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## **Speculative and Practical Theology in the Second Scholasticism: Melchor Cano (c. 1507–1560)<sup>1</sup>**

### *Spekulativna in praktična teologija druge sholastike: Melchor Cano (ok. 1507–1560)*

*Abstract:* This article reviews the principal theological doctrines of Melchor Cano, perhaps the greatest dogmatic theologian of the Second Scholasticism. His *De locis theologicis* marked a watershed in the definition of theology as the ‘fundamental science,’ and his writings on morals attest to the practical sense of the Salamanca theological school. Since theology is both speculative and practical, this paper deals with the main aspects of Cano’s theoretical and moral theology, namely, his doctrine of theological places, his vindication of the Indian’s freedom and political power, his teaching about the distinction between natural and positive law, and Cano’s conception of the right of war.

*Keywords:* Second Scholasticism, Melchor Cano, theoretical theology, practical theology, Spanish Scholasticism, *loci theologici*

*Povzetek:* Članek ponuja pregled glavnih teoloških nauk Melchorja Cana, verjetno največjega dogmatičnega teologa obdobja druge sholastike. Njegovo delo *De locis theologicis* je bilo prebojno pri opredelitvi teologije kot ‘temeljne znanosti’, njegovi spisi o morali pa pričujejo o praktičnem smislu salamanške teološke šole. Ker je teologija tako spekulativna kakor tudi praktična, članek obravnava glavne vidike Canove teoretične in moralne teologije, to je: njegov nauk o teoloških mestih (virih), njegov zagovor svoboščin in politične moči Indijancev, njegov nauk o razlikovanju med naravnim in pozitivnim zakonom in njegovo dojemanje pravice do vojne.

*Ključne besede:* druga sholastika, Melchor Cano, teoretična teologija, praktična teologija, španska sholastika, *loci theologici*

The renewal of scholastic theology in Early Modernity saw Melchor Cano<sup>2</sup> –

<sup>1</sup> The author is grateful for the sponsorship of FONDECYT-Chile, project 1180510.

<sup>2</sup> Melchor Cano entered the Dominican order in 1523 and studied arts and theology in Salamanca, where he attended Francisco de Vitoria’s lectures. He has been acclaimed as Vitoria’s favorite disciple, but the same has been said of Domingo de Soto and Alonso de la Veracruz.

Melchor de Santa Marta – as one of its protagonists: he inaugurated a new theological method, systematised and ordered the insights of precedent theologians, and elaborated the first great dogmatics of modern Scholasticism (Lang 1962; Vilanova 1991; Belda 2000). Cano, known as ‘the Cicero of the schools’,<sup>3</sup> writes at a challenging time for the Church. In Cano’s words, the disintegration of Christianity stemming from the ‘Lutheran disease’, as well as from the poor or null formation of Christians, wreaked havoc and brought upon a terrible doctrinal dispersion both inside and outside the Church (Cano 1871, 514).

Cano articulates Thomistic and Salamancan theology with Aristotelian philosophy, shaping it according to the classical scheme of the ‘topics’. These ‘new topics’, which the tradition calls ‘theological places’, form a complex system that incorporates the Holy Father’s teachings, the ideas of the medieval theologians, the science of the canonists, and the theses of the other Salamancan theologians. Cano does not shut his mind to any current of thought (provided that the adherence to other’s ideas is critically legitimated) since, according to the principles of the scholastic method, science is about truth, and truth can be found anywhere. Now, Cano respects and follows St. Thomas and Francisco de Vitoria and the great scholastics, whose doctrines he expands on (1900a, l. 12 c. 1). For this reason, some scholars have argued that Cano is both a conservative and modern writer, since, on the one side, he belongs to a particular school of thought and, on the other side, he independently argues for his position in dogmatic and practical theology (Belda 2013, 102; Lang 1925, 242).

This paper surveys the theological synthesis of ‘the terrible Cano’, ‘the admiration of Trent’ (Tellechea 2003–2007; Menéndez Pelayo 2006–2007).<sup>4</sup> After a brief description of theology as the fundamental science, the main aspects of Cano’s speculative and moral theology are exposed, specifically his theory of the theological places, his ideas on the freedom of the Native Americans and the relationship of natural law with positive law, and Cano’s teaching on the law of war. To conclude, this article refers to Cano’s defence of political power.

## 1. The Theological Science

According to Scholasticism, theology is a rational discourse about God. Natural theology is the metaphysics of God as the last cause, and supernatural theology is the science of God starting from revelation. Accordingly, the knowledge coming

<sup>3</sup> Also known as the ‘Quintilian of the theologians’. See Menéndez Pelayo 1994; Menéndez Pelayo 2006–2007; Caballero 1871.

<sup>4</sup> Besides his intellectual merit, Cano is remembered for his brutal persecution of Bartolomé Carranza and the Society of Jesus. He was convinced that the Jesuits are ‘harmful to the Christian religion.’ Cano deemed heretical both them and Carranza. Witnesses of that persecution abound among the Jesuits; the accusations Cano presented to the Inquisition concerning Carranza’s catechism are also documented. Although some present-day historians try to downplay this persecution, the fact is that Cano was particularly harsh to the Ignatians and Carranza de Miranda. Two examples should suffice. About the Jesuits he wrote: ‘What do I feel about that family? Something very serious, too grave to say it in a letter. I do not write about it, but I fear greater damage than in Germany;’ and about Carranza he says that many of his ideas ‘sounds like heresy.’

from revelation surpasses natural human capacities. (Cano 1900a, l. 12 c. 2)

The formal reason for supernatural theology is the revelation communicated directly by God or through His grace infused in men. This science requires a light superior to the light of natural reason. Mystical theology investigates a double object: primarily God himself, His nature and His attributes, and secondarily men regarding God. Theology exceeds any other science because it is based on divine authority, the safest source of knowledge. (l. 12 cc. 2–3)

Like any science, theology requires evident principles and safe conclusions deduced from principles. Theological principles are hierarchically ordered. First come the most general and fundamental principles, such as »God exists« and »God rewards those who seek him.« The following principles are more determined, as in the articles of faith. Third, some principles are not sought for their own sake but to explain the previous ones. Finally, theology picks some principles from the human sciences. The two fundamental principles, that »God exists« and that »God rewards those who seek him,« are true axioms: if the theological science does not start from them, it cannot unfold. Cano affirms that whoever wishes to acquire supernatural knowledge must have grasped these principles. (l. 12 c. 2)

Not every theological principle is written in the Scripture. Some have been inherited orally through apostolic traditions, providing the best explanation for specific scriptural passages. Concerning the principle »God rewards those who seek him« (Heb 11:6), it declares the nature of God as God. That is, if God did not reward good men, he would not be God because that would mean that he is blind and unjust. (Cano 1900a, l. 12 c. 3)

Theology also studies man, for it is the material creature most similar to God. From the theological perspective, man is a »composite of flesh and spirit, as a midpoint between beasts and angels,« who seeks God as his end and hopes to please him with his acts and decisions (1972, c. 1). Thus, Cano claims that man belongs to theology, a characteristic feature of the School of Salamanca (Belda 2013, 104).

Lastly, theology is practical and speculative, although it is mainly theoretical because the end of man is the vision of God.

## 2. Theoretical Theology and the so-called Theological Places

Cano's principal contribution to Second Scholasticism —undoubtedly his *masterpiece*— is the *De locis theologicis*, a classic work in fundamental Catholic theology and scholars' opinion, the essential methodological writing of modern theology (Grabmann 1933, 152–153). Cano could not complete his original project; even so, he thought his work was necessary for theology (»/.../ nobody, as far as I know, has carried out something like this«).<sup>5</sup>

<sup>5</sup> See Cano 1900a, proemium. With this work, the independence of the theological method was established for the first time (Humbert 1911).

The work originates from the Victorian reforming intention to overcome the ‚verbosity‘ of Late-medieval Scholasticism. It outlines the paradigm for theology until the middle of the 20th century and revolutionises theological epistemology.<sup>6</sup> It is still useful today. Furthermore, as Schmutz points out, »it is the fundamental writing for understanding the difference between medieval and modern theology« (2010, 117).

Cano did not invent the notion of theological places. Aquinas and Vitoria had already advanced a similar doctrine. Before Cano, Carranza used the expression ‚theological places‘. The same must be said of Soto. Cano posits ten theological places: the authority of Scripture, of the traditions, of the universal Church, of the councils, of the Roman Church, of the Holy Fathers, of the scholastic theologians and canonists, of natural reason, of the philosophers and human history.

‚Theological places‘ are like the Aristotelian topics: just as philosophical arguments stem from the topics, every theological argument is based on theological places. However, the different theological places have unequal importance: the first seven are called ‚proper places‘ and the other three are called ‚foreign places‘. Within the proper places, the first two are »constitutive places of theology« since they designate »the legacy of the faith« (Hünemann 2003b, 165). On the other hand, foreign places are complementary (Cano 1900a, l. 1 c. 3).

The theological places are *domicilia omnium argumentorum theologorum*, in the words of Cano (l. 1 c. 3). They are the principles that epistemologically support theological discussions (Hünemann 2003b). They are instances for defining the faith and sources of Christian truth. They include »all existing ways of arguing in theology« (Cano 1900a, l. 1 c. 3).<sup>7</sup>

### 3. The Ten Theological Places

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#### 3.1 The Authority of Holy Scripture

Divinely inspired authors wrote the Holy Scriptures. These books are the most secure source of theology. Since God, the author of the sacred books, cannot lie to us, their truth is fundamental to the Christian life. These books are like the principles of theological science, for they are necessary for any discourse about the revelation of God to men. (l. 2 c. 1)

The debate about the authority of Scripture relates to the Church’s role in determining the canonicity of the sacred books. Martin Luther and the Protestants deny that this power resides in the ecclesiastical authorities because the Scriptures do not require any kind of approval (l. 2 c. 6). Cano reports the writings of John

<sup>6</sup> See Belda 2013, 35; Körner 2017, 924–925; Körner 2000, 257–269; Hünemann 2003a, 1–21.

<sup>7</sup> Cano’s exposition of the theological places remains valid in contemporary research. For instance, the Second Vatican Council has insisted on the importance of history and philosophy, and has concluded that traditions are a firm source of truths of faith.

Calvin, for whom the power to judge on the Scripture cannot reside in anyone but God. However, Cano remarks that the Scriptures cannot be judged by themselves; thus, there must be an adequate judge. (l. 2 cc. 6–7)

Unlike Luther, Cano believes that men, as particular individuals, cannot judge the canonicity of the sacred books. Not even in secular republics do citizens exercise a similar faculty. The only possible court of law is the Roman Church, defining a book as inspired or not revealed. The preceding derives from 1 Tim 3:15, where it is affirmed that the Church is the foundation of truth (l. 2 cc. 7–8).

Cano writes that even Protestants admit that, in *De captivitate babilonica Ecclesiae*, Luther recognises that only the Church can distinguish human from divine words. Therefore, »against their will, the Lutherans accept that the ecclesiastical authority has the power to resolve which are and which are not sacred books« (l. 2 c. 7).

Cano closes his analysis by pointing out that the first responsible for resolving the canonicity of the sacred books are the apostles. Indeed, »there are no other sacred books in the Old and New Testaments than those which the apostles determined as revealed« (l. 2 c. 7). Cano adds that the Church cannot err and that »if we follow the determinations of the Church, we will not be wrong« (l. 2 c. 18). Accordingly, when the Church establishes that a book should be considered canonical, everyone must accept it as legitimate. If the Church does not hold that power, faith could hardly advance.

The Church determines the canonicity of the sacred books through the councils. The conclusions of a council, as we will see later, are firm rules of faith. However, disagreements may arise among the council fathers. The Pope is in charge of resolving such disagreements.

Cano observes that human demonstrations are not decisive in matters of faith. They support faith, but they cannot settle by themselves supernatural problems. We should bear in mind that the Church's binding decisions are legitimate not because they come from the Church but because God has wanted them to be legitimate. For example, the Gospel of Matthew is not true because the Church has willed it, but because God has revealed it as accurate. Cano, then, concludes the following: »we believe that the Holy Spirit has inspired the Church to define the books that should be considered as canonical, but not to determine their veracity or authority.« (l. 2 c. 8)

### 3.2 The Authority of Traditions

Cano's elucidation about this theological place starts examining the Lutheran objection of the fragility of traditions. According to the testimony of Thomas of Walden, the same criticism was proposed by Erasmus and, before him, by Wyclif. Cano deems it a standard heretical error. Simultaneously, Cano remarks that much in the sacred books is difficult to understand, as seen in the many obscure passages which have been variously interpreted. If diverse readings of a text are offered, which one should we follow? If each reader sticks to his reading as the true one,

wouldn't great chaos ensue? Moreover, without agreement on the meaning of revelation, under which criterion may we determine what belongs to the faith? Only the authority of the Tradition discloses the precise meaning of the Scriptures. (I. 3 cc. 2–3)<sup>8</sup>

Christ and others instituted some traditions by the apostles. The traditions inherited directly from Christ are called perpetual. Nobody may abrogate them, and they are immutable. However, if the apostles have instituted the traditions as ecclesiastical pastors, those traditions can be changed or left without effect. (I. 3 c. 5)

### 3.3 The Authority of the Universal Church

Cano explains that *ecclesia* is a Greek word that means 'convocation', 'assembly'. In the Church, everyone is gathered together by faith in Christ. The Church is not a physical place. It is the community of Christian faithful, the meeting of all the baptised, be they saints or not. (I. 4 c. 2; I. 4 c. 6)

The Church is a visible institution. That is a typical thesis of the Spanish scholastics against Lutheran theology, which understands the Church as a purely spiritual entity. The faith of the Church cannot err. God endorses everything that the Church believes to be true. Whoever denies the inerrancy of the Church in matters of faith denies thereby the assistance of the Holy Spirit and the power of binding and loosing delivered by Christ to Peter and the apostles. (I. 4 c. 4)

### 3.4 The Authority of Councils

Cano defines councils as meetings of bishops and priests that define the faith and customs of the Church. Ordinary men should not solve the problems of faith. Christ gave the keys of the Kingdom to the apostles and not to the ordinary people. (I. 5 c. 2)

The acts of a council are jurisdictional. There are three kinds of councils: general, provincial and diocesan. General councils call together all bishops. A general council convoked by the Pope does not lose validity due to the absence of some bishops; it suffices that everyone is summoned. Provincial councils gather the bishops of an ecclesiastical province. Finally, diocesan councils are synods of priests from a particular church that are promoted by the diocesan bishop. (I. 5 cc. 2–3)

General councils not convoked or confirmed by the Pope and provincial councils not confirmed by the Pope can err (but their conclusions can be corrected). Without the Pope's assent, the jurisdictional acts of a council lose validity. Accordingly, general and provincial councils confirmed by the Pope provide certain doctrines in matters of faith. The contrary conclusion, Cano maintains, is heresy.

<sup>8</sup> The faith of the early Church was not founded on the Scripture —at the beginning, there was no canon of the Scriptures! Furthermore, »not everything belonging to the faith is in the Scripture.« Cano gives the example of the perpetual virginity of Mary, which, he writes, is not formally formulated in the biblical texts. The same must be said of the cult of the martyrs and of the cult of images, traditions that the Church considers as revealed by God.

If councils endorsed by the Pope could err, there would be no way to resolve the problems of faith. Finally, the diocesan councils confirmed by the Pope offer sure arguments. (I. 5 c. 4)

### 3.5 The Authority of the Roman Church

Cano contends that the Church of Rome cannot err in matters of faith because Peter, who cannot err as a pastor, was constituted as the head and foundation of the Church. When Peter dies, the Church looks for a new head because, as in any society, authorities are required to achieve social goals. Therefore, if it is reasonable to sustain the Church's unity and interior harmony, a ruler with enough power to solve the doubts and discussions that may arise at the intra and extra-ecclesial level is necessary. (I. 6 c. 3)

The Pope is the highest authority in the Church. No norms may be dictated without his approval. Accordingly, the Church of Rome has always prevailed over the rest. This is so established by divine law, which commands that the Roman Church be the foundation of the Universal Church. (I. 6 c. 7)

In the exercise of his functions, the Pope cannot err. That is, the Pope is infallible when he decrees on matters of faith. The ideas of *De locis* are complemented by Cano's handwritten lessons on the art. 8 of the *quæ. 1* of the *Prima Pars*: »the Pope cannot err. If he did, we could not turn to him as a firm judge. It would be necessary to resort to somebody more learned and holier than him. In addition, the Church is built on the Pope, and the Church cannot fall. Consequently, its foundation cannot fall either. Otherwise, the whole building would collapse.« The infallibility of the Pope exists because »the Supreme Pontiff, when defining matters of faith, does not use human power, but is led by the Holy Spirit« (1982a, ff. 13–14).

### 3.6 The Authority of the Holy Fathers

In dogmatic theology and the Holy Scriptures, the opinion of the Holy Fathers is classed as probably accurate. To overestimate their opinion is imprudence, and to reject it, daring. Cano fosters the respectful reading of the Holy Fathers, although with critical judgment and a certain detachment. They should be followed as teachers, not as lords.

Cano criticises the Protestants saying that »Lutherans have the habit of opposing the common opinion of the Fathers of the Church« Contrary to them, the author considers that the antiquity of the Fathers' ideas is a guarantee of their veracity (1900a, I. 7 c. 3).

### 3.7 The Authority of the Scholastic Doctors and Canonists

According to Cano, the new Protestants tend to reject the authority of scholastic theologians. Luther, for example, holds that Scholasticism only entangles us in ignorance regarding faith. However, we should remark that Luther's criticism of Scholasticism does not point to Aquinas —contrary to what Cano thinks—but to Gabriel Biel's nominalist theology, in which Luther was educated (I. 8 c. 1).

Cano argues that many heresies are born from the rejection of Scholasticism and suggests that opposing it endangers faith. Cano warns that not all versions of scholastic theology should be followed. It is only beneficial to focus on Scholasticism founded upon the Scriptures. In this context, Cano explains that the scholastic theologians defend truth and reject error »because the error that is not explained is accepted,« what is a severe evil. They reason with precision and discipline and confirm the teachings of Christ with the knowledge provided by human sciences. Among the scholastic theologians, the majority consensus is not an argument. If the thesis of the minority is solid, it can be defended. In this context, Cano writes: »the School allows us to defend any doctrine freely.« (l. 8 cc. 2–4)

Together with the scholastic theologians, we must consider the canonists. Canon law and theology are like ‚sister sciences‘ since the cure of souls requires knowledge of ecclesiastical law, and the work of canonists is ordered to the truth about God. Now, God has wanted canonists to exist. The Holy Spirit has inspired the ecclesiastical laws, and as God does not lack in what is necessary, He put the canonists and theologians side by side (l. 8 c. 7).

### 3.8 The Authority of Natural Reason

Just as it is a mistake not to consider the arguments provided by theology when examining natural subjects, it is wrong to ignore the arguments of natural reason: neither should reason be worshipped nor banished from theological discourse. Reason and faith are complementary paths (l. 9 cc. 1–2).

To suppose that theological arguments can dispense with reason is tantamount to believing that a man can live without intellectual capacity. Humanity and reason coexist (»by despising reason men cease to be men«). Theology cannot exist without genuine reason. Many tenets of faith are incomprehensible without recourse to it (l. 9 c. 4).

Without natural reason, as expressed in different sciences, faith cannot be protected or interpreted. This *ratio naturalis* is multiform. First, it is expressed in the unprovable principles of human knowledge and then in the conclusions drawn from the principles (Hünemann 2003b).

### 3.9 The Authority of Philosophers

Philosophers express the authority of natural reason. Luther, an anti-Aristotelian, according to Cano, had sown doubts about the authority of philosophy. In Luther’s opinion, the Scriptures account for themselves and the only science that matters is the experience of the Christian life.

It is worth saying a few words about Luther’s criticism of Aristotelianism. As a general rule, scholars conceive of Luther as a thinker who breaks with the previous Tradition —MacIntyre, for example, speaks of the Lutheran rejection of the classical conception of man (2007, 165–180). The break would be marked by statements such as »the ethics of Aristotle is the enemy of grace« (Luther 1883, 1:226) and »the Holy Spirit matters more than Aristotle« (6:511). An inattentive



reading could lead us to that conclusion. However, there are good reasons to suppose that the reformer is closer to classical philosophy than it seems: Luther's statement that the Holy Spirit matters more than Aristotle is understood when we bear in mind that Luther is discussing not with the great medieval scholastic interpretation of Aristotle, but with polemicists like Prierias, who wrote that the teaching of Aristotle dazzles more than the sun (Svensson 2016a).<sup>9</sup>

Some think that Luther's rupture with Aristotle is due to his criticism of the power of reason, such as it is found in *De servo arbitrio*. However, Luther points out elsewhere that »after sin, God did not remove the greatness of reason, but confirmed it« (Luther 1883, 39/1:175). Even more, he says that intelligence »... is still a good instrument« (Luther 1883, TR 3, 2938b, 105, 15). Thus, the reason is a kind of light, something like a god that illuminates the things of our temporal world. Its apprehensive capacity has not been wholly lost (Svensson 2016b, 102–106; 2019, 1–15). Despite this, Luther emphasises the effects of sin in weakening our intellectual capacity much more than the authors of Late Scholasticism (Contreras 2018).

Returning to the question of the authority of philosophy, it should be noted that not all philosophers are recommendable. On the contrary, only a few philosophers aid theologians. One should only study those who wrote on nature's causes and the essence of moral life (Cano 1900a, l. 10 c. 3).

Paraphrasing Aristotle, Cano points out that those who are driven by the old doctrines do well. He so highlights the truthfulness of an idea based on its antiquity. By the way, Cano dedicates some sections of book X of *De locis* to analyse the philosophy of Aristotle. According to Cano, Aristotle, »wise most of the time,« does not own the truth. Consequently, he argues that the Scriptures must be more profusely read and preferred than Aristotle's doctrine, whose philosophy, anyhow, brings clarity and precision to theological discourse. (l. 10 cc. 4–5)

### 3.10 The Authority of Human History

Theologians who do not know about history are ignorant (l. 11 c. 2). Secular history is essential for understanding the Scriptures because men must believe that other men do not want to become like beasts, and faith in reports of historical facts is similar to religious faith. Society would be destroyed if friends did not trust each other or if children did not believe their parents. The bond of friendship would be ruined, and nothing could save interpersonal relationships. (l. 11 c. 4)

In this context, Cano notes that God implanted in men a natural tendency to believe, trying to prove so that trust is most necessary for life. Therefore, those who oppose this natural inclination are fools and fight against the gods as if they had the strength to do so. (l. 11 c. 4)

<sup>9</sup> According to the actual stand of research, Aristotle is not a concern for Luther. He is rather interested in the purification of theology, like Cano. Hence, »Luther's anti-Aristotelianism is not even paradigmatic /... / for his immediate surroundings. Next to him is Melancthon, who, although he yields for a brief time owing to the impression caused by Luther, later profusely comments on Aristotle, presenting his philosophy as the less sophisticated one that the nascent Protestant universities had at hand« (Svensson 2016a, 56).

## 4. Practical and Legal Questions

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Although theology is primarily a theoretical science, the Second Scholasticism profusely enriched practical theology. Proof of this are the monumental treatises *De iure* and *De legibus* written, among others, by Domingo de Soto, Luis de León, Domingo Báñez and Francisco Suárez.

Cano, too, regards theology as a science concerned with concrete social and political problems. The *De locis* presents his incipient legal theory in the section where he argues for the legal formation of theologians and confessors. Thus, he makes a case for law as a theological place. His legal theory will be further developed by writings which, in general, the contemporary scholars have not considered, such as his lessons on the freedom of the Native Americans or the law of war. We will sketch, therefore, the main thrusts of his practical theology and his theology of law.

### 4.1 Native Americans' Freedom

Cano refers to the Native Americans' rights in *De dominio indorum* (1982b, ff. 28–40). It aims to show that Americans are not slaves by nature, unlike the barbarians of whom Aristotle speaks in the *Politica*. Since they are free, neither the Emperor nor any human authority may deprive the Native Americans' of their goods or enslave them.

According to Cano, slavery consists of being subject to the will of a master and accordingly losing power over one's actions. Cano believes that no man is subject to another by natural right, except children to parents and women to their husbands. For this reason, no one may subjugate the Native Americans. Natural law proves that there is no distinction between one man and another. All are equal. Likewise, no one is by nature a prince but is constituted as such by men. Therefore, no one is subject to another by nature.

Despite the above, there is a reason why a man may rule over another one: his greater intellectual capacity. According to the natural order of things, those who exceed in reason must govern the less wise. That is why man governs beasts, and angels preside over men. For the same reason, Cano points out, brute men should be governed by the most prudent. Furthermore, fools should be led by the wise. Cano, so, proposes the following conclusion: »When it is necessary for the preservation of the republic, I grant that it is of natural law that the weak of mind be governed by others who excel, and if the wise do not do so, they sin against natural law. However, the weak-minded cannot be forced to do so any more the prodigal may be forced to hand over his property.«<sup>10</sup>

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<sup>10</sup> If a prince wants to benefit the Native Americans, may he subdue them? Cano remarks that beneficence belongs to charity and not to justice, unless it is a duty ensuing from the office. Thereby, a prince may legitimately use force when, for instance, the innocent is harmed in the community of the Native Americans. Only in cases like this is the authority allowed to intervene, because »it is lawful for any person to help those who are driven to death as a consequence of a possible crime. We must know, however, that it is not a question of a title of justice, but of charity, hence it only authorizes to defend, not to conquer them.« (Cano 1982b, ff. 28–40)

## 4.2 The Distinction between Natural Law and Positive Law

Melchor Cano posits a bipartite division of law like Aristotle and other Spanish scholastics: the law is either natural or positive. Laws that derive from man's nature and express the person's social-rational character are called natural. Such rules cannot be abrogated and are perpetual (1973, ff. 3–4). On the other hand, the norms of positive law are contingent, and each republic dictates different precepts because social circumstances are diverse in different places.

Natural law contains primary or self-evident principles and derived principles. The primary principles are known to everyone with the use of reason. These are rules common to all peoples, and each person recognises them thanks to the light of the agent intellect, which reveals to us what is concordant with nature. These principles, which are immediately known, i.e. without the need of rational discourse, are foundations of practical knowledge; hence, whoever denies them rejects the possibility of proper knowledge in the field of *praxis*.

Intellectual light is the participation of divine reason in our mind. That light is the same in every man. It illuminates everyone with the same intensity to show the fundamental principles of morality. Directing one's life by that light could save us, even without explicit faith (1900b, pars II num. 17).

The natural principles are affirmative and negative. Those who command actions are called affirmative, and those who impose omissions are negative. Within the opposing principles, some are absolute and prohibit acts that are always unlawful. Cano tries to reconcile this doctrine with the problem of so-called natural law's exceptions: how could theft be wrong if God ordered the Jews to take the Egyptian vessels? No one does evil if he acts according to the divine will. Considering this single fact, it seems that taking the Egyptian vessels is justified because God has determined it. The answer, however, is not to suppose that God has wanted something arbitrarily. Instead, this act is lawful because its moral species is not that of theft: there is no theft if God owns everything and gives the vessels to the Jews. This act is legitimate because »the Egyptians had not paid the Jews for their service and had harshly oppressed them with forced labour /.../ and with every kind of servitudes. For this reason, even in times of peace, Jews had the right to keep their own /.../ because there was no other way to claim what they were owed.« (1900a, l. 2 c. 4)

Therefore, Cano implies that the robbery is not justified even if God allows it. Cano thinks that God's transfer of the Egyptian vessels to the Jews cannot be defined as theft. The act of appropriation of the Jews and robbery only have in common their biological or natural species.

Cano goes further than St. Thomas. Where the medieval says that the problem of the Egyptian vessels is resolved by appealing to the infinite power of God, Cano postulates a valid reason of justice to legitimise the behaviour of the Jews. Thus, he escapes from the 'decisionism' that usually characterises the scholastics' solutions and other exceptional cases.

Natural law is necessary by itself; that is to say, republics cannot subsist without natural law. Positive law, on the contrary, is derivatively necessary, according to the circumstances of civil society. This law depends on a variety of places, and it is coercive. It obliges in conscience and orders social life in every point not regulated by natural law. (1982b, ff. 28–40)<sup>11</sup>

Book VIII of *De locis* reads that most of the norms of life are transmitted in the Scriptures. I think this statement must be qualified. The Scriptures contain several moral norms and an abundant number of precepts of positive law, but they do not contain or transmit all the norms required for achieving a whole social life. They cannot contain them because the adequate norms for each republic are — for the most part — contingent and cannot be anticipated since the problems that will require these laws cannot be anticipated.

### 4.3 The Law of War

War is a form of legitimate defence between political societies. The authors of the Second Scholasticism discuss the law of war starting from the distinction betwixt the *ius ad bellum* and the *ius in bello*, that is, from the difference between the right to declare war and the justice during the war. The main question in the *ius ad bellum* is the just cause to wage war. Only a severe attack on the common good may legitimate waging war. It must be effective damage, not future, because according to the general rules of self-defence, the defensive action is only justified against current or imminent aggressions. (1981, q. 1)

Cano tries to confront Luther and the pacifist authors. Luther and his followers think that war is always immoral because it causes irreparable damage to the lives of men. However, Luther does not realise that the defence of the innocent or the common good can be a legitimate cause to initiate an armed defence: sometimes war is the only way to preserve social peace.

Neither the disparity of religion nor the war carried out for the sake of the rulers' usefulness or under the pretext of expanding the Christian faith just causes for waging war.

For the *ius in bello*, the means deployed require careful analysis. These means must be proportionate to the end of the defence, and they may not imply the extermination of innocent civilians. Cano, like Vitoria, condemns the voluntary killing of innocents. The innocent may only die *per accidens*, as a collateral effect of the defence. (1981, q. 1)

### 4.4 Political Authority and Natural Law

Although natural law neither subdues men to each other (for »...they are all born equal,« as Cano writes) nor directly designates the princes, authorities with the power to dictate laws and enforce them are necessary (1982b, ff. 28–40).

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<sup>11</sup> In Cano's view, positive law includes the *ius gentium*. If the law of nations were natural, »no republic could be exempted from it, since it would compel everyone. Now, it is evident that some republics can exempt themselves from this right, like the Christian republic, which /... / exempts itself from private property, because in the primitive Church all things were common, and even now among the religious.« (Cano 1973, ff. 3–4)

In Cano's opinion, Aristotle's optimal state of nature states that the clever dominate and the strong obey once the political society is formed. Such organisation is the most convenient for the republic.

Those governing must seek the social good and the temporal peace of the republic (1981, q. 1). Cano refers to the nature of authority in the *Parecer sobre la guerra contra el papa Paulo IV*, where he writes that authorities owe their loyalty to their communities (1871, 515). They swore to protect and defend the lands that are under their government »from any person who tries to force and harm them«. The defence of society is a solemn obligation, so not doing so could cause great social evils (515–517).

## 5. Conclusion

Cano has elaborated a superlative, perhaps second to none, synthesis of scholastic theology. Cano's writings harmonise the Catholic Tradition —the patristic and medieval theologians interpreted through the doctrines of ancient philosophers— with the ideas of the flourishing Salamanca scholastics, more concerned with the social reality than with empty disputations, that ‚sophistic scholasticism‘ so criticised by Erasmus and even by Cano himself (1900a, l. 9 c. 1; l. 9 c. 7).

An issue that especially concerned Cano was the protection of the native Americans' rights. According to Cano, who deemed that the Amerindians were persons like the Spaniards, natural law was an excellent tool for intercultural dialogue and the justification of the rationality and autonomy of the indigenes. Furthermore, many of Cano's doctrines outlined in the *De locis theologicis* remain valid – for instance, his teaching on natural justice – but many others still lack attention in contemporary research. Thereupon is a pending challenge to examine Cano's work and contributions to dogmatic theology, philosophical and theological ethics, spiritual theology, and legal theory in detail.

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