

SPANISH COLONIAL SOVEREIGNTY OVER THE PHILIPPINE ISLANDS: LEGAL ORIGINS AND JUSTIFICATIONS

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Abstract

The legal origins of the embryonic Philippine Republic can be traced back over 500 years to a series of papal issuances known as the “Declaration of Alexander,” which provided the Spanish Crown with legal authority to acquire territory overseas. By the time Miguel Lopez de Legazpi arrived in 1565, Spain had already garnered much experience in the management and exploitation of its colonial possessions. King Philip II wanted to prevent a repeat of the brutal conquests in the Americas that belied Spanish attempts to legitimate its colonial enterprise in the name of Christianity. The Manila Synod of 1582 formulated a novel theory upon which Spain staked its legal claim to sovereignty over the Philippine Islands. Through baptism, natives were deemed to have become subjects of the Pope’s spiritual sovereignty while remaining subjects of their own local leaders. The Pope delegated his sovereign powers to the Crown, and the Crown and its subordinates felt legally empowered to promulgate laws deemed necessary, an arrangement some native leaders purportedly agreed to. But many *indios* resisted. As such Spain never technically acquired full sovereignty over the entire archipelago.

Keywords: *Philippines, sovereignty, history, law, papal bulls, Tordesillas treaty, Manila synod*

The natives undoubtedly had true dominion in both public and private matters, just like the Christians, and neither their princes nor private persons could be despoiled of their property on the ground of not being true owners.

Francisco de Vitoria 1539
De Indis, Section I, Premise 24

It is certain that, by public report, if they had to show their titles to those lands it would be found that many, if not all of them, had been usurped from the Indians.

Simon de Anda
Philippine Governor-General
Memoriam 1771

The legal origins of the embryonic Philippine Republic can be traced back over 500 years. By the onset of the fifteenth century, Portugal had achieved political definition and, during 1415, it initiated European colonial expansionism by seizing the Muslim port-city of Cueta on the African side of the Gibraltar Straits.¹ In 1456, Pope Calixto III gave papal blessing to previous and prospective Portuguese Acquisitions of islands and ports down the African coast ‘as far as the Indies’ — that is Asia.” Christian monarchs who challenged the papal edict were threatened with excommunication (Scott, 1987, pp.349-350).²

Thirty-six years later, in 1492, Christopher Columbus entered into a commercial contract with ‘Los Reyes Catolicos’ [‘the Catholic Kings’], Ferdinand and Isabella. Columbus was eager to profit from any discoveries that might be made as a result of his pending journey across the Atlantic Ocean. Significantly, the contract said “nothing ... about any missionary motives nor did the expedition carry a chaplain” (Scott, 1987, p.350).

The contract also gave no heed to the prior understandings between Portugal and the Pope. Unlike the Portuguese, Spain could only invoke a domestic law to legitimize its colonial claims. It vested legal rights over newfound territories in the first inhabitants (Aragon, 1969, pp.3-21, citing Law 29, Title XXVIII, of Partida III as compiled in the 1848 edition of *Las Codigos Espanioles Concordados y Anotados*, III:Codigo de las Siete Partidos). This provision was relied on by Columbus during his inaugural voyage when he laid claim to islands in the Caribbean which were already inhabited.

When Columbus returned on March 4, 1493, he first anchored off Lisbon and was promptly informed by the Portuguese king, John II, that the discoveries belonged to Portugal. Columbus reported this demand to the Spanish monarchs and King Ferdinand hastened to respond. Fearing that the Portuguese might decide to occupy the islands forcibly “on the grounds that numerous papal briefs had given them sole right” (Noone, 1986, p.12), Ferdinand instructed his emissaries in Rome to start working for papal favors to remove the threat of excommunication ... and recognize Spain’s rights to the new territories, whatever and wherever they might be” (Scott, 1987, p.351).

The Spanish Crown enjoyed considerable leverage at the Vatican in 1493. The current Pope, Alexander VI, was “said to have gained the [papal] tiara by a pact with the devil at the price of his soul” (Tuchman, 1984, p.89).³ He was Spanish-born and indebted to Spain for the appointment of his 16-year-old son as archbishop of Valencia. Alexander was also eager to obtain Ferdinand’s neutrality in a complicated annulment proceeding involving relatives of both men (Scott, 1987, p.351). The Pope, therefore, responded favorably to the Spanish demand by issuing a series of papal bulls which are cumulatively known as the “Declaration of Alexander”. “The revision and repetition of the Bulls, to meet Spanish demands, emphasized the importance attached to them by the Spanish monarchs” (Vander, 1916, p.16). It was evident “Alexander VI could refuse nothing to Ferdinand and Isabela” states Vander (1916, p.15), who also adds that “the different bulls of that year were but successive increments of the favors granted to the Spanish sovereigns, Alexander VI being at that time but an instrument in their hands” (p.20). Other European monarchs’ reactions to the papal grants “ballooned into outrage when the extent of the grants was realized” (Dickason, 1988, pp.61-66).

The bulls were addressed to “Ferdinand, King, and Isabella, Queen, of Castile and Leon, Aragon, Sicily, and Granada.” In them, Pope Alexander claimed to have acted on his “own accord, not at your [Ferdinand’s and Isabella’s] instance nor the request of anyone else in your regard.”⁴ It appears that there were at least five bulls. In the first bull, *Inter Caetera*, issued on May 3, 1493, the pontiff cited “the authority of almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ which we hold on earth.” He then purported to “give, grant and assign forever . . . all and singular the countries and islands unknown and hitherto discovered” by Spanish envoys, provided that — “they at no time have been in the actual temporal possession of any Christian owner, together with all their dominions, cities, camps, places, and towns as well as all rights, jurisdictions, and appurtenances of the same wherever they may be found.”

King Ferdinand was not satisfied. The document was a private communication that had not been issued publicly. Furthermore, it failed to delimit Portuguese authority or to define the territory to which Spain could lay claim with papal sanction (Scott, 1987, p.354). The Pope moved quickly to assuage these royal concerns. Another bull, *Eximiae Devotionis*, was issued the following July but fictitiously backdated to May 3. It closed loopholes in the first bull and granted the Spanish Crown the same “graces, privileges, exemptions, liberties, faculties, immunities, letters, and indults that have been granted to the kings of Portugal” (Noone, 1986, p.13).

The grant was not gratuitous. It was accompanied by a papal command that the monarchs “in virtue of holy obedience,” send “worthy, God-fearing, learned, skilled, and experienced men in order to instruct the inhabitants and dwellers therein in the Catholic faith, and train them in good morals.” The duty imposed, however, was not overly burdensome. Rather, it reflected the “masterful hyperbole about Ferdinand’s missionary zeal.” In order to generate the most favorable political conditions and inducements for securing papal sanction of Spanish colonialism, the Spanish king realized that he needed to shroud his imperial designs. On June 8, therefore, Ferdinand “dispatched the Latin outline of what would become the third papal bull, *Piis Fidelium*,” of June 25, 1493. The bull licensed missionaries and empowered Ferdinand to select them (Scott, 1987, pp.354-355).

The king was still not satisfied, and another bull, retrospectively dated May 4, was promulgated in late July 1493. Also named *Inter Caetera*, it laid the foundation for the “Treaty of Tordesillas”, which was signed the following year by representatives of the Spanish and Portuguese monarchs.⁵ The bull attempted to delineate the respective spheres of Iberian influence by drawing an imaginary line between the Arctic and Antarctic poles one hundred leagues, west of the Cape Verde Islands and continuing across the other side of the planet. (The line was moved 270 leagues further west by the Treaty).⁶ In the words of a contemporary, the world was “sliced in two like an orange” (Noone, 1986, p.12 [citing a letter of Alfonso de Zuazo to the Spanish king, Charles I, dated January 1518]). The Spanish zone of exploration was west of the Atlantic line, the Portuguese zone was east. No agreement on the precise location of the Pacific line was ever reached (Cushner, 1971, pp. 9, 21).⁷ Nevertheless, once ratified under oath, the treaty provided that neither party would seek “absolution or relaxation from our very holy Father, or from any other Legate or Prelate who could give it, nor to make use of it if they give it of their own volition” (quoted in Scott, 1987, p.356).

The Spanish monarchy ratified the Tordesillas treaty in the belief that it ensured control over a direct route to the fabled Orient. Columbus, after all, believed up to his death that he had reached islands off the eastern coast of Asia. But it soon became apparent that the islands claimed were not adjacent to Asia. Rather, they abutted a previously unknown continental land mass. Pope Alexander and the Spanish monarchs, therefore, contrived once more to undermine Portuguese claims and shore up Spanish ones. Their efforts culminated in yet another bull, *Dudum Siquidem*, which was dated September 26, 1493. It officially interpreted *Inter Caetera* as empowering the Spaniards to claim lands beyond the treaty line provided they were discovered by sailing west (Noone, 1986, p.13).

The Portuguese, meanwhile, bided their time on the papal front and continued to expand their naval explorations. The Cape of Good Hope had been rounded for the first time in 1487 and this opened the way to India and the Spice Islands. It was only a matter of time until Alexander died and a successor more congenial to Portuguese interests became Pope. Portuguese patience was rewarded on November 3, 1514, when Pope Leo X issued the bull *Praeelsae Devotionis*. It granted the Portuguese king an exclusive right to claim all lands that could be reached by sailing east (Cushner, 1971, pp.9-10).⁸ As a result, the Portuguese believed that Spanish hopes of profiting from the coveted spice trade and the imaginary treasure house on the Asian mainland had been dashed.

The Portuguese were soon to learn that Spanish hopes had actually been rekindled a year earlier when Vasco Nuñez de Balboa, while exploring the Panamanian isthmus, had “discovered” the Pacific Ocean and claimed it on behalf of the Spanish Crown. Balboa’s success renewed interest in the search for a westward sea passage. Eight years later, during an epic voyage to Asia, the straits at the southern tip of the Americas were successfully traversed by, and eventually named after, Ferdinand Magellan.

Magellan and the Islas de San Lazaro

Magellan was an experienced Portuguese mariner. In 1518 he secured the patronage of the Spanish king, Charles I, for a daring effort: Magellan proposed reaching the Moluccas from the west by sailing around the southern tip of the New World. On September 20, 1519, he led a fleet of five ships and 241 men as it plunged into the Atlantic and headed southwest. More than a year later, on November 20, 1520, three ships entered the Pacific Ocean.

When Magellan reached the equator, “he strangely did not veer west in search of the Moluccas he knew to be on that line, rather he changed course when he reached the latitude of Luzon and headed straight for the Philippines” (Scott, 1989, p.14). Long overlooked by historians, the change was no accident. Reports concerning East Asian topography had been filtering back to Europe for several decades prior to Magellan’s historic trip. The conduits were often Spanish speaking, Muslim trading merchants whose forebears had been driven out of Spain during the fifteenth-century Christian reconquest. These merchants “interacted with, among others, natives from the still ‘undiscovered’ Philippine Islands” (Scott, 1989, p.5). They also conversed with Portuguese sailors and merchants who, in turn, relayed the information back home. As a result,

Portuguese cartographers were quickly able to indicate Asian points which Portuguese explorers had not yet seen. An unsigned chart, presumably by Pedro Reinal (who supplied Magellan with maps before he left Seville), drawn before Borneo and the Philippines were reached, shows in addition to known parts along the Indonesian archipelago from Sumatra to the Moluccas, the sketchy outlines of the Chinese coast and, to the east, a group of islands south of the Tropic of Cancer and a larger one just north of it. The Tropic of Cancer actually passes through the large island of Taiwan, and the Philippines, of course, lie to the south of it. (Scott, 1989, p.8, citing Armando Cortesáó and Avelina Teixeira de Mota [1960. *Portugaliae Monomenta Cartographice* 1, plate 10, Anonymous — Pedro Reinal chart of ca. 1517])

On March 17, 1521, the ocean-weary fleet reached the shores of what is now known as Samar Island. Magellan and his men referred to the still relatively unexplored archipelago as the “Islas de San Lazaro” (Antonio Pigaffeta, 1519-1523, in Blair & Robertson, 1973, Vol. 33, p.109).⁹ (The island of Samar was first referred to as “Felipinas”, in honor of Philip, the crown prince, during the ill-fated expedition of Ruy Lopez de Villabos in 1543. Only later was the name used to include the entire archipelago [Cushner, 1971, p.35]). On Easter Sunday, March 31, 1521, the first mass was held in the archipelago on the island of Limasawa at the southern tip of Leyte. That afternoon, a large wooden cross was planted atop a nearby hill.

The planting of a wooden cross symbolized the papal right to proselytize, but the nature and extent of this right would not be determined until the end of the century. Citing letters written by Columbus, Green has reported that in the Americas, “The practice of putting up crosses as a sign of a claim of title was in general use during the period of early exploration” (Green, 1989, p.7; and see generally pp.7-27). Contrary to the prevailing twentieth-century Filipino perspective known as the Regalian Doctrine, however, neither the Pope, the Spanish King, nor Magellan purported to usurp unilaterally all of the customary property rights, or even the sovereign rights, of the natives. This fact was highlighted during the first week of April when Magellan and his men arrived in Cebu. The local chief asked Magellan’s emissaries, including the fleet’s lawyer, if the natives were expected to pay tribute to the Spanish Crown. The lawyer replied that there was no such demand; Magellan merely wanted exclusive trade rights (Pigaffeta in Blair & Robertson, 1973, Vol. 33, p.141; see also Noone, 1986, p.69).

The diplomatic riposte notwithstanding, it was evident that Magellan and his men wanted, and needed, more. During the sixteenth century, Spanish soldiers received no pay; while in foreign lands, they oftentimes had no alternative but to extract their means of sustenance from peoples they met. Fortunately for Magellan and his men, many of the natives they encountered in the archipelago appeared eager to become Spanish vassals, particularly after they saw the power of the king's cannons. Not everyone, however, was so easily cowed; a fact that was confirmed on April 27. On that date, Magellan lost his life on the north shore of Mactan Island during a fight with native warriors led by Lapu-Lapu, a local village chieftain. Shortly thereafter, the remaining crew members departed the archipelago.

Sovereignty and the Alexandrian Declaration

Nearly 30 years elapsed between the "discovery" of the Americas and Magellan's arrival in the Pacific archipelago. Forty-four more years passed before a permanent Spanish occupation force was established. By the time Miguel Lopez de Legaspi and his entourage arrived in 1565, Spain had already garnered a considerable degree of experience in the management and exploitation of its overseas possessions. It had also enacted an elaborate legal framework for administering the vast Spanish empire and for justifying sovereign claims based on discovery. Spanish laws pertaining to discovery were located in the *Laws of the Indies* (*Recopilacion de Leyes de los Reynos de las Indias Mandadas Imprimir y Publicar por la Magestad Catolica del rey Don Carlos II*, 4:13 and 6; laws regarding conquest qua pacification of the natives were compiled in 4:4 and 6). The experience and framework provided the empirical and theoretical bases by which Spain would attempt to administer the Philippine colony from Madrid. But the theory invoked by the Crown for extending its sovereignty over the Philippine archipelago would be unique.

King Philip II ascended the throne in 1556. He wanted to prevent any repeat of the brutal conquests of Mexico and Peru that had done much to belie Spanish attempts to legitimate the colonial enterprise in the name of Christianity. At the same time, the friars were eager to secure more control over the Philippine colonial enterprise than they had in the Americas. The Dominican theologian and renowned humanist, Francisco de Victoria (1483/6-1546), provided powerful arguments in their favor. Vitoria "was an incorrigible anti-imperialist" (Muñoz, 1938, p. 43).¹⁰ His positions were largely inspired by the thirteenth-century scholar, Thomas Aquinas (Phelan, 1959, pp. 8-9). Aquinas believed that temporal rule emanates from nature and that the dictates of nature are universal. In Aquinas' opinion, non-Christian leaders were legitimate and,

provided they did not violate natural law, must be obeyed by their subjects, including Christians (Aquinas, 1964[circa 1260], Question 10, Tenth Article).

Building on Aquinas' premise, in 1539 Vitoria delivered an important lecture at the University of Salamanca. During the lecture, which was titled, "*De Indis Prior et De Indis Posterior*" (The Indies Before and the Indies After), Vitoria examined various legal issues pertaining to Spanish conquests in the Americas. He concluded that rights enjoyed by virtue of natural law must be recognized by a Christian sovereign aspiring to spread the faith. He also argued strenuously that there was no legal basis for unilaterally usurping the sovereignty and property rights of non-Christian natives.¹¹ In Vitoria's words:

The natives undoubtedly had true dominion in both public and private matters, just like the Christians, and neither their princes nor private persons could be despoiled of their property on the ground of not being true owners (Vitoria, 1539, Section I. Twenty-fourth premise).

Vitoria's perspectives clashed with the views of other royal advisors. As a result, efforts to provide a legal justification for the "king's authority over the Indies remained a burning issue . . . virtually throughout the sixteenth century" (Aragon, 1969, p. 4).¹² Much of the controversy revolved around conflicting interpretations of the Alexandrian Declaration. De la Costa has opined that "(p)erhaps it is impossible, in the present state of our knowledge, to tell exactly what the Pope — or the papal curia — thought the Holy See could grant or was actually granting to the Crown of Castille" (1953, p.160). Secular supporters of the Crown did not want to concede that the sole basis for colonial sovereignty rested on papal grants. "[T]his would base Spain's claims to the islands upon a concession emanating from a source outside of Spain. This would confer on the pope or his representative powers that might in the future erode the king's (Constantino, 1975, p. 33). Spanish secularists stressed the right of prior discovery; their foremost exponent was Juan de Solorzano Pereira. "Although virtually compelled to concede some importance to the papal concession, Solorzano argued that the Spaniards were entitled to occupy the Indies without the Pope's sanction" (Phelan, 1957, p. 229).

Vitoria led those who believed in the preeminence of papal powers. He interpreted the bulls as being preeminently spiritual in nature. Since the Pope is not temporal sovereign of the world, Vitoria reasoned, he enjoys no authority over non-Christian peoples. The papal bulls, therefore, could not have entailed any grant of political dominion, let alone ownership, over inhabited territories

(Muñoz, 1938, pp.80-83, 75-79). In addition, the Crown could not base its title on discovery of areas already inhabited. In Vitoria's opinion, efforts to invoke the just war theory were also mistaken, especially in places where the natives tended to welcome the colonizers and fought against them only when provoked (Aragon, 1969, pp.7-8).¹³

The perspective of Vitoria and his allies came to be shared by many people, including King Philip. The comparatively late establishment of a permanent occupation force in the Pacific islands provided him with an opportunity to apply Vitoria's theory.¹⁴ In 1564, Philip dispatched Legazpi and ordered him to pacify the Philippine archipelago peacefully. Philip also ordered that the indigenes be informed that there were no designs on their persons or property.¹⁵

Manila Synod of 1582

The first phase of the Spanish occupation, from the arrival of Legazpi until 1581, was notable for the harsh treatment inflicted by soldiers and colonial officials on indigenous peoples, and the complaints by the friars which ensued (Aragon, 1950, pp.13-52).¹⁶ The most serious abuses were caused by *encomenderos*. Augustinian priests led a vocal opposition to the abuses being committed. The *encomenderos* were defended by the secular regime—*encomiendas*, after all, were “their principal means by which a few hundred Spaniards in the course of twenty-five years pacified a large portion of the northern and the central Philippines (Phelan, 1957, p.230).

Indigenes who initially came in contact with the Spaniards were likely bewildered by the colonial endeavor. Many paid what was demanded of them. Others carried on the tradition of Lapu-Lapu and his followers and rose to defend themselves during *entradas* (expeditions in search of entry points and/or precious metals) by roving bands of soldiers based in Manila and Cebu. The Spanish marauders “would provoke incidents and thus provide themselves with an excuse for making a ‘just war.’” Superior firepower usually ensured a Spanish victory and thereby enlarged the number of tribute-paying vassals (Cushner, 1976, pp.101-102).

The second phase of the occupation (1581-86) was heralded by the arrival of the first Bishop of Manila, Domingo de Salazar O.P. (Aragon, 1950, pp.53-81, 84-114). Salazar came into conflict with the *encomenderos* soon after he disembarked. Significantly, however, Salazar did not object to the exaction of tribute. He viewed the *encomienda* as a “just and necessary” institution.

“What he objected to was the scale of the tribute as levied on Christian and non-Christian, on ‘pacified’ and ‘unpacified’ natives (De la Costa 1953, pp.155-156).¹⁷

In 1582, an ecclesiastical synod was convened in Manila under the leadership of Bishop Salazar to address the problem of tribute collection and, more important, to formulate a novel theory upon which Spain would stake its legal claim to sovereignty over the archipelago. The issue was “by no means purely academic. North and south of the Spanish city of Manila lay extensive tracts of unconquered territory, including whole islands” (de la Costa, 1953, p.158). Most historians seem to assume that, at least for legal purposes, there was an almost instant and widespread conquest. Bauzon, for example, stated that “While the Spanish conquest of the Philippines in 1565 touched off a crisis of conscience among Spaniards, the legality of that conquest as a *fait accompli* was in itself not disputed” (1981, p.19). The synod, meanwhile, began its deliberations on the issue of sovereignty by declaring that the Castilian monarchs “do not occupy the Philippines by right of inheritance or through a just war.” Instead, it “repeated the principle that Castilian sovereignty in the Indies flowed from the commitment to preach the Gospel to the infidels and to provide military protection of converts against their pagan neighbors” (Aragon, 1969, p.10).

The synod also stressed that “the natives could not be deprived of their property or their individual rights founded in natural law and the law of nations unless they positively interfered with the preaching of the Gospel” (Phelan, 1957, pp.222-223). Unlike Vitoria, however, the synod participants were willing to justify the Spanish usurpation on the basis of the indigenes’ supposed cultural inferiority. Their ethno-centrism became “one of the well-springs of the friars’ defense of the natives against harsh exploitation.” The friars harbored “the conviction that they were dealing with peoples culturally inferior to the Spaniards [and] who were unable to defend their rights (Phelan, 1957, p.223).

The synod concluded that the sole right possessed by the Castilian sovereign and its agents “was that of preaching the gospel and not dispossessing any man of what was his” (Aragon, 1969, p.10). The council fathers agreed, however, that the crown held a certain “quasi-imperial authority” over the indigenes by virtue of the supposed “higher spiritual goal” that motivated the colonial endeavor. Through baptism, the natives were deemed to become subjects of the Pope’s spiritual sovereignty while remaining subjects of their own local leaders. The Pope delegated his sovereign powers to the Crown by the bull and the *patronato real*. As a result, the Crown was legally empowered to

promulgate laws necessary for the protection and exercise of the spiritual rights of the native Christians.

Although it may have “had no effect on history” (personal communication, William H. Scott in Sagada, Mountain Province, November 19, 1988), the Synod “defined provisionally the juridical basis of Castilian sovereignty in the islands” (Phelan, 1957, p.232). Aragon (1950) portrayed the third phase of the Spanish occupation as lasting between 1587 and 1600 (p.149). He characterized the period in contradictory terms as “*luchas por la libre aceptacion del dominio espanol*” (“struggle for the free acceptance of Spanish dominion”). Official unanimity over the need to secure “consent” before imposing sovereignty was not attained the century’s end. In large measure this occurred because the Synod’s conclusions were received favorably by King Philip (Cushner, 1971, p.102, citing a royal cedula issued on April 1, 1586).

By 1597 controversy over the legal basis of Castilian sovereignty was raging once more. The catalyst was ostensibly the decades-old dispute between the encomenderos and the Philippine church over the collection of the tribute. The real issue appears to have been political power and which institutions, religious or secular, would dominate the colonial enterprise.

Sovereignty and Consent

Philip decided in favor of the clergy. He decreed on February 8, 1597, that the consent of the natives to Castilian sovereignty should be secured. His instructions were contained in a Royal Cedula dated July 12, 1599 (Blair & Robertson, 1973, Vol.10, pp.343-372, 353-355). Soon after, large delegations of native chieftains from Ilocos, Laguna de Bay, Pangasinan and the Manila provinces were assembled in the presence of colonial officials and priests. Apparently however, only few meetings were ever held and they only included native leaders who occupied government positions, usually as tax collectors.

William H. Scott cautioned (personal communication, interview in Sagada on November 19, 1988), that not much is known of these meetings except for the one held in Laguna de Bay. In other words, the meetings were held “only in areas already conquered.” In the first plebiscites ever held in the archipelago, these precocious native collaborators “voluntarily” and “solemnly” chose the king as their sovereign and natural lord (Phelan, 1959, p.25; Aragon, 1969, p.19). According to Spanish accounts, the “results were overwhelmingly favorable, even if in some instances reservations and conditions were attached” (Aragon, 1969, p.19).

They based their voluntary submission on the contractual promise that the king and his subjects render each other certain services. In these documents the conquest was interpreted as a “liberation.” In overthrowing the pagan cults the Spaniards were said to have liberated the Filipinos from the enslavement of the devil as well as freed them from the oppressive and tyrannical government of their rulers. The positive benefits that the king promised to render were religious instructions, the administration of justice, and protection against their enemies. (Phelan, 1957, p.238)

Governor Tello reported that the natives in Laguna had “not so easily yielded; for the natives there asked a year’s time in which to answer”. Tello’s interpretation of his instructions from the king raises doubts as to the ‘voluntariness’ of the submission. In Tello’s words, he was ordered “by the best and most gentle methods possible”, to compel the natives to render submission (this ceremony having been neglected at first), so that the tributes which they pay “can be collected with more justice.” Pursuant to this interpretation, Tello reported that “Instructions and directions have been sent to all the alcaldes-mayor and to the religious in all the provinces, that by the gracious methods which your Majesty directs, submission shall be rendered” (Letter from Governor Tello to the King dated July 12, 1599, part 9, in Blair & Robertson, Vol. 10, pp.253-255).¹⁸

The plebiscite participants, of course, did not speak for everyone. In many parts of the islands resistance to the colonial imposition was widespread, enduring, and occasionally successful.¹⁹ In addition, the “great land masses of the archipelago never really came under Spanish control,” instead, “except for the great central plain of Luzon, few Spaniards in 1800 resided more than 15 kilometers from the sea coast;” census figures, meanwhile, “represented not the entire population but only those who were willing to be counted “ (Scott, 1982, pp.22-23). As a result, little is known about those who lived beyond the Spanish pale.

Despite these limitations, it was estimated that by 1670, fewer than a half-million *indios* were paying tribute, while twice as many were believed to live outside the colonial realm (Phelan, 1959, p.108; de la Costa, 1961, p.89). A century and a half later, an anonymous Spaniard lamented that only the coastal populations of Luzon and the Visayas had been Christianized (Robles, 1969, p.12, citing a manuscript which was probably written in 1825). And in 1899, an Englishman who had traveled widely in the colony estimated that one-fifth of the population of Luzon and one-fourth in the Visayas were living independently

outside of the colonial framework (Foreman, 1899, p.129; Roth, 1977, pp.98-99).²⁰ In Mindanao, Mindoro, Palawan, Samar, the Sulu Archipelago, the mountains of northern Luzon, and even parts of Panay, this percentage was undoubtedly much higher.²¹ Besides the shortage of Spanish personnel, rugged terrain, and geo-physical isolation contributed to the maintenance of local sovereignty, as did warrior traditions among Islamicized peoples and those living among the Gran Cordilleras of northern Luzon and the interiors of Mindanao.²²

After a brief foray into the mountains of northern Luzon in 1880, the governor-general waxed indignant about the situation in a memoria to the overseas minister in Madrid:

It is certainly humiliating for Spain and her government at home and abroad to realize that thousands of human beings, some at the portals of the capital of the archipelago and many others within sight of Christian towns with resident civil, military, and ecclesiastical authorities, not only live in pre-Conquest [*sic*] backwardness but commit crimes and depredations, carrying their audacity to the extent of demanding and collecting tribute from Christian towns without receiving castigation for their troubles and without any authority having been bold enough to impose upon them (quoted in Scott, 1977, pp.267-268).

The Spanish use of force to secure the consent of the natives to the colonial imposition intensified after the introduction of vastly superior weapons, especially steam powered gunboats in 1848. Still, the “consent” of the Yakan of Basilan was not secured until 1845 (Aragon, 1969, p.20). The Maguindanao Sultanate was not subjugated until 1860, while Jolo fell for the first time only in 1876 (Gowing, 1983, p.12). Igorot resistance proved to be so frustrating to the Spaniards that in 1881 the Governor General issued a decree devoid of any democratic pretenses. He appealed “to all the Filipino Igorots to accept the rule of the Spaniards, under pain of being forcibly subdued.” Predictably, many Igorots refused and once again another expedition was sent against them. The expedition ended when telegraphed orders were received from Madrid, which compelled the governor-general to desist (Aragon, 1969, pp.20-21).²³ Scott (1977) implied that Igorot resistance, including an impressive “list of wrongs inflicted by Igorots on Spanish subjects,” theoretically legitimated, in the minds of Spanish priests and other officials, military efforts to conquer the Cordilleran indigenes (pp.26-27).

The legal implication arising from successful resistance to the colonial imposition, as well as Spain's official domestic viewpoint, was clear: Spain technically never acquired full sovereignty over the entire archipelago. Conversely, regions inhabited by unconsenting peoples retained their sovereign rights.

Spanish Sovereignty and International Law

Centuries-old domestic legal technicalities debated within the Spanish government had no impact on nineteenth-century international law perspectives, at least insofar as Anglo-American legal scholars were concerned. At the time Spain ceded its Philippine rights to the United States in 1898, the prevailing international theory was that an area inhabited by people not "permanently united for political action was deemed *territorium nullius* [empty territory]" (Lindley, 1926, p.80; Bennett, 1978, p.5). This was an ambiguous term that "could mean lands totally vacant of people or merely not inhabited by peoples possessing those religions and customs that Europeans recognized as equal to their own" (Berkhofer, 1979, p.120). Political sovereignty and land title to uninhabited land could be claimed on the grounds of *vacuum domicilium* (empty domicile).

A claim grounded on *territorium nullius* was legally binding over other foreign powers. The presence of an acknowledged colonial in the archipelago would be recognized as a manifestation of sovereignty over the entire island group,²⁴ except perhaps for territory belonging to the Sulu Sultanate.²⁵ The consent of the native inhabitants did not matter, especially if they were not politically organized in a territorially expansive manner.

Spanish sovereignty over the archipelago was ceded to the United States of America in 1898. The theory of consent appears never to have been raised during the transfer. Instead, the United States relied on the international character of the cession and claimed sovereignty over the entire archipelago, including southern territories that fell under the jurisdiction of Muslim sultans and principalities. Had the need arisen, the theory of *territorium nullius* was available.

Widespread resistance in many parts of the colony amply demonstrated the lack of native consent. Subsequent victories by the U.S. military laid the foundation for another internationally recognized legal title based on conquest. But once Spain ceded the archipelago, there was never any need to invoke these alternative theories. It was simply assumed, without question, that the Spanish cession was valid and that it applied to all parts of the colony, whether conquered or not.

Meanwhile, in September 1902, Pope Leo XIII promulgated the Apostolic Constitution *Quae Mari Sinico*. The Constitution terminated any remaining privileges still enjoyed by the Spanish friars who remained in the colony after 1898. It enjoined members of the Catholic clergy to focus their energies on religious, as opposed to worldly, pursuits. It also rescinded the Declaration of Alexander and thereby formally extinguished the last legal remnant of Spanish sovereignty in the Philippines.²⁶

Endnotes

¹The Spanish Crown, by contrast, was not forged until 1469 when the Crowns of Castille and Aragon were united (Wolf, pp.110,112,129). Dickason (1988, p.58), however, cited a papal grant in 1344 that awarded the Canary Islands to Castille, and reported in note 30 that “the islands alternated between Castille and Portugal according to the currents of papal politics.” She added that “In some ways, without pushing the comparison too far, the Spanish conquest of the Canaries can be seen as a precursor of that of the Americas.” (See also Dickason, 1989, pp.176-178).

²Scott’s (1987) article relies extensively on the “meticulous study” of Manuel Gimenez Fernandez (1944). ‘Nuevas consideraciones sobre la historia y sentido de las letras Alejandrinas de 1493 referentes de las Indias’. *Anuario de Estados Americanos*, Sevilla, 1, pp.171-430). Additional support for Portuguese expansion was provided in the papal bulls *Dum Diversas* of June 18, 1452 (Nicholas V); *Romanus Pontifex* of January 8, 1455 (Nicholas V); and *Aeterni Regis* of June 21, 1481 (Sixtus IV). The last reaffirmed the 1479 Treaty of Alcabobas between Portugal and Spain, and was ratified after Spain tried and failed to undermine its rival’s naval hegemony. It “granted . . . Portuguese occupation of Atlantic islands . . . and sanctioned all future discoveries ‘in the Ocean Seas’ (*in mari oceano*), the waters believed to surround the Eurasian land mass” (Scott, 1987, p.350). See also Joaquin (1988, pp.84-99); Green (1989, pp.4-7); Blair & Robertson (1973, Vol. 1, pp.136-137). For a brief survey of earlier, related developments see Dickason (1988, pp.52-58).

³For a brief historical summary of Alexander IV see generally Tuchman (1984, pp.75-90).

⁴The quoted sections are taken from an English translation in Blair & Robertson (1973, Vol. 1, pp.97-111). The original *Inter Caetera* was unknown until 1892 (Scott, 1987, p.355). Blair & Robertson (1973), meanwhile, contains no reference to the bull *Pius Fidelium*.

⁵The treaty and related documents can be found in Blair & Robertson (1973, Vol. 1, pp.115-129, 130-135). See also Lindley (1926, p.124).

⁶Measurements of a league vary between 3.9 to 7.4 kilometers (2.4 to 4.6 miles).

⁷Successful negotiations between Spain and Portugal to determine the location of the Pacific line were held in 1524. Pursuant to the 1529 Treaty of Zaragoza, Spain ceded to

Portugal its supposed rights to the spice-rich Moluccas for 350,000 ducats (Cushner, 1971, p.29).

⁸Excerpts of the bull, *Praeelsae Devotionis*, can be found in Blair & Robertson, 1973 (Vol. 1, pp.137-138).

⁹See generally Blair & Robertson (1973, Vol. 33, pp.25-366; 34:39-180). For a more contemporary translation see Pigafetta in Nowell (1962). St. Lazarus figures prominently in the gospel during the fifth week of Lent, which was when Magellan and his men first arrived (Cushner, 1971, p.17).

¹⁰For additional background into the life and theories of Vitoria, see Scott (1934), Hamilton (1963). See also de Vitoria (1932).

¹¹For a discussion of *De Indis* and Vitoria's other major lecture pertaining to Spanish sovereignty over the Americas, *De Jure Belli* (1539), see Muñoz (1938, pp.44-203). English translations can be found in Scott (1934, Appendixes A and B).

¹²For an overview of other personalities and theories involved in the debate see Dikason (1988, p. 6671), Dickason (1989, pp.144-173), Green (1989, pp.39-81).

¹³See Phelan (1957, pp.226-230); de la Costa (1953, pp.158-160). See also the 1574 Opinion of Fray Martin Rada on Tribute from the Indians (in Blair & Robertson, 1973, Vol. 3, pp.254-259). Self-defense, however, was permitted (Royal Communications to and Concerning Legazpi: King's Reply of August 6, 1569 in Blair & Robertson, 1973, Vol. 34, p.235).

¹⁴Legazpi's arrival was preceded by three unsuccessful attempts in 1525-26, 1527-29, and 1542-43 to establish a permanent occupation force; see Blair & Robertson (1973, Vol. 2, pp.11-73), Noone (1986, pp.109-257), Cushner (1971, pp.21-39).

¹⁵An account of Legazpi's expedition and years in the colony can be found in Noone (1986, pp. 261-439), Cushner (1971, pp. 39-71). See also Blair & Robertson (1973, Vol 2, pp.77-335, and Vol. 34, pp. 236-252).

¹⁶Aragon was a Spanish Augustinian priest who served as the UST archivist during the 1950s. Aragon's book provides a scholarly array of background on the juridical and theological perspectives of the friars which pertained to the Spanish acquisition of the archipelago. Any critical perspective concerning the role of the friars, however, was notably absent.

¹⁷De la Costa stressed that the bishop's position was a product of the previous decades of Spanish colonial experience (1953, pp.156-157, 160). For a description and discussion of the Synod's deliberations see Aragon (1950, pp.59-96); de la Costa (1961, p.1536); de la Costa (1950).

¹⁸See also The Collection of Tribute in Filipinas Islands (in Blair & Robertson, Vol. 7, pp.268-318; Vol. 8, pp.25-69).

¹⁹For an overview and analysis of agrarian uprisings during the nineteenth and early twentieth centuries see generally Iletto (1979); Sturtevant (1976).

²⁰Foreman, in the 1906 third edition, deleted this estimate and cited the 1903 Census of the Philippine Islands figure which identified “uncivilized” people as comprising 8.5% of the colony’s population (p.120). A substantial portion of these peoples, the so-called remontados, had lived under Spanish rule until they fled to more remote locales.

²¹Scott noted that “As late as 1881 more than one-third of the population of Samar was listed as independent, and when the central government pushed a plan to resettle all unconverted Filipinos in registered barrios in the early 1890’s, Antique led the list with 154 such rancherías” (1982, p.23).

²²Islam arrived in the southern portion of the Philippine Islands by the twelfth century and, by the time of Legazpi’s arrival in 1565, its influence had reached beyond Manila (see generally Majul, 1978).

²³For a discussion of the telegram from Madrid and the Governor-General’s response see Scott, 1977, pp.267-273.

²⁴Island of Las Palmas Case (United States v. Netherlands), 1928 In *United Nations Reports International Arbitration Awards* 2, p.829, portions reprinted in McDougal & Reisman (1981, pp.620-625).

²⁵International recognition of Spanish sovereignty over the territory of the Sulu Sultanate was problematical insofar as the British and German governments were concerned (see, e.g., Majul 1978, pp.290-308).

²⁶For an English translation of *Quae Mari Sinico*, see *American Catholic Quarterly Review* (1903, 28, pp.372-379).

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