

Charter of rights of the Indians according to the School of Salamanca*

by Luciano Pereña Vicente

1. Denunciation of the Requirements Act

The discovery of America, first seen as an encounter, soon degenerated into a clash between two worlds. It is said that the invasion of the Americas by Europeans started in 1492. The conquering Spaniards overran the recently discovered lands by force of arquebus and disease, their most effective allies being the bacteria and viruses they carried with them.

The shock of conquest caused depopulation, exploitation and even oppression, as witness the decimation of the Indians in Hispaniola, the slaughter of Mexicans at the feast of Toxcatl and Nuño de Guzmán's repression in Mexico's northern provinces. These were shameful events. The reaction of Spanish missionaries and moralists brought about Spain's first national crisis of conscience.

Indeed, Spaniards were the first to denounce and condemn the abuses and cruelties of the initial conquest of America. This was unprecedented in Renaissance Europe: the Spaniards criticized their own conquest. The self-criticism in university halls and governing councils sparked new concepts, new ideals and new approaches to the

* This article has served as the basis for many symposia and seminars which I personally have conducted in European and American universities in 1992 as the School of Salamanca's contribution to the quincentenary of the discovery of America. In the midst of the polemics, between black and white legend, the message of Francisco de Vitoria has helped to shed light on a highly manipulated historical event which has stirred so much political passion. We are grateful for this opportunity to make public the message of Francisco de Vitoria, the founder of modern international law. Our introduction is followed by his basic text on the "Rights and obligations of Indians and Spaniards in the New World". It was his finest contribution to the law of peace, one which paved the way for reconciliation between Spain and America. The paper closes with a list of references and a bibliography.

Americas throughout the reign of Charles I (the Emperor Charles V), King of Spain and Emperor of the West Indies.

The Middle Ages gave way to modernity and new foundations for "America Nostra" were laid. At the centre stood Francisco de Vitoria, a professor at Salamanca and founder of an entire school of thought. The impulse was given by the conquest of Peru by Francisco Pizarro pursuant to the Requirements Act. The constitutional document of the New America was the *Relectio De indis* of 1539, the first declaration of rights and obligations of Indians and Spaniards in the New World.

Francisco de Vitoria began by denouncing the Requirements Act, which until then had legitimized the initial conquest of America. The Act was dialectically dismantled through a slow process of investigation and theological reflection which eventually invalidated the papal theocracy being revived in Pope Alexander's bulls.

The Pope had no political power over the Indians. By neither natural law, positive law nor the law of nations could it be demonstrated that he was lord of all the Earth or that he had acquired such power in the course of history, so it was hard to see how he could transmit that power to the kings of Spain. But even assuming that the Sovereign Pontiff had political power over all the world, the fact is that he would not have had the authority to transmit it to the kings of Spain.

Nor was Emperor Charles V lord of all the Earth; and he had not acquired sovereignty over the Indies by Papal delegation. His title did not authorize the King of Spain to establish his rule in America, remove its former rulers, install new kings or impose new taxes. The conquistadors unjustly commandeered the Indians and forced them to recognize and obey the Pope and the Emperor. Their ascendancy and seizure of power could not be justified on natural grounds.

In short, even if the "required" Indians were unwilling to recognize or denied the sovereignty of the Emperor or Pope, their reluctance could not serve as a fair or lawful reason for making war on them and confiscating their property and lands. In all justice, the Indians were entitled to defend themselves and wage war on the Spaniards.

All that has been said suggests that the Spaniards had no just cause for declaring war on the Indians, whether their claim to legitimacy was based on the fact that the Pope **gave** their territories to the Emperor or on the alleged universal power of a Pope the Indians chose not to recognize.

Francisco de Vitoria concluded that when they first sailed to the Indies, the Spaniards carried no warrant for taking over the territories.

The Indians had their own rights of sovereignty even before the Spaniards landed.

Criticism of the Requirements Act took Francisco de Vitoria on to conclusions that were definitive for the philosophy of American history. It called into question the policy of colonial repression. In the interests of peace and human solidarity, his reinterpretation of Alexander's bulls was to gain ground from that historic moment onward.

Meanwhile, Emperor Charles V passed instructions to his ambassadors to the courts of Europe not to urge the "papal gift" as the sole and overriding justification for the legitimacy of the conquest of America. Canon lawyers, colleagues and disciples of Francisco de Vitoria at Salamanca, decided to ask the Holy See to revoke Alexander's bulls or specify the meaning of "papal gift" in accordance with Vitoria's new interpretation.

In 1556 the synod of Santafé agreed to appeal to the Council of Trent and to His Majesty's Royal Council of the Indies. And so it was that Juan del Valle, a professor and disciple at Salamanca, left for the Council with the points approved by the synod of Popayán in 1558. The criticism and revision of the Requirements Act was certainly of the utmost service to historical truth and to the democratic awareness that was beginning to take shape. The School of Salamanca had set in motion the first programme of claims.

2. The programme of claims

The programme of claims was based on five assumptions or basic principles: first, that Indians and Spaniards were fundamentally equal as human beings; second, that although the Indians were equal and free, their backwardness was largely ascribable to lack of education and to barbarous customs; third, that the Indians owned their property in the same way as Christians, and could not be dispossessed of it on grounds of ignorance; fourth, that the Indians could be placed under the trusteeship and protection of the Spaniards while in a state of underdevelopment; and fifth, that in the final analysis mutual consent and free choice on the part of the Indians constituted the primary justification for Spain to intervene and rule.

To the Master of Salamanca, the Indian peoples were autonomous communities and performed functions of sovereignty. They owned their national property and had rights of sovereignty over natural resources for the benefit of their own people. Only in terms of free choice of citizens, and to uphold and protect the basic rights of Indians

and Spaniards alike, did Vitoria justify Spain's intervening and remaining in the newly conquered Indies. The laws and the administration of Charles V would have legitimacy only insofar as they were designed to advance the natives in solidarity and cooperation with the Spaniards. For the Indians, too, had duties of solidarity and cooperation.

Recognition and application of this Constitutional Charter of the Indians formed the basis for the colonial reconversion demanded by Francisco de Vitoria and put into practice down to its final consequences by the School of Salamanca.

Francisco de Vitoria and his School started by claiming the "humanity of the Indians" at a time when their condition as human beings was being questioned by historians and politicians alike. Doctrinal recognition of their fundamental freedom led to the condemnation of theologians and jurists who upheld before the Council of the Indies the Spanish King's right to enslave the recently discovered Indians.

Questioning the system of slavery to which the natives had been reduced by the first conquistadors, Vitoria claimed their fundamental social and political freedom and demanded that the Crown recognize and proclaim that freedom and intervene to free the Indians; this resulted in the official abolition of slavery throughout the Indies.

Being fully alive to the policy of repression and exploitation, Vitoria claimed for the Indians freedom from violence on the part of the conquistadors, freedom from the greed of the land grantees, freedom from repression by the governors, freedom from injustice on the part of the judges and courts, freedom from the tyrannies of the caciques and native rulers and freedom from the outrages of priests and gospel pedlars, thus causing a genuine liberation theology to be implemented on the Indians' behalf.

He claimed the right of Indians to peace and coexistence, to the protection of their national identity, to education and social advancement, to just and equitable services and taxes, to freedom of employment and fair wages, to justice and proper treatment. And by dint of theological reflection and pressure of conscience he imposed ethical criteria that did much to advance the cause of freedom. It was by the work and grace of the School of Salamanca that so many royal ordinances and canonical rulings were issued in favour of Indian freedoms.

Through its disciples — missionaries and theologians — the School critically oriented its charter of claims to persuade the Crown to find ways of guaranteeing those freedoms; through pressure of conscience it strove to train the Indians in greater awareness and

defence of their rights and obligations, for their primordial right to human status also carried the obligation to humanize themselves and rid themselves of their barbarous customs and certain atavistic instincts.

On the basis of its charter of claims, the School of Salamanca defined the objectives and aims of Spain's intervention in America and ultimately typified and determined the Crown's presence as a political protectorate at the service of conquered Indians politically subject to Spanish sovereignty. Vitoria's disciples recognized the Spanish King-Emperor's right to intervene in those parts of the Indies where the kings and chiefs of some recently discovered peoples were known beyond doubt to be tyrants who governed despotically; provided, however, that such victims of repression could be liberated solely by armed intervention and could enjoy their right to human coexistence only if the tyrants were overthrown.

The School of Salamanca recognized Spain's right to remain in the territories and towns of the New World, but only when their kings and rulers proved recalcitrant. To make them give up their crimes against humanity and free their victims from cannibalism and treatment that was an affront to human dignity, it recognized the Emperor's legal right to take over government and remain there until such horrendous crimes and repressive regimes were brought to an end.

The Spanish King-Emperor held or could hold some sort of dominion, sovereignty or jurisdiction over the inhabitants of the West Indies and over subject Indian princes and caciques, but only if the Indian peoples — sovereign in their own right — fully agreed to it or if the world community so ruled in order to protect innocent beings.

Any kind of power over America that could be held by the Crown of Castile would ultimately find its legitimacy in the free will of the Indians who made up its community of peoples. Even the powers of the viceroys and other authorities who were delegated by Charles V to govern the different Indian territories derived from the power granted by the Indian peoples over their own subjects and vassals.

3. The Spanish protectorate

Vitoria's principle of respect for sovereign will was largely developed by Alonso de Veracruz, a disciple of Vitoria and professor at the University of Mexico. The sovereign Indian peoples under the protectorate of the Crown of Castile were becoming a genuine community of peoples based on mutual respect for political liberties, the effective

solidarity of mutual responsibility and the responsible coordination of limited sovereignty. That was the first condition for the political protectorate.

Application of the protectorate at that historic turning point of colonial reconversion suggested Europe's first attempt at reconciliation between winners and losers, conquerors and the conquered. The model advocated by Vitoria's School could have brought forward American independence by several centuries had the pragmatism of economic interests not eventually prevailed.

While Francisco de Vitoria proclaimed the fundamental rights of the Indians, even in relation to Spaniards when the latter acted unjustly, he also justified Spain's intervention in America on grounds of human solidarity and advancement. The Spanish kings had assumed the burden of a mandate to prepare the natives of the Indies for integration in the community of civilized peoples on the basis of equal rights.

In the interests of the subjects in those newly discovered lands, the kings of Spain had the right to take over administration, appoint governors and even replace the indigenous rulers if necessary for the advancement and development of their peoples. Colonization thus developed into a right of protection primarily for the benefit of the protected peoples. This was the second condition for the political protectorate.

The overseas kingdoms had not been conquered so that their riches should contribute to the development of the metropolis or that their inhabitants should be subordinated exclusively to Spanish interests. For, Alonso de Veracruz argued, it would be unjust to think that the chief aim of the Spanish government was to perpetuate the Crown's rule in the Indies rather than secure the welfare of the inhabitants. He believed that the exploitation, repression and annihilation of the natives would soon come to an end.

Vitoria certainly claimed the right to transfer and share property. And by virtue of those two provisions of the law of nations, Spain intervened and occupied the Indian territories to help and defend the Indians: it was entitled to keep what it held, but only as long as its presence was essential for promoting the advancement of the Indians and preparing them politically.

The protector State assumed the duty of regenerating the protected communities by sending them suitable governors to administer them, missionaries to evangelize them and teachers and settlers to educate them and improve their lands with farming implements.

Vitoria implicitly recognized the right of the Indian peoples to national integrity, the right to sovereignty over their territory, and the fundamental right to manage their natural resources. Being free and sovereign, the Indian peoples could in all justice forbid the Spaniards to take gold from their mines or pearls from their rivers. And in all justice they could limit or ban the immigration of aliens bent solely on engaging in business or trade, if their activities harmed or threatened the natives of the country. That was the third condition for the political protectorate.

In conclusion, the Spanish Crown maintained its sovereign rule over many Indian kings and peoples. Its imperial power had to be compatible with the sovereignty of the Indian peoples and nations. There were mutual rights and obligations which mutually conditioned and limited the two sovereignties — Indian and Spanish — which were shared in the territories of the New World. In the final analysis, Vitoria's School saw the right to intervene in America as being legally founded on a pact of collaboration, a mandate to protect and uphold human rights. However, the resulting subjection or servitude in no way implied the curtailment of political freedom. The protectorate could and should be the means for Latin America's protection and social development.

The ultimate goal of colonial reconversion was to be independence. Colonization could pave the way to self-government. Time-limits were even set for the protective mandate. As a result, the Crown had to restore the Indian peoples to the full development of their traditional attributes and grant them independence if at some future date the native rulers achieved a level of civic culture which gave serious grounds for thinking that they would rule in a just and Christian manner. For the time being, Francisco de Vitoria expressly ruled out that contingency, considering it more likely that the Indians would revert to their inveterate paganism and despotism.

However, he did admit the possibility of self-government, which the natives or Indians under Spanish protection might claim once they had the knowledge, ability and will to exercise it. It remained a matter for their free will, always on the assumption that they developed sufficiently to use their political freedom in a humane manner. The Crown assumed the obligation gradually to foster the development of the peoples under its trusteeship until they reached political maturity.

The former local rulers of the Indian peoples would eventually be restored fully to the powers and authority of which they had been divested, provided this did not hamper proper government of the natives or interfere with their cultural and spiritual development.

Colonial reconversion transformed the old land grants into a genuine system of social advancement more for the benefit of the expropriated Indians than for that of the Spanish land grantees. The grants ceased to serve as a means of exploitation and social slavery.

The economic output of the Indies was to be invested on a priority basis in meeting the Crown's commitments to christianize and civilize, given that the papal "gift" and international mandate were primarily designed to bring about the conversion of the Indians; the King had no right to divert Indian property for the benefit of other kingdoms to the detriment of the protected peoples.

While in these circumstances Charles V could not legally abandon the Indian kingdoms, it was difficult for the Crown to meet its obligations of protection without the presence of Spanish troops and settlers, and without exploiting precious metals, cultivating the land and encouraging trade with the kingdoms of Spain. Nonetheless, the Spanish kings lacked any competence to dispose of or transfer Indian territories as they saw fit.

To sum up, there were not supposed to be more Spaniards in America than was necessary to "sustain the territory", support evangelization, establish justice and rationally exploit the land. Disciples of the School of Vitoria asked the Crown to screen passengers to the Indies with a view to preventing an excessive preponderance of aliens and ensuring that those territories did not become republics of day-labourers, wage-earning Indians hiring themselves out or performing forced labour in mines or on estates and farms, to the exclusive advantage of the Spaniards.

As early as 1560 the inspector Tomás López proposed that the Indians gradually be made responsible for their own government; and late in the sixteenth century the American-born Zapata y Sandoval, professor at the University of Mexico and Bishop of Guatemala, demanded that the peoples of America be governed by Americans. The natives — Indians, American-born whites and people of mixed race — were capable of governing themselves and should be given preference over Spaniards born outside the Indies and arriving from the Peninsula.

Nobody knew their own affairs better than those born in the American nations: they had a greater interest in and love for their countries, a greater ability and willingness to accept sacrifices and provide services for the benefit of their own people, and a greater concern for solving the problems and conflicts of the Indians.

Such were the broad lines of Francisco de Vitoria's plan for colonial reconversion, which the School wanted implemented down to its last consequence. Did the plan remain a pipe dream? Did the Crown even attempt to apply it politically?

The masters of the School of Salamanca, professors and advisers, demanded that the colonial authorities show respect for the human

condition of the Indians and for their potential and capacity for development, and show tolerance for their historic and religious traditions, however backward, while promoting and guiding their advancement. They demanded that the King of Spain promulgate progressive laws in that respect so that the Indians should learn the benefits of Christian faith and civilization. That programme of claims culminated in an official declaration of freedoms. The School of Salamanca's guidelines appeared to have gained political acceptance.

On 26 November 1542, in Barcelona, Emperor Charles V promulgated the New Indies Acts. He was responding to the Cortes and authorities of the kingdom who had asked the monarch to remedy the abuses and cruelties committed by the conquistadors in America. Those fundamental laws ended with a new proclamation of freedoms.

That is what many Americans wish to celebrate on the quincentenary of the discovery and evangelization of America: this message of pacification and reconciliation, of rehumanization and the enshrinement of human dignity, of solidarity and the sharing of property, of denunciation of and rebellion against social injustice; in other words, the message bequeathed by Francisco de Vitoria. They want to celebrate that cultural and social, legal and political message so dynamically conducive to the understanding and joint advancement of our peoples, in the service of world peace and harmonious coexistence. They regard any other version or interpretation as a betrayal of the American conscience and a falsification of history. Some groups belonging to the so-called mixed-race elite, frustrated and burdened by an uneasy conscience, are now trying to evade their historical responsibilities.

4. Basic text

THE RIGHTS AND OBLIGATIONS OF INDIANS AND SPANIARDS IN THE NEW WORLD ACCORDING TO FRANCISCO DE VITORIA**

I. The Indians are human beings

1. Every Indian is a man and thus is capable of attaining salvation or damnation (*CHP* 5, 87).

** As a contribution to the celebration of the quincentenary of the discovery of America in 1992, Dr. Luciano Pereña, coordinator of the *Cátedra V Centenario*, has reconstructed the "Rights and Obligations of Indians and Spaniards in the New World according to Francisco de Vitoria", largely on the basis of texts published in the collection *Corpus Hispanorum de Pace* (vols. 5, 6 and 17; hereinafter cited as *CHP*).

2. Every man is a person and is the master of his body and possessions (*De iustitia* I 228).
3. Inasmuch as he is a person, every Indian has free will and, consequently, is the master of his actions (I II 203).
4. By natural law, all men are born equal. Legal slavery is a product of the law of nations and thus can be abolished, when nations so will, in the interests of peace and human progress (*De iustitia* I 77).
5. Consequently, the position of those theologians who maintain in the *Consejo de Indias* that the King can enslave the newly discovered Indians is iniquitous (*De iustitia* I 53).
6. By natural law, all men are free. In the exercise of this fundamental freedom, the Indians freely organize themselves in communities and freely elect and establish their own rulers (*CHP* 5, 39).
7. On account of this political freedom, the Indian rulers elected by their people may legitimately impose taxes and new economic charges (*De iustitia* I 228-232).
8. The power to rule, or political superiority, was given to certain men by the consent or free choice of the community or by the majority of its members (*De iustitia* I 77-79).
9. The right that a man has to his possessions derives from the fact that he is in the image of God; he cannot lose this dominion on account of his infidelity or sins of idolatry (*De iustitia* I 106-108).
10. The Indians do not lose the right to the goods they possessed publicly or privately prior to the arrival of the Spaniards on account of their infidelity or idolatry (*CHP* 5, 25).
11. The Indians may not be deprived of their goods or powers on account of their social backwardness, nor on account of their cultural inferiority or lack of political organization (*CHP* 5, 30).
12. The Indians may not be expropriated, nor may their lands be occupied, if these actions are not based on the law that is common to Christians and non-Christians alike (*CHP* 5, 141).
13. The obligations placed upon the Indians cannot exceed their natural endowments (*CHP* 5, 118-120).
14. Every man has the right to truth, to education, and to all that forms part of his cultural and spiritual development and advancement (*CHP* 5, 87).
15. The Indians' current social and political situation stems largely from their bad and barbaric education, or from their deficient or limited human advancement (*CHP* 5, 30).
16. By natural law, Indian children are subject to their parents and, subsidiarily, to the State for their education and sustenance (I II 208-212).

17. By natural law, every man has the right to his own life and to physical and mental integrity (*De iustitia* I 109-110, 125-127).
18. Every man has the right to his personal reputation, honour, and dignity (*De iustitia* I 110).
19. The Indians are entitled not to be baptized and not to be forced to convert to Christianity against their will (*CHP* 5, 118-129).
20. The Indians have the right to be sufficiently educated and to be instructed in the Christian faith prior to being baptized (*CHP* 5, 158-164).
21. In defence of one's homeland and one's individual rights, it is legitimate to repel force with force within the limits of self-defence and even to endanger the life of the aggressor (*De iustitia* I 287-368).
22. No one may be condemned without having been heard by the competent public authority in accordance with the law (*De iustitia* I 284).
23. No innocent person may be sacrificed or put to death, even if he consents thereto or offers himself voluntarily (*De iustitia* I 299).
24. All things were created for the service of man (*De iustitia* I 267-270).
25. No one may be punished or penalized for resisting or refusing to convert or subject himself to the religion of the Spaniards (*CHP* 5, 129).
26. By natural law and the law of nations, men are entitled to have their mortal remains and those of their ancestors treated with dignity; wherefore Indians and Spaniards who persist in inhuman and barbaric customs may be punished to force them to stop (*CHP* 5, 111).

II. The Indian peoples are sovereign

1. The Indian communities are sovereign republics and, thus, are not properly subordinate to Spain, nor do they form part of Spain (*CHP* 5, 113-140).
2. The Emperor or King of Spain would act unjustly if he were to permit the exploitation of the Indians' sources of wealth or the removal of gold from the Indian territories to the detriment of the development and progress of the natives (*CHP* 5, 113).
3. Nor is it just for the King of Spain to prohibit the Indians from minting their own currency, if they find this beneficial to their commerce and social advancement (*CHP* 5, 113).
4. The Indian rulers, whether natural or elected, enjoy the same fundamental rights as any Christian or European prince (*CHP* 5, 113).
5. The Indian peoples may freely change their political regime and subject themselves to a different sovereign in order to defend themselves from oppression and to rid themselves of a tyrant (*De legibus* 82).

6. For the common good and in order to achieve greater harmony and peace among the people, the ruler may licitly tolerate laws and customs that go against natural law (*De legibus* 82).
7. The Indian communities are not the personal possessions of their caciques or rulers, and the latter may not arbitrarily use or dispose of their subjects' goods or the goods of the other inhabitants of their territory (*De legibus* 83).
8. According to natural law, a non-Christian cacique or king does not lose his dominion or jurisdiction on account of his infidelity or idolatrous practices, and even Christian subjects are obliged to obey him (*CHP* 5, 132-133).
9. The Indian peoples may defend themselves with arms and may rebel against foreigners who unjustly seize their territories or who govern the republic to their own advantage or to the advantage of their own people (*CHP* 6, 281-285).
10. By natural law and the law of nations, all the goods of the earth exist principally for the common good of humanity, and the natural resources of every nation should also serve this end (*CHP* 5, 83).
11. In principle, all peoples, Indians as well as Spaniards, have the right to defend themselves by force of arms against the unjust aggression of infidels or Christians, and they have the right to resort to war in order to deter aggressors from endangering their national integrity or security (*CHP* 5, 105-107).
12. Without reasonable cause, the Indians may not reject their own rules in order to recognize and submit themselves to foreign kings; nor may the caciques legitimately do this without the people's consent (*CHP* 5, 73).
13. God made all things in common for the service of all humanity, and by natural law man is the primary holder and recipient of these things. Thus, the division of goods and territories was introduced solely by the law of nations, which is positive and revocable, to meet the exigencies of peace and human progress (*De iustitia* I 74-80).
14. By natural law, dominion or ownership over all goods belongs principally to the entire human community, wherefore any individual man may use these goods when necessary so long as he does not prejudice others in so doing (*De iustitia* I 74).
15. Just laws are binding in conscience and are valid even when they have been issued by a ruler or political leader who has seized the realm by force, provided that such a tyrant be tolerated by the community (*De iustitia* I 54).
16. The Indian caciques may oblige their subjects to abandon the rites and sacrilegious customs of eating human flesh or offering human sacrifices (*CHP* 5, 103).

17. If an Indian prince converts to Christianity, and even if he does not convert, he commits no injustice against his subjects by abolishing idolatry and other practices that go against natural or divine law. Indeed, he is obliged to do this, if he can do so in a prudent manner and without scandal or detriment to the common good, the peace and the well-being of his people (*CHP* 5, 103-105).
18. If an Indian chief should become a Christian, he may promulgate laws in accord with the Gospel, obliging his subjects to abide by those laws, to listen to Christian teaching and to abandon their rites and religious superstitions, without this implying any attempt to force them to convert to Christianity (*CHP* 5, 105-106).
19. Indian princes who have converted to Christianity may oblige their non-Christian subjects to abandon customs and rites that go against natural or divine law, but only provided that by doing so they do not provoke scandal and that this does not result in a worse situation than would prevail were they to tolerate such pagan rites (*CHP* 5, 107).
20. Consequently, pagan or non-Christian rites may be tolerated on account of the common good in a specific political community (*CHP* 5, 107).
21. The Indian peoples, who have spontaneously and freely subjected themselves to Christian princes on condition that they not be obliged to believe in the Christian religion, may not be forced to convert by the Emperor or King of Spain, and agreed religious freedom should be respected (*CHP* 5, 127).

III. The Indian peoples form part of the international community

1. On account of natural human solidarity and by the law of nations, all men, Indians and Spaniards, have equal right to communication or exchange of persons, goods, and services, with the sole proviso that justice and the natives' rights be respected (*CHP* 5, 77-87).
2. By reason of natural sociability, the Spaniards have the right to travel through Indian territory and to establish residence there on condition that by so doing they neither prejudice nor injure the natives (*CHP* 5, 77).
3. Spaniards have the right to trade with the Indians just as the Indians have with the Spaniards. Spaniards may export the goods that the Indians need and may import gold and silver in which the Indies abound, provided, however, that this is not prejudicial to the Indians and that this exchange is conducive to their advancement (*CHP* 5, 81).
4. For the same reason, Spaniards have the right to take gold from the mines and fish from the waters that are common to all and have no owners, always provided that the inhabitants and natives are not thereby prejudiced and that the laws of the land do not burden the Spaniards in a discriminatory way with respect to other foreigners (*CHP* 5, 81).

5. By natural law, Spanish children born in the Indies have the same rights as the natives. Moreover, those foreigners who wish to establish residence in the Indies may do so by contracting marriage or by any other means whereby foreigners attain nationality. They thus incur the same rights and duties as the Indians (*CHP* 5, 83).
6. In defence of these natural and common rights, which by natural law and the law of nations belong to all men, the Spaniards may have recourse to war and may take all the necessary security precautions after having tried to show the Indians with words and deeds that they want to live with them in peace and to cause them no harm, and after the Indians have attacked them violently, prohibiting them from exercising their rights as emigrant foreigners (*CHP* 5, 85).
7. However, recourse to war and such security measures may never serve as a pretext for slaughter, or for sacking or occupying the towns of the Indians, who are by nature fearful and humble, and who have more than sufficient reason for distrusting the Spanish conquistadors, whose ways are strange to them and who are armed and much more powerful than themselves (*CHP* 5, 85).
8. The Spaniards may justly defend themselves against such Indians as long as they stay within the limits of self-defence; but they may not use victory as an excuse for seizing the Indians' towns or for enslaving their inhabitants; a properly defensive war does not justify conquest when the Indians innocently believe, on account of ignorance, that they are justly defending their property (*CHP* 5, 85).
9. If after having sufficiently demonstrated by words and action that they do not intend to disturb peaceful coexistence with the Indians, and that it is also not their intention to interfere in the Indians' internal affairs, and if after all peaceful means have been exhausted the Indians persist in their ill-will and plan to destroy the Spaniards, then, and only then, may the Spaniards justly act against the Indians as declared enemies, conquer them in application of the law of war, and punish them in proportion to the gravity of their crimes and offences (*CHP* 5, 85).
10. Human solidarity constitutes a valid reason for armed intervention on condition that this intervention occurs without fraud or unnecessary injury and that it does not serve as a pretext for taking possession of the defeated people's goods and territories (*CHP* 5, 87).
11. This same right of intervention is also justified in the case of military support provided to allies, on condition that the belligerent party that receives such support is truly the victim of aggression and that the Spaniards are first called in by the Indian peoples who have been unjustly attacked (*CHP* 5, 95).
12. The Spaniards may not intervene in the Indies out of desire to enhance the glory or prestige of the monarchy, nor out of ambition to increase the power or territory of the empire, nor may they use these reasons to seize

- the Indians' territories and enslave or exploit their population (*CHP* 6, 123-125).
13. In the interests of peace and the good of all peoples, it is lawful to take action to punish criminals who, by means of repression or tyranny, oppress innocent people and disrupt the tranquillity of humanity or the community of nations (*CHP* 6, 109).
 14. It will be lawful for Indians and Spaniards to resort to war on account of a very grave injustice, but only on the assumption that the atrocities, devastation and deaths that would logically result from the use of force would be proportional to what would occur if the injustice were tolerated (*CHP* 6, 133).
 15. Although the war against the Indians might have been declared for a just reason, this does not permit the use of any means whatsoever, nor the application of any possible sort of sanction. However, everything that is truly necessary for purposes of defence and the guarantee of future peace may indeed be done (*CHP* 6, 132).
 16. By natural law and the law of nations, Spaniards may lawfully seize those goods of the Indians that are necessary for covering the costs of a just war and, consequently, they may demand compensation for the injuries that the enemy has unjustly inflicted upon them. Moreover, for the peace and tranquillity of everyone, they may, by means of sanctions or other types of pressure, deter the Indian caciques from committing similar aggression in the future (*CHP* 6, 137).
 17. Consequently, any republic, Indian or Spanish, has the right to take military action against a real and present aggression; however, when the need for self-defence has passed, there is no further reason for war, and all occupied territories must be abandoned (*CHP* 6, 117).
 18. If war is waged against the Indians in order to free them from their inhuman and barbaric customs, when this aim has been reached the "protector-State" cannot prolong its intervention; nor may it, on the pretext of defending innocent people, be permitted to occupy Indian territories indefinitely (*CHP* 5, 111).
 19. The "protector-State" has the right to remain in the conquered territory only as long as its presence is necessary for ending the unjust situation and for ensuring future peace (*CHP* 5, 111).
 20. Spain's right to remain in the Indies with the intention of overseeing and governing the natives is acceptable only because of the need for change there and only on condition that this reform and protection be carried out for the benefit and development of the indigenous people (*CHP* 5, 98).
 21. In conclusion, the Kings of Spain have the right to remain in the Indies, and may lawfully take the Indians under their tutelage and protection while the latter exist in a state of dependence and underdevelopment, on condition that their occupation and rule tend more to the good and utility

of the Indians than to the benefit of the Spaniards, so that the Indians' situation might improve and not become worse than it was previously (CHP 5, 98).

22. By virtue of prescription and more than forty years of *bona fide* possession, the Spaniards have the right to remain in the Indies and are even bound to do so, because of the need of newly converted Christians to be defended from the persecution and repression of their caciques, who might, by means of force or terror, try to make them return to idolatry (CHP 5, 98-99).
23. On the premise that a large number of Indians have converted to Christianity (regardless of whether their conversion was free or forced, just or unjust) and that these converts are now living as true Christians, and fear, not without reason, that they might apostatize owing to the repression and threats of their pagan political chiefs, in defence of the legitimate rights of these Christian Indians, and in order to free them from such risks and almost certain danger, the King of Spain has the duty not to abandon them and to remain in the Indies as long as necessary for their security (CHP 5, 89-92).
24. Additionally, out of human solidarity and in defence of innocent Indians who are still sacrificed to idols or are killed that their flesh might be eaten, the Spaniards cannot abandon the Indies until the necessary political and social changes have come about that will put an end to that regime of terror and repression (CHP 5, 93).
25. Finally, in exercise of the right of self-determination and by the free choice of the majority of Indians who have seen the moderation and political prudence of the Spaniards, the caciques and their peoples may freely choose to avail themselves of Spain's protection in order to be governed and administered by the Crown for the benefit of their own land and the advancement of its inhabitants (CHP 5, 95).

Conclusions

The responsibilities of government

1. The kings of Spain should feel themselves obliged, albeit reluctantly, to resort to war, but should not seek occasions or pretexts to seize the Indians' territories or to subjugate their populations. For wars are not waged to exterminate people, even though the latter might have been the aggressors, but rather for the defence of law and the establishment of peace. It will be possible to guarantee the peace and security of the Indians only through relations marked by moderation, understanding, and tolerance. The controversy regarding the Indies should thus be guided by these principles of moderation and desire for peace (CHP 6, 195).
2. On the sole basis of the law of war, it would be difficult to justify the conquest and occupation of the Indies, if not as a means of just compensation, in order to punish war criminals or out of a grave necessity for

peace and security. Moreover, the conquest and occupation must always conform to the principles of proportionality and equity, and there is always an obligation to return the conquered territory when peace is established and the reasons for the occupation no longer exist (*CHP* 6, 195).

3. Consequently, the King of Spain is obliged to seek the utility and development of the Indian people above all else, and cannot allow them to suffer so that Spain might benefit. The monarch and his counsellors are responsible for ensuring that this does not happen, and they will have to answer for this when the time comes (*CHP* 5, 113).
4. It is not sufficient for the King of Spain to promulgate sound laws, appropriate to the capacity and development of the Indians; he is also obliged to install competent governors who are willing to enforce such laws against those who exploit the Indians or attempt to plunder them and seize their goods (*CHP* 5, 113).
5. Although it is certain that, in principle, the King of Spain, as Emperor of the Indies, has the competence to make laws that aim to abolish idolatry and pagan rites and to introduce Christianity more successfully in the New World, it is appropriate that this legislative function be carried out with prudence and tolerance and without violence or inconvenience to the new Indian vassals or subjects (*CHP* 5, 114).
6. Political prudence and freedom of conscience require that the Emperor and King of Spain promulgate progressive laws in favour of Christianity, which shall provide the opportunity and the means for Indians to be educated and sufficiently instructed about the errors of their religion and pagan rites, with the aim of convincing them and attracting them to listen to Christian truths so that they might willingly and freely decide to convert (*CHP* 5, 114-116).
7. The King of Spain can lawfully employ a certain moderate and gradual coercion, possibly including even the legal prohibition of idolatry and the destruction of idols, in order to persuade the Indians to abandon their religious rites. However, a policy of coercion and force to make the Indians abandon their ancestral religion, by violent means rather than by persuasion, would be intolerable and morally unacceptable (*CHP* 5, 114).
8. Nonetheless, the King has the duty to examine the extent to which his laws and religious policy are aimed at the true, and not simply apparent, conversion of the Indians, since he would have to reject that religious policy if he feared that the laws under consideration would lead to resistance, persecution, pretexts for thievery, and intolerable repression, to the detriment of peace and the common good of the Indians (*CHP* 5, 115).
9. Religious tolerance is a principle of political prudence that occasionally requires one to countenance certain pagan customs and laws, the abolition of which, even though they might be illicit in principle, would nonethe-

less be a crime against social peace and the conscience of the majority of Indians (*CHP* 5, 114-16).

10. However legitimate the Emperor's power over the Indians might be, he may not burden them more than his Spanish subjects by imposing greater taxes upon them, taking away their freedom, or castigating them with any other type of levy or financial charge (*CHP* 5, 112).
11. In the current controversy over the conquest of the Indies, it is not sufficient for the King of Spain to believe that justice is on his side; rather, he is obliged in conscience to examine diligently and to make his counsellors examine the grounds for war that are advanced by the parties to the dispute, and he has the duty to pursue the debate in accordance with the criteria of justice and law (*CHP* 6, 141).
12. The governors and members of the *Consejos*, the political advisers, and the military chiefs are also bound in conscience to examine the reasons for the wars of conquest, to inform the king and the *Consejos* faithfully, and to dissuade them from undertaking any war that they consider unjust or in which they must refuse to take part on the grounds of conscientious objection (*CHP* 6, 143).
13. Likewise, ordinary soldiers may not lawfully enlist in wars of conquest that they know or believe to be unjust, and they are not excused in this matter by their duty to obey, by culpable ignorance, or by an error made in bad faith. But if no evidence of injustice is given and if there are no clear indications of the injustice of the conquests, then ordinary soldiers who have no other responsibilities may take part in war with an easy conscience (*CHP* 6, 141).
14. The Emperor and King of Spain, who is the *bona fide* owner thereof, is not obliged to abandon the conquered territories in the Indies on account of the Indian question or the controversy regarding the legitimacy of the wars of conquest, but he does have the duty to examine the reasons for his ownership of these territories and to listen peaceably to the evidence and claims of the litigating parties (*CHP* 6, 147).
15. In the controversy or claim regarding the restitution of territories, the claimants or litigating parties have the duty to pursue the debate and to study the arguments and evidence that is adduced, and they are obliged to accept the solutions of distribution or equal compensation that might result from political negotiations and arbitration, even though one of the parties involved might be more powerful than the other and would have sufficient strength to occupy the entire territory by force of arms (*CHP* 6, 149).
16. Restitution must be made to the Indians for all the goods and territories that have been taken from them as the result of unjust wars, and the amount of restitution for goods so confiscated should exceed the necessary compensation due for damage caused by the losers in a just war (*CHP* 6, 235-237).

17. However, if the soldiers who participated in an unjust war and in the distribution of the gold and silver gained thereby thought the war was just and did not greatly enrich themselves through the booty thus acquired, or if they have completely used up the gold distributed to them, then those soldiers are not obliged to make restitution because they acted in good faith; nor are princes who were deceived by their counsellors obliged to make restitution (*De iustitia* I 177).
18. The governors and other delegated authorities have the duty to make restitution to the Indians for new taxes imposed without the King's authorization or in opposition to established laws and for taxes that exceed the limits of justice and equity (*De iustitia* I 230-231).
19. If the particular owner of goods taken in an unjust war is unknown, and presuming that owing to the passage of time heirs or direct owners no longer exist, then the value of these goods should be given to the community for the benefit of public institutions at the discretion of its rulers (*De iustitia* I 169).

Dr. D. Luciano Pereña Vicente is coordinator of the 500th Anniversary Chair of the *Universidad Pontificia de Salamanca* and Dean of its Faculty of Political and Social Sciences; he also heads the Department of Ethics and Human Rights at the University of Salamanca. He teaches research methods at the Council for Scientific Research (CSIC) and is Director of the *Corpus Hispanorum de Pace* collection. For 30 years he has led a team engaged in research on the School of Salamanca along three main lines: the foundations and sources of classic Spanish thought; democracy and human rights; ethics and the conquest of America. He has given courses and held seminars at various universities and has attended a number of national and international meetings. Professor Pereña has published 30 reference works, 80 academic papers in Spanish and foreign journals, and hundreds of essays and articles for dissemination purposes.

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