Ibero-American Bioethics
Philosophy and Medicine

VOLUME 106

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Ibero-American Bioethics

History and Perspectives

Translated by
Jennifer Bulcock
Adail Sobral
Maria Stela Gonçalves

Springer
This book is the first in a series of planned volumes focused on preserving the character of the development of bioethics in particular cultural contexts. As the first of these volumes, Leo Pessini, Christian de Paul de Barchifontaine, and Fernando Lolas Stepke’s work has succeeded well. It has brought together accounts by scholars who were crucial to the emergence of bioethics in the Ibero-American cultural domain. This trail-blazing work in the history of bioethics will be of enduring significance. I am deeply in their debt for having shouldered this far from easy task.

Bioethics is the product of very particular socio-historical developments. Most prominent among them have been (1) the secularization of the dominant culture of North America, Western Europe, and now Central and South America as well, (2) a deflation of the status and authority of physicians as moral authorities able to guide their own profession, and (3) the salience of a post-traditional animus that gives central place to persons as isolated atomic sources of moral authority. Bioethics initially took shape in North America as a post-Christian, post-professional, post-traditional social movement. This bioethics sought to establish a moral discourse for the public forum, a moral practice able to give practical guidance in hospitals and other institutions, and a body of undergirding and justifying theoretical reflections. The emergence of bioethics in the 1970s recapitulated the Enlightenment aspiration to articulate a universal, rational, moral vision that could supersede Western Christian moral understandings. The latter had already taken on the aspiration of supporting a universal, rationally justifiable moral vision, given its moral–theological commitments to natural law. At the very time traditional Christian belief, medical ethics, and traditional moral authorities were displaced from the public forum, medical advances and the increased costs and power of medicine called out for moral guidance. Bioethics was crafted to fill the cultural–moral vacuum.

This original bioethics of the early 1970s, made in America, was with missionary zeal exported globally. There was a naïve and doctrinaire assumption that all humans share a common morality (the conflicts of the culture wars to the contrary notwithstanding), and that all, if only properly enlightened, would embrace the bioethics that took shape at Georgetown University and the Hastings Center. A global consensus, supporting a global bioethics, was seen as inevitable. This has not turned out to be the case. In the ruins of the Enlightenment, Hegel recognized that the dominant morality of every society is socio-historically conditioned, despite Kantian aspirations to
a universal rational morality. Also, it is far from clear that Hegel’s claims, that a dialectic in world history will move all to embrace a common understanding of all being free, will in fact prevail. In any event, bioethics has turned out not to be one, but many, with disparate histories and different foundational understandings. In part, this has been due to the force of local culture. In part, this has been due to the contributions and influences of particular persons and particular local events. As a result, in order to appreciate the variegated character of the development of bioethics worldwide, one must with care look at how it took shape locally. It is a story shaped by different personalities set within different cultures.

This volume in presenting the development of bioethics in the Ibero-American cultural domain offers a rich perspective on the constitution of a particular bioethical discourse. It gives voice to those who gave it shape. The essays allow the reader access in English to the various perspectives on this history, indeed, to the various first-person histories of this history. The essays have an importance in terms of the arguments and accounts of the authors. The essays in addition possess the status of indispensable primary sources for any future account of this history. No history, including this history, is a final history. No account is ever from nowhere. These essays give the reader an entrée into the various somewheres of the particular contributors to the complex phenomena of Ibero-American bioethics. Even if this phenomenon may have no Aristotelian essential core, it is bound together by a complex of heuristic family resemblances, as well as points of divergence. In all of this, Leo Pessini and his co-editors are to be praised. They have done, if not the impossible, then at least the improbable. They have articulated a powerful mosaic of reflections concerning the regional development of bioethics. This work is thrice over important in its own right. It has preserved the voice of those who gave shape to the local emergence of bioethics. It has preserved a sense of the importance of local culture, events, and persons. It offers competing, critical perspectives on the history of Ibero-American bioethics. It should inspire others to do likewise for their own cultures. This volume will surely guide all future attempts to give an account of the local emergence of bioethics.

The task of providing accounts of the local emergence of bioethics is important not only because the voices of the founders will soon be silent. Dead men write no autobiographies. One all too quickly loses the first-person perspective on the local concerns that fashion bioethics within a particular culture. Such regional explorations of the development of bioethics are likely crucial now, in that there are indications that the complex phenomenon of bioethics may be entering a period of critical self-regard. It is not just that the original bioethics once made in America is no longer uncritically accepted. It is not just that different cultures seek different guiding middle-level principles. In addition, the aspirations to a global bioethics are increasingly being brought into question as the demands of moral pluralism are taken more seriously. The character of bioethics is likely to change. The histories that will be written in the future will likely have a quite different bioethics to address. This volume offers a rich contribution to the appreciation of the first phase in the development of bioethics.

Manaus, Brazil

19 September 2008

H. Tristram Engelhardt, Jr.
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Introduction

Leo Pessini and Christian de Paul de Barchifontaine

Every new book has a history of its origin, sometimes marked by rigorous planning, such as dissertations and theses, and other times born simply from some moment of inspiration. *Ibero-American Bioethics: History and Perspectives* appeared due to a lively accidental discussion during a flight between São Paulo and Foz do Iguaçu, with our friend in bioethical endeavor, H. Tristram Engelhardt, Jr., when he came to Brazil to participate in the Fifth Brazilian Bioethics Congress in Foz do Iguaçu (PR) in 2005. We were invited to contribute and with Fernando Lolas Stepke were chosen to be editors of a volume of essays written by the pioneers responsible for the introduction and spread of bioethics in Latin America, the Caribbean, and the Iberian peninsula.

In the letter we sent to all the collaborators when announcing the objective of this new project, we said that bioethics emerged, four decades ago (1970–2010), as a new area of education and ethical sensitivity devoted to preserving and caring for human life, even cosmic–ecological life, before the extraordinary techno-scientific advances in the life and health sciences. Every part of the world has its peculiar history in terms of the development of bioethics, formed by different pioneering personalities and cultural contexts, as well as by the specific circumstances of each country. Our project aims to present essays by researchers responsible for the emergence of bioethics in their respective countries, telling in first person their first insights as well as experiences of and contributions to the development of bioethics. The hope is to have a critical historical account of the debates, controversies, and concerns of a bioethics that forged its own identity in Latin America as well as in the Iberian peninsula. In order to reach a wider audience, *Ibero-American Bioethics: History and Perspectives* is being published in three languages: English, Spanish, and Portuguese.

This work is a result of four years of intensive work, contacts, and dialogues, via telephone, internet, written correspondence, and meetings, with supporters of bioethics scattered throughout Latin America, the Caribbean, and the Iberian peninsula. We opted for adopting the “Ibero-America” category as a general inclusive geographical expression of the contributions from the pioneers of bioethics in these regions of the world. Our research perspective was to be maximally open and inclusive to allow the participation of the highest number of countries. Certainly, it is our desire in some future edition to include more
countries that have a history of their own developments in the field of bioethics. We believe the participation of 17 countries in this book is a great victory and signals that our objective was reached. The accounts here presented, in their diverse points of view, offer a picture of the greatest accomplishments in and future perspectives of bioethics in this important, but often overlooked, region of the world.

This work has been divided into five sections. In the first we have reflections from the Latin-American context. Here we present the historical context of Hispano-American bioethics (Diego Gracia Guillén), the discourses of bioethics in Latin America and references made to bioethics in Argentina (José Alberto Mainetti), an overview of the development of bioethics in the Ibero-American cultural realm (James Drane), bioethics in Latin America and Colombia (Alfonso Llano Escobar, S.J.), and lastly an account of the important role of the Pan-American Health Organization (Fernando Lolas Stepke). In the second section, there are reflections from pioneering voices of different countries: Argentina (José Alberto Mainetti and Marta Lucia Perez), Bolivia (Javier Luna Orozco Eduardo), Brazil (Leo Pessini and Christian de Paul de Barchifontaine), Chile (Miguel Kottow), Costa Rica (Daniel Bustos-Montero), Cuba (José Ramón Acosta Sariego), Dominican Republic (Miguel Angel Suazo), Ecuador (Katya Rodríguez), Mexico (Gerardo Jiménez-Sánchez, Cesara Francisco Lara-Álvarez, and Alberto Arellano-Méndez), Panama (Claude Vergès), Paraguay (Marta Ascurra), Peru (Roberto Llanos Zuloaga), Portugal (Jorge Bicaia and Walter Osswald), Puerto Rico (Leonides Santos y Vargas), Spain (Francesc Abel and Núria Terribas), and Venezuela (Ludwig Schmidt H.). In the third section, to demonstrate the scope of bioethics in the region, we address five specific issues: bioethics and religion in Latin America (Márcio Fabri dos Anjos), bioethics and women in Latin America (Debora Diniz and Dirce Guilhem), bioethics and environmental concerns (José Roque Junges and Lucilda Selli), issues of human vulnerability (José Eduardo de Siqueira and Marco Segre), and research ethics involving human subjects (William Saad Hossne and Corina Bontempo Duca de Freitas). In the fourth section, we ask ourselves what sort of future awaits us in bioethics by considering the lessons that can be learned from the Hispano-American historical context (Hubert Lepargneur), providing a critical assessment of the development of bioethics in Latin American (Germán Calderón Legarda), and identifying general questions for the future (Leo Pessini and Christian de Paul de Barchifontaine). The volume concludes with a postscript (Jennifer A. Bulcock) that acknowledges the important contributions made by the authors of this volume in preserving the history of the development of bioethics in the Spanish and Portuguese cultural domains.

This work is offered not merely to demonstrate the ever-increasing output of bioethical literature in our countries, but also to serve as a foundational historical reference for those who – in the present as well as the future – research and study various topics related to the history of the development of bioethics in Ibero-America. In the 1990s there were already some initial efforts to publish a historical picture of bioethics in the Latin American context. We remember, among other publications: a special edition of the Boletín de la Oficina Sanitaria
Introduction


The beginning of 2008 was marked by the publication of the Dicionário latino-americano de bioética (Latin-American Dictionary of Bioethics), an event of signal importance for the history of Ibero-American bioethics. This project, conducted under the auspices of the Latin-American and Caribbean Network of Bioethics under UNESCO, had as its editor-in-chief the Argentinian philosopher, Juan Carlos Tealdi. Tealdi states in the introduction to the Dicionário that the objective is “to think about bioethics from the various disciplines and moral visions that serve as a meeting point for critical and normative reflections related to Latin American life and those living here” (Tealdi 2008, p. xxvii). The Dicionário, published by the National University of Colombia, compasses 685 pages with 249 entries by 184 authors drawn from 16 countries of this region. From this point forward, anyone wanting to study bioethics in Latin America must take this important text into account.

It is in this current decade, the first decade of the new millennium, that significant advances in bioethical education have been made, with specialization and Master’s degrees, publications and commissions, either in the field of human research or in consulting roles created by governments. Partial as they are, their very existence demonstrates the need for a volume like this.

Our most sincere gratitude is extended to all those who worked with us – “friends of the cause of bioethics.” They allowed us to make this dream become a reality.

¹PAHO/WHO published a special issue dedicated to Bioethics in their official Bulletin in 1990, four years before PAHO’s “Special Regional Bioethics Program.” The issue presents several translated papers by authors from the USA, Canada, and Europe. In Latin America we have data on the development of bioethics in Argentina, Brazil, Colombia, Chile, Mexico, and Peru, clearly from the perspective of bioethics based on medical ethics.

IBERO-AMERICAN BIOETHICS: History and Perspectives is a landmark work, collecting the voices of those who participated in the founding and development of bioethics in Latin America, the Caribbean, and the Iberian Peninsula. The volume offers the reader a cluster of perspectives on the various births of bioethics in this region. The essays in part are irreplaceable first-person voices that give an account of how bioethics took shape within the Spanish and Portuguese cultures both in Europe and in the Americas. As such, the volume is a collection of primary sources, otherwise not available in English, that presents historical panoramas and explores the new perspectives born of the different phases of bioethics in Ibero-America – from its assimilation of bioethics to the creation of its own authentic voices. The volume also encompasses critical reflections from this region on the quite different ways in which its local bioethics have taken shape. As such, this volume also offers an introduction into the quite different concerns that frame and direct bioethics in the cultural context of Ibero-America.

The book gives a rich, deep, broad, and pluralist presentation of Ibero-American bioethics and its contribution to the international phenomenon of bioethics. It is a volume for all readers interested in bioethics, Ibero-American studies, and international approaches to health care policy.
References

Part I
Reflections from the Latin American Context
1.1 Introduction

Bioethics has been and continues to be an American movement. It would be difficult to successfully transfer its propositions, unchanged, to other countries, even to those with very similar economic, social, and cultural conditions, such as European countries in general and those of Latin or Mediterranean Europe in particular (Drane 1988; Gracia 1993, pp. 97–107). The differences are compounded when a culture does not share Western roots, such as in Japan (Bai et al. 1987, pp. 18–20), China (Qiu 1993, pp. 108–125), or Nigeria (Gbadegeisin 1993, pp. 257–262). One’s inability to universally apply the American principles to different cultures highlights the importance of trans-cultural studies and the history of peoples that need to be appreciated. Outside of cultural and historical context the ethics of a people or an epoch and their bioethics cannot be understood. In this paper, I propose to study the historical setting of Latin American bioethics. This is necessary because the culture of these peoples stems not only from the Anglo-Saxon but also from a Latin and Mediterranean tradition, from which it has derived highly specific characteristics. In what follows, I will offer a brief review of the history of these peoples and then define the ethical features of the main periods of that history.

1.2 The Pre-Columbian Age and the Time of Discoveries: The Ethics of the Gift

Most primitive cultures seem to share a religious view of life and the world (Laín-Entralgo 1961). The pre-Columbian cultures of the American hemisphere are no exception to this rule. Despite their rich variety, they all see the world and the
events of life as a complex system of powers, some good and some evil, which express and symbolize the good and bad relations of mortals with divinity and of divinity with mortals. As a result, natural phenomena and the events of life are always seen as “gifts” of divinity or as “debts” incurred to it. The dialectic of the gift–debt is particularly clear in the case of disease. Health is a gift of the divinity, a sign of divine pleasure, while disease is a punishment for sins, or is inflicted by malign spirits. This type of interpretation is encountered in virtually every pre-Columbian culture (Guerra 1971, 1990, p. 233), and we have highly valuable literary examples of it, particularly from the Maya (Rivera 1986, pp. 22, 28–29; Sáenz de Santa María 1989).

This mythic-magical and religious interpretation of the world did not dissipate with the coming of the Spaniards to America in 1492: first, because indigenous people remained attached to their beliefs and, second, because the Spaniards brought with them an equally strong reliance on providence. The Christian religion, however, was certainly different from any seen before in the New World.

A reading of the letters from Christopher Columbus to the King of Spain (Colón 1989) or of those from the voyage of Amerigo Vespucci (Vespucci 1986) is sufficient to show that Columbus saw his discovery as a divine “gift” vouchsafed to him and the Spanish sovereigns. Favorable events continued to be seen as gifts and unfavorable events as reverses brought on by the hardheartedness of the conquistadors or the American indigenes. The discovery of the new continent was considered in any case a marvelous gift. The fact of having come upon America unexpectedly, “by chance,” convinced Columbus that it was a gift from heaven. So began a providentialist interpretation of America that would have incalculable consequences (Xirau 1973). One of the first was the “mythification” of the American Indian and his society. Columbus’ letters refer over and over to what could be called the American “white legend”: Indians living in a “state of nature” with neither laws nor government, with a sexual morality quite different from that of medieval Europe.

The “mythification” of America was so broad that Columbus and the early discoverers saw an entire utopia that led them to locate an earthly paradise in the southern part of the American hemisphere (in an account of his third voyage, Columbus said that it lay in the southern hemisphere, below the equinoctial line (Colón 1989, p. 216)). This subject resonated extensively in the medical literature, for the earthly paradise had to be, by definition, the most beautiful and healthful of all places (Cisneros 1618, p. 99 et seq.). This myth of paradise and of the natural goodness of its inhabitants led to the creation of European literature about the myth of the “noble savage,” who lived in what then came to be called a “state of nature.” Without this antecedent, modern political doctrine from Thomas Hobbes and John Locke to Jean-Jacques Rousseau and Immanuel Kant would make no sense. Only after it could a distinction be drawn between a “state of nature” and a “civil state,” from which the features of the “social contract” were derived (Douchet 1971).
1.3 The Ethical Problem of the Conquest: The Ethics of Despotism

Although the relations between the Spaniards and the Indians were excellent at the outset, they soon deteriorated. Liberty and peaceful coexistence gradually gave way to coercion and force. The famous sermon of brother Antonio de Montesinos on the island of Hispaniola in 1511 was the first public statement of the changed state of affairs (Hanke 1988, pp. 29–35; Pereña 1992, p. 20ff). The thesis of the noble savage was gradually replaced by that of the evil savage, to be treated almost as an irrational being. The use of force became systematic to bring them to the true faith and into the service of the King of Spain. This attitude intensified after 1519 with the conquest of Mexico by Hernán Cortés. In Cortés’s harangue to his troops before they embarked for Mexico, nothing remained of the earlier utopia of the naturally good and gentle Indian. Quite the reverse: Cortés saw the Indian as a perverse being who must be won over, if necessary by force, to civilization and Christian morality (Pereña 1992, p. 46). Peaceful coexistence was thus followed by military conquest, and the white legend was succeeded by the “black legend” (Molina 1991). The Indian was no longer a noble savage but a “dirty dog” to be subjugated and enslaved. He lived in a state of nature, but that state was bestiality, the bellum omnium contra omnes of Thomas Hobbes.

The conquistadors came to believe that the Indians must be subdued by force, and not for their own good but for that of the conquistadors and Spain. The ethic of the gift was succeeded by the ethic of despotism and tyranny. All of classical philosophy has accepted without discussion, at least since Aristotle, that the slave must be governed for the convenience not of the slave but of the master (Aristotle, Politics 1278b, pp. 33–35). This act Aristotle called “despotism” when done by the master of a house, and “tyranny” when done by a monarch (Aristotle 1295a). Both forms differ, argues the philosopher, from the government of one’s children, in which the father seeks not his own benefit (as in despotic and tyrannical relationships) but the benefit of the governed (Aristotle 1278b 35–40). The latter is paternalism. From 1510 on there can be no doubt that the ethic of the American conquest became clearly despotic. It could not be correctly termed tyrannical, for after 1526 the Spanish crown attempted to prevent the degradation of the Indian community (Pereña 1992, p. 40), but neither was it paternalistic. The ethic consolidated in these years was clearly a despotic one.

According to Francisco de Vitoria, Peru had been conquered (1531–1532) by despotism, and he referred contemptuously to the despots who ruled over the Inca Indians as “peruleros,” against whom he inveighed in 1534: “I am not frightened or embarrassed by the things that come to my hands except the tricks of benefices and things of the Indies, the very mention of which freezes the blood in my body” (Vitoria 1967, p. 135). The letter is dated November 8, 1534, and is one long tirade of invective against the conquistadors of Peru: “Of those of Peru, timeo [I fear] that
they are the kind qui volunt divites fieri [who want to become rich]. And of some it has been said that impossible est divitem intrare in regnum caelorum” [it is impossible for the rich to enter the kingdom of heaven] (Vitoria 1967, p. 138).

Vitoria says he “does not understand the justice of that war” (Vitoria, loc. cit.), for “from what I understood from those who were at the recent battle with Tabalipa, neither Tabalipa nor his people had ever done any wrong to the Christians or anything else that would justify making war on them” (Vitoria, loc. cit.). In his view, “there was no cause for war other than to rob them … and I believe that the other conquests since have been even more wicked” (Vitoria, loc. cit.); besides, Indians “think the Spaniards tyrannize them and make war on them unjustly” (Vitoria, loc. cit.).

Vitoria’s point is that “war, especially against vassals, must be started and waged for the good of the vassals and not of the prince” (Vitoria, loc. cit.). The former is paternalism, while the latter is despotism. Vitoria believes that the peruleros are behaving despotically (for their own benefit), and so rob the Indians of all their wealth: “I do not see how they can rob and despoil the unfortunates they have vanquished of all their goods” (Vitoria, loc. cit.).

He argues that

There is only one way to justify the cruelty of the conquistadors; that is, to regard the Indians not as people, but as apes … In truth, if the Indians are not men, but apes, non sunt capaces injuriae [they are incapable of suffering injury]. But if they are men, and our fellows, and therefore vassals of the emperor, non video quomodo [I do not see how] to excuse any conquistador of ultimate impiety and tyranny, nor do I know what so great service they render His Majesty in ruining his vassals (Vitoria 1967, pp. 138–139).

The acts of the conquistadors are so unjustifiable that Vitoria writes:

If I wished for the archbishopric of Toledo, which is vacant, and they were to give it me if I subscribed or affirmed the innocence of these peruleros, I would surely not dare to: May my tongue and my hand wither ere I say or write such a thing so inhuman and alien to all Christianity. Let them do what they will and leave us in peace (Vitoria 1967, p. 139).

Vitoria’s judgment agrees with that expressed by Bartolomé de Las Casas in his polemical works, especially the Brevisima relación de la destrucción de las Indias (1542) (A Very Short Report on the Indies Destruction). Against him Ginés de Sepúlveda, a great Aristotelian and official chronicler of Emperor Charles V, maintained in his book Democrates Secundus (1544) that the despotism in the Americas was ethically correct. From their confrontation in Valladolid (1550–1551) (Pagden 1982) at least one clear idea emerged: the despotic treatment of the Indians must give way to another that is more humane and would treat them not as animals or slaves but as sons and daughters. The despotism of the Conquest was to be succeeded by the paternalism of the colonial age.

What consequences did the ethic of despotism have for the lives of the American Indians? The denunciations of Bartolomé de Las Casas attest well to the destruction and death wrought by this policy:

At this time the clergy of Santo Domingo had already noted the sad life and harsh captivity suffered by the native people of this island and how they were being consumed thereby; the Spaniards who owned them being no more concerned than if they had useless
animals, and sorry when they died only because they had such need of them in the gold mines and other profitable ventures; nor did they for all that, use those that were left with more compassion or mitigation of the rigor and harshness with which they were used to oppressing and exhausting them. And in all this there were Spaniards who were better and worse, for some were of utmost cruelty, with neither pity nor mercy, having regard only to their own enrichment with the blood of those unfortunate wretches, while others were less cruel, and some it may be supposed must have grieved at their misery and anguish, but all, the ones and the others, tacitly or expressly put their own private material interests before the health and lives and salvation of the unfortunates (Las Casas 1961, p. 174).

1.4 The Colonial Age: The Ethics of Paternalism

The colonial age departed both from the optimism of the “noble savage” and from the pessimism of the “dirty dog.” The ideology of this third phase lay in between: the Indian was free, but was seen as a minor, as a small child in need of supervision. This could already be seen in the Laws of Burgos of 1512 (Molina 1991, p. 87), but became accepted as standard in the New Laws of the Indies of 1542. As Luciano Pereña has written, these Laws are the outcome of the theoretical work done by Vitoria, Covarrubias, Soto, and Cano, of the school of Salamanca (Pereña 1992, p. 172).

Paternalism is the solution proposed by Las Casas in his books. Vitoria, in his Relectio de Indis of 1539, does not accept the proposition that the Indians are irrational beings by nature. Nor does he accept Aristotle’s thesis to the effect that “there are those who are by nature slaves” (Vitoria 1967, pp. 13–14). Although, in his opinion, the Indians are very similar to animals, he does not think them “mindless or idiots”:

They are actually not idiots, but have, in their own way, the use of reason. It is evident that there is a certain order in their affairs: they have properly ordered cities, well-defined marriages, magistrates, lords, laws, professors, industries, trade; all of which requires the use of reason. They also have a kind of religion and do not err about things that are evident to others, which betoken the use of reason. God and nature do not abandon them regarding what is necessary to the species; and the principal thing in man is reason, and useless is the potentiality that is not reduced to an act. Moreover, they may have been so many thousands of years, through no fault of their own, outside the state of salvation, for they were born in sin and are without baptism, and may not have the use of reason to inquire into what is needful for salvation. From which I believe that the fact that they seem to us such idiots and dullards derives in most part from their poor and barbarous education, for among us, too, we see many men of the countryside who are little removed from the brute animals (Vitoria 1967, pp. 29–30).

After this, Vitoria replies to the counterargument that denied rationality in Indians based on the authority of Aristotle. What is truly consistent with Aristotle’s thought, he says, is “that there is in them a natural need to be ruled over and governed by others, and it is very beneficial to them to be subject to others, as children need to be subject to their parents and a woman to her husband” (Vitoria 1967, p. 31; cf. Aristotle, Politics 1259a, b). Here, we see clearly the paternalism of Vitoria’s solution.
Vitoria, however, is not untroubled by doubts. These doubts lead him to view this argument as merely probable, but for that very reason valid as a guide to practical conduct (it should not be forgotten that the Salamanca school that started with Vitoria gave rise to the moral doctrine of probabilism). Here is a highly significant passage:

There is another point that could not be affirmed with surely but can indeed be discussed and appears legitimate to some. I would venture neither to approve nor to condemn it absolutely. This point is: Those barbarians, though they may not be, as has been said, entirely incompetent, are so little removed from the mentally retarded that they seem not capable of establishing or administering a legitimate republic within human and political limits. Hence they have no proper laws, or magistrates, and do not even have enough capacity to govern the family. Indeed they are without not just liberal but also mechanical sciences and arts, and a diligent agriculture, artisans and many other amenities that are even necessary for human life.

It could then be said that for the utility of them all the kings of Spain may take upon themselves the administration and government of those barbarians, appoint to them ministers and governors for their peoples, and even give them new princes so long as it is clear that this is conducive to their well-being.

It would be difficult to persuade oneself of all this because if all were incapable, there is no doubt that it would only be permissible and most advisable, but even princes would be in the obligation of doing this just as if they were entirely children. And there appears to be the same reason for so dealing with those barbarians as with the mindless, for they can do little or no more to govern themselves than the mentally deficient. And they are almost as the very wild beasts, for they use foods no more prepared and not much better than they. Thus they could similarly be entrusted to the tutelage of men more intelligent than themselves.

And this thesis is confirmed with some appearance of truth or likelihood. For if perchance all the adults of those regions were to perish and leave only the children and the adolescents with some use of reason, but still within the years of childhood and puberty, it seems clear that princes could take them in charge and govern them while they were in that state. If this is granted, it seems true that it is not to be denied that the same could be done with the parents of the barbarians, assuming the mental incapacity ascribed to them by those who have been there, which they say is much greater than that of adolescent children in other nations.

And in truth this conduct could even be founded on the precept of charity, for they are our fellow men and we are obliged to do what is good for them. I accept this (as I have said) without affirming it absolutely and, moreover, on condition that it is done for the good and utility of them and not as a pretext for profit to the Spaniards. For herein lies all the danger to souls and their eternal salvation. This argument may also be supported by what was said before, that they are serfs by nature. And such these barbarians do appear to be, and it is partly for this reason that they could be governed as serfs (Vitoria 1967, pp. 97–98).

These passages convey Vitoria’s mind-set very well and therewith the mentality underlying the Laws of the Indies. Indians are men, not animals, and hence merit our respect; but they are barbarian men, to be protected like children. Vitoria proposes that we behave paternalistically toward them and avoid tyranny. He therefore inveighs against the excesses of the conquistadors, and in a letter to Father Arcos says “non video quomodo (I do not see how) ... to excuse these conquistadors of ultimate impiety and tyranny” (Vitoria 1967, p. 139).

José de Acosta is another great theoretician of paternalistic protection of the Indians. In his work De procuranda indorum salute (1576), he defines the Indians as “barbarians” and asserts, “By the definition of prestigious writers, barbarians are
those who shrink from right reason and the habitual practice of men (\textit{qui a recta ratione et hominum communi consuetudine abhorrent}). This is why the most illustrious writers emphasize the incapacity of barbarians, their ferocity, including their techniques and works, which show how far they are from the usual practice of other men and how little wisdom and rational activity they have” (Acosta 1984, p. 61). This is the mind-set that presides over all the Spanish colonization: the Indians are barbarians and hence have physical strength, but not rational or spiritual vigor and are by nature in need of tutelage. They are like the artisans in Plato’s \textit{Republic}, whereas the guardians and governors are the Spaniards.

José de Acosta distinguishes three levels of barbarism, from least to most. The least is that of the East Indies. The peoples of the West Indies are at the second and third levels. At the second level are the Mexicans and Peruvians, and almost all the other American peoples are at the third. And, Jose de Acosta adds:

All these men or half-men must be given human instruction that they may learn to be men and become educated like children. And if with flattery they let themselves be improved, so much the better; if they do not, they must not be left to their fate: if they stubbornly resist their own regeneration and talk nonsense against their own teachers and physicians, they must be compelled by force and some convenient pressure must be exerted on them that they do not raise obstacles to the Gospel, and they must be made to fulfill their obligations; and it will be well to force them to move from the jungle to the human comity of the city, and to enter, however reluctantly, into the kingdom of heaven (Acosta 1984, p. 69).

De Acosta does not hesitate to apply to the American Indians the hard words in the book of the \textit{Wisdom of Solomon} on the Canaanites: “knowing that they came of evil stock, that they had been wicked from birth, and would never change their way of being. Their whole nation was cursed from the beginning” (Wisdom, 12:10–11). And, de Acosta adds, “There are therefore individuals afflicted by a congenital and hereditary malice, so to speak; their way of thinking is so stubborn and perversely deep-rooted that it is almost impossible to extirpate…. This is, then, the first and principal cause of why in these regions so little fruit is to be expected from so much effort: they are a cursed race, almost beyond divine help and destined for perdition” (Acosta 1984, p. 89). Similar passages could easily be found (see, for example, Acosta 1984, pp. 139, 141, 143 and 145).

In these and many similar expressions, José de Acosta is not justifying the despotism of the conquistadors. Quite the contrary, what he proposes as an alternative to despotism is paternalism. So he writes immediately thereafter the following passage:

I mention all this not to approve in any way of the “tyrannical” power and cruelty (so removed from the teachings of Christ) that have been used with the peoples of the Indies, or because I think they are to be commanded like serfs, or because I do not abhor and condemn with all my energy the crimes of the scoundrels and the greed of those who convert the goods, work and sweat of those wretches to their sole benefit, taking most iniquitous advantage of their dull-wittedness (Acosta 1984, p. 147).

This is the mentality with which decent Spaniards sought to govern the American colonies from about 1550 until independence. The Indians were protected like children rather than treated as slaves (which was prohibited by law). This does not mean that slavery did not exist. In fact, the traffic in African slaves to America took place precisely because of the demand of the most burdensome tasks which only
slaves carried out. Negroes were not considered in the “Leyes de Indias” (Legislation for Indians) and therefore could be treated as slaves according to the medieval legislation which Alfonso X recapitulated in the Partidas. Consequently, colonial society was stratified into an authentic caste system in which the Spaniards occupied the top level, then came the American Spaniards or Criollos, then the Mestizos (a mixture of European and Indian), after them the Mulatos (a mixture of European and African) and then the Zambos (a mixture of Indian and African), then the Indian and finally at the bottom the Negro slaves. Paternalistic treatment never reached the last level.

In the medical sphere, this caste system had both good and bad consequences. One good consequence was the categorical prohibition under the New Laws of 1542 of inhuman and degrading labor. It was forbidden to make Indians carry burdens on their backs, with the sole exceptions imposed by the absence of beasts of burden or of roads, and only as moderate tasks voluntarily undertaken and never compelled, and without detriment to the health, the lives, and the preservation of the Indians, and always in exchange for payment accepted by them freely and voluntarily (Pereña 1992, p. 166). Mistreatment and abuse were also forbidden, and severe punishment awaited whoever killed or wounded any Indian. The bad consequence was undiluted paternalism. What was good for the Indian was defined by the Spaniard or the Criollo, not by the Indian himself. What was done was that which the Spaniard or the Criollo thought was good for the Indian and in most cases was merely what was good for the Spaniard or the Criollo.

Far from solving existing problems, belief in the natural inferiority of Indians and the necessity of guiding them only compounded problems. This is obvious in the area of health care. Seeing themselves looked down upon and rejected by white and criollo society, Indians took refuge in their own traditions and reverted to the faith medicine of their forebears. Western medicine reached them not through physicians and surgeons but through missionaries, who carried out important health initiatives for evangelization, founding hospitals for the lower classes and educating people in health matters.

In conclusion, then, we may say that during the centuries of the colonial age the Indians were accorded some civil rights (e.g., the right to life and to humane treatment in the sense of the integrity of one’s person), but these civil rights never turned into political rights, and the Indians remained in a state of social relegation. This moved them to withdraw into their ancient traditions, which reduced their health care largely to their old faith-healing practices. The paternalism of the colonial age protected their lives but also segregated them socially, prevented the betterment of their condition, and barred them from the benefits of Western medicine.

The European residents in America and the Criollos, however, did benefit from the Western medical practices that the Spaniards brought to the New World. The sixteenth century was a century of great splendor in Spanish medicine, which had clear effects on American medicine (Guerra 1972, p. 346). Schools of medicine were opened in the leading universities (Mexico: 1555, Lima: 1634, Guatemala: 1681, Quito: 1693, Bogotá: 1715, Havana: 1726, Caracas: 1727 etc.), which produced physicians trained to European standards. In addition, with the
promulgation of the *New Laws of the Indies* in 1542, medical practice passed under the control of the Tribunal del Protomedicato (Examining Board of Physicians), which began to function in 1570. Thereafter, Hispano-American medicine flourished increasingly and uninterruptedly until the end of the eighteenth century.

In this way, different forms of medical care were established in Indian society, each corresponding to the different castes. The physicians from the universities tended to the health needs of the highest class, made up of the nobility and the governors from Spain. They also cared for *criollos* with money. Surgeons and barbers took care of the *mestizos* and *mulatos* and these castes also employed the techniques of folk medicine. Some Indians benefited from the Western medicine provided by missionaries, but most were taken care of by folk doctors. The African slaves used their own folk medicine as well. All of the above-mentioned medicines were paternalistic, but each in a different way. European medicine regarded the patient as a child or a moral invalid and hence as incapable of deciding on matters of one’s own body. Indians were in a different situation, for they were regarded as children even when they were healthy, and hence were subject to paternalism in every area of life. It may also be said that the Indian was seen and treated, in all cases and without exception, like a patient. The white and *criollo* were treated paternalistically only when they were sick, but for the Indian and *mestizo*, paternalistic treatment was the rule and affected every aspect of life. Their racial condition was regarded and treated as if it were a disease. This is particularly clear with Negroes whose race and skin color condemned them to something worse than paternalism, i.e., to despotism and tyranny.

### 1.5 The Age of Independence: The Vicissitudes of Ethnic Autonomy in Latin America

During the centuries of the colonial age, American society consisted of several strata: the highest, consisting of the European governors, the middle stratum, made up mostly of *criollos*, and the third and lowest consisting of the indigenes. With time, it was seen that the first two had clearly opposing interests, for there was no necessary identity between the interest of the crown, represented by the European governors, and the interest of the settlers themselves. This was the wellspring of the internal struggles for political power that began in the colonies during the nineteenth century. The occasion for revolt was created by the French invasion of Spain and the imprisonment of the Spanish monarch, Ferdinand VII, in 1808. As in Spain, so in America: local and vice-royal “juntas” (boards of governors) were formed and assumed political control of the colonial cities and territories. These *juntas* were made up of *criollos*, who by this means acquired effective power against Spanish authorities in the colonies. This process took place between 1808 and 1810 and was consolidated years later, between 1820 and 1824, in the form of autonomous political authority independent of the Spanish Crown. The process was influenced by
the Declaration of Independence of the British colonies in North America in 1776, the French revolution of 1789 and, in general, the intellectual climate of the French Enlightenment. The great Hispano-American revolutionaries (e.g., Antonio Nariño, Francisco Miranda, Simón Bolívar, etc.) were scions of the wealthy, cultivated criollo bourgeoisie who, having studied in Europe, were acquainted with liberal ideology and realized the importance of the new doctrine of human rights for democratic politics. In 1793 Nariño translated and printed in Bogotá the Declaration of the Rights of Man, which the French constituent assembly had promulgated shortly before in 1789. It is interesting to note that, similar to Spain – where many of the members of the Cortes who in 1812 proclaimed the first Liberal Constitution were physicians – a very high proportion of the leaders of the independence movements of the new American nations were also physicians (Guerra 1975, pp. 23–51). The fact that medicine was one of the most esteemed professions by the new criollo bourgeoisie had considerable importance.

The constitutions of the new American countries were drawn up on the models of those of the United States (1776), France (1789), and Spain (1812). This means that they started from the assertion of popular sovereignty and from the recognition in all human beings of certain inborn and inalienable rights referred to as civil and political rights. Against the old model of the paternalist state, the new model asserted that all human beings are adults and autonomous, that is, persons with rights that none may violate (Sánchez Agesta 1987). The place of paternalism in the old model was now occupied by the idea of autonomy. All citizens, including Indians, were considered autonomous and were to be treated as equals in the new democratic state.

From a formal standpoint this constituted an indisputable step forward, and yet in other ways it was distinctly retrogressive. In this stage the Indian actually made no gains in prestige or social standing, but remained completely outside the social dynamics in these countries. Indeed, being no longer protected by the structures of the old paternalist state, Indians were left utterly defenseless against the economic and social interests of the criollo bourgeoisie. Wars of persecution of the Indians were undertaken in several Hispano-American countries in the second half of the nineteenth century, some of which nearly exterminated the Indians.

The revolution allowed the criollo bourgeoisie to organize itself on new lines of conduct very similar to those of Europe and the United States. When the Spanish colonies became independent, a bipolar social structure emerged even more clearly in the new American countries: a bourgeoisie of European and first-world patterns and customs, and an extensive underclass closely attached to Indian traditions and of a clearly third-world caste.

This social structure had major consequences for health. From the early days of independence the bourgeoisie enjoyed health care very similar to that of the advanced countries of the West, while the health care of the needy classes was seriously deficient. In Latin-American countries, an exercise of civil and political rights was impossible where these were not accompanied by economic, social, and cultural rights. Among civil and political rights are the right to life and to humane treatment or personal integrity and the right to freedom or autonomy. There can be no doubt that People of good economic and social status can secure their rights without the