

# *Declared Enemies and Pacific Infidels: Spanish Doctrines of “Just War” in the Mediterranean and Atlantic*<sup>1</sup>

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**I**N DECEMBER 1511, on successive Sundays of Advent, the Dominican friar Antonio de Montesinos delivered a series of rousing sermons from the pulpit of the main church of Santo Domingo in which he took the Castilian colonists of the Caribbean island of Hispaniola to task for their treatment of the Indians.<sup>2</sup> The protests of Montesinos and his fellow Dominicans prompted King Ferdinand of Aragon (r. 1479–1516) to convene a *junta* in the Castilian city of Burgos in 1512 to examine the legality of the Spanish conquest of the Americas and the attendant treatment of the region’s inhabitants. One result of the meeting at Burgos was that the jurist and law professor Juan López de Palacios Rubios was commissioned to codify the *Requerimiento*, the document Castilian conquistadors were to read to indigenous peoples upon first contact. In no uncertain terms, the *Requerimiento* demanded of its listeners “that you acknowledge the Church as the Ruler and Superior of the whole world and the high priest called Pope, and in his name

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<sup>1</sup> The two descriptors both come courtesy of Bartolomé de Las Casas. In his *Tratado comprobatorio del imperio soberano*, he describes Turks and Moors as the declared enemies of Christendom (*hostes públicos y enemigos*). See Bartolomé de Las Casas, *Tratados de Fray Bartolomé de Las Casas*, preface by Lewis Hanke and Manuel Giménez Fernández, 2 vols. (Mexico City: Fondo de Cultura Económica, 1965), 1035. By contrast, in his *Brevisima relación de la destrucción de las Indias*, he describes the indigenous inhabitants of the Americas as “pacific infidels” (*infielos pacíficos*). See Bartolomé de Las Casas, *Brevisima relación de la destrucción de las Indias* (Paris: Sociedad de Ediciones Louis-Michaud, 1913), 43.

<sup>2</sup> Bartolomé de Las Casas, *Historia de las Indias*, ed. Agustín Millares Carlo, with preliminary study by Lewis Hanke, Biblioteca Americana (Mexico City: Fondo de Cultura Económica, 1951), bk. 3, chaps. 3–5, 2:439–48.



the King and Queen Doña Juana our lords, in his place, as superiors and lords and kings of these islands and this Terra Firme.”<sup>3</sup>

Aside from this prescription, the *Requerimiento* contained numerous other bewildering stipulations, such as the contradictory assurance that the Indians would not be compelled to convert to Christianity and yet that, like others who had already converted voluntarily, they were “held and obliged to do the same.”<sup>4</sup> The confounding logic of obligatory voluntary conversion was grist for the mills of a bevy of critics, the most vocal of whom was Bartolomé de Las Casas. This “defender of the Indians” immediately labeled the doctrines espoused by the *Requerimiento* as heretical and interpreted the text as a cynical cloak for a land grab.<sup>5</sup> Indeed, viewed in its American context, the *Requerimiento* contains an inscrutable logic, a fact noted by many critics and scholars over the past five centuries.<sup>6</sup> When analyzed in a broader context, however, one that encompasses early modern Spanish expansionary ventures in the Old World as well as the New, the *Requerimiento* becomes more intelligible, and indeed, the text can be taken as an indicator of the (often messy) legal and moral quandaries Spanish jurists attempted to resolve as they faced the contingencies presented by a Spanish monarchy that, nearly overnight, had become a global empire.

During the same years that Castile established the earliest European colonies in the Caribbean, the Spanish Crown directed a series of conquests 5,000 miles to the east: Castilian forces completed the conquest of Nasrid Granada in 1492; beyond the Peninsula, Castile conquered the last two of the Canary Islands (La Palma and Tenerife, 1492–96), and between 1497 and 1510, Castile and Aragon conquered or annexed a string of African cities and fortresses in a venture dubbed the *empresa de África*. By 1510, the realms of Castile and Aragon were masters of a network of presidios along a 2,500-mile stretch of Maghribi coastline, from Cape Bojador on the Atlantic to Tripoli on the Mediterranean.

Spain’s initial success in the *empresa de África* was viewed through a lens of unbridled optimism. Numerous examples of this can be seen in the reactions to the Spanish conquest of Tripoli in 1510. On August 13, 1510, the Italian humanist Peter Martyr, at that time with the court of King Ferdinand of Aragon, composed a letter to his friend Íñigo López de Mendoza, the second Count of Tendilla, in which he could barely contain his enthusiasm: “Concerning Africa,” he wrote, “listen to this piece of news, impossible to believe accounting only for human agency. You will have heard that Tripoli is a city of Barbary, the richest emporium of Africa, defended by impregnable walls and towers, surrounded by sea and land, fortified by nature as well as the artifice of man, and under the rule of the king of Tunis. Leading an armada that departed from the Aeolian Isles, Count Pedro Navarro has arrived at the city and subjugated it.”<sup>7</sup> Seven months

<sup>3</sup> The *Requerimiento*, as translated and printed in Lewis Hanke, “The ‘Requerimiento’ and Its Interpreters,” *Revista de historia de América* 1 (March 1938): 25–34, here 27.

<sup>4</sup> *Ibid.*

<sup>5</sup> Las Casas describes a dialogue of the deaf when he writes about the earliest application of the *Requerimiento*, which was during Pedrarias Dávila’s 1513 incursion into Darién: “Hicieron los requerimientos que aquellas tierras supiesen ser de los Reyes de Castilla, y por tanto que le viniesen a dar la obediencia y tornarse cristianos; si no, que las dejasen y se fuesen dellas. Respondiéronles con una gran nubada de flechas, pero creer que entendieron ellos cosa del requerimiento es falsísimo, porque no sabían más de nuestra lengua que de la latina” (Las Casas, *Historia de las Indias*, bk. 3, chap. 59, 3:33–34).

<sup>6</sup> See Hanke, “The ‘Requerimiento’ and Its Interpreters.”

<sup>7</sup> All translations are mine unless otherwise noted. Peter Martyr to “Su Conde” (Íñigo López de Mendoza), August 13, 1510, from Monzón. The original reads: “Acerca de Africa, escucha una nueva hazaña, imposible a creer acontece mediando únicamente las fuerzas humanas. Oíste alguna vez que Trípoli es una ciudad bárbara,

earlier, following the surrender of the city of Bougie to Spanish forces, Martyr had exuberantly proclaimed, “From now on, nothing will be difficult for the Spaniards; they will undertake nothing in vain. They have sown panic throughout Africa.”<sup>8</sup>

Many in King Ferdinand’s inner circle subscribed to Martyr’s view of these events, interpreting Spanish expansion across the Maghrib as predestined and as a prelude to the imminent acquisition of all of Mediterranean Africa. It was projected that Spanish forces would then use Africa as a base from which to launch a series of Levantine conquests that would soon encompass Egypt, Greece, Turkey, and the Holy Land. The same day Peter Martyr wrote to López de Mendoza, King Ferdinand composed a letter to Cardinal Francisco Ximénez de Cisneros, claiming that Navarro’s victory (achieved July 25, the day of Saint James, the patron saint of Castile) demonstrated God’s clemency, and that the path (*camino*) was being opened for the completion of the “holy enterprise,” a term that referred to the recovery of Jerusalem.<sup>9</sup>

The understanding of Spain’s victory at Tripoli as but one component of a wider crusading strategy prevailed outside Spain as well. On September 8, 1510, Emery d’Amboise, the master of the Knights of the Hospital of Saint John of Jerusalem, based at Rhodes, wrote to Ferdinand congratulating him on recent Spanish victories in the African cities of Bougie and Tripoli. The Knights of Saint John had ordered solemn processions to mark the conquest of Tripoli, he related, and he expressed confidence that the Spanish would soon reach Egypt, where Amboise’s military order would join forces with them to “liberate” the Holy Land:

May it please God that all Christians, following Your Majesty’s example, take up arms against the infidels who have afflicted the Christian nation for so long. And in their lands may we raise the banner of the cross and recover the Holy Land, a task that will not be as difficult as many ignorant people believe. . . . [M]ay God Almighty carry out Your Majesty’s wishes and allow you to proceed with and complete the conquest of Africa as far as Egypt, where . . . we hope to join forces with Your Highness’s army and serve God in this worthy endeavor.<sup>10</sup>

Although this process of Mediterranean expansion is less well known today than the contemporaneous incursions into the Americas, in the early sixteenth century it occupied a

el más rico emporio de Africa, con murallas y torreones inexpugnables, rodeada de mar y tierra, admirablemente fortificada por la Naturaleza y el Arte, sometida al señorío del Rey Tuneto, que vosotros los españoles decís Túnez. Navegando con su armada desde las islas de Eolia, el referido Conde Pedro Navarro llegó a esta ciudad y le dió la acometida.” *Epistolario de Pedro Mártir de Anglería*, trans. J. López de Toro, in *Colección de documentos inéditos para la historia de España* (Madrid: Imprenta Góngora, 1953–57), vol. 10, doc. 442, pp. 325–27, here 325–26.

<sup>8</sup> Martyr to Iñigo López de Mendoza, January 23, 1510: “¡Oh hazaña digna de encomio! De ahora en adelante nada habrá ya difícil para los españoles, nada emprenderán en vano. Sembraron el pánico en toda Africa” (*ibid.*, 313).

<sup>9</sup> Ferdinand to Cisneros concerning the capture of Tripoli, August 13, 1510: “de lo cual nos le habemos dado y damos infinitas gracias, y estamos muy alegres, porque su divina clemencia nos muestra y abre cada día mas el camino para que le sirvamos en aquella santa empresa” (*ibid.*, vol. 25, doc. 19, p. 467).

<sup>10</sup> “Plazerá al Soberano que todos los christianos, a enxenplo de vuestra Magestad, tomen las armas contra los infieles que tanto tiempo han fatigado la nación christiana y en las tierras dellos se tienda la vadera saludable de la crus y se cobre la Tierra Santa, que, por çierto, no es tan difiçil como muchos ynorantes dizen. . . . Dios Todopoderoso cunpla los deseos de vuestra cathólica Magestad y le dexe proseguir e acabar la conquista de África fasta en Egipto, en el qual lugar, si biviéremos, esperamos juntarnos con todo nuestro poder con el exército de vuestra Alteza en propia persona y servir a Dios en tan meritoria enpresa.” Emery d’Amboise to Ferdinand of Aragon, September 8, 1510, in María Isabel Hernández-González, *El taller historiográfico: Cartas de relación de la conquista de Orán (1509) y textos afines*, Papers of the Medieval Hispanic Research Seminar, 8 (London: Queen Mary and Westfield College, 1997), 60.

position of utmost importance in royal policy and, not unlike its American counterpart, Spain's Mediterranean expansion required legal buttressing in order to fend off European competitors. On occasion, the two expansionary processes were even addressed in the same text. Following the *junta* at Burgos, Palacios Rubios composed a legal tract titled *De insulis* that elaborated the full legal and theological arguments underlying the *Requerimiento*.<sup>11</sup> The jurist's primary aim in *De insulis* was to present a legal grounding for Castilian claims to the islands and mainland of the Americas. The treatise, however, includes a number of passages in which the author develops arguments justifying Spanish claims to a variety of Old World locales. As part of his argumentative strategy, Palacios Rubios invokes Spanish claims to the formerly Islamic Kingdom of Granada, and he includes a ten-page excursus in which he defends Spanish expansionary ventures in North Africa and the eastern Mediterranean. The *Requerimiento* is thus but a small part of a significantly broader corpus of work, whereby Spaniards attempted to craft legal doctrines that would justify conquest and imperial claims in a variety of lands, including the Islamic Mediterranean, Catholic Navarre and Naples, as well as the gentile-inhabited Canary Islands and Americas.<sup>12</sup> It is only by analyzing the *Requerimiento* against the contemporaneous arguments deployed in *De insulis* and other related sources that the document's bewildering prescriptions are made somewhat more intelligible. Doing so produces a more complete understanding of Spanish doctrines of just war in a variety of locales, Muslim and gentile alike.



The reading of the *Requerimiento* could only have aroused confusion, perhaps among the readers as much as among the auditors. King Ferdinand apparently stipulated that the text be read with an interpreter present.<sup>13</sup> Las Casas, however, implies that this protocol was rarely, if ever, followed.<sup>14</sup> Even in cases where linguistic comprehension presented no barriers, the *Requerimiento* must have been conceptually incomprehensible. The text's early passages relate a biblical history of the earth and humankind, in which five millennia are telescoped into seven sentences. The *Requerimiento* recounts that God bequeathed all dominion to the papacy, thus giving the pope universal jurisdiction: "God our Lord gave charge to one man, called St. Peter, that he should be Lord and Superior of all men in the world, that all should obey him, and that he should be head of the whole human

<sup>11</sup> Juan López de Palacios Rubios, *De las islas del mar Océano*, published with Matías de Paz, *Del dominio de los reyes de España sobre los indios*, introduction by Silvio Zavala, ed. and trans. Agustín Millares Carlo (Mexico City: Fondo de Cultura Económica, 1954). Zavala argues that *De insulis* / *De las islas* is the full juridical argument that lies behind the *Requerimiento* (p. cxxiv of his introduction). There is no date of composition indicated in the lone surviving manuscript of *De insulis* (Biblioteca nacional, Madrid, MS 17641), but it is generally agreed that the treatise was completed ca. 1512–15.

<sup>12</sup> Palacios Rubios was also responsible for a juridical tract in support of Spanish claims to Navarre: *De iusticia et iure obtentionis ac retentionis regni Nauarrrae, necnon et de ipsius terrae situ et antiquitate* (Burgos: Fadrique de Basilea, ca. 1515–17). There is no modern edition of this text, but an original edition is available at the Biblioteca nacional, Madrid: R/31345.

<sup>13</sup> On this point, Las Casas cites what are purportedly King Ferdinand's instructions to Pedrarias Dávila, which contained the following admonition: "antes de romper con ellos les hagáis de nuestra parte los requerimientos necesarios para que vengan a nuestra obediencia, una y dos y tres y más veces, cuantas viéredes que son necesarias conforme a lo que lleváis ordenado; pues allá habrá y con vos irán algunos cristianos que sabran la lengua, con ellos les daréis primero a entender el bien que les verná en ponerse debajo de nuestra obediencia" (Las Casas, *Historia de las Indias*, bk. 3, chap. 54, 3:16–17).

<sup>14</sup> *Ibid.*, chap. 59, 3:33–34: "pero creer que entendieron ellos cosa del requerimiento es falsísimo, porque no sabían más de nuestra lengua que de la latina."

race, wherever men should live, and under whatever law, sect, or belief they should be; and he gave him the world for his kingdom and jurisdiction."<sup>15</sup> Since then, Peter's successors have all inherited this jurisdiction over the world, and one of these, Pope Alexander VI (r. 1492–1503) (although he is unnamed in the text), donated the western lands to the monarchs of Spain, entrusting them with the task of spreading the gospel to this part of the world.<sup>16</sup> The document thus implies that non-Christians may not exercise *dominium*, a position that accords with that of Hostiensis, the thirteenth-century canonist who made this argument with respect to the Muslim rulers of the Holy Land.<sup>17</sup> The text of *De insulis* is more nuanced on whether non-Christians could possess *dominium*. Here, the jurist elucidated the theological foundations of universal papal dominion: all the world had been Christ's, and he bestowed full jurisdiction, temporal and spiritual, upon Peter.<sup>18</sup> As legitimate heir to Peter, the pope now possesses this dominion over the entirety of the world, including all its inhabitants, Christian as well as infidel.<sup>19</sup> In acknowledgment of all the territories of the world that, in fact, did *not* recognize the authority of the pope, Palacios Rubios wrote that through a tacit arrangement (*un consentimiento precario*) the church allows certain infidels to continue to exercise jurisdiction in their lands. The jurist stressed, though, that this *does not* result in the transfer of dominion or possession to the infidels.<sup>20</sup> The pope may therefore abrogate this "agreement" in order to dispense lands anywhere in the world.

Palacios Rubios's elaboration in *De insulis*, then, affirms the doctrine expressed in the *Requerimiento* that the pope may donate lands not ruled by Christians and, in theory at least, that the pope may do so anywhere in the world. Palacios Rubios, however, adds a wrinkle to this line of reasoning. The jurist poses the question of whether, in some remote past, Christianity had ever been preached in the Americas. He concludes that either Christianity had never reached American shores or, if it had, so much time had elapsed that all vestiges of that evangelization had disappeared and it should be considered that the gospel had never been preached in the Americas.<sup>21</sup>

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<sup>15</sup> Hanke, "The 'Requerimiento' and Its Interpreters," 26.

<sup>16</sup> *Ibid.*, 26–27.

<sup>17</sup> Muldoon provides a succinct outline of Hostiensis's arguments on this matter. See James Muldoon, *Popes, Lawyers, and Infidels: The Church and the Non-Christian World, 1250–1550* (Philadelphia: University of Pennsylvania Press, 1979), 15–18. This was one of the *Requerimiento*'s doctrines that Las Casas labeled heretical.

<sup>18</sup> Palacios Rubios, *De insulis*, 84–85: "Cristo, por consiguiente, cometió a San Pedro, con preferencia a los restantes Apóstoles, los dos poderes y jurisdicciones que tenía, el gobierno de toda la Iglesia y cuanto a dicho gobierno era necesario y conveniente; por eso en el Papa reside la plenitud del poder delegado por Cristo, poder que ha de estimarse adecuado a las necesidades del gobierno de la Iglesia universal y a la procuración de la salud de los fieles. Como dice Prepósito Alejandrino, *Summa*, dist. 15, col. 14. Ambos poderes, a saber, el temporal y el espiritual, eran necesarios para gobernar la Iglesia, porque lo espiritual no puede subsistir largo tiempo sin lo temporal. Cristo cometió y comunicó a Pedro uno y otro."

<sup>19</sup> *Ibid.*, 88: "A San Pedro se le dió como nave todo el mundo, y tuvo su residencia así en Antioquía como en Roma y en donde hubiese querido, incluso, por ejemplo, en Babilonia, pues ejerciendo pleno poder sobre toda la tierra, lo tuvo también sobre todos los hombres, porque Dios le sometió todas las criaturas y por ello pudo incluso juzgar a los infieles."

<sup>20</sup> *Ibid.*, 110–11: "Por tanto, la Iglesia, que en virtud de un consentimiento precario permite a los infieles poseer la jurisdicción, sin que dicho consentimiento les transfiera el dominio ni la posesión (según la ley 'Quod meo' del Digesto, tít. 'De acquirenda possessione'), sino tan sólo una especie de detentación, duradera únicamente mientras perdure la aquiescencia y voluntad de aquélla . . . podrá, cuando quisiere, quitarles dicho consentimiento en todo o en parte, por más que regularmente no le es lícito a un superior impedir a un subordinado el uso de la jurisdicción."

<sup>21</sup> *Ibid.*, 13: "o porque los nacidos en estas Islas nunca han oído el nombre de Cristo, o porque el Evangelio nunca fue predicado entre ellos, ni conocidos los Sacramentos, o porque si alguna vez lo fueron, ha transcurrido tanto

If Palacios Rubios argued that infidels could not hold *dominium*, thus defending the papal donation of lands not under Christian rule, then why include the excursus hypothesizing, and then ruling out, an earlier Christian presence in the Americas? Simply put, the lack of some early Christian presence that had ultimately been subjugated by later invaders or conquerors had the effect of absolving the American Indians of the charge of usurpation (or apostasy). For Palacios Rubios, the fact that they were not usurpers endowed the Indians with a sort of quasi *dominium*. For certain Spanish writers, including Martín Fernández Enciso, the fact that the Indians were idolaters sufficed to justify their conquest and enslavement.<sup>22</sup> Palacios Rubios made no such argument. Indeed, he maintained that the Indians might legitimately defend themselves *before* they were informed of the truth of Christianity by the Spanish. On the basis of the precepts of natural law, Palacios Rubios held that up until they were notified of the arrival of Christianity, the Indians' defense of their lands against the Spanish constituted a just war.<sup>23</sup>

And this brings us to the crux of the legal and ideological work that the *Requerimiento* was designed to perform: the act of reading the text to the inhabitants of the American islands and mainland served as an announcement of Christianity to the gentiles: "we . . . notify and make known to you, as best we can, that the Lord our God, Living and Eternal, created the Heaven and the Earth, and one man and one woman, of whom you and I, and all the men of the world, were and are descendants, and all those who come after us."<sup>24</sup> In addition to informing the Indians of Christianity, the performance of the *Requerimiento* was, in theory, supposed to operate as a proffer of peace. While the *Requerimiento* itself makes no explicit mention of this, in *De insulis* Palacios Rubios was clear that an olive branch must be extended before an act of war could be committed.<sup>25</sup>

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tiempo, que ya no queda recuerdo alguno de tal predicación, motivo por el cual dicha predicación se considera como si no hubiera existido."

<sup>22</sup> Enciso was present with Pedrarias Dávila in the incursion into the Darién isthmus in 1513. He is well known as the author of the *Suma geografía* (Seville, 1520). He also composed a *memorial* to Charles V (r. 1516–56) in which he defended Spanish conquests in the Americas on the grounds of the inhabitants' idolatry and their reported violations of natural law. See Martín Fernández Enciso, "Memorial," in *Colección de documentos inéditos relativos al descubrimiento, conquista, y organización de las antiguas posesiones españolas en América y Oceanía* (Madrid: M. B. de Quirós, 1864), 1:441–50.

<sup>23</sup> Palacios Rubios, *De insulis*, 34: "éstos no habían oído antes la fé de Cristo y si en alguna ocasion llegó hasta ellos por la predicación de San Pedro y San Pablo o de aquellos secuaces que la predicaron en Occidente, y no quedaba ningún recuerdo de ella. Por tanto, durante el tiempo que los Isleños tardaron en cerciorarse del propósito e intención de los cristianos que les atacaban, *la guerra era justa por su parte, y los apresados en ella no pasaban a ser siervos de sus aprehensores* [my emphasis]." Ibid.: "Aun suponiendo que estos isleños se hubieran resistido en un principio, defendiendo su libertad y sus bienes antes de conocer a nuestra gente y de tener averiguada la causa de su venida, no por eso perdieron la libertad, *porque la defensa es cosa permitida por el derecho natural* [my emphasis]." Ibid.: "Los isleños no estaban, por tanto, obligados a entregarse tan pronto como llegaron hasta ellos los Cristianos, a los que con razón consideraban enemigos, sino solo cuando conocieron y descubrieron sus intenciones, porque nadie debe confiarse al punto a sus enemigos." And slightly later, *ibid.*, 36: "de modo que *los tales isleños podían justamente defenderse de los Cristianos que les atacaban, hasta que se les descubrió la verdad* [my emphasis]." Here it is worth noting that there has been much debate surrounding the extent to which Palacios Rubios's position was Hostiensian or Innocentian, vis-à-vis the possibility of infidel *dominium*. For the argument that Palacios Rubios was *not* Hostiensian, see Muldoon, *Popes, Lawyers, and Infidels*, 141–43. I would submit that the nuances of Palacios Rubios's argument (more plainly apparent when *De insulis* is included in the analysis) suggest that he attempted to stake out a narrow middle ground between Innocent IV and Hostiensis.

<sup>24</sup> Hanke, "The 'Requerimiento' and Its Interpreters," 26.

<sup>25</sup> Palacios Rubios, *De insulis*, 37: "En primer término, pues, hay que invitar a la paz y ofrecerla. Esto es lo que el Señor dijo a sus discípulos cuando los envió a predicar el Evangelio." The notion that the *Requerimiento* was intended to operate in this way is supported by King Ferdinand's instructions to Pedrarias Dávila, as cited above in n. 13.

Here Palacios Rubios was following a prescription laid down in Deuteronomy 20:10–14, a text that was profoundly influential on medieval theories of just war.<sup>26</sup>

For Palacios Rubios, the proffer of peace was rescindable, should the infidels refuse to admit preachers. Under those circumstances it would be licit for the Christians to take up arms.<sup>27</sup> The importance placed on non-Christian rulers admitting Christian missionaries, known as the *ius praedicandi*, or the “right to preach,” was an established tenet of canon law in the later Middle Ages. The *Requerimiento* is consistent with the principles of canon law on the *ius praedicandi*, noting in several instances that the Indians were required to admit preachers: “that you consent and give place that these religious fathers should declare and preach to you the aforesaid.”<sup>28</sup> Since the *Requerimiento* was drafted at the moment that Spaniards were embarking on the conquest of the American mainland, the text invoked the previous two decades of Spanish experience in the Caribbean islands as precedent. In regard to the islanders who had already come under the rule of the Spanish monarchy, the *Requerimiento* noted that they had “received and obeyed the priests whom their Highnesses sent to preach to them and to teach them our Holy Faith.”<sup>29</sup>

At this point the text offered an unspecified length of time during which to consider the terms set forth in the document: “Therefore as best we can, we ask and require you that you consider what we have said to you, and that you take the time that shall be necessary to understand and deliberate upon it.”<sup>30</sup> In *De insulis*, Palacios Rubios is no clearer on how much time might be offered for deliberation. The jurist wrote simply of a “reasonable amount of time”—a “*plazo prudencial*”—in which to consider the terms. If the Indians did not agree by the specified time to admit preachers, it would be just to invade their lands, seize their goods, and enslave their persons.<sup>31</sup>

The objective of allowing the admission of priests was ostensibly the conversion of the Indians to Catholicism. Voluntary, rather than coerced, conversion was held to be a more sincere embrace of the faith. The text of the *Requerimiento* provided the reassurance that the Indians would face no coercion: “and they shall not compel you to turn Christians, unless you yourselves, when informed of the truth, should wish to be converted to our Holy Catholic Faith, as almost all the inhabitants of the rest of the islands have done.”<sup>32</sup> On this point, however, the logic of the *Requerimiento* attains the acme of incoherence (or cynicism). Again alluding to the precedent of the Caribbean islanders, Palacios Rubios wrote, “and all these, of their own free will, without

<sup>26</sup> See Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 9 and, more fully, 284. See also Deuteronomy 20:10–14: “When thou comest nigh unto a city to fight against it, then proclaim peace unto it. And it shall be, if it make thee answer of peace, and open unto thee, then it shall be, that all the people that is found therein shall be tributaries unto thee, and they shall serve thee. And if it will make no peace with thee, but will make war against thee, then thou shalt besiege it: And when the Lord thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword: But the women, and the little ones, and the cattle, and all that is in the city, even all the spoil thereof, shalt thou take unto thyself; and thou shalt eat the spoil of thine enemies, which the Lord thy God hath given thee.”

<sup>27</sup> Palacios Rubios, *De insulis*, 37: “Por tanto, si los infiles no quisiesen recibir a los predicadores de la fe, será lícito recurrir a las armas y a la guerra hasta que los admitan.”

<sup>28</sup> Hanke, “The ‘Requerimiento’ and Its Interpreters,” 27.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> Palacios Rubios, *De insulis*, 36: “Y si después de un plazo prudencial para decidirse no quisiesen hacerlo, pueden ser invadidos y expugnados por medio de la guerra, la fuerza y las armas, aprehendidos sus bienes, y reducidas a esclavitud sus personas, porque la guerra, de parte de los Cristianos, está justificada.”

<sup>32</sup> Hanke, “The ‘Requerimiento’ and Its Interpreters,” 27.

any reward or condition, have become Christians.”<sup>33</sup> And then, in the very same sentence, the text stipulates, “and you too are held and obliged to do the same.”<sup>34</sup>

The consequences, should the Indians not comply, would be severe: “But if you do not do this, and wickedly and intentionally delay to do so, I certify to you that, with the help of God, we shall forcibly enter your country and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their Highnesses.”<sup>35</sup> It is not clear what “this” refers to in the first clause of this sentence. If you do not admit priests? Or if you do not convert? *De insulis* offers modest clarification on this point, insofar as the lengthier juridical tract’s language seems to refer specifically to the admission of priests: “they are obliged to admit priests, that they might explain to them the mysteries of our faith. And if, after a reasonable amount of time in which to decide, they choose not to do it [admit priests], they may be invaded and taken through an act of war.”<sup>36</sup>

The *Requerimiento* and *De insulis* thus seem to transmit rather muddled messages concerning the demands the Spaniards placed on the Indians vis-à-vis the admission of priests or conversion to Christianity. *De insulis*, composed in Latin, was never published or propagated in the Americas. And as Las Casas sardonically noted, the *Requerimiento* was usually pronounced in Castilian, a language the Indians understood no better than they did Latin.<sup>37</sup> While Palacios Rubios clearly had no control over the language in which his composition was read on American soil, the lack of clarity in the text itself suggests that the jurist did not care terribly much about the spiritual salvation of the Indians. Rather, his objective seems to have been to broadcast to the papacy (and probably to other European powers as well) that Spain’s actions in the Americas were primarily geared toward the peaceful and voluntary conversion of the Indians. In this regard, Spain was in compliance with the terms stipulated in the papal bulls of donation, particularly *Inter caetera*. In the donation, Pope Alexander VI had written, “we earnestly require, that, since you intend to prosecute such expedition at all and to undertake it with a mind wholeheartedly zealous for the orthodox faith, you should endeavour and feel obliged to induce the peoples living in such islands to accept the Christian profession, that no perils nor labours should deter you.”<sup>38</sup> Through the reading of the *Requerimiento*, then, Spaniards demonstrated that they were actively

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid., 28.

<sup>36</sup> Palacios Rubios, *De insulis*, 36: “así como están obligados a admitir a los predicadores de nuestra fe para que les expliquen detalladamente todos sus misterios. Y si después de un plazo prudencial para decidirse no quisieren hacerlo, pueden ser invadidos y expugnados por medio de la guerra.”

<sup>37</sup> Las Casas, *Historia de las Indias*, bk. 3, chap. 59, 3:33–34: “creer que entendieron ellos cosa del requerimiento es falsísimo, porque no sabían más de nuestra lengua que de la latina.”

<sup>38</sup> *Inter caetera*, May 3, 1493: “We, therefore, earnestly commending this your sacred and praiseworthy purpose in the Lord, and desirous of having this work brought to the due issue and the very name of the Saviour introduced into these parts, exhort you earnestly in the Lord and by the reception of the holy baptism, whereby you are bound by apostolic demands, and by the bowels of mercy of our Lord Jesus Christ, we earnestly require, that, since you intend to prosecute such expedition at all and to undertake it with a mind wholeheartedly zealous for the orthodox faith, you should endeavour and feel obliged to induce the peoples living in such islands to accept the Christian profession, that no perils nor labours should deter you, filled with the firm hope and confidence, that the omnipotent God will successfully further advance your efforts.” *The Earliest Diplomatic Documents on America: The Papal Bulls of 1493 and the Treaty of Tordesillas*, trans. Paul Gottschalk (Berlin: Paul Gottschalk, 1927), 23. As Anthony Pagden has noted, the grants in the bulls of donation were contingent on the Spaniards’ converting the local inhabitants. On this, see Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain, and France, c. 1500–c. 1800* (New Haven, CT: Yale University Press, 1995), 31–32.

prosecuting the evangelizing mission that Alexander VI had stipulated. Neither Portugal nor France nor any other polity could impugn Spanish claims to America on those grounds.

Here it is instructive to consider the parallel process of Spanish expansion in the Mediterranean. Spanish claims to Africa, like those to America, had been sanctioned by a papal bull of donation. Less than two years after promulgating *Inter caetera*, Alexander VI issued *Ineffabilis et summi*, a bull remarkably similar in content to *Inter caetera*. As with the bull to the Americas, Alexander VI exhorted Ferdinand and Isabella to undertake a mission of evangelization: “and I exhort you that if, with God’s favor, you should acquire Africa or a portion thereof, you work with all diligence and effort, as befitting Catholic princes, that the name of our Savior be honored there and that the Catholic faith be augmented, so that in this way, in addition to the eternal reward, you should merit our blessing and that of the apostolic see as well as other benedictions.”<sup>39</sup>

Some Spaniards, most notably Cardinal Francisco Ximénez de Cisneros, did hold evangelizing aspirations in Africa and worked toward that end.<sup>40</sup> And as we saw in Ferdinand’s letter to Cisneros quoted earlier in this article, Ferdinand was happy to represent the *empresa de África* as a crusade, as a war undertaken for the faith and one that led inevitably toward a Christian recovery of the Holy Land. This, of course, allowed him to make use of the funds that were raised through the *cruzada* levy. For at least fifteen years, this continued to be the light in which Ferdinand’s African enterprise was cast. In March 1510 Pope Julius II (r. 1503–13) issued the bull *Sacrosanctae Romane*, in which he praised Ferdinand’s efforts “to bring an end, through blood and fire, to the perfidious sect [of Islam].”<sup>41</sup> Julius went on to express optimism that the African expedition that Ferdinand was planning for that summer would lead, eventually, to the ultimate “destruction of all vestiges of the impious superstition [of Islam].”<sup>42</sup>

<sup>39</sup> Pope Alexander VI’s bull *Ineffabilis et summi*, February 13, 1495: “y exhortándoos ahincadamente que si adquirís la dicha Africa o parte de ella con el favor de Dios, procuréis con todo empeño y diligencia como conviene que unos reyes y príncipes católicos lo hagan, que sea honrado allí el nombre del mismo Salvador nuestro y la fé católica sea exaltada y aumentada para que de este modo además del premio eterno, merezcáis conseguir nuestra bendición y la de esta sede apostólica y gracias más abundantes.” José María Doussinague, *La política internacional de Fernando el Católico* (Madrid: Espasa-Calpe, 1944), 524. The Latin original reads: “requirentes et plurimum hortentes in Domino ut si ipsam Affricam vel aliquam eius partem Domino concedente adquisiveritis omni studio et diligentia prout catholicos reges et principes decet efficere studeatis, quod in ibi nomen ipsius Salvatoris nostri colatur, et fides catholica exalterur et ampliatur ut ex inde preter eterne retributionis premium, nostram et dicte sedis benedictionem et gratiam uberius consequi mereamini” (ibid., 522).

<sup>40</sup> On Cisneros’s African policies, see in particular the following works: Beatriz Alonso Acero, *Cisneros y la conquista española del norte de África: Cruzada, política y arte de la guerra* (Madrid: Ministerio de la Defensa, 2006); and José García Oro, *Cisneros: El cardenal de España* (Barcelona: Editorial Ariel, 2002).

<sup>41</sup> Pope Julius II’s bull *Sacrosanctae Romane*, March 26, 1510: “y hace poco, ha conquistado una parte no pequeña de Africa, ocupada por larguísimo espacio de tiempo por los mahometanos, y está preparando al presente a pasar personalmente al Africa, reunidas todas las fuerzas de sus reinos, como fortissimo atleta de Cristo, para poner fin a sangre y fuego a tan perfidísima secta, borrar la ignominia marcada sobre el pueblo cristiano por espacio de tantos años, recuperar tan gran provincia, más aún, la tercera parte del orbe antes, oh dolor, fiel y católica, oprimida por tan larga esclavitud de gentes cruelísimas, y asegurar y vengar el honor de toda la república cristiana manchado y despreciado” (Doussinague, *La política internacional*, 591).

<sup>42</sup> Julius II, *Sacrosanctae Romane*, March 26, 1510: “Esperamos que se echarán fundamentos tales para la restauración de la fe con esta expedición, que fácilmente podamos más tarde cumplir la esperanza que hace tiempo llevamos en el alma, que congregadas las fuerzas del mismo rey y de los demás príncipes cristianos y emprendida una expedición general contra los infieles, destruyamos para siempre con la ayuda de Dios las reliquias de la impiísima superstición” (Doussinague, *La política internacional*, 591–92).

Pope Julius's words do not indicate whether he envisioned the conversion of African Muslims and the salvation of their souls or merely their death or subjugation as the geographical boundaries of Christendom were extended. For all the lip service Ferdinand paid to the ideals of crusade and (possibly) evangelization, in practice on the ground the Aragonese king proved flexible and pragmatic, ever willing to work out an ad hoc system to preserve his conquered territories, even if that entailed abdicating the evangelical responsibilities imposed by a papal bull. Two months following Julius's *Sacrosanctae Romane*, Ferdinand wrote to Pedro Navarro, giving the commander instructions on how to negotiate terms with Muley Abdalla [*sic*: read Abdallah], the emir of recently conquered Bougie. What Ferdinand proposed was a condominium of sorts: Ferdinand suggested that he would populate the African cities along the coast with Christians, but that the defeated emir would be allowed to control as much of the interior as he desired, maintaining control over his subjects, as well as all "rents, goods, and jurisdiction" (*rentas, bienes, jurisdicción*, etc.), while the coast should belong to Ferdinand and his successors. Along the coast, Ferdinand would enjoy complete jurisdiction over both the *Christian and Muslim* populations. Ferdinand would now be king of Bougie, meaning that Muley Abdallah would need to use a different title. In recognition of his vassalage, the Muslim ruler would pay an annual tribute to Ferdinand.<sup>43</sup> The arrangement the Aragonese king proposed allowed for the possibility of Ferdinand's acquiring new *Muslim* subjects. While Spanish men of the cloth may have held evangelizing aspirations in Africa, such a mission does not appear to have been a priority for Ferdinand. If one were to look for Iberian analogues to this arrangement, it might be useful to think of Muley Abdallah as a *ta'ifa* king entering into a relationship of vassalage with Ferdinand.

Seven months later, in December of the same year, Ferdinand wrote to Navarro again, this time giving him instructions to execute an attack on Tunis the following summer (1511). Ferdinand expressed hope that Navarro's expedition might conquer a large swath of land stretching into the interior. In the event that that should occur, wrote the king, he would receive the Muslims of the interior as *mudéjar* subjects.<sup>44</sup> The summer of 1511 brought no such Spanish conquest of Tunis, but if Ferdinand's plans had come to fruition, this would have represented a significant departure from the injunctions to evangelize that were present in *Sacrosanctae Romane* and the earlier *Ineffabilis et summi*. It seems that, by late 1510, Ferdinand had opted for a more traditionally medieval Iberian custom of allowing ongoing Islamic practice, by a *mudéjar* population

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<sup>43</sup> King Ferdinand to Pedro Navarro, May 1510:

y assi por esto como por que el titulo de Bugia esta ya puesto por nuestro en las memorias de la yglesia Romana y arrimado a los otros nuestros titulos reales no nos parece que el dicho Rey Muley deue tener titulo de Rey de Bugia sino que se llame Rey de alguna otra tierra o lugar, o prouincia de las que estan en esse reyno de Bugia exceptuando las de la marina y sea de la que el mas quisiere. Assi mismo por el dicho respecto me parece que la ciudad de Bugia y sus terminos y rentas y jurisdiccion con todas las casas y faziendas y las otras ciudades y villas y lugares de la costa desse Reyno deuen quedar enteramente para nos y para nuestros sucesores y que en estas no deue tener que fazer el dicho Rey ni en las rentas ni en los bienes ni en la jurisdiccion dellas en cristianos ni en moros [my emphasis].

Pero somos contento y nos plaze que exceptadas las suso dichas ciudades y villas y lugares de la costa, todas las otras ciudades y villas y lugares y tierras del dicho Reyno de Bugia con su jurisdiccion y rentas queden al dicho Rey Muley Abdalla y a sus sucesores reseruando para nos la mayoria y superioridad de la justicia y la fidelidad que no se pueden apartar de la suprema corona Real, y que en reconocimiento de vasallaje nos haya de dar cada vn año cierto tributo. (Archivo general de Simancas, Estado, Leg. 461, fol. 5, in Doussinague, *La política internacional*, 614–15)

<sup>44</sup> Ferdinand to Pedro Navarro, December 24, 1510: "vamos a essecutar la empresa de Tunes y lo que dezis de dentro de tierra haueyslo de tener desta manera que si Dios nuestro señor fuere seruido que ganemos a Tunes yo espero que con ello cahera y se dara mucha parte de la tierra de adentro y si assi fuere los de la tierra adentro podran recibir como mudejares y darles orden mediante nuestro señor la mejor que fuere possible en la seguridad dello" (Doussinague, *La política internacional*, 641–43).

now subject to a Christian ruler. As Bougie was incorporated into the Crown of Aragon and Tunis lay within the region that would go to Aragon if conquered, Ferdinand's policy vis-à-vis Muslim subjects was really no different from his policy within the Crown of Aragon proper. That region of eastern Iberia would have a Muslim population up until Charles V applied the edict mandating conversion or exile in 1526.<sup>45</sup> Even as it accorded with his policy in Aragon, Ferdinand's approach in Africa stands in sharp contrast to the policies being simultaneously implemented in Granada, and it clearly circumvents the injunctions laid out in the bull *Ineffabilis*.



Ferdinand's circumvention of the papal injunctions to evangelize is echoed in Palacios Rubios's defense of Spanish claims to Muslim-ruled lands in the Mediterranean. Because *De insulis* was completed sometime between 1512 and 1515, the jurist is here offering a post facto defense of those conquests that Spain had already effected in Africa, but his wording makes it clear that he envisions more conquests to come.<sup>46</sup> In his excursus on Spain's rights to Granada, Africa, and Palestine, the jurist makes no reference to *Ineffabilis* or a policy of conversion. Indeed, Palacios Rubios's argument differs in significant ways from the doctrines justifying conquest in the Americas that he espoused in the *Requerimiento* and in *De insulis*. Palacios Rubios invoked the recent Spanish conquest of Nasrid Granada as a point of departure from which he could draw conclusions about the perduring nature of Christian political rights in lands that had at any time been under Christian rule: "A prince may licitly defend his patrimony or recuperate it if he has lost it. . . . From which it may be inferred that the conquest of all territories held by infidels that were at one point subject to Spain belongs to the king of this nation, in his capacity as universal heir to the Kingdom of Spain."<sup>47</sup> As far as Palacios Rubios was concerned, however, the immutable nature of these rights was rooted not only in the dynastic history of Iberian monarchy but in the shifting religious power relations of the medieval Mediterranean: "From this it may be argued that if any region, province, or kingdom was ever possessed by Christians and later occupied or usurped by infidels, the former may recover the land by their own authority."<sup>48</sup> Palacios Rubios thus concluded that Ferdinand and Isabella's decade-long campaign against Granada qualified as a "just and holy war."<sup>49</sup>

Palacios Rubios extrapolated from the case of Granada to propound a similar argument in support of Spanish claims in Africa, an expansionary process that, as we have seen, had

<sup>45</sup> It is also worth noting here that Ferdinand allowed for the practice of Judaism in Orán, marking a departure from the policy of conversion or expulsion he implemented in Aragon in 1492. On the ongoing Jewish presence in early modern Spanish North Africa (until the expulsion of 1669), see Jean-Frédéric Schaub, *Les Juifs du roi d'Espagne* (Paris: Hachette Littératures, 1999); and Jonathan I. Israel, *Diasporas within a Diaspora: Jews, Crypto-Jews and the World Maritime Empires (1540–1740)* (Leiden: Brill, 2002), 151–84.

<sup>46</sup> Palacios Rubios, *De insulis*, 65–68: here Palacios Rubios offers his exegesis of a sibylline prophecy that he interprets as auguring a Spanish conquest of all of Africa, to be effected either by Ferdinand or by his descendants.

<sup>47</sup> *Ibid.*, 58: "se afirma que los vasallos están obligados a ayudar a su señor a defender su patria, o a recuperarla, si la hubiese perdido, por remoto que sea el lugar en que se encuentren, porque el señor puede por derecho lícito defenderla y recuperarla, si la ha perdido, ya que al recobrarla no pierde su derecho en virtud de dicha recuperación. . . . De lo dicho se infiere que la conquista de todos los territorios que poseen los infieles y que en otro tiempo fueron de España, pertenece al Rey de esta nación como sucesor universal del reino de España."

<sup>48</sup> *Ibid.*, 57–58: "De aquí que si alguna región, provincia o reino fueron en otro tiempo poseídos por Cristianos y más tarde ocupados o usurpados por infieles, podrán los primeros recuperarlos por propia autoridad."

<sup>49</sup> *Ibid.*, 61: "y con esa reconquista [of Granada] hicisteis una guerra justa y santa y rendisteis la debida servidumbre al Supremo Dios."

been under way for at least fifteen years when he wrote *De insulis*. “Africa, in the time of Saint Augustine, bishop of Hippo, was under the dominion of the Christian kings of Spain. . . . Later this land was occupied, as it currently is, by the infidels, and it ought to be subjugated by one who comes from a royal line.”<sup>50</sup> It is true that the Visigothic kings of late antique Hispania claimed suzerainty over the African province of Mauretania Tingitana, and it is this fact to which Palacios Rubios appeals when he issues the patrimonial side of his argument. But the legal principle the jurist invokes is as rooted in the early Christian presence in Africa as it is in the recovery of lost patrimony. The emphasis on Africa’s Christian past is implicit in Palacios Rubios’s reminder that it had been the native land of Saint Augustine, and he describes sixteenth-century Africa as “occupied” by the same infidels, prone to violence and tyranny, who had occupied Granada for eight centuries. Palacios Rubios thus argues that Spain’s rights in Africa are essentially equivalent to those in Granada. This rendered Spanish conquests, such as that of Tripoli, like Granada, a “just and holy war.”

In *De insulis*, Palacios Rubios also articulated Ferdinand’s right to conquer the defunct crusader Kingdom of Jerusalem. While this was merely an aspirational conquest (and would remain so), Palacios Rubios wrote that for political and religious reasons, Ferdinand (more than any other Christian prince) possessed the right to execute the crusading enterprise. Through Ferdinand’s conquest of the Kingdom of Naples (1503), the Aragonese monarch had obtained the title to Jerusalem.<sup>51</sup> In addition to this, however, Palacios Rubios impugned the Mamluks’ right to rule over the Holy Land on the grounds of their religious identity. Following centuries of early Christian history in the eastern Mediterranean, wrote the jurist, “the infidels violently occupied [the Holy Land] and now rule it as tyrants.”<sup>52</sup> This was but one of numerous factors that, for Palacios Rubios, legitimated a Christian assault on Palestine.

To the modern reader, the passage of eight centuries of Islamic rule stretches the parameters of what might reasonably qualify as a just war of recuperation. Palacios Rubios, however, insisted that the passage of time makes no difference: “nor can [the land’s] current rulers defend themselves on the grounds that so much time has passed, for since they took possession of the land unjustly [in bad faith, *de mala fe*], no statute of limitations applies to them.”<sup>53</sup>

The arguments that Palacios Rubios offers in *De insulis* in defense of Spanish claims to Muslim-ruled lands in the Mediterranean do not include a protocol for conquest such as applied in the Americas. Nowhere does the jurist mention an offer of peace as part of the process of declaring war against Granada, North Africa, or Palestine. Nor does the jurist address the admission of priests to Muslim lands or a period of deliberation during which the invaded were invited to consider terms.<sup>54</sup> Evidence does point to at least one of these conventions being practiced in Spanish interconfessional warfare in the Mediterranean. The Castilian chronicler Andrés Bernáldez, in

<sup>50</sup> Ibid., 64–65: “África, que antaño, en tiempos de San Agustín, Obispo de Hipona, estuvo bajo el dominio de los Reyes Cristianos de España. . . . Más tarde fué esa tierra ocupada, como lo está actualmente, por los infieles y debe ser subyugada por uno de estirpe regia.”

<sup>51</sup> Ibid., 61–62: “Vuestra Majestad, empero, tiene, así por la causa expresada como por otras muchas, el título del reino de la Tierra Santa.”

<sup>52</sup> Ibid., 62: “por último, fué ocupada violentamente por los infieles que ahora la señorean como tiranos.”

<sup>53</sup> Ibid., 59: “ni podrán los poseedores ampararse en la prescripción del largo o larguísimo tiempo transcurrido, porque como son poseedores de mala fe, no puede aplicárseles la prescripción en ningún tiempo.”

<sup>54</sup> Kedar notes that, while Christian priests might be allowed to minister to Christians in Christian churches within the Dar al-Islam, the general practice within Islamic lands was not to allow entry to priests bent on evangelization. In other words, in relations between Catholic Europe and the Islamic world, the legal principle

his *Memorias del reinado de los reyes católicos*, describes Pedro Navarro's negotiations with the "sheikh" of the island of Djerba, off the coast of Tunisia, during 1510. In this case, the sheikh, a Castilian renegade, asked for a period of deliberation during which he might consult with his subjects, a request that Navarro granted.<sup>55</sup> But in the case of Djerba, there was no need to read anything like the *Requerimiento*. There was no formal announcement of Christianity, nor does Bernáldez (or any other chronicler) refer to the *ius praedicandi* as a demand to be made in these negotiations. In this case, after all, the sheikh originally hailed from Castile and was a Catholic apostate. While this is admittedly an extreme example with which to make my point, nowhere in the Mediterranean world or its hinterlands was a formal announcement of Christianity deemed a necessary prelude to war.

Palacios Rubios's tract suggests that in the Mediterranean religious landscape other conditions obtained, making the proffer of peace unnecessary. In all three Mediterranean cases that he cites, the fact that the lands had at one time been Christian rendered military action an act of defensive war. As such, presumably, it was not necessary to first offer peace. Rather, the basis of Spanish claims to these territories rested on the illegitimacy of Muslim rule due to their status as usurpers and tyrants.

There is no question that the Spanish experience in Granada and North Africa informed the ways in which conquistadors understood and recounted their experiences in the Americas.<sup>56</sup> While the influence of these recent (in some cases contemporaneous) episodes of warfare against non-Christian foes is undeniable, I believe it bears emphasizing that the Dar al-Islam occupied a different space in Spanish political thought than did the novel lands of the Americas. Bartolomé de Las Casas articulated this distinction when he wrote that Spanish rights in America were not the same as those in Africa, where Spaniards had the unfettered right to make war and to subjugate the inhabitants.<sup>57</sup> What Las Casas meant by this statement was that the Turks and Moors of Barbary and the eastern Mediterranean had an open and declared war against Christendom. Las Casas argued that, in the case of the Muslims of the Mediterranean, there was no doubt that Spain was engaged in a "just war," and even that these actions qualified as a "legitimate defense."<sup>58</sup>

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of the *ius praedicandi* was something of a moot point. See Benjamin Z. Kedar, *Crusade and Mission: European Approaches toward the Muslims* (Princeton, NJ: Princeton University Press, 1984).

<sup>55</sup> Andrés Bernáldez, *Memorias del reinado de los reyes católicos*, ed. Manuel Gómez-Moreno y Juan de M. Carriazo (Madrid: Blass, 1962), 566: "Y avía en la isla un capitán e señor de la tierra, *xequé* que ellos dizen, y era renegado, que avía sido christiano, y natural de Castilla. Al cual el conde habló dulçemente, e a los más prinçipales de la isla, que se diesen al rey de España, pues ya vían que, con la ayuda de Dios, toda aquella tierra avía de ser suya. Y en la isla avía dos parçialidades, y respondió el *xequé* que le diese plazo y hablaría con los de la isla y respondería. Y dióle plazo, y vino a responder en fin del plazo y dixo cómo la una parçialidad o comunidad de los moros de los Gerves [Djerba] querían que se diesen al rey de España, y la otra parçialidad no quería; y en fin, el *xequé* dixo: - Yo soy con los que no se quieren dar, salvo defender."

<sup>56</sup> Along these lines, see Mercedes García-Arenal, "Moriscos e Indios: Para un estudio comparado de métodos de conquista e evangelización," *Cronica nova* 20 (1992): 153–75.

<sup>57</sup> Regarding Spanish abuses in the Americas, Las Casas drew a sharp distinction between Spain's American and African enterprises: "Y esto acaeció por la ignorancia de los del Consejo y error con que anduvieron siempre ciegos, estimando que, porque los Reyes de Castilla descubrieron por medio del Almirante Colón aquestas Indias, tenían ya derecho para por paz o por guerra, por mal o por bien, por fuerza o por grado, las gentes y señoríos dellas sojzggallas y señoreallas, como si fueran las tierras de Africa" (Las Casas, *Historia de las Indias*, bk. 3, chap. 55, 3:19).

<sup>58</sup> *Ibid.*, bk. 1, chap. 25, 1:134: "La primera es si nos impugnan e guerrear e inquietan la cristiandad actualmente o en hábito, y esto es que siempre están aparejados para nos ofender, aunque actualmente no lo hagan, porque o no pueden o esperan tiempo y sazón para lo hacer, y éstos son los turcos y moros de Berbería y del Oriente,

Las Casas also weighed in on the papal donation of lands, drawing a contrast between donations of Mediterranean territories such as Africa or Jerusalem and the donation of the Americas. He noted that different conditions applied in the Mediterranean, because the Moors and Turks, as “open and declared enemies, persecutors of us and of our Catholic faith,” had usurped Christian lands and ruled them tyrannically.<sup>59</sup>

For Las Casas, it was the act of usurpation that invalidated the rights of Muslims to exercise *dominium*. And while Las Casas’s juxtaposition of innocent American gentiles against aggressive Muslim infidels is well known, a rarely cited passage in his *Historia de las Indias* confirms that it is their usurpation, rather than their confessional identity, that rendered Mediterranean Muslims guilty. In the portion of the *Historia* chronicling the actions of the Portuguese in Guinea, Las Casas asserts that their enslavement of the Muslim inhabitants of that region was unjustified, as those lands had never been Christian, and their rulers, therefore, could not be guilty of charges of usurpation.<sup>60</sup> In this light, Palacios Rubios’s determination that the Americas had never been Christian, even in some remote past, takes on new significance.

In drawing attention to the legal distinctions rendering Spanish actions in Mediterranean Africa different from those in the Americas, Las Casas asserted that some of the confusion on these points had arisen from a tendency to conflate different “types” of infidels, thus understanding the innocent gentiles of the Americas as equivalent to the violent usurpers of Christian lands in the Mediterranean.<sup>61</sup> Las Casas suggested that the tendency to elide different types of infidels arose from a reading of Hostiensis, the canonist who in the thirteenth century, Las Casas suggested, could not have been familiar with innocent gentiles but knew only about the infidels who had “tyrannically usurped the Holy Land, Spain, and Africa.”<sup>62</sup> For Las Casas, and for many of

como cada día vemos y padecemos; contra éstos no hay duda ninguna sino que tenemos guerra justa, no sólo cuando actualmente nos la mueven, pero aun cuando cesan de hacerlo, porque nos consta ya por larguísima experiencia su intinción de nos dañar, y esta guerra nuestra contra ellos no se puede guerra llamar, sino legítima defensa y natural [my emphasis].”

<sup>59</sup> Las Casas, *Tratado comprobatorio del imperio soberano*, in Las Casas, *Tratados*, 1035: “Pero hay mucha diferencia entre estas donaciones, por lo cual dijimos en el corolario diferentemente según la diversidad de los infieles. Y es ésta: que las donaciones del reino de Hierusalem y de los de África y los semejantes, usurpados y detenidos tiránicamente por los infieles cuales son los moros e turcos, hostes públicos y enemigos, manifiestos perseguidores nuestros y de nuestra católica fe, cuando de aquellos reinos faltase dueño y del legítimo señor sucesor, pertenece a la Sede apostólica de derecho divino e por auctoridad de su presidencia universal y apostolado e la jurisdicción que en el mundo alcanza, proveer a los tales reinos de príncipe y rey cristiano, y éste en favor de la fe e religión cristiana y culto divino. . . . Y así, al que la Sede apostólica nombrase o eligiese, aquél sería rey de aquel tal reino (del usurpado digo) a quien faltaba dueño o heredero legítimo dél, y así acaesció en Carlomagno, y lo son los reyes de Castilla y de Portugal en la parte que de los reinos de África les cabe.”

<sup>60</sup> Las Casas, *Historia de las Indias*, bk. 1, chap. 25, 1:136: “nunca injuriaron ni perjudicaron a la fe ni jamás impediría pensarlos, y aquellas tierra tenían con buena fe porque ellos nunca nos despojaron, ni quizá ninguno de sus predecesores, pues tanto distante vivían de los moros que por acá nos fatigan, porque confines son de Etiopía, y de aquellas tierras no hay escritura ni memoria que las gentes que las poseen las usurparon a la Iglesia, ¿pues con qué razón o justicia podrán justificar ni excusar tantos males y agravios, tantos muertos y captiverios, tantos escándalos y perdición de tantas ánimas, como en aquellas pobres gentes aunque fuesen moros, hicieron los portugueses? ¿No más de porque eran infieles? Gran ignorancia y damnable ceguedad ciertamente fué ésta.”

<sup>61</sup> Las Casas, *Tratado*, 1039: “De donde ha procedido la confusión que ahora ocurre y algunos siembran ampliando lo que los doctores afirman de los moros e turcos, perseguidores del nombre cristiano e violentos poseedores de los reinos de la cristiandad, a los infieles que nunca supieron que hobiese en el mundo gente cristiana, ni eran obligados a lo saber, y por consiguiente que nunca la ofendieron.”

<sup>62</sup> Las Casas, discussing Hostiensis, argued that the latter was addressing the “infidels” that he knew of at the time he was writing: “sino de los que tuvo noticia que había en su tiempo, como eran los turcos y moros, mayormente

his contemporaries, there was a sharp distinction between different types of infidels. The friar Matías de Paz, who, along with Palacios Rubios, was present at the *junta* of Burgos, wrote a treatise in 1512 on Spanish rights of dominion over the American Indians. In this text, Paz elucidated what he perceived to be the “positive” sin of denying Christianity (of which were guilty the Jews, Saracens, Turks, and Christian heretics) and the lesser sin (if it even qualified as a sin) of which were guilty the American gentiles.<sup>63</sup>



Throughout *De insulis*, Palacios Rubios employs the term “infidel” indiscriminately to describe Berbers, Arabs, Turks, and the gentiles of the Americas. And yet, the jurist is in fact acutely aware of the significant differences that demarcate these “infidels” in the legal thinking of his day. The *Requerimiento* implicitly recognizes the difference, and *De insulis*, in its postulations on whether Christianity had ever reached the Americas in the distant past, is even more explicit on this point. Ostensibly, the *Requerimiento* served to announce to Catholic Europe that Spain’s actions in America accorded with the terms of *Inter caetera*, and that the Spanish monarchy was engaged in an evangelizing mission geared toward achieving the conversion of the Indians. Fundamentally, however, the performance of the *Requerimiento* accomplished something quite different: through the announcement of Christianity, the demand that preachers be admitted, and the presentation to the gentiles of a choice to be made, the reading of the text removed the Indians from a state of “innocent” pagan “gentility.” For certain Europeans, this step was not a necessary prelude to a declaration of war. For instance, for Martín Fernández Enciso the Indians’ idolatry (among other putative violations of natural law) sufficed to justify the use of force against them.<sup>64</sup> Juan Ginés de Sepúlveda followed a similar logic at the Valladolid debate of 1550–51 when, drawing on Aristotelian notions, he declared that the Indians met the criteria of “natural slaves.”<sup>65</sup> Members of what might be considered a more moderate school of legal thought (of which Las Casas is the most prominent exponent) interpreted the Indians’ status as gentiles as protection against acts of war and enslavement (*de jure*, if not *de facto*). The act of reading the *Requerimiento* removed the protection afforded by the Indians’ lack of exposure to Christianity. As Palacios Rubios wrote in *De insulis*, citing Saint Augustine, “once the truth is made manifest, old traditions must yield.”<sup>66</sup>

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los que tiránicamente usurpada la Tierra Sancta, y España, e África tenían” (*ibid.*, 1093).

<sup>63</sup> Paz, *Del dominio de los reyes de España sobre los Indios*, 220–21: “En tercer término hemos de explicar qué cosa sea la sobredicha nación de los indios. Para lo cual ha de advertirse que existen algunos infieles a cuya noticia ha llegado la fe verdadera de nuestro Redentor, como son los Judíos, Sarracenos, Turcos y herejes. Todos éstos tienen propiamente el pecado de infidelidad, no sólo privativamente, sino también positivamente, lo cual es el pecado mayor, según prueba Santo Tomás en su *Secunda Secundae*, cuest. 10, art. 3. Hay otros a cuyo conocimiento aun no ha llegado acaso nuestra fe, o si alguna vez llegó, no recuerdan, sin embargo, en la actualidad, la existencia de esa fe sobre el orbe de las tierras. De éstos dice Santo Tomás, en la cuestión aducida, art. 1, que tienen cuando menos una infidelidad privativamente, la cual no puede llamarse pecado, sino más bien pena de pecado. . . . Mi interpretación es que no hay en los tales pecado por comisión contra la fe, y que por razón precisamente de dicha ignorancia, no tienen ningún pecado actual.”

<sup>64</sup> See n. 22 above.

<sup>65</sup> Lewis Hanke, *All Mankind Is One: A Study of the Disputation between Bartolomé de Las Casas and Juan Ginés de Sepúlveda in 1550 on the Religious and Intellectual Capacity of the American Indians* (DeKalb: Northern Illinois University Press, 1974). See also Lewis Hanke, *Aristotle and the American Indians: A Study of Race Prejudice in the Modern World* (Chicago: H. Regnery, 1959).

<sup>66</sup> Palacios Rubios, *De insulis*, 36: “una vez que la verdad se hace manifiesta, debe ceder ante ella la costumbre, como dice San Agustín.”

During the approximately six minutes that might transpire during the notary's reading of the *Requerimiento*, eight centuries of Mediterranean interconfessional relations were effectively telescoped, in order to arrive at the same circumstances that governed European just-war arguments concerning Africa, Palestine, and Granada. In this brief span of time, what Paja Faudree has labeled the "discursive rupture" separating the Spaniards from the Indians fundamentally altered the legal conditions that obtained, thereby justifying acts of violence under any circumstances other than the Indians' admission of priests.<sup>67</sup>

While the papal bulls donating lands in both Africa and the Americas stipulated the evangelizing mission that Spain was expected to undertake, in the case of the Mediterranean, Spanish jurists found ways to circumvent the papacy's demands. This was due, in part, to the fact that there existed a variety of means of articulating claims of sovereignty in the Mediterranean that were *not* predicated on conversion and, indeed, that could be articulated in ways that bypassed the expansive powers the papacy claimed. Palacios Rubios, who clearly supported these sweeping powers in the context of the bulls of donation pertaining to the Americas, actually went so far as to imply that the papacy's powers were more limited in the Eastern Hemisphere. In addressing Ferdinand's rights to make war in Granada and in the Canary Islands (both of which, Palacios Rubios argued, constituted part of ancient Hispania), the jurist wrote that Spain was justified in resorting to force to "reclaim" these lands, "because there exists no higher authority before whom to plead for justice [in this case]."<sup>68</sup> This statement suggests that Palacios Rubios believed that in Old World locales the ancient precedent offered by the religious and political history of the region afforded wider latitude in which to articulate legal claims. The just-war argument Palacios Rubios appealed to as justification for Spanish aggression in the Mediterranean was predicated on those campaigns qualifying as a defensive war. As such, there was no need to announce Christianity or to offer peace. In the context of the Caribbean, the lack of any evidence of Christian history in the region rendered the defensive-war argument absurd. It was this distinction that necessitated the codification of the *Requerimiento* and the bewildering demands the document made of the Indians. Only once the Indians had refused to recognize the sovereign authority of the Catholic Church, or refused to admit preachers within the stipulated time, could the Spaniards enter into conflict that would meet the criteria of a just war.

This brings us back to the letters pertaining to the Spanish conquest of Tripoli that I cited earlier in this article: Ferdinand of Aragon employed diplomatic correspondence and the patronage of chroniclers to broadcast domestically and internationally that Spanish incursions into Africa were undertaken as a crusade for the faith. This was a crusade predicated, not on the conversion of Muslims or the salvation of souls, but on the conquest of territory and the extension

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<sup>67</sup> Faudree makes a somewhat analogous point in her piece about the performativity of the *Requerimiento*. See Paja Faudree, "How to Say Things with Wars: Performativity and Discursive Rupture in the *Requerimiento* of the Spanish Conquest," *Journal of Linguistic Anthropology* 22, no. 3 (2012): 182–200. "Finally, after the text is used, relations between the indigenous peoples and the Spanish are discursively—and then materially—reconstituted" (193). What I am arguing is that the relations are also *legally* reconstituted in a manner that renders acts of violence, on the part of the Spanish, legal and just.

<sup>68</sup> Palacios Rubios, *De insulis*, 58–59: "Podrá, pues, el Rey de España apoderarse de dichas provincias, incluso por la fuerza y por las armas, porque el que las posee las tiene contra la voluntad de su dueño, y porque no existe autoridad superior ante la cual se pueda reclamar justicia [my emphasis]; de donde resulta que por esta falta de autoridad puede el mencionado Rey basar su derecho en la fuerza y en las armas, como se consigna en la ley 'Ut vim' del *Digesto*, tit. 'De iustitia et iure.'"

of the limits of Christendom. Indeed, ideologies of holy war were not necessarily predicated on the conversion of the vanquished.<sup>69</sup>

As such, Spanish actions in Africa might not have accorded perfectly with the injunction in *Ineffabilis et summi* that the Spanish monarchs evangelize in Africa. What is clearly elucidated in juridical texts such as *De insulis* and in the writings of Las Casas is the fact that Spanish monarchs did not feel dependent on the papacy to recognize their claims in Africa and Palestine to the extent that they did in the Americas. Spanish political thought on war against a Muslim foe, and on political claims to lands that could be proved to have at one time been under Christian rule, differed from thinking on the question of just war, conquest, and enslavement in lands that had never been exposed to Christianity. The two expansionary ventures, Mediterranean and Atlantic, and the legal arguments they engendered no doubt informed one another. And in their abuses and disregard for human life they might have borne a strong resemblance the one to the other. But at the level of legal and theological doctrine, the two processes were in fact quite distinct. And it was this distinction that demanded the performance of the *Requerimiento*. Cynical the text may have been, but the codification of the *Requerimiento* reveals the nuances of Spanish political thought on conquest and just war in lands inhabited by a variety of non-Christian peoples. [A]

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<sup>69</sup> Kedar, *Crusade and Mission*, esp. 159–71.