

**John Wyclif and the Rights of the Infidels: The Requerimiento Re-Examined**



James Muldoon

*The Americas*, Vol. 36, No. 3 (Jan., 1980), 301-316.

Stable URL:

<http://links.jstor.org/sici?sici=0003-1615%28198001%2936%3A3%3C301%3AJWATRO%3E2.0.CO%3B2-1>

*The Americas* is currently published by Academy of American Franciscan History.

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/about/terms.html>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/journals/aafh.html>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

---

JSTOR is an independent not-for-profit organization dedicated to creating and preserving a digital archive of scholarly journals. For more information regarding JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# JOHN WYCLIF AND THE RIGHTS OF THE INFIDELS: THE *REQUERIMIENTO* RE-EXAMINED\*

**T**HE *Requerimiento* was one of the most striking legal documents of the entire age of European overseas expansion. A long line of publicists and scholars from Bartholomew de Las Casas to Lewis Hanke have discussed, praised and condemned it.<sup>1</sup> The *Requerimiento* appears to illustrate more clearly than any other single document the combination of high-sounding motives, legal chicanery and brute force that made the Spanish conquest of the Americas possible. In recent years, there has been increasing emphasis upon examining the conquest in terms of the brute force involved and a decreasing emphasis upon the motives and the legalisms which the Spanish employed.<sup>2</sup> As one scholar

\*I wish to express my appreciation to my colleague, Professor Keith Davies, for his advice and assistance in the preparation of this paper. The present paper is a revised and expanded version of one first read at the Ninth Conference on Medieval Studies at Western Michigan University, May, 1974.

<sup>1</sup>The most convenient introduction to the *Requerimiento* is Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia, 1949) 31-36. The text is in the *Colección de documentos inéditos relativos al descubrimiento, conquista y organización de las antiguas posesiones españolas de ultramar*, second series (Madrid, 1885-19 ) XX, 311-314. The standard English translation is that of Sir Arthur Helps, *The Spanish Conquest in America and its Relation to the History of Slavery and to the Government of the Colonies* 4 vols. (New York, 1856-1857) I, 358-361.

<sup>2</sup>The value of studies dealing with the legal theories which were employed to justify or to condemn the Spanish Conquest has been criticized and defended in a series of exchanges between two of the leading students of the colonial period. See Lewis Hanke, "More Heat and Some Light on the Spanish Struggle for Justice in the Conquest of America," *Hispanic American Historical Review* 44(1964) 293-340; and "A Modest Proposal for a Moratorium on Grand Generalizations: Some Thoughts on the Black Legend," *Ibid.*, 51 (1971) 112-127. In response, see Benjamin Keen, "The Black Legend Revisited: Assumptions and Realities," *Ibid.*, 49(1969) 703-719; and "The White Legend Revisited: A Reply to Professor Hanke's 'Modest Proposal'," *Ibid.*, 51(1971) 336-355. What is still lacking are studies which focus on the links between medieval legal theories about the rights of non-Christian peoples *vis-à-vis* Europeans and the theories (and the practice) of the sixteenth century. Such continuity was outlined in Frank Tannenbaum, *Slave and Citizen* (New York, 1947) and developed somewhat by Herbert S. Klein, *Slavery in the Americas* (Chicago, 1967). E.N. van

has said, the *Requerimiento* was but a "useless legalism," and, presumably, no longer worthy of serious attention.<sup>3</sup> In addition, scholars have generally agreed that the *Requerimiento* is thoroughly understood. Following Las Casas, they have asserted that it contained the legal opinion of the thirteenth century canon lawyer known as Hostiensis that infidels had no right to property or political jurisdiction. In medieval terms, that infidels, such as the inhabitants of the Americas, did not possess *dominium*. In recent years, scholars have asserted that those who defended the Indians against the conquerors, such as Las Casas himself and Francisco Vitoria, drew upon the opinion of Hostiensis' teacher, the canonist-Pope Innocent IV.<sup>4</sup> In this way, the *Requerimiento* and the related debate about the rights of the Indians has been placed within its proper position within the late medieval canonistic tradition.

Yet another discussion of the *Requerimiento* and its roots in the legal tradition might seem unnecessary. The Indians obviously had little interest in the subtleties of sixteenth century Spanish legal thought concerning the rights of the conquered, and the conquerors themselves seem, in practice, to have been little concerned with legal niceties. Such an opinion, however, rests upon two important assumptions which have not been adequately examined. The first is that the document is rooted in the Hostiensian theory of the inability of infidels to possess *dominium*. The second is that the primary purpose of the *Requerimiento* was to offer to the Indians a summary of Christian religious doctrine and political theory in order that by accepting the truths contained therein they might avoid the evils that would attend upon bloody conquest. The contention of this paper is that both of these assumptions are in error, and that the *Requerimiento* was in fact based on the theories of Innocent IV, and that

---

Kleffens, *Hispanic Law Until the End of the Middle Ages* (Chicago, 1969) is suggestive of what could be done by beginning with medieval Spanish law. All three writers stressed the importance of the Spanish legal tradition in shaping the conquest. More attention has been generally paid to the philosophical and theological traditions, usually with heavy emphasis upon the influence of Thomas Aquinas. What scholars have tended to overlook is that the bureaucrats who administered the conquest were generally trained as lawyers and that their writings, when examined closely, indicate the major role which canon and civil law played in their intellectual formation.

<sup>3</sup>Manuel Giménez Fernández, quoted in Juan Friede, "Las Casas and Indigenism in the Sixteenth Century," *Bartolomé de Las Casas in History*, eds. Juan Friede and Benjamin Keen, (DeKalb, Illinois, 1971) 127-234 at 149-150.

<sup>4</sup>The links of Las Casas and Vitoria with the medieval canonistic tradition and their acceptance of the Innocent position on the rights of the infidels are discussed in: Kenneth J. Pennington, "Bartolomé de Las Casas and the Tradition of Medieval Law," *Church History* 39(1970) 149-161; and James Muldoon, "A Canonistic Contribution to the Formation of International Law," *The Jurist* 18(1968) 265-279.

its primary purpose was to protect the Spanish government from the charge that the conquest was based on heretical principles. The specific heresy involved was that of John Wyclif whose opinion that possession of *dominium* depended upon being in the state of grace, an opinion similar to that of Hostiensis, had been condemned at the Council of Constance.

In order to understand the legal tradition on which the *Requerimiento* rested, it is necessary to recognize that three centuries of debate in canonistic circles about the rights of infidels preceded its composition. The essence of the problem was first raised by the Donatist heretics of North Africa in the fourth century. They asserted that the ability of a priest to administer the sacraments validly depended upon his being in the state of grace, not upon his proper administration of the ritual involved, as their opponent, St. Augustine argued.<sup>5</sup> Although the Augustinian view prevailed within the Church, the Donatist position occasionally reappeared when reformers despaired of reforming the institutional Church.<sup>6</sup> The doctrine's appeal lay in its call to abolish all ecclesiastical evils by the elimination of institutionalism itself which the reformers saw as the root of the evils. By the early thirteenth century, the opinion that sacramental power rested on grace had been expanded to include secular power as well. It entered the canon law tradition through the writings of Alanus Anglicus, a defender of the most extreme papal claims to power. He argued that at the birth of Christ all true authority, *dominium*, both spiritual and temporal, was transferred to Him.<sup>7</sup> He in turn transmitted it to St. Peter and to Peter's successors. Infidel rulers who, by definition, did not recognize Christ as the ultimate source of their power and the pope as the channel through which legitimate power comes, did not, according to this view, possess *dominium*. Such were only *de facto* rulers, not *de iure*.

The opinions of Alanus did not receive a great deal of attention at first. For the most part, the canonists were not interested in the status of infidels during the early decades of the thirteenth century. They were

<sup>5</sup>On Augustine and the Donatists, see Herbert A. Deane, *The Political and Social Ideas of St. Augustine* (New York, 1963) *passim*.

<sup>6</sup>The extreme supporters of the Gregorian reform of the eleventh century are occasionally identified as being Donatist in orientation: see Christopher Dawson, *Religion and the Rise of Western Culture* (New York, 1950; reprinted, Garden City, N.Y., 1958) 205. Gregory himself has also been charged with Donatism: see Norman Cantor, *Church, Kingship, and Lay Investiture in England, 1089-1135* (Princeton, 1958) 124, 244.

<sup>7</sup>The significance of Alanus was first stressed by Walter Ullmann, *Medieval Papalism* (London, 1949) 10, 14 and *passim*. See also A.M. Stickler, "Alanus Anglicus als Verteidiger des monarchischen Papsttums," *Salesianum* 21(1959) 346-406.

primarily interested in Alanus' arguments as they affected the debate concerning the extent of papal power over secular rulers in Christian society. Canonistic interest in non-Christians was restricted to consideration of Jews and Saracens whose activities impinged upon Christian society in some way. Only after the middle of the thirteenth century did canonists begin to give serious attention to the status of the infidels. At that point, the beginning of contacts with the Mongols of Central Asia necessitated a fuller consideration of the place of the infidel societies within the scheme of international relations that existed within canon law.

Had the views of Alanus been widely accepted, there would have been no need to develop any new theory of Christian relations with the infidels. If Alanus was correct, then Christians were within their rights to attempt the conquest of any infidel society which they might wish to dominate simply because the infidels had no legal right to rule. The canonist who began the reaction to Alanus' opinion and asserted that all rational creatures, Christians and infidels alike, could possess *dominium* was also the pope, Innocent IV, who first initiated relations with an infidel society.<sup>8</sup> Innocent argued that while Christians had the right to wage war against the Moslems in order to recapture the Holy Land and other territories once Christian but presently in Moslem hands, they had no right to conquer other Moslem lands simply because the rulers were Moslems.<sup>9</sup> Fitting the crusades into the framework of the traditional theory of the just war, Innocent was arguing that the reconquest of the Holy Land was a just war of recuperation. Wars to gain other Moslem territories would be wars of aggression and therefore forbidden.

Having stated clearly the right of infidels to claim *dominium*, Innocent IV then went on to explain how this right was not an absolute one. In his view, the pope, though not a universal temporal ruler, did have a

<sup>8</sup> ". . . possessiones et iurisdictiones licite sine peccato possunt esse apud infideles. haec. enim. non tamen pro fidelibus. sed pro omni rationabili creatura facta sunt, ut est praedictum. ipse enim solem suum oriri facit super bonos. et malos. ipse etiam volatilia pascit . . . et propter hoc dicimus, non licet Papae. vel fidelibus, auferre sua, sive dominia, sive iurisdictiones infidelibus, quia sine peccato possident. . . ." Innocent IV, *Commentaria in quinque libros decretalium* (Turin, 1581) ad 3.34.8., fol. 176. For a further discussion of Innocent's views, see James Muldoon, "Extra ecclesiam non est imperium: The Canonists and the Legitimacy of Secular Power," *Studia Gratiana* 9(1966) 553-580.

<sup>9</sup> "Quod autem Papa facit indulgentias illis, qui vadunt ad recuperandam Terram sanctam, licet eam possideant Saraceni, et etiam inducere bellum, et dare indulgentias illis, qui occupant Terram sanctam: quam infideles illicite possident, hoc totum est ex causa, nam iuste motus est Papa, si intendit Terram sanctam, que consecrata est. . . . Item Terra sancta iusto bello victa fuit ab Imperatore Romano post mortem Christi, unde licitum est Papae ratione Imperii Romani, quod obtinet, illud ad suam iurisdictionem revocare, quam iniuste expoliatus. . . ." Innocent IV, *Commentaria ad 3.34.8.*, fol. 176.

universal judicial and missionary responsibility. Within Christian society he judged men, even rulers, according to the laws of the New Testament and of the Church. Jews he could judge according to the laws of the Old Testament if the leaders of their communities did not enforce these laws. He could judge infidels if they sinned against the laws of nature which, he assumed, were clear to all men.<sup>10</sup> Among the actions for which an infidel ruler could be punished by the pope was the refusal to allow Christian missionaries to circulate freely in his lands. In this case, the natural right of men to circulate freely in peace and the divine mission of the Church to preach to all men combined to override the natural right of any society to govern itself free of outside interference.<sup>11</sup> For Innocent IV, there existed a hierarchy of rights so that the right to *dominium* can and must be subordinate to the Church's mission.

Although the opinion of Innocent IV appears to have become the predominant one among the canonists, it was not unchallenged. Innocent's student, Hostiensis, generally a follower of his master's opinions, took strong issue with Innocent on this issue. Following instead the arguments advanced by Alanus, Hostiensis rejected the argument that infidels could possess *dominium*.<sup>12</sup> In his opinion, the coming of Christ ended the priestly powers of the Jewish priesthood and, by analogy, the powers of non-Christian secular rulers as well. The only exception that he made was for infidel rulers who recognized that their *dominium* was derived from Christ through the mediation of the Church.<sup>13</sup>

No canonist seems to have recognized the Donatist implications of Hostiensis' argument that *dominium* rests on grace, although it might be argued that the failure of later canonists to follow this line of argument suggests that they suspected the danger. It was when the similar opinion of John Wyclif was examined and condemned at the Council of Con-

<sup>10</sup>" . . . sic per praedicta apparet, quod Papa super omnes habet iurisdictionem, et potestatem de iure, licet non de facto unde per potestatem, quam habet Papa, credo, quod si gentilis, qui non habet legem nisi naturae, si contra legem naturae facit, potest licite puniri per Papam. . . . Item Iudaeos potest iudicari Papa, si contra legem evangelii faciunt in moralibus, si eorum prelati eos non puniant. . . ." *Ibid.*

<sup>11</sup>" . . . tamen mandare potest Papa infidelibus. quod admittant predicatores evangelii in terris suae iurisdictionis, nam cum omnis creatura rationabilis facta sit ad deum laudandum . . . si ipsi prohibent praedcatores praedicare, peccant, et ideo puniendi sunt." *Ibid.*, fol. 177.

<sup>12</sup>" . . . mihi tamen videtur quod in adventu Christi omnis honor et omnis principatus et omne dominium et iurisditio de iure et ex causa iusta, et per illum qui suppreman manum habet nec errare potest omni infideli subtracta fuerit ad fideles translata. . . ." Hostiensis, *Lectura quinque Decretalium*, 2 vols. (Paris, 1512) ad 3.34.8., fol. 124.

<sup>13</sup>"Concedimus tamen quod infideles qui dominium ecclesie recognoscunt sunt ab ecclesia tolerandi: quia nec ad fidem precise cogendi sunt. . . ." *Ibid.*, fol. 125.

stance that the implications of what Alanus and Hostiensis had argued became apparent. At the Council, the problem of the relationship of power, both sacramental and civil, to grace was more than a theoretical quarrel among theologians. For the institutional Church, the argument that priestly power depended on the priest's spiritual state meant the dissolution of the Church as an institution. For secular rulers, the implications of this theory emerged when the conflict between the Teutonic Knights and the King of Poland over control of pagan Lithuania reached the Council. The Council acted as a lens which focused two long standing problems in such a way as to make the implications of the legal theories involved clear to everyone.

Among the forty five propositions contained in the works of Wyclif which the Council condemned as false and heretical was the opinion that "No one is a civil lord, or a prelate, or a bishop, while in mortal sin."<sup>14</sup> The defenders of both the papal and the conciliar positions at the Council could agree on the destructive effects of such an opinion on the institution which each camp sought to control. At the same time, it is also clear that the Council Fathers did not read Wyclif's works extensively in order to reach their decision to condemn the propositions. They relied on the list of statements which the supporters of the condemnation advanced. On the surface, then, it would appear that Wyclif's views would justify the conquest of an infidel society on the grounds that the rulers, being infidels, were by definition not in the state of grace. Just as

<sup>14</sup>"Nullus est dominus civilis, nullus est prelatatus, nullus est episcopus, dum est in peccato mortali." Charles-Joseph Hefele and H. Leclercq, *Histoire des conciles*, 10 vols. (Paris, 1916) VII, part 1, 517. Wyclif expressed this opinion in various places in his works. The following extract is representative of his views: "Nota tamen quod nullum est civile dominium, nisi in iusticia evangelica sit fundatum; ideo peccans mortaliter non habet dominium pocius quam virgo perpetua habet paternitatem carnalem. . . ." John Wyclif, *De Civili Dominio*, 4 vols., eds. R. L. Poole and J. Loserth (London, 1885-1904) I, 21-22. Precisely what Wyclif meant by this statement is in dispute. One view is that he meant a man in the state of mortal sin "has neither political authority nor property in the full and proper spiritual sense, but he does not mean that he cannot have these in the ordinary or legal sense." R. W. and A. J. Carlyle, *A History of Mediaeval Political Theory in the West*, 6 vols. (London and Edinburgh, 1903-1936) VI, 60. The difficulty with accepting this argument is that Wyclif pairs civil and ecclesiastical *dominium* so that if, as he argues, mortal sin invalidates the sacraments administered by the sinful priest and he should therefore be removed, then secular power must likewise be invalidated by the sin of its possessor and he too should be removed from his office. On the other hand, it has been argued with equal firmness that his system places real value only on *dominium* which is based on grace. See, L. J. Daly, *The Political Theory of John Wyclif* (Chicago, 1962) 76. The difficulties involved in grasping the meaning of Wyclif's arguments have been summed up thus: "So carefully did Wyclif obscure the logical consequences his theories on dominion would have meant for the nobility that the duke [John of Gaunt], the notoriously immoral son of an equally immoral father, together with the vicious Percy, appeared as his champions at St. Paul's." Joseph Dahmus, *The Prosecution of John Wyclif* (New Haven, 1952) 18.

his arguments could be used to dissolve the institutional Church, so too they could be used to justify unlimited conquest. Indeed, a close reading of *De civili dominio* will provide materials which appear to prove that Wyclif intended to apply his arguments in this way. At one point, for example, he illustrated the argument that *dominium* is lost by mortal sin with a reference to the ouster of Adam and Eve from the Garden of Eden, suggesting that Christians, acting in the place of God, could dispossess infidels.<sup>15</sup>

On the other hand, Wyclif generally subordinated the goal of conquering the infidels to that of converting them. Apparently aware that others might use his arguments to justify conquests, he stressed that the salvation of souls, not the conquest of infidel bodies was the proper goal of Christians.<sup>16</sup> Rather in the fashion of Innocent IV, he argued that the use of force against infidel rulers was justified only if they refused to allow Christian missionaries to enter their lands.<sup>17</sup> Furthermore, in keeping with his avowed intention of advancing ecclesiastical reform, he advised that Christian rulers would do better to employ their arms in reforming the Church at home before marching off to conquer infidels under the banner of religion.<sup>18</sup>

In the final analysis, Wyclif's views on Christian-infidel relations were quite traditional and rooted in the just war tradition which justified wars of defense, not wars of aggression.<sup>19</sup> Furthermore, in a striking reversal

<sup>15</sup>"Confirmatur per hoc quod nullum civile dominium est iustum simpliciter, nisi in naturali dominio sit fundatum; sed nemo habet naturale dominium pro tempore quo peccat mortaliter; ergo nec civile dominium iustum simpliciter. Minor patet ex facto iudicis summe iusti, qui expulit primum hominem de paradiso post peccatum. . . ." Wyclif, *De Civili Dominio*, I, 37-38.

<sup>16</sup>"Obiciunt nempe nobis infideles convertendi quod sumus prevaricatores manifestissimi legis nostre, cum predicamus despectionem temporalium ac aspirationem caritativam et pacificam ad eterna; et tamen de facto nulla gens insistit ardencius circa civile dominium vel pro temporalibus fratrem suum contra caritatem perturbando persequitur. . . . non ergo per rapinam temporalium sed instar Christi ac suorum discipulorum, per eorum renunciacionem sermone et opere convertimus infideles." *Ibid.*, II, 9-10.

<sup>17</sup>"Licet ergo militantibus pugnare contra ferales qui nolunt exhortacionibus vel Christi legibus comparere, eciam contra infideles sectas, supposito quod sacerdotibus ecclesie revelatum sit quod eorum exhortacione neglecta sint per corporalem gladium castigandi." *Ibid.*, II, 255.

<sup>18</sup>"Rex igitur invadens regna externa si corpus rebellet anime, debet primo corpus suum subicere, cum sit hostis pericolosissimus dampni maximi de proximo versimiliter illaturus. . . . Racio prima est quod rex ad beneficienciam sui et suorum est obligacior, secunda quia inpugnacio eorum de quibus rex habet curam speciale est periculosior. . . ." *Ibid.*, II, 244.

<sup>19</sup>For example, Book II, ch. 17 of *De Civili Dominio* which deals with the just war cites *Causa XXIII* of the *Decretum*, the basic canonistic source for the just war, extensively, more extensively in fact than the editor's notes would indicate. Although Wyclif is said to share in the strong antipathy of theologians to lawyers, both canon and civil, nevertheless he cites their material a great deal. On Wyclif's antipathy to lawyers, see Daly, *Political Theory of John Wyclif*, 96.



of the usual argument that Christ's birth radically affected the right of non-Christians to *dominium*, Wyclif argued that it was wrong to point to the wars of the ancient Hebrews as a model for wars of religion waged by Christians. The coming of Christ meant the end of such wars. The God of the Old Testament ordered His people to fight. Christ ordered His followers to love all men and to preach to them.<sup>20</sup>

The failure of the Council Fathers to consider Wyclif's thought in all its complexity becomes quite apparent when their treatment of John Hus is compared with their treatment of Wyclif. The zeal with which the members of the Council sought to accuse Hus of being a follower of Wyclif, even on points that Hus rejected, suggests that the Council Fathers were very alarmed about Wyclif's opinions and very anxious to see them destroyed. Although Hus' opinions, like those of Wyclif, came to the Council as a series of propositions, the Bohemian had the distinct advantage of being present and being able to point out that his opinions had been quoted inaccurately. This appears clearly in the debate about Hus' views on *dominium* when he specifically denied teaching Wyclif's doctrine "that a priest in mortal sin does not consecrate." In response to this charge, he suggested that if his critics would take the trouble to examine his writings, they would see that he had written that such priests administer the sacraments unworthily but validly.<sup>21</sup> In spite of this, members of the Council continued to charge him with believing that *dominium* rested on grace. Jean Gerson, for example, asserted that "the most pernicious error" in all of Hus' works was precisely this opinion. Matthew Spinka has argued that "Gerson hastily assumed that Hus shared Wyclif's view without taking the trouble to note Hus's qualification of it," a charge that in all probability can be leveled against all the Council Fathers.<sup>22</sup>

<sup>20</sup>"Et videat quare per idem non sequitur quod cerimonialia et iudiciali veteris testamenti debent hodie observari. Consideret secundo quod patres veteris testamenti secundum legem singulariter eis datam in funiculo distribucionis conversantes habuerint infideles undique circumseptos, quos auctoritate Dei tanquam eius adversarios precepti sunt aggredi. In novo vero testamento cum preceptum est evangelium predicari cuilibet creature et omnes homines diligere remittenda est iniuria cuilibet instar Christi, eum per hoc medium omnes gentes debent converti." Wyclif, *De Civili Dominio*, II, 249.

<sup>21</sup>Peter of Mladonovice, "An Account of the Trial and Condemnation of Master John Hus in Constance," *John Hus at the Council of Constance*, ed. Matthew Spinka (New York and London, 1965. Records of Civilization: Sources and Studies, LXIII) 87-234 at 171-172.

<sup>22</sup>Spinka, *John Hus at the Council of Constance*, 171, note 25. See also, Matthew Spinka, *John Hus, A Biography* (Princeton, 1968) 248-249, where he argues that Gerson's criticisms of the Church were essentially in agreement with those which Hus had expressed, but that Gerson simply accepted "the calumnies of Hus' enemies for truth" and thus failed to see the areas in which he and Hus were in agreement.

While the sensitivity of churchmen at the Council to the implications of what they considered, too simply perhaps, Wyclif's considered opinion on *dominium* obviously resulted from the fear that his doctrine, if accepted, would dissolve the institutional Church, laymen had a similar response to its implications for secular power. When Emperor Sigismund heard Hus say that the effect of mortal sin was to render a secular ruler unworthy before the throne of God, he responded that all men were sinners and, presumably unworthy to possess *dominium*.<sup>23</sup> For the Emperor this was obviously an unsatisfactory conclusion, one which could lead to the dissolution of all secular government.

The most extensive discussion of the problem of *dominium* at Constance came in connection with the debate over the conflicting claims of the King of Poland and the Teutonic Knights to Lithuania. In this arena the practical implications of the ideas about *dominium* which Alanus, Hostiensis, and Wyclif had advanced came into public view. The Knights claimed the right to control Lithuania on the basis of papal bulls which authorized them to convert these infidels to Christianity. The King of Poland's representatives argued that the conversion of the Grand Duke of Lithuania and the subsequent Union of 1386 which linked Poland and Lithuania under a single ruler ended the role of the Knights in Lithuania. Paulus Vladimiri, a noted canon lawyer who served as an advocate for the Polish position at Constance, asserted that the Knights' position rested on the condemned doctrine of John Wyclif concerning *dominium* because they assumed that the Lithuanians, being infidels, were incapable of possessing *dominium*.<sup>24</sup> In an extensive discussion of the theory that grace is necessary in order to have *dominium*, an essay which significantly is entitled *Opinio Hostiensis*, Vladimiri concluded with a firm restatement of Innocent IV's assertion that all men, even infidels, have the right to *dominium*.

Infidelity is not inconsistent with *dominium*, because *dominium* and preferential status spring from human law, namely the *ius gentium*. The distinction between the faithful and the infidels is from divine law. Divine right,

<sup>23</sup>Spinka, *John Hus at the Council of Constance*, 202-203.

<sup>24</sup>Paulus Vladimiri, "Articuli contra Cruciferos," Stanislaus F. Belch, *Paulus Vladimiri and his Doctrine Concerning International Law and Politics*, 2 vols. (The Hague, 1965) II, 905-988 at 917. Belch's work is an aggressive attempt to demonstrate the significance of Vladimiri in the development of international law and the importance of the conflict between the Knights and the King of Poland in focusing his ideas on the subject. The position of the Knights has been recently defended by Erich Weise, *Die Amtsgewalt von Papst und Kaiser und die Ostmission besonders in der 1. Hälfte des 13. Jahrhunderts* (Marburg, 1971).

however, which is derived from grace, does not remove right, which comes from natural reason.<sup>25</sup>

For Vladimiri, the Hostiensian argument that with "the coming of Christ all jurisdiction, pre-eminence, honor, and *dominium* were transferred from the infidels to the faithful" led logically to the conclusion that "a war against infidels who do not recognize Roman *imperium* is always just and licit for Christians."<sup>26</sup> This was a conclusion which he could not accept, preferring instead to follow the *communis opinio* of the canonists which was that of Innocent IV. Vladimiri appears to have been the first lawyer to comprehend fully the political consequences of what Alanus, Hostiensis and Wyclif had argued.

Had the debate on *dominium* remained on the level of legal tracts, the Wyclifian implications of the Knights' position might not have become widely recognized. A war of words between supporters of the Knights and those of the Poles which culminated in a special commission of the Council to investigate the charges raised in the quarrel eventually gave wide publicity to the problem. A Dominican friar, Johannes Falkenberg, a supporter of the Knights, declared that the Poles and the Lithuanians were "heretics and shameless dogs who have returned to the vomit of their infidelity." In addition, the friar also claimed that the "King of the Poles, since he is a bad ruler, is an idol and all the Poles are idolators and serve their idol Jaghil."<sup>27</sup> In this barrage Falkenberg mixed various charges, at least one of which, the assertion that the Poles had lapsed from the faith, was a traditional argument for a just war.

Falkenberg's charges received a good deal of attention from the Council, resulting eventually in a series of tracts and statements by various individuals for and against the friar's position. One of his supporters noted, however, that the accusation of idolatry, if taken literally, would convict Falkenberg of accepting Wyclif's condemned views on *dominium*, something that the Dominican surely could not have intended.<sup>28</sup> Rather than justifying the war on the grounds that the Poles and Lithuanians were infidels and idolators, this writer eventually argued that the work of the Knights was analogous to the task of reconquering Spain, thus shifting the basis of the war to the traditional just war of recuperation.<sup>29</sup> As Vladimiri had noted elsewhere, this

<sup>25</sup>Vladimiri, "Opinio Hostiensis," Belch, II, 845-884 at 883.

<sup>26</sup>*Ibid.*, 864.

<sup>27</sup>*Acta concilii Constanciensis*, ed. Heinrich Finke, 4 vols. (Münster, 1896-1928) IV, 363, 365.

<sup>28</sup>*Ibid.*, 364.

<sup>29</sup>*Ibid.*, 403.

analogy was invalid because Lithuania, unlike Spain, had never been occupied by Christians in the past.<sup>30</sup>

Although the Council did not resolve the conflict between the Knights and the King of Poland which dragged on until 1446, the Council's commission to study Falkenberg's charges did reach a conclusion. In December 1417, the commission drafted a report which condemned Falkenberg's tract because it "contained many false, detestable and damnable [statements] which are against the faith and against good morals. . . ."<sup>31</sup> While not specifically accusing the Dominican of adopting Wyclif's teachings, it is reasonable to assume that among the doctrines which constituted "errors against the faith" in Falkenberg's tract were the Wyclifian implications which the tract contained.

The condemnation of Wyclif's opinions at Constance and the recognition that Hostiensis' opinions on *dominium* were identical with Wyclif's forced the canonists to follow the opinion of Innocent IV on *dominium* or face the threat of condemnation. While the obvious reason for this shift was the threat which the doctrines of Wyclif posed for the Church as an institution, the effect was to cause a major shift in the attitude which the lawyers would take toward infidel *dominium*. The result was the development and refinement of Innocent IV's justifications for Christian intervention in infidel societies. For the remainder of the fifteenth century, the canonistic tradition continued to hold to the position that infidels did possess *dominium* but that the pope's responsibility for the souls of men and his role as universal judge could require him to order the use of Christian arms against infidel societies. In addition, there emerged the argument that Christians also had a responsibility to civilize primitive peoples as well as to convert them.<sup>32</sup> The justifications for conquest thus acquired a positive tone, stressing the advantages, both spiritual and temporal, which the infidels would obtain from Christian domination.

l'expansion Portugaise au XV<sup>e</sup> siècle," *Revue d'histoire ecclesiastique* 48(1953) 683-718; 49(1954) 438-461; 51(1956) 415-453 and 809-836]48(1953) 715-17 at 715. For a full discussion of this letter and its place in the development of legal thought about the status of infidels, see James Muldoon, "A Fifteenth Century Application of the Canonistic Theory of the Just War," Proceedings of the Fourth International Congress of Medieval Canon Law (Toronto, August 21-25, 1972).

<sup>30</sup>Vladimiri, "Opinio Hostiensis," Belch, II, 878.

<sup>31</sup>*Acta concilii Constanciensis*, IV, 430.

<sup>32</sup>King Edward of Portugal raised this argument in connection with the conquest of the Canary Islands in 1436. According to him: "Has indomiti silvestres fere homines inhabitant qui nulla religione coagulati, nullis denique legum vinculis irretiti, civili conversacione neglecta, in paganitate veluti pecudes vitam agunt. Iis navale comercium, literarum exercicium, genus aliquod metali aut numismatis nullum est." The text is in Charles-Martial de Witte, "Les bulles pontificales et

This was the legal tradition within which Juan López de Palacios Rubios was operating when he, as is generally supposed, drew up the *Requerimiento*. It is a tradition of which those who have described the document as expressing Hostiensian views have been unaware or which they have misunderstood. The essence of the *Requerimiento* is that the Indians do indeed have *dominium*. The Spanish could not lawfully invade their lands until the document had been read to them. The message of the *Requerimiento* is that the Christian Church is responsible for them and that the natives must allow missionaries to preach the Gospel to them. If they refuse to allow this and to recognize the papal appointment of Ferdinand of Aragon and his daughter Joanna as their overlord so that the work of conversion could proceed smoothly, then the Spanish troops could move. Failure to heed the message of the *Requerimiento* provided a *casus belli* which the Spanish needed in order to legitimize their attack in terms of Innocent IV's opinion on infidel *dominium*. If infidels did not have *dominium*, there would be no need to prepare the *Requerimiento* and to engage in the ritual of reading it before an attack.

The misinterpretation of the *Requerimiento* stemmed from two errors, one concerning what Hostiensis' views on *dominium* really were, and the other concerning the purpose for which it was composed. Both of these errors can be traced to the writings of Las Casas whose opinions have gone unchallenged. Las Casas admitted to being puzzled by Palacios Rubios' willingness to authorize the Spanish conquest on the basis of the Hostiensian position which Las Casas realized was unacceptable theologically.<sup>33</sup> What Las Casas did not perceive was that both the Innocentian and the Hostiensian positions led inevitably to the justification of the right of conquest. The two opinions differed on the basis for justifying such conquest, but Innocent IV, no less than his student, essentially admitted the right of Christians to invade infidel societies. What Las Casas and those who have followed his lead have overlooked was Innocent's careful creation of a scale of spiritual priorities which the pope could invoke to override the *dominium* of infidels. Although Las Casas was familiar with the legal tradition and employed it in his battle with the Spanish government, he was not a trained lawyer. He was far more concerned with the goal of protecting the natives than with

<sup>33</sup>Bartolomé Las Casas, *Historia de las Indias*, 3 vols., ed. Agustín Millares Carlo (Mexico, 1951) III, 25-28. Francisco Vitoria, *De Indis et de jure belli relectiones* Washington, D.C., 1917; reprinted, New York, 1964) 121-122, argues that Hostiensian arguments were used to justify the conquest, although he did not say specifically that Palacios Rubios employed them or that they were to be found in the *Requerimiento*.

exploring the subtleties of canon law. As a result, he missed the crucial distinction between Innocent's opinion and Hostiensis'.

Las Casas missed the importance of the subtle distinction between the two legal opinions because he assumed that the basic purpose of the *Requerimiento* was to inform the Indians of the choices open to them on the eve of a Spanish attack. If this was the real reason for its composition, then the line of critics from Las Casas to Hanke who have been scandalized by the vision of *conquistadores* reading it to trees and empty villages or hurling it at the backs of fleeing Indians has a right to be scandalized.<sup>34</sup> On the other hand, there is no evidence that the Spanish government took any great steps to insure that the document was read carefully and that the natives had sufficient time to ponder their response before the troops attacked. In fact, the major purpose of the document was to protect the Spanish from the charge that they were basing the conquest on Wyclif's doctrine of *dominium*. The *Requerimiento* fits into the series of documents which the Spanish used to legitimize their various conquests, in Europe and overseas. The papal bulls dealing with the conquest of Navarre and the more famous ones which Alexander VI issued to the Portuguese and the Castilians in 1493, granting them each the exclusive right to direct the exploration, settlement and subsequent conversion of a specific region were legitimizing documents. They formed part of a legal tradition by means of which the papacy sought to direct and control European conquest and expansion, a tradition which reached well back into the Middle Ages.<sup>35</sup> The *Requerimiento* was an effort to prove to the papacy that the conquest of the Americas was proceeding along the lines that the papacy would approve. That is, the primary reason for the conquest, according to the *Requerimiento*, was to convert and to civilize the natives. It was not undertaken for base motives. In addition, the Spanish felt obliged to state that they were not denying the *dominium* of the Indians, that, like Innocent IV, they were acting because of the overriding obligation of Christians to spread the Gospel. In the early days of the conquest, before the Spanish hold on the Americas was assured, the government obviously feared that other European nations would enter into the Americas. The easiest way for them to do so legally would be to prove to the papacy that the Spanish

<sup>34</sup>Hanke, *The Spanish Struggle*, 34-35.

<sup>35</sup>Ferdinand the Catholic in particular was very sensitive to the need for legitimizing conquests. See Roger B. Merriman, *The Rise of the Spanish Empire in the Old World and in the New*, 4 vols. (New York, 1918-1934; reprinted, 1962) II, 345. Two more recent works have sought to analyze this legitimizing role of the papacy in more detail: Luis Weckman, *Las Bulas Alejandrinas de 1493 y la Teoría Política del Papado Medieval* (Mexico City, 1949) and de Witte, "Les bulles pontificales. . . ."

were not living up to the terms of Alexander IV's bulls, or to prove that the Spanish were justifying their conquest on a doctrine which had been condemned as heretical. It is no coincidence that the *Requerimiento* gradually fell into disuse in the 1540's as the Spanish conquest was becoming secure and when the progress of the Reformation was making a mockery of papal claims to universal jurisdiction. Papal approbation was no longer a factor worth considering in the administration of the conquest.

The strongest argument against this interpretation of the *Requerimiento* is the existence of Palacios Rubios' tract on the right of the Spanish to the Americas, *De las Islas del Mar Océano*. In the introduction to the first printed edition of the text, Professor Silvio Zavala argued that this treatise demonstrates the Hostiensian position of Palacios Rubios.<sup>36</sup> Here again, he followed the argument of Las Casas without further examination of the legal tradition within which the work was written. In fact, Palacios Rubios made it clear in the treatise that the Indians did possess *dominium*, that infidelity was not a suitable grounds for dispossessing them, and that only for good and just cause could the Spanish invade their lands.<sup>37</sup> In another place, to the question of the effect of conversion upon infidel *dominium*, Palacios Rubios responded that as they possessed *dominium* before their conversion, so they would continue to possess it after conversion.<sup>38</sup>

What Palacios Rubios, following Hostiensis, did assert was that infidels possessed no lawful authority over Christians, a position widespread among the canonists and philosophers, although not universal.<sup>39</sup>

<sup>36</sup>"A fin de fundo este principio, tan decisivo papa las relaciones entre la Christiandad y los reinos de infieles, Palacios Rubios se apoya en la doctrine canónica del siglo XIII, o como diría Las Casas, sigue 'el error de Ostiensis'." Juan Lopez de Palacios Rubios, *De las Islas del mar Océano*, intro. and ed. by Silvio Zavala (Mexico City, 1954) XC.

<sup>37</sup>"En virtud, pues, de estos tres derechos parece haberse introducido en cierto modo el dominio de las cosas. . . . Todo esto se refiere no sólo a los fieles, sino a los infieles. . . . Fieles e infieles poseen y tienen lícitamente la propiedad de las cosas, como abiertamente lo afirma Inocencio, al que siguen todos los demás, al comentar el citado capítulo 'Quod super his, De voto'. . . ."

"De lo anterior se infiere primeramente que los infieles no deben sólo por motivo de su infidelidad y sin mediar otra causa justa, ser privados de sus bienes, ni moverles guerra en que los Cristianos se apoderen de lo que poseen." *Ibid.*, 41-42.

<sup>38</sup>"Por tanto, el dominio que en común o en particular tenían, lícita y justamente, antes de convertirse y de quedar sometidos a vuestro poder, lo conservan hoy, porque al tornarse Cristianos y súbditos vuestros no lo perdieron, como en el capítulo anterior hemos dicho de su ingenuidad y libertad, pues los infieles son capaces para el dominio de las cosas y posesiones." *Ibid.*, 39.

<sup>39</sup>"De lo dicho resulta que el dominio de prelación o jurisdicción que los infieles pretenden tener sobre los fieles puede quitárseles por sentencia u ordenamiento de la Iglesia, poseedora de la autoridad de Dios, porque los infieles, por mérito de su infidelidad merecen perder su potestad sobre los que pasan a ser hijos de Dios. . . ." *Ibid.*, 115.

Innocent IV, for example, following a long standing canonistic position, argued that having infidels rule over Christians was an imprudent situation but not an illegal one.<sup>40</sup> At no point did Palacios Rubios deny the essential point in Innocent IV's argument, namely that infidels did possess *dominium*. Rather than attacking this position directly, he undermined it by developing the various arguments which Innocent himself had used to explain the overriding responsibility of Christians for the conversion of infidels.<sup>41</sup>

Placed within the proper legal context, the *Requerimiento* takes on a somewhat different sense than the one scholars have generally attributed to it. Professor Hanke, for example, assuming that it contained the Hostiensian position on the rights of infidels, argued that its proponents "lulled the King's conscience" with it in order to justify the conquest of the Americas.<sup>42</sup> When looked at as embodying the Innocentian doctrine of the rights of the natives and the superior responsibility of Christians for the souls of infidels, and a document which was only one of a long line of documents designed not to lull but to legitimize, there remains no need to suppose that the composition of the *Requerimiento* was any less an integral part of the quest for legitimizing the conquest than the earlier papal bulls had been.

In a wider context, Hanke's "Spanish Struggle for Justice in the Conquest of America" was not a uniquely Spanish theme at all. The justice which the Spanish sought to achieve was derived from the medieval canonistic tradition which placed the pope at the head of a judicial pyramid. The secular rulers of the world were subordinate to him and served as his agents in achieving a just and orderly world. By accepting the responsibility for administering the program of conversion

<sup>40</sup>"... fatemur tamen, quod si populi conversi essent, sed domini remanerent infideles, quod Papa bene posset domino infideli dominium et iurisdictionem dimittere super fideles, arg. 1. ad Thimo.6. in prin. dummodo Christianos non gravaret iniuste. Item propter periculum posset cogi dominus ad recipendum pretium vel commutationem. . . ." Innocent IV, *Commentaria*, 3.34.8., fol. 177.

<sup>41</sup>It is interesting to note that the *Requerimiento* is constructed along the general lines of two letters which Innocent IV addressed to the leader of the Mongols in 1245. These letters discuss Christ's incarnation and the subsequent responsibility of the pope for the souls of all men. This is not to say that Palacios Rubios was directly influenced by Innocent IV's letters in the writing of the *Requerimiento*. Rather, the similarity suggests that Palacios Rubios thought along the lines of Innocent IV because he was influenced by Innocent's views on *dominium*. The bulls are in the *Monumenta Germaniae Historica, Epistolae saeculi XIII e registis Pontificum Romanorum*, II, sel. G. H. Pertz, ed. C. Rodenberg (Berlin, 1887) 72-75. See also, C. Dawson, *The Mongol Mission* (London and New York, 1955) 73-76.

<sup>42</sup>Hanke, *The Spanish Struggle*, 35.



in a particular region, as the Spanish and Portuguese had done by the terms of Alexander VI's bulls, a Christian ruler was accepting a papal licence, one which could be removed if the terms of the grant were not fulfilled. What is most striking is that the Spanish and Portuguese monarchs were among the last European monarchs to seek papal legitimization for their expansionistic activities. The view of a papally directed society which underlay the *Requerimiento* and the related papal documents was clearly an outdated one, a view of the world which is usually said to have been laid to rest with Boniface VIII.<sup>43</sup>

Finally, the struggle over the rights of the infidels was linked, through the legal tradition, to the far more important problem of the nature of the Church. When the lawyers defended the right of infidels to *dominium*, they were not thinking primarily of the inhabitants of the Americas. They were thinking of the related problem of ecclesiastical dominium. If infidels could not possess *dominium* because they were in the state of sin, neither could sinful priests, a conclusion which obviously unacceptable. The easiest of all justifications for European conquest of the non-European world, the denial of rights to the infidels, was made unacceptable by the condemnation of Wyclif's opinions at Constance. The elaboration of subtle legal distinctions to justify such conquests was a direct result of the lingering effects of that condemnation. John Wyclif, who had so little impact upon contemporary Church theology and reform, shaped the path which the lawyers were to take on the problem of *dominium*. The condemnation at Constance meant that the opinion of Innocent IV, not that of Hostiensis, would be the basis of legal thinking on the rights of infidels.

JAMES MULDOON

Rutgers University—Camden  
Camden, New Jersey

<sup>43</sup>It is interesting to note that Palacios Rubios cited Boniface VIII's *Unam sanctam* in his discussion of the Spanish claim to the Americas (page 88). Yet, although this bull is generally understood as the most extreme assertion of papal claims to temporal power, a document which enshrined the theories of Alanus Anglicus according to Walter Ullmann (*Medieval Papalism*, 11), it is possible to interpret it differently, in the tradition of Innocent IV's views on the relation of the two powers. For this interpretation, see James Muldoon, "Boniface VIII's Forty Years of Experience in the Law," *The Jurist* 31(1971) 449-477.