The School of Salamanca, the Requerimiento, *and the Papal Donation of Alexander VI*

Anthony Pagden
University of California, Los Angeles

I

It has been suggested that the origins of the *Requerimiento* can be found in the Qur'anic practice of *da'wa.* Intriguing though that may be, it is also worth recalling that the author of the *Requerimiento,* Juan López de Palacios Rubios, so far as I know, knew no Arabic, had no knowledge of the Qur'an, and had no reason to be familiar with the obligations imposed upon would-be conquerors by Islamic law. (It is also the case that the *da'wa* is more in the nature of an invitation or a request and is not necessarily linked to warfare, whereas the *Requerimiento* is, of course, a demand.)[1] The most obvious model for a civil lawyer such as Palacios Rubios would have been the Roman fetial laws by the terms of which a declaration—the *rerum repetitio*—had to be made by an ambassador to any potential enemy and rejected before war could begin. It seems unlikely, however, from the document itself, brief though it is, that this was what Palacios Rubios had in mind either. Rather, his source of inspiration, as he himself

[1] "Por ende, como mejor podemos, os rogamos y requerimos que entendáis bien esto que os hemos dicho, y toméis para entenderlo y deliberar sobre ello el tiempo que fuere justo, y reconozcáis a la Iglesia por señora y superiora del universo mundo, y al Sumo Pontífice, llamado Papa, en su nombre, y al Rey y reina doña Juana, nuestros señores, en su lugar, como a superiores y reyes de esas islas y tierra firma, por virtud de la dicha donación y consintáis y deis lugar que estos padres religiosos os declaren y prediquen lo susodicho." The text of the *Requerimiento* is printed in *Cedulario indiano* (1596), comp. Diego de Encinas, ed. Alfonso García Gallo (Madrid: Ediciones Cultura Hispánica, 1945–46), 4:226.

made clear, was Deuteronomy 20:10–14, which requires that a declaration of peace be made to any city before hostilities could begin and, like the *Requerimiento*, stipulates that if this is refused, then all the men should be killed, all the women and children enslaved, and all movable goods seized.[2] In the case of Deuteronomy, however, there is obviously no demand that the inhabitants renounce their religion.

All we can say with any certainty is that the three cultures that exercised most influence on the legal practices of early modern Spain—the Roman, the Judeo-Christian, and the Muslim—all demanded that some kind of prior warning and appeal be made to an enemy before war could be made upon them.

Furthermore, what the *Requerimiento* initially demands of its listeners is not that they accept the Christian God but that they recognize "the King and Queen Doña Juana, our lords, . . . as superiors and lords of these islands and Tierra Firma." And this claim to sovereignty derived neither from Islamic nor from Roman law but exclusively from the so-called "bulls of donation" issued by Pope Alexander VI in 1493 granting to the Catholic monarchs Ferdinand and Isabella and their successors, in perpetuity, all territorial rights over all those lands "as you have discovered or are about to discover" that were not already occupied by another Christian prince.[3] This, of course, means that whatever the initial inspiration of the *Requerimiento* may have been, its authority came not from civil but from canon law. It was premised on the assumption, generally upheld by the canonists, that the pope possessed *dominium* over both spiritual and secular matters, and that this could be exercised over both Christians and non-Christians. The *Requerimiento* itself states this in baldly simple terms: "Of all the nations God our Lord gave charge to one man, called Saint Peter, that he should be Lord and Superior of all the men in the world, that they should obey him, and that he should be the head of the whole human race." This claim was, however, by no means as straightforward as Palacios Rubios made it appear. In the most widely accepted version of the argument, papal plenitude of power did not descend directly from God to the pope but traveled from the Roman emperors to the pope. God's role in the whole affair was left suitably vague. In the terms used by the thirteenth-century decretalist Hostiensis—the most frequently cited authority on the matter—if the Roman emperors had, as they claimed, been granted exclusive rights of property in "the world" by the terms of Justinian's decree *Bene a Zenon*, then the popes, as their sole true heirs, could, likewise, lay claim not only to sovereignty over the entire world, Christian and non-Christian, but also to the right of ownership (*dominium ac proprietatem bonorum omnium*) to everything in it.[4] This, in turn, gave the papacy the right to distribute that property among its subjects as it so wished. The supposed universal jurisdiction of the papacy was thus closely tied to the claim first made explicit by the emperor Antoninus Pius in the second century CE (although it had for long been implicit): the Roman emperors were *domini totius orbis*.

---

2 Juan López de Palacios Rubios, *De las islas del mar Océano* [*De insulanis*], ed. and trans. A. Millares Carlo and Silvio Zavala (Mexico City: Fondo de Cultura Económica, 1963), 37. On Palacios Rubios's use of the Old Testament, see Annie Lemistre, "Les origines du 'Requerimiento,'" *Mélanges de la Casa de Velázquez* 6 (1970): 161–209.

3 The bulls of donation are printed in *Bulas Alejandrinas de 1493 texto y traducción*, in *Humanismo latino y descrubrimiento*, ed. Juan Gil and José Maria Maestre (Seville: Universidad de Sevilla and Universidad de Cadiz, 1992), 16. And see Hans-Jürgen Prien, "Las bulas Alejandrinas de 1493," in *Tordesillas y sus consequencias: La política de las grandes potencias europeas respecto a América Latina (1494–1898)*, ed. Bernd Schröter and Karin Schüller (Frankfurt: Vervuet Iberoamericana, 1995), 12–28.

4 *Codex*, 7, 37, 3.

Papal plenitude of power—and all that it implied for the superiority of ecclesiastical over civil power—was broadly rejected by both the theologians and the civil lawyers. Even the canon lawyers might have been wary of claiming for the papacy direct divine authority over secular matters—of the kind implied by the *Requerimiento*—without scriptural authority. The involvement of the so-called "School of Salamanca" in the debate over the legitimacy of the Spanish conquest of the Americas, although the *Requerimiento* itself is rarely mentioned, inevitably entailed very careful scrutiny of the persistent papal and, by implication, royal insistence that the bulls constituted a valid charter of sovereign rights over both peoples and goods. For, as Francisco de Vitoria pointed out, to exercise universal *dominium* the pope would have had to have acquired it through one of the three forms of law: divine, natural, or civil. Clearly, on the canon lawyers' own evidence, papal *dominium* could not derive from either civil or natural law. And, he concluded, "as for divine law no authority is forthcoming[;] hence, it is vain and willful to assert it."[5] The contrary claim was, in his view, merely a "willful twisting of the evidence made in obsequious flattery of the papacy."[6] It was, Domingo de Soto added bluntly, nothing other than a prescription for tyranny, the kind of claim to rights over the private property and the persons of the subjects of a prince that was endorsed only by the Turks. Christian princes, by contrast, whose rule was absolute but not arbitrary, could not make use of the goods (*bona*)—and still less of the persons—of their subjects "except where it is necessary for the defense and government of the community."[7]

Both Vitoria and Soto were prepared to concede to the papacy some degree of instrumental authority in securing "spiritual ends." Soto was willing to accept that the papacy had the right to entrust the task of evangelizing the Americas to the Spanish; but while this carried with it an obligation, it conferred no rights of any kind beyond the right to protect the missionaries.[8] The bulls, that is, were a concession, not a grant.

Both men were also prepared to accept that under certain circumstances and in sole pursuit of evangelical ends, papal authority could be said to extend to the "power to make new princes, to unmake others, to divide empires and many other such things." But in what Vitoria somewhat elusively described as the "ordinary course of events," "the pope has no power at least to judge the case of princes or the title of jurisdictions or realms."[9] It was also obvious that even if the pope did have such a power, "he could not give it to secular princes," for it would necessarily be held by the *papacy* and not by any individual pontiff and could not therefore be alienated, any more than any wholly secular ruler could give away any part of his realm that was not also his own personal private property.[10] Furthermore, although the pope clearly had some standing as a moral arbiter between Christian princes, he "has no dominion in the lands of the infidel."[11] *Dominium*—for Catholics at least—was taken to derive from nature, not grace, and unbelievers could not, therefore, be deprived of their rights or their goods by believers merely on the grounds that they were unbelievers, for, in Vitoria's words, "unbelief does not cancel out either natural

5 "On the American Indians," 2.2, in *Vitoria: Political Writings*, ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 260.

6 "On the Power of the Church," 1.5.1, in *Vitoria: Political Writings*, 84–85.

7 Domingo de Soto, *De iustitia et iure, libri decem*, 4.4.1 (Salamanca, 1556), 301.

8 Jaime Brufau Prats, *El pensamiento político de Domingo de Soto y su concepción de poder* (Salamanca: Universidad de Salamanca, 1960), 212.

9 "On the Power of the Church," 1.5.8 and 5.3, in *Vitoria: Political Writings*, 92 and 87.

10 "On the American Indians," 2.2, in *Vitoria: Political Writings*, 261.

11 "On the Power of the Church," 1.5.1, in *Vitoria: Political Writings*, 84.

or human (civil) law, but all forms of dominium derive from natural or human law; therefore they cannot be annulled by lack of faith."[12] From this it must follow that if the pope's universal authority derives from his status as Vicar of Christ, it cannot possibly extend to those who do not believe in Christ. All were agreed—and this was quite explicit in the bulls themselves, if rather more opaque in the *Requerimiento*—that no one can be compelled to accept Christianity against his will. And if that were the case, then, Vitoria concluded, it would be "the height of absurdity" to claim that "the barbarians may refuse Christ with impunity, but are obliged to accept Christ's vicar on pain of war and the plunder of all their goods."[13]

Vitoria was convinced, as indeed were most of his successors, that although the papal donation clearly imposed an unequivocal moral obligation on the Spanish monarchs to attempt to evangelize the Indians—something emphasized in *Pius fidelium* (June 25, 1493)—it could not be used as grounds for any right to exercise sovereignty or property rights, despite the fact that that is precisely what all five bulls claimed to be doing. Both he and Soto accepted that a limited war might be fought in defense of the missionaries, but both were insistent that the Spanish could not wage war on the "barbarians" in order to convert them, as at least some of the canonists had also claimed. Since what Vitoria called "the right of natural partnership and communication" (*ius naturalis societas et communicationis*)—that is, the unlimited right of access by all peoples to all parts of the earth—is a natural one,[14] the Indians are under an obligation to allow the Spanish to enter their territories freely so long as they do so peacefully and in their capacity as "ambassadors of Christendom."[15] Any attempt to violate this right would constitute grounds for a just war, but it would do so only in natural law (and the law of nations) and not in divine or canon law. The corresponding right to self-defense, were the Spaniards to be prevented from exercising the right of free, peaceful entry, would apply to all, be they Christians, Muslims, Jews, or pagans. So long, therefore, as the Indians "permit the Spaniards to preach the gospel freely and without hindrance," the Spaniards may not "impose anything on them by war," whether or not the Indians chose to believe what they heard.[16] Assuming it to be the case that the "Christian faith is set before them in a probable manner"—which means "with provable and rational arguments and accompanied by manners both decent and observant of the law of nature" (which Vitoria was certain had not, in fact, been the case in America)—then the "barbarians" are obliged to accept the "faith of Christ under pain of mortal sin." But they are *only* obliged to do so under pain of mortal sin, and no secular power has the authority to wage war on mortal sinners merely because they are sinners.[17] Furthermore, their choice would always have to be a personal one that possessed none of the political implications contained in the *Requerimiento*.

The terms of the *Requerimiento*, however, clearly state what Vitoria emphatically denies: namely, that "the barbarians are bound to believe from the first moment that the Christian faith is announced to them . . . unaccompanied by miracles or any kind of proof or persuasion," and that "when there are no miraculous signs or other reasons for belief, there will be no sin." From this it

12 "On the American Indians," 1.3, in *Vitoria: Political Writings*, 244.

13 "On the American Indians," 2.2, in *Vitoria: Political Writings*, 263.

14 "On the American Indians," 3.1, in *Vitoria: Political Writings*, 278–79. For a more detailed account of the *ius naturalis societas et communicationis*, see my *The Burdens of Empire: 1500 to the Present* (Cambridge: Cambridge University Press, 2015), 53–56.

15 "On the American Indians," 3.1, in *Vitoria: Political Writings*, 283.

16 "On the American Indians," 3.2, in *Vitoria: Political Writings*, 285.

17 "On the American Indians," 2.4, in *Vitoria: Political Writings*, 271.

clearly followed that "the Spaniards cannot use this pretext to attack them or conduct a just war against them."[18] The *Requerimiento* certainly offered no "proof or persuasion," much less miracles. It was also of some importance how the Christian faith was presented to the Indians. The *Requerimiento* "required" that the listener accept a set of alien (and highly improbable) claims as true. It supposed, therefore, a choice, and for that to be legitimate, it assumed what Vitoria called a "freedom of election." But although the text of the *Requerimiento* encourages the Indians to "deliberate on this for as long as is fit" (*deliberar sobre ello el tiempo que fuere justo*), Palacios Rubios insisted in *Libellus de insulanis oceanis quas vulgus Indias appellat*, a treatise written in about 1512, that were the Indians to refuse to acknowledge the truth of all that was contained in his overhasty account of Christianity and the grounds for papal dominion, "they may be invaded and destroyed [*expurgados*] by war[,] . . . their goods seized and their persons reduced to slavery because war by Christians is just. And this is the indisputable opinion of the Commentators."[19] (This is a very crude account of the views of the Commentators—or Postglossators—of the Roman law on the justice of war. And Bartolomé de Las Casas, who wrote *Falso!* in the margin of his copy of the manuscript of *De insulanis*, was, broadly speaking, correct. It is true, however, that Gratian held that a war against infidels could be justified on the grounds that it punished sinners and prevented them from sinning again. But even this did not grant the pope the power to distribute their goods and their persons among their Christian opponents, much less could it be considered grounds for claiming sovereignty over them.)

There was a further point. The *Requerimiento* not merely requires the Indians to accept the tenets of a hitherto-unknown religion and reject the faith of their ancestors but also demands that they renounce all allegiance to their previous rulers. This, even if it had the implicit support of papal decree, implied the transfer of an entirely unwarranted degree of political authority from the ruler to his subjects. Vitoria's reply on this point was categorical: "a people," he wrote, "cannot without reasonable cause seek new masters who would be to the detriment of their previous lords." And even were it to be the case that the *Requerimiento*'s terms were heard and accepted by the Indians' "true masters," those "masters themselves cannot elect a new prince without the assent of the whole people." And even if both masters and people were in agreement on the matter, their choice would be invalid because "[t]he barbarians do not realize what they are doing[;] perhaps indeed they do not even understand what it is the Spaniards are asking of them. Beside[s] which the request is made by armed men, who surround a fearful and defenceless crowd." From this he concluded: "They are not obliged to believe the Christian religion, nor the dominion of the pope, and hence not the dominion of the emperor either."[20]

The papal bulls were still valid as injunctions to evangelize and, as Las Casas pointed out, as injunctions against doing undue harm to the Indians. But as charters for *dominium* of any kind they had no force whatsoever.

Vitoria was, however, prepared to accept that although the Spanish may not use force in their attempts at evangelization, conversion to Christianity is of such importance for the Indians themselves that any ruler who actively prevented them from converting would, in effect, be inflicting unacceptable harm upon them. And if that were the case, then "the Spaniards could wage war on

---

18 "On the American Indians," 2.2, in *Vitoria: Political Writings*, 269–70.

19 Palacios Rubios, *De las islas del mar Océano* [*Libellus de insulanis oceanis quas vulgus Indias appellat*], ed. and trans. A. Millares Carlo and Silvio Zavala (México: Fondo de Cultura Económica, 1963), 36.

20 "On the American Indians," 2.6, in *Vitoria: Political Writings*, 275–76.

behalf of [a ruler's] subjects for the oppressions and wrongs which they were suffering." This was part of his larger argument that any legitimate state may come to the aid of people suffering under an oppressive ruler, an argument he referred to as the "defense of the innocent."[21] The right of the Spaniards, in this case, to defend the suffering Indians from their evidently tyrannical rulers would also apply even if the "barbarians" themselves should resist their putative saviors, as they clearly had done, for "[i]t makes no difference that all the barbarians consent to these kinds of rites and sacrifices, or that they refuse to accept the Spaniards as their liberators in this matter." For as Soto phrased it, "that which nature teaches is not within the reach of everyone, but only those who have serene reason and are free from all obscurity [*nebula*]."[22] Prolonged habit is capable of distorting every human being's understanding of the natural law and, by implication, the law of nations. "For sometimes," wrote Francisco Suárez, "due to bad customs, and in those who have fallen profoundly into evil, the knowledge of the natural law may be changed."[23] It is also the case that no individual can renounce his natural rights even if he is unaware of their existence. "It is lawful to defend an innocent man even if he does not ask us to do so, or even refuses our help, especially when he is suffering an injustice [*iuria*] in a matter where he cannot renounce his rights, as in the present case."[24] If, then, Vitoria concluded, the rulers of the "barbarians" refuse to abandon their crimes against their own peoples, "their masters may be changed and new princes set up."[25] It is clear from the context of the argument, however, that since the issue for Vitoria is one of universal justice, not belief, there can be no grounds for claiming that these new princes, even if placed there by the Spanish, have themselves to be Spanish or even Christian, since these new princes are acting here solely as the agents of the civil power, and "the final cause for civil power is natural necessity."[26] Once again, all the Spanish would be doing in this case would be fulfilling an obligation to the world, from which they could claim to derive no benefit whatsoever for themselves.

Vitoria applies a somewhat similar argument to what he calls "the protection of converts." Although the whole world might be one *respublica*, it is nevertheless divided into different nations and societies, some of which are constituted by belief. If the Indians convert to Christianity, and their rulers "try to call them back to their idolatry by force or fear," the Spanish have a perfect right, which also amounts to a duty, to "wage war on them and to compel the barbarians to stop committing this wrong, not only because of the right that every man must have to be allowed to accept the true faith but because those Indians have been converted, they are now bound to the Spanish by ties of friendship [*amicia*] and partnership [*societas*]." They have, so to speak, become part of the *respublica Christianorum*, which the Spanish have a clear obligation to defend.[27] But, although Vitoria is silent on the issue, even that would not confer either sovereign or property rights on the Spanish. Once the wrong had been righted, they would have no other legal option but to withdraw. "If necessity and the requirements of war demand that the greater part of enemy territory or a large number of cities be occupied," he argued, "they ought to be returned once

21 For a more extensive discussion, see my *Burdens of Empire*, 59–62.

22 Soto, *De iustitia et iure*, 3.1.2 (Salamanca, 1556), 195.

23 Francisco Suárez, *De legibus: Comentarios al tratado de la ley*, ed. and trans. Francisco Puy and Luís Núñez (Granada: Universidad de Granada, 1965), 94.

24 "On Dietary Laws, or Self-Restraint," 1.5, in *Vitoria: Political Writings*, 225.

25 "On the American Indians," 3.5.15, in *Vitoria: Political Writings*, 287–88.

26 "On Civil Power," 1.2, in *Vitoria: Political Writings*, 6–10.

27 "On the American Indians," 3.2, in *Vitoria: Political Writings*, 285–86.

the war is over and peace has been made, only keeping so much as may be considered fair in equity and humanity for the reparation of losses and expenses and the punishment of injustice."[28] However this might be interpreted, it clearly did not constitute a license for occupation, much less the de jure annihilation of what were recognized as being entire political communities, threatened by the terms of the *Requerimiento*.

Any war fought on behalf of third parties—and in particular on behalf of innocent third parties—must constitute the fulfillment of a duty. The Spanish in the Americas have incurred this obligation toward the Indians because, even though they were not bound to them by ties of *amicia* or *societas*, they are nevertheless neighbors (*proximi*) and therefore common denizens of the world commonwealth, and "as is shown by the parable of the Samaritan (Luke 10:29–37) … [all men] are obliged to love their neighbors as themselves," and this love carries with it a corresponding duty to assist each other in times of crisis.

The only possible grounds that the Spanish might have for claiming a right to be in America in anything but a purely defensive posture are therefore inextricably linked to a moral obligation to offer assistance to the oppressed. The same also applied to the always-subversive question as to whether the American Indians might be incapable of self-government. Vitoria and all his successors routinely denied the suggestion that the Indians might be Aristotle's "natural slaves," and even if they were, in fact, "as foolish and slow-witted as people say they are," this would not, in itself, deprive the Indians of their natural right to "true dominium."[29] He was, however, prepared to concede, "for the sake of argument although certainly not asserted with confidence," that the Indians might be like "natural slaves" in that by all accounts they were "unsuited to setting up or administering a commonwealth [*respublica*] both legitimate and ordered in human and civil terms." If that were the case, then the "princes would be bound to take charge of them as if they were simply children." Such "princes" (who, although they are in actual fact the kings of Spain, might, by implication, be drawn from any people with the necessary abilities to act as guardians) would, however, not be acting in their own interest and would not be pressing any claim on their own behalf but would be acting, once again, as agents of what Vitoria famously called "the whole world which is in a sense a commonwealth [*respublica*]"[30] and then only "for the benefit and good of the barbarians." And on this he concluded, "The whole pitfall to souls and salvation is found to lie."[31]

It was not, as Hugo Grotius later supposed, that what Grotius called "bringing the gentiles against their will to a more civil kind of behaviour" was "thought wicked and impious of all the divines, but especially the Spaniards."[32] What was wicked and impious was the supposition that this process of "civilizing" might also confer upon the civilizer any significant rights over the person or properties of the person to be civilized. For since any war made in "defense of the innocent" or for the protection of converts (and missionaries) had necessarily to be limited to exercising what are, in effect, moral duties, war cannot be used to provide the basis for any kind of occupation. Vitoria was prepared to go one step further. Even if the "barbarians" could be said to

28 "On the Law of War," 3.7, in *Vitoria: Political Writings*, 324.

29 "On the American Indians," 1.Conclusion, in *Vitoria: Political Writings*, 251. On the Indians as natural slaves, see my *Burdens of Empire*, 87–92.

30 "On Civil Power," 3.4, in *Vitoria: Political Writings*, 40. For a more detailed account of this phrase and its implications for Vitoria's conception of the *ius gentium*, see my *Burdens of Empire*, 51–56.

31 "On the American Indians," 3.8, in *Vitoria: Political Writings*, 290–91.

32 Hugo Grotius, *The Free Sea*, trans. Richard Hakluyt, ed. David Armitage (Indianapolis: Liberty Fund, 2004), 15.

have waged an entirely unjustified war against the Spanish, he pointed out that, in all likelihood, they had done so only because they were "understandably fearful of men whose customs seem so strange and whom they can see are armed and much stronger than themselves." This would, therefore, have to be considered "just" and would therefore, in itself, have "made them innocent." And if this were the case, the only kind of war the Spanish could make against the Indians would have to be purely defensive. Because in such a war there is "right on one side and ignorance" on the other, it "may be just on both [sides]." It could not, in consequence, grant the Spanish the usual rights covered by the *ius post bello*, which included, crucially, "occupying their communities."[33] This is a very strong statement indeed, for although he does not say so explicitly, all that Vitoria would seem to have left his king was a series of obligations under the law of nations to help the "barbarians" to escape from their barbarism but no sovereign or property rights whatsoever.

II

The *Requerimiento* was finally abandoned in 1556, and in 1680 the term "conquest" was banned from all official state documents concerning the Indies. Yet despite this, and despite the widespread rejection by Vitoria and his successors of the validity of the bulls of donation as anything other than an encouragement to evangelize, for the Spanish monarchy the bulls remained the basis for its principal and, in its mind, only undisputable claim to sovereignty in the Americas until the final demise of the "Kingdoms of the Indies" in the nineteenth century. They are, for instance, the only justification for the Spanish presence in America offered by the historiographer royal Antonio de Herrera y Tordesillas in his massive official history of the conquest of the Americas, *Historia general de los hechos de los castellanos en las islas y tierra firma del mar Océano* (1601–15). The *Recopilación de leyes de los reynos de Indias*, which was composed in 1680 by the jurist Juan de Solórzano y Pereira and constituted a distinct code of law for the Americas, echoes the terms of *Inter caetera* and states: "By donation of the Holy Apostolic See and other just and legitimate titles, We [the King of Spain] are Lord of the Western Indies and the Mainland of the Ocean Sea, which has been discovered or is still to be discovered, and has been incorporated into our Royal Crown of Castile."[34]

The famous 1550–51 "debate" (although in fact the two men never met) between Bartolomé de Las Casas, official "Defender of the Indians," and Juan Ginés de Sepúlveda, humanist historian, royal chaplain, and translator of Aristotle, was also overwhelmingly concerned with the true meaning of the bulls and the various theological and scriptural problems that they raised. To judge from Domingo de Soto's wry account of the events, the debate was something of a shambles. Sepúlveda provided only a summary of his arguments and kept pretty much to the question under debate—at least as he chose to interpret it. Las Casas, however, went on at very great length in an "attempt to reply to everything the doctor had ever written and everything that, in his view, it was possible to oppose." Between them, Las Casas and Sepúlveda, as Soto makes clear, hijacked a discussion whose original purpose had been to discover "by what manner and under what laws our holy Catholic faith could be preached and promulgated" and how the

33 "On the American Indians," 3.5, in *Vitoria: Political Writings*, 282.

34 Quoted in Francisco A. Ortega Martínez, "Entre 'constitución' y 'colonia,' el estatuto ambiguo de las Indias en la monarquía hispánica," in *Conceptos fundamentales de la cultura política de la independencia* (Bogotá: Universidad Nacional de Colombia, 2012), 64. On Antonio de Herrera y Tordesillas, see David Brading, *The First America, the Spanish Monarchy, Creole Patriots and the Liberal State, 1492–1867* (Cambridge: Cambridge University Press, 1991), 205–10.

Indians might be "subjected to the majesty of the emperor, our lord, without harming the royal conscience, in conformity with the bulls of Alexander." Instead, the debaters studiously avoided any consideration of the still highly contentious issue of the legal status of the Spanish occupation of the Americas. Rather than discuss this question, "in the manner of a consultation," they had "treated and debated another": namely, was it "licit for His Majesty the emperor to make war on these Indians before preaching to them the faith, in order to submit them to his authority so that they might be more easily and more comfortably instructed and enlightened by the evangelical doctrine and in the understanding of their errors and in the Christian faith."[35]

Sepúlveda argued that the war "was not only licit but also convenient." Las Casas, of course, maintained the contrary. Neither man, however, questioned the legitimacy of the Spanish presence in the Americas nor of the lasting validity of the Alexandrine donation. Las Casas had dismissed the *Requerimiento* as "a mockery of truth and justice and a great insult to our Christian faith and the piety and charity of Jesus Christ," claiming it had no legal validity whatsoever and famously adding that he did not know whether to laugh at it or to weep over it. He also dismissed it because it required the Indians to accept the sovereignty of the Castilian Crown, and the force of the ecclesiological arguments on which that rested, *before* they had been instructed in the Christian faith. But he insisted that the papal donation remained the "juridical and fundamental basis" of the Castilian title to the Indies.[36] Las Casas's prime concern was not with the legitimacy of the occupation—which he never questioned—but with the behavior of the occupiers. What was at stake was the legitimacy of the *means* by which the Indians had been, as Las Casas expressed it elsewhere, "brought into history" so as to become, as both the pope and God had intended them to become, Christians and subjects of the Spanish Crown. On his reading of history, sacred and profane, America was unique, a true donation, not only of Pope Alexander VI but of God. It had been for this reason, he claimed at his most eschatological, that God had provided their discoverer with a first name, Christopher, that meant in Latin "Christ-bearer" and a second ("Colon" in Spanish") that could be glossed as "Colonizer." For Las Casas the entire course of the Spanish overseas empire had been part of God's design to bring these "countless peoples" into history, and it had been Columbus's voyages that had "broken the locks that had held the Ocean Sea fast ever since the Flood."[37] The same rules that applied to the conversion and settlement of America also applied, mutatis mutandis, to the conversion and settlement of Africa and Asia, but because the *rights* that the Spanish Crown claimed in America were dependent upon a unique historical event, they were consequently entirely sui generis and, thus, for Las Casas, confined to one time and one place. They could never, therefore, be defended in terms of any kind of universal *law*, other than the canon law that underpinned the pope's right to make the donation in the first place.

Las Casas had, however, another reason for insisting on the validity of the bulls. For if Vitoria—whom he rarely mentions by name—was right in his refutations of the pope's claims to universal jurisdiction, then the only *rights* that the Castilian Crown could claim in America would have to have been acquired as the outcome of a just war, or as he put it, they would have to

35 *Aquí se contiene una controversia*, in Bartolomé de Las Casas, *Obras completas* (Madrid: Alianza, 1988–98), 10:106.

36 Bartolomé de Las Casas, *Tratado comprobatorio del imperio soberano y principado universal que los reyes de Castilla y León tienen sobre las Indias* (1552), in *Tratados de Fray Bartolomé de Las Casas*, 2 vols. (Mexico City: Fondo de Cultura Económica, 1965), 2:925.

37 N. Griffin, ed., *Las Casas on Columbus: Background and Second and Fourth Voyages*, Repertorium Columbianum, vol. 7 (Turnhout: Brepols, 1999), 23–28.

have been grounded "in arms and in power." If that were the case, then the Kingdoms of the Indies could only have been founded in the same manner "as that great Alexander and the Romans and all those who were famous tyrants, as today the Turk harries and oppresses Christendom," had founded their empires.[38] And that would have been a blatant denial of his image of the Spanish Empire as the means of fulfilling God's intentions for mankind. Las Casas's objective throughout all of his voluminous writings on the subject was to demonstrate that while the Spanish *occupation* of the Americas was fully justified by the donation, it served only one end: the conversion of the Indians. The wars of conquest, which he denounced at every turn, were an aberration brought about by the rapacious, unprincipled, and un-Christian behavior of the conquistadors. And the *Requerimiento* had been precisely intended to legitimate just such behavior, promising the Indians that if they did not recognize the validity of the papal donations and the sovereignty of the Catholic monarchs, "we assure you that with the help of God, we will move mightily against you and we will make war in all the places and in all the ways that we can, and we will subject you to the yoke and obedience of the church and of Their Majesties, and we will seize your persons and your woman and your children and make slaves of them, and as such we will sell and dispose of them as Their Majesties command." And what was for Las Casas perhaps most chilling of all, knowing what he knew: "We assert that the deaths and the damage that will follow from this will be your fault and through none of Their Majesties, nor ours *nor of the gentlemen who come with us*" (my emphasis).[39] The *Requerimiento*, whatever its origins, had been intended as a preliminary to the waging of a just war. But for Las Casas, no war based upon the misreading of a papal bull could possibly be just. Even Vitoria's attempt to salvage the Spanish occupation on the grounds that it might have offered protection for the innocent against the excesses of their own rulers he rejected. If the sole means to protect the innocent from the "personal tyranny" of their masters was warfare, then, he argued, "it would be better to relinquish that protection," for when compared to the evils of warfare, and in particular the kind of warfare that the *Requerimiento* had been written to defend, even human sacrifice was the lesser of the two.[40] A

38 Las Casas, *Tratado comprobatorio del imperio soberano*, 921.

39 "[S]i así no lo hicieseis o en ello maliciosamente pusieseis dilación, os certifico que con la ayuda de Dios nosotros entraremos poderosamente contra vosotros, y os haremos guerra por todas las partes y maneras que pudiéramos, y os sujetaremos al yugo y obediencia de la Iglesia y de Sus Majestades, y tomaremos vuestras personas y de vuestras mujeres e hijos y los haremos esclavos, y como tales los venderemos y dispondremos de ellos como Sus Majestades mandaren, y os tomaremos vuestros bienes, y os haremos todos los males y daños que pudiéramos, como a vasallos que no obedecen ni quieren recibir a su señor y le resisten y contradicen; y protestamos que las muertes y daños que de ello se siguiesen sea a vuestra culpa y no de Sus Majestades, ni nuestra, ni de estos caballeros que con nosotros vienen" (*Requerimiento*, in *Cedulario indiano*, 4:226).

40 *Aquí se contiene una controversia*, 10:121. Sepulveda's reply was that from all that he had heard "more than 20,000 persons were sacrificed each year" in New Spain and that multiplying that by the thirty years since the conquest makes "60,000 [*sic*]." In addition, "that war prevented the loss of an infinity of souls" (ibid., 143).