenth century during the dawn of European global imperialism, and how this helped set the proto-racial pathways of the global inequality that came to characterise the modern world. There are numerous studies of the contribution of Scholastic thought to theories of empire but,¹ until now, there has been less attempt to connect this to the long intellectual history of inequality. This article argues that the way in which the Scholastic concept of equality incorporated the importance of property rights and proportionality inbuilt the possibility for inequality, and that the way this was developed by the Second Scholastics of the sixteenth century laid the foundations for the inequalities of the imperial world order. It is reasonably well known that Scholasticism laid down a theory of natural equality in humanity,² there has been less focus on the implications of how this equality was qualified, or how the boundaries of humanity came to be questioned during the emergence of global imperialism.

In a recent study of the long cultural history of inequality in medieval and early modern Europe, Alfani and Frigeni argue that while economic inequality increased steadily throughout the pre-modern period, only when this becomes more acute during the period of industrialisation does the economic understanding of inequality come into being: 'Chronologically, the moment when inequality finally acquired an economic meaning probably coincided with European industrialization, the rising phase of the Kuznets curve'.³ They argue that before the industrial revolution there were concepts of equality, but not inequality, and that

preindustrial Europeans (from the Middle Ages to the end of the early modern period if not beyond) were well aware that their economies and societies were highly unequal, but they usually viewed this situation as acceptable, 'natural', and inherent, given God's plans.⁴

Conversely, in this article, I argue that there was a concept of inequality in pre-modern Europe, and that this was not just theological, but also political and economic, relating to theories of property. Inequality was not seen as natural, because in the state of nature all things were equal. The state of nature was the subject of ongoing debates in the Middle Ages, and within these debates the theological, the political, and the economic were not separate spheres but deeply connected. Medieval European discussions on the state of nature were also economic since they were centred around the concept of *dominium*, understood as property and lordship. These discussions were not abstract, relating only to a past time, but informed theories of natural law, which in turn informed legal, moral, and economic norms.

The sixteenth century has been acknowledged as a turning point in understandings of inequality; Alfani and Frigeni attribute this to the spread of the natural law tradition,⁵ but transformations of understandings of inequality need to be understood in the emerging global context of imperialism for two reasons. Firstly, the influx of New World wealth engendered anxiety about the resulting extremes in inequality of wealth. In 1589 in his *Ragione di Stato* (Reason of State), the anti-Machiavellian thinker Giovanni Botero warned that 'all the great empires have been ruined because of two vices, luxury and avarice'.⁶ Secondly, the School of Salamanca renewed discussions of equality in the

state of nature. These Second Scholastic debates focused upon the theological question of the ontological state of the Amerindians, but they had political *and* economic implications as they followed the Thomistic schema and focused upon property rights. New understandings of inequality did emerge in the sixteenth century, but these must be understood in the global context of imperialism. These new understandings of equality and inequality were political, economic, and socio-cultural, and had longstanding implications for the history international relations and the racial logic of capitalism.

2. The battle for equality in the state of nature

Scholars in medieval and early modern Europe did not believe that inequality was natural. Medieval thinkers tended to agree that men were equal in the state of nature, but they debated the constitution of this natural equality. The concept of equality was mutable and could accommodate within it multiple forms of inequality. For example, there could be gender inequality as Adam was discussed as having *dominium* (ownership/lordship) but not Eve,⁷ and it could be anthropocentric as Adam was discussed as having *dominium* over the natural world, humans were interpreted as superior to animals.

The medieval discussions on equality focused on the concept of *dominium*, understood as lordship and ownership. Consequently, theological discussions about natural law and equality in the state of nature had real economic meanings, as they related to the concept of property. The battle for the form of equality in the state of nature was central to the Franciscan poverty disputes in the thirteenth and fourteenth centuries. The Franciscans had denied that people had access to the things they needed in the state of nature due to the power relation of property or lordship, but rather by simple use. The Franciscan position that the common access to resources in the state of nature did not involve relations of *dominium*, was defeated in Pope John XXII's bull, *Quia vir reprobus*, which ruled that Adam had *dominium*, understood as property, from God in the Garden of Eden before The Fall. Unlike the Franciscans, the Dominican friar Thomas Aquinas (1225–1274) had argued that there was *dominium* in the state of nature: 'man has a natural dominion over external things, because, by his reason and will, he is able to use them for his own profit, as they were made on his account'.⁸ Aquinas reminded readers that this *dominium* was from God,

moreover, this natural dominion of man over other creatures, which is competent to man in respect of his reason, wherein God's image resides, is shown forth in man's creation by the words: 'Let Us make man to Our image and likeness, and let him have dominion over the fishes and sea'. (Genesis I 26)⁹

Within the Thomistic tradition, all things were common in the state of nature with respect to *dominium*. Contrastingly, the Franciscans had argued that all things were common in the state of nature but use of resources did not require *dominium*. The Franciscans had conceptualised an alternative vision of equality that was not conditioned by the power relation of *dominium*. Within the Thomistic synthesis, there was equality in the state of nature, but there was also *dominium*, and from this theological premise the material inequality engendered by property relations became possible.

During the late Middle Ages, the mendicant orders debated the meaning of property and its theological and moral implications. Whereas the Franciscans saw private property

as the source of moral corruption, an indicator of the immorality of post-Lapsarian man, Aquinas saw private property as instituted by positive law but following from natural law. He wrote that ‘the ownership of possessions was not contrary to the natural law’.¹⁰ Aquinas saw private property as ‘necessary to human life’, ensuring productivity, order, and peace.¹¹ The Franciscans alternatively had seen private property as the source of the moral corruption of society.

While private property was important to the Thomistic vision of society, this view was not libertarian; private property was not an absolute freedom of the individual. Thomists saw property as having a theological and social function. Thomas Aquinas was influenced by the work of the Ancient Greek philosopher Aristotle (384–322BCE), and Aquinas established the place for Aristotelian thought within Christian moral philosophy in his *Summa Theologica* (1265–1274). Aquinas, and subsequent Thomist thinkers, were influenced by the Aristotelian view that private property could be a path to virtue as it enabled the redistribution of accumulated private property through practicing the virtue of generosity. Aquinas observed that owners of possessions ‘should be ready to communicate them to others in their need’.¹² He even added that somebody who takes something in extreme necessity is not guilty of theft, but added that the person in need does not consume the things taken without a property right but rather those things become their property in the case of need.¹³ Following this, Aquinas went on to explain other cases, for example that the spoils of just war were not robbery.

Aquinas’ property centred view of human society was opposed to wealth inequalities. He quoted Basil who had said ‘Why are you rich while another is poor, unless it be that you may have the merit of good stewardship and he the reward of patience?’¹⁴ Additionally, he quoted Ambrose who had said ‘He who spends too much is a robber’.¹⁵ The Thomistic property centred view of human society was opposed to inequalities, but while the Franciscans had focused upon the ability of the poor to use the things that they required without any property rights, Thomists focused upon the obligations of the property owner to give to the poor. This focus on the obligation of the owner rather than the right of the receiver helped shape the pathways to inequality in the early modern period when the particular demographics of who should receive charity were debated.

3. Inequality in natural law

Rousseau’s 1754 essay *Discourse on the Origin and Foundations of Inequality among Men* has been taken as a turning point in the discussion of inequality in the European intellectual tradition. This essay is thought to have inspired the 1776 Declaration of Independence which proclaimed that ‘all men are created equal’ and the 1789 French Declaration of the Rights of Man. Rousseau began his essay by stating that men, ‘who are by common consent, as much equal by nature as were the animals of every species before diverse physical causes introduced the varieties we observe among them’.¹⁶ In this opening passage, Rousseau articulated a long-established theory of natural law that all were equal in the state of nature, and that inequalities were established by human laws and institutions with the evolution of civil societies after the Fall. Rousseau went on to say that man has lost its understanding of nature, and cannot agree on what is law, and so the meaning of natural law, and correspondingly equality, had become lost. Rousseau argued that this had led to misunderstandings such as the exclusion of animals from

the natural right not to be abused.¹⁷ Rousseau's essay was by no means a starting point in discussions of equality or inequality, but it does illustrate how conceptions of equality, conditioned by conceptions of the state of nature and understandings of natural law, have changed over time. The subject of equality and the state of nature were central to the natural law debates of the medieval and early modern period.

Thomas Aquinas contributed to the development of natural law theory in the thirteenth century in his monumental *Summa Theologica*. In this, equality was one of the six articles of Aquinas's discussion on natural law. Aquinas argued that natural law was common to all: 'as far as common principles are concerned in the case of speculative as well as of practical reason the same truth and the same rectitude exists among all and is equally known to all'.¹⁸ He added the disclaimer that:

in the case, however, of the proper or peculiar conclusions of speculative reason, the same truth obtains among all, even though it is not known equally to all. For it is true among all men that the three angles of a triangle are equal to two right angles, even though not all men know this.¹⁹

Fundamental principles were true for everybody, but this knowledge may not be equally distributed.

Within his discussion of equality in natural law Aquinas covered the conditions in which inequalities could arise. He explains, 'in the case of the proper or peculiar conclusions of the practical reason there is neither the same truth and rectitude among all men, nor where it does exist, is it equally known to all'.²⁰ Aquinas gave the example of the restitution of a deposit to an owner, arguing that while usually this would be right and in accordance with reason, 'a case may possible arise in which such restitution is harmful and consequently contrary to reason; so, for example, if things deposited were claimed so that they might be used against the fatherland'.²¹ While certain principles were equal to all, there may arrive conditions which necessitate unequal application. Aquinas added that some men may deviate from natural law, as 'some men have their reason distorted by passion, or by evil habits, or by bad natural relations'.²² He explains that under such conditions a morally corrupted person could fail to recognise theft as contrary to justice.²³

In this example of Aquinas's discussion of equality in natural law he gave the example of the restitution of property, and this is unsurprising since the concept of property was central to many of Thomas Aquinas's discussions of natural law. Within the natural law tradition the key concept conditioning hierarchies of equality and inequality was *dominium*, understood as both ownership and lordship. It is not true that pre-modern conceptions of equality and inequality were not concerned with material inequalities since the key concept was property.

Property was also central to Aquinas's concept of Justice. In his *Summa Theologica* Aquinas defined justice as 'rendering to each one his right'.²⁴ For Aquinas this meant property rights, 'rendering to each one his own'.²⁵ Given private property could be unevenly distributed, in the Thomistic schema which was predicated upon the protection of private property, justice and inequality were not incompatible. But as we have seen from his discussion on property, extremes of inequality were seen as immoral.

Equality was important to Aquinas and his discussion of natural law and justice, but Aquinas's concept of equality was not defined by all things being the same so much as

difference be proportionate. In explaining equality in justice, he wrote that ‘each man’s own is that which is due to him according to the equality of proportion’.²⁶ This definition of equality in terms of proportionality came from Aristotle.

In the *Nichomachean Ethics* Aristotle discussed equality with regards to justice and injustice. For Aristotle justice could be understood in terms of what was lawful (universal justice) and in terms of what was fair and equal (particular justice).²⁷ Aristotle then identified two forms of particular justice: distributive justice and corrective justice, later called commutative.²⁸ Distributive justice concerned the distribution of resources in society, while corrective, or commutative justice, concerned punishment. Both distributive and commutative justice concerned treating unequal people unequally. With distributive justice, ‘awards should be ‘according to merit, for all men agree that what is just in distribution must be according to merit in some sense’.²⁹ Aristotle gave illustrative examples of merit as those with noble birth or the free not enslaved. Aristotle explained that ‘the just then, is a species of the proportionate’, he defined proportionality as an equality of ratios.³⁰ Aristotle understood distributive justice in terms of equality, but what was just was not necessarily equal but proportionate. Aristotle explained that

Equality implies at least two things. The just, then, must be both intermediate and equal and relative (i.e. for certain persons). And qua intermediate it must be between certain things (which are respectively greater and less), qua equal, it involves two things, qua just, is for certain people.³¹

Equality in its Classical conception was not ‘equal’ in the sense of different people having the same things, but relational. Different people could have different things, which we would understand as equity, but this was not incommensurable with a notion of equality if this was proportionate.

Aquinas breathed new life into the Aristotelian notion of distributive justice and the definition of equality in terms of proportionality of difference when he argued that

the matter of justice is an external operation in so far as either it or the thing we use by it is made proportionate to some other person to whom we are related by justice. Now each man’s own is that which is due him according to equality of proportion. Therefore the proper act of justice is nothing else than to render to each one his own.³²

In his *Commentary on Aristotle’s Politics*, Aquinas clarifies that there are two forms of equality, things that are equal, and things that are proportionally equal:

and so he said in his *Ethics* than an equal reciprocity (i.e. proportionally equal return to each one for what one has done) preserves a political community, since there needs to be such reciprocity among those who are free and equal. For if there were no return to someone for what one has done, there would be a form of slavery. And in things exactly equal, this return, which he here calls reciprocity, is done by exact equality, so that each receives as much gain as each contributed, and each suffers as much loss as each caused. But in things proportionally, not exactly, equal, proportional equality will also be observed.³³

This accounts for different expectations for equality with regards to the distribution of property. Aquinas argued that while for Aristotle ‘it is in one respect expeditious for the political that citizens have equal property, in order to avoid civil strife among them’, he adds that ‘it is not important, so to speak, that this avoids civic disturbances by the lower classes when matter for strife by the upper classes remains’.³⁴ Aquinas

explained that equality might not be the most harmonious or beneficial choice for the political community:

for the endowed in the political community (e.g. the noble and virtuous) will be indignant if they receive equal things but deserve greater things. For, as it seems to be contrary to justice that equal persons have unequal things, so it is unjust that unequal persons have equal things.³⁵

The Thomistic discussion of equality centred on property and accommodated the need for unequal distribution, as long as this was proportionate.

Thomas Aquinas departed from early Christian beliefs about redistribution. While the Church Father Augustine of Hippo had contended that giving to the poor was a matter of justice, Aquinas argued that this was a matter of liberality, mercy, or charity, which were secondary to the cardinal virtue of justice.³⁶ Aquinas explained that this went against Cicero, who had said that ‘beneficence, which we may call kindness or liberality, belongs to justice’.³⁷ For Aquinas the redistribution of charity, was secondary to justice which protected property rights which could be distributed proportionately. Aquinas did not forget the needs of the poor, arguing that they became owners of the things they needed to use in the case of necessity, ‘that which he takes for the support of his life becomes his own property by reason of that need’.³⁸ Despite this, Aquinas cited his departure from the teaching of the Decretal, ‘It is the hungry man’s bread that you withhold, the naked man’s cloak that you store away, the money that you bury in the earth is the price of the poor man’s ransom and freedom’. Aquinas posited that this did not mean that all excess wealth had to be given to the poor, as there were too many poor, and so instead the owner must manage their goods and give accordingly

since, however, there are many who are in need, while it is impossible for all to be succoured by means of the same thing, each one is entrusted with the stewardship of his own things, so that out of them he may come to the aid of those in need.³⁹

While Aquinas acknowledged the right of the very poor, he placed the power of giving, and the need to differentiate those in need, with the owner.

Thomas Aquinas’s conception of natural law, discussion of the nature man, principles of justice, importance of property, and Christian reception of Aristotle were significant beyond the thirteenth century. In 1526 the Dominican friar Francisco de Vitoria was elected the Prime Chair of Theology at Salamanca where he was expected to lecture on Peter Lombard’s *Sentences*, but instead insisted that he be allowed to comment on Thomas Aquinas’s *Summa Theologica*. This established what later became known as the School of Salamanca, or Second Scholastics, including scholars such as Domingo de Soto (1494–1560) (Charles V’s confessor) and Melchior Cano (1509–1560). Scholars of the School of Salamanca worked with, but also departed from, the Aristotelian-Thomistic schema of the late Middle Ages, and made important developments in theories of natural law and moral theology which produced new theories sovereignty.⁴⁰ In the sixteenth century, the scholars of the School of Salamanca were engaged with questions of global significance, the nature, rights, and property of the indigenous people of the New World, the boundaries of imperial sovereignty, and the integrity of relations between nations. The response of the School of Salamanca scholars to these questions had far-reaching consequences, and they have even been credited as establishing the foundations

of international law. The way in which these interventions were rooted in the significance of private property had long-lasting implications for the history of inequality.

4. Inequality and the foundations of international law

In 1547 Juan Ginés de Sepúlveda (c. 1490–1573), the official chronicler of Charles V and tutor of Philip II wrote *Democrates Secundus*, which argued that the indigenous people of the Americas were less than humans: ‘With the prudence, intelligence, magnanimity, temperance, humanity, and religion of these men [the conquistadors], now compare these less-than men [*homunculi*], in whom you will scarce find any traces of humanity.’⁴¹ Sepúlveda argued that they are more like animals:

They are for the most part slavish and barbarous. For the fact that they have houses, some means of communal living, and trade, which natural necessity brings about, proves nothing but that they are not bears or monkeys, which totally lack reason.⁴²

He argued that the indigenous people of the Americas did not have civil society, and if they had organisation, it was more in the manner of a colony of bees or ants.⁴³ Like many commentators on the so-called New World, Sepúlveda had not travelled across the Atlantic and had not witnessed Amerindian civilisations first hand. In comparing the Amerindians to animals, he was building upon a literary genre that had been established during Columbus’s first landing in the Antilles, and which had grave political implications for the equality of indigenous people. Columbus had described the indigenous Taíno people whom he first encountered in the Caribbean not only as meek, suggesting they were infantile, but also comparing their hair to that of horses.⁴⁴ This comparison of the Amerindians with animals had legal and political implications for the status of the Amerindians within the New World order since, within the natural law tradition, man was lord over nature.

Upon arrival in the Americas Europeans treated the indigenous people as if they were inferior. Columbus boasted that he had tricked the islanders into unequal exchange, giving worthless trinkets in exchange for precious metals. Conquistadores took advantage of local hospitality customs, and when they were not provided for they seized what they needed by force. While as early as 1500 the Spanish monarchs Ferdinand and Isabella had ordered that indigenous people brought from the Caribbean Islands should not be enslaved and should be returned to their country of origin (*‘paises de su naturaleza’*),⁴⁵ such pronouncements against indigenous slavery did not protect the integrity of Amerindian people and resources.

In 1511, the Dominican friar Antonio de Montesinos made an impassioned plea for the humanity of the Amerindians: ‘are these not also men, do they not have rational souls?’⁴⁶ This was a direct condemnation of the violence of the conquistadores against the Amerindians but it also raised an ontological question about the status of the Amerindians and the nature of man. A discussion ensued which established that humans were equal ontologically and theologically speaking (in that all souls were equal before God), but also established rationalising frameworks for forms of inequalities instituted by positive law. These debates focused upon the equality of men, and have been identified as laying the foundations for human rights and international law, but these debates had ambivalent implications for the global intellectual history of inequality.

When Europeans encountered the Amerindians they encountered a people who were unknown to them, and some tried to classify them in terms of familiar categories in ways that would justify (to a European audience at least) their exploitation. Some early colonial commentators tried to argue that the Amerindians were not equal to Europeans as the fitted the Aristotelian category of 'natural slaves'. Aristotle had established the foundations for the innate inequality of peoples as he argued that some men are natural slaves:

We may thus conclude that all men who differ from others as much as the body differs from the soul, or an animal from a man (and this is the case with all whose function is bodily service, and who produce their best when they supply such service), all such are, by nature slaves, and it is better for them [...] to be ruled by a master. (Politics, 1254b §8)⁴⁷

In 1510 John Major, a Scottish Dominican, first suggested that the Amerindians were Aristotle's "natural slaves".⁴⁸ Juan Ginés de Sepúlveda, the humanist scholar who famously debated the rights of the Amerindians with the Dominican friar Bartolomé de Las Casas maintained that the Amerindians fitted the category of natural slaves. In his *Democrates Alter Sepúlveda* later wrote that:

Philosophers see slavery as inferior intelligence along with inhuman and barbarous customs [...] Those who surpass the rest in prudence and talent, although not in physical strength, are by nature the masters. Those, on the other hand, who are retarded or slow to understand, although they may have the physical strength necessary for the fulfilment of all their necessary obligations, are by nature slaves, and it is proper and useful that they be so, for we even see it sanctioned in divine law itself, because it is written in the Book of Proverbs that he who is a fool shall serve the wise ... If they reject such rule, then it be imposed upon them by means of arms, and such a war will be just according to the laws of nature.⁴⁹

The scholars of the School of Salamanca took up the question of the status of the Amerindians in relation to the Spanish and the legitimacy of the Spanish in the New World. Domingo de Soto set out his defence of the Amerindians in his 1535 lecture, and Francisco de Vitoria set out his position in his lecture on the Indies (*De Indis*) delivered in 1539.

The early scholars of the School of Salamanca (Vitoria and de Soto) were Dominican, and their work renewed engagement with that of their Order's founder, Thomas Aquinas. These so-called Second Scholastics held that everyone was free and equal in the state of nature, as no one held dominium over the other.⁵⁰ Aquinas has argued that under natural law everyone was born free and all property was in common, and all iniquities were instituted by human law. Following Aquinas there was equality in state of nature, since no one had dominium over the other. Vitoria explained,

they say that man was born free; in the original blessed state of innocence no man was master and no man was a slave ... Gregory the great says 'it is against nature for one man to wish for power, since all men are equal in natural law'.⁵¹

While maintaining that people were equal in the state of nature, Aquinas had taken up Aristotle's notion of natural slave by arguing that people have 'superior intellect' and are natural rulers', while 'those who are less intelligent but have stronger bodies seem to be made by nature to serve'.⁵² Classical Thomism accommodated Aristotle's theory of natural slaves, and this was the view of the Amerindians taken by some later Dominicans such as Thomas Mair.⁵³

Vitoria, departed from Aquinas and dismissed the idea that Amerindians could fit Aristotle's category of natural slaves. He argued:

Aristotle certainly did not mean to say that such men thereby belong by nature to others and have no rights of ownership over their own bodies and possessions (*dominium sui et rerum*). Such slavery is a civil and legal condition, to which no man can belong by nature.⁵⁴

Here it is clear that by natural law no man could be slave to another.

Unlike Aquinas, Vitoria and other Second Scholastics, were sceptical of Aristotle's category of natural slaves:

nor did Aristotle mean that it is lawful to seize the goods and lands, and enslave and sell the persons, of those who are by nature less intelligent. What he meant to say was that such men have a natural deficiency, because of which they need others to govern and direct them. It is good that such men should be subordinate to others, like children to their parents until they reach adulthood, and like a wife to her husband. That this was Aristotle's true intention is apparent from his parallel statement that some men are 'natural masters' by virtue of their superior intelligence. He certainly did not mean by this that such men had a legal right to arrogate power to themselves over others on the grounds of their superior intelligence, but merely that they are fitted by nature to be princes and guides.⁵⁵

Vitoria referenced Thomas Aquinas who 'rightly says that in natural law all are free other than from the dominion [*dominium*] of fathers or husbands, who have dominion over their children and wives in natural law (ST I. 92 1 ad 2; I. 96. 4)'.⁵⁶ Vitoria's rejection of the natural slavery of the Amerindians has ambivalent implications for the intellectual history of equality. It suggests that ontologically all men are free, but it introduces a deeply paternalistic framework for inequality. Children were subordinate to parents, wives to husbands, and the less intelligent to custodians.

Vitoria argued that since all men are rational therefore all men are equal juridically:

if men are essentially equal by virtue of their capacity of reason, and if they can create societies that rationally enact just laws, then their societies, in their mutual relations and bound by the principles of natural and positive justice, are juridically equal as well.⁵⁷

Vitoria argued that the Amerindians had reason,⁵⁸ and were therefore juridically equal. This ontological and juridical equality did not take into account the power imbalance of the colonial context, establishing colonial subjects as equal subjects in an unequal system.

Vitoria did not see equality as the best form of community. He argued that:

if all members of society were equal and subject to higher power, each man would pull in his own direction as opinion or whim directed, and the commonwealth would necessarily be torn apart. The civil community (*civitas*) would be sundered unless there some overseeing providence to guard public property and look after the common good.⁵⁹

Vitoria's comments show that in the mind of one of the early defenders of indigenous rights, equality was not seen as something beneficial to social order or desirable for a society.

Following the Thomistic tradition of natural law, the capacity to own property was understood to be important to the status of the indigenous people and their rights against the infringements of the Spanish state. Vitoria argued that the Amerindians possessed their own property: 'the barbarians undoubtedly possessed as true dominion, both public and private, as any Christians'.⁶⁰ Vitoria noted that there were non-Christians in

Europe and even these groups had their property rights respected, adding that 'it would be harsh to deny them, the rights we concede to Saracens and Jews, who have not been continual enemies of the Christian religion'.⁶¹ Similarly, the Dominican scholar Domingo de Soto had also stated that the Amerindians had rights to their property in his 1535 lecture.

Private property, while instituted by human law and not natural law, was seen as central to the freedom and sovereignty of people. As Koskenniemi explained,

most of them [school of Salamanca scholars] followed Aquinas and accepted private property as a pragmatic 'addition' to natural law (instead of a sinful deviation from it) and valid overall as *ius gentium*, a position that was consolidated within the Church at the latest during the Franciscan poverty controversy.⁶²

While the Franciscans had imagined an equality based upon freedom from property, the Thomistic vision which shaped the imperial order was predicated upon property and so was already an equality that could accommodate inequality. Vitoria argued that cities and commonwealths had emerged because of 'a device implanted by Nature in man for his own safety and survival' and that the rulers of commonwealths were necessary 'to guard public property' as well as looking after the common good.⁶³ The possibility for conflict between private property and the common good was left unresolved.

The right to property made problematic foundations for equality within the development of a New World order that would be characterised by inequality, by dispossession and some groups wielding power over others. Following the Thomistic vision of the emergence of society, all things were common in the state of nature, private property was instituted by human laws, and here it was not evenly distributed. It was the task of justice to protect private property. Vitoria agreed with Aquinas's view of justice as 'rendering to each one their own'.⁶⁴ Justice should see that private property rights were upheld, but as we saw in Aquinas's discussion of equality in natural law, there were different grounds on which people could lose their property.

The recognition of the Amerindian right to property did not establish the foundations for the maintenance of material equality, and nor was it ever meant to. Possession was not a safeguard against dispossession.⁶⁵ The Franciscans had understood this when, during the Franciscan Poverty Dispute, they had argued against *dominium* in the state of nature.⁶⁶ The Franciscans did not want the natural right of use in the case of necessity to be associated with the asymmetrical power relationship of *dominium*, and nor did they want the things they used and consumed to be entangled in the volatile matrix of property law. The Franciscan vision of a world free from property was defeated. For the Franciscans, this ruling accelerated their pathway to becoming an important financial institution as they could not be free from the property. The indigenous people of the world would encounter quite different problems. The Amerindians would find that having property rights did not place them on an equal footing with the colonisers. It did not protect their access to their own resources, or even the labour of their own persons. The Amerindians had property, and they could be dispossessed.

The conceptual understanding that the Amerindians were property owners did not establish the foundations for the practical defence of property claims. It established them as equal players in an unequal game. As the Franciscans had argued in the

thirteenth and fourteenth centuries, property rights were a litigious maze that did not ensure access to resources. Amerindians had to learn the language and procedures of Spanish civil law in order to make property claims. This often required the invention of documentation, and ongoing disputes to land defined the colonial era. Meanwhile, land that was not recognised as owned was classed as common property and could be claimed for private ownership. Much colonial ownership started out through squatting. Further, property was alienable and could be sold. Amerindians were not protected from the inequalities of knowledge and power inherent in the market. Many sold land either because demands on their labour left them unable to work it, or because the land was seen as low value. In this way, vast swathes of Amerindian land were bought by colonial speculators who later profited from the increase in value, while Amerindians were dispossessed and at the mercy of the unregulated wage labour market.

Vitoria examined the different grounds on which the Spanish could legitimately dispossess the Amerindians, investigating the property rights of sinners, infidels, irrationals, children, and the mad. The question of a sinner's right to their property provoked a re-visitation of one of the medieval poverty disputes, concerning the heretic John Wycliff. Citing this case Vitoria reminded his audience that dominium was independent of grace.⁶⁷ Vitoria concluded that they 'could not be robbed of their property either as private citizens or as princes, on the grounds that they were not true masters'.⁶⁸ Vitoria acknowledged an equality of property rights, but saw grounds for conquest including the right of partnership and communication. In this sense, anything that was not specifically claimed by the Amerindians was common to all and therefore could be used by the Spanish.⁶⁹

Vitoria was concerned with the ontological nature of the Amerindians in relation to their Spanish counterparts, but he was really interested in the implications of this question for the Spanish claim to global sovereignty. He argued:

The Emperor is not the lord of the whole world, and, even if he were, he would not therefore be entitled to seize the provinces of the Indians, to put down their lords, to raise up new ones, and to levy taxes.⁷⁰

Vitoria used the Roman law notion of the law of nations, *ius gentium*, to establish the idea of a political equality between nations, arguing that 'the law of nations is 'what natural reason has established among all nations''.⁷¹ In 1934 James Scott Brown argued that Vitoria's discussion of the law of nations laid the foundations for international law,⁷² a thesis which has spawned nearly a century of debates. Wherever you stand on these debates, deepening the intellectual history of international law, global sovereignty, human rights, and the idea of equality back to the start of colonialism in the sixteenth century, and indeed deeper into the medieval legacies that shaped these sixteenth-century debates, can deepen our understanding of the ambivalence of the foundations of certain concepts and suppositions.

While accepting the equal rights of people to own property and equal rights of dominium between nations, Vitoria also established possibilities for Spanish interventions. These reasons included the need for conversion, protection of converts, and protection against tyranny. This established the possibility of a cultural inequality as it suggested that Christianity was morally superior. Many have argued that this laid the foundation

for interventionism in international relations. Vitoria also revisited the question of the mental capacity of the Amerindians, comparing Amerindians, whom he described as barbarians, to children, who may need to be 'handed over to wise men to govern'.⁷³ Vitoria stressed that this must be 'done for the benefit and good of the barbarians, and not merely for the profit of the Spaniards'.⁷⁴ From the basis of the equality of property rights, Vitoria establishes the possibility for a cultural inequality rooted in Christianity and a political inequality rooted in the politics of care.

Scholars have debated whether Vitoria was really arguing for equality. Roberto Irigoyen argued that equality was central to Vitoria's vision of international relations.⁷⁵ Alternatively, Sankar Muthu argued that Vitoria's discussion of inequality was insubstantial.⁷⁶ Robert Williams observed that

the West's first tentative steps toward this noble vision of a Law of Nations contained a mandate for Christian Europe's subjugation of all peoples whose radical divergence from European-derived norms of right conduct signified their need for conquest and remediation.⁷⁷

By 2004 Anthony Anghie had established the postcolonial critique of Vitoria and his contribution to international law, arguing that international law was created to justify colonialism.⁷⁸ Anghie explained that while 'the Indians seem to participate in the system as equals', and 'the exchange seems to occur between equals entering knowledgeably into these transactions, each meeting the other's material lack and possessing, implicitly, the autonomy to decide what is of value to them', the reality was far different.⁷⁹ Anghie argued that the notion of the equality of the Amerindians which was part of the Vitorian schema was not just the starting point for an exploration of the boundaries of imperial sovereignty but rather designed from the start to legitimate global imperialism'.⁸⁰ From the postcolonial perspective established by Anghie, the Thomistic principle of equality employed by Vitoria is designed to legitimate imperial inequality. Martti Koskenniemi revisited the Spanish contribution to international law and the work of Vitoria in 2011.⁸¹ Koskenniemi argues that

Even at their most appealing, the Spaniards' arguments remained paternalistic and failed to respect Indian identity, never for a moment treating them as equal to Europeans. In fact, the argument goes, the Spaniards initiated the European practice of conducting colonialism and subjugating non-European cultures under a rhetoric of civilization and trusteeship.⁸²

The basis for inequality was contained within Vitoria's thesis. Vitoria argued that it was permissible for the Spanish to enter the Americas for the purpose of humanitarian intervention (for example to save people from 'barbarous customs of cannibalism') or conversion.⁸³ While in his discussion of *ius gentium* Vitoria outlined a cosmopolitan vision of the world, in reality he suggested that Christianity was superior. This contributed to another discourse that would come to define the inequalities of the emerging empires in a way that was seen as legitimate, that of the civilising mission. All people may be equal ontologically, but there were other ways in which they could be seen as unequal. Behind the discourse of the humanitarian intervention and the civilising mission, the establishment of imperial inequalities were represented as acts of care. This helped set the place of indigenous peoples in the imperial world order and its labour market as subordinate.

When Latin America gained independence at the start of the nineteenth century, the independence movement was led by protagonists of the liberal tradition, committed to protecting private property. Under the sway of liberalism, Latin America did not overcome its material inequalities. As with conquest in the sixteenth century, the protection of private property rights could never be a pathway to equality, and this was never the goal. The liberal independence did also not bring an end to the established traditions of cultural inequality. In 1845 Domingo Faustino Sarmiento (1811–1888) wrote his influential novel *Facundo*, which cast indigenous Americans as barbaric, in need of ‘civilising’ to the standards of Enlightenment Europe.⁸⁴ Focused upon power struggles in post-Independence Argentina, Sarmiento missed the irony that the European Enlightenment concepts of equality, or its earlier Thomistic iterations, had only brought deep inequalities to the Americas.

The concept of equality was important to Vitoria’s discussion of the Amerindians. Within the Thomistic natural law tradition this led Vitoria to conclude not only that the Amerindians were rational humans like the Spanish, but also that they were property owners. Vitoria’s recognition of indigenous sovereignty, coming from their status as legitimate owners of their dominium, underpinned his interpretation of *ius gentium* and notion that all nations were equal. This theory of equality was, in my view, important to Vitoria’s contribution to international law, but it was not at odds with the creation of material inequalities through dispossession or socio-cultural inequalities through what became known as the civilising mission. Rather, from looking at the concept of equality and its historic relationship to both property and notions of distributive justice, understood in terms of proportionality, we see that the concept of equality had developed in the Scholastic tradition with the capacity to accommodate inequalities, without contradiction.

5. Conclusion

Inequality was not conceptualised as natural in the medieval and early modern world, but the Thomistic concept of equality which influenced the political thought of Europe’s first global empire was ready to accommodate forms of inequality. It was focused upon a natural law tradition of property which located the authority for redistribution with the obligation of the owner rather than the right of the person in need. It was also informed by an Aristotelian conception of justice which upheld property (‘render to each his own’) and proportionality. When the Second Scholastics of the School of Salamanca deployed the Thomistic synthesis to establish the legal and political foundations of the new global order the concept of equality was ready to build a world of inequality.

Vitoria’s work had implications beyond the boundaries of the Spanish Empire. As Pagden explains, Vitoria made possible the language for a ‘the law of nature and of nations’ which became the basis for ‘a new global order.’⁸⁵ Hugo Grotius (1583–1645), Samuel Pufendorf (1632–1694), Emer de Vattel (1714–1764) have all been seen as the heirs to Vitoria. However, while these later thinkers built upon the foundations laid by Vitoria, they also made significant departures which increased the possibilities for building a world of inequality. For example, Jean Bodin (1530–1596) to Alberico Gentili (1552–1608) used Vitoria’s theory of *ius gentium* but they dismissed the principle of equality between Europeans and Native Americans.⁸⁶ When the Dutch scholar Hugo

Grotius (1583–1645) tried to develop a theory of international law based upon the freedom of the seas (*Mare Liberum*) and the spoils of war (*De Iure Pradae*), he looked to the work of Vitoria, whom he cited on multiple occasions. But, as Martin Van Geldren also notes, what was significant about these later works was their departure from Vitoria and the emergence of a distinct liberal tradition based less upon the communitarian vision of the world imagined by Vitoria and more upon an individualistic model of relations focused upon self-preservation.⁸⁷ Adapting the schema established by Aquinas and his reading of Aristotle, Vitoria had established a vision for equality in the world predicated upon private property which subtly accommodated multiple possibilities for inequality. Building upon these foundations but diverging from Neo-Scholastic synthesis, the emergence and development of the liberal tradition saw property less as a social good and matter of responsibility and more as a freedom of the individual. The emergence of the liberal tradition facilitated the more explicit development of the inequalities that would come to define the modern world.

Notes

1. For example, Anghie, *Imperialism, Sovereignty* and more recently Lantigua, *Scholastic Theology, Justice*.
2. Porter, "Justice, Equality, and Natural Rights Claims."
3. Alfani and Frigeni, "Inequality (Un)perceived," 57. Alfani and Frigeni's article is based upon an empirical study of selected key words rather than contextual analysis of key texts.
4. *Ibid.*, 23.
5. *Ibid.*, 52.
6. Botero, *The Reason of State*, 79.
7. For more on the history of gender equality and natural law see Becker, *Gendering the Renaissance Commonwealth*.
8. Aquinas, *Summa Theological* II-II, in Bigongiari, *The Political Ideas of St. Thomas Aquinas*, 128.
9. *Ibid.*, 128.
10. *Ibid.*, 130.
11. *Ibid.*, 130.
12. *Ibid.*, 130.
13. Aquinas *Summa Theologica*, II-II, 139.
14. *Ibid.*, 130.
15. *Ibid.*, 131.
16. Rousseau, *A Discourse on Inequality*, 67.
17. *Ibid.*, 71.
18. Aquinas, *Summa Theological* I-II, 49.
19. *Ibid.*, 47.
20. *Ibid.*, 49.
21. *Ibid.*, 50.
22. *Ibid.*, 50.
23. *Ibid.*, 50.
24. *Ibid.*, 106.
25. *Ibid.*, 124–5.
26. Aquinas, *Summa Theological* I-II, 124.
27. Aristotle, *Nichomachean Ethics*, 80.
28. *Ibid.*, Book V, On Justice.
29. *Ibid.*, 85.
30. *Ibid.*, 85.

31. Ibid., 84.
32. Aquinas, *Summa Theological*, 124.
33. Aquinas, *Commentary on Aristotle's Politics*, 84.
34. Ibid., 129.
35. Ibid., 129–30.
36. Aquinas, *Summa Theological*, 124.
37. Ibid., 124.
38. Ibid., 139.
39. Ibid., 138.
40. The exact nature of the departure of the Second Scholastics from the classic Aristotelian-Thomistic schema has been subject to debate. Martin Van Geldren argues that the Neo-Thomists departed from the strict Aristotelian concept of justice, such that 'the realm of justice lost its distinctly Aristotelian character and function' and was 'subsumed under moral law'; Van Geldren, "The Challenge of Colonialism," 16.
41. Sepúlveda, *Democrates segundo* (2007), 285.
42. Ibid., 286.
43. Sepúlveda, *Democrates segundo* (1951), 36, cited in Pagden, "Dispossessing the Barbarian," 171.
44. Columbus, "Digest of Columbus' Log-Book," in *The Four Voyages*, 37–76, 55.
45. Navarette, *Colección de los viages y descubrimientos*, CXXXIV, 246–7.
46. Antonio de Montesinos, "Christmas Eve Sermon of 1511," cited in Bartolome de Las Casas, *Historia de las Indias*, Book 3, chapter 4, cited in Hanke, *The Spanish Struggle for Justice*, 17.
47. Aristotle (1946), 13, cited in Valenzuela-Vermehren, "Empire, Sovereignty, and Justice," 265.
48. Pagden, "Dispossession the Barbarian," 165, see also Pagden, *The Fall of Natural Man*.
49. Sepúlveda, 2012, cited in Valenzuela-Vermehren, "Empire, Sovereignty, and Justice," 265.
50. See Skinner, *Foundations*, Vol. II.
51. Vitoria, *On Civil power*, in *Vitoria: Political Writings*, 13.
52. Thomas Aquinas, "Summa Contra Gentiles," Book 3, chapter 81 in Sigmund, *St. Thomas Aquinas on Politics and Ethics*, 11, cited in Van Geldren, "The Challenge of Colonialism," 15.
53. For further discussion on natural slavery see Pagden, *The Fall of Natural Man*.
54. Vitoria, *On the Indies*, in *Vitoria: Political Writings*, 251.
55. Ibid., 251.
56. Ibid., 254.
57. Valenzuela-Vermehren, "Creating Justice," 60.
58. Vitoria, *On the Indies*, 250.
59. Vitoria, *On Civil Power*, 9.
60. Vitoria, *On the Indies*, 240.
61. Ibid., 251.
62. Koskenniemi, "Empire and International Law," 17.
63. Vitoria, *On Civil Power*, 9.
64. Vitoria, *On Law*, 177.
65. See Greer, *Property and Dispossession*.
66. See McClure, *The Franciscan Invention*.
67. Vitoria, *On the Indies*, 242–3.
68. Ibid., 250–1.
69. Ibid., 278.
70. Vitoria, *On the Indies*, cited in Simpson, *The Encomienda in New Spain*, 128.
71. Vitoria, "On the American Indians," supra note 13, 3.1 § (278).
72. Brown, *The Spanish Origin*. Cf Kooijmans, *The Doctrine of the Legal Equality of States*.
73. Vitoria, *On the Indies*, 290–1.
74. Ibid., 291.
75. Irigoyen, *Francisco de Vitoria*, 113, cited in Cavallar, "Accomplices of European Colonialism," 186.

76. Muthu, *Enlightenment Against Empire*, 273–5.
77. Williams, *The American Indian in Western Legal Thought*, 59.
78. Anghie, *Imperialism, Sovereignty*.
79. *Ibid.*, 21.
80. *Ibid.*
81. Koskenniemi, “Empire and International Law.”
82. *Ibid.*, 10.
83. Vitoria, *On the Indies*, question 3.
84. Sarmiento, *Facundo*.
85. Pagden, “Introduction,” in Beneyto and Corti, eds, *At the Origins of Modernity*.
86. Grant, “Francisco de Vitoria.”
87. Van Geldren, “The Challenge of Colonialism,” 32.

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