THE LEGAL LOGIC OF WARS OF CONQUEST: TRUCES AND BETRAYAL IN THE EARLY MODERN WORLD

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By definition, the term "conquest" implies the dominance of one political community over others. By definition, too, "conquest" denotes war, and histories of conquest tend to feature episodes of extraordinary brutality, including the complete destruction of civilian settlements. This basic understanding of conquest as political dominance through warfare brings unity to narratives about historical settings as diverse as Inner Asia under Mongol assault, Muslim and Christian advances across the Iberian Peninsula, and the Spanish takeover of indigenous South America. The history of the early modern world has sometimes been styled as a history of invasion, occupation, and the sweeping cultural and institutional consequences of both.

These basic assumptions about the nature of conquest deserve closer scrutiny. Rather than the stark opposition of conquering and conquered societies or the clear-cut dominance of victors over vanquished, early modern campaigns of conquest depended on, and also gave rise to, pluri-political formations. Conquering and conquered societies boasted multiple corporate entities and jumbles of overlapping jurisdictions, and these plural structures guided the strategies and determined the pace and designs of conquest. Campaigns of conquest also produced new patterns of association in fragmented political fields, from experiments in confederation to the construction of fragile networks of alliances. The overwhelming power of conquerors and the catastrophic defeat of the conquered could coexist with the persistence of indigenous polities' autonomy and often produced powerful constraints on the actions of imperial rulers.

A closer look at conquest reveals, too, that peace pacts formed an integral part of the process. Whether labeled as imperial projects or not, conquests enlarged composite polities, and truces created allies and established tributary arrangements such that zones of relative, if unstable, calm sat adjacent to frontiers of open warfare. Parties to truces recognized

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them as vulnerable to disturbance, yet the benefits of peace made such arrangements irresistible, no matter their duration. Many subordinate polities insisted on describing their relation to invaders as one of alliance even after submitting and becoming tribute payers, and imperial agents often adopted the posture of allies when forcefully entering foreign political territories. Some invaders acted initially as tribute payers of host polities before finding advantage and assuming the mantle of conquerors. The alternation of fragile peace and strident conflict created by the context of truces dictated the pace of conquest. Shifting alliances continually reconfigured frontier regions and generated small conflicts that could intensify and spread rapidly. Regardless of the balance of power reflected in truces, all sides understood their volatility and knew that the chronic violence of raiding during periods of peace could move political relationships very quickly from mutual protection to enmity, or from peaceful inequality to open conflict and domination.[1]

In both tributary states and zones of open warfare, intermittent violence drove the dynamics of warfare. Pitched battles were very meaningful but also rare, and "small wars" (some declared, some not) produced more bloodshed if we sum the results of raiding, counter-raiding, violence against women, and captive-taking. This is not to say that conquest campaigns lacked decisive battles. The sack of Constantinople, the fall of Granada, the taking of Tenochtitlan—these and other famous engagements served as the centerpieces of conquest chronicles for good reason; they carried great symbolic importance and conferred strategic advantage on the victors. Contemporaries' emphasis on these engagements reflected, too, widely held views that outcomes of pitched battles expressed divine will. Staged battles represented extensions of legal modes of conflict resolution and could even formally substitute for judicial proceedings in deciding conflicts.[2] Yet seemingly decisive battles took their meaning, too, from the quiet warfare that regularly punctuated long phases of supposed peace.

Recognizing the pluralism of early modern political entities before and after conquest, studying the violence of peacetime, and tracing the instability of alliances – these approaches bring into view important and often overlooked elements of the legal logic of conquest. In a broad sense, the

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1. The subject of truces is related to but slightly different from the subject of peace treaties, which has been examined somewhat more systematically as sources of international law. *See generally* PEACE TREATIES AND INTERNATIONAL LAW IN EUROPEAN HISTORY: FROM THE LATE MIDDLE AGES TO WORLD WAR ONE (Randall Lesaffer ed., 2004); EMPIRE BY TREATY: NEGOTIATING EUROPEAN EXPANSION, 1600–1900 (Saliha Belmessous ed., 2014).

2. JAMES Q. WHITMAN, THE VERDICT OF BATTLE: THE LAW OF VICTORY AND THE MAKING OF MODERN WAR 8, 46–47 (2012); FREDERICK H. RUSSELL, THE JUST WAR IN THE MIDDLE AGES 297 (Walter Ullmann ed., 1975).

practices produced a vernacular jurisprudence of conquest that emerged through the acts and pronouncements of those involved in conflict. More specifically, the politics of truces and the rationales for "small wars" created a close association between the violence of conquest and narratives of betrayal. Contemporary chronicles routinely describe massacres, destructive raids, and sudden outbursts of violence against civilian populations as retribution for broken promises of peace and trust, some formal and some assumed. The emphasis on trust and betrayal often led potential antagonists to place a high value on striking first and also amplified descriptions of what constituted self-defense. The pluri-political contexts of conquest and associated anxieties about alliances and betrayal had the further effect of focusing the discourse of conquest on goals of protection and peacemaking.

In many ways, such justifications for violence fit neatly within the European just war tradition. Medieval formulations posited that a just war could be conducted in response to injury, and injuries could include harms ranging from unlawful taking of property to endangerment of broadly interpreted standards of human justice.[3] Late medieval and early modern innovators offered variations of what constituted injury and who might exact punishment.[4] They characterized various types of offensive behavior as violations of natural law or, more nebulously, as challenges to the legal order of "the whole world which is in a sense a commonwealth."[5] Yet agreement about the legal foundations for violence against polities and people far from Europe remained elusive. Although the basic elements of what made war just were strikingly consistent across periods and authors, there was also no clear consensus about what constituted injury, who had the authority to sanction violence or declare war, what conduct was required of soldiers in a just war, and the degree to which a just war needed to have an ameliorative effect, such as serving the good of all by establishing a basis for long-lasting peace.[6]

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3.   *See*, *e.g.*, RUSSELL, *supra* note 2, at 65 (writing about Gratian).

4.   For Vitoria, American Indians' violation of the natural right to trade and travel could authorize violence; for Grotius, private parties could legitimately act to punish violations of natural law. Anthony Pagden, *Conquest and the Just War: The "School of Salamanca" and the "Affair of the Indies"*, *in* EMPIRE AND MODERN POLITICAL THOUGHT 30,47 (Sankar Muthu ed., 2012) (discussing Vitoria); Richard Tuck, *Introduction* to HUGO GROTIUS, THE RIGHTS OF WAR AND PEACE VOL. 3 ix, xvii-xviii (Richard Tuck ed., Liberty Fund 2005) (1625); Benjamin Straumann, *The Right to Punish as a Just Cause of War in Hugo Grotius' Natural Law*, 2 STUD. IN THE HIST. OF ETHICS 1, 1 (2006).

5.   *See* Pagden, *supra* note 4, at 43 (quoting Vitoria). Pagden points out that Vitoria appeared to cast the *ius gentium* as something broader than the Roman law governing Rome's relations with non-Roman peoples and represent it as a secondary natural law that applied to all men and was recognized by all polities.

6.   *See* Jonathan Barnes, *The Just War*, *in* THE CAMBRIDGE HISTORY OF LATER MEDIEVAL PHILOSOPHY: FROM THE REDISCOVERY OF ARISTOTLE TO THE DISINTEGRATION OF SCHOLASTICISM, 1100–1600 771, 771–84 (Norman Kretzmann & Anthony Kenny Jan Pinborg, eds. 1982).

Opinion shifted, too, on whether it was licit to form alliances across religious boundaries, particularly for the purpose of fighting co-religionists.[7]

Such variations and shifts make it difficult to evaluate European colonial practice against evolving patterns of political thought about just war. By the same token, it is challenging to divine the relation between European and non-European legal approaches to violence.[8] Fortunately, such approaches are not the only options. One can recognize the mutually constitutive relation between theological discourse about just war and the quotidian narration of acts of war without making that relationship a singular object of study. And one can incorporate history beyond Europe without turning the exercise into the study of non-European influences on European writings on international law or into part of a story about European universalism.[9] Analysis of participants' actions and justifications for war brings to light repeating elements of discourse about law and war, making it possible to consider directly and more fully the juridical framing for violence. Whatever the ties to evolving theories of just war, there can be no doubt that conventions of warfare in conquest informed rationales for both routine raiding and exceptional violence. In turn, quotidian references to violence shaped the conduct of conquest.

This paper illustrates the value of this approach by sketching some common scenarios of conquest and war against the backdrop of truces and alliances in pluri-political landscapes. Violence in composite political fields tended to highlight themes of betrayal in justifications for violence. Betrayal was a charge applied with special frequency to unsteady allies and to vassals who were understood as having pledged allegiance in some form to new sovereigns. Accusations of betrayal could frame claims of ongoing or sporadic injury that justified raiding, and they could serve as a convenient trigger for exceptionally brutal attacks on former allies or friends-turned-enemies. In structural terms, the theme of betrayal signaled the delicate situation of polities positioned as simultaneously inside and outside pre- and post-conquest political orders.[10]

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7.   Richard Tuck, *Alliances with Infidels in the European Imperial Expansion*, *in* EMPIRE AND MODERN POLITICAL THOUGHT 61, 61–83 (Sankar Muthu ed., 2012).

8.   The search for influence of Asian interpolity norms and practice, including laws of war, on European writings about the law of nations makes up one strand—largely repudiated by subsequent writers—of the work of C.H. Alexandrowicz. *See* David Armitage & Jennifer Pitts, *This Modern Grotius: An Introduction to the Life and Thought of C.H. Alexandrowicz*, *in* THE LAW OF NATIONS IN GLOBAL HISTORY 1, 28 (David Armitage & Jennifer Pitts, eds. 2017).

9.   For examples of such alternative approaches, *see* LAURA BENTON & LISA FORD, RAGE FOR ORDER: THE BRITISH EMPIRE AND THE ORIGINS OF INTERNATIONAL LAW, 1800–1850 1–27 (2016); JENNIFER PITTS, BOUNDARIES OF THE INTERNATIONAL LAW: LAW AND EMPIRE (2018).

10.   The "inside/outside" problem of international relations is addressed in various scholarship. *See, e.g.,* R.B.J. WALKER, INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY 1–25, 169–

The article begins with some general observations about the role of political pluralism and routines of war and peace in campaigns of conquest across the Eurasian world. I then analyze these currents in several well-known episodes of Spanish conquest in the Americas, highlighting continuities in practice that reinforced narratives about truces and betrayal. Finally, I briefly consider some broader implications of the perspective developed here for an understanding of interpolity law in the early modern world.

CONQUEST AS A GLOBAL PHENOMENON

The association of conquest with phases of warfare followed by political consolidation arises in part from traditional accounts of the Roman Empire. Historians describe a long phase of warfare, including many examples of Romans' brutalization of defeated populations, that produced imperial expansion on a vast scale. This phase gave rise to the Pax Romana, defined as several centuries of relative peace in the territories controlled by Rome, and a sharpening difference between areas legally incorporated inside the Roman sphere and regions beyond it defined as the land of barbarians. That consolidating phase was followed by the split of the empire into eastern and western parts and then, of course, by the conquest of Rome itself.

Recent scholarship calls our attention to two subtle but important elements of this history that begin to reshape our understanding of Roman violence. First, a culture and practice of raiding were central both to Rome's expansion and to the Pax Romana. Small-scale military actions and the lure of plunder fit within broader patterns of conflict and interpolity relations, and in this sense Roman aggression against neighboring polities was singular in its success over a long period but not unusual in its modalities.[11] During the Pax Romana, the majority of Roman fighting forces were stationed in garrisons along the frontier, where they responded to and also engaged in raiding.[12] Routines of raiding were widely recognized and repeated, and so were the options and strategies they generated. No line of garrisons could protect perfectly against incursions, and raids for plunder continually tested the ability of settled regions to defend themselves against predation. Raiders did not move aimlessly about but homed in on targets on or near the frontier

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174 (Steve Smith et al., 1993); ANNABEL S. BRETT, CHANGES OF STATE: NATURE AND THE LIMITS OF THE CITY IN EARLY MODERN NATURAL LAW 10–17 (2011); BENTON & FORD, *supra* note 9, at 193–94.

11.   *See generally* ARTHUR M. ECKSTEIN, MEDITERRANEAN ANARCHY, INTERSTATE WAR, AND THE RISE OF ROME (2009).

12.   ADRIAN GOLDSWORTHY, PAX ROMANA: WAR, PEACE AND CONQUEST IN THE ROMAN WORLD 381 (2016) ("The bulk of the Roman army was deployed in frontier areas—or in mountainous or other difficult country inside the provinces.").

that were weak and rich – the ideal combination – about which they already possessed some information.

Raiding was associated with a set of rationales for violence, a repertoire rather than a rule book for forces on both sides. The value of alliances lay both in their ability to generate information about potential enemies and in the possibilities they created for broader-scale warfare when alliances broke down. Raiding parties in some cases hoped for organized opposition that would justify a brutal response, while those defending against raids often maneuvered to intercept raiders on their way back to their home territories burdened by their booty. A period of successful raiding in a territory could lead to more organized assaults and the establishment of permanent footholds from which to launch further raids. In this sense, as one scholar points out, in the ancient world within and beyond Rome there was "no simple divide between full-scale war and minor raiding and skirmishing, for one led naturally to the other."[13]

The transition from raiding to open war was not always clearly marked, but Roman rituals did exist to create a legal framework for war. Fetial ritual, or the symbolic actions of a college of priests, could legitimize and formalize a state of war. The ritual took the form of a warning of aggression, and generally followed a period of attempts to seek redress for harm, offering populations about to be under attack the opportunity of surrender, usually in exchange for protection against violence to lives and property. Clifford Ando points to one of the clearest contemporary descriptions of this ritual:

> When they wanted to declare war, the *pater patratus*, that is, the chief of the fetials, would set out for the enemy's border. There he would speak certain solemn pronouncements, saying either in a clear voice that the Romans were declaring war for specific reasons, either because they had harmed allies of Rome, or because they had not returned animals they had stolen or captives they had seized. This is called the *clarigatio*, from the *claritas* of his voice. After the *clarigatio*, a spear is hurled into the enemy's territory, to indicate the commencement of hostilities.[14]

The ritual achieved a legal reset by announcing the grievances behind previous violence or diplomacy and by shifting the burden of causing the outbreak of war to the enemy. As Ando notes, the intention was not "to forestall violence" but to "inaugurate wars."[15]

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13.   *Id.* at 54–56, 382 .

14.   CLIFFORD ANDO, LAW, LANGUAGE, AND EMPIRE IN THE ROMAN TRADITION 52 (2011). The same source sets out that where hostile territories were hard to reach, the ritual could be conducted by instructing a prisoner of war from the hostile territory to purchase a piece of land in Roman-controlled territory and then throwing a spear into it. Ando argues that the ritual in this case creates abstract and general categories detached from enemies' actions.

15.   *Id.* at 51.

Practices of raiding and rituals of warfare paralleled persistent legal pluralism and helped to blur the distinction between territories inside the empire and those outside that might become incorporated.[16] Against the standard account of a sharp division between the *ius civile* and the *ius gentium*, there is evidence that Romans relied on analogy to extend the legal status of citizen to aliens while continuing to recognize elements of legal difference between them. It has not been easy to appreciate the subtlety and complexity of Roman legal strategies because of the "suspiciously homogeneous" nature of the Justinian Corpus and a dearth of information about the legal treatment of aliens. Yet we understand the legal pluralism of the empire to be one of its defining characteristics, with the elaboration of the category of "Latin" as distinct from "citizen" and a series of other conceits amounting to "the endless construal of aliens as citizens."[17]

Placing Roman practices of war and peace in the context of much more broadly recognized and widely copied conventions does not equate to a straightforward argument about the Roman origins of a legal framework for conquest. Instead, it allows us to recognize patterns of war and rationales for conquest that influenced a flexible vernacular and helped denizens of the Mediterranean world make sense of widely occurring political and military practices. Interpolity raiding, surrender, and extreme violence encompassed and paralleled Roman approaches.

To bring this observation into focus, consider the practices of violence framing the Arab conquests between the seventh and eleventh centuries. An older view of the Arab conquests pointed to the importance of pressures impelling Arab migration. Critical perspectives on the root causes of the conquests largely left in place a persistent emphasis on their scope and speed. Moving out from the Arabian Peninsula, we are told, Islamic-inspired fighters cut a wide swath of invasion and destruction across the Middle East, North Africa, and Iberia that spread Islam throughout the region.[18]

Recent studies reveal the conquests to be less "Islamic" in character and even less "Arab" than historians initially thought, and show the conquests as relying on and in many regions engendering persistent political pluralism.

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16.   *See supra* note 10.

17.   ANDO, *supra* note 14, at 17–18.

18.   A valuable overview of earlier narratives of the Arab conquests, including the migration thesis, is FRED DONNER, THE EARLY ISLAMIC CONQUESTS 3–10 (1981). The characterization of the conquests as an expansionist project envisioned and led by Middle Eastern Arabs finds repetition in popular histories. Hugh Kennedy, for example, describes his popular account as "a tale of how a small number . . . of determined and highly motivated men were able to cover vast distances, through rugged and inhospitable lands, to conquer major empires and kingdoms and to rule their lands" and describes the speed of these events as "amazing." HUGH KENNEDY, THE GREAT ARAB CONQUESTS: HOW THE SPREAD OF ISLAM CHANGED THE WORLD WE LIVE IN 1, 3 (2008).

The conquests were also not "imperial" in the usual sense, nor impelled by a singular group of interconnected bands and their descendants. Arabs joined an array of other peoples responding to opportunities for raiding created by a long "cold war standoff" of Byzantium and the Persian Empire and by a weakening of Byzantine, Persian, and Chinese power in the sixth century. Viewed in this light, the Arabs appear as the "most successful of the peripheral peoples" on the edges of imperial spheres of influence or inhabiting zones of inter-imperial tension.[19]

Arabs' seventh-century advances displayed familiar features of ancient Eurasian and Roman raiding. Muhammed's coalition made peace agreements with a series of towns in Byzantine Arabia, Palestine, and Syria, concluding truces with local rulers rather than their imperial overlords. Raiding intended for procuring booty could lead in irregular fashion to actual conquest, and raiders sometimes avoided fortified settlements at first and, pressed for provisions like other raiding armies, aimed at easier, more quickly dominated settlements of lesser symbolic significance. When approaching larger targets, raiders frequently demanded submission and tribute in exchange for a promise of securing lives and property. For their part, isolated and weak settlements anticipating an invasion could strike for peace by requesting such terms. The pressures to submit in the face of the threat of Arab raiders helped to fray imperial connections, as town rulers negotiated capitulations independently of Byzantine overlords.[20]

Those towns suing for peace or agreeing to Arab demands to submit did not consider themselves necessarily defeated or conquered. They sought to maintain some autonomy and often negotiated for a greater measure of it if they could offer military assistance to raiders. They were aware that submission, while life saving, also preserved the possibility of a power reversal at a later date. Sometimes, too, raiders took their tribute or booty, and then left. Capitulating after a long phase of resistance could result in more severe treatment by raiders, even if a pact was signed to preserve lives and property. After the Cypriot city of Lapathos surrendered in 650 following resistance and a siege, for example, the result was not just a thorough sacking of the city's goods and treasures but also mass enslavement and shipments of probably tens of thousands of captives to Syria.[21]

If demands for submission and the tactics and timing of capitulation were strategically varied rather than formulaic, negotiations also relied on widespread familiarity with the politics and legalities of raiding. Similar

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19. ROBERT G. HOYLAND, IN GOD'S PATH: THE ARAB CONQUESTS AND THE CREATION OF AN ISLAMIC EMPIRE 21 (2015).

20. *See id.* at 39, 44, 47, 67.

21. *Id.* at 93.

practices of submission and payment of tribute in exchange for the promise of protection permeated the Eurasian and African worlds into which Arab forces were advancing. Formal agreements of this type included the Roman/Byzantine model of the *deditio in fidem*, which involved surrender in connection with a pledge by the invader to act in good faith in implementing the conditions with a measure of justice and mercy.[22] The arrangement was formalized in a treaty or pact.

This framework for violence and its suspension preserved and generated pluralism in various ways. The pluralism of the raiding parties characterized the Arab conquests from the earliest stages, as armies relied on religiously and ethnically different fighting forces and as the dispersed geography of campaigns made imperial centralization impossible. The process of conquest itself also produced political pluralism. Treaty making with individual settlements shifted polities from one imperial sphere to another without removing political differences that set up the dynamics of later conflict or rebellion. For example, the revolt of Berber groups split an emerging Arab sphere of influence and gave rise to new Berber composite polities. Political fragmentation also took place alongside shifting pluralist frameworks inside incorporated territories, where distinctions of status and religious difference were embedded in structures of taxation and rule.

The Iberian Reconquest from the ninth to the fifteenth centuries represented a variant within this vast regional complex of raiding, tribute, and composite political formations. Although the Reconquest undoubtedly belongs to the history of crusading Christendom, to regard it mainly as a religious campaign is to overlook the medium of fractured polities through which the struggle developed. The frontier was never defined simply by religious opposition. At times both Christian and Muslim rulers reached across religious lines to form alliances, and at times they attacked co-religionists or hired mercenaries without regard to religion. Some periods of intensifying religious zeal on both sides corresponded to phases of heightened violence and in-fighting among co-religionists.

Especially striking is the degree to which the Reconquest moved through two familiar and persistent practices: raiding and truces enabling the collection of tribute. As occurred elsewhere in the early modern world, some pitched battles took place, and some took on special symbolism in shifting overall military advantage. Yet most fighters avoided pitched battles and the risks they entailed, and they even maneuvered to delay siege warfare until raiding had pushed the enemy back to defensive positions and secured the

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22.   Gerhard Wirth, *Rome and its Germanic Partners in the Fourth Century*, *in* KINGDOMS OF THE EMPIRE: THE INTEGRATION OF BARBARIANS IN LATE ANTIQUITY 13, 20-21 (Walter Pohl ed., 1997).

surrounding countryside. Even then, sieges were difficult to sustain and raiding armies returned to the cover of territories secured, more or less, behind lines of fortified towns and castles. Between the ninth and fifteenth centuries, the fluid frontier was not a battle line but a hazard zone where the only settlements were small and insecure sites exposed to predation by raiders.

Raiding drew willing participants not just for the glory of serving in what was regarded and rewarded as a rightful (and godly) cause. Raids produced booty in the form of treasure, captives, and – of growing importance in Iberia – livestock.[23] Minor notables as well as commoners on the frontier responded readily to the lure of such rewards, and royal sponsors of raids profited through collection of one-fifth of the value of the booty.

More generally, sustained campaigns of destructive raiding produced windfalls in the form of tribute. A first phase of rampant tribute taking by Muslims began in the mid-tenth century, when caliphate armies under al-Hakam wreaked havoc to the north. Sancho II of Navarre, Ramiro II of Leon, and several counts who were formally dependent polities within a loosely structured Leonese empire all sent peace embassies to al-Hakam and agreed to pay tribute. Under al-Hakam's successor, al-Mansur, Christian polities continued to recognize the superior strength of the caliphate, which in turn did not press to conquer them in part because tribute made uneasy truces so profitable. In the early eleventh century, continual civil war within the caliphate – there were 15 changes in rule between 1009 and 1027 – splintered Muslim political power. The multiple successor states to the caliphate, the *taifa* kingdoms, found themselves exposed to raiding and forced to pay tribute themselves. A resurgent Navarre under Fernando I in the middle of the eleventh century even maneuvered to extract tribute from *taifa* kingdoms in exchange for protection from attacks by Christian neighbors in Castile and Aragon.[24]

If tribute in exchange for protection from harm represented a key modality of conflict and conquest, reversals of fortunes could radically shift

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23. Livestock raids could produce significant windfalls. Forces from Cordoba in 1191 conducted an attack on Christian-held Silva and took 3,000 prisoners and 15,000 head of cattle. JAMES BRODMAN, RANSOMING CAPTIVES IN CRUSADER SPAIN: THE ORDER OF THE MERCED ON THE CHRISTIAN-ISLAMIC FRONTIER 3 (1986). On the cultural significance of livestock raiding, *see* JAVIER IRIGOYEN-GARCIA, THE SPANISH ARCADIA: SHEEP HERDING, PASTORAL DISCOURSE, AND ETHNICITY IN EARLY MODERN SPAIN 86–87 (2014).

24. DEREK LOMAX, THE RECONQUEST OF SPAIN 47–50 (1978); R.A. Fletcher, *Reconquest and Crusade in Spain c. 1050–1150*, *in* SPAIN, PORTUGAL AND THE ATLANTIC FRONTIER OF MEDIEVAL EUROPE 69, 73(José-Juan López-Portillo ed., 2013).

tributary arrangements.[25] After the Almoravids swept over the *taifas* in the twelfth century, they no longer had to pay tribute to Christians. But tributary arrangements returned in the early thirteenth century as Muslim kings of Valencia and Baeza declared themselves vassals of Fernando III and when the caliph of Seville, Abu-l-'Ula, pledged to pay tribute to Fernando III in exchange for a truce.

The long, last phase of conflict leading up to the conquest of Granada centered on the recognized subordination of the last great Muslim polity on the peninsula and its tribute payments to Christian rulers. The treaty signed by Muhammad I of Granada and Fernando III in 1246 set the pattern for a series of subsequent truces over nearly two and a half centuries. In the agreement, Muhammad I declared himself to be Fernando III's vassal and agreed to pay the Catholic king annual tribute. Fernando III in turn recognized Muhammed's authority within the emirate of Granada and other territories. Like subsequent truces, the pact had a time limit specified, in this case twenty years.[26] This pact was followed by no fewer than 74 other truces signed between Catholic monarchs and rulers in Granada between 1246 and 1492. Truces did not end warfare in the form of raiding along the fluid frontier. Surprise attacks and destructive forays of short duration by frontier forces generally did not signify breaking the peace. There was not a single year between 1464 and 1481 without at least one raid and counter-raid, including major attacks on Christian-held Villacarrillo and Cieza in 1477, despite the truce signed in 1475.[27]

The counterpart of the truce was capitulation. As in Arab and Mongol conquests, the Christian advance was accompanied by demands for settlements to surrender and meet certain demands. In Portugal and Spain, Muslims were typically sent into exile and instructed to leave all their property behind. Christian armies presented exile as a concession, the alternative to destructive pillaging. Fernando III allowed the Muslims of Capilla, Baeza, Ubeda, Cordoba, Jaen, and Sevilla to leave and assured their safety, and even their possession of some property, as they traveled to Muslim territories.[28] But Christian raiders did not always accept payments in lieu of attack, and following a practice familiar across the Eurasian world

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25.   On the sale and purchase of protection more generally, *see* Lauren Benton & Adam Clulow, *Empires and Protection: Making Interpolity Law in the Early Modern World*, 12 J. OF GLOBAL HIST., 74, 75 (2017).

26.   DOLORES MARÍA PÉREZ CASTAÑERA, ENEMIGOS SECULARS: GUERRA Y TREGUAS ENTRE CASTILLA Y GRANADA (C. 1246—C. 1481) 22 (2013).

27.   MIGUEL ANGEL LADERO QUESADA, LA GUERRA DE GRANADA (1482–1491) 16 (2001).

28.   JOSEPH F. O'CALLAGHAN, RECONQUEST AND CRUSADE IN MEDIEVAL SPAIN 140 (2003). On the capitulation agreements leading up the conquest of Granada, *see* MIGUEL ANGEL LADERO QUESADA, CASTILLA Y LA CONQUISTA DEL REINO DE GRANADA 79–97 (1988).

they sometimes brutally punished townsmen who surrendered after a long siege or who refused to submit.[29]

Raiding, alliance formation, capitulation and tribute extraction – these routines structured all phases of the Reconquest. The persistent political pluralism of the peninsula made the combination possible and necessary. In the last stages of the long campaign against Granada, when the Catholic kings Isabela and Fernando had determined to take the city, these same modalities were present, while new patterns also emerged. Alongside typical acts of capitulation, sponsored settlement, and the grant of *fueros*, or law codes, the crown took on a stronger role, insisting on making all ecclesiastical appointments and extending a measure of royal jurisdiction throughout the new territories. This enhanced royal power existed alongside the resurgent power of nobles who were receiving rich grants in lands and offices through the conquest. Also in contrast to the conquests of Seville and Cordoba, most Muslim residents of the city stayed in place and retained some property rights.[30] Recent studies properly insist that when gauging the influence of the Reconquest on the Spanish conquest of the Americas, we should specify that conflicts before and after the conquest of Granada, together with Iberian experiences in North Africa and the Atlantic islands, represented the most immediate reference points for the Spanish crown and its agents.[31]

Religious crusading and a penchant for regarding violence against non-Christians as legitimate enemies are therefore only part of the story. By the same token, to herald *convivencia* as Iberia's lost tradition of tolerance is to romanticize this period of conflict. Routines of raiding, truce signing, tribute extraction, negotiated submission, and post-conquest jurisdictional conflict played an outsize role in structuring participation in conquest and distributing its rewards, as well as in shaping justifications for violence. Some distinctive Iberian variants of these practices emerged, but in general they resembled raiding and truce making familiar throughout the Eurasian

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29.   For example, as at Almeria, where mass enslavement followed the siege. *See* O'CALLAGHAN, *supra* note 28, at 140.

30**.**   The strength of crown authority should not be exaggerated; crown policy was reactive and largely driven by petitions from various groups of local notables. *See* DAVID COLEMAN, CREATING CHRISTIAN GRANADA: SOCIETY AND RELIGIOUS CULTURE IN AN OLD-WORLD FRONTIER CITY, 1492–1600 74 (2003).

31.   The Atlantic islands as a model for colonization in the Americas is long recognized, but recent studies have pushed to deepen the understanding of continuities. *See, e.g.*, Gabriel Rocha, Empire from the Commons: Making Colonial Archipelagos in the Early Iberian Atlantic (2016) (unpublished Ph.D. dissertation, New York University).

world.[32] This complex of conquest practices shaped Atlantic violence and the political and legal frameworks of overseas European empires.

CONQUISTADORS AND VIOLENCE

It may be helpful to begin discussion of conquest by Spaniards in the New World with a single example. In 1512, the Spanish crown issued a contract to Juan Ponce de Leon, then resident in Havana, granting him the right to "discover and settle" the Island of Bimini, an undefined area that encompassed what we now call Florida, and appointing him *adelantado*, a term lifted from the Reconquest to signify an officer in charge of the Spanish advance with responsibility for civil and criminal jurisdiction over the expedition and over any lands he might discover and settle.[33] Like other similar grants issued to Spanish agents in the Americas, the contract focused on the financial framework for the venture, mainly Ponce's commitment to finance expeditions and settlements to the region, together with his obligation to provide the crown with a share of "the gold and other metals and things of value that might be on the stated island." There was no explicit authorization of war against the inhabitants—only indirect references to sanctioned violence in the mention of *repartimiento* of the Indians (their assignment as labor), specifications about the financing of fortresses "for defense against the Indians," and reference to Ponce's entitlement to exercise "full power" in the territory.[34]

Only two years later, the Spanish crown issued an addendum. Written after the passage of the 1512 Laws of Burgos placing constraints on the

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32. Pluralism was a feature of these broader European patterns, too. Colonialism within Europe centered on what one scholar has called "a process of replication" involving the creation of new settlements modeled on the legal, civic, and ecclesiastic institutions of late medieval towns in settled areas. Corporate entities organized these replicated places, and even as royal power grew stronger in sponsorship of conquest and settlement, the most powerful parties guiding new town politics consisted of consortia of merchants, townsmen, and clerics, together with noble and royal sponsors. Such patterns were integral to an expansionary phase that resulted in the doubling in size of Latin Christendom between 950 and 1250. *See* ROBERT BARTLETT, THE MAKING OF EUROPE: CONQUEST, COLONIZATION AND CULTURAL CHANGE, 950–1350 307–08 (1993).

33. On the legal capacities and responsibilities of adelantados in Castile, *see* ROBERT MACDONALD, LEYES DE LOS ADELANTADOS MAYORS: REGULATIONS, ATTRIBUTED TO ALFONSO X OF CASTILE, CONCERNING THE KING'S VICAR IN THE JUDICIARY AND IN TERRITORIAL ADMINISTRATION 5–29 (Robert A. MacDonald ed., 2000). And on the legal meaning and context of claims of discovery and settlement, *see* Lauren Benton & Benjamin Straumann, *Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice*, 28 LAW & HIST. REV. 1, 1–38 (2010); LAUREN BENTON, A SEARCH FOR SOVEREIGNTY: LAW AND GEOGRAPHY IN EUROPEAN EMPIRES, 1400–1900 22–23 (2010); SANTIAGO OLMEDO BERNAL, EL DOMINIO DEL ATLÁNTICO EN LA BAJA EDAD MEDIA: LOS TÍTULOS JURÍDICOS DE LA EXPANSION PENINSULAR HASTA EL TRATADO DE TORDESILLAS 420–22 (1995).

34. JOHN E. WORTH, DISCOVERING FLORIDA: FIRST CONTACT NARRATIVES FROM SPANISH EXPEDITIONS ALONG THE LOWER GULF COAST 73–74 (John E. Worth ed. and trans, 2014).

enslavement of Indians in the New World, the second contract outlined the conditions under which Ponce might conduct an authorized war against Indians. Ponce was instructed in dealing with the Indian inhabitants to "make them understand" that they were required to embrace the Catholic faith and "obey and serve" representatives of the Spanish crown. The crown authorized war against Indians if they chose not to obey or if they agreed and then later rebelled. Ponce was provided with the *requerimiento*, a statement drafted by Juan López de Palacios Rubios, a jurist on the Council of Castile, and approved by the crown in 1513, outlining Indians' obligation to submit and the right to attack, imprison, and enslave them if they did not.[35]

These instructions to Ponce, and many others like them, have helped to frame some lightly distorted assumptions about the Spanish conquest. The documented destructiveness and violence of the conquest lead understandably to the view that it was defined by a series of acts of subjugation of Indians.[36] Yet Indian polities continued in military opposition to the Spanish Empire and to independent nation-states of Latin America for centuries. Some of these groups, like the Araucanians and the Charruas of the southern cone, eluded decisive confrontations for a long time through a combination of warfare and semi-nomadic migration. Yet these were not the only political communities that persisted. In Mesoamerica, numerous micro-polities contributed to the Spanish invasion and expected in return to receive a measure of autonomy and exemptions from tribute.[37] In Peru, the symbolically momentous murder of the Incan ruler and his followers at Cajamarca marked not the end of conquest but the beginning of a long phase of civil war on the side of the Spaniards and the establishment of a second Incan state at Vilcabamba.[38] And in New Spain, the post-conquest landscape remained one of multiple micro-polities whose leaders simultaneously acted as Spanish imperial officials and directed the independent political life of Indian "republics."[39]

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35.   *Id.* at 80. For the text of the *requerimiento*, *see* Bartolomé de las Casas, HISTORIA DE LAS INDIAS VOL. 3 3, 26–27 (Agustín Millares Carlo ed., 1951).

36.   This approach underpins one of the persistent "myths" of the conquest: its "completion" through effective subjugation. *See* MATTHEW RESTALL, SEVEN MYTHS OF THE SPANISH CONQUEST 64–76 (2004).

37.   Laura Matthews asserts that the Indians of Mesoamerica regarded their role as more than "auxiliary" and regarded the invasion as a "joint affair." LAURA MATTHEWS, MEMORIES OF CONQUEST: BECOMING MEXICANO IN COLONIAL GUATEMALA 2 (2012).

38.   *See* JOHN HEMMING, THE CONQUEST OF THE INCAS 305–19 (2003).

39.   Bernardo Garcia Martinez, *Hernán Cortés y la Invención de la Conquista de México*, *in* MIRADAS SOBRE HERNÁN CORTÉS 23, 23-47 (Maria del Carmen Martínez Martínez & Alicia Mayer, eds., (2016).

The approach to conquest as a series of contests won by Spaniards also misrepresents the mechanisms through which they were seeking advantage and profit. As in the Reconquest, Spanish agents employed routines and rituals of peace-making, including affirmations of the bonds of alliances and negotiated truce agreements.[40] Declarations by Indians that they were vassals of the king implied incorporation but not the dissolution of their political communities; in fact, keeping these intact for the purposes of tribute exaction was preferable.[41] At the same time, practices of "discovery and settlement" referenced in Ponce's contract were fundamental to solidifying Spanish claims of possession and occupation in the Americas, and these focused less on the submission of Indians and more on the symbolic rituals of founding towns and their associated civic institutions, together with acts and statements aimed at forestalling papal intervention against Castilian claims.[42] Fluent in diplomacy and the rituals of warfare, Indians, meanwhile, maneuvered to preserve the pluri-political structure of empire and to position their political communities as semi-autonomous. In short, the practices of conquest both required pluralism and called it into existence.

Not surprisingly given this context, Spanish chronicles, correspondence, and contracts reporting the interactions with Indians narrated raids and sometimes brutal violence against Indians as logical responses to threats and as reactions to betrayal in the form of breaking the terms of truces, alliances, and agreements to surrender. The ritual reading of the *requerimiento* fit within this broader pattern, rather than the other way around. In exploring the origins of the *requerimiento*, some historians have pointed to the influence of Islamic jurisprudence in the Spanish court; echoes of *jihadi* doctrine do appear to be present in the authorization of violence against non-believers and apostates.[43] Others have located the foundations of the *requirimiento* in medieval adaptations of Roman approaches to just war, in particular the Roman emphasis on the need for formal authorization of acts of violence other than those taken in self-defense, together with the

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40.   In doing so, they were not only acting on their experiences in Iberia and the Atlantic world but also emulating Indian patterns, including the "establishment of alliances; the gathering of the conquistador army; the creation of military garrison towns and ethnic organization of neighborhoods; the arrival of non-military settlers; the awarding of land rights to military captains; and the expectation of exemption from tribute and forced labor." MATTHEWS, *supra* note 37, at 49.

41.   The same could be said about Indian responses to British incursions in North America. On the supple use of the language of subjecthood in the context of an Indian rebellion, *see* JENNY HALE PULSIPHER, SUBJECTS UNTO THE SAME KING: INDIANS, ENGLISH, AND THE CONTEST FOR AUTHORITY IN COLONIAL NEW ENGLAND 81 (2005).

42.   JAMES MULDOON, POPES, LAWYERS, AND INFIDELS: THE CHURCH AND THE NON-CHRISTIAN WORLD 142 (1979).

43.   PATRICIA SEED, CEREMONIES OF POSSESSION IN EUROPE'S CONQUEST OF THE NEW WORLD, 1492–1640 69–99 (1993).

Roman view that enemies vanquished in a just war could be legally dispossessed and enslaved.[44] Both origins stories can be read as connecting the *requerimiento* to the broader practices we have surveyed of formal demands for capitulation in exchange for limited protection and tribute payments. Viewing the *requerimiento* and the rituals surrounding it as a specific variant of this wider pattern allows us to understand the inconsistencies of its application by Spaniards in the New World after 1513. They did not need the specific form in order to be practicing the generally recognized formula of raiding combined with demands for capitulation and the proffer of protection.[45]

The use of the *requerimiento*, as we see in Ponce's case, came on the scene after decades of Spanish-Indian interactions and authorizations of violence like those of the first Ponce contract: indirect but also brutally effective. The document's presentation was also far from systematic. Critics of Spanish treatment of Indians – most notably Bartolomé de las Casas, who lamented that the *requerimiento* was often read "to the trees" – complained that it was announced out of earshot of its intended audience and in a foreign language.[46] But the unevenness of implementation went still further. Spanish chronicles recount attacks on Indians with no reference at all to the reading of the *requerimiento*.

This is not because Spanish imperial agents disapproved of the document but because the ritual blended into a routine practice of demanding declarations of vassalage. We see this in the description of Cortés's advance toward Tenochtitlan and his encounters with various Indian groups along the way. In this telling, specifically crafted to appeal to the king, the advance takes on the structure of an extended raid with the goal of subduing the countryside surrounding his target of Tenochtitlan. Anthony Pagden has suggested that Cortés's actions were not yet styled as conquest because he was asserting that Moctezuma was inviting him to Tenochtitlan and because his "only acts of warfare" in his approach to the city had been "the subjugation of Tlaxcala – which was in some sense an independent city – and the massacre at Cholula."[47] But Cortés was throughout his march relying on the continual threat of violence and the occasional demonstration of brutality, and these acts of "small" warfare were very significant. They were

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44. RUSSELL, *supra* note 2, at 40–54.

45. The flexible use of the *requerimiento* is consistent with another of its purported aims: "to demonstrate to the papacy that the Castilian invasion of the Americas was based on the refusal of the natives to admit missionaries." MULDOON, *supra* note 42, at 142.

46. LAS CASAS, *supra* note 35, at 28–31.

47. HERNÁN CORTÉS, LETTERS FROM MEXICO lxix (Anthony Pagden ed., 2001).

also narrated as responses to the failure of Indians to make and observe peace.

The *requerimiento* was read along the way, but not consistently. On the island of Cozumel, off Yucatán, where Cortés knew of attacks on a previous Spanish expedition, he found deserted towns and sent emissaries to find chieftains. When one came forward, Cortés explained that his only demand was "that the chieftains and people of the island should also owe obedience to Your Highnesses; and [he] told them that by doing so they would be much favored, and no one thereafter would molest them."[48] Meeting forceful opposition by Indians to a landing in Yucatán, Cortés had the *requerimiento* read three times and witnessed by a notary, and the letter to the king reporting these events was careful to specify that Cortés "did not want war" but that "the Indians were most resolutely determined to prevent him from landing, and indeed had already begun to shoot arrows."[49] This pattern continued, and the *requerimiento* was read again the next day to another group of armed Indians; these Indians, too, according to the official account, were engaged in betrayal because they were "attacking us with arrows instead of bringing supplies as they had promised."[50] The Spanish account emphasizes the need for self-defense against Indian attackers even before the *requerimiento* was read; in this case the Spaniards explained their demands through an interpreter, asserting that they "did not desire war but only peace and love between us" – whereupon the Indians "replied not in words but with a shower of arrows."[51] The failure to parlay, here and elsewhere, features prominently in Spanish justifications for violence.

Such accounts of the threat or outbreak of war were often followed quickly with descriptions of Indians' ready declarations of their vassalage. Hernán Cortés records again and again in his letters to the king that Indian "chieftains" presented gifts and declared themselves "very well pleased to be Your Highness's vassals and my friends."[52] Historians have interpreted these reports as either willful misreading of Indians' gestures of liberality that were intended to signify the opposite – their superiority over Spaniards and their permission for them to remain – or as part and parcel of self-interested positioning in order to establish conquistadors' worthiness for valuable royal grants and titles.[53] Yet it is doubtful that Cortés was

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48. *Id.* at 12.

49. *Id.* at 20.

50. *Id.* at 21.

51. *Id.*

52. *Id.* at 54.

53. On the likelihood that the Aztecs' gifts to Spaniards were signs of dominance rather than submission, *see* Inga Clendinnen, *Fierce and Unnatural Cruelty: Cortés and the Conquest of Mexico*, *in*

misreading or misrepresenting so many encounters in the same way. Indians were familiar with tribute and were also aware of the need to provide it in the face of superior military power. Like Spaniards accustomed to the chaotic mixture of full campaigns, staccato raiding, and limited truces of the Reconquest, Indians suggested by their behavior that they also did not regard submission as marking a permanent end to warfare or a surrender of sovereignty. Also, Cortés might have reasonably assumed that his intended audience at the royal court would not find his accounts of Indians' pledges of loyalty either far-fetched or self-aggrandizing because they were the expected response to a threat of siege or invasion.

Declarations of vassalage, real or imagined, would have in fact represented to Spaniards standard elements of truce. What truces brought, in turn, was a powerful rationale for violence in the form of the punishment of betrayal. Once Indian groups had supposedly declared themselves vassals of the Spanish king, any resistance to the Spaniards could be styled treachery and rebellion, and brutally contained. Here again, the Spanish chronicles lay example on example, including the narrative about the Aztecs' supposed betrayal in chasing the Spanish force out of Tenochtitlan. The Aztec ruler's act of "treachery" followed several speeches of submission in which Moctezuma supposedly promised his loyalty to the king and recognized Cortés's legitimate right to rule as the king's representative. The declarations might have been invented by Cortés. But the betrayal they prefaced hardly comes as a surprise in the narrative, which presents a string of dodgy acts by the Aztec ruler clearly intended to undermine and oppose Cortés's agenda and that anticipate his violent "rebellion." Moctezuma's treachery then stands as the rationale for every act of vengeance by the Spaniards and their agents, from the murder of innocents to the burning and destruction of an entire city.[54]

Betrayal was oddly linked, too, to another set of rationales for violence connected with Spanish imperatives to trade and settle. Historians have noted the strategic brilliance of Cortés's founding of the town of Vera Cruz, an act

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NEW WORLD ENCOUNTERS 12, 17 (Stephen Greenblatt ed., 1993). For the argument that Cortés emphasized Indians' status as vassals in various ways to reinforce his legitimacy as conqueror, *see* JOSÉ VALERO SILVA, EL LEGALISMO DE HERNÁN CORTÉS COMO INSTRUMENTO DE SU CONQUISTA 44–47 (1965).

54.   Cortés is explicit in connecting the rationale for war to Moctezuma's "treachery": "I could scarcely believe that such a great lord should . . . say that he was my friend, and meanwhile should be seeking a way to attack me by another's hand . . . But since it was true that he did not keep his word or speak the truth, I had changed my plans: whereas, before, I had been going to his land with the intention of seeing him and speaking with him in order to have him as a friend and to converse with him in harmony, now I intended to enter his land at war doing all the harm I could as an enemy, though I regretted it very much, for I had always wished rather to be his friend and ask his advice on all the things that must be done in this land." CORTÉS, *supra* note 47, at 75–76.

that gave him the possibility of appealing directly to the crown rather than through his sponsor and enemy, Diego Velásquez, governor of Cuba. From a legal standpoint, the founding of the town gave Cortés, appointed by the town council that he himself conjured into existence and that was clearly acting on his behalf, as the chief justice, with jurisdiction over a vast and still-unbounded political community of Spanish and Indian subjects. This jurisdictional power could be called on to authorize specific acts of violence against Indians as subjects. It is very often difficult to tell when violence was being justified by jurisdiction or as an element of warmaking. When news reached Cortés in Tenochtitlan that Indians in a coastal community had invited a delegation of Spaniards to their town and then killed them, Cortés insisted that Moctezuma summon the chieftain at the place of the murders and investigate in order to identify and execute the guilty party.[55] This was on the surface a judicial act, but Cortés was also compelling Moctezuma to use his independent authority over subordinate polities.

The same flexible combination of rationales for violence framed the most spectacular act of Spanish violence of Cortés's advance on Tenochtitlan, the massacre at Cholula. When the Spaniards occupied the city, they negotiated an uneasy truce. In the next days, encouraged by Tlaxcalan allies who regarded the Cholulans as enemies, the Spaniards scanned the scene nervously for signs of danger. Whether the inhabitants were planning to attack or whether Cortés was reading too much into their increasing reluctance to provide food and placing too much trust in reports from various quarters about quiet preparations for war, he became convinced that the Cholulans were planning violence. Cortés ordered all "noblemen, rulers, captains, chiefs, and also the men of the town" to assemble in the temple courtyards.[56] Through an interpreter, he chastised them for plotting to harm the Spaniards and for having agreed to a false truce rather than engaging enemies in open battle. Ever careful to present a legal rationale for violence, Cortés declared, according to Bernal Diaz, that "the royal laws" dictated punishment for their "treasons . . . and that for their crime they must die."[57] The Spaniards then set upon the Indians trapped in the temple courtyards. In the Mexica account dictated years later to Fray Bernardino de Sahagun, the Spaniards' attack was entirely without legal foundation: "Nothing like this was in the minds of the Cholulans. Without swords or shields they met the Spaniards. Without warning, they were treacherously and deceitfully

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55. *Id.* at 89.

56. FRAY BERNARDINO DE SAHAGÚN, FLORENTINE CODEX BOOK 12 29 (1975).

57. BERNAL DÍAZ DEL CASTILLO, THE TRUE HISTORY OF THE CONQUEST OF NEW SPAIN, VOL. II 454 (2010). The fact that the *requerimiento* was not read became a point of criticism during the *residencia* (formal review) of Cortés. CORTÉS, *supra* note 47, at 454, n. 27.

slain."[58] For Cortés, the justification for the massacre activated the theme of betrayal in a way that bundled arguments about the legitimacy of violence in self-defense and the authorization to punish vassals who had submitted to the crown without laying down arms. The same set of rationales created permission following the massacre for destructive pillaging of the city by the Tlaxcalans. This posture treated Cholulans simultaneously as enemies and vassals.

When alliances held, they could have the same effect of preserving political pluralism. Alliances and the fighting forces they provided were crucial to the Spanish advance. In joining forces with the Spaniards to defeat the Aztecs as common enemies, Tlaxcalans assumed the alliance amounted to a pact of mutual convenience that might transition, once the Aztecs had been defeated, to a truce between separate polities. Spaniards considered their indigenous allies to have come under royal authority while retaining elements of self-rule.[59] These positions did not represent different understandings of the relationship but instead signified different interests in how it would develop.[60]

In appealing to the Spanish crown for political autonomy, Tlaxcalans joined in Indian strategies to preserve the autonomy of their political communities. For the hundreds of small community kingdoms of Mesoamerica, deference to Spanish demands that they be recognized as rulers did not necessarily signify surrender, and truces were not always permanent. The open-endedness of violence meant that Spanish dominance could only be established through a kind of retail politics combined with chronic violence. The empire remained, as a result, a patchwork of Spanish municipalities and republics of Indians, often arrayed in a state of suspended warfare. The uneven advance of imperial influence through raiding, tentative jurisdictional acts, and pledged alliances made the empire an interpolity formation. That structure could also serve to transmit violence. When raiding ruptured truces or alliances broke down, the webs of protection and alliance operated, as one historian has observed in the context of North America, like conduits carrying an electrical charge.[61]

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58.   DE SAHAGÚN, *supra* note 56.

59.   R. JOVITA BABER, THE CONSTRUCTION OF EMPIRE: POLITICS, LAW AND COMMUNITY IN TLAXCALA, NEW SPAIN, 1521–1640 67, 194 (2005).

60.   *Id.* at 134. On the limits to focusing on interpreting "understanding" in such encounters, *see* Lauren Benton, *In Defense of Ignorance: Frameworks for Legal Politics in the Atlantic World*, *in* JUSTICE IN BRITISH, IBERIAN, AND INDIGENOUS AMERICA, 1600–1825: THE CHALLENGE OF LEGAL INTELLIGIBILITY (Brian Owensby & Richard Ross eds., 2018).

61.   MICHAEL WITGEN, AN INFINITY OF NATIONS: HOW THE NATIVE NEW WORLD SHAPED EARLY NORTH AMERICA 293 (2012). *See also* BRETT RUSHFORTH, BONDS OF ALLIANCE: INDIGENOUS AND

It remains puzzling that we still have few labels for such interpolity formations, including little scholarly attention to the vernacular jurisprudence of the many small wars that made up the bulk of Spanish-Indian violent encounters.[62] If the best that contemporaries could do was to draw in a disorganized and opportunistic way from multiple legal discourses and political arrangements to create a fluid framework for violence, the limitation was surely partly intentional since such obfuscations provided cover for ad hoc violence. The logic of small wars did not reside, that is, in a well-labeled and coherent political and legal framework. It was transmitted in the piecemeal descriptions of violence on the margins of war: in the interstices of truces, the fluctuation of alliances, the legal practices of settlement, and the subjective definitions of self-defense and betrayal.

CONQUEST AND INTERPOLITY LAW

Empire was a central preoccupation of early modern European jurists.[63] News and commentary about the legal politics of overseas empires filtered to Europe and influenced debates there, while knowledge of the law, however flawed, in turn affected the strategies and declarations of imperial agents.[64] We know that Vitoria, Grotius, and other writers described by historians as central to the canon of early "international" law were aiming explicitly to justify or criticize European violence beyond Europe.[65] Commentary on the laws of war was inextricably bound up with assessments of the legal rights of empires to acquire foreign territory and incorporate new subjects.

This article has sought to widen the lens through which we examine the relation between the laws of war and the comportment of imperial agents and armies. It does so first by placing European practice and discourse about war

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ATLANTIC SLAVERIES IN NEW FRANCE (2012). And on the persistence of Indian polities, *see generally* Garcia Martinez, *supra* note 39.

62.   *See generally* Benton & Clulow, *supra* note 25.

63.   Diego Panizza, *Alberto Gentili's De armis Romanis: The Roman Model of the Just Empire*, *in* THE ROMAN FOUNDATIONS OF THE LAW OF NATIONS: ALBERICO GENTILI AND THE JUSTICE OF EMPIRE 53, 55 (Benedict Kingsbury & Benjamin Straumann eds., 2010). *See generally* ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW 13–114 (2005); BENTON, *supra* note 33, at 1–39, 122–27; PITTS, *supra* note 9 (forthcoming).

64.   *See, e.g.*, Lauren Benton & Benjamin Straumann, *Acquiring Empire by Law: From Roman Doctrine to Early Modern European Practice*, 28 LAW & HIST. REV. 1, 1–5, 6–7 n.10 (2010); KARUNA MANTENA, ALIBIS OF EMPIRE: HENRY MAINE AND THE ENDS OF LIBERAL IMPERIALISM (2010); *see generally* BENTON & FORD, *supra* note 9.

65.   For especially careful analyses, *see* DAVID A. LUPHER, ROMANS IN A NEW WORLD: CLASSICAL MODELS IN SIXTEENTH-CENTURY SPANISH AMERICA 73–74 (2003) (examining Vitoria's position on Roman imperialism); Annabel Brett, *The Space of Politics and the Space of War in Hugo Grotius's De iure belli ac pacis*, 1 GLOBAL INTEL. HIST. 33, 36–51 (2016) (analyzing Grotius).

in the context of Eurasian patterns of conquest. That comparative historical context brings a set of conditions into sharper relief. One is the importance of political pluralism in structuring campaigns of conquest and its aftermath. A related finding is the centrality of truces to the conduct of conquest and to rationales for episodes of extreme violence, often narrated as responses to the breakdown of friendly relations or alliances. Finally, the compatibility of truces with raiding emerges as a key feature of interpolity relations along unstable frontiers of conquest. These elements assembled a useful and flexible legal framework for violence, one that we can glimpse independently of the study of theories of just war in the West.

This is not to say that juridical thought was irrelevant to imperial legal politics. This article's discussion of violence in the Spanish conquest illustrates the fluid connections between rationales for attacks on Indians discussed by European writers and justifications of violence reported by imperial agents. The *requerimiento*, written for the Spanish crown, offered a formula for legitimating attacks on Indians, but interpreting the document and making sense of its rituals fell to imperial agents who relied on a wider set of related routines and narratives. Similarly, conquistadors' emphasis on Indians' betrayal as a justification for violence emerged as a response to perceived dangers, while also supporting strategies to secure royal support based on suppositions about which legal arguments would find favor at home.

The flexible legal framework for conquest merged theory and practice.[66] It resulted not just from iterative connections between them but also from the similarly varied possibilities of worlds of theory and practice. The juridical repertoire informing conquerors, in other words, mirrored a rich and varied grammar of violence and justification in action. In this sense, campaigns of conquest drew on a playbook rather than stringing together set

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66.   Andrew Fitzmaurice has argued that the study of legal practices stands apart in my work from the analysis of the history of legal thought. Fitzmaurice writes that I tend "to dismiss the work and ideas of the canonical figures with whom intellectual historians have been concerned." Andrew Fitzmaurice, *The Dutch Empire in Intellectual History*, 132 LOW COUNTRIES HIST. REV. 97, 108 (2017); *see also* Andrew Fitzmaurice, *Context in the History of International Law*, J. HIST. INT'L LAW (forthcoming). This is a misreading of my work. In *A Search for Sovereignty*, I call attention to "links between the fluid politics of empires and the texts of European jurists, including some of the leading figures in the history of international law: Gentili, Grotius, Bentham, Maine, and others." BENTON, *supra* note 33, at xiv, 121, 277–78; explicitly mapping a way to move beyond a mere search for influence between theory and practice, in *Rage for Order*, Lisa Ford and I locate "vernacular varieties of political theory" emerging from "the empire's legal politics." BENTON & FORD, *supra* note 9, at 14. We go on to reject the distinction between the study of imperial legal politics and the analysis of jurists' texts: Analyzing imperial legal politics and "vernacular political theory across the globe . . . works with, not against, intellectual histories. It redefines intellectual influences as much more diffuse—distributed across the empire in the writings, utterances, and acts of myriad participants in legal conflicts, all of whom understood their contests to have wider implications." *Id.* at 189.

pieces: the parlay, the challenge, the pitched battle. The flexibility of practices of war and peace was more similar to than different from the ambiguity of laws of war. As Annabel Brett notes with regard to Grotius's writings, European juridical approaches to war employed "a multivalent terminology that deliberately defies any overly reductive conceptualization."[67] Strategies and narratives of war by participants also deployed a multivalent legal logic of conquest that could not be described as a theory of war.[68]

This perspective informs a broader objective, the possibility of uncovering interpolity law before the rise of international law.[69] As an example, recent research has examined the importance of "protection talk" as a widespread category for organizing interpolity relations in the early modern world.[70] Agreements about protection structured tributary systems and networks of long-distance trade, while facilitating imperial expansion. A fluid politics of protection shaped alliances and gave rise to sprawling and often surprisingly stable interpolity zones.[71] I have argued elsewhere that "jurisdictional politics" constituted another element of interpolity law involving jockeying over the ordering of multiple legal authorities.[72] Conflicts over possession and proofs of possession appear to represent another widely recurring rubric for interpolity relations in the early modern world.[73]

Should conquest feature in this composite image of interpolity law? The ubiquity of interlocking practices of raiding, invasion, and settlement suggest they should. As we have seen, the practices spanned Eurasia, Africa, and the Americas, and warring polities relied on similar expectations about the possibilities for using, justifying, and fending off violence.

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67.   Brett, *supra* note 65, at 43

68.   Brett, *supra* note 65, at 42 (describing Grotius's juridical writings on war).

69.   Lauren Benton & Adam Clulow, *Legal Encounters and the Origins of Global Law*, *in* CAMBRIDGE WORLD HISTORY VOLUME 6: THE CONSTRUCTION OF A GLOBAL WORLD, 1400–1800 CE, PART 2: PATTERNS OF CHANGE 80, 80–100 (Jerry Bently et. al. eds., 2015).

70.   *See* BENTON & FORD, *supra* note 9, at 115–16, 191–92); Lauren Benton & Adam Clulow, *The Long, Strange History of Protection*, *Introduction* to PROTECTION AND EMPIRE: A GLOBAL HISTORY 1, 1–8 (Lauren Benton et. al. eds., 2017).

71.   *See* Benton & Clulow, *supra* note 70, at 4, 7–8.

72.   And blurring, too, the boundary between intra- and interpolity ordering. On jurisdictional politics, *see* LAUREN BENTON, LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY, 1400–1900 12–15, 80–126 (2002).

73.   *See* Benton & Clulow, supra note 69, at 87–89. Adam Clulow, *The Art of Claiming: Possession and Resistance in Early Modern Asia*, 121 THE AMERICAN HISTORICAL REV. 17, 17–38 (2016); TAMAR HERZOG, FRONTIERS OF POSSESSION: SPAIN AND PORTUGAL IN EUROPE AND THE AMERICAS *passim* (2015). This argument has been fleshed out best for Iberian imperial relations. *See* Lauren Benton, *Possessing Empire: Iberian Claims and Interpolity Law*, *in* NATIVE CLAIMS: INDIGENOUS LAW AGAINST EMPIRE, 1500–1920 19–40 (Saliha Bellmessous ed., 2011).

The analysis of these practices brings some surprises, too. If we take seriously the centrality of truces to the progress of campaigns of conquest, we might elevate peace-making over invasion as a critical component of interpolity relations and, paradoxically, of the early modern law of war. Truces prefigured violence by establishing the basis for presenting conquest as a serial response to betrayals of trust. The failure to parlay, to make peace, to submit, and to act the part of loyal vassals—these possibilities were embedded in the terms of truces, and invaders came prepared to charge their opponents with such infractions, and to deliver punishment. Cycles of truce making, tribute extraction, and raiding ruled the rhythm of conquests and provided their inner logic across legally, religiously, and militarily disparate settings of a politically fragmented early modern world.