

THE GLOBAL ORIGINS OF PROBABILISM: SOME
NEGLECTED CONTRIBUTIONS IN THE MERCANTILE
AND SACRAMENTAL WRITINGS OF VITORIA, MERCADO
AND VERA CRUZ

*Los orígenes globales del probabilismo: algunas contribuciones
olvidadas en los escritos mercantiles y sacramentales de
Vitoria, Mercado y Vera Cruz*

José Luis EGÍO 

Goethe University Frankfurt
egiogarcia@em.uni-frankfurt.de

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ABSTRACT: In contrast to traditional historiography which, until recently, has generally explained the origin of probabilism based on works written in the European academic context, this article explores pragmatic works written mostly by —and for— experienced actors making practical use of their knowledge in fields such as trade, commerce and sacraments within the new global horizon of the Hispanic Monarchy. I propose a new, more global explanation of the progressive emergence of probabilism as a theological doctrine and method for the resolution of cases. Particular attention is granted to the use of probabilistic arguments in works of American missionary literature and writings of moral theology produced in the changing context of the central decades of the sixteenth century. This analysis allows us to understand their focus on evaluating probable alternatives in unfamiliar contexts and with unforeseen doubts that already existed in Vitoria's ideas on economy and mission. As I show in this article,

this emerging focus is a tendency that later Salamancan disciples such as the *novohispano* theologians Alonso de la Vera Cruz (1509-1584) and Tomás de Mercado (1523-1575) went on to radicalize by appealing to the need to follow merely probable opinions in a growing range of cases. Both of them adapted European moral and religious norms to a wide range of specifically early modern problems. The evaluation of the family or marriage customs of the indigenous American peoples and of frequent practices in the transatlantic economy such as money exchange and sale on credit were among the most discussed.

Keywords: probabilism; probable opinion; moral theology; confession; merchants; transatlantic commerce; contract, money exchange; marriage; Francisco de Vitoria; Alonso de la Vera Cruz; Tomás de Mercado; Bartolomé de Medina.

RESUMEN: Frente a una historiografía tradicional que, hasta fecha reciente, ha tendido a explicar el origen del probabilismo a partir de obras escritas en el contexto académico europeo, este artículo explora obras y ámbitos de diversa índole. Concede, en particular, en una nueva explicación global de la emergencia progresiva del probabilismo como doctrina teológica y método para la resolución de casos, una gran atención al uso de los argumentos probables en obras de la literatura misional americana y escritos de teología moral producidos en el contexto cambiante de las décadas centrales del siglo XVI. El análisis realizado permite al lector entender, en primer lugar, la centralidad que ya en el pensamiento económico y evangelizador de Vitoria presenta la evaluación de alternativas probables a la hora de enfrentarse a contextos poco conocidos y dudas inéditas. Como mostramos en este artículo se trata de una tendencia que discípulos salmantinos posteriores como los teólogos ‘novohispanos’ Alonso de la Vera Cruz o Tomás de Mercado radicalizarán apelando a la necesidad de seguir opiniones meramente probables y, en ocasiones, mayoritariamente refutadas por sus colegas europeos, a la hora de traducir a una amplia serie de problemáticas específicamente modernas (como la evaluación de las costumbres familiares o matrimoniales de los pueblos indígenas americanos o de prácticas frecuentes en la economía transatlántica como el cambio o la venta al fiado) la normatividad moral y religiosa precedente, de cuño marcadamente europeo.

Palabras clave: probabilismo; opinión probable; teología moral; confesión; mercaderes; comercio transatlántico; contrato; cambio; matrimonio; Francisco de Vitoria; Alonso de la Vera Cruz; Tomás de Mercado.

1. INTRODUCTION. THE BIRTH OF PROBABILISM. SOME BREACHES IN TRADITIONAL HISTORIOGRAPHICAL EXPLANATIONS

The most recent books on the history of probabilism repeat the traditional historiographical perspective according to which Bartolomé de Medina's (1527-1581) influential *Expositio in primam secundae Angelici Doctoris D. Thomae Aquinatis* —first printed in Salamanca in 1577-78 (Medina, 1578)— is considered the ground zero in the history of probabilism (Schüßler, 2019: 91; Tutino, 2018: 42). For the first time in history, and contrary to the tutorist and probabiliorist approaches, which were the dominant approaches to moral advice on ill-defined issues —within or outside the realm of confession— during the late medieval period,¹ a Christian author admitted that an opinion or criterion of action could be chosen even if the opposite opinion or pattern was more probable.² A slight deviation from the accustomed and well-trodden approach to moral counsel, hidden away in an erudite textbook for theology students at Salamanca,³ launched an 'intellectual revolution' that affected moral philosophy and theology as well as secular and ecclesiastical law.

Medina almost immediately found followers of his approach, which set the foundations of a deep methodological transformation in moral advice and in the practice of confession. Progressively, moral theologians divided themselves into two conflicting factions. While, for the followers of Medina (particularly abundant within the Jesuit order (Maryks, 2008; Tutino, 2018: 52-88)), the Salamanca master had paved the way for a new moral theology in accordance with the contemporary

1. While tutorism «obliged the agent to follow the course of action that best ensures that the agent would avoid sin» (Tutino, 2018: 1), the probabiliorist approach recommended that «if two opinions had unequal support by truth-tracking reasons, only the more probable ought to be endorsed as a premise of action and could be held as true» (Schüßler, 2019: 147). A brief account on Medieval scholastic attitudes to the variety of opinions, including tutorism and probabiliorism (Schüßler, 2019: 32-40).

2. «Si est opinio probabilis, licitum est eam sequi, licet opposita probabilior sit» (Medina, 1578: q. 19, a. 6, 309).

3. In a very humble way, Medina presented himself in the «Argumentum Operis» as a mere interpreter and fulfiller of Aquinas doctrine, as well as a compiler of the commentaries to the *Summa theologiae* dictated by his predecessors at the Faculty of Theology of the University of Salamanca. The book should help Medina's pupils and listeners to recognize and desire the salvific light of Saint Thomas' doctrine. «De me verò, qui huius sum interpres & enarrator, nihil vobis possum polliceri, nisi diligentissimam diligentiam, laborem assiduum, bonam mentem, desiderium denique bonum, ac rectum; orauique, atque oro vnum Deum meum, per quem omnia, in quo omnia, vt in tradenda atque edocenda veritate Christiana, det mihi mentem pacatam, & tranquillam, & magis de discipulorum vtilitate atque profectu, atque Dei gloria, quam de honore huius mundi cogitantem. Item oro Deum meum, vt audiet auditors meos intuentes, & verum quaerentibus lumen accendat interius» (Medina, 1578: [s.p.]).

practice in different spheres (economic, social, military, political, etc.), the zealous defenders of rigorism or probabiliorism rapidly denounced probabilism as a too lax method to address moral problems on confession, allowing penitents to follow almost always their own will and criteria. Besides, the use of probable opinions also became common in juridical argumentation during the 17th century (Salgado de Somoza [1629], 1759: P. II, C. XIV, § 297, 299), which resulted in the same kind of fierce debates as in moral philosophy and theology. Evidence and diverse degrees of probability were envisaged as different criteria for the difficult act of judging (Garriga, 2009: 67)⁴. As one can read in the different histories of probabilism, the controversy did not cease until one of the contending parties achieved a series of clear victories in late 17th century. Probabilistic approaches to moral theology could only be defended in a mitigated way after Popes Alexander VII (1599-1667), Innocent XI (1611-1689) and Alexander VIII (1610-1691) condemned several probabilistic propositions as scandalous and opposed to evangelical simplicity (Quantin, 2016: 125-130; Martel Paredes, 2005: 50).

According to the common opinion of historians, probabilism emerged in the erudite sphere of the Salmantine academic theology, written in Latin, where it was used to train future confessors. From there, it was introduced into the political councils of the Hispanic monarchy by the clergymen who served as confessors and advisers (Reinhardt, 2016: 77-86). The hypothesis seems convincing, to the point that it has been upheld for centuries without alternative opinions. In fact, when Delumeau (Delumeau, 1992: 133), Tutino (Tutino, 2018: 42), Poutrin (Poutrin, 2019) and Schüssler state that probabilism was «a doctrine invented in Salamanca by the Dominican friar Bartolomé de Medina in 1577» (Schüssler, 2019: 25), they adhere to an opinion which was already consolidated in the first encyclopedic history of probabilism, written as a polemical denunciation of probabilism and their proponents. I am referring to the famous *Della Storia del Probabilismo, e del Rigorismo*, written by Daniele Concina (1687-1756) (Concina, 1743). In the first book of this influential *History of Probablism and Rigorism*, Daniele Concina had already considered the

4. Garriga considered, in fact, probabilism and casuistry as the main characteristics of the juridical order of the Hispanic monarchy during the *Ancien Régime*. In his perspective, its «casuistic and probabilistic configuration» is crucial to understand the complex relationships between metropolitan (King, Council of Indies, *Casa de la Contratación*,...) and overseas institutions (*Audiencias*, Viceroy, ...). «Como puede observarse, muy de acuerdo con la configuración casuística y probabilista de aquel orden jurídico, por toda solución general se impone una vía para llegar al establecimiento de soluciones particulares (esto es, atentas a las circunstancias del caso), que en último término supeditan el gobierno a la justicia, toda vez que apoderan al presidente para decidir la naturaleza (gubernativa o judicial) de las cosas o causas dudosas, pero con apelación a la Audiencia si las cosas de gobierno devienen causas de justicia (lo que desde luego incluye la decisión sobre su admisión o no, es decir, la calificación del grado)» (Garriga, 2009: 67).

Expositio of Medina on Aquinas *Ia-IIae* to be the first Christian «testo» to hold such an opinion and approach to morals and confession (Concina, 1743: 17-18).⁵

The consolidated approach to the origin of probabilism disregards at least two breaches in the same foundational sources which are always mentioned as textual proofs. On the one hand, Medina himself presented his work as contiguous with the methods taught at the Faculty of Theology of Salamanca since the arrival of Francisco de Vitoria. According to his perspective, Medina's role would have been that of the humble compiler and fulfiller of the great commentaries on the *Summa theologiae* written by his predecessors at the main chairs of the Faculty of Theology in Salamanca (Vitoria, Soto, Cano, Sotomayor, Peña, Mancio, etc.) and used, during three generations, as supporting teaching materials.⁶

The second important flaw in the traditional account of the origin of probabilism can be found in Concina's own foundational statements. Written in a tone of vehement denunciation, Concina was not always consistent in his references to sources and authors in his *Della Storia del Probabilismo, e del Rigorismo*. While many passages in his text are insistent and repetitive, some important nuances and information pass almost unnoticed in his extensive account of almost 1,500 pages. It is not surprising then, that Concina considered Medina to be the «inventor» of probabilism as no theologian before him «insegnata cotesta sua opinione», also pointing to 1577 as the «epoca della nascita del Probabilismo [...], comunemente accordata da tuti' i Teologi, anche Probabilisti», and then some pages later, he refers to Luis López (1520-1596) as the second probabilist Dominican friar, only to

5. «La epoca del Probabilismo sorto tra' Cristiani cominciò nel 1577, nel qual anno il P. Bartolommeo Medina pubblicò il suo tomo sopra la prima della seconda parte di S. Tommaso» (Concina, 1743: 17-18). Concina referred to the probabilism originated among Christians, in order to distinguish it from the Pagan holders of probabilism in Early Christianity. Concina pointed to the «secta de los Academicos»—targeted by Augustin of Hippo in his *Against the Academics*—as the real creators of a perverted approach to knowledge and morals that is not, in fact, compatible with Christian values (Concina, 1743: 15).

6. «Sed neque in his, a me ante commemoratis, desiit diuinae sapientiae radius: floruerunt namque apud nos sapientissimi Magistri, Sotomayor, Peña, Mantius, quos honoris gratia nomino. Hi omnes in doctrinam D. Thomae annotations reliquerunt, non quidem integras & perfectas, neque typis mandatas, sed in albeolis manuscriptis a discipulis exceptas. Quibus nos, qui pie illis in Christo defunctis supersumus, semper de nouo addimus, semper aliquid ex D. Thomae fonte perenni exhaurimus (...). Patres igitur nostril quasi a longo somno expergefacti; quippe qui & omnes honores, & omnia honorifica ne pili quidem faciant; mihi, omnium Theologorum minimo, in commodum Reip. Christianae hanc provinciam demandarunt, ut haec literarum monumenta, simul cum eis, quae ego excogitaueram, ordinarem, complem, & perficere». Dedicatory letter to the General Master of the Dominican Orden, Seraphino Cavalli, «Reverendissimo, ac dignissimo Patri nostro Seraphino Cavalli Brixiensi, totius Ordinis Praedicatorum Magistro Generali» (Medina, 1578: [s.p.]).

introduce a third name, a certain Del Mercado, whose status and role in the origin of probabilism is not clarified at all by Concina in his long dissertation:

Il secondo Domenicano difenditore della sentenza del Medina, e del Mercado, è il P. Lodovico Lopez. Questi verso il 1585. Pubblicò la sua Istruzione della coscienza, nella di cui prima parte scrive: scio comunem esse sententiam Soti, Corduba, Cajetani, Conradi, & Navarri non satis ese probabilem opinionem sequi, sed Probabiliorem ese seguendam. Egli però difende la contraria, perlochè il P. Escard nel la Biblioteca degli Scrittori dell'ordine, osserva, che il Padre Lopez è censurato da alcuni Autori, come di troppo propenso verso le opinioni larghe (Concina, 1743: 20-21).

Did López follow Medina and Del Mercado, or only Medina? If López was the second Dominican supporting Medina's opinion, what then was Del Mercado's position in the timeline of the origin of probabilism? Who was this Del Mercado? Did he write before or after Medina? This information is impossible to find in *Della storia del probabilismo e del rigorismo*. In fact, Del Mercado (*sic!* De Mercado), who sided with Medina and López in this bizarre and unclear statement is mentioned only once more in the book and there, again, as a theologian having played a certain, yet unspecified role in the origin of probabilism.⁷

In this article I will examine some clear probabilistic passages of Tomás de Mercado's (1523-1575) *Tratos y contratos de mercaderes*—the work that Concina or some of the non-quoted sources on which he relied could have had in mind when he confusedly included Mercado among the first proponents of the probabilistic doctrine. With these passages and sources, I will try to resolve the mystery unleashed by Concina's negligence. Surprisingly, contemporary scholars of probabilism have tended to synthesize previous and historiographical explanations gathered over the long-term rather than to challenge them by a direct reexamination of classical scholastic sources.

First published in 1569, Mercado's *Tratos y contratos de mercaderes* offers a start to the story line of the origin of probabilism almost a decade before traditional historiographical perspectives. Importantly, it offers the possibility to reconstruct the early history of probabilism whose origin is not limited to the erudite realm of the university teaching. In challenging the pre-established philosophical account of the emergence of probabilism as the intellectual 'invention' of a brilliant master of thought, I aspire to provide a more historically and contextually embedded explanation that points to its gradual and progressive emergence. This new account of the origin of probabilism contextualizes the 'intellectual revolution' that occurred in

7. «L'autorità gravissima del Medina, del Mercado, del Lopez, del Banez, del Valenza, dell'Azorio, dell'Enriquez, del Salas, del Suarez, e del Sanchez fu uno stimolo efficacissimo agli altri posteriori Teologi per dichiararsi del partito Probabilistico» (Concina, 1743: 23).

the fields of moral philosophy and theology within the wider context of the economic and social transformations that affected the Iberian world at this time, especially within the mercantile and missionary spheres. From this point of view, probabilism and the probabilistic approach to moral counsel appear not as a sudden creation or invention, but as a process of emergence related to the growing complexity and the entanglement of early modern business ethics and sacramental theology.

As is the case for the explanations of state-building, contemporary legal codifications or international law, where Eurocentric perspectives prevail in legal history (Duve, 2020a), the global dimension of the historical changes that contributed to the emergence of probabilism in the early modern period has usually been overlooked. The discovery of the New World and «the development of an international market fueled by financial transactions» (Tutino, 2018: 3) are mentioned in the books of Tutino, Schüssler and others,⁸ but only in passing and without establishing solid explanatory links between this kind of introductory considerations and scholastic sources.

In order to develop a new global perspective on the emergence of probabilism in early modernity, I will focus on the use of «probable arguments» in some of the writings that the Dominican theologians Francisco de Vitoria (1483-1546) and Tomás de Mercado dedicated to what we call nowadays mercantile ethics. Nevertheless, the discovery of America implied not only a revolution in business practices and their normative regulatory regimes, progressively imbedded by uncertainty and provisionally admissible resolutions, but also in the related field of sacramental theology. Given that the missionary confrontation with a vast range of unforeseen social, familial or sexual customs also contributed to made the use of probable arguments more important than ever, I will include in my analysis some references to the writings on infidel baptism and marriage by Francisco de Vitoria and one of his early disciples, the Augustinian friar Alonso de la Vera Cruz (1507-1584). Having attended the courses of Francisco de Vitoria from 1528 to 1532 (Ramírez González, 2007: 641), Vera Cruz spent most of his life in Mexico as a missionary (Lazcano, 2007). In 1556, he published the book *Speculum coniugiorum* (Vera Cruz, 1556), a very important treatise for the history of theology and canon law. It was not only

8. Offering a general perspective on the reasons behind the consolidation of probabilism in 17th century and not focusing exclusively on the American dimension of its emergence, Esteban Llamosas underlines the importance of its economic factors: «La explicación del triunfo y pervivencia del probabilismo, al menos hasta su vinculación a la laxitud, se relaciona al intento de conciliar las exigencias de los cambios modernos, especialmente los económicos, con los mandatos de la moral cristiana. El préstamo a interés, el crédito, la creación de riqueza por estos medios, exigían mayor flexibilidad en los moralistas que hasta ese momento los habían condenado» (Llamosas, 2011: 286).

the first book on these fields of knowledge published in America, but also the first treatise on marriage written with a specific ‘American’ focus⁹.

The role that Vitoria, Mercado and Vera Cruz played in the rise of modern probabilism has gone almost unnoticed by the historians of moral theology until now. For example, in the thousands of publications dedicated to Francisco the Vitoria, the famous ‘founding father’ of the School of Salamanca, there is not a single article dedicated to the way in which Vitoria resorted to probable argumentation in his writings and lessons. In the case of Mercado, only José Ignacio Saranyana—in his impressive *Teología en América Latina*—, referred to him incidentally as a theologian who employed the probabilistic approach prior to Bartolomé de Medina for the resolution of moral dilemmas (Saranyana, 2005: 186). For Saranyana, even if Bartolomé de Medina was the first acknowledged proponent of probabilism, the principle upon which the new moral system was founded was known before, having been recommended to confessors and religious advisers by moral theologians such as Tomás de Mercado. Given the encyclopedic nature of Saranyana’s work, he limited his mention of the link between Mercado and the origin of probabilism to a few words. He did not develop this promising line of inquiry to challenge an abundant and repetitive historiography.

2. AZPILCUETA AND ANTONINUS FLORENTINUS AS PREDECESSORS. RISKS OF A PURELY TEXT-BASED GENEALOGICAL APPROACH TO PROBABILISM

As is generally acknowledged, probabilism and the use of probable opinions were in an «embryonic phase» in the late middle ages and early modernity, but became crucial in the 17th century. Even if the experts on the history of probabilism tend to locate the proper birthdate or ‘Big Bang’ of probabilist reasoning in the *Expositio in primam secundae Angelici Doctoris D. Thomae Aquinatis*, first printed in Salamanca in 1577-78, there had been complementary hypotheses about writings

9. Francisco de Salazar, professor of Rhetoric and colleague of Vera Cruz at the recently created University of Mexico, where the Augustinian friar held the prestigious chair of Saint Thomas (Pavón Romero, 2009), considered *the Speculum coniugiorum* to be the salvific tool that would allow the missionaries working in the Viceroyalty of New Spain and other regions of the Empire to escape unharmed from the complex «labyrinth of Daedalus» represented by the Natives’ familiar, marital and sexual customs. «Quae tu damna candide lector, nisi oscitas, & stertis, hoc uno libro comparator, tam facile vitabis ut in re difusissima, & labyrintho Dedali implicatori tutius, ac certius quam Theseus, provintiam matrimonialem (perpaucis quidem obviam) & adire & superare poteris cuius laboris compendium», Francisco Cervantes de Salazar, «Franciscus Cervantes Salazarus artium magister, iuris pontifici & sacrae Theologiae Candidatus in academia Mexicana Rhetoricae professor: candido lectori. S.» (Vera Cruz, 1556: 6-7).

and authors that could be considered as early modern precedents to probabilism. In this sense, some scholars speak of different books and figures who influenced the way in which, since the late 1570s, probability was envisaged by Bartolomé de Medina and later, clearly probabilistic authors.

Stefania Tutino, for instance, suggests that the core of the innovative probabilistic doctrine, which allowed the actor to choose an opinion or course of action different from the safest one, was already present in Azpilcueta's manual for confessors, notably in a paragraph dedicated to the problem of scruples of conscience¹⁰. This passage had been part of the manual for confessors since its first edition, originally published in Spanish in the 1550s (Azpilcueta, 1556; Bragagnolo, 2020).

Indeed, Azpilcueta stated that «it is not always necessary to choose the safest alternative, because it is usually sufficient to choose a safe action»; yet placed within the general order of Azpilcueta's exposition in chapter 9 of his *Manual de confessors*, it becomes obvious that he considered it necessary to follow the safest alternative in all matters related to the salvation of the soul, in particular those related to the principles of the faith and customs. And just before the sentence to which Tutino misleadingly points, Azpilcueta also stated that «the doubtful conscience regarding whether something is or is not a mortal sin, compels us to choose the safer alternative if we do not want to sin». In fact, the kind of scruples which Azpilcueta referred to when he partially permitted to follow a safe, but not the safest option, are related in this sentence to minor matters and ceremonial precepts such as what kind of non-physical activities could be undertaken on a holiday — one of the typical matters where in the absence of a safer position, to act according to a probable determination would be enough in order to avoid sin¹¹.

10. Tutino quotes chapter 27 of the manual, according to the Latin edition printed in Rome in 1584 «Addo, non semper esse necessarium partem tutiorem eligere, quia satis est quo ad praecepti implementum tutam eligere, ut late in d. cap. Si quis autem a num. 34 probavimus, etiam in his quae ad fidem & mores pertinent; in aliis enim nec de consilio quis tenetur eligere tutiorem, ut ibidem probatur» (Azpilcueta, 1584: 1006).

11. «XVI. Que la consciencia dudosa especial sobre algo, si es o no pecado mortal, obliga a escoger la parte mas segura so pena de pecado. M. porque otramente se pone a peligro de pecar mortalmente, como lo diximos en otra parte l l In. d. c. Si quis autem. n. 42., dando exemplo del que duda si es pecado mortal, o no tener dos beneficios, aunque sean simples: ca si los toma dudando, peca mortalmente m m Thom. in quoli. 8. ar. 13. Y se puede poner del que duda de algun pecado, si es mortal, o no. Ca peca mortalmente, sino lo confiesa. Lo qual procede, aun quando la consciencia no es del todo dudosa, por parecerle mas verdadera la vna parte, que la otra si en ninguna assegura, como lo prouamos largo allí. Diximos (especial) porque la general, no basta para esto: como lo diximos allí, del letrado que duda en general, si es licito aconsejar el dia de fiesta. Pero no duda, antes tiene por cierto, que le es licito al que lo haze. Lo qual mesmo se podria dezir dela consciencia cierta general, y de su contraria especial. No se dize empero la consciencia dudosa, porque algunos escrupulos sienta en si contra lo que determina de hazer, si cree, o tiene opinion prouable, que es bueno, por ley, autoridad, o

It has often been said that these types of positions were, in fact, not exceptional and could be found in *summae* and manuals for confessors even in the Late-Middle Ages. For example, in *L'aveu et le pardon*, Delumeau (Delumeau, 1992: 129) referred to a passage of Antoninus of Florence's *Summa theologiae* (written in 1449 and first printed in 1477-79)¹², considering it to be a clear precedent of probabilism. Yet, Daniele Concina in his famous *Storia del probabilismo, e del rigorismo* had already denounced the proto-probabilist interpretation of this paragraph¹³, noted by the authors of the first historiographical retrospective on probabilism in the 17th century (Gonet, 1671: 296¹⁴; De la Font, 1701: 486-488), as a perverse manipulation: Antoninus did not affirm that to choose the safest way was not a precept, but that to choose monastic life was not a precept (Concina, 1743: 372).

Concina's interpretation is, in fact, coherent with the doctrines contained in the *Titulus Tertius, Capitulum Decimum* of Antoninus' *Summa*. The safest option must be followed whenever a mortal sin might be involved¹⁵. Besides, with regards to other minor matters, the abandonment of the safer alternative was only legitimate

razon suficiente, para tenerlo assi, a juyzio de varon de sciencia, y consciencia, puesto que la mayor parte delos doctores tengan lo contrario. Que no se sigue desto, ser siempre necessario escoger la parte mas segura: porque comunmente basta escoger la segura, como lo prouamos largamente en otra parte: mas solamente se prueua, que ello se ha de hazer en las cosas que son dudosas, y necesarias a la saluacion del alma, quales son las dela fe, y costumbres» (Azpilcueta, 1556: 792-793).

12. «Sed ad hoc responderetur quod eligere viam tutiorem consilii est non precepti. Alias oporteret multos ingredi religionem in qua tutius vivitur quam in seculo. Non ergo de necessitate oportet tutiorem eligere, quanto etiam alia via potest eligi tuta. Sicut enim diverse vie tendunt ab unam civitatem. licet una tutior alia sit. Sic ad civitatem celestem alius sic alius sic vadit et tute. licet aliquis tutiori modo» (Florentinus, 1477, 111-112).

13. According to which, in order to avoid the total inaction to which excessive scruples of conscience could follow, Antoninus would have admitted that, in case of contradicting opinions about a certain practical issue, it was legitimate to follow a mere safe option. He would have even considered that to follow the safer way was not a precept when there were other safe ways, proving his opinion by *reductio ad absurdum*: if the safer option had always to be chosen, everyone would become a friar or a nun, avoiding the secular life.

14. Who, interestingly, referred to this paragraph of Antoninus and the above-mentioned passage of Azpilcueta's manual for confessors as traditional authoritative support for anti-tutorist early modern perspectives. «Non est etiam praetermittendum, plures ex Authoribus, quos Adverarii citant pro sua sententia, non loqui de opinione probabiliori, sed de tutiori, solumque docere inter duas tutas non necessario tutiorem esse sequendam. Ut patet praecipue de D. Antonino, & de Navarro: primus enim I. p. tit. 3. Cap. 10. § 10. sic ait : [...]. Secundus vero in Manuali cap. 27. num. 279 haec scribit: [...] », (Gonet, 1671, 296).

15. «Sed ad hoc responderetur. quod utique ille qui agit scienter id de quo dubitat esse mortale permanente dubitatione mortaliter peccat. etiam si illud in se non esset mortale. sumendo proprie et stricte dubitationem. videlicet prout rationes sunt eque ponderantes ad utramque partem nec magis declinat quis ad unam quam ad aliam» (Florentinus, 1477, [112]).

if there was a more probable one, endorsed by many doctors, and if in accordance with the testimony of the Bible and the traditional interpretation of the Church¹⁶. That is to say that Antoninus could be considered at most as a probabilioristic, but not a probabilistic author, as different interpreters looking to support for their own theses had suggested. Whichever value we give to those late medieval or early modern excerpts, it is clear that they are only related to the discussions on tutorism and that they admitted only occasional disregard for the safest way under specific circumstances. The core of the probabilistic doctrine cannot be found in any of the above-mentioned passages.

The same considerations would apply for other authoritative quotations, often manipulated by scholars who were fiercely opposed in one of the most acrimonious early modern intellectual debates and who sought above all to defend their own positions. In fact, when contemporary scholars point to previously neglected sources and paragraphs, they generally follow a sterile and well-traveled path in trying to prove these sources and paragraphs to be the true predecessors of the probabilistic doctrine in late medieval period.

3. VITORIA'S *DE INDIS* IN THE LIGHT OF THE EMERGENCE PROCESS OF PROBABILISM. THE AMERICAN DILEMMAS AS A KEYSTONE OF THEOLOGICAL KNOWLEDGE

Francisco de Vitoria holds a key position in the history of the Spanish second scholasticism. His introduction of the *Summa theologiae* became the foundation for the teaching of theology at the University of Salamanca and contributed to developing theologians' engagement with legal issues. Last but not least Vitoria has been associated with the emergence of international law based on a solid juridical and moral normative framework structured around the concepts natural law and law of nations (Haggenmacher, 2017: 50). This master narrative has at times reduced preceding Spanish and Salamanca scholastics to mere antecedents of Vitoria's solid Thomism, while later authors and their conceptual developments are noted as minor footnotes to Vitoria's pioneer reflections and methodological approaches.

Within this general historiographical trend, probabilism and the reinforcement of the use of probable arguments in moral theological reasoning since the mid-16th

16. «Sed si dubitet leviter quis. et per modum scrupuli. sicut dubitat seu formidat habens opinionem de aliquot. quia ita inheret ipsi sententiae quod tamen formidat de opposito. Sic agendo contra tale dubium non peccatur. dum adheret opinioni alicuius doctoris. et habet rationes probabiles pro ipsa magis quam pro opposita opinione. etiamsi ipsa opinio quam tenet non esset vera; et hoc nisi ipsa opinio sumpta esset contra manifestum testimonium scripture vel determinationem ecclesie» (Florentinus, 1477, [112]).

century is perhaps one of the topics that, until now, have escaped the overwhelming presence of Vitoria. On this point Stefania Tutino notes:

[...] the Dominican theologian Francisco de Vitoria was intellectually very close to many probabilist theologians and was uncommonly attentive to the political, epistemological, legal, and moral repercussions of the discovery of the New World, and yet he did not demonstrate any significant interest toward moral probabilism despite being steeped in the Aristotelian-Thomistic tradition to a greater extent than many theologians of his generation (Tutino, 2018: 4).

Contrary to Tutino, Rudolf Schüßler in his book *Moral im Zweifel* (2003) reserved a discrete place for Vitoria in the prehistory of modern probabilism. According to his reading, although Vitoria cannot be considered, *stricto sensu*, a probabilist thinker, writings such as the famous *Relectio de Indis prior* have to be understood within a new, evolving context in which moral theologians were grappling with an unforeseen and previously unknown degree of moral uncertainty (Schüßler, 2003: 123). Convincingly Schüßler identified Vitoria's hesitant evaluation of the Amerindians *amentia*—insanity or idiocy—as one of the novel 'American' dilemmas to which Vitoria could neither give a solid answer, nor even a more probable opinion. Vitoria's perplexity is evident in an exceptional passage in which he acknowledged his lack of knowledge:

There is one further title which may be mentioned for the sake of the argument, though certainly not asserted with confidence; it may strike some as legitimate, though I myself do not dare either to affirm or condemn it out of hand. It is this: these barbarians, though not totally mad, as explained before, are nevertheless so close to being mad, that they are unsuited to setting up or administering a commonwealth both legitimate and ordered in human and civil terms (Vitoria, Pagden, Lawrance, 1991: 290)¹⁷.

The subjective way in which Vitoria expressed his claim, which *de facto*, allowed the Spaniards to continue with the process of conquests until the viability of an autonomous Indian rule could be proven, has at times been understood as personal perspective and deliberately vague answer. In fact, twentieth-century scholars such as Antony Anghie have looked critically at what they consider an intentionally perverse evaluation of the rational capacity of Indians by Vitoria to justify their subjugation.

17. In the Latin original edition: «Alius titulus posset non quidem adseri, sed revocari in disputationem et videri aliquibus legitimus, de quo ego nihil affirmare audeo, sed nec omnino condemnare, et est talis: Barbari enim isti, licet (ut supra dictum est) non omnino sint amentes, tamen etiam parum distant ab amentibus; ita videtur quod non sint idonei ad constituendam vel administrandam legitimam Rempubicam etiam inter terminos humanos et civiles» (Vitoria, 1557: 371).

According to Anghie, by conceding that indigenous people generally had the gift of reason, while underlining repeatedly that, for the time being, Indians were only capable of a very barbaric use of their potential abilities, almost undistinguishable from *amentia*, Vitoria represented the Indian as a kind of «schizophrenic, both alike and unlike the Spaniard» (Anghie, 1996: 327).

Schüßler holds a different opinion on this issue: avoiding a teleological interpretation of Vitoria in the light of contemporary controversies on colonialism, he suggested that the paragraph of the *Relectio de Indis prior* needs to be read within the «Hintergrund der scholastischen Unsicherheitskasuistik» (Schüßler, 2003: 123). Given that the alleged imbecility of the Native Americans had not been proven, it was not possible to justify a war on this basis: the casuistic principle *in dubiis melior est conditio possidentis* was in favor of the Indians (Schüßler, 2003: 123-124), who as current possessors of goods and jurisdictions should not be deprived of their belongings based on uncertain reasons. The interpretation of Vitoria's arguments within their proper context of enunciation, shows that he thought it would be unreasonable to consider the alleged Natives' *amentia* and, by extension, their assumed barbarism and deficient use of reason, a legitimate title for conquest.

Independent from the question about Vitoria's actual intentions, it is clear that in this passage of *De Indis prior*, Vitoria admitted his lack of expertise on the crucial issue as to whether Native Americans were able to rule themselves, a point on which others — the missionaries, for example, who had first-hand experience — were better placed to judge. Vitoria's hesitant evaluation of the *amentia* of the Indians is representative of the way in which empirical and practical knowledge about doubtful moral matters, especially in the missionary field and in uncertain transatlantic contexts, was increasingly appreciated. Over time, such considerations became an indispensable complement of the classical literary training received by moral theologians in colleges and universities.

There is no doubt that for Vitoria the consultation of a learned and experienced theologian was an obligation whenever a lay person was confronted with a doubtful moral matter¹⁸. The advice of theologians, whether they were acting as counselors or confessors, was considered mandatory for penitents and advised laypeople. Whether they were kings with scruples about the justice of an anticipated war, or women unable to discern if her décolleté and make-up were sinful or could invite others

18. «It must be so, because in matters which concern salvation there is an obligation to believe these whom the Church has appointed as teachers, and in cases of doubt their verdict is law» (Vitoria, Pagden, Lawrance, 1991: 235). «Tenetur enim credere in his quae expectant ad salutem his quos Ecclesia posuit ad salute et ad docendum. Et in re dubia arbitrium illo modo est lex» (Vitoria, 1557: 289).

to sin¹⁹, the consultation and obedience to the confessor was deemed imperative. Nevertheless, there is a great difference between the above-mentioned dilemma of the Indians' *amentia* and these traditional cases, whose resolution could be established by theologians in a wide range of sources, preexisting examples, and criteria. Contrary to these traditional cases, the *amentia* of Native Americans of a large and still largely unexplored continent could not be assessed so easily.

4. THE USE OF PROBABLE OPINION IN VITORIA'S SACRAMENTAL THEOLOGY

As I mentioned in the previous section, Francisco de Vitoria is considered to have played no role in the increasing use of probable arguments in 16th century. On this issue, we face a historiographical fact which deserves further explanation. Why, if Vitoria is always considered as the initiator of every single theoretical or methodological movement in Salamanca and Iberian scholasticism, has his *a priori* potential importance for the prehistory of probabilism not been evaluated?

This gap in previous historiography, in my view, is linked to the inattention paid to his writings on mercantile and financial practices (sales, contracts, different forms of exchange, usury, etc.), and sacramental theology. In the exceptional monographic approaches to Vitoria's economic ideas (Vitoria, Zorroza, 2006; Cendejas Bueno, 2018; Iparraguirre, 1957; González Fabre, 1998; Gómez Rivas, 2015; Castillo, Zorroza, 2015) and his doctrines on the sacraments (Repgen, 2014; Borobio, 2006; Borobio, 2007; Borobio, 2008; Lanza, Toste, 2015; Lavenia, 2004), the issue of probabilism is not mentioned. In fact, an important part of Vitoria's thinking on these issues cannot be found in his famous and well-studied *Relectiones*, but in his commentaries to Aquinas's *Summa theologiae* and Peter Lombard's *Sentences*. While Vitoria's comments to questions 77-78 of Aquinas' *IIa-IIae* — the part of the *Summa theologiae* in which Aquinas analyzed contracts, change and usury — are crucial to understand his thoughts on economics, his comments on the distinctions of Lombard's *Fourth Book of the Sentences*, from which only the manuscript annotations made by one of his pupils has survived to the present,²⁰ are the essential to reconstruct his sacramental theology. The latter part of Vitoria's intellectual pursuits was also epitomized and redistributed (Egío, 2021) by Tomás de Chaves, one of the lesser-known of Vitoria's pupils (Cuervo, 1914; Barbosa Machado, 1752; Díaz Díaz,

19. «Women are obliged to obey the experts in all matters necessary to salvation, and they place themselves in danger of damnation if they commit acts which in the opinion of wise men are mortal sins» (Vitoria, Pagden, Lawrance, 1991: 237). «Nam femina tenetur credere in his, quae sunt necessaria ad salute, peritis, et exponit se periculo faciens contra illud, quod secundum sententiam sapientium est mortale» (Vitoria, 1557: 291).

20. Biblioteca de Ajuda, Lisbon, Ms. 44-XII-20, ff. 463-696.

1983; De los Hoyos, 1966) in a book called *Summa sacramentorum*, first published in 1560 (Vitoria, Chaves, 1561). Looking at this manual for the administration of the sacraments, a number of probable arguments or alternative solutions emerge which Vitoria carefully evaluates to solve some problematic cases of sacramental theology. Although only partially conserved in the epitomized book derived from his lessons on Peter Lombard's *Sentences*, their number was so high that late sixteenth-century editors feared they might confuse readers and lead to misunderstandings²¹. Trying to make Vitoria's *Summa sacramentorum* more pragmatic and less problematic, they redirected readers to special text boxes in which each doubt was exposed and answered succinctly and with great clarity²².

As we will also see while analyzing Alonso Vera Cruz's *Speculum coniugiorum*, one problematic area in which many doubtful cases arose in the writings that Vitoria dedicated to sacraments was marriage. Vitoria humbly recognized that in some doubtful cases there was no clear answer or solution, with an opinion and its contrary being probable at the same time. An example in point was the case of a wife who, after her husband having consummated their marriage forcefully by violating her, decided to become a nun.

It is asked, can the wife enter into religion against the will of the husband if the husband consummated the marriage by force? It seems not to be the case, because the marriage has already been consummated. On the other hand, because of him having offended her, it seems that such an offense should be repaired: and if she could enter into religion before being offended, she should also be able to do it afterwards. I cannot see anything determined by law in such a matter. Therefore, both positions are probable. And that is what Durandus believes, even if for him it seems more probable that she cannot enter into religion because there is already not only a carnal link, but also a spiritual one. Even if the man behaved poorly, he should not be punished with such a sanction. She should have taken care or have entered into religion before. Palude holds it to be more probable that she can enter into religion. Both opinions seem probable to me²³.

21. Something to be especially avoided in this literary genre of manuals for confessors and priests.

22. Compare, for example, the presentation of the *dubium* «Quaeritur, vtrum amentes, & furiosi sint baptizandi?» in one of the first editions of the *Summa sacramentorum* published by printer Sebastián Martínez in Valladolid (Vitoria, Chaves, 1561: ff. 18v-19r) and in the 1595 edition by the Venetian printer, Domenico Farri. In Farri's publication a box -not included in the editions published during Tomás de Chaves's life- was added to facilitate the easy consultation of the resolution of the *dubium* by readers. «Conclusio. Amentes, qui numquam habuerunt, vsum rationis, debent baptizari; si autem habuerunt, & tunc nolebant, non sunt baptizandi, si volebant, sunt baptizandi» (Vitoria, Chaves, 1595: ff. 20v-21r).

23. «QVÆritur, si sponsus vi consumauit matrimonium, an possit illa transire ad religionem eo inuito? Videtur quod non, quia iam matrimonium est consumatum. In contrarium est

In evaluating his doubts, Vitoria did not use the term *aeque probabile* (equally probable), but he clearly pointed in the direction of equi-probabilism²⁴, which was proliferating in the sixteenth century (Schüßler, 2019: 52)²⁵. It was an attempt to deal with the increasing social, religious and economic complexity, but it could also be applied as Vitoria did here, to classical marital casuistry. As Schüßler stated «the growing use of equi-probability after 1500 may therefore have been one of the factors that contributed to the probabilistic revolution in the second half of the seventeenth century» (Schüßler, 2016: 55). In fact, rather than an abrupt break or discovery, the spread in moral theology and sacramental literature in the first half of 16th century of such equi-probabilistic approaches to doubtful cases might have prepared the ground for the slow emergence of probabilism in the second half of the century.

Vitoria was also compelled to evaluate probable opinions in some doubtful cases concerning baptism. Here, the topic of the *amentia* (imbecility, madness), so important in his *Relectio de Indis prior*, appeared again with view to to the administration of sacraments in his lessons on Peter Lombard's *Sentences*. As mentioned above, in his *relectio* Vitoria had been unable to judge whether Indians should be considered *amentes*. Yet, if that was the case, did insanity or idiocy make them unable to exert a political *dominium*? This is one of the few occasions in which the usually self-assured and confident Salamancan master felt he was unable to find a solid answer or even a more probable opinion. In his lesser-known references to *amentia* in the manuscript of his courses on Lombard's sentences, later epitomized in the *Summa sacramentorum*, it is possible to discern that Vitoria remained deeply interested in this topic throughout the years, but also that his doubts on such borderline cases persisted, forcing him to resort to probable argumentation. Against the majoritarian position of the learning community of his time, Vitoria considered, for example, that *amentes* and *furiosi* could receive grace through baptism. Nevertheless, it is

quia ille fecit iniuriam, ergo videtur quod talis iniuria debeat reparari: & cum ipsa ante iniuriam possit ingredi, poterit etiam post acceptam contumeliam. De hoc nihil vidi in iure determinatum. Ideo probabilis est vtraque pars. Et ita putat Durandus licet ei magis probabile videatur quod non potest ingredi religionem, quia iam est ibi vinculum carnale & non tamen spirituale. Et licet vir malè fecerit non tamen debet hac poena puniri. Caueret ipsa sibi, vel intraret antea religionem. Palude reputat magis probabile quòd possit transire. Vtraque opinio videtur mihi probabilis» (Vitoria, Chaves, 1561: ff. 182r-182v).

24. Another equi-probabilistic resolution in *Relectio De Augmento Caritatis* [1557] (Vitoria, Osuna Fernández-Largo, 2017: 950-954).

25. Schüßler mentioned the *Summa silvestrina* (1515), a treatise on penitence written by the Spanish Hieronymite Bernabé de Rosales (1540) and Antonio de Córdoba's *Quaestionarium theologicum* (1569) as important milestones in the development of equi-probabilism. It is quite enlightening for the later history of probabilism, that those pioneer approaches took place within the realm of the literature for confessors (Schüßler, 2016: 67-68; Schüßler, 2019: 76-78).

important to underline that in these cases, Vitoria was conscious of defending a minority position, and he explicitly presented his opinion as not «determinate» (as a determination or resolution) but «probabile» (as a probable opinion):

But, what if such [a madman] gets baptized, does he receive grace? Doctors say unanimously no, because for such a person baptism would not be of any benefit. I do not dare to say the contrary in a determined way, but I consider it nevertheless to be probable, given that baptism exists as a remedy for sinners and is efficient in anyone who is attrite and in mortal sin. And he can be baptized even if being originally a madman, because if baptized, in this case he would be saved. We must not exclude anybody from the path of salvation. I think that this is very probable²⁶.

Why was the topic of *amentia* so relevant for Vitoria? The epitomized and decontextualized way in which the doubts of the baptism of *amentes* and *furiosi* appear in the *Summa sacramentorum* does not provide any clue about Vitoria's motivation. Nevertheless, if we look at the related section in the surviving manuscript of Vitoria's courses²⁷, the context and horizon of enunciation become much clearer. It is obvious that he had in mind the same transoceanic and missionary context to which he referred when discussing the problem of *amentia* in his *Relectio de Indis*. Moreover, the above-mentioned question of whether or not to baptize adults in a potential state of incidental or permanent lack of understanding could only be found at that moment in time when pagan peoples were being converted to Christianity in America.

With this context in mind Vitoria addressed some very specific and difficult questions, which his disciple Tomás Chaves later dropped in the *Summa sacramentorum*. For instance, does the baptism of an accidentally imbecilic infidel fall within a missionary purpose, even if the Father does not know if the infidel really wanted to convert before losing his mind? Should an infidel married to his sister who, having use of reason, wanted to be baptized in this state of public mortal sin, be baptized after going crazy?²⁸ These omitted cases and contextual precisions are

26. «Si autem talis de facto baptizetur, vtrum consequatur gratiam? Doctores concorditer dicunt, quòd nihil sibi proficeret baptismus. Nec ego oppositum auderem determinatè dicere, probabile tamen existimo, cùm baptismus sit in remedium peccatorum, quòd habet efficaciam erga attritum qui est in mortali. Et potest etiam baptizari cum sit in originali talis furiosus, quòd si baptizetur in casu dicto saluabitur, ne ponamus aliquem in via extra statum salutis. Hoc credo multum probabile» (Vitoria, Chaves, 1561: ff. 18v-19r).

27. Containing the commentaries that Vitoria, teaching in Salamanca, dedicated to Lombard's *Fourth Book of the Sentences* during the academic years 1529-31 and 1538-39. *Commentaria in quartum librum sententiarum*, Lisbon, Biblioteca da Ajuda, 44-XII-20, ff. 463-696.

28. «Sed circa tertium dubitatur, nam volo quod talis amens sit ex aliqua Provincia quae tota modo ad deum convertatur an talis fine esset baptizandus cum Pater nescit illum baptizari

extremely important. They give insight into Vitoria's doubts which led him to step away from many traditional theological opinions, uncontested for centuries. In these interesting 'American' cases, Vitoria make use instead of probable opinions based on the information he had gathered through the contact with missionaries working in America.

5. VITORIA'S PROBABLE RESOLUTIONS CONCERNING DIFFERENT COMMERCIAL AND FINANCIAL PRACTICES

Vitoria's self-awareness about an epochal change fostered by the discovery of countless infidels overseas and the parallel development of global commercial networks can also be appreciated in his writings on contracts, loans and money exchange. We know, thanks to Bartolomé de Albornoz's *Arte de los contractos*, first published in 1573, that Vitoria and the theologians of Paris used to be consulted about these topics by the merchants of Vitoria's hometown, Burgos. As Albornoz stated in his reference to Vitoria, Burgos led the commerce in Castille over four centuries, almost until the discovery of the Indies and the emergence of Seville as a global commercial seaport:

La ciudad de Burgos ha muchos años que en estos Reinos tiene este trato de lanas, y sola tuvo en Castilla el de la mercadería mas de. CCCC. años, hasta que (parte por el nuevo descubrimiento de las Indias, parte por hauer dexado los hijos el exercicio de sus padres, y dadose a la cavalleria) se passo a Sevilla donde ahora esta. En esta ciudad los mercaderes antiguos tuvieron por costumbre, qualquiera caso que parecía dudoso, comunicarle con la buena memoria, de el mui reverendo maestro de todos el gran frai Francisco de Victoria, y quando en el caso havia mas duda, despachaban posta a Paris, a consultarlo con los Theologos de maior nombre de aquella Universidad, y con esto conseruo tanto aquella ciudad su credito (en la limpieza de la mercancia) que bastava hazer un mercader Burgales una contratación, para entender los de otras partes, que sin otra diligencia la podían hazer, y tener por buena (Albornoz, 1573: f. 81v)²⁹.

The role of Vitoria as the main advisor to the merchants of his homeland is not surprising, especially if we take into account that he was a descendant of a merchant family from Burgos. The Vitorias sold wool to Flanders, linens to Rouen and different merchandise to Nantes (López Mata, 1948: 149, Beltrán de Heredia, 1972:

licet iste ante nollisset in usu rationis [...] Praeterea quaerit an si quis habuisset sororem per uxore et vellet baptizari nollens eam dimittere et postea cadat in amentiam cum tali voluntate et proposito an sit baptizandus», Francisco de Vitoria, *Commentaria in quartum librum sententiarum*, f. 514r.

29. On this issue, see (González Ferrando, 1991).

94). As attested by contemporary sources, Vitoria's family was also quite used to doubtful practices such as buying on credit (Albornoz, 1573: f. 82r)³⁰. Even if only some of Vitoria's *pareceres* on contracts have been preserved to this day (Barrientos García, 2011: 119-120), it is quite probable that after leaving the city to undertake university studies, Vitoria continued advising people he knew from his social and familiar milieu.

Most of Vitoria's opinions about different types of mercantile contracts can be found in the manuscripts of the lessons he gave at Salamanca on Aquinas' *Iia-IIae*, qq. 77-78 (Beltrán de Heredia, 1952; Zorroza, 2006)³¹. Some of his commentaries to *quaestiones* 62, 63 and 66 (*Iia-IIae*) also contain reflections on important economic topics such as restitution and tributes (Barrientos García, 2011: 117-118).

During the spring of 1536, when he held the chair *Prima de teología* in Salamanca, Vitoria commented on the questions 77-78 of Aquinas' *Iia-IIae* which concerned sales, contracts and usury. Interestingly, he did not limit himself to contrasting the opinions of Aquinas and other legal and theological authorities on these problematic issues. Rather, he linked traditional debates with many living discussions of his time, showing his extensive knowledge of the practices of merchants, money lenders and exchangers in Castilla, Italy, Flanders,³² and Seville.

In some of these cases we can also see an exceptionally fragile and doubtful Vitoria in action. He seems quite unsure about how theologians ought to proceed while evaluating practices such as term purchases or sales on credit. He knew, of course, that the traditional position of the Church on such issues was quite restrictive. For example, an additional gain for a sale on credit was always considered to be a usurious practice. Nevertheless, Vitoria was conscious that by maintaining such a rigorous position, moral theologians would severely reduce the profits obtained by merchants. This would hinder commerce³³ and ultimately alienate merchants from

30. «He referido esto [about buying on credit] para mostrar la dificultad de esta question, que si por ser Trato de Burgaleses (que tan recatados son en sus conciencias) y por ser trato tan publico de estas dos ciudades [Burgos and Segovia], y tan grueso, de el qual no podían pretender ignorancia estos famosos hombres (que he nombrado) por que los padres, hermanos, parientes, y vecinos de ellos mismos, tenian este trato, y bivian de el, no es de creer que si le tuvieran por malo, no los desengañaran, y por no lo haver hecho, son vistos haver lo aprobado expresamente con la obra» (Albornoz, 1573: f. 82r).

31. First edited by Beltrán de Heredia, they were translated into Castilian and critically edited by Idoya Zorroza. On the relationship between these commentaries and Vitoria's general teaching program, see (Zorroza, 2006: 61-63).

32. During his courses, Vitoria made frequent mention of some of the consultations he had received from many distant regions and cities of the Spanish Empire, for example, from Flanders (Zorroza, 2006: 133).

33. By this time, as other contemporary sources attested, transatlantic commerce was totally dependent on sales on credit. «Lo segundo en nueva España comunmente se vende

confessors and religious normativity. Considering all these conflicting motivations, Vitoria tried to find middle ground and, together with Domingo de Soto, instructed his brother Diego de Vitoria per letter about the possibility of «justifying» a practice that according to «the clear determination of the Church», «could not be done». The conciliatory tone of Vitoria and Soto and the epochal dimension of the dilemma they faced are quite clear in their own words:

Toda la dificultad está en cómo lo querrán entender los tratantes, que cada uno procurará de lo glosar a su provecho e interés; los teólogos no queremos cerrar la puerta a las negociaciones, ni atajar el interés y fruto razonable y conveniente de los tratantes, pero tampoco podemos dar mayor licencia de la que dieran, no sólo los doctores pasados, sino los sumos pontífices que determinaron particularmente este caso, no sólo una vez sino muchas. Ha de quedar siempre a salvo que por fiar no se puede la mercadería vender más cara porque ésta es la determinación clara de la iglesia; pero, no obstante, esto se puede justificar, como en este parecer va declarado (Zorroza, 2006: 268).

Vitoria would find a way to redirect and conciliate the opposing pressures exerted by a rigorous tradition and the ambitious merchants he used to advise. Always prudent, he developed most of these pragmatic positions not in his courses but in private letters addressed to friends such as Miguel de Arcos. As the Provincial of the Andalusian Dominicans, Arcos asked Vitoria's advice several times about certain types of sales on credit being practiced in contemporary Seville.

Adapting Aquinas' ideas on fair price and custom, Vitoria elaborated his advice for Arcos. He argued that wholesalers (*vendedores por grueso* or *al por mayor*), such as the ones selling their merchandise at trade fairs—a commercial phenomenon increasing in the Early Modern period—could ask for a higher price if selling on credit. A sale on credit was the consuetudinary way of selling merchandise at trade fairs; therefore, it was legitimate to consider the price on credit as the fair price of a certain good, even if higher than the cash price for the same good:

Santo Tomás en la *II-II*, como vuestra paternidad sabe, dice que *duplex est pretium justum rei, scilicet aut lege constitutum, aut consuetudine*. Si algunas mercaderías hay que comúnmente se venden al fiado, aquél es su justo precio, aunque al contado se vendiesen por menos, como son las mercaderías que se venden por grueso en las

fiado en tierra firme, aunque se solia vender de contado, que era vna de las buenas calidades, o la mejor que tenia aquella negociacion, ya se va introduziendo tambien el fiado, porque es ya tanta la gente, y tan grande la cantidad y multitud de ropa que va, que no puede el Peru con toda su riqueza acaudalar para pagar toda vna flota, que comunmente es muy gruesa en numero de naos» (Mercado, 1569: f 54v).

ferias, que casi todas se venden al fiado; ni se podrían vender al contado: que no hay tanto dinero en la feria (Zorroza, 2006: 263).

Vitoria was able to satisfy the opposite pressures coming from the duty of keeping the normative patrimony of the Church concerning usury and the merchants' natural goal to obtain financial benefits with these kinds of conciliatory innovations. Yet, he felt unable to solve many doubts about other contemporary mercantile practices. For example, Vitoria admitted to his incapacity to draw clear criteria regarding retail sales (*venta al por menor* or *por menudo*) on credit if higher prices were asked than when paying cash. Just as the famous donkey of Buridan, Vitoria remained undecided on this issue. He was unable to choose between a total condemnation of this practice and a toleration of it if the price increase was moderate.

En fin, quien por menudo vende a dos precios: uno, al contado, y otro, al fiado, yo no sé cómo le excusar de la condenación de la iglesia, si no fuese alguna cosa muy poquita: como dos o tres por ciento a lo más (Zorroza, 2006: 269).

6. TOMÁS DE MERCADO'S *TRATOS Y CONTRATOS* (1569). A MERCANTILE AND VERNACULAR EMERGENCE OF PROBABILISM IN MORAL THEOLOGY

We can find even more interesting material to help us understand the emergence of probabilism, and the social and economic historical context in which this process of emergence took place, in Tomás de Mercado's *Tratos y contratos de mercaderes y tratantes* (Mercado, 1569). Born in Sevilla in the 1520s, Tomás de Mercado moved to New Spain, today Mexico, as a child. An important part of Mercado's family resided in Mexico City where they took part in different economic activities: sales and purchase of goods, money lending, administration of merchants' companies, money exchange, shipping of silver to Sevilla, etc. (Bernal, 2015: 47-49). These comprise all the activities about which this Dominican friar and theologian would later write. As I mentioned while writing about Vitoria's family, Mercado's case was not exceptional at the time. In fact, many other scholastic theologians also came from wealthy families of merchants who understood university studies as a way of social advancement.

Mercado entered the Dominican order in Mexico City in 1552, where he studied arts and theology. Also residing in the convent of the Dominicans during this period were Pedro de Pravia (Cazares, 2007: 355; Saranyana, 1991: 667-668) and Bartolomé de Ledesma (Beuchot, 1991: 253). They were disciples of Francisco de Vitoria at Salamanca and later masters of Theology in the recently created University of Mexico where they taught arts to their fellow friars. In the 1560s, Mercado returned to Spain, lived between Sevilla and Salamanca, and deepened his theological studies

at the University. During the academic years 1563-64, 1566-67 and 1568-69 (Bernal, 2015: 74), he counted as teachers Pedro Sotomayor, Mancio de Corpus Christi, Juan de la Peña and Luis de León who were the main figures of the generation preceding Bartolomé de Medina. (Barrientos García, 2018).

Mercado's manual for merchants and confessors of merchants was written in Mexico and Sevilla in the 1560s and published in Salamanca in 1569. He tried to give confessors some methodological recommendations about how to address the complex labyrinth of norms and options in which the practice of contracts, loans and money exchange had evolved since the late Middle-Ages (Schüssler, 2019: 12). In the Hispanic context, the discovery of the New World, quickly followed by the opening of commercial networks on a planetary scale and the integration of Castile into the complex pan-European Empire of the Hapsburgs, added even more complexity to an already problematic panorama. Mercado had a clear historical conscience about the singular period in which he was living. He knew that Sevilla, like many other coastal and riparian cities had been always an important destination for traders, but as he noticed:

[...] Pero de sesenta años a esta parte, que se descubrieron las Indias occidentales: se le recrescio para ello una gran comodidad y una ocasion tan oportuna, para adquirir grandes riquezas: que combido y atraxo a algunos de los principales a ser mercaderes, viendo en ello pujantissima ganancia. Porque se avian de proveer de aqui muchas provincias. La ysla Española, Cuba, Honduras, Campeche, nueva España, Guatemala, Carthagená, tierra firme, con toda la grandeza del Peru (Mercado, 1569: ff. 1v-2r).

In Mercado's work there is a parallel concern about the rapid and connected evolution in the field of commercial practices that were getting out of moral and religious control. He was conscious, for example, about the fact that money changers, previously «an accidental and accessory profession» had proliferated «because of the universal extent» of commercial networks³⁴. The interconnection of cities resulted

34. «Los de Burgos tienen aquí sus factores, que o cargan en su nombre, o aseguran a los cargadores, o resciben, o venden, lo que de Flandres les traen. Los de Italia también han menester a los de aquí: para los mismos efectos: de modo que qualquier mercader caudaloso trata el día de oy en todas las partes del mundo, y tiene personas que en todas ellas les correspondan den crédito y fee a sus letras, y las paguen, porque han menester dineros en todas ellas. En Cabouerde para los negros, en Flandes para la mercería, en Florencia para las raxas: en Toledo y Segouia para los paños: en Lisboa para las cosas de Calicut. Los de Florencia y los de Burgos tienen necesidad dellos aquí, o para seguros que hizieron, y se perdieron, o de cobranças de la ropa que embiaron, o cambios que en otras partes tomaron remitidos aquí. Todos penden vnos de otros, y todo quasi tira, y tiene respecto el día de oy a las Indias, Sancto Domingo, Sancta Martha, tierra firme, y Mexico, como a partes do va todo lo mas grueso de ropa, y do viene toda la riqueza del mundo. De modo que qualquiera destos de gradas (con quien

in commerce on a planetary scale and led to an extraordinary and quick evolution in business practice that was complicated and entangled. Mercado recognized that many confessors lacked knowledge and practical experience on these matters. They were totally ignorant of the challenges and risks associated with the profession of the merchant and could neither examine their penitents' actions *in foro conscientiae*, nor assess them about better ways to keep on doing business in a safe manner:

En este opusculo me parecio quasi necessario escreuir con la Theorica destes negocios, juntamente la practica y hecho dellos, porque la saben los vulgares, y acaesce ignorarla alomenos no entendella cumplidamente los muy doctos [...] Y como el derecho en estos contratos se funda en el hecho, no raro dan algunos padres Theologos mill leguas del blanco, y atinan tan mal, que los mesmos mercaderes los jusgan por ciegos. A cuya causa me parecio conuenible, gastar algun pedaço desta obrilla, en dezir que traça, medios, y arte tienen oy los cambiadores en negociar. Porque sabido, sera facil jusgar, y ver quanto se suele negociando acertar, o errar. Y no deue a los cambiadores serles tedio leer, lo que ya se saben, porque quise hazer este seruicio a los padres confesores, que con su gran recogimiento, no pueden alcançar el praxis de negocios tan enmarañados, que los mesmos tratantes se hallan, no pocas vezes cortos y atajados sin saber darse mano, ni salir de do entraron (Mercado, 1569: ff. 84v-85r).

In a world of changing practices, Tomás de Mercado and other leading figures of the Dominican order clearly envisaged the risk of a total rupture between commerce and morals³⁵. Mercado seems to tell his fellow friars: if we wish to avoid an irreversible detachment of practice and norms, we have first to simplify theoretical doctrines. Secondly, it is urgent to abandon the contemplative withdrawal from external world. Thirdly, to be able to judge traders correctly *in foro conscientiae*, we have to conduct research on the contemporary practice of the matters upon which we have to judge.

The publication in vernacular should also be considered as an important part of the strategy aimed at preventing the normativity of moral theology from becoming a sterile jargon. To avoid or, at least, to minimize the growing disconnection between

particularmente hablamos) tiene necesidad de tener dineros en todas partes, o para comprar, o pagar, o cobrar, porque en todas deuen, y les deuen. Y este ser su trato tan vniuersal, fue causa principal vuisse cambiadores [...] De modo que lo que accidental o accessoriamente antes se hazia, entre solos mercaderes, començo a ser particular, y principal negociacion de algunos» (Mercado, 1569: ff. 85v-86r).

35. For example, the Dominican Diego Rodríguez, Chair of Saint Thomas at the University of Salamanca, recommended in his prefatory letter the reading of *Tratos y contratos* because, in his opinion, it was a book containing doctrines «muy necessarias para remediar la quiebra de la justicia, que anda tan desterrada en nuestros infelices tiempos, en todo genero de negociacion» (Mercado, 1569: [s.p.]).

the world of facts and the world of moral and religious values and precepts, some jurists³⁶ and moral theologians had implemented a series of editorial strategies, among which the publication in Spanish (Castilian) was a fundamental one. That is why Mercado wrote *Tratos y contratos* in vernacular and in an epitomized and anti-erudite style. He defended it as pleasant to merchants, who were focused as the intended public of his mercantile moral speculations instead of contemporary academic communities³⁷. Mercado was conscious that his choice would be probably criticised by «this kind of unbearable people» who were the Grammarians, humanists following Erasmus as their model. In any case, he decided to take the risk to achieve a greater goal³⁸.

Closely connected to the pedagogic approach mentioned above, there is also a clear call in Mercado's work to transform, or at least adapt, the practice of confession itself. He sought confession that could better fit the high degree of uncertainty that distinguished the profession of merchants, money changers and bankers. These fields of business made it difficult for both confessor and penitent to determine a safer/safest —*tutior*— or more probable *probabilior* —course of action. Consequently, rigorist and probabiliorist approaches had to be abandoned. He argued that confession and theological consultation on these delicate matters should become, instead, a kind of exchange of probable opinions between penitents and confessor. The authority of the moral advisor itself seemed to dissolve, as this authority was less informed about penitents' practices than penitents themselves. It remains, of course, *de iure*, but considering the previously mentioned growing and almost insurmountable gap of knowledge, Mercado insisted on recommending confessors of merchants to be «not such a friend of their own concepts» and to avoid the imposition of their own criteria to the penitent:

36. The influential *Arte de los contractos* written by the jurist Bartolomé de Albornoz, disciple of Diego de Covarrubias at the University of Salamanca, was almost contemporary to Mercado's *Tratos y contratos*. Bartolomé de Albornoz (1573). *Arte de los contractos*. Valencia: Pedro de Huete.

37. «[...] con toda la breuedad posible, tratate del estado y condición de los mercaderes, mayormente de los desta republica y de sus negocios y tratos: porque para su utilidad y cómodo, especial y particularmente lo escreui y publique en su lengua materna y vulgar, do sin interprete lean y entiendan como han de vender y comprar, celebrar sus compañías, lleuar sus encomiendas; embiar y sortir cargazones, partir costas, intereses y ganancias», (Mercado, 1569: f. 2v.).

38. «Ésto entienden bien los que algo entienden de buena doctrina, solo ladran sin cessar en genero de gente intollerable, que jamas puso pie fuera de Gramatica, cuyo principal intento en genero de letras es parecer leydos no serlo. Tan enamorados de buenas palabras que por encaxar en vna razon dos buenos términos, o hazer la sentencia rodada, cortaran por medio vna verdad substancial, o la explicaran confusamente. El mesmo texto Euangelico les enfada con ser catholicos por faltarla la facundia Ciceroniana», (Mercado, 1569: «Prologo», [s.p.]).

[...] sino quiere ser reglado, ni seguilla [la regla dada por el confesor]: y la que sigue es probable, y tiene sus razones, fundamentos y autores: basta aconsejarle, lo que tiene por mas cierto, o mas le agrada, pero si al penitente le desagrada: y lo que haze, se puede hazer y lo apruevan muchos autores aprobados: gran tochedad y arrogancia seria: porque el lo repruebe, no absolvelle: sino desiste dello: aviendo en un contrato por una parte y por otra opiniones buenas entre doctos: cada uno es libre para seguir la que escogiere: lo mesmo en substancia entiendo, quando fuera de confesion se propone al theologo un negocio, que si por entrambas partes ay opiniones: y lo uno, y lo otro se puede hazer y seguir sin peligro (dado que el aya escogido una dellas por mas probable) no deve atar con ella al que pregunta, sino dezirle de plano su parecer: avisandole: que haziendo lo contrario no es peccado: porque ay muchos doctores que lo tienen por licito: tengo este consejo por muy importante en negocios de mercaderes que comunmente son de interes (Mercado, 1569: f. 15r).

Mercado's position is not explicitly probabilistic. But his perspectives on how the practice of confession had to evolve in order to conform to the new demands of commercial globalization and the high degree of complexity of mercantile and financial contracts, must be considered as intrinsically probabilistic. In fact, even if Mercado did not say precisely that a less probable opinion about a certain moral matter could be followed, he assumed and underlined that for many newly arisen practices in commerce and banking, there were no clear criteria for distinguishing a safer, more probable, more legitimate, and reasonable course of action. Therefore, if the penitent or the layman receiving the advice of the theologian insisted on defending his own criterion and this criterion had a certain probability — the degree of which was not specified by Mercado —, it had to be admitted as a probably licit course of action. It is clear that absolute truth and moral good, considered to be unattainable in certain practical spheres, lose relevance in Mercado's approach. The «certa scientia» of an omniscient and irrefutable confessor was clearly replaced by the fallible knowledge of a very human moral advisor who was subject to error and put on an equal footing with the person he was supposed to guide.

I think, therefore, that Mercado's economic reflections, almost neglected until now by the historiography on probabilism, should be integrated as one of the most important steps in the history of the emergence of probabilistic thinking (Saranyana, 2005: 186; Egío, 2020). His writings represent a clear step forward to the more systematic methodological developments of Medina, Suárez, Avendaño, that took place from the late 1570s onwards. It is important to consider, too, that a position concerning the practice of confession such Mercado's was far from being unanimous before the consolidation of probabilism in late 16th century. For example, in his contemporary *Manual de confesores*, Azpilcueta did not want to venture answers «about the question whether a confessor had to absolve against his own opinion or only when in doubt» (Schüßler, 2019: 460).

Moreover, working in a more traditional perspective, Vitoria had supposed the theologian to be always better informed than the layman. That is the reason why he considered it mandatory for laymen to always follow the advice of their confessors or theological advisors—unquestionable living authorities. Even if the historiography on the *Relectio de Indis prior* has always interpreted this imperative in relationship to war and geopolitical matters, there are also some references to the economic sphere of deals and contracts in the text:

Therefore, it is not enough in conscience for a man to judge by himself whether his actions are good or bad. In cases of doubt, he must rely on the opinion of those authorized to resolve such doubts. It is not sufficient for businessmen merely to abstain from those contracts which they know to be illegal, if at the same time they continue to make contracts of dubious legality without consulting the experts³⁹.

If we go back to Mercado's *Tratos y contratos*, the book profiles what we can consider a specific *Berufsethik*. In fact, the relatively lax perspective he developed was not intended as a general recommendation that applied to every layman, but for the specific *gremium* of merchants:

[...] el letrado, corto, falto de experiencia y cargado de escrupulos, no es conveniente para el mercader [...]. Y no se yo porque, preguntándome uno si podra ganar en esto: concediendole muchos authores graues y doctos la ganancia, se la e de quitar yo, o vedar por solo que soy de contrario parecer, destos casos ay cien mil en theologia moral [...]. Por lo qual deue el confessor, y theologo no ser tan amigo de sus conceptos: que tenga todos los otros por borrados sino ser discreto, discernir entre lo que ay evidencia, o sola opinion y probabilidad, y no tener cada cosa en mas de lo que es (Mercado, 1569: f. 14v-15v).

So, *In dubio melior est opinio mercatoris*. Those are, evidently, words that Mercado did not say, but I think he would agree with this particular rewriting of the famous Latin adagio *In dubio melior est conditio possidentis*. He was extremely conscious that too scrupulous and rigorist an approach to merchants' activities would be fruitless and even counter-productive for the spiritual goals pursued by religious advisers and moral theologians. Strict and overly orthodox approaches could only lead to a drastic decrease of commercial relationships that impose on merchants' conditions and make every business unprofitable. More probably, an excessive rigorism would make moral theology a sterile jargon, devoid of any connection with

39. (Vitoria, Pagden, Lawrance, 1991: 236). In the original Latin text: « Itaque non satis est ad securitatem vitae et conscientiae, ut quis putet se bene agere, sed in rebus dubiis necesse est, ut aliorum, ad quos expectat, autoritate nitatur. Nec enim negotiatoribus satis est, ut nihil faciant, quod ipsi illicitum putent, si alias sine consilio peritorum illicitus contractus faciant » (Vitoria, 1557: 290).

real life and practice. Facing these two extreme positions, Mercado tried to adapt what we could call Christian traditional normativity concerning different mercantile and financial practices to the specific moral challenges faced by contemporary merchants. The abundance and degree of specificity of Mercado's moral advice was so clear that we could say he developed a kind of professional ethic applicable to the *gremium* of merchants⁴⁰.

In order to conform to a normative framework that could still have practical relevance in his time, Mercado decided also to explicitly step away from the task of «persuading and exhorting to do what it is better and safer», that is, the classic tutorist/rigorist approach. Instead, he set himself the more restrained objective of distinguishing licit from absolutely illicit practices. Interestingly for the definition of moral theology itself in the Early Modern period, he considered this kind of pragmatic analysis of cases as one to be presented by a proper moral theologian. In contrast, the idealistic or tutorist approach should be led to preachers, who were responsible for educating the general Christian flock in a more rigorous moral standard⁴¹.

It is important to mention, lastly, that the writing and publication process of *Tratos y contratos* was not an isolated initiative by Mercado 'the genius'. Rather, it is possible to understand Mercado's manual as a kind of common initiative of the Faculty of Theology at the University of Salamanca. In the «Epistola nuncupatoria» that Mercado wrote as an introduction to his book, he explicitly pointed to the main teachers of the Faculty and the other distinguished theologians who had read it and approved it as its co-authors⁴². From the five masters holding chairs of scholastic

40. Of course, this effort of adaptation does not apply exclusively to the profession of the merchant. Western philosophical and theological tradition had always taken into account the specific commitments of rulers, ambassadors, and lawyers, among many other professions. It seems to me, in any case, that these dynamics of normative differentiation increased in the Early Modern period, as new genres such as the political literature on reason of state attest.

41. «[...] yo no quise en este opúsculo ser predicador, sino doctor, no rethorico facundo y elegante, sino theologo moral, claro y breve, asi no escribo persuadiendo y exhortando lo mejor y mas seguro, sino enseñando lo que es licito e ilícito: en lo demas, cada uno se aconseje con su confessor: y pues el trato (dado que es ocasionado para mal) se puede (aunque con dificultad) exercitar bien: mi fin será mostrar que intento deve tener el mercader en sus negocios, que medios a de escoger, para que pueda ganar de tal modo su vida, que no pierda la futura: lo demas que es persuadirles se aparten totalmente del trato, no me quise agora detener en hazerlo, lo vno viendo que no an acabado cosa los que en ello se han detenido, lo otro y principal considerando la suspensión en que quedo el glorioso S. Augustin, comenzando vna vez a persuadir esto en el psal. 70» (Mercado, 1569: ff. 9r-9v).

42. «Por lo qual desseando la utilidad y honrra verdadera de essas gradas procure, que dado yo solo compusiesse la obra, muchos varones mas antiguos en dias, y letras, que yo casi fuessen autores della (conuiene a saber) todos los cathedricos en Theologia desta universidad de Salamanca, y otros muchos maestros, de gran erudicion, como abaxo van nombrados,

Theology at the Faculty, four praised the book in positive written censures, among them, Mancio de Corpus Christi and Luis de León who were without doubt, the two most eminent theologians of their generation. In my opinion, that would imply a common support by the corporation of the Salamanca theologians not only of the contents of the book, but also of the key methodological assumptions put into practice by Mercado in his treatise.

7. PROBABLE ARGUMENTATION IN ANOTHER *NOVOHISPANO* MORAL THEOLOGICAL TREATISE. ALONSO DE LA VERA CRUZ'S *SPECULUM CONIUGIORUM* (1556)

Exhaustive research on the pre-history of probabilism should also consider the role of probable arguments in the writings of the prominent theologians who gave their intellectual support to Mercado's *Tratos y contratos*. Unfortunately, a full inquiry about such a complex topic is beyond the scope of this article. Among the leading masters of Mercado's time who wrote positive letters of censorship, the only one not holding a chair of Theology at the University of Salamanca or an ecclesiastical benefice in the city, was Alonso de la Vera Cruz. He was another crucial figure in colonial Mexican or *novohispano* scholasticism who, during this period of his life (1562-71), was residing in the Augustinian convent of El Escorial (Lazcano, 2007: 68-88). As already mentioned in the first section of this article, his *Speculum coniugiorum* was one of the first books printed in America and, in fact, the first 'American' treatise of moral theology, published in Mexico City in 1556. Vera Cruz's *Speculum* is particularly important for tracing the impact of Vitoria's use of probable argumentation in his lessons on the *Fourth Book of the Sentences*. As mentioned above, it was specially in these courses that Vitoria integrated in a very pioneering way some 'American' cases, echoing some questions he and other Dominicans had received from overseas. On the other hand, this adaptation was specially intended for those disciples who, like Vera Cruz, would begin to work in the missionary fronts just after their theological training in Salamanca.

The 'discovery' of a myriad of Pagan peoples in the Americas with different and, sometimes, unheard-of customs, forced missionary theologians and canon lawyers to adapt what we could call a classical normative framework to local practices and customs (Aznar Gil, 1985; Rípodas Ardanaz, 1977). As already mentioned in the sections dedicated to Vitoria's sacramental theology, probable argumentation was

examinandola ya compuesta, y aprobando su doctrina, cada uno de los quales la passo por si, y la censuro, de manera que se pueden asegurar con ella, y holgarse de tener resueltos y determinados sus contratos, por toda esta famosa universidad do al presente, y siempre se conseruo, y florescio toda doctrina verdadera, ansi natural y moral, como divina» (Mercado, 1569: [s.p.]).

decisive in this complex process of adaptation of preexisting normativities. In order to avoid excessive confrontation with native lords and peoples, non-majoritarian arguments—and clearly not the safer and most probable ones—gained ground in a localized moral theology. For example, missionaries were forced to tolerate, for the time being, matrimonial and sexual practices that would hardly have been admitted in the European context (Castelnaud L'Estoile, 2009, 96; Egío, 2021).

Working in close contact with the *purepecha* populations of the present Michoacán (Mexico), Vera Cruz undertook the challenge of linking coherent guidelines to some of these problematic local customs. He tried, in fact, to draw a clear line between the conceptions, practices, customs and rites that could be tolerated after the conversion of the Pagan inhabitants of the Americas to Christianity, and the indigenous traditions that should be eradicated (Zaballa Beascochea, 2019; Assimakópulos, Contreras, 2017). In his attempt to introduce Christian marriage in what we could call a soft way, he avoided as much as possible any conflict with Native Americans being Christianized. He resorted to mere probable arguments that could be used in order to justify some local practices. Vera Cruz tried, above all, to defend that even if far away from European customs and important Christian precepts on marriage, the unions contracted by the Amerindians «in the time of their infidelity» should be considered as true marriages and contracted in accordance with natural law. The opposite position would have led to a forced separation of many couples and to a complicated process of celebration of new marriages under the Christian ritual. That would have been, of course, traumatic for the neophytes and logistically impossible for the few missionaries working in the Indies. Both imperatives explain the flexibility of the normative framework constructed by Vera Cruz, the distance he took vis-à-vis traditional canon law and common theological assumptions, and the way in which he made use of probable argumentation throughout his treatise.

Lacking time for a detailed analysis, I will only mention three clear examples of the use of probable arguments related to consent, repudiation and marriage among siblings. Among the doctrinal points defended by Vera Cruz, there was the opinion that Native infidels' unions, contracted in most cases without verbal consent, should nevertheless be considered as true marriages. Vera Cruz founded his theological position on the fact that the signs or a mere internal consent — such as a non-explicit disagreement — would be sufficient to validate a marriage. The authority to which Vera Cruz resorted to endorse this problematic position was a «non-improbable» opinion given by John Mair in his commentary to Lombard's *Sentences* (Mair, 1519 : d. 26, qq. 1-3).

Even if Vera Cruz was conscious that the opinion of Mair about a consent internally revealed by God was quite marginal and that it was neither the most probable nor the safer option, Vera Cruz insisted on defending his validity in the American context. The fact that this position was not completely improbable and

had some support among European theologians, seemed to be enough to legitimize its consideration. It was a probable valid resolution for the missionary context in which he and other fellow friars were operating⁴³.

Another very problematic practice was divorce, designated as repudiation in this time, and remarriage. Vera Cruz was conscious that canon law considered these practices as cases of bigamy and adultery, and as crimes that made null and void any marriage contracted after the first and legitimate one⁴⁴. Nevertheless, considering that repudiation and remarriage was a deep-rooted custom among infidel and even baptized Amerindians, and that they mostly ignored the idea of this practice being a crime, Vera Cruz held the opinion that the impediment of crime by bigamy would not properly apply to American infidels and neophytes:

Therefore, it seems probable that those who repudiated according to their customs before, did not sin. In fact, even if we said before that the staying together of man and woman until the complete education of their offspring belongs to the first principles of natural law, I understand that to be true among political Peoples, but not among very ignorant Peoples, that almost don't know anything but to be born and to die. But it is true among the Peoples who use reason, expect and believe in another life and educate and direct their children towards it. Nevertheless, if anyone does not like this sentence, I don't contradict him. If he proves the contrary in a clearer way, I will agree with pleasure⁴⁵.

43. «Et dicere quod sufficit solus interior consensus ad matrimonium est error damnatus Vuitcleff. Non tamen improbableem puto quod Maior ait in 4. quod si constasset per Dei reuelationem interior consensus, ipsis contrahentibus, non essent verba, vel signa necessaria, quamvis alij putent esse falsum. Sed contra diffinita in isto articulo sese offert quod interior consensus sufficiat, primero, Innocentius in capitulo citato Tuae fraternitati, videtur dicere, cum ait solum per ecclesiam requisitum. Ergo alias stando in iure divino sufficit, et sic saltem novi orbis incolae ante baptismum contrahentes per solum interiorem actum, vere contraherent» (Vera Cruz, 2009: 94-95).

44. Knowing that this position was the majoritarian one among theologians, Vera Cruz quoted Pierre de La Palude commentaries to Lombard's *Sentences* in this sense. «Hanc sententiam tenet Palude in 4. D. 27. Vbi loquens de bigamia, quae non tollitur per baptismus, dicit. Neque obstat, quod Ecclesia non iudicat de his, quae foris sunt: quod verum est, quamdiu foris sunt, sed postquam intrauerunt, iudicat eos, etiam secundum ea quae foris habuerunt, vt patet in conuersione infidelium. Haec Palude» (Vera Cruz, 2009: 455).

45. «Quare probabiliter videtur tales ante tempus hoc repudiantes, secundum suam consuetudinem, non peccasse. Nam dato supra dixerimus, quod manere simul virum, et foeminam vsque ad perfectam prolis educationem, sit de iure naturae de primis principijs, intelligo id verum esse apud Gentes politicas, et non apud Gentes ignorantissimas, quae nil aliud fere habent, quam nasci, et mori. Sed ita verum est id esse apud Gentes vtentes ratione, quae aliam vitam spectant, et tenent, et ad ipsam educant prolem, et dirigunt. Si tamen aliquis sit, cui ista sententia displiceat, non contradico. Si clarius contrarium probet, assensum praebeo libenter» (Vera Cruz, 2013: 200).

Vera Cruz's flexibility concerning the practice of repudiation among the American infidels came to the point of being defensive. It could not be considered a sin among them, even if husbands or wives abandoned their spouses during their children's upbringing and even though this violated a clear fundamental principle of natural law. In any case, Vera Cruz was open for further discussion and reflection, and was somehow conscious of the fragility of his own position and thus, defended it as a mere probable opinion.

A third polemical set of cases in which Vera Cruz intervened against a clear majoritarian position of canon lawyers and theologians was the marriage contracted between siblings, a customary practice of Native elites in areas such as Peru. Vera Cruz argued as a probable opinion that the vicious character of this kind of union, not clearly forbidden by the first principles of natural law, could be easily ignored by Native Americans. That was, at least, what the experience of many missionaries working in different regions of the New World had shown. Using as his main authority this practical experience directly gathered on the ground, Vera Cruz dared to oppose some of the important theologians who had held a different position on this point in ancient and contemporary times:

From that it appears as probable that if among some [Peoples] there was the custom of marrying between siblings, that would not be against the first precepts of natural law: and they should not be separated if they converted [to Christianity], but tolerated. Nevertheless, the Pope would need to be consulted, as it is a serious matter. In fact, against this kind of precepts of natural law, custom or law can prevail [...]. And so, those who say that marriage between siblings was prohibited in natural law, as Soto says (lib. 2. *De iustitia et iure*, q. 3. art. 1. et 8), have to be understood as referring to the second degree of natural law, not to the first [...]. However, the opposite sentence, that it is prohibited by [the first precepts of] natural law, has its probability⁴⁶.

It is interesting to underline that, on this specific point, Vera Cruz explicitly opposed one of the most prestigious Salamanca masters, Domingo de Soto. In his *De iustitia et iure*, first published in Salamanca in 1553, Soto had held the opposite opinion. Indeed, Vera Cruz was clearly conscious that on the issue of marriage

46. «Ex quibus probabile videtur dicendum, quod si apud aliquos esset consuetudo, vt coniungerentur fratres inter se, non esset contra prima praecepta iuris naturae: et non essent separandi, si conuerterentur, sed tollerandi. Esset tamen consulendus Papa qui res grauis est: nam contra talia praecepta iuris naturae praeualere potest consuetudo, vel lex [...]. Et sic qui dicunt de iure naturae prohibitum esset fratres coniungi, vt Soto lib. 2. de iure et iustitia q. 3. art. 1. et 8. Debent intelligi, quod in secundo gradu, et non in primo gradu iuris naturae [...] Contraria tamen sententia, scilicet, esse iure naturae prohibitum, suam habet probabilitatem» (Alonso de la Vera Cruz, 2009: 336-338).

between siblings, as well as on topics such as non-verbal consent and repudiation, there were only conflicting probable opinions. Consequently, the Augustinian friar defended his opinion cautiously. He showed himself again open for better arguments or for the intervention of a superior authority — namely, the Pope —, underlining that such an intervention from above would surely put an end to the long and fierce discussion among peers⁴⁷.

8. CONCLUDING REMARKS

In conclusion, it is important to reflect on the above-mentioned paradox in Vitoria's *Relectio De Indis prior*. The famous Salamancan master began his text by highlighting that the consultation of a learned and experienced man (theologian/confessor/moral advisor) was an obligation every time someone was confronted with a doubtful moral matter. This obligation applied to all laypersons: for the king with scruples on the justice of an anticipated war as well as for the woman 'unable' to discern if her outfit could be sinful or invite others to sin. Nevertheless, this clear ambition of extending the rule of theology or the theological supervision to every doubtful moral matter ended in the same *Relectio De Indis prior* with the undeniable fading of Vitoria's pretention: at the very end of the *Relectio*, Vitoria was forced to recognize his lack of knowledge and expertise to decide on such a crucial element as the ability of Native Americans to rule themselves.

Cases such as the ones represented by women's dress codes were traditional. Vitoria had at his disposal a great variety of sources and examples to answer such questions. On the contrary, the hypothetical *amentia* of a large and still largely unexplored continent's inhabitants could not be decided so easily. That is the main reason why Vitoria concluded his evaluation by suspending judgment and humbly recognizing his doubts.

As I tried to show in this article, during the Early Modern period, these kinds of doubts increased insofar as the universal regulatory aspirations of theologians and canon lawyers dealt with many other issues and problematic fields. Among the most complex were how to work with the discordant normative frameworks of the newly 'discovered' Pagan peoples in America and the emerging commercial and banking practices, fields in which innovations were frequent and positive regulation was constantly evolving (Jonsen, Toulmin, 1988: 144).

47. An intervention that never took place. As Charlotte de Castelnau L'Estoile pointed out in his systematic outlook to the 16th century pontifical interventions on the subject of the Christian marriage of unbelievers, Paul III, Pious IV, Pious V and Gregory XIII limit themselves to exempt neophytes from impediments of affinity and consanguinity in third and fourth degrees (Castelnau L'Estoile, 2009, 98).

Within this volatile and vague context, the use of probable arguments was only one of the many different strategies put into practice by theologians, moral philosophers and canon lawyers working in missionary and mercantile fields. Depending on the context and case, they tried to accommodate, adapt or translate the normativity contained in classical sources to new and even unforeseen contexts.

We see such a progressive occurrence of different strategies and methodological approaches to solve doubtful cases in early modern pragmatic literature that did not belong to the academic realm (Duve, 2020b). Theological experts such as Vitoria, Vera Cruz and Mercado were trying, above all, to regulate different commercial and financial practices and solve complex doubts related to the administration of the sacraments to Native Americans. Examination of their writings can help us, firstly, to widen the number and typology of sources on which scholars have been focusing their attempts to locate a ‘ground zero’ of probabilism. Secondly, such a diversification of theological sources, topics, and contexts of intervention would help us to better understand the birth of probabilism as a process of progressive emergence, rather than as a kind of abrupt break or discovery made by the isolated ‘genius’ Bartolomé de Medina in 1577/78.

BIBLIOGRAPHY

- Albornoz, B. de (1573). *Arte de los contractos*. Valencia: Pedro de Huete.
- Assimakópulos, A. & Contreras, S. (2017). Matrimonio y derecho natural en Alonso de Veracruz (1507-1584). *Revista de Estudios Histórico-Jurídicos*, 39, 173-193.
- Aznar Gil, F. (1985). *La Introducción del Matrimonio Cristiano en Indias: Aportación Canónica (s. XVI), Lección inaugural del curso académico 1985-1986*. Salamanca: UPSA.
- Azpilcueta, M. de (1556). *Manual de confesores y penitentes*. Salamanca: Andrea de Portonaris.
- Barbosa Machado, D. (1752). *Bibliotheca lusitana historica, critica e cronologica*, Vol. IV. Lisboa: Ignacio Rodrigues.
- Barrientos García, J. (2011). *Repertorio de moral económica (1536-1670)*. Pamplona: EUNSA.
- Barrientos García, J. (2018). *La Facultad de Teología de la Universidad de Salamanca a través de los libros de visitas a cátedras (1560-1641)*. Madrid, Porto: Sínderesis.
- Beltrán de Heredia, V. (1972). Ensayo bibliográfico sobre el P. Diego de Vitoria, O. P. Fundador de la Cofradía del Santo Nombre. En: V. Beltrán de Heredia, *Miscelánea Beltrán de Heredia* (tomo II, pp. 93-112). Salamanca: OPE, 1972.
- Bernal, A. M. (2015). Tomás de Mercado y las ‘negociaciones’ con las Indias. En: T. de Mercado, *Tratos y contratos de mercaderes y tratantes. Edición facsimilar* (pp. 43-69). Salamanca: Universidad de Salamanca.
- Beuchot, M. (1991). Bartolomé de Ledesma y su Suma de sacramentos. *Estudios de Historia Novohispana*, 11, 253-265.

- Borobio, D. (2006). *El sacramento de la penitencia en la Escuela de Salamanca: Francisco de Vitoria, Melchor Cano y Domingo Soto*. Salamanca: UPSA.
- Borobio, D. (2007). *Sacramentos en general: bautismo y confirmación en la Escuela de Salamanca: Fco. Vitoria, Melchor Cano, Domingo Soto*. Salamanca: UPSA.
- Borobio, D. (2008). *Unción de enfermos, orden y matrimonio en Francisco de Vitoria y Domingo de Soto*. Salamanca: UPSA.
- Bragagnolo, M. (2020). Les voyages du droit du Portugal à Rome. Le 'Manual de confesores' de Martín de Azpilcueta (1492-1586) et ses traductions. En : J. L. Fournel, I. Paccagnella (eds.), *Traduire dans l'Europe de la Renaissance/ Tradurre nell'Europa del Rinascimento*, Genève: Droz.
- Carrillo Cazares, A. (2007). Un tratado perdido de fray Pedro de Pravia. *Anuario de Historia de la Iglesia*, 16, 355-360.
- Castelnau L'Estoile, C. (2009). Le mariage des infidèles au XVIe siècle : doutes missionnaires et autorité pontificale. *Mélanges de l'École française de Rome. Italie et Méditerranée*, 121:1, 95-121.
- Castillo, G. & Zorroza, M. I. (2015). Actividad económica y acción moral. Una revisión del supuesto antropológico moderno en la descripción del mercado de Francisco de Vitoria. *Revista Empresa y Humanismo*, 19:1, 65-92.
- Cendejas Bueno, J. L. (2018). Justicia, mercado y precio en Francisco de Vitoria. *Revista Empresa y Humanismo*, 21:1, 9-38.
- Concina, D. (1743). *Della Storia del Probabilismo, e del Rigorismo. Tomo Primo*. Venecia: Simone Occhi.
- Cuervo, J. (1914). *Historiadores del convento de San Esteban de Salamanca*. Salamanca: Imprenta Católica Salmanticense.
- De la Font. M. (1701). *Les principes de la theologie morale [...] Par lesquels on peut aisément decider les cas de conscience les plus difficiles sur toute sorte de matière*, Tome I. Paris: Pierre et Imbert Debats.
- Delgado de Hoyos, F. (1985). Apuntes para la historia de la Escuela de Salamanca. *Anthologica annua*, 32, 387-412.
- Delumeau, J. (1992). *L'Aveu et le Pardon. Les difficultés de la confession. XIIIe- XVIIIe siècle*. Paris: Fayard.
- Díaz Díaz, G. (1983). *Hombres y documentos de la filosofía española*, Vol. 2. Madrid: CSIC.
- Duve, T. (2020a). What is global legal history? *Comparative Legal History* 8:2, 73-115.
- Duve, T. (2020b). Pragmatic Normative Literature and the Production of Normative Knowledge in the Early Modern Iberian Empires (16th–17th Centuries). En: Duve, T., Danwerth, O. (eds.), *Knowledge of the Pragmatici: Legal and Moral Theological Literature and the Formation of Early Modern Ibero-America* (pp. 1-39). Leiden / Boston: Brill.
- Egío García, J. L. (2020). Tomás de Mercado y la transfretación global de bienes y normas. Emergencia del probabilismo y una ética mercantil diferenciada. *Cauriensia. Revista anual de ciencias eclesiásticas*, 15, 169-201.

- Egío García, J. L. (2021). En torno a una copia inédita de la primera edición frustrada de la *Summa sacramentorum* (1541). El epitomizador Tomás de Chaves y la circulación manuscrita de las lecciones de Francisco de Vitoria In IV Sent. *Bajo Palabra. Revista de Filosofía*, 26, 75-106.
- Florentinus, A. (1477). *Summa theologica*, Vol. I, Nürnberg: Anton Koberger.
- Garriga, C. (2009). Gobierno y justicia. El gobierno de la justicia. En: M. Lorente (dir.), *La jurisdicción contencioso-administrativa en España. Una historia de sus orígenes* (pp. 47-113). Madrid: Consejo General del Poder Judicial.
- Gómez Rivas, L. (2005), Economía y guerra: el pensamiento económico y jurídico desde Vitoria a Grocio (y después). *Studia historica. Historia moderna*, 27, 135-159.
- Gonet, J. P. [1659-69] (1671). *Clypeus theologiae Thomisticae*, Vol. III. Köln: Johann Wilhelm Friesse, 1671.
- González Fabre, R. (1998). *Justicia en el mercado. La fundamentación de la ética del mercado según Francisco de Vitoria*. Caracas: Universidad Católica Andrés Bello.
- González Ferrando, J. M. (1991). Apostillas al dictamen de los hermanos Coronel en materia de 'Cambios y contratos'. *Revista de Historia Económica*, 9:2, 395-401.
- Haggenmacher, P. (2017). Sources in the Scholastic Legacy. En: S. Besson, J. d'Aspremont (eds.), *The Oxford Handbook on the Sources of International Law* (pp. 45-63). Oxford: Oxford University Press.
- Iparraguirre, D. (1957). *Francisco de Vitoria. Una teoría social del valor económico*. Bilbao: Publicaciones de la Universidad de Deusto.
- Jonsen, A. & Toulmin, S. (1988). *The Abuse of Casuistry*. California: University of California Press.
- Lanza, L. & Toste, M. (2015). The Sentences in Sixteenth-Century Iberian Scholasticism. En: P. Rosemann (ed.), *Mediaeval Commentaries on the Sentences of Peter Lombard* (Vol. III, pp. 416-503). Leiden / Boston: Brill.
- Lavenia, V. (2004). *L'infamia e il perdono. Tributi, pene e confessione nella teologia morale della prima età moderna*. Bologna: Il Mulino.
- Lazcano, R. (2007). *Fray Alonso de Veracruz (1507-1584). Misionero del saber y protector de indios*. Guadarrama: Revista Agustiniiana.
- Llamosas, E. (2011). Probabilismo, probabiliorismo y rigorismo: la teología moral en la enseñanza universitaria y en la praxis judicial de la Córdoba tardocolonial. *Cuadernos del Instituto Antonio de Nebrija*, 14:2, 281-294.
- López Mata, T. (1948). Vitorias y Compludos. *Boletín de la Comisión Provincial de Monumentos y de la Institución Fernán González de la Ciudad de Burgos*, 104, 145-149.
- Mair, J. (1519). *In Libros Sententiarum primum et secundum commentarium*. Paris : Josse Bade.
- Martel Paredes, V. H. (2005). *La Filosofía Moral: El debate sobre el Probabilismo en el Perú (Siglos XVII-XVIII)*. Lima: Universidad Nacional Mayor de San Marcos.
- Maryks, R. A. (2008). *Saint Cicero and the Jesuits. The Influence of the Liberal Arts on the Adoption of Moral Probabilism*. London: Routledge.

- Medina, B. de (1578), *Expositio in primam secundae Angelici Doctoris D. Thomae Aquinatis*. Salamanca: Matthias Gast.
- Mercado, T. de (1569). *Tratos y contratos de mercaderes y tratantes discidados y determinados, por el Padre Presentado Fray Thomas de Mercado, de la orden de los Predicadores*. Salamanca: Matthias Gast.
- Pavón Romero, A. (2009). La Universidad de México en tiempos de fray Alonso de la Veracruz. En: A. Velasco Gómez (ed.), *Alonso de la Veracruz: universitario, humanista, científico y republicano*, México: UNAM, 47-62.
- Poutrin, I. (2019). Morale, justice et restitution chez les grands seigneurs espagnols. En: I. Poutrin, C. Duhamelle et al. (eds.), *Conversion/Pouvoir et religion*. <https://pocram.hypotheses.org/2658>
- Quantin, J. L. (2016). Catholic Moral Theology, 1550-1800. En: U. L. Lehner, R. A. Muller, A. G. Roeber (eds.), *The Oxford Handbook of Early Modern Theology, 1600-1800* (pp. 119-134). Oxford: Oxford University Press.
- Ramírez González, C. I. (2007). Alonso de la Veracruz en la Universidad de Salamanca: entre el tomismo de Vitoria y el nominalismo de Martínez Silíceo. *Salmanticenses*, 54, 635-652.
- Reinhardt, N. (2016). *Voices of Conscience. Royal Confessors and Political Counsel in Seventeenth-Century Spain and France*. Oxford: Oxford University Press.
- Salgado de Somoza, F. [1626] 1759. *Tractatus de regia protectione vi oppressorum appellantium à Causis et Judicibus Ecclesiasticis*. Lyon, Frères de Tournes.
- Reppen, T. (2014). Der Summenkommentar des Francisco de Vitoria. En: D. Kästle, N. Jansen (eds.), *Kommentare in Recht und Religion* (pp. 249-275). Tübingen: Mohr Siebeck.
- Rípodas Ardanaz, D. (1977). *El matrimonio en Indias: realidad social y regulación jurídica*. Buenos Aires: Fundación para la Educación, la Ciencia y la Cultura.
- Saranyana, J. I. (1991). Pedro de Pravia († 1590), teólogo académico mexicano. *Scripta Theologica* 24:2, 667-682.
- Saranyana, J. I. (dir.), Alejos-Grau C. J. (coord.) (2005). *Teología en América Latina. Volumen II/I. Escolástica barroca, Ilustración y preparación de la Independencia (1665-1810)*. Madrid-Frankfurt: Iberoamericana-Vervuert.
- Schüßler, R. (2003). *Moral in Zweifel. Band I. Die scholastische Theorie des Entscheidens unter moralischer Unsicherheit*. Paderborn: Mentis.
- Schüßler, R. (2016). Equi-Probability Prior to 1650. *Early Science and Medicine*, 21, 54-74.
- Schüßler, R. (2019). *The debate on Probable Opinions in the Scholastic Tradition*. Leiden, Boston: Brill.
- Tutino, S. (2018). *Uncertainty in post-Reformation Catholicism: a History of Probabilism*. Oxford: Oxford University Press.
- Vera Cruz, A. de la (1556). *Speculum coniugiorum aeditum per R. P. F. Illephosum a Vera Cruce Instituti Haeremitarum Sancti Augustini, artium ac sacrae Theologiae doctorem, cathedraeque primariae in inclyta Mexicana academia moderatorem*. México: Pablo Bricense.

- Vera Cruz, A. de la & Barp Fontana, L. (ed.) (2009). *Speculum coniugiorum. Espejo de matrimonios. Primera parte: Matrimonio y familia*, México: La Salle.
- Vera Cruz, A. de la & Barp Fontana, L. (ed.) (2013). *Speculum coniugiorum. Espejo de matrimonios. Segunda parte: Matrimonio verdadero*. México: La Salle.
- Vitoria, F. de [1529-39?]. *Commentaria in quartum librum sententiarum*, Lisboa, Biblioteca da Ajuda, 44-XII-20, ff. 463-696.
- Vitoria, F. de (1557). *Relectiones theologicae*. Lyon: Jacques Boyer.
- Vitoria, F. de & Chaves, T. de (1561). *Summa sacramentorum*. Valladolid: Sebastián Martínez.
- Vitoria, F. de & Chaves, T. de (1595). *Summa sacramentorum*. Venezia: Domenico Farri.
- Vitoria, F. de, Pagden, A. & Lawrance, J. (eds.) (1991). *Francisco de Vitoria. Political Writings*. Cambridge, Cambridge University Press.
- Vitoria, F. de (1952). Disensiones sobre ciertos tratos de mercaderes. En: V. Beltrán de Heredia (ed.), *Comentarios a la Secunda secundae de Francisco de Vitoria* (Vol. VI, 512-517). Salamanca, San Esteban, 1952.
- Vitoria, F. de & Zorroza, M. I. (ed.) (2006), *Francisco de Vitoria. Contratos y usura*. Pamplona, EUNSA.
- Vitoria, F. de & Osuna Fernández-Largo, A. (dir.) (2017). *Relecciones jurídicas y teológicas*, Vol. 1. Salamanca: San Esteban.
- Zaballa Beascochea, A. de (2019). El matrimonio indígena antes y después de Trento. Del matrimonio prehispánico al matrimonio cristiano en la Nueva España. *Rechtsgeschichte — Legal History Rg* 27, 90-104.