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Representation and the State in the Early Modern Spanish Empire

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ABSTRACT OF THE THESIS

Representation and the State
in the Early Modern Spanish Empire

by

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In the past decade, there has been a concerted effort to understand the relationship of the European colonial experience to the conceptual development of the state and international law in the early modern period. This thesis shares in this endeavor, but poses a new question about the relationship of empire to the maturation of the concept of representation, a concept that recent historical literature has shown to have been inextricably linked to the development of the concept of the state in the same period. The latest historians to have written on the subject have acknowledged that representation was first spoken of and exercised in monarchical and ecclesiastical settings, but these writers have not investigated the concept’s articulation within the political practices and theories of empires. This work thus serves to highlight the crucial role the concept played in the building of the Spanish overseas empire.
The thesis of Sean Nikos Messarra is approved.

Peter J. Stacey  
Anthony R. Pagden  
Kevin Terraciano, Committee Chair  

University of California, Los Angeles  
2015
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Introduction

Those who love looking and listening are delighted by beautiful sounds and colours and shapes, and the works of art which make use of them, but their minds are incapable of seeing and delighting in the essential nature of beauty itself ... And those who can reach beauty itself and see it as it is in itself are likely to be few.

- Plato, *The Republic, 476-476c*¹

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From antiquity to the modern age, philosophers and writers of diverse backgrounds have explicated theories about the unsettling situation Plato describes in the *Republic*: a nearly insurmountable gap that separates art from nature, which most minds are apparently incapable of realizing. In the eighteenth century, the Swiss philosophe Jean-Jacques Rousseau reproduced a similar opinion about the character of art and its relationship to nature in his correspondence on the theater. His greatest contention is perhaps not the theater itself, but its partisans who claim that the playwright’s words make virtue loveable and vice odious. The virtues and vices are things that were known to man before he ever sat down to write drama; for man is born good, and knowledge of what is decent from what is evil is found within our hearts and not in the text of plays. The theater, in other words, does not instill sentiments in us that we do not already hold. It merely represents them. Rousseau wrote in a similar way regarding the subject of aesthetics. He considers the love of beauty as something natural to man, that is, something not born from an arrangement of scenes or the author’s choice of words. The playwright finds everything he presents on stage to his spectatorship in nature; he does not bring beauty or the virtues to us from himself by act of creation, but cleverly appeals to what is already found in existence. For Rousseau, the use of representation ought to be unnecessary insofar as the presentation of ideas of beauty and morality are concerned. Ultimately, the theater obscures man’s understanding of the natural world.²

Toward the end of the nineteenth century, the trained classicist Oscar Wilde advanced a radically different opinion in his dialogue *The Decay of Lying* (1889). The Victorian writer suggests that if art is to ever make any lasting impact on society, it must never make the appeal to nature that Plato and Rousseau describe. Because the reality of things are rather unpleasant, the representation of nature should be avoided since people tend to live their lives in imitation of the characters found in the works of literature and theater they consume. The artist ought to

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instead consciously lie to his or her spectatorship about reality if they wish for their art to serve as an instrument of societal change, as “Art is our spirited protest, our gallant attempt to teach Nature her proper place.”

This thesis is not a history of art theory, nor is it a philosophical response to this apparently timeless question about the relationship of art to nature. This is a thesis about the history of the concept of representation and its role in the building of the Spanish empire in the sixteenth century. And although it focuses on the use of the concept in primarily political and theological settings, it aims to highlight the versatility of the concept in different contexts as well as the longevity of the problems it has posed over time. Regardless of the particular historical circumstances in which it has been deployed, the problems of representation, as we shall see, are considerably similar in nature across disciplines. The problematic gap between art and nature that Plato, Rousseau, and Wilde delineated — between that what represents and that what is represented — is the underlying issue that the concept poses throughout the pages of this work. This introduction will then not only serve as a review of the recent historiography about the history of representation in political theory, but will discuss the scholastic conception of representation in the theater, as the schoolmen of the Middle Ages played an instrumental role in the concept’s transmission into the early modern period.

In the past decade, there has been a concerted effort to understand the relationship of the European colonial experience to the conceptual development of the state and international law in the early modern period. This thesis shares in this endeavor, but poses a new question


about the relationship of empire to the maturation of the concept of representation, a concept recent historical literature has shown to have been inextricably linked to the development of the concept of the state in the same period. This latest scholarship has implored us to think about the emergence of the concept of the state as a development that necessitated some form of representation in politics. The birth of the state in political theory (and consequently the rise of representative government) therefore comprise a single, inseparable and contemporaneous process. The most well-known proponent of this idea to which all these historians point is the English political theorist Thomas Hobbes (1588-1679), who wrote a sophisticated analysis of the concept of representation in chapters sixteen and seventeen of his *Leviathan* (1651). In his words, for the commonwealth to come into being from the state of nature it required the appointment of “one Man, or Assembly of men, to beare their Person ... This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine CIVITAS ... And in him consisteth the Essence of the Commonwealth; which (to define it) is One Person ... And he that carryeth this Person, is called SOVERAIGNE.” For Hobbes, the commonwealth could not be a commonwealth without it having a man or assembly of men to bear its person. His entire theory of the state relied on the use of this word “Person,” which at first glance does not seem to say much about representation even though later on he uses the word “representative” to describe the sovereign. Yet in the preceding chapter he defined the word “Person,” explaining its classical origins as well as its relation to representation:

> A PERSON, is he, whose words or actions are considered, with as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction. When they are considered as his owne, then is he called a Naturall Person: And when they are considered as representing the words and actions of another, then is he a Feigned or Artificiall person. The word Person is latine: instead whereof the Greeks have πρόσωπον, which signifies the Face, as Persona in latine signifies the disguise, or outward appearance of a man, counterfeited on the

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Stage; and sometimes more particularly that part of it, which disguiseth the face, as a Mask or Visard: And from the Stage, hath been translated to any Representer of speech and action, as well in Tribunalls, as Theaters. So that a Person, is the same that an Actor is, both on the Stage and in common Conversation; and to Personate, is to Act, or Represent himself, or an other; and he that acteth another, is said to beare his Person, or act in his name; (in which sense Cicero useth it where he saies, \emph{Unus sustineo tres Personas; Mei, Adversarii, & Judicis}, I beare three Persons; my own, my Adversaries, and the Judges;) and is called in diverse occasions, diversely; as a Representer, or Representative, a Lieutenant, a Vicar, an Attorney, a Deputy, a Procurator, an Actor, and the like.\footnote{Hobbes, \textit{Leviathan}, 111-112.}

Hobbes’s intriguing analysis suggests that, at some point in time, the concept of representation had no association with politics. The reader is left to wonder when the concept and the word “Person” made its transition from the theater to the political realm. Hobbes, unwittingly faithful to the humanist education of his youth, points to Cicero’s \textit{De Oratore} as an early example of the word’s use in a civic context. He strangely omits, however, the more relevant Ciceronian passage that is to be found in \textit{De Officiis}, where the philosopher opines that “the particular function of a magistrate [is] to realize that he assumes the role of the city” (\textit{gerit personam civitatis}).\footnote{Additionally, the magistrate “ought to sustain its standing and its seemliness, to preserve the laws, to administer justice, and to be mindful of the things that have been entrusted to his good faith.” Cicero, \textit{On Duties}, ed. Miriam Griffin and E.M. Atkins (Cambridge: Cambridge University Press, 1991), 48.}

Nevertheless, there lays a wide space of time between the writings of Cicero and Hobbes that the existing narrative on representation has yet to fully take into account. One part of this story that is critically missing is the elaboration of the concept and its corresponding language in scholasticism, particularly within the works of Saint Thomas Aquinas (1225-1274) and his most enthusiastic Spanish revivalists in the sixteenth century.\footnote{There is the exception of the extensive scholarship written on the theory of representation advanced in Marsilius of Padua’s \textit{Defensor pacis} (1324). For for this work see Michael Wilks, “Corporation and Representation in the \textit{Defensor Pacis},” \textit{Studia Oratiana} 15 (1972): 251-292, Jeannine Quillet, “Community, counsel and representation,” in \textit{Cambridge History of Medieval Political Thought c.350-1450}, ed. J.H. Burns (Cambridge: Cambridge University Press, 1988), 554-574, and Hwa-Yong Lee, \textit{Political Representation in the Later Middle Ages: Marsilius in Context} (New York: Peter Lang Publishing, 2008).}

On one hand, it is important to consider this earlier history in order to understand the concept’s varied meanings and its uses in non-political contexts. Pope Innocent III (1160/61-1216), for example, notably adopted the Ciceronian language, who wrote pertaining to
the function of the papacy that, “the pope is him who is called upon to bear or to ‘represent’ [gerere] the person of Christ.” On the other hand, the study of this earlier episode in the history of political thought is significant because the Thomist theologians preceded Hobbes in his appropriation of the Cicero passage from De Officiis. In the Summa Theologiae, Aquinas described the prince as he “who has charge of the people and who bears the public person” (qui curam populi habet et eius personam gerit). The theologian Francisco de Vitoria (c.1485-1546), who lectured much closer to Hobbes’s day, generally opted from using the precise phrasing of Cicero and Aquinas, but nevertheless conveyed the same idea through identifying the prince in several of his lectures as an “appointed agent” of the community, “a servant of the commonwealth,” “a public representative,” and “the authorized representative of the commonwealth” However, he did employ similar language to that of Aquinas in his lecture De potestate ecclesiae Prior (1532) while discussing the supremacy of spiritual power over temporal power, commenting on the biblical relationship of Melchisedec to Abraham that “Abraham was


\[\text{Reference 11} \text{ While it is possible Hobbes could have simply missed the relevant passages found in the works of the late medieval schoolmen, he could have also intently chosen not to recognize the influence of their projects given his hostility toward Aristotelianism and scholasticism: “The Writings of Schoole-Divines, are nothing else for the most part, but insignificant Trains of strange and barbarous words, or words otherwise used, then in the common use of the Latine tongue; such as would pose Cicero, and Varro, and all the Grammarians of ancient Rome. Which if any man would see proved, let him (as I have said once before) see whether he can translate any Schoole-Divine into any of the Modern tongues, as French, English, or any other copious language: for that which cannot in most of these be made Intelligible, is not Intelligible in the Latine. Which Insignificancy of language, though I cannot note it for false Philosophy; yet it hath a quality, not onely to hide the Truth, but also to make men think they have it, and desist from further search.” Leviathan, 472-473.} \]

\[\text{Reference 12} \text{ Thomas Aquinas, Political Writings, ed. R.W. Dyson (Cambridge: Cambridge University Press, 2002), 162. Summa Theologiae Iae Iae q. 57 a. 2.} \]

\[\text{Reference 13} \text{ Francisco de Vitoria, Political Writings, ed. and trans. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 21, 157, 162-163, 301. The last example is a problematic translation as Vitoria does not use the word “representative” (at least in one of several of the original Latin sources readily available). Instead, he expresses: “Quia Princeps non est nisi ex electione Reipublicae; ergo gerit vicem et authoritatem illius.” The Latin here is derived from vol. 2 Relecciones Teológicas del Maestro Fray Francisco de Vitoria: Edición crítica, con facsimil de códices y ediciones principes, variantes, versión castellana, notas e introducción, ed. Maestro Fray Luis G. Alonso Getino (Madrid: Asociación Francisco de Vitoria, 1933), 395. In any case, the passage still bears resemblance to the wording of Cicero and Aquinas through Vitoria’s expression that the prince bears the role and authority (gerit vicem et authoritatem) of the commonwealth. It also reveals the means by which the prince holds his office, by election. However, it is possible that Vitoria could have elsewhere described the prince as a “representative.” The collection of Vitoria’s relections presented by Pagden and Lawrance consists of material gathered from (1) a copy of Vitoria’s original manuscript made by Andrés de Burgos, Hernando Ortiz, and Juan de Heredia between 1538-1545, (2) a publication of 1557 from Lyon by the bookseller Jacques Boyer, and (3) a publication of 1563 from Salamanca by Alonso Muñoz de Tevar. That being said, it is observed by Lawrance “that this edition diverges in hundreds of places, sometimes widely, from the printed texts and translations of the relections” (pp. xxxv-xxxvi).} \]
the temporal ruler, or personified temporal power” (*Abraham vero erat Princeps temporalis, aut personam gerebat temporalis potestatis*). In the following chapter, we will look at how Vitoria situates representation in his theory of the state. Moreover, we shall see how he advances an argument akin to that of Hobbes’s about the necessity of representation for the birth of the state. For Vitoria, the need for a public representative is as much a problem of political ontology as it is for Hobbes, but it is above all else a problem about public action. A community cannot properly *act* either domestically or internationally without the selection of a representative or representatives. In any case, both theorists regard the state as inconceivable without some form of representational arrangement. Vitoria and Hobbes thus share more than a common choice in language. They partake in a similar conceptual meaning of that language, which for them, is the essential element that allows for political life. So, while the latest commentators on representation have observed that this crucial concept was first articulated and practiced in monarchical settings, it is the objective of this thesis to investigate the concept’s *essential* role (both theoretical and practical) in the building of the Spanish empire in the early modern period. Because as Hobbes had made perfectly clear, although himself largely indebted to scholastic thought and corporation theory, the state could not come into being without representation.

The thesis consists of three chapters that each examine a different albeit closely related usage of the concept during the formative years of the imperial project. The first chapter examines, as said before, the place of representation in Vitoria’s theory of the state, found primarily in his lecture *De potestate ciuili* (1528). The second chapter discusses the significance of the Alexandrine bulls of donation in the extension and exaltation of the empire into the New World, documents which held their legitimacy by way of the claim that the pope as the Vicar of Christ represented the person of Christ (*personam Christi*) in a temporal capacity. This chapter additionally analyzes the debate about the legitimacy of this claim undertaken by Vitoria in his

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14 Vitoria, *Political Writings*, 82-83. For the Latin see *Relecciones Teológicas del Maestro Fray Francisco de Vitoria*, 61.
lectures *De potestate ecclesiae Prior* (1532) and *De Indis* (1539). The third chapter explores the material and intellectual motivations that brought the viceregal system into being, and reflects upon the significance of the colonial state in the history of political representation. The chapter also makes some observations about the ontological challenges that representation posed in the New World, and discusses Spanish attempts at rendering the concept accessible to the American Indian populations of the Valley of Mexico. These chapters collectively aim to demonstrate the crucial role that the concept played in the building of the Spanish empire; from its place in the then prevailing theory of the state, to its part in the arguments that sought to justify as well as oppose the existence of a transatlantic empire, and to the assurance of the preservation of that empire through a lasting political arrangement. The political history of the Spanish empire in America begins and ends with the crucial question of representation, as it was through its bridge that the Old World and the New were originally joined, and it was through its collapse in 1808 and 1812 that the two eventually severed. The challenges of both epochs demonstrate that a transatlantic empire was not possible without representative government, whether monarchical or republican.

It must be said that this thesis does not purport to be a complete account of representation in the Spanish world. Due to the restraint of time, I have had to put aside the discussion of those well-known representative bodies, the *cabildo* and the *cortes*. The omission of these institutions from this work should not be interpreted as a sign of their unimportance to the historical development of the concept and its role in the construction of the empire. Rather, I have chosen to devote this space to monarchical, ecclesiastical, and imperial examples of representation in an attempt to highlight the concept’s earlier history before the rise of representative democracies in the modern age, in order to show, as Quentin Skinner has observed in his account of the concept of the state, the “contingent and contestable character of

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the concept, the impossibility of showing that it has any essence or natural bodies.”16 In this respect, the thesis follows two identifiable yet seemingly opposing trends in historiography about political philosophy. On one hand, it seeks to trace “the origins of our current beliefs and arrangements,” and on the other, it intends “to establish that some of our most cherished political concepts may have been wholly absent from earlier periods, or may have been understood in wholly different ways.”17 Representation is precisely one of these cherished political concepts of the modern age that historically for some peoples was totally absent from their ideological repertoires, and for others was understood quite differently from how it is today. Elements of the neo-Thomist conception of the state, which today at large are no longer with us, are making a revival in emerging theories of international relations and cosmopolitanism. It is of fundamental importance to reflect deeply upon both of these possibilities. For this type of analysis of continuity and discontinuity in intellectual history can allow us to learn how ideas we no longer possess but once did, or how ideas we may have never possessed but others did, can be used to our wellbeing today. Similarly, it can allow us to rejoice that we or other peoples have abandoned some ideas in favor of others.

Through this exercise, I additionally hope to show the intimate involvement of Spain in continental affairs as well as the insights of its imperial experience to the history of Europe and the Atlantic world. I have regarded highly the advice of J.H. Elliott that, “every Hispanicist runs the risk of becoming a narrow antiquarian unless he looks at more than Spain ... to gain the maximum yield from his knowledge of Spain and its history, politics and culture, the Hispanicist must be capable of tracing the links between the peninsula and events in the wider world to draw parallels and comparisons which will themselves help to clarify the Spanish situation.”18


For the remainder of this introduction, I will discuss medieval commentaries on the theatrical origins of the concept of representation and the word *persona* in hope of providing some sense of clarity about the Spanish situation in later years.

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Hobbes’s analysis of representation in *Leviathan* rightly shows that the history of the concept predates the modern age, and that for most of its history, the concept had little or nothing to do with politics. He is not, however, saying anything new regarding the theatrical origins of the concept and its corresponding language to anyone acquainted with the work of the schoolmen of the medieval period, who in fact had a stronger understanding of ancient Greek and Roman theater practices than is usually assumed. This was greatly in part thanks to the philosopher Boethius (480-524/5), who in his fifth and longest theological tract titled, *De Duabus Naturis et Una Persona Jesu Christi, contra Eutychen et Nestorium*, defined the word *persona* as "the individual substance of a rational nature (*naturae rationabilis individua substantia*)." After providing the established theological use of the word found in discussions of the Holy Trinity, which dated back to the early Christian writer Tertullian (c.160-c.220) who defined the concept as “three Persons, one Substance (*tres Personae, una Substantia*),” Boethius offered its Latin and Greek etymologies.\(^\text{19}\) The word *persona* had meant the mask worn during performances of Roman tragedy and comedy, and had been derived originally from the word *personando* which had meant “sounding through.” The mask conceived in this way functioned in the theater as both a visual and audio device; *personae* were used not only to visually represent the different characters of a play, but to amplify the voice of the actor to his

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\(^{19}\) Tertullian is attributed as being the first to use the word representation in its modern sense as well as the first to coin the term *repræsentor*. Alan Watson, “*Repræsentatio* in Classical Latin,” in *Repræsentatio: Mapping a Keyword for Churches and Governance - Proceedings of the San Miniato International Workshop, October 13-16 2004*, ed. Massimo Faggioli and Alberto Melloni (Münster: Lit Verlag Berlin, 2006), 17-19.
audience. Boethius went on to give the Greek meaning of the word, πρόσωπα, as Hobbes would one day also do.20

A large number of the schoolmen from the ninth century to the height of scholasticism in the thirteenth century – John the Scot, Gilbert de La Porrée, Simon of Tournai, Alain de Lille, Conrad of Mure, Albert Magnus, Saint Bonaventure, and Saint Aquinas – commented on or referred to the theatrical meaning of the word persona as laid out by Boethius. Each of these writers emphasized aspects of Boethius’s definition while some understood it quite differently from how it was originally constructed. Besides this important theological tract, the Etymologiae of Saint Isidore of Seville (c.560-c.636) served as another valuable source of knowledge about ancient theater practices to the scholastics. However, we will put aside our discussion of this source for the end of this chapter as it was of particular importance to Aquinas’s thinking on the subject.

John the Scot (c.815-c.877), in one of the first commentaries to mention the theatrical meaning of the word, referred to the actors who performed on stage (as well as the masks that were worn) of ancient theater as personae “because in those masks they represented the substances of individual men. Masks were introduced, he said, to avoid displeasing by bare-faced ridicule, and also served to amplify the voice. His etymology for the word was ‘per se sonantes’.”21 Following in the footsteps of John the Scot, Peter Abelard (1079-1142) comprehended the word to mean “the men who by their gestures represent to us acts and words” (homines, qui per gestus suos aliqua nobis facta vel dicta repraesentant).22 Gilbert de La Porrée (c.1085-1154) remained faithful to the definition of Boethius in his commentary on De Duabus Naturis, but he mysteriously exhibited a greater understanding of ancient theater than could have been derived from either Boethius or Isidore of Seville. It is known that he was


22 Quoted in Marshall, 474.
acquainted with Terence, although he could have possibly been familiar with the *Troades* and *Medea* of Seneca before their wider circulation in the late thirteenth and early fourteenth century.\(^{23}\)

Toward the end of the twelfth century, Simon of Tournai (c.1130-1201) recapitulated the opinions of Boethius, John the Scot, Abelard, and La Porée, though emphasizing as John the Scot had first done, the view that *persona* corresponded to the actors who performed on stage: “*Dicitur persona, ut ait Boethius in illo libro De duabus naturis et una persona Christi, a personando ... et datum est hoc nomen primo histrionibus, qui assumentes larvas varias pro qualitate personarum, quas repraesentare volebant in tragoedia vel in comoedia, variis vocibus insonabant,modo muliebri, modo virili,modo puerile,modo senili.*”\(^{24}\) In this instance, the actor functions as a dissimulator, who primarily through voice modification and only secondarily through the guise of the mask itself, offers a diverse range of characters for the audience to absorb through the concealment of a single mask. It seems that alteration of the voice, perhaps because of its unfixed and readily changeable nature, was regarded as the fundamental theatrical technique in this period, more so than the mask itself in the representation of characters to an audience. The mask, after all, always remained the same in its physical appearance whereas the voice that emanated from behind its surface could and frequently did transform whenever a changing circumstance demanded.

In an anonymous commentary of the twelfth century, “the author (possibly Achard of St. Victor) seems to have interpreted *persona* as rôles, as the persons whom actors represented when they transformed themselves into a boy, a youth, an old man, speaking in the voice appropriate to each age, according to the size of the opening in the masks” (*personas repraesentabant histriones, qui se transformabant, tum in puerum, tum in juvenem, tum in senem, et secundum uniuscujusque aetatem diversam vocem proferebant, ad quantitatem*

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\(^{24}\) Quoted in *Ibid.*, 476.
foraminum larvarum).\textsuperscript{25} Here, the author stresses the transformative effect acting has upon the actor who wears the mask of a character. It is clear that from as early as the twelfth century, the theater was perceived in scholastic circles as a place of mystical significance where the unreal was paradoxically made real through representation. The definition of Boethius also made its appearance in numerous medieval dictionaries of the time. In the Distinctiones Dictionum Theologicalium of the twelfth century, Alain de Lille (c.1128-1202/03) provided its theological meaning as it related to the Trinity, its theatrical meaning as it pertained to actors (but not masks), and in a step of noteworthy distinction from his predecessors, its “reference also to the use of the term for anyone endowed with some dignity or office, as in the church; the legal use of the term, among rhetors ... and the grammatical conception.”\textsuperscript{26} The term persona in reference to a figure of ecclesiastical dignity or office was apparently taken from Saint Augustine.\textsuperscript{27} Alain went on to state that the actor was to represent the various states of men, “persona dicitur histrio, qui variis modis personando diversos status hominum repraesentat.”\textsuperscript{28} In the Summa de Arte Prosandi (1275), Conrad of Mure (c.1210-1281) presented all of the aforementioned meanings of the word, though remarkably stated, “Quandoque dicitur ‘persona’ homo qui laruatus uel aliqualiter tegens et dissimulans faciem naturalem in gesticulationibus recitationibus et in scenis loquendo seu gesticulando uel ultrumque faciendo alicquid representat, iuxta illud: mulier nempe ipsa uidetur non persona loqui [Juvenal, III, 96] item: nec quarta loqui persona laboret. [Horace, AP, 192] de hac persona satis habes in Terentio.”\textsuperscript{29} What stands out here is Conrad’s emphasis that to represent is to conceal one’s natural appearance, sharing notably in the distinction that Hobbes would later set forth about natural and artificial persons. The classical language of persona, its theatrical connotation, and the

\textsuperscript{25} Quoted in Ibid., 476.

\textsuperscript{26} Ibid., 477.

\textsuperscript{27} Ibid., 477.

\textsuperscript{28} Quoted in Ibid., 477.

\textsuperscript{29} Quoted in Ibid., 478. Emphasis is mine.
concept of representation as it historically related to theater, survived in the West through scholastic transmission.

Like Conrad, Aquinas was critical of the idea of dissimulation, at least in its application to princely conduct, which he glossed in *De regimine principum* as a vicious act comparable to the desire of glory:

There is another vice closely related to the desire for glory, namely, *dissimulation*. For it is difficult to pursue those true virtues to which alone honour is due, and few manage to do so; but, desiring glory, *many pretend to be virtuous*. In this way, as Sallust says, ‘Ambition has made many a mortal false. They have one thing shut up in their bosom, but another ready on their tongue, and *they have more appearance than prowess*.’ But our Saviour Himself calls such people hypocrites, that is, dissimulators, *who do good that they may be seen by men*. Therefore, just as it is perilous for the community if the prince should seek pleasure and wealth as his rewards and so become predatory and overbearing, so also it is perilous when the love of glory has him in its grip and he therefore becomes presumptuous and deceitful.30

For Aquinas, there was no difference between a hypocrite and a dissimulator. The convergence in meaning of these two terms was the influence of Isidore of Seville, who in book ten of the *Etymologiae* rendered the Greek word *hypo* (which meant falsehood) and the term *krisis* (which meant judgment) to be the equivalent of the Latin word *simulator*:

118. Hypocrite (*hypocrita*) from the Greek (i.e. ὑποκριτής “play-actor, dissembler”) is translated into Latin as “disssembler” (*simulator*). Such a one outwardly appears as good, while he is evil within, for ὑπο- means “false” and κρίσις means “judgment.” 119. Moreover, the name of *hypocrita* derives from the appearance of those who go in theatrical spectacles with countenance concealed, marking their face with blue and red and other pigments, holding masks of linen and plaster of Paris decorated with various colors, sometimes also smearing their necks and hands with white clay, in order to arrive at the coloring of the character they portray and to deceive the public while they act in plays. Now they look like a man, now a woman, now a man with barbered hair, now with long, now a woman with an old crone’s, a maiden’s, or some other appearance, with age and sex varied, to deceive the people while they act in plays. 120. The sense of this theatrical hypocritical appearance has been transferred to those who proceed with a false face and pretend to be what they are not. They cannot be called hypocrites from the moment they reveal themselves outwardly. 121. Interred (*humatus*), because one is covered with soil (*humus*), that is, buried.31

Aquinas explains in the *Secunda secundae* that Isidore derived the word hypocrite from,

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30 Aquinas, *Political Writings*, 23. Bk I, Ch VIII. Emphases are mine.

the appearance of those who come on to the stage with a disguised face, by changing the color of their complexion, so as to imitate the complexion of the person they simulate, at one time under the guise of a man, at another under the guise of a woman, so as to deceive the people in their acting.' Hence Augustine says (De Serm. Dom. ii) that just as hypocrites by simulating other persons act the parts of those they are not (since he that acts the part of Agamemnon is not that man himself but pretends to be), so too in the Church and in every department of human life, whoever wishes to seem what he is not is a hypocrite: for he pretends to be just without being so in reality.' We must conclude, therefore, that hypocrisy is dissimulation, not, however, any form of dissimulation, but only when one person simulates another, as when a sinner simulates the person of a just man.32

What Aquinas means to say when he labels men as hypocrites and dissimulators is that they are actors on a stage. Princes are not supposed to act or pretend while in the duty of their office, but are to be truthful to themselves and those they govern. There is thus something particularly scandalous about role-playing in the Christian tradition, as evidenced by Aquinas’s transmission of Isidore and Augustine’s considerably negative opinion about the nature of acting and its deceptive qualities. However, this is precisely what representation demands of those who practice it in all areas of life. Acting, whether on the theatrical stage or the political one, invariably necessitates the assumption of different characters, roles, and qualities.

That being said, the difficult task of identifying precisely when the concept of representation made its transition from the theater to politics is no less important than addressing the pre-political origins of the concept and their relation to politics. The current body of historical literature on representation lacks an extended and systematic analysis of the

32 ST Ha Iae q. 111 a. 2. The full text from Augustine reads: “Do not, says He, desire to become known in the same way as the hypocrites. Now it is manifest that hypocrites have not that in their heart also which they hold forth before the eyes of men. For hypocrites are pretenders, as it were setters forth of other characters, just as in the plays of the theatre. For he who acts the part of Agamemnon in tragedy, for example, or of any other person belonging to the history or legend which is acted, is not really the person himself, but personates him, and is called a hypocrite. In like manner, in the Church, or in any phase of human life, whoever wishes to seem what he is not is a hypocrite. For he pretends, but does not show himself, to be a righteous man; because he places the whole fruit [of his acting] in the praise of men, which even pretenders may receive, while they deceive those to whom they seem good, and are praised by them. But such do not receive a reward from God the Searcher of the heart, unless it be the punishment of their deceit: from men, however, says He, “They have received their reward;” and most righteously will it be said to them, Depart from me, ye workers of deceit; ye had my name, but ye did not my works. Hence they have received their reward, who do their alms for no other reason than that they may have glory of men; not if they have glory of men, but if they do them for the express purpose of having this glory, as has been discussed above. For the praise of men ought not to be sought by him who acts rightly, but ought to follow him who acts rightly, so that they may profit who can also imitate what they praise, not that he whom they praise may think that they are profiting him anything.” Augustine, “Our Lord’s Sermon on the Mount, According to Matthew,” trans. Reverend William Findlay, in A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church, vol.6 ed. Philip Schaff (Grand Rapids: WM. B. Eerdmans Publishing Company), 89. This is an online book resource made available by the Christian Classics Ethereal Library that can be downloaded at the following URL: http://www.ccel.org/ccel/schaff/npmf106.html
artistic, theatrical, juridical, and theological origins of the concept. It expresses the importance of understanding the concept as it independently existed in a range of contexts before it entered the realm of politics, though falls short of providing a thorough discussion of its variegated deployments in these disciplines. It is then not only necessary to elaborate upon the manner in which the concept was used in these settings, but also to analyze the practical and theoretical problems the concept posed on the canvas and stage, and in the courtroom and spiritual life. An analysis of the conceptualization of representation in the world of art, theater, law, and theology can offer valuable insight to the concept’s translation into the language of politics, the modern opinion of its centrality as a key political concept, and the numerous practical and theoretical problems it posed and still poses to government today.

33 By spiritual life I do not only mean doctrinal beliefs about humanity’s relationship to the divine and the exposition of the great mysteries of the faith, but also Christian life inside the Church as a visible and hierarchical institution. Life inside the Church had also meant life inside of the political community, for the theological opinion about the relationship of the Church and the political community was neither polarized nor dichotomous, but each comprised, as Gregory I (c.540–604) was the first to gloss in what would become a motif in scholastic political thought, “one body in Christ.” Walter Ullman, *Medieval Political Thought* (Middlesex: Penguin Books, 1975), 50–51.
1. Representation in Francisco de Vitoria’s Political Philosophy

Prosopopoeia occurs when personality and speech are invented for inanimate things. Cicero in the *Catiline Oration* (1.27): “If, in truth, my fatherland, which is far dearer to me than my life, were to speak with me, saying,” etc. Thus we bring in speaking mountains and rivers or trees, imposing personhood on a thing that does not have the capacity for speech. This is common in tragedies and found very frequently in orations.

—Isidore of Seville, *Etymologiae*¹

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From 1526 to 1546, Francisco de Vitoria (c.1485-1546) lectured as Prime Chair of Theology at the University of Salamanca. It was during this time that papal and imperial authority were challenged throughout Europe, and new political arrangements in Spain and abroad were in the making. Vitoria’s corpus of relectiones, special lectures delivered at the end of each academic term, examined topics as diverse as ecclesiology, the morality of cannibalism and suicide, the laws of war, and the legality of Spanish property rights in the New World. These lectures represent Vitoria’s vast scholarly interests and the larger intellectual world with which he was actively engaged, but also the great problems of the day that plagued the Spanish world. He was the first member of a group of theologians that is now known as the School of Salamanca or the seconda scolastica. The School of Salamanca, starting with Vitoria and ending with the death of the Jesuit Francisco Suárez (1548-1617), has been recognized for its contributions to a number of disciplines of its time, ranging from physics to economics. In the history of political thought, the work of its schoolmen is widely considered as a precursor to the “modern” development of natural law theory, natural rights theory, social contract theory, and “international law” in the seventeenth century, laying the groundwork for the later projects of Hugo Grotius, Thomas Hobbes, John Locke, and Samuel Pufendorf. Until the mid-seventeenth century, right around Spain’s decline as a continental power, the writings and lectures of the Salamanca theologians were some of the preeminent textbooks of politics and ethics in Europe.²

In 1506, Vitoria entered the Dominican order at the monastery of San Pablo in Burgos. Three years later, he began his studies of the arts at the University of Paris at the Collège de Saint-Jacques, where he remained until the completion of his license and doctorate in theology in 1522. During his stay, Vitoria studied the arts under the nominalist Juan de Celaya from 1509-1510 and theology under the recent Thomist convert Pierre Crockaert beginning in 1512-1513. Crockaert, perhaps, had the greatest influence upon the intellectual development of the young student. Some years earlier in 1503, Crockaert left the study of William of Ockham in favor of the theology of Thomas Aquinas, and in 1507 replaced the traditional, instructional textbook of theology, the Sentences of Peter Lombard, with the Summa Theologiae of Thomas Aquinas. This was an act believed to be made for pedagogical and doctrinal reasons, and it was one that Vitoria would make years later as a professor at Salamanca. Moreover, it was in Paris that Vitoria witnessed the participation of his professors in a rather serious polemic about conciliar theory, which emerged out of the convention of a general council at Pisa in 1511 against the consent of Pope Julius II by cardinals in support of the policies of Louis XII of France. The conflict lasted until 1512, and ultimately resulted in his exposure to two important treatises on conciliarism written by the Master of the Order of Preachers, Tommaso de Vio, and the Sorbonne professor, Jacques Almain. Both pieces had, as most of Vitoria’s recent commentators observe, a lasting influence on his thought about temporal and spiritual government.

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3 The biographical dates of Vitoria are inexact. Getino suggests he was born “no earlier than 1483 and no later than 1486” (quoted in Skinner, Foundations of Modern Political Thought, 135). Mesnard proposes he was born in 1480 and J.A. Fernández-Santamaría claims around 1492 (Foundations, 135). While Pagden and Lawrance say Vitoria entered the order around 1506 (introduction to Political Writings, xxix), Hamilton and Skinner say he entered in 1504 (Political Thought in Sixteenth-Century Spain, 17 and Foundations, 135). Pagden and Lawrance note that Vitoria began to study at the University of Paris in 1509 (introduction to Political Writings, xxix), Katherine Elliot van Liere provides an earlier date of 1507 (“Vitoria, Cajetan, and the Conciliarists,” 603), and Skinner provides an even earlier date of 1506 (Foundations, 135). All agree upon the date of the completion of his theological studies in 1522 and his return to Spain in 1523.

4 Skinner says this change in curriculum was made in 1509 (Foundations, 135), while Pagden and Lawrance maintain 1507 (introduction to Political Writings, xxix).

5 Ricardo García Villoslada, La universidad de París durante los estudios de Francisco de Vitoria, O.P. (1507-1522) (Rome: Gregorian University, 1938), 10.

6 Elliot van Liere, 603.
This chapter analyzes the place of representation in Vitoria’s theory of the state in his relectio De potestate ciuili (delivered in 1528) with intertextual references to his other relectiones and in particular Almain’s Libellus de auctoritate ecclesiae (1512). This will be accomplished through an approach that takes into account the largely neglected philosophical underpinnings of the lecture; namely Aquinas’s metaphysics and the Aristotelian principles of causality which inform Vitoria’s method to addressing the question of the origin and nature of civil power, and ultimately determine his conclusions on the subject. This was assumed knowledge for the scholastics that did not require repetitious exposition at it was foundational to their ideological toolset. It does, however, need clarification today because the language of scholasticism and its meaning is conceptually removed from present understanding. The political project of Vitoria and his colleagues cannot be faithfully understood as they intended it to be unless, as Vitoria had expressed, the causes are understood: “The causes of civil and lay power … is to be the subject of this whole relection. Once the causes are understood, the potential and effects of power itself will become evident.”

The first section discusses the significance of Almain and Vitoria’s use of analogy in the attribution of right from the individual to the commonwealth. The second section examines their treatment of the positive transference of right from the commonwealth to the prince. It additionally aims to clarify Vitoria’s ambiguous opinion the origin of civil power. The third section discusses Vitoria’s thesis about the necessity of representation for political existence, analyzes the subject of resistance against the prince, and describes the general characteristics of the public representative.

In the introduction of this thesis, we saw how the medieval scholastic comprehended the concept of representation in a theatrical setting. It was on the stage that actors, through mask-wearing and voice modification, represented the words, actions, substances, and qualities of

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7 Preceding these comments Vitoria cites the Physics of Aristotle, stating: “men do not think they know a thing till they have grasped the why or primary cause of it” (Physics 194b19). Francisco de Vitoria, Political Writings, ed. and trans. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 4.
different kinds of men and women. From as early as the twelfth century, the theater was perceived in scholastic circles as a place of mystical significance, where actors transformed themselves through assuming the roles of other people. In the realm of politics, representation similarly involves this kind of investment or attribution of qualities, substances, words, actions, and rights from one party to another. The investment of rights and so forth can be made, as in the familiar manner it has been discussed in the existing historical literature on representation, by means of a positive transference of right. That is, by an expressed or written statement of will, oath, contract, election, or declaration. However, for the schoolmen, rights, qualities, substances, words, and actions, could also be invested by means of analogy. Indeed, we find in the political theories of Almain and Vitoria both methods at play: representation of right by means of analogy and representation by means of a positive transference of right.

The place of analogy in Almain and Vitoria’s theory of the nature of the political community has been highlighted by Annabel Brett in both *Liberty, Right and Nature* (1997) and *Changes of State* (2011), but its greater significance as a means of investment or attribution has yet to be noted. Its use in this manner grew out of the subject areas of logic, theology, and metaphysics in the Middle Ages, where philosophers and theologians were concerned with the meaning of words in their application to similar but different objects. In the theology faculty, the device was primarily aimed at exposing the varied senses of the language used to explain the causal relationship of God to man. Qualities such as benevolence and intelligence were not applied to humans and God equally, but analogously by virtue of the principle of proportional causality. This principle held that whatever was in an effect must have been in its total cause in

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8 Neither Almain or Vitoria use the language of oath. Domingo de Soto devotes an entire section in *De iustitia et iure* to the morality of oath-making. These theorists were perhaps reluctant to discuss there being an oath made by the commonwealth to the prince and vice versa because of the stigma attached to oath-making in the New Testament. See for example Matthew 5:33-37: “Again, you have heard that it was said to the people long ago, ‘Do not break your oath, but fulfill to the Lord the vows you have made.’ But I tell you, do not swear an oath at all: either by heaven, for it is God’s throne; or by the earth, for it is his footstool; or by Jerusalem, for it is the city of the Great King. And do not swear by your head, for you cannot make even one hair white or black. All you need to say is simply ‘Yes’ or ‘No’; anything beyond this comes from the evil one.”

9 Brett observes in *Changes of State*, “The conclusions concerning political power generated by this debate permeate Vitoria’s reflection On civil power, where he reproduced Almain’s analogy between the individual and the political community, which both equally by natural law have the natural right of self-preservation and self-defence.” (p.124).
some way (whether formally, virtually, or eminently), or as Jennifer Ashworth explains, it is a doctrine by which “every agent produces something like itself.”\textsuperscript{10} So, for example, because man is made in the image and likeness of God (Genesis 1:26), Aquinas glosses man to reflect or imitate God in his intellectual nature.\textsuperscript{11} Moreover, since man is known to be a rational creature from human observation, it had to be said that whatever created him must have also been essentially rational. The principle of causality was thus very much a theory of copy-making, akin to Plato’s theory of the forms outlined in book ten of the Republic. Here the philosopher opines that artistic and theatrical representations are a “third removed” from reality. So, when a craftsman makes a chair he deviates from the ideal chair, and when a painter depicts that same chair, he copies the work of the craftsman and not the ideal chair. The chair, as it is represented or imitated in a painting, is the lowest degree away from truth. Hence Aquinas clarifies his interpretation of the passage from Genesis, commenting that “this likeness is not one of equality, for such an exemplar infinitely excels its copy. Therefore there is in man a likeness to God; not, indeed, a perfect likeness, but imperfect.”\textsuperscript{12} Man therefore partially reflects or imitates God, and in a strictly limited capacity.

While the use of analogy is fundamental for Aquinas in his discussion of the divine attributes and the inherent goodness of man, we see that for Almain and Vitoria, analogy is precisely the means by which the political community receives the right to defend itself from domestic and foreign enemies. For both theologians, it is from the natural law where the power and right to self-defense originates. This power and natural right first resides in the individual, whom Almain writes in Libellus de auctoritate ecclesiae, “God, the author of nature, created ... with a natural right or power to obtain those things which are necessary for his sustenance and


\textsuperscript{11} In the prima pars, Aquinas does not make the case that this relationship to the divine allows man rights of ownership or dominium. Vitoria, however, would add a juridical dimension to his gloss when answering the question if sinners and children have dominium in De Indis (1539), stating: “man is the image of God by his inborn nature, that is by his rational powers ... the foundation of dominion is the fact that we are formed in the image of God.” (p. 242, p. 249).

\textsuperscript{12} Summa Theologiae, Ia, q. 93, a.1.
to repel those which are harmful, on which right is founded the power to kill anyone who attacks [one] unjustly.” This faculty is said to be held “in the same way” by “any community of people living together in civil association — which, according to Paul’s saying, is like one body, and are every one members one of another [Rom. 12:5].” The corollary is that since the commonwealth resembles one body, it “has a natural power to preserve itself not only in being but in peaceful being,” no differently than an individual, “which includes the prerogative of cutting off even by death those whose life disturbs the community.” Vitoria reiterates these claims in De potestate ciuili, arguing along the lines of Almain, that “every man has the power and right of self-defence by natural law, since nothing can be more natural than to repel force with force. Therefore the commonwealth, in which ‘we, being many, are one body, and every one members of another’ as the Apostle says (Rom. 12: 5), ought not to lack the power and right which individual men assume or have over their bodies, to command the single limbs for the convenience and use of the whole.” The causal relation in question is conceptualized in a formal way, in which the effect fits the form of the cause. The commonwealth is like a human body in its form, and

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13 Jacques Almain, A book concerning the authority of the Church, in Conciliarism and papalism, ed. J.H. Burns and Thomas Izbicki (Cambridge: Cambridge University Press, 1997), 135-136. This passage from Romans would become a commonplace of late scholastic thought used by Vitoria not only to describe the political community, but also to justify the Spanish right to travel freely throughout the political communities of the New World in De Indis. Soto most famously used it to defend the rights of beggars to travel freely throughout all the political communities of the world in In causa pauperum deliberatio (1545).

14 Vitoria, Political Writings, 11. The passage from Romans bears resemblance to the passage from the Politics where Aristotle, though discussing the advantages that are to be had from including the multitude as opposed to the few best men in the government of the polis, says: “For each individual among the many has a share of excellence and practical wisdom, and when they meet together, just as they become in a manner one man, who has many feet, and hands, and senses, so too with regard to their character and thought.” Aristotle, The Politics, in The Politics and the Constitution of Athens, ed. Stephen Everson (Cambridge: Cambridge University Press, 1996), 76. (1281b4-7) The metaphorical man which Aristotle speaks of, however, is a disfigured man. It is precisely the political situation he wishes to avoid, and it is also the one Vitoria fears.
therefore it must have the power and right a human body has by nature.\textsuperscript{15} It is because the community resembles the individual as one body that it has the same power as the individual. However, as Brett has explained in \textit{Changes of State}, the second-scholastic thinkers were also deeply indebted to the longstanding, medieval tradition of speaking about the body politic as analogous to the human body as well as corporation theory.\textsuperscript{16} No rights or powers have been positively transferred from the individual to the community at this point, as Brett succinctly observes, “the notion of individual subjective right is brought in purely by way of analogy. It plays no motive role in the formation of the civitas.”\textsuperscript{17}

The power and right of self-defense that a community possesses over its own members and against other communities in the world is analogous (in a related sense) to the power and right of self-defense an individual possesses by nature. The reason the attribution is not made univocally or equivocally is because the individual and the community are different beings with different ends respectively. The power may be the same nominally, it may be held in the same way by both entities according to the natural law, but the manner and the purpose for which it is used is remarkably different. Vitoria explains that, “Individuals may even risk the loss of a limb if this is necessary to the safety of the rest of the body; and there is no reason why the commonwealth should not have the same power to compel and coerce its members as if they were its limbs for the utility and safety of the common good.”\textsuperscript{18}

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\textsuperscript{15} Richard Tuck has argued in \textit{The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant} (1999) that Grotius and Hobbes believed that the qualities states possessed in the international arena were morally analogous to individuals in the state of nature. States and individuals were governed by a minimal natural morality that posited self-preservation as the fundamental law of nature. All peoples of all places of the world at all times could have been said to agree upon this law by virtue of their rationality. This analogy between states and individuals, and their possession of identical moral qualities, was, according to Tuck, novel, and subsequently came to dominate political thought throughout the seventeenth and eighteenth centuries. It was this principle that made it possible for Hobbes to speak more specifically of a state of nature between states: “Natural law can again be divided into the natural law of men, which alone has come to be called the law of nature, and the natural law of commonwealths, which may be spoken of as the law of nations, but which is commonly called the right of nations.” Quoted in David Armitage, \textit{Foundations of modern international thought} (Cambridge: Cambridge University Press, 2013), 63-64. However the history of individuals possessing rights predates Grotius and Hobbes, as does the analogy between states and individuals in a state of nature, and the belief that Tuck attributes to Grotius that is of medieval origin, that self-preservation is the fundamental law of nature.

\textsuperscript{16} Brett, \textit{Changes of State}, 122.

\textsuperscript{17} Brett, \textit{Liberty, Nature and Right}, 136.

\textsuperscript{18} Vitoria, 11.
community are not actually reduced to human limbs, but they are to be treated as if they were limbs for the common good of the body politic. Vitoria’s pupil, Domingo de Soto (1494-1560), expressed the difference between the individual and the commonwealth most eloquently when he wrote in *De iustitia et iure* (1556), “a limb does not have a being distinct from that of the whole; nor in any way is it for the sake of itself, but for the sake of the whole; nor of itself can it sustain either right or injury. But a man, albeit he is a part of the commonwealth, is nevertheless a subject existing for the sake of himself, and is therefore of himself capable of sustaining injury, which the commonwealth cannot visit upon him.”

The great implication that results from this theory of the nature of the political community is that there must be instances in which the power and right of the individual prevails over the power and right of the commonwealth. The two entities may have the same power and right on the basis of an analogous relationship predicated on the likeness of the community to the individual, but just as Aquinas glosses that the likeness of man to God is not one of equality, Almain, Vitoria, and Soto formulate that the power and right of the commonwealth is not identical to the power and right of the individual in its application. In this respect, it could be said that the community is a moral reflection of the individual in his natural capacity to defend himself from harm’s way, no differently than how man is formed in the image and likeness of God and imitates his intellectual nature. In both cases, the “exemplar infinitely excels its copy.”

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Analogy is precisely the means by which, for the second-scholastic theologians, the commonwealth could be said to formally have the individual’s natural power and right of self-defense. However, this is not the entire story. Causal relation can also be grasped in a virtual way, when the effect does not have the cause actually, such as when the prince virtually has the natural power and right of self-defense possessed by the commonwealth. For Almain, the positive transference of the power and natural right of self-defense does not occur until “the

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19 Quoted in Brett, *Changes of State*, 32.
community confers on the prince the authority to kill those whose life leads to harm to the commonwealth.”

It is at this moment that a positive enactment is made when the community imparts to a certain person or persons the authority to use its power and right on its behalf. Almain emphasizes that what the king holds is authority and not power: “That authority is in the community first of all, since no one gives another what he does not have. The antecedent is known, since the prince does not have that authority from himself; nor does he have it immediately from God, at least in most cases.” He therefore declares that, “the power a king uses is the community’s power. Hence he is said to act by public authority; and, on account of this, William of Paris says that the dominion of princes is ministerial.” The prince, then, makes use of the natural power and right of the commonwealth. Almain clarifies this position, writing that:

The primary power of coercive jurisdiction, even to the point of inflicting death, is not, in regard to its establishment, purely positive, although its imparting to a certain person, such as a king, or certain members of the community, many or few, who rule it aristocratically or timocratically, [belongs to] positive [law]. That is demonstrably true, because no case can be excepted by positive law, at least by human law, from the command, *Thou shalt not kill* [Exod. 20:13], since it is part of natural law; for there is no human power over natural right. So the primary power to kill is natural, not a matter of human ordinance.

The power and right of self-defense is not a positive enactment made by men, but it is a natural power that the community has communicated to the prince to exercise on its behalf. It remains natural despite the king’s use of it and the civil arrangement that places him in the position to exercise it. Borrowing from Herveus, Almain raises a crucial distinction about what it means to establish power and what it means to confer what has already been established. The former belongs to natural law, at least in this case, whereas the latter belongs to positive law:

Herveus shows very clearly, that to establish power is one thing while to confer what has been been instituted on a particular person [is another]. This is manifest from the

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21 Almain, 136.


previous chapter, since the people does not institute the power to kill, because it is
natural, but communicates it to the prince. Indeed, the power to establish is to ordain
that there is in the community a certain power, of such and such a degree and kind,
applying to such and such cases, such and such people, and so on in similar respects; and
such an institution can precede in time [its] communication to a particular person ... it is
proved that this power can be established by God alone ... It follows as a corollary that
this power can be taken away neither simply by a man nor by men.²⁴

The action of conferring what has been divinely instituted ought to always be traced back to the
community. “As the doctors, especially Durandus, say, we are not to understand that a secular
king’s authority comes from God in the sense that He ordinarily has committed it directly to
anyone, but that it is committed to someone according to the right reason which God conferred
on men. And it does not appear — since it has not been committed directly by God — that it has
been granted to the prince by anyone but the community itself.”²⁵ Vitoria is as eager to show
that this power is not civil, that is, it is not a power the community contrived like a craft for the
use of the king. He expresses most clearly regarding the origin of this power that, “The efficient
cause of this power can easily be deduced from the preceding argument. If, as we have shown,
public power is founded upon natural law, and if natural law acknowledges God as its only
author, then it is evident that public power is from God, and cannot be over-ridden by
conditions imposed by men or by any positive law.”²⁶ The efficient cause of a thing is that which
brings it into existence. Since God is omnipotent, nothing in this world can be said to have
intrinsic causal power; whatever power a thing in the world may have is derived or borrowed
from God. All secondary power, in this case public power and the power of the individual, is
derived from God’s primary power. Both of which are from nature, which as Aquinas had said,
works under the direction of a higher agent:

Since nature works for a determinate end under the direction of a higher agent,
whatever is done by nature must needs be traced back to God, as to its first cause. So also
whatever is done voluntarily must also be traced back to some higher cause other
than human reason or will, since these can change or fail; for all things that are

²⁴ Ibid., 139-140.
²⁵ Ibid., 136-137.
²⁶ Vitoria, 10.
changeable and capable of defect must be traced back to an immovable and self-necessary first principle.  

Vitoria commented on Aquinas’s treatment of the power of human law in the *prima secundae*, “God is no less the cause of a law produced through secondary causes than He is of those which He produced by Himself immediately.”  

The act of instituting the prince is performed by the community and invariably necessitates voluntary action, and although Vitoria deems princes to be ministers of God, it is not in the sense that kings are his vicegerents. Rather, it is that they have the special role of conveying God’s work, which is to administer a God-given power and right to protect the community from harm. The power and right that a prince uses is divinely established, but humanly instituted. Vitoria thus says: “if men or commonwealths did not derive their power from God, but formed an agreement to set up a power over themselves for the public good, then this would be a [human] power, such as the power which members of a religious order ascribe to their abbot.”  

This hopefully elucidates the ambiguous and largely contested opinion of Vitoria “that sovereigns have their power by natural and divine law, not from the commonwealth or from men.”  

Vitoria opines that the commonwealth confers on the prince its *authority* to exercise the power and right of the community on its behalf, expressing like Almain that, “although this power and authority we speak of belongs first of all and *per se* to the commonwealth itself, the *same authority belongs to the rulers and magistrates to whom the commonwealth has delegated its powers and offices.*”  

In this case, Vitoria employs the language of delegation, and goes on to reiterate as before that this power comes from God, though insisting that it is men who set up the rulers who preside over them:

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27 Aquinas, *ST*, Ia, q. 2, a. 3.

28 Vitoria, 175.


royal power is not from the commonwealth, but from God himself, as Catholic theologians believe. It is apparent that even though sovereigns are set up by the commonwealth, royal power derives immediately from God. For example, the pope is elected and crowned by the Church, but nevertheless papal power does not come from the Church, but from God himself. In the same way, the power of the sovereign clearly comes immediately from God himself, even though kings are created by the commonwealth. That is to say, the commonwealth does not transfer to the sovereign its power (potestas), but simply its own authority (auctoritas); there is no question of two separate powers, one belonging to the sovereign and the other to the community. And therefore we must say about royal power exactly what we have asserted about the power of the commonwealth, namely that it is set up by God and by the natural law. This agrees with Holy Scripture, and with common practice, which calls kings ‘ministers of God’ not ‘ministers of the commonwealth’. And divine wisdom, speaking through the mouth of Solomon, says: ‘By me kings reign, and princes decree justice’ (Prov. 8:15). And the Lord answered Pilate: ‘thou couldst have no power at all against me, except that it were given thee from above’, that is, from heaven (John 19:11).

The consensus on the meaning of this particular passage in the historical literature is that Vitoria means to say that royal power is exceptional among other political constitutions in that it is only in a monarchy that power is derived from God. So, Bernice Hamilton observes regarding Vitoria’s theory that, “It is, and is not at the same time, a theory of divine right.” While Anthony Pagden writes that, “Vitoria now commits himself to the extreme claim that, unlike aristocratic or timocratic power, ‘royal power is not from the commonwealth, but from God himself’,” Annabel Brett comments that, “Unlike both Almain and Cajetan, however, he sought to defuse the potentially revolutionary implications of the people’s power by insisting that in the specific constitution that is a monarchy, the power comes from God, and only the authority to exercise it from the people.” However, for Vitoria, this is not an exception to be made for monarchy alone, but is in fact the overarching rule for all political constitutions. The power of all communities and the power of their rulers, whether few or many, ultimately comes from God. This is because the power that Vitoria is speaking of is the power and right to kill in self-defense. It is this power that God grants to all individuals first at creation, and it is this power that Almain and Vitoria attribute to the commonwealth by virtue of its resemblance as a human

32 Ibid., 16-17.
33 Hamilton, Political Thought in Sixteenth-Century Spain, 38.
34 Pagden, introduction to Political Writings, xix.
35 Brett, Changes of State, 124.
body. Subsequently, this is the power and right which is passed from the community to the prince by means of a positive transference to act as the community’s appointed agent. Although Almain and Vitoria have an obvious preference for monarchy, it does not matter the number of men in government who take on the task of governance because ultimately the ruler performs the same power regardless of the constitution of the state. Thus, Almain declares that “royal sovereignty, aristocratic sovereignty and timocratic [sovereignty] do not differ among themselves because they are diverse powers, since they have completely the same object, but on account of the diversity of those holding power.” And Vitoria takes the opportunity to argue that the individual is no more free in an aristocracy, timocracy, or any other type of government, than in a monarchy:

Civil societies which have no sovereign and are ruled by a popular administration often boast of their liberty, accusing other civil societies of being the servile bondsmen of sovereigns. There are even some within this kingdom who subscribe to this view. Against this stupid and ignorant idea I offer my first corollary, which is that there is no less liberty under a monarchy than under an aristocracy or timocracy ... under any type of government, each private individual is subject to the public power, which he is bound to obey, whether that power resides in one man or in a number of men or in the whole multitude. This power is the same, whether it be exercised by one man, or by the whole community or commonwealth, or by the nobles; there is clearly no greater liberty in being subject to three hundred senators than to one king. Indeed, men who are subject to the decree and government of the crowd have, by that token, all the more masters – unless anyone is so mad as to believe himself a slave when he obeys one wise king, and fancy himself free when he is subject to a barbarous mob.

36 There are two possible interpretations of what Vitoria means by power in this passage in light of the lecture as a whole. Power could be construed as the power and right of self-defense, which seems most likely given the contents of the passage. However, he could also mean public power which he defines clearly as “the authority or right of government over the civil commonwealth” (p. 18). However, it seems unlikely the word has this sense, at this part of the lecture. In any case, as we shall see, both are still God-given in all constitutions.

37 Almain, 138. In the prima secundae, Aquinas reasoned his preference of monarchy over other political constitutions, “parce qu’un régime de cette sorte représente au mieux le régime divin (maxime repraesentat divinum regimen), par lequel Dieu unique gouverne le monde depuis les origines.” Quoted in Adalbert Podlech, “La représentation: une historie du concept.” Trivium 16 (2014): 2. ST Ia IIae, q. 105, a. 1. Podlech holds this to be the “premier texte médiéval dans lequel ‘repraesentare’ est utilisé dans le contexte sémantique du ‘gouvernement’ (regimen).”

38 Vitoria continued, “Was not obedience to the absolute emperor Octavian far preferable to obedience to the Triumvirate or the Decemvirate? Especially when you consider that the constitution of the Roman republic, which these fellows crack up as the very cynosure of liberty, amounted in the end to nothing more than obedience to the edict of a singe praetor, who did not even administer the republic like a king, but seized and harried the individual citizens from pillar to post at the whim of his caprice, or rather of his lusts. And yet these wretched men, harried as they were by a contemptible homuncule, swore that they were free!” (p. 20).
For Vitoria, the constitution of the community does not reflect the liberty of its individual members since the power under which they are all subjected has the same object. Instead it is said that, “if the power of the commonwealth is not tyrannical but just, then the power of a monarch will be just too, for it is none other than the commonwealth’s power administered through the sovereign.”

Like those actors who wore masks in the theater and represented the substances of men, the commonwealth’s power is administered through (per) the prince, who is a moral reflection (or perhaps representation) of the power of the commonwealth. As man imitates God and the community imitates the individual, so the prince imitates the community in a certain capacity. Therefore, it is undoubtedly true as Brett and Pagden say, that it is not men who bring royal power into existence since its source is from nature, whose author is God. However, this is not an exception to be made of monarchy since Vitoria extends the claim that the power found in all political constitutions is natural and God-given. Soto would reproduce this argument in *De iustitia et iure*, writing, “Nempe regia Imperatoriamque potestatem, caeterorumque principum autoritatem non homini esse inuentum, sed Dei sancissimam ordinationem.”

Public power is from the natural law whose Author is God, the efficient cause of all that is to be found in the world.

So far, there has been a fascinating interplay between art and nature in these discussions. The commonwealth is a natural organism, that as the most natural of things, possesses a natural right and power of self-defense. The monarch is, in a way, like a piece of art, which comes into being through quasi-artificial means (i.e. voluntary election on the part of humans) and makes use of the natural power and right of the commonwealth no differently than how art makes use of what it finds in nature. The relationship of the prince to the commonwealth construed in this way bears a striking resemblance to the relationship of art to

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40 Domingo de Soto, *De iustitia et iure libri dicem* (Madrid 1967; facsimile of Salamanca 1556), lib. IV, q. 4, a. 1. (p. 302).
nature discussed in the introduction of this thesis. Between Plato and Rousseau, there is Aquinas who interjects in *De regimine principum*: “if those things which come about through art do so by imitation of those which exist in nature, and if a work of art is better to the degree that it achieves a likeness to what is in nature, it is necessarily true in the case of human affairs that that community is best which is ruled by one.” Finally, we realize quite profoundly that the prince not only represents the community in its natural capacity to defend itself, but in fact reflects its moral quality (that is, whether it is just or unjust).

In his chapter on the neo-Thomists in the *Foundations of Modern Political Thought*, Quentin Skinner observes that “no commonwealth has a natural existence, they must all have been deliberately brought into being – as it were at some later stage – by some form of concerted action on the part of their own citizens.” Now, it is true that man must pass through the principal stages of human association laid out in Aristotle’s *Politics* before finally arriving at the political community — the initial union of male and female, the family, and the village —, but the city (*civitas*) is, for Vitoria, emphatically, “the most natural community, the one which is most conformable to nature ... [its] primitive origin was not a human invention or contrivance to be numbered among the artefacts of craft, but a device implanted by Nature in man for his own safety and survival.” Of course, Skinner does not set out to reconstruct the second-scholastic framework of social development. Instead, he is concerned with identifying in their political project what he describes as the fundamental question all social contract theory engages: how it is that some men came to rule over others in spite of all men being born free, equal, and independent by nature, and what legitimates it. For Vitoria, it is not a commonwealth that is being inaugurated by concerted action (since it already exists by nature), but it is the prince

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42 Skinner, 155.

43 Vitoria, 9.

44 Skinner, 159.
whom exercises civil power (both of which are markedly different and quite distinct from the commonwealth). The birth of the “commonwealth” that interests Skinner is properly speaking, at least for Vitoria and his colleagues, the rise of “the community’s appointed agent,” “the public representative of the commonwealth,” or as Aquinas had put it, he “who has charge of the people and who bears the public person” (*qui curam populi habet et eius personam gerit*).\textsuperscript{45} The commonwealth boasts a natural existence and is something independent from the governing force that preside over it, and must precede the latter in its existence.

In *De potestate civili*, there are four distinct elements that are constitutive to all political existence. These are the individual, the commonwealth, civil power, and the commonwealth’s appointed agent. These are elements that have not satisfactorily received the clear distinction they merit for a faithful exposition of Vitoria’s political theory. The joining of these elements form integral parts of what we may call as modern commentators, Vitoria’s theory of the state. It is only through an understanding of the nuances of these components and their relationship to one another that we can fully grasp the political project of Vitoria and the School of Salamanca. Moreover, this clarification is of great importance to our discussion of representation and the state, for when Vitoria says that civil power is not of the commonwealth, he may not mean to be saying in that specific instance that its origin is not of the commonwealth (though of course, as we have shown in the last section, it is a power that is natural and God-given). What he could mean to be saying in that particular case is that civil power cannot possibly be maintained in the commonwealth without a head to govern and direct it. The people as a whole and in themselves cannot independently perform the act of governing, and for this reason the power they have must be entrusted to one or more men by authorization of the community.

Almain gives this topic only cursory treatment, writing that “A particular polity is not called royal, therefore, because one person rules over it who is greater than the whole community in jurisdiction, and not subject to it in any way, but only for this reason, that there is

\textsuperscript{45} Aquinas, *Political Writings*, 162. *ST*, Ilae IIae, q. 57, a. 2.
a single ruler who has jurisdiction over every other member of the community and is superior to [each member].” The defining feature of a royal polity, for Almain, is the presence of a common power who prevails over each of its constituent members, but who still remains subject and accountable to the community that elected him. However, the greater importance of there being head and the reason for its necessity to the community are not topics explored in great detail by Almain, but his student Vitoria, who argues:

Though the commonwealth has power by divine law over the individual members of the commonwealth, as has been proved (1.4 above), it is nevertheless quite impossible for this power to be administered by the commonwealth itself, that is to say by the multitude. Therefore it is necessary that the government and administration of affairs be entrusted to certain men who take upon themselves the responsibilities of the commonwealth and look after the common good. It is irrelevant whether this be a number of men, as in an oligarchy, or a single man, as in a monarchy; in any event, if the power of the commonwealth is not tyrannical but just, then the power of a monarch will be just too, for it is none other than the commonwealth’s power administered through the sovereign. The commonwealth as such cannot frame laws, propose policies, judge disputes, punish transgressors, or generally impose its laws on the individual, and so it must necessarily entrust all this business to a single man.

It is impossible for the commonwealth to work efficiently without the institution of rulers who oversee its care, as the commonwealth cannot independently govern itself nor can it effectively administer its own public affairs. By this, Vitoria not only means that the commonwealth is incapable of maintaining its own defense from internal and external enemies, that is, exercising the most fundamental right it possesses by nature to take the life of its own citizens and make war against other princes, but it is also unable to perform basic legislative and judicial duties central to governance. The commonwealth in this condition cannot legislate, impose its laws on its members, and judge disputes until it institutes certain men or a single man to bear these duties. Vitoria goes so far to argue that partnerships without an overseeing power or governing force cannot exist. “If all members of society were equal and subject to no higher power,” he says, “each man would pull in his own direction as opinion or whim directed, and the

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46 Almain, 137-138.
47 Vitoria, 14. Emphasis mine.
commonwealth would necessarily be torn apart.” This is again proven by way of analogy to the human body, which “cannot remain healthy unless some ordering force (uis ordinatrix) directs the single limbs to act in concert with the others to the greatest good of the whole.” For these reasons, the government and administration of affairs of the commonwealth must “be entrusted to certain men who take upon themselves the responsibilities of the commonwealth and look after the common good.”

This opinion about the necessity of a higher power for the very existence of the commonwealth does not seem to undermine the Aristotelian thesis of natural sociability, since the institution of a prince (although distinct from the social formation of the commonwealth) is part and parcel of the process that leads up to the rise of the political community. Vitoria refers the student to Aristotle’s thesis of the unmoved mover:

Aristotle asserts in *Physics* 254b13-256a3 that lighter and heavier bodies are set in motion by no other cause than the natural inclination to motion with which the First Mover endows them. Therefore, if God was responsible for endowing men with the necessity and inclination which ensure that they cannot live except in partnership (*societas*) and under some ruling power, we must conclude that partnership and power are themselves God-given. For things which are natural to all creatures must themselves be created by God, the author of nature, since he who gives the creatures their form and structure, as Aristotle again says, must also be responsible for the consequential things entailed by that form. For this reason Paul teaches us that ‘whosoever resisteth the power, resisteth the ordinance of God’ (Rom. 13: 2). Therefore I conclude that power exists in the commonwealth by God’s ordinance.

Still, it is a rather ambiguous position to make. The community must precede the institution of its prince by virtue of its naturalness, but then, at the same time, the community cannot exist without the election of a person to assume the responsibilities of the commonwealth. Vitoria regretfully leaves the student without an answer about the precise timing of these events. Since God implants within us an inclination toward both partnership (*societas*) and residence under some ruling power, it is possible that the formation of the commonwealth and the election of its

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appointed agent occur at the same time. This is the way that Hobbes would later conceive of the coincidence of these occurrences, as a single inseparable and contemporaneous process. Before the election of a representative, “the people” are not “the people,” but rather a multitude of men in a state of war of every man against every man. For Hobbes, corporate existence depended entirely upon representation. The second-scholastic theologians, because of their adherence to Aristotle’s theory of the natural sociability of man, propounded a theory that was surely more ambiguous than Hobbes’s, but it was one that was still no less profound in its implications for political life. For the scholastics, corporate existence both was and was not possible without a head, the presence of which was considered to ameliorate many of the discontents that arose from a headless body. In any case, the appointed agent is a necessary element in Vitoria’s overall thesis, which means that a form of representation is absolutely fundamental for a healthy, political life. Years later, Soto would rework this theory into book four of De iustitia et iure using the language of representation, writing that,

God through nature gave to individual things the faculty of preserving themselves, not only with regard to the safekeeping of their temporal well-being, but also through his grace with regard to the prosperity of their spiritual well-being. But since in their scattered state they were not able to exercise this faculty conveniently, he added to them the instinct of living together, so that united they might be sufficient to each other. However, the commonwealth thus congregated could in no way govern itself, drive off enemies and check the temerity of malefactors unless it selected magistrates, to whom it granted its faculty: for otherwise the community, without order or head, would not represent one body [congregatio sine ordine & capite, neq; unum corpus representaret, neq], nor could it provide for those things that were expedient.52

Soto follows Vitoria’s argument with only slight deviation toward the end of its course; God first grants the individual the faculty of self-preservation, he next gives the individual an instinct of communal living, but then God strangely exits the stage and the community serendipitously decides to select magistrates who represent the body politic. Brett writes on the significance of this passage, “Here, the faculty of the congregated commonwealth — the body — is implied but instantly transferred to a head. The body cannot act, it cannot even be a body, without a head, and it is the head that exercises the faculty of preserving it ... But the relationship between body

52 Quoted in Brett, Changes of State, 125. The Latin is from the 1967 Madrid facsimile of De iustitia et iure, lib. IV, q. 4, a. 1. (p. 302).
and head is reciprocal, because the power that the head exercises is only the body’s power of
preserving itself.”53 For both theologians, the very being of the political community is dependent
on the representation of the body by a head. However, Vitoria believes that the making of the
decision to select magistrates to assume the responsibilities of the commonwealth is the result of
God putting in the individual an inclination toward living under a ruling power. While for Soto,
the influence of God-given instinct ends at living in society, and does not inform the individual’s
realization that he must live under a ruling power if the political community is to exist.

Vitoria’s reference to the Pauline statement about the resistance of power appears to be a
Christian rephrasing of Aristotle’s dictum from the Politics, “he who by nature and not by mere
accident is without a state, is either a bad man or above humanity; he is like the Tribeless,
lawless, hearthless one, whom Homer denounces — the natural outcast is forthwith a lover of
war; he may be compared to an isolated piece at draughts.”54 To not reside in a community
without a ruling power would mean to resist the natural law and therefore God himself,
precisely what at least some of the American Indians were doing at the arrival of the Spanish in
the New World. Power, understood as a right of self-defense and as the ruling power itself,
therefore cannot be abolished as Vitoria argues:

I have shown that public power is of God, and that as such it is just and legitimate. And
from this follows the proof of the last part of the proposition, where I said that power of
this kind can not be abolished even by the consensus of men. If a man cannot give up
his right and ability of self-defence and of using his own body for his own convenience
because this power belongs to him by natural and divine law, by the same token the
commonwealth also cannot be deprived of its right and power to guard
and administer its affairs against violent attack from its enemies, either from within or
from without. And this it can only do by assuming public powers. Therefore, even if all
the members of the commonwealth were to agree to share this power freely among their
number without restraint of law or obedience to magistrates, their agreement would be
null and void as contrary to natural law, which the commonwealth of itself cannot
abolish.55

The reason public power cannot be abolished even by the consensus of men is that the
commonwealth would be incomplete without it. It could not properly defend itself from

53 Brett, Changes of State, 125.
54 Aristotle, The Politics, 13. 1253a1-6
55 Vitoria, 18-19.
domestic and foreign enemies without the establishment of a ruler who exercises civil power. Vitoria concedes that this power is held originally by the commonwealth, but maintains that the commonwealth cannot exercise this power without ensuring the institution of a ruler who assumes public power on its behalf. He does not wish to say that there is no such thing as the commonwealth until these public powers are assumed, but rather the commonwealth is lacking in a critical way if there is no prince to exercise civil power. Moreover, the power cannot be abolished by men since it is, as we have discussed at length in the second section, from the natural law. Vitoria here remains indebted to Almain who also argued that the power of self-defense cannot be abdicated by any perfect community or any individual:

No perfect community can abdicate this power, just as no individual man can abdicate the power which he has of preserving himself; nor, indeed, can he be deprived of it except by God. The gloss seems to be of this opinion at c. Ostendit [C. 23 q. 3 c. 11], where we read ‘The people truly has jurisdiction, although the law may say that it has transferred its right to the emperor. For, if the city or the people did not have jurisdiction, why would it be punished on account of deficiency in the judge, as in c. Dominus [C. 23 q. 2 c. 2], where we read, ‘The city which has neglected to punish the misdeeds of its citizens or to return what was carried off unjustly must be pursued’.56

The analogous relationship between the community and the individual not only licits a common right, but it also demands that that right remains permanently reserved in both entities. For Vitoria, however, this is a question not only about abdicating the power and right of self-defense, but also about abolishing the ruling power itself. Almain never goes so far to extend the argument to the figure of the prince, and instead advances a radical theory of accountability:

The whole community has power over a prince constituted by it, by means of which, if the king rules not to the edification but to the destruction of the polity, it can depose him, otherwise it would not have sufficient power to preserve itself ... And, although some have received civil jurisdiction over a certain people immediately from God, as seems probably in regard to Saul and David, nonetheless, they always were subject to the whole community in a case where they ruled to the destruction of the community.57

So far, we have seen the closeness of Vitoria’s lecture to Almain’s book. However, now, we see a remarkable divergence in their political theories. Almain provides ample room for resistance against a prince whose rule threatens the preservation of the community, but the allowance of

56 Almain, 137.

57 Ibid., 137.
this power must be seen in relation to the wider aim of his political theory. In writing *Libellus de auctoritate ecclesiae*, Almain aimed to provide theoretical support for the deposition of Julius II amid the conciliar crisis of the early sixteenth century, and therefore seeks to use his brief political exercise on the origin and nature of civil power to demonstrate the Church’s analogous power to depose a pope whose rule threatens the preservation of the spiritual community. It is interesting to note that Vitoria borrows Almain’s passages word for word, yet never formally acknowledges his debts to his professor. Nor does he once, at least in *De potestate ciuili*, provide justification for the deposition of a prince whose rule works toward the destruction as opposed to the edification of the political community.\(^5\) It was customary at the time to name the works and commentaries of those theologians and jurists who supported the argument one was advancing. To refrain from doing so raises the perplexing question why.\(^6\) Vitoria obviously fears the constitutionalist implications of Almain’s thought, and is perhaps carefully distancing himself from the conciliarist program to which his professor subscribed. Vitoria was, after all, lecturing during the Reformation, a radically different political and religious climate from Almain’s Europe. This was a time when positions across the board had to be hardened for solidarity in Catholic Europe. There could be no pleas for conciliarism or constitutionalism in the Church or politics. If there could, it could only be so limited, and in a way that ultimately sought to dismantle Lutheran and Calvinist theses on the divine right of kings. In short, Almain’s thesis can only run so far with what Vitoria wants to do with it.

Vitoria’s inability to fully absorb the whole of Almain’s political theory without disposing of its constitutionalist implications is apparent when he argues that the community can be lawfully plundered on account of an unjust war waged by its authorized representative. Vitoria states:

> *the whole commonwealth may lawfully be punished for the sin of its monarch.* If a sovereign wages an unjust war against another prince, the injured party may plunder and pursue all the other rights of war against that sovereign’s subjects, even if they are

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\(^5\) There is, of course, the exception of *De Indis* where he provides numerous titles through which the American Indians could dispel their current masters in favor of the Spanish.

\(^6\) I am grateful to Miriam Bodian at the University of Texas at Austin for raising this question.
innocent of offence. The reason is that once the sovereign has been duly constituted by the commonwealth, if he permits any injustice in the exercise of his office the blame lies with the commonwealth, since the commonwealth is held responsible for entrusting its power only to a man who will justly exercise any authority or executive power he may be given; in other words, it delegates power at its own risk. In the same way, anyone may lawfully be condemned for the wrongdoings of its appointed agent.60

The contradictions rise to the surface. If the commonwealth has a power and right of self-defense by nature, should it not have the liberty to use that right toward its own preservation independently of its prince, particularly if, as in this scenario, the representative of the community has erred in the duty of his office and has threatened the preservation of the body politic? Vitoria does not say that the commonwealth cannot defend itself against the foreign prince, but conversely he never says that it can either. Rather, he places the blame on the commonwealth for making a poor choice in the selection of its representative, because anyone who appoints another person to act on their behalf must be held responsible for the actions of their appointed agent. The people are left to be punished for sins that they themselves never committed, for injustices committed in their name.

Although the community originally possesses the power and right of self-defense, it cannot exercise this power on its own accord in its defense against a foreign enemy nor against its own prince. This could be because the power is inalienably transferred to the prince. Vitoria explained in his commentary on Aquinas’s discussion of the law, that “once the commonwealth has transferred its power to the king, it does not retain that power to itself, otherwise there has been no transfer.”61 This could otherwise be his attempt to champion the primacy of the Castilian monarch over his recalcitrant subjects after the revolt of the comunidades from 1520-21. However, it could also be a remnant inherited from Aquinas, who also deprived the community from exercising this power on its own accord:

It is lawful to kill a malefactor insofar as doing so is directed to the health of the whole community; but so to do pertains only to him to whom the task of preserving the community’s has been entrusted, just as it pertains to the physician to cut off a decayed member when he has been entrusted with the care of the health of the whole body. Now

60 Vitoria, 21.
61 Vitoria, 199.
the care of the common good is entrusted to princes having public authority; and so they alone, and not private individuals, can lawfully kill malefactors.⁶²

Although the body of the community is distinct from the human body, Aquinas speaks of the community as having health like a body, that requires someone external to it to oversee its proper care. The health of the community is analogous to the health of the individual, as the prince is analogous to the physician. Just as it is the physician who is held responsible for the care of the human body, it is only the prince who can rightfully look after the body politic and therefore lawfully kill a malefactor. But in this section of the secunda secundae, Aquinas is only discussing princely authority to kill domestic enemies.

In De Indis Relectio Posterior, sive iure belli (1539), Vitoria declares that “the prince has the same authority as the commonwealth ... the prince must be chosen by the commonwealth, therefore he is the authorized representative of the commonwealth. Indeed, where the commonwealth has a legitimate prince, all authority rests in his hands, and no public action can be taken, whether in peace or in war, without him.”⁶³ The ruler serves as the public representative of the commonwealth, and represents the commonwealth in its capacity to kill malefactors and make war against other princes. Vitoria reinforces his earlier position from De potestate ciuili about the necessity of the prince to the commonwealth, but it is here that he introduces the idea that no public action (in peace or in war) can be taken without its representative. This explains why the commonwealth cannot take up the war effort by itself. In time of peace, the prince “fulfills a public role which is itself ordained for the public good, and he is a servant of the commonwealth ... Only a public representative has the authority to make law, and a law privately promulgated is not law ... The proof of this is that the legislator acts in a public role; he therefore has no power to enact laws unless he promulgates them in public.”⁶⁴

⁶² Aquinas, 255. ST, IIaIIae, q.64, a.3. “occidere malefactorem licitum est inquantum ordinatur ad salutem totius communitatis. Et ideo ad illum solum pertinet cui committitur cura communitatis conservandae, sicut ad medicum pertinet praeicidere membrum putridum quando ei commissa fuerit cura salutis totius corporis. Cura autem communis boni commissa est principibus habentibus publicam auctoritatem. Et ideo eis solum licet malefactores occidere, non autem privatis personis.”

⁶³ Vitoria, 301.

⁶⁴ Ibid., 157, 162-163.
The theatricality of this passage is interesting. The representative acts in a public role and therefore must make all laws before the public in order for them to be binding. For Vitoria, the need for a representative is as much a problem of political ontology as it is for Soto and Hobbes, but it is above all else a problem about public action. While it could still be debated if the political community could exist with or without a prince, it was undeniable for Vitoria that the community could not act without a ruling power of some sort. “The body is entirely at the service of the mind ... [and] would be nothing but a burden, a prey, were that mind of the empire to be withdrawn,” as Seneca had said.65 This belief is not far removed from Hobbes’s, and it is not very far removed from our own. Though, it is still an unsettling situation to be in. The moment a people gives itself representatives is, as Rousseau had said in the Social Contract, the moment “it ceases to be free; it ceases to be.”66 Vitoria’s theory of representation is more than a theory of tutelage or trust. The prince does not solely bear the public person in the sense that he undertakes the community’s care or assumes its role, as in Aquinas and Cicero. He is much more than a moral reflection of the community. The prince is the community’s actor, who through communal authorization, gives the community a dynamic legal personality. In fact, the only way in which the community may act in a public sense at all is through its prince. A community cannot act without a representative in either peace or war. But there were those writers who insisted there be an alternative, such as the seventeenth-century playwright and poet, Lope de Vega, who alluded in the play Fuenteovejuna (1619) to the idea that a town, a corporate body without a head could possess a single, juridical identity and commit acts in unison. Based upon a historical event of insubordination that took place in the late fifteenth century, one of the villagers of the town of Fuenteovejuna takes it upon himself to kill the royal commander who is committing gross abuses against the innocent people of the town. When a royal judge is sent to investigate the crime and bring the offender to justice, all of the town’s people answer that it was


Fuenteovejuna who murdered the commander. The act of one anonymous person is held by the town to represent its unanimous will, implicating both personhood and speech for the inanimate town of Fuenteovejuna.
2. The Papal Bulls of Donation and Spanish Property Rights in the New World
We saw in the last chapter the place of representation in Vitoria’s theory of the state in matters of life and death. The political community receives the right to defend itself from domestic and foreign enemies by means of analogy. The community and the individual both in some way resemble bodies, and because of their shared likeness it is possible for them to have analogous moral qualities. This right which is originally held by the individual is passed from the community to the prince to act as the community’s appointed agent. He serves as the public representative of the commonwealth, and for Vitoria, he represents the commonwealth in its capacity to kill malefactors and make war against other princes. The themes of resemblance and agency are fundamental to this chapter as well, but it is here that we see the power of representation above all in the extension and exaltation of empire.

Throughout the early years of the sixteenth century, the crown and its supporters employed a number of different claims to justify its occupation of the New World. These ranged from arguments for universal empire over the whole world, claims to possession by right of discovery and by special gift of God, and theories about the rational incapacity of the American Indians (in addition to their status as unbelievers and sinners). But the official position of the crown about its property rights in the New World came from a source outside of its earthly reach, from three papal bulls made by Pope Alexander VI in 1493. Upon hearing the news of Columbus’s discoveries, the crown ordered its ambassadors at Rome to gain papal recognition of its rights over its latest territorial acquisitions. It is possible that the Catholic Monarchs were so adamant about receiving the approval of the pontiff because the crown was at that moment at risk of excommunication from Rome. When Columbus sailed west and came across land, he was in effect violating the 1479 Treaty of Alcaçobas and the bull Aeterni Regis of 1481 that gave the Portuguese exclusive rights over Atlantic exploration and settlement. To his dismay, Columbus was made aware of this transgression upon his arrival in Portugal by John II himself.¹ Yet in

1493, Alexander VI was notified of the crown’s temporal affairs before the rest of Europe, and customarily issued three bulls entitled “Eximie devotionis” 1, “Inter cetera” 1, and “Inter cetera” 2, that ceded,

in perpetuity each and every said land and island thus unknown, both those already found by your envoys and those yet to be found, and which are not at present established under the temporal domination of any Christian lords, with all their lordships, cities, castles, places, and towns and rights and jurisdictions and all appurtenances, by the authority of almighty God granted to us through Saint Peter and of the vicariate of Jesus Christ which we exercise on earth.²

These documents, which held their legitimacy by way of the claim that the pope as the Vicar of Christ represented the person of Christ (personam Christi) in a temporal capacity, donated American lands to the king of Spain and his heirs in perpetuity. Collectively, the bulls stipulated that the donation was based upon the apostolic authority invested in the papacy by direct authority of the powers of binding and loosing that Christ presented to Saint Peter in Matthew 16:18-19. From the point of view of the pope, this gift of temporal lordship was made in order to facilitate the instruction of the faith in these new lands lands. Alexander VI proclaimed:

We should favorably grant to you those things through which you may better and more easily be able to carry out in the future your holy and praiseworthy proposal and the work begun in seeking our lands and islands, both distant and undiscovered, for the honor of almighty God and the extension of the empire of Christendom and the exaltation of the Catholic faith.³

It should be said that this proposal of evangelical work was not the original intention of the Catholic Monarchs, who sponsored Columbus with the aim of discovering a faster route to reach the lucrative spice trade of the far east. Then, of course, this might have been different if the king and queen were aware beforehand of the presence of so many souls that had never heard the Gospel and remained outside of the family of the faith. The intentions of the pious Isabel quickly


³Italian Reports on America, 1493-1522, 30.
changed when this fact was realized. The Holy See, however, did not make this arrangement without setting terms of its own and staking a claim for itself in the enterprise. “You should want to, and indeed you must, induce the peoples dwelling in these islands to receive the Christian faith,” declared the pope, “We command you by virtue of holy obedience, that, just as you have promised (and on account of your very great devotion and royal magnanimity we do not doubt that you will do it), you should send to the said lands and islands prudent and God-fearing men, learned, skilled, and proven, to instruct the said natives and inhabitants in the Catholic faith and to instill good morals in them, and you should show all due diligence in these matters.”\textsuperscript{4} At the outset then, there were two tasks with which the crown was charged: the juridical incorporation of these new lands under the crown of Castile and the evangelization of these peoples outside of the faith.

In the years ahead, the bulls would come to hold a very special place in the Spanish political imagination. These were documents recognized almost universally, and without much resistance, by royal historians, priests, and jurists as the just and supreme title that legitimized the existence of the overseas empire. The crown first upheld these claims in the summons \textit{el Requerimiento} drafted by the jurist Palacios Rubios in 1513 and in a royal decree issued by Charles V in 1519, which read:

\begin{quote}
Por Donacion de la Santa Se de Apostolica, y otros juftos y legitimos titulos fomos Señor de las Indias Occidentales, Islas y Tierra firme del mar Occeano, defcubiertas, y por defcubrir, y efán incorporadas en nueftra Real Corona de Caftilla. Y porque es nueftra voluntad, y lo hemos prometido y jurado, que fiempre permanezcan vnidas para fu mayor perpetuidad y firmeza, prohibimos la enagenacion de ellas.\textsuperscript{5}
\end{quote}

The historians Gonzalo Fernandez de Oviedo y Valdes and Francisco López de Gómara clung to the legitimacy of the documents in the \textit{Historia general y natural de las Indias} (1535) and

\textsuperscript{4} \textit{Ibid.}, 32-33.

\textsuperscript{5} \textit{La Recopilación de las leyes de los Reynos de las Indias}, Libro III, Titulo I, Ley I. From online facsimile available at the Archivo Digital de la Legislación en el Perú: \url{https://archive.today/20120629195154/www.congreso.gob.pe/ntley/LeyIndiaP.htm}
**Historia general de las Indias** (1552), respectively. The famous defender of the Indians, Bartolomé de las Casas, briefly upheld the bulls in the *Historia de las Indias* and in even greater passion in his treatise of 1552 titled “Tratado comprobatorio del imperio soberano y principado universal que los reyes de Castilla y León tienen sobre Las Indias.” In his words,

> Los reyes de Castilla y León tienen justísimo título al imperio soberano e universal o alto de todo el orbe de las que llamamos Océanas Indias, e son justamente príncipes soberanos y supremos, y universales señores y emperadores sobre los reyes y señores naturales dellas, por virtud de la autoridad, concesión y donación, no simple y mera, sino modal, *id est, ob interpositam causam*, que la Sancta Sede Apostólica interpuso y les hizo. Y éste es, y no otro, el fundamento jurídico y substancial, donde estriba y está colocado todo su título.⁶

The reason being that,

> El Papa romano y Sumo Pontífice, canónicamente elegido y entronizado en la apostólica Silla, es sucesor de Sant Pedro y vicario soberano e universal de no puro hombre, sino hombre y Dios, Jesucristo, e tiene su poder sobre todo el mundo, que comprende fieles e infieles || (aunque diferentemente), a los unos e a los otros, en el camino de la vida eterna, y por consiguiente, para quitar los obstáculos e impedimentos de la consecución della, lo qual es decir *in ordine ad finem spiritualm.*⁷

The jurist Juan de Solórzano y Pereyra (1575-1655), who was ultimately charged by the crown to compile *La Recopilación de las leyes de los Reynos de las Indias* (1680), addressed the bulls and the crown’s relationship to the Indies in his *Política Indiana* (1647). Solórzano opined that the end of empires was the establishment, propagation, conservation, and augmentation of the faith.⁸ In chapter IX of *Política Indiana*, on the titles that justified Spanish property rights in the

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⁶ Bartolomé de las Casas, “Tratado comprobatorio del imperio soberano y principado universal que los reyes de Castilla y León tienen sobre Las Indias,” in *Fray Bartolomé de las Casas: Obras Completas, tomo 10, tratados de 1552 impresos por Las Casas en Sevilla*, ed. Ramón Hernández and Lorenzo Galmés (Madrid: Alianza Editorial, 1992), 399-400.

⁷ Las Casas, “Tratado comprobatorio del imperio soberano y principado universal que los reyes de Castilla y León tienen sobre Las Indias,” 400.

New World, he argued that there was no need to inquire into the justice of the conquest or the continent’s settlement. The chapter was written, in his opinion, to merely satisfy those heretics who kept endlessly inquiring into the justice of the conquest. Additionally, Solórzano argued it was an issue not worthy of further deliberation because of all the historical treatment it had already received, ironically citing Vitoria as an example. Furthermore, he stressed the affair of the Indies was conducted in the best faith, and for this reason, had to be just. The bulls were immortalized in time to come in the actual publication of La Recopilación.

In Solórzano, we see the prevalence of the language of evangelism in royal documents from the early history of the imperial project. All the documents Solórzano cites indicate that the task of evangelism was one entrusted to the crown by the pope. It was not a task that was undertaken by the Catholic Monarchs and their heirs as direct representatives of God free from papal jurisdiction, rather it was one entrusted to them by the direct representative of Christ on earth. In private correspondence, Isabel of Castile wrote to her daughter Joanna the Mad and her son-in-law Philip the Handsome that the obligation to the Holy See must be honored because it was through the intention of evangelization that these newly discovered lands were given to Spain. The first ordinance to the Council of the Indies acknowledged the nature of the duty that was entrusted to the kings, and recognized even more importantly that the gift of temporal lordship over these lands was made in order that this assignment be fulfilled. The documents of this period all claim, so Solórzano says, that sufficient ministers would be

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9 “No porque sea necesario andar inquiriendo, y calificando la Justicia de los Reynos, yá de antiguo adquiridos, y entablados, como cueradamente lo advierte Balduino, y más entre los que somos vasallos de Reyes tan Católicos, y circunspectos: y respetamos tanto sus acciones, y determinaciones, por las cuales debemos estar en viéndolas resueltas, y executadas, é ir con buena fé de que es justo, y legítimo lo que obraron, pues siempre para ello preceden tan graves, y maduras consultaciones, y deliberaciones, como en nuestros mismos terminos lo dicen con erudicion, y prudencia Victoria, y Acosta.” Solórzano y Pereyra, Política Indiana (Madrid: Compañía Ibero-Americana de Publicaciones, S.A., 1930), vol. 1, 87-88. Vitoria was quick to criticize this type of logic. When asked in a letter dated 1546 by a fellow friar, "can we rest easy in conscience on the assurance that the king of Portugal and the members of his Council will not permit unjust [slave] trading?" Vitoria responded, "if the reality of some unsuitable thing or injustice were affirmed by a good many people, I should not dare wholly to cling to the excuse that 'the king and his councils know and approve of it'. Kings often think from hand to mouth, and the members of their councils even more so." Francisco de Vitoria, Political Writings, ed. and trans. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991), 334-335.

10 Solórzano y Pereyra, Política Indiana (Madrid: Biblioteca Castro, 1996), Bk IV, Ch 1, p. 1203.
provided for the task of evangelization. Solórzano added that beyond the first ordinance to the Council of the Indies, the instructions to the viceroy and other governors made it explicitly known that the temporal concession of the Indies was dependent upon the spiritual obligation of evangelization of its indigenous peoples. Even before the appointment of viceroy to the New World, the crown recognized the urgency of the task and ordered from Madrid on 20 April 1528 to the first Audiencia of Mexico:

Sabloed que nos deseando el bien y pro común de los dichos nuestros reinos y provincias, porque nuestros sujetos y naturales que pidiesen justicia la alcanzasen, y celando el servicio de Dios Nuestro Señor, bien y provecho y alivio de nuestros sujetos y naturales, y la paz y sosiego de los pueblos de la dicha Nueva España y provincia de yuso declaradas, según somos obligados a Dios y a ellos a cumplir con el officio que de Dios tenemos en la tierra, y a la gran ciudad de Tenochtitlán México, y de los otros pueblos que están poblados en la dicha Nueva España.11

Did the king mean to say that he was obliged to God directly, or did he mean to say that he was obliged to the direct representative of Christ on earth? It is important to highlight that the crown was not only obliged upwards to God in the administration of justice, but also downwards to the city of Tenochtitlan as well as the other towns of New Spain. The first instructions given to the first viceroy of New Spain, Antonio de Mendoza, in 1535 declared more clearly:

Habemos acordado de nombrar persona que en nuestro nombre y como nuestro visorrey la gobierne, y haga y provea todas las cosas concernientes al servicio de Dios Nuestro Señor y aumento de nuestra santa fe católica, y a la instrucción y conversión de los indios naturales de la dicha tierra, y asimismo haga y provea las cosas que convengan a la sustentación y perpetuidad, población y ennoblecimiento de la dicha Nueva España y sus provincias.12

The primary duties with which the viceroy was charged were spiritual matters. In the name of the king, he performed these duties as well as all the others that were necessary for sustaining New Spain and its provinces.

The fact that the crown upheld the bulls as the just title that legitimated Spanish dominium in America into the seventeenth century, instead of perhaps one of the other more


12 Instrucciones y Memorias de los Virreyes Novohispanos, 76.
compelling titles for dominiun proposed by Vitoria, suggests much about the way it perceived its political relationship with the New World. It additionally elucidates the way in which the crown understood its relationship with the papacy, and the papacy's relationship with Christ and the world around it. According to the glossators of canon law and their secular allies, the pope was temporal and spiritual lord of the world, and as Christ sent his apostles to teach and baptize the children of all nations — since his own absence on earth was imminent —, the pope would send his own children, Ferdinand of Aragon and Isabel of Castile — because of his own absence —, to baptize and teach the children of these newly discovered lands. For these advocates of papal power over earthly affairs, the Catholic Monarchs and their heirs were to be the pope’s representatives in the New World, but his representatives had more immediate concerns in Europe as Spain was flung into continental politics for the next two centuries, and thus employed representatives of their own to ensure the good governance of these kingdoms which always went hand in hand with the Christianization and moral development of the Indies.

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Before the great debates at Valladolid over the ontological status of the American Indian between Bartolomé de las Casas and Juan Ginés de Sepúlveda in 1550-1551, Francisco de Vitoria delivered a groundbreaking lecture titled De Indis at the University of Salamanca in 1539. The theologian was originally asked by the crown to investigate the orthodoxy of forced baptisms in America, but ultimately his lecture developed a character of its own that sought to answer three contentious questions about the “affair of the Indies.” First, Vitoria endeavored to answer the question “by what right (ius) were the barbarians subjected to Spanish rule.” Second, he wished to discuss “what powers has the Spanish monarchy over the Indians in temporal and civil matters.” Third, he sought to define “what powers has either the monarchy or the Church with regard to the Indians in spiritual and religious matters.” 13 Through a close reading of the narratives and histories of the conquest – Hernán Cortés, Gonzalo Fernández de Oviedo, Peter

13 Vitoria, Political Writings, 233.
Martyr, and Francisco Jerez\textsuperscript{14} — Vitoria sought to prove that the American Indians were rational creatures that resided in true political communities, whom as participants in the natural law (\textit{ius naturae}) and the law of nations (\textit{ius gentium}), rightfully possessed and exercised \textit{dominium} as children “formed in the image of God.”\textsuperscript{15}

The whole of Vitoria’s lecture discusses the potential just and unjust titles under which the Indians could have been said to have been subjected to the crown. While the formulation of these titles was largely based upon Castilian experiences with the infidel throughout the \textit{Reconquista} (or on theories of cosmopolitanism derived from the great Roman law texts and the scholastics), they still reflected the realities of the American conquest and engaged contemporary intellectual efforts to justify a transatlantic empire. In \textit{De Indis}, Vitoria therefore inquired into the validity of the papal bulls of donation, providing the loudest outcry against what had become consensus among Spanish intellectuals about papal claims to temporal and spiritual \textit{dominium} over the earth. The fact that a theologian denied the papacy these rights during a sensitive time after the aftermath of the Reformation is quite remarkable. In his discussion of the issue, representation was the fundamental problem at play. Vitoria’s inquiry into the validity of papal claims to temporal and spiritual \textit{dominium} over the earth was fundamentally concerned with answering the pressing question of the representational relationship of the pope to Christ. The passing of the keys to Peter was believed to have bound and loosed in heaven what was bound and loosed on earth, but even then, the ambiguity of the passage left considerable room for debate among canonists and theologians throughout the Middle Ages into the sixteenth century. The historical discussions about the legitimacy of these claims involved, on both sides, answering the question of the capacity in which the pope represented Christ. To make any argument in support or against the papacy required a clear description of the powers Christ was assumed to have possessed while he was still on earth, and


\textsuperscript{15} Vitoria, 249.
those held by way of representation of his vicar. Las Casas was thus correct when he observed that “ningún católico cristiano duda (conviene a saber) quel Sumo Pontifice sea sucesor de Sant Pedro e vicario de Cristo, Hijo de Dios vivo,” but he was mistaken to presuppose that because of this role, the pope had “plenísimo poder en la tierra sobre todo el mundo, al menos sobre todos los fieles que recibieron agua del sancto baptismo.”

The papal bulls of donation were ridiculous, according to Vitoria, not only because the Indians rightfully possessed private and public *dominium* by the natural law, but because the papacy could not make claims to temporal *dominium* over the earth as the holder of an office that only held spiritual *dominium* over Christian believers. According to Vitoria, Christ never had this power and, even if he did, he never entrusted it to Peter. Even more troubling, however, were the implications of this promulgation for the peoples who inhabited these lands. "First the pope ceded these countries to the kings of Spain," stated Vitoria, "then the barbarians were informed that the pope is the vicar and lieutenant of God on earth, that they should therefore recognize him as their superior, and that if they refused war would justly be declared upon them, their countries conquered, and so forth." The *Requerimiento* made these dubious claims known to the Indians that were dependent first upon comprehension of Castilian or Latin, and second upon their recognition of the representational relationship between the pope and Christ that upheld the basis of the entire document. Hence a problem not only in communication, but one in ontology.

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16 Las Casas, 401. The qualification about baptism, however, is correct. Vitoria repeated throughout his career that the only *dominium* the pope could possibly hold over the peoples of the earth was over members of the faith.

17 Vitoria, 259.

18 Even toward the prospect of political independence from Spain in the nineteenth century, American intellectuals found the document to be worthy of criticism, but to support their own claims to property rights in the New World. Fray Servando Teresa de Mier exclaimed, “¡Extraño evangelio aquel en que se intimaba a los indios por primer artículo de fe, que debían renunciar a su libertad, bienes, tierras y dominios, o perecer con sus familias bajo la hacha de la servidumbre, o en un bautismo de su sangre!” “Idea de la Constitución dada a las Américas por los reyes de España antes de la invasion del antiguo despotismo,” in *Escritos Ineditos*, ed. J.M. Miguel I Verges and Hugo Díaz-Thome (México, D.F.: Instituto Nacional de Estudios Históricos de la Revolución Mexicana, 1985), 255
Vitoria explains in *De Indis* that the belief that princes received their power from the papacy was an opinion shared by figures as diverse Bartolus, Hostiensis, Saint Antonino of Florence, Agostino Trionfo, Silvestro Mazzolini da Priero, Hervé de Nédellec, and even Saint Aquinas:

The one proof adduced by all these fellows is simply this: ‘The earth is the Lord’s, and the fulness thereof’ (Ps. 24: 1), and ‘All power is given unto me heaven and in earth’ (Matt. 28: 18). The pope is Christ’s vicar; and ‘being found in fashion as a man, he humbled himself and became obedient unto death, wherefore God also hath highly exalted him, and given him a name which is above every name, that at the name of Jesus every knee should bow, of things in heaven and things in earth’ (Phil. 2: 8-10).¹⁹

This kind of relationship between the head of the Church and the head of the commonwealth was not a stance that Vitoria was ready to agree with, but it was still considered valid by many devout canonists. Vitoria directs the student to an earlier lecture of his, *De potestate ecclesiae Prior* (1532), for full treatment of the issue. "Now there are some who are so carried away by their solicitude and care for the papacy that they believe all kings and other temporal rulers to be no more than vicars or representatives of the Roman pontiff, mere ministers, as it were, of papal power,” Vitoria commented in this lecture, “They affirm that all temporal power derives from the pope in Rome.”²⁰ He went on to say that its supporters “commonly assert that the pope instituted all temporal powers as his delegates and subordinates, and that he also instituted Constantine as emperor. All this is improbable make-believe, without a shred of logical proof or authority, either from scripture or from those true theologians, the Fathers. It is the glossators of [canon] law who, in their poverty of learning and substance, attributed this dominion to the pope.”²¹ Vitoria was clear in defining the duties and obligations of temporal and spiritual rulers throughout the course of his lectures, but these duties and obligations very often overlapped,

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¹⁹ Vitoria, 259.
²⁰ Ibid., 83.
²¹ Ibid., 86.
and at times, conflicted quite dangerously. So, in *De potestate ecclesiae Prior*, he answered regarding the question of whether spiritual power is above civil power:

> it is incontrovertible that spiritual power is far more excellent and more exalted in its supreme dignity. Faculties, skills, and capabilities (*potentiae*) must be judged, like all other things ordained to a particular end, by their purpose; and the purpose of spiritual power far excels that of temporal power, in the measure that perfect bliss and ultimate felicity excell [sic] all human or earthly happiness. As Innocent III says in the decretal *Solitae*, ‘spiritual things are worthier than temporal things by as much as the soul is more excellent than the body’ (X. 1. 33. 6) ... Therefore spiritual power is altogether greater and more revered than temporal power, and should be served with greater devotion and ritual.\(^{22}\)

It would then seem that temporal power and spiritual power were two disparate and distinct powers; however this was not the case as the civil policies of a king could not be detrimental to the spiritual ministry of the Church, and temporal rulers were in some way obliged to tend to spiritual matters. It was pertinent for the king to tend to the matter of religion in the care of his kingdom, and it was crucial the pope be attentive to the spiritual welfare of his flock in all parts of the world. Furthermore, the prince not only had to be concerned about the temporal policy that affected the spiritual goods of his own realm, but also those that affected the spiritual goods of those outside of it. “It does not ‘solely concern his own subjects’,” stated Vitoria, “If, for example, the policy of the civil commonwealth in Spain were to cause a great loss of spiritual goods in Africa, the ruler would still be obliged to correct that line of policy. It is therefore a matter of the dependency and hierarchy [of civil and spiritual powers].”\(^{23}\) The limitations and boundaries of temporal and spiritual powers were not clearly demarcated, as the pope could still interfere in the affairs of earthly kings insofar as spiritual concerns permitted. For example, the pope could depose an apostate king, but in doing so the king did not lose his *right* to possess the office of king, which cannot be taken away since it belongs to the natural law, but instead his *jurisdiction*. An apostate king is then deprived of his *functions*, not his *office*.\(^{24}\)

\(^{22}\) *Ibid*, 82-83.

\(^{23}\) *Ibid*, 91.

Vitoria’s commentary on question 10 of the *Secundae secundae* (should unbelievers be forcibly converted?) and his *rectio* on the lawfulness of cannibalism and human sacrifice has much to say about the rights of princes and their subjects over the matter of religion. Peoples who had not heard the faith should not be forcibly converted, he argued, but in the event missionaries were hindered from spreading the Gospel it would be lawful to restrain those doing so with force. This was an opinion he would repeat in *De Indis*. The reason being that, “everyone has the right to defend himself and his temporal interests, and therefore also his spiritual interests.” This was in line with what Vitoria said in his earliest *rectio De potestate ciuli*, that, “every man has the power and right of self-defence by natural law, since nothing can be more natural than to repel force with force.”

It is because an individual first has the right to defend himself and his temporal interests that an individual is able to defend his spiritual interests. In other words, the right to spiritual self-preservation is the corollary of the right to temporal self-preservation. If a man has the right to defend his physical being by nature, there should be no reason why a man cannot defend his spiritual being in the same way. The two rights are inextricably linked. “God through nature gave to individual things the faculty of preserving themselves not only with regard to the safekeeping of their temporal well-being,” repeated Soto in *De iustitia et iure* (1556), “but also through his grace with regard to the prosperity of their spiritual well-being.” This was all in agreement with Aquinas, who stated in the *prima secundae* that, “every substance desires the preservation of its own being in accordance with nature,” and the nature of man was ultimately directed to the final end of eternal blessedness.

For Vitoria and Soto the preservation of the faith comes above the temporal affairs of man, because ultimately it is its preservation that will guarantee the prospect of eternal salvation in the kingdom of God. Spiritual need will always transcend temporal needs, and its transcendence

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28 Quoted in Brett, *Changes of State*, 20. *ST* Ia IIae, q. 94, a. 2.
has only some respect for the jurisdictional and territorial integrity of the numerous commonwealths that form the whole of Christendom, because ultimately all Christians “are one body in Christ.”

Vitoria proceeds to show that there is no explicit prohibition of forcible conversion to be found in the Scripture. “There are some passages from which it may be inferred, though not clearly, at least by deduction,” he holds, “This is as much to say, it comes not from positive divine law but from natural law; and the arguments for proving it depend on natural reason.” Upon casting the debate in the language of the natural law, Vitoria distinguished between the forcible conversion of unbelievers who are subjects of Christian princes and those who are not, referring to the Saracens and the Indians of the New World as respective examples. Forcible conversion could be good in either case he says, even if it is evil in its methods and consequences, as it is in the interest of God, to the benefit of the individual, and to the overall advancement of the faith. For “no one can be good unless he is a Christian and accepts our faith” as it was only through the observance of the divine law that eternal happiness could be achieved in the kingdom of God. Additionally, Vitoria maintained in his commentary on the Summa Theologiae that, “everyone in the world is bound by the law of Christ, although those who have yet to hear of it are pardoned ... the evangelical [law], has been effective and binding on all men ever since it was promulgated.” It thus could be licit for a Christian prince to compel his very own subjects to the faith. The reason being that, “Christian princes have the authority to compel their subjects to believe; that is, if it be lawful to compel unbelievers. Christian princes may compel their own subjects not only in civil matters but also in religious ones; the commonwealth holds both civil and religious authority over its own subjects by natural law, and the prince has the same authority as the commonwealth over his subjects, be they pagans or not.” Since the

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29 Vitoria, 341.
30 Ibid., 345.
31 Ibid., 161.
32 Ibid., 344.
power of civil and religious authority was from the natural law, Vitoria was able to say that “Saracen priests have their authority to coerce their subjects because the Saracens themselves have given them the power to teach them in matters of religion. Hence they would commit a sin not merely by refusing to listen to their teaching, but even by not obeying it.” It was clear then that the king of Spain had no power over nonbelievers that fell under the jurisdiction of another prince despite the obligation of all humankind to obey the law of Christ since its promulgation. It was highly questionable if the Spanish could stop either the Saracens or Indians from blasphemy and idolatry since even pagan rulers, as Vitoria said, held civil and religious authority by natural law.

Some years later in 1537, Vitoria took a markedly different stance on the issue in his relectio De usu ciborum, sive temperantia. Here he argued that the act of forcible conversion is unlawful for any person of temporal or spiritual authority to commit because “no one can coerce or punish another unless he has power over him, but no power extends to coercing the will; therefore it is not lawful for anyone.” Like for Aquinas, “in matters that pertain to the interior motion of the will, a man is not bound to obey man, but God alone; but a man is bound to obey man in those things that are enacted externally by means of the body ... the servitude, by which man is subject to man, pertains to the body, not to the soul, which remains free.” Here Vitoria contradicted his original proposition, stating that “civil power does not extend this far, because it is from the people; the people never wished to confer spiritual power, nor does it seem within their power to do so. Hence it is clear that not even its own temporal subjects can be coerced to accept the faith by the civil power.” Vitoria deprives the civil power from the authority of coercing in spiritual matters. The reason being that the civil power represents the commonwealth in a temporal sense. It comes into being for purely temporal reasons and for

33 Ibid., 346.
34 Ibid., 218.
35 Quoted in Brett, 144-145.
36 Ibid., 218.
exclusively temporal ends. Although human law was built upon the foundations of an eternal, natural law, it was primarily aimed at solving temporal needs. Men indeed convened in political communities by a desire to obey the law of God, but by this the scholastics had meant adherence to the natural law (knowingly or unknowingly). If this were the case, the Indians would not be bound to listen to their masters in the teaching of religion since they never possessed this authority by natural law. Vitoria would reiterate this claim in De Indis. The conclusion stood that forcible conversion was against the natural law, and not only that, but against the divine law since only God could move souls.

Despite the moral and legal ambiguity of forcible conversion, it would seem the king could compel unbelievers from committing acts against nature since all men shared in the natural law. Though the Gentiles, Aquinas glossed, “have not the law, [they] do by nature those things that are of the law.” However this was not the case, Vitoria held, as the consequences from this course of action could cause greater harm than good. Idols and temples of unbelievers should not be destroyed where there is not a majority of converts as it provokes indignation, violates their property rights, and leaves them without a law. Moreover, the act has no positive effect upon their sympathies toward the faith as the unbelievers will rebuild the objects and places of religious significance they had known and practiced for so long. “We see that Saracens never become Christians,” joked Vitoria, “no indeed, tan moros son agora como antes.” The question of the presence of a majority of Christian converts reappeared in De Indis, where Vitoria abruptly closed his lecture stating, “it is clear that once a large number of barbarians have been converted, it would be neither expedient nor lawful for our prince to abandon altogether the administration of those territories.”

38 Ibid., 344.
39 Ibid., 292.
rightful possession of *dominium*, but he could continue the administration of the Indies in the interest of the *congregatio fidelium*, which always, because of its final end of eternal happiness, overshadowed the material ends of temporal commonwealths. The Spanish could not make war against the Indians on the basis of their violation of the natural law. Additionally it could be inferred that the breaking of the natural law was realistically an injury to God, its author. Only God, then, and not man, could rightfully take it upon himself to redress this grievance. The Spanish could, however, wage a war in the defense of the innocent as the practices of cannibalism and human sacrifice posed an injury to men. For Aquinas and his followers, all wars had to be defensive and aimed at the redressing of a grievance. Technically there was no actual injury inflicted upon the Spanish by the Indian’s practice of cannibalism and human sacrifice. There was, however, an injury made against the victim of these crimes who the Spanish could, as Vitoria said, come to aid in his defense whether or not he asked for assistance.

Then there was the question of the legality of princes using threat and intimidation as a means to conversion. “It seems that they can,” Vitoria stated, “because Christ forced Paul to believe by casting him to the ground and blinding him (Acts 9: 3-9); therefore the same can be done to unbelievers. The reply is that it is not lawful for all of us to do everything which God is permitted to do, because we are not the masters of mankind as Christ is. Hence Christ could coerce not only Paul, but the whole world, and He could have left this power to the Church; but He did not. Second, I reply that if it were in our power to move hearts, as Christ could, then it would be lawful for us to behave in this way; but He made Paul believe, not by intimidation, but by divine inspiration.”

leave his power of coercion to the Church or men to exercise on his behalf in his absence on earth.

3

This distinction between the temporal and the spiritual was an important facet of the political thought of the Dominican members of the School of Salamanca that informed second-scholastic beliefs about the origin, nature, and aim of law; the ends of civil and ecclesiastical association; the moral conduct and rewards of subjects and rulers; and the “international” community. The problems posed by these theological questions about the temporal and the eternal informed a conception of the state that was permeable in nature and susceptible to a number of external influences such as extra-civil laws that required obedience, the jurisdiction of the pope who was the vicar of Christ, and membership to competing tiers of human communities to which man owed a number of obligations. The state in Spain and its overseas possessions was not completely directed toward the temporal affairs of man and ridden of greater spiritual ends. For Vitoria, the state was certainly fixated in place and in time, but with some considerable limitations that a modern observer would find incompatible with contemporary notions of territorial sovereignty. The state was a fluid entity that was aimed first and foremost to temporal happiness, but that was still crucially and essentially directed to the final end of eternal blessedness. This belief defined the nature of the _civitas_ or _respublica_ in this period, and as a consequence imposed considerable limitations and obligations upon itself as a juridical entity that could in part explain the practice of politics in the Spanish world of the sixteenth century. The conception of the modern territorial nation-state and the sacrosanct notion of territorial sovereignty were being carefully negotiated at this early stage:

The confirmation of this is that the Church is one body, and the civil and spiritual commonwealths cannot be made into two bodies, but only one. This is certain from the words of the apostle Paul adduced above, that Christ is the head of the whole Church. It would be an unnatural monstrosity for the one body to have no head, or for the head to have two bodies. In a single body, everything is connected and subordinated to one another, the less noble parts existing for the more noble. So too, in the Christian commonwealth, all offices, purposes, and powers are subordinated and interconnected;
but it can in no sense be said that spiritual things exist for temporal ones. On the contrary, temporal things exist for spiritual ones, and depend on them.\footnote{Ibid., 91.}

For Vitoria, there were different tiers of bodies or communities to which all human beings belonged as members, and subsequently owed a number of obligations. The smallest and most immediate was the political community governed by human law, which we have discussed at length in the previous section. The largest and most universal was the \textit{respublica totius orbis} governed by the \textit{ius gentium}, which all human beings regardless of faith or ethnicity belonged to by virtue of a shared humanity. “The whole world, which is in a sense a commonwealth, has the power to enact laws which are just and convenient to all men; and these make up the law of nations,” declared Vitoria, “No kingdom may choose to ignore this law of nations, because it has the sanction of the whole world.”\footnote{Ibid., 40.} The \textit{ius gentium} was “a law neither between individual men, nor between sovereign states, but between all human beings as forming one community.”\footnote{Brett, 13-14.} It had at its aim the preservation of the natural law among all members of the human community. In the words of Annabel Brett, it “govern[ed] all inter-human relations prior to and outside the laws of particular sovereign states ... legitimate[d] division between properties and peoples and at the same time limit[ed] the claims they can make to exclude other members of the universal human society.”\footnote{Ibid., 14.} It was regarded to be “the consensus of all mankind.”\footnote{Ibid., 13.} However, in between these two communities intersected the most important community, the sacramental community of universal and eternal aspirations. This was the \textit{congregatio fidelium}, which required entrance through baptism. On that note, Vitoria said that:

\begin{quote}
temporal dominion (\textit{dominium}) sometimes belongs to the pope extraordinarily, for reasons of spiritual government. If emperors and kings are said to be ‘vicars’ of Christ and His successors, it is in the sense that Christ in His capacity as Messiah or the pope in his capacity as His vicar have been given the power of using temporal things and kingdoms insofar as it is necessary for their purposes and office, that is, for the
\end{quote}
government of the Church. In either case they would have some power over kings and emperors; but I do not believe that the latter receive their absolute (meram) temporal power from the pope.  

In the eleventh century, Peter Damian was the first to refer to the pope as the Vicar of Christ (Vicarius Christi), who “acts in the place of Christ.” However this title was still freely used to refer to bishops and lay princes, and would not come to belong exclusively to the supreme pontiff until Saint Bernard of Clairvaux explored the question of “who you are [the pope] and what person you temporarily represent in God’s Church” in his treatise De consideratione. However even as late as 1532, Vitoria reveals how the title was applied to bishops as well as the pope himself, thereby invalidating the claim that the pope, as the vicar of Christ, had temporal dominium over the earth. “If the pope were master of the whole world, then a bishop would be temporal master in his own bishopric, since he too is the vicar of Christ in his own see.”

Although holder of the keys as successor of Peter, the pope was believed to be limited in his actions. Even as his representative, the vicar of Christ only represented certain qualities of Christ, and in a quite strict capacity.

According to Vitoria, civil power and ecclesiastical power were both entrusted to certain men or “vicars” for the purpose of administering the things necessary to their respective temporal and eternal ends. Kings and emperors would primarily fulfill the task of administering the commonwealth, while the pope would administer the Church. Vitoria clarifies that a “vicar does not have what is not prohibited, but only what is conceded. And Christ did not bestow any

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47 Ibid., 28-29. Vitoria referring to Aquinas, “Whoever is entrusted with the principal is also entrusted with the accessory. All human affairs are ordained for the principal purpose of blessedness, which is eternal salvation; and men are admitted to or excluded from eternal salvation by the judgment of Christ, as is apparent from Matt. 25: 31-46. Hence it is evident that all human affairs fall under Christ’s power of jurisdiction”


50 Vitoria, 262
power to loosen or relax his commandments, only to administer and apply them.”\(^{51}\) The powers said to be held by a vicar, as understood by Vitoria, are therefore conceded powers of administration and application that disallow individual agency to change things at a whim. Moreover, it was not possible to argue that just because a certain quality was not prohibited in the entrustment of an office, that that quality could be exercised. A vicar only has what is expressly conceded. Vitoria goes on to say that,

> when someone is entrusted with the power or care of some office, he is understood to have been entrusted with all those things without which the office could not properly be fulfilled: see the decretal *Sedes apostolica (Extrauagantes Communes 1. 6. 1).* Since the pope is spiritual pastor by commission from Christ, and this office may be obstructed by the civil power, and since ‘God and nature never fail in what is necessary’, it cannot be doubted that the pope was left sufficient power in temporal matters to govern spiritual affairs.\(^{52}\)

By spiritual affairs, Vitoria means to say that “the pope may infringe any civil laws which promote sin ... He may also adjudicate between princes who are threatening to come to war over some quarrel about their princely rights, and pass sentence on their dispute after examining the case from both sides ... he may on occasion depose kings or institute new ones, as has sometimes happened.”\(^{53}\) Solórzano would use the language of the vicariate in *Politica Indiana* to discuss the relationship of the viceroy to the king. The viceroys "se les encargan, representen, como he dicho, su persona y sean vicarios suyos, que eso propiamente quiere decir la palabra latina, <<proreges>> o <<vicereges>>, que en romance decimos virreyes y en Cataluña y otras partes los llaman <<alter Nos>>.”\(^{54}\) The language of the vicariate was thus not only used to describe the relationship of the pope to Christ and the king to the pope, but also the viceroy to the king. The viceroy shared in the king’s fullness of power as a part of his body in the same way that Hostiensis held “the cardinals shared in the pope’s fullness of power as parts of his body.” The

\(^{51}\) Quoted in Hamilton, *Political Thought in Sixteenth-Century Spain*, 74.

\(^{52}\) Vitoria, 261.


metaphor, as Hostiensis derived it, came from the Roman law which described “the senators as parts of the emperor’s body (C. 9.8.5pr).” Hostiensis additionally held the cardinals were representatives of the universal church, and that in the event of their absence, the authority to elect a new pope could devolve to the clergy and the people.55

Speaking of the powers Christ possessed in his person before entrusting them to Saint Peter, Vitoria argued in *De potestate ciuili*:

Christ ... was monarch of the universe not by *succession*, but by the gift of His Father through the Hypostatic Union; and His kingship was not of the same kind as that enjoyed by earthly rulers ... first, because the kingdom of Christ embraces souls, whereas other kingdoms rule only over bodies; and other kingdoms concern the things of this world, while Christ’s embraces celestial things also, as He Himself said: ‘All power is given unto me in heaven and in earth’ (Matt. 28: 18). Second, it is higher in its purpose and more immediate to human needs, since the principal and immediate aim of other kingdoms is human happiness and peace within the commonwealth, and spiritual salvation is less attended to; but Christ’s kingdom, on the contrary, has as its first aim the salvation of souls, even though it has human happiness as a secondary aim. Third, earthly kingdoms are of this *moment* only, whereas Christ’s is *present* and *future*, for ‘of his kingdom there shall be no end’ (Luke 1: 33). Fourth, other kingdoms exist by the consent of the people or by *succession*, but Christ’s kingdom was given Him immediately by God.56

The claim for papal *dominium* of temporal things could not be advanced seriously if Christ in his own person never even exercised temporal *dominium* over the earth. The kingdom of Christ was not of this world as it governed souls. Its end was eternal blessedness and not temporal happiness since Christ’s kingdom is eternal and does not end. His kingdom was not set up by people, but it was given by God, mirroring the distinction of the canonist Laurentius Hispanus (d. 1248), who argued the authority of the pope to be from word of God and not the college of cardinals.57 Vitoria claims in *De Indis* that this is the opinion of Torquemada, Johannes Andreae, Huguccio of Pisa, Innocent III, and Saint Bernard. The pope therefore represented Christ above all in a spiritual capacity:

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56 Vitoria, 25. Emphases are mine.

Even if Christ did have this power, it is accepted that He did not entrust it to the pope. The argument is clear: the pope is Christ’s vicar no less in spiritual matters than temporal ones, yet he has no spiritual jurisdiction over the infidel, as our adversaries themselves admit, and as the Apostle expressly declares: ‘For what have I to do to judge them also that are without?’ (1 Cor. 5: 12); hence he has no temporal jurisdiction over them either. To be sure, the argument that Christ had temporal power over the whole world and that therefore the pope has it also is mere nonsense. Christ, after all, undoubtedly had spiritual power over the whole world, over unbelievers as much as the faithful, and could enact laws which were universally binding, as He did in the case of baptism and the articles of the Faith; yet the pope does not have that power over unbelievers, nor can he excommunicate them, or prevent them from marrying within the degrees of consanguinity prohibited by the divine law. Furthermore, according to the doctors Christ did not entrust His power of excellence to the apostles. Thus the deduction that because Christ had temporal power over the whole world the pope also has it is invalid.58

Vitoria finally concludes in this section:

even if the barbarians refuse to recognize any dominion (dominium) of the pope’s, war cannot on that account be declared on them, nor their goods seized. This is obvious, because the pope has no such dominion. And the proof is quite clear, for, as I shall show below and as our adversaries admit, even if the barbarians refuse to receive Christ as their lord, they cannot for that reason be attacked or harmed in any way. It is therefore the height of absurdity to claim, as these men do, that the barbarians may refuse Christ with impunity, but are obliged to accept Christ’s vicar on pain of war and the plunder of all their goods.59

However, it was not unlawful for the pope to entrust the business of evangelization to the Spanish king in favor of all other Christian kings:

The proof is that although the pope is not a temporal lord ... he nevertheless has power in temporal things insofar as they concern spiritual things. And since it is the pope’s special business to promote the Gospel throughout the world, if the princes of Spain are in the best position to see to the preaching of the Gospel in those provinces, the pope may entrust the task to them, and deny it to all others. He may restrict not only the right to preach, but also the right to trade, if this is convenient for the spreading of the Christian religion, because he has the power to order temporal matters for the convenience of spiritual ones. So if these things are convenient for this purpose, they belong to the authority of the supreme pontiff. And it is quite clear that they are convenient, because if there were an indiscriminate rush to the lands of these barbarians from other Christian countries, the Christians might very well get in each other’s way and start to quarrel.

58 Vitoria, 260-261.

59 Ibid., 263.
Peace would be disturbed, and the business of the faith and the conversion of the barbarians upset.\textsuperscript{60}

It was possible for the crown to monopolize on the conversion of the Indians, and it was even possible to restrict the trade of other European nations to further this end. Once more, it was the concern of man’s eternal end that triumphed over the meager concerns of this world. Vitoria thus restricted the movement of certain persons, thereby violating the law of nations which sanctioned the right to trade freely throughout the world without harm to the citizens of the place of trade, insofar as the preservation of the faith was concerned. Vitoria would say in \textit{De Indis},

\begin{quote}
Amongst all nations it is considered inhuman to treat strangers and travellers badly without some special cause, humane and dutiful to behave hospitably to strangers ... in the beginning of the world, when all things were held in common, everyone was allowed to visit and travel through any land he wished. This right was clearly not taken away by the division of property (\textit{divisio rerum}); it was never the intention of nations to prevent man’s free mutual intercourse with one another by this division.\textsuperscript{61}
\end{quote}

It is clear, then, that it would be unlawful by the \textit{ius gentium} for the crown to prevent any person from entering Spanish domains. However it was not unlawful for the pope to entrust the business of evangelization to the Spanish kings in favor of all other Christian kings. Although Vitoria and Soto ascribed to man the right to move freely throughout the world beyond the physical boundaries of the political community, the papacy had formed a markedly different opinion in its American policy. In the bull “Dudum siquidem” of 25 September 1493, Alexander VI declared:

\begin{quote}
We strictly forbid all persons whatsoever of any dignity, status, degree, order, or condition whatsoever under penalty of excommunication \textit{latae sententiae}, which they will incur immediately by acting against it, that they should not presume without express and specific permission from you or your said heirs and successors, under any pretext or color, to go or send to the said regions for sailing, fishing, or exploring islands or mainlands, notwithstanding any apostolic constitutions or ordinations or any donations, grants, permissions, and assignments whatsoever made by us or our predecessors to anybody, whether kings or princes, \textit{infantes}, or any other persons, or to religious orders or military orders concerning the said regions, seas, islands, and lands, or any part of
\end{quote}

\textsuperscript{60} \textit{Ibid}, 284-285.

\textsuperscript{61} \textit{Ibid}, 278.
them, from all causes whatsoever, even if it be out of piety or the faith, or for the redemption of captives, and other most urgent causes.\textsuperscript{52}

The papacy was forwarding a strong argument for territorial sovereignty over these new lands. All persons were barred from entering Spain’s American possessions without the explicit permission of the crown. Not only were sailors, fishermen, and explorers prohibited from entering the New World, but even missionaries and persons with “humanitarian” intentions. Peoples were restricted by the divine positive law to free movement throughout the world no matter what the reason or motive for their movement.

4

In the fifteenth century, antiquated claims about the pope’s temporal *dominium* over the earth provided the foundation for the promulgation of three bulls that donated American lands to the king of Spain and his heirs in perpetuity. Despite Vitoria’s protest against these arguments, the bulls remained the official title that justified the imperial project overseas into the seventeenth century. The polemics over the legitimacy of these claims were virtually unending throughout ecclesiastical history, and had to do not only with the relationship of the pope over believers inside of Christendom but also unbelievers on the outside.\textsuperscript{63} But like in the last chapter, Vitoria recognizes that what a representative could do depended entirely upon what the represented could do. Since Christ never had temporal *dominium* over the earth, it was the height of absurdity to claim that his representative on earth had such a power. In the next chapter, we shall see how the rule applied to the relationship of the viceroy to the king.

\textsuperscript{52} Italian Reports on America, 1493-1522: Letters, Dispatches, and Papal Bulls, 42.

3. Royal Absenteeism and the Building of the Colonial State
Of the many problems faced by Charles V (1500-1558), one of the most pressing was his own absence. The first Habsburg king of Spain spent his entire reign on horseback – riding throughout the Low Countries, the Holy Roman Empire, and the Italian peninsula – to settle disputes and administer justice, but also to strike awe in his recalcitrant subjects through elaborate royal entries. Royal absenteeism was a problem because it disrupted the traditional, medieval relationship between monarch and subject that was based on face-to-face transactions. Through an array of imperial symbols and mythology – “globes of the world, images of the cosmos, gods and goddesses, heroes and heroines, subject continents, rivers and peoples”1 – the royal entry made the royal presence felt in remote provinces, and reminded subjects of their subservience to the crown. The production of art during the reign of the monarch, who, fittingly adopted the maxim *Plus ultra* as his catchphrase, was intimately tied to the construction of power on a global scale.

Only a generation earlier, Isabel of Castile’s (1451-1504) patronage of the arts was aimed more immediately at the assertion of hegemony over a warring aristocracy and the display of religious zeal against the recently conquered Moors.2 The fortuitous marriage arrangements of the Habsburg family and the conferral of the imperial title upon the young prince compelled him to operate under drastically different political circumstances than his grandparents, who, into the late fifteenth century, continued to personally meet with subjects on a weekly basis to adjudicate competing interests among defiant nobles.3 Charles’s absenteeism not only put an end to a traditional practice, but it gravely left subjects without recourse to a source of justice to redress grievances. This was immensely problematic as *justicia* was regarded to be the most important virtue a king could possess. Citing Romans 13:4 in his lecture *De potestate ciuili* (1528), Francisco de Vitoria declared: “For he [the king] is the minister of God, a revenger to


execute wrath upon him that doeth evil; Wherefore ye must needs be subject, not only for wrath, but also for conscience sake, for they are God’s ministers, attending continually upon this very thing.”

Vitoria’s pupil, Domingo de Soto (1494-1560), who was the confessor of Charles, proclaimed to him in the dedicatory letter of his *De iustitia et iure* (1556):

Dios, por quien todos los Reyes reinan y con cuya sabiduría determinan lo justo, no les otorgó tan gran poder ciertamente para que violen sus derechos, o causen injuria a ningún mortal, sino para que reprimen las injusticias, e impida que se produzcan, y destierre las introducidas; entendiendo que así como están sumamente libres de toda humana coacción, así también les conviene vivir sumamente sujetos no solo a la razón, sino sobre todo a las leyes de Dios.

It was the opinion of Soto that Charles was brought to this life by a long lineage of kings and emperors to marry the virgin born of the heavens who was none other than the allegorical figure of justice, and it was through his embodiment of this cardinal virtue that he would protect the great number of nations and kingdoms that fell under the title of his crown. To bring forth justice to all parts of an empire that was, in the words of the jurist Juan de Solórzano y Pereyra (1575-1655), “the most extensive and far-flung empire that the world has known” was the overarching political problem of the monarchy in the sixteenth century.

The problem of royal absenteeism, however, was an issue Iberian kings had confronted and solved before. Alfonso the Magnanimous (1396-1458) settled the problem of his absence by entrusting the care of the principality of Catalunya to his wife and lieutenant (*alter nos*), María of Castile (1401-1458). In his absence, María maintained an independent court and council of equal stature, and possessed and performed all of the powers and duties of her husband as if he were actually present. Abroad, Alfonso granted full and mixed judicial powers (*merum et mixtum imperium*) to the barons of the kingdom of Naples, who retained

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5 Domingo de Soto, *De iustitia et iure libri dicem* (Madrid 1967; facsimile of Salamanca 1556), vol. 1, 4.

6 Soto, *De iustitia et iure*, vol. 1, 3.

control over the administration of justice into the sixteenth century to the dismay of Charles. The sharing of judicial powers with local elites and the lieutenancy of María of Castile were systems of delegation that arose because of the exigencies of territorial expansion into the Mediterranean. However the problem of Charles’s absenteeism was unparalleled on a continental scale that no Iberian ruler had at any time experienced before, and it had already been unmatched before his ascendance to the throne on a global scale on October 11, 1492, when an ambitious Genoese seafarer stumbled upon an unknown, thickly populated landmass in search of the riches of Cathay.

It was on this day that Christopher Columbus (1451-1506) came across a type of man who went naked in his public affairs, unashamed of his private exposure, as if Adam and his descendants had never fallen from the grace of God some millennia ago. This man convincingly lived in a prelapsarian state. The American Indian not only went naked, but traded liberally as if there had been no concept of property among his lot. He did not carry arms and was, in Columbus’s words, completely ignorant of them. These were peoples who lived in egalitarian societies in which their kings sat alongside their fellow men while dining, all sharing from the same cup and plate. Rank and status appeared to be fluid, if not completely nonexistent, among this type of man. The simplicity and innocence of the Indian, as well as the mighty force of the Orinoco River, would ultimately lead Columbus to conclude on his third voyage that he had reached the terrestrial paradise recounted in the works of Isidore of Seville and John Mandeville.

The Indians so closely mirrored man’s original state that some contemporaries such as Paracelsus, Andrea Cesalpino, and Isaac de la Peyrère daringly suggested that their existence could only be ascribed to the artifice of a second Adam. There had been no industrious spirit

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9 Cristóbal Colón, Los cuatro viajes Testamento, ed. Consuelo Varela (Madrid: Alianza Editorial, 2005), 57-60.

among them, and they were indeed without civil society to Western standards. More 
disorienting was the realization that these peoples had not heard the Gospel; a serious problem 
considering Christ sent his apostles to teach the word of God and baptize the children of all 
nations in Matthew 28:19. The Roman Church, however, saw this theory of a second Adam as an 
assault on the foundational Christian belief in a single source of all creation. Although deemed 
blasphemous and heretical, the theory would remain a popular explanation for the existence of 
the American Indians into the late seventeenth century.\textsuperscript{11}

The American Indian was outside of the Western trajectory of history. He had not heard 
the Gospel, violated the natural law through acts of cannibalism and human sacrifice, and was – 
in the Antilles at least – without any recognizable form of civil association. In the eyes of the 
early chroniclers, these peoples additionally seemed to be without religion. For even the pagans 
of antiquity had religion, commented Hernán Cortés.\textsuperscript{12} Besides serving as a source of revealed 
knowledge, religion was believed to be a means of social order that all peoples possessed, as the 
philosopher Marsilius of Padua had said in the \textit{Defensor pacis} (1324):

\begin{quote}
For even if the various philosophers who invented these religions or followings may not 
have perceived or believed in the resurrection of men and the life that is called eternal, 
they nevertheless developed and encouraged the fiction of its existence, including the 
delights and afflictions it contained in relation to the nature of human deeds in this 
mortal life, in order thereby to induce in men a reverence and fear of God and a desire to 
avoid the vices and cultivate the virtues ... And out of terror of all this men avoided acting 
wrongly, were aroused to virtuous deeds of piety and mercy, and became well-framed 
with regard both to themselves and to others. Because of this, many disputes and injuries 
within communities came to an end. And also as a result the peace or tranquility of cities, 
and the sufficient life of human beings for the status of this present world, was preserved 
with less difficulty – which was precisely what those sages had intended as their end in 
the exposition of such religions or followings.\textsuperscript{13}
\end{quote}

If the Indian was to be in any sense of the term \textit{political}, they had to be religious. For it was 
religion which aided in the politicization of man, as Rousseau would later comment in \textit{The  


Social Contract (1762).\textsuperscript{14} Without the proper institution that cultivated human virtue, the Indian found himself in a disorganized and lawless state where there could be neither peace nor tranquility. Columbus recounted on these men outside the confines of civil society in return to Spain after his third voyage,

> In Spain they judge me as if I had been sent to govern Sicily or some province or city under settled government, and where the laws can be strictly applied without fear of a complete upheaval. This does me great harm. I should be judged as a captain sent from Spain to the Indies to conquer a large and warlike people, with customs and beliefs very different from ours. These people live in mountains and forests without settled townships, and we have none there either. Here by God’s will I have brought under the dominion of our sovereigns a new world, whereby Spain, which was called poor, has now become rich.\textsuperscript{15}

It is here that the seafarer abruptly distinguished between the civil arrangements of the Old World and the New as well as the peoples that resided within them. For Columbus, the New World could not have possibly been governed like an Old World polity. It was a lawless abyss inhabited by peoples that were naturally disposed to warfare and incapable of establishing settled townships. The logistical obstacles posed by the administration of an overseas empire could have been expected, but the ontological challenges were unforeseen. “Hay en este imperio de las Indias, que Vuestra Cesárea Magestad y su corona real de Castilla posseen,” wrote Gonzalo Fernandez de Oviedo y Valdes in the \textit{Historia general y natural de las Indias} (1535), “tan grandes reynos é provinçias y de tan extrañas gentes é diversidades é costumbres y çerimonias é idolatrias, apartadas de quanto estaba escripto (desde \textit{ab initio} hasta nuestro tiempo).”\textsuperscript{16} Nevertheless, the Habsburgs who ruled this vast empire from 1506 to 1700 juridically incorporated these lands as an accessory of the crown, which in theory meant the Indians were to be subjected to the same laws and share the same rights as Castilians.\textsuperscript{17} One notable difference being that the Indians, unlike their Castilian counterparts, were subjected to

\begin{itemize}
  \item Columbus, \textit{The Four Voyages}, 274.
  \item Gonzalo Fernandez de Oviedo y Valdes, \textit{Historia general y natural de las Indias, islas y tierra-firme del mar oceano} (Asuncion del Paraguay: Editorial Guarania, 1944), vol. 1, 27.
\end{itemize}
forced labor. Despite this difference, the imperial policy of the Habsburgs treated its overseas
possessions and the peoples that inhabited them as constitutive and integral parts of the
monarchy. In this way, the crown reconciled the insurmountable differences between the Old
World and the New through a universalist outlook.

The Spanish had went to the New World with set expectations of what they believed
would be present, and were duly surprised when they found that these elements were no place to
be found. First of all, true political communities appeared to be totally absent among most of the
Indian populations of the New World. The peoples of the Americas were seen by many
contemporaries as the natural slaves described in Aristotle’s Politics, excepting of course the
theologians of the School of Salamanca, who inquiring into the ontological status of the Indian,
demanded the indigenous to be rational creatures of God. The conviction that the Indian was a
political creature likely would not have been convincing, however, were it not for the conquest of
the kingdom of Moctezuma in 1519-1522. The events of these years, recounted in Cortés’s letters
to the crown, irrevocably altered the course of debates over the political nature of the Indian,
and shifted the way the crown perceived its relationship with the New World. The peoples of this
kingdom and its tributaries were unlike those found in the Antilles in that they lived in
sophisticatedly hierarchical and ordered societies that closely resembled Old World polities. In
the words of Cortés, “one might call oneself the emperor of this kingdom with no less glory than
of Germany.”18 These peoples did not live in a prelapsarian state. They wore clothes that
designated their rank in society, lived in stone houses rather than the feeble huts of the
Caribbean, and exercised an industrious spirit as evidenced by their elaborate and detailed
material culture and organized market places. They practiced a form of religion, with priests and
deities like the pagans of antiquity. They had languages, laws, and systems of justice. The
accomplishments of these peoples were so astounding to the rustic Extremaduran that he
commented, “these people live almost like those in Spain, and in as much harmony and order as
there, and considering that they are barbarous and so far from the knowledge of God and cut off

18 Hernan Cortes, Letters from Mexico, 48.
from all civilized nations, it is truly remarkable to see what they have achieved in all things.”

Mesoamerica resembled the Old World to such an extent, that the name of this new kingdom would be none other than New Spain: “From all I have seen and understood touching the similarity between this land and that of Spain, in its fertility and great size and the cold and many other things, it seemed to me that the most suitable name for it was New Spain of the Ocean Sea, and so in Your Majesty’s name I called it that. I humbly entreat Your Highness to look favorably on this and order it to be so called.”

Secondly, the word of God had somehow managed to not reach these distant lands. Without any knowledge of Christ, the Indians remained outside the reach of eternal salvation. Finally, once the conquest had reached a close, the king himself was absent and was in dire need of being represented. His presence was not only crucial to his Castilian subjects who settled across the Atlantic, but also to his latest subjects, the natural inhabitants of the land who were mostly without recognizable political arrangements and who had not heard the Gospel. Almost overnight the monarchy became the largest empire the world had seen, and as a result, required a lasting solution to the problem of royal absenteeism that could maintain the personal relationship between the king and his subjects, dispense justice across vast and disparate provinces, and advance the spiritual welfare of the body of the faithful.

The crown found its solution to these problems in the viceregal system, whereby through the royal selection of distinguished representatives, it aimed to introduce two new communities across the Atlantic, one political and the other spiritual. The Spanish did not simply seek to solve the problem of the Indian’s stateless condition for their own sake, but intended to introduce their very own communities. The complexities and intricacies of the New World were puzzling to those explorers, chroniclers, and theologians who wrote about America, but

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19 Cortes, 108.

20 Ibid., 158.

21 For a discussion of this problem as a “double constitutional crisis” in which Spain suddenly emerged from a small kingdom to a continental and transatlantic empire of two opposing and conflicting natures see J.A. Fernández-Santamaría, The state, war and peace: Spanish Political Thought in the Renaissance, 1519-1559 (Cambridge: Cambridge University Press, 1977), 5-7.
ultimately the differences between the Old World and the New were in some way consciously overlooked as evidenced by the transplantation of the viceregal system of the Old World to the New. At this point in time the New World did not call for an original system of political organization fitted to American conditions, but was capable of fitting into what Juan A. Ortega y Medina calls “el cuadro mental de la superestructura aristotélico-tomista.”

In Europe and America, the viceroy represented the royal person. He was the king’s alter ego, and like the empire of the Old World which was maintained by pact relations between the king and his subjects, the New World was sustained for centuries by the king’s persona made present through the viceroy. The relationship of the viceroy to the king was expressed using the language of representation as early as 1543 in a royal decree that would eventually be reproduced in the *Recopilación de Leyes de los Reynos de las Indias* (1680) that declared, “los Reynos de el Perú y Nueva Efpaña feã regidos y governados por Virreyes, q reprefenté nueueftra Real perfona, y tengan el govierno superiior, hagan y adminiftré jufticia igualmente á todos nueftrtos subditos y vaſfallos, y entiendan en todo lo que conviene al fofsiego, quientud ennoblecimiento y pacificaciõ de aquellas Provincias, como por leyes defte título y Recopilacion fe difpone y ordena.” Moreover, the representative nature of the viceroy or *virrey* was encapsulated in the name of the office; *vice* or *vir* was derived from the Latin prefix *vic* (“in the place of”) and *roy* or *rey* from the Latin noun *rex* (“king”). The viceroys, in the words of Solórzano y Pereyra, “pudiesen hacer e hiciesen y cuidar y cuidasen de todo aquello que la misma real personal hiciera y cuidara si se hallara presente ... se les encargan, representen, como he dicho, su persona y sean vicarios suyos, que eso propiamente quiere decir la palabra latina, <<proreges>> o <<vicereges>>, que en romance decimos virreyes y en Cataluña y otras partes los llaman <<alter Nos>>.” Although the office had Mediterranean origins, the


23 Book III, Title III, Law I. From online facsimile available at the Archivo Digital de la Legislació en el Peru: https://archive.today/20120629195154/www.congreso.gob.pe/ntley/LeyIndiaP.htm

Portuguese were in fact the first to send a viceroy outside of Europe in 1505. The Spanish would not follow to New Spain and Peru until 1535 and 1544, respectively. Like the Spanish, the Portuguese too employed the language of representation and the word person (pessoa) to describe the relationship of the viceroy to the king. The first viceroy sent to India, Francisco de Almeida, wrote to Manuel I: “Asy me castiga acerca dos perdoes que cá dey. Eu os daua pólo poder de vossa carta, que mo concedia assy como Vossa Real pessoa, assy na justiça como na fazenda.” Like Solórzano, the Portuguese jurist João de Barros wished to attribute the origins of the office to the ancient Roman positions of the proconsul and the praefectus praetorio. Some of his colleagues mentioned the figure of the papal legate as a sort of precursor to the viceroy. Solórzano greatly stressed the ecclesiastical heritage of the office, adding the spiritual institution of the vicariate and its related language to these discussions. The jurists had indeed seen the office of the viceroy as a part of this trajectory of classical imperial and ecclesiastical representation. They perhaps even saw the office as an extension of the artistic origins of the concept, as Solórzano frequently used artistic language to describe the viceroy as a painting, a living image, and even a stamp of sort. Even if the jurists did not realize the extension they were making, they certainly were at a transition point in the history of representation, where the concept laid between the artistic and the political, between the Old World and the New.

The instructions made to the first viceroy sent to New Spain in 1535, Antonio de Mendoza, established a division in “las funciones gubernamentales y las judiciales” between the viceroy and the audiencia. The viceroy was to not be a letrado, and he was not to take a vote in issues of justice. These were royal orders, but of course, this did not stop viceroys from

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25 It is then of fundamental importance to approach the study of the administration of these empires together instead of separately as they so often are, which Sanjay Subrahmanyan observes as “an obstinate historiographical separation that has long dogged studies of the Iberian empires, as well as a tendency to reify the two imperial models in order to make the contrasts between them all the more stark.” Sanjay Subrahmanyan, “Holding the World in Balance: The Connected Histories of the Iberian Overseas Empires, 1500-1640,” The American Historical Review 112 (2007), 1362.

interfering in what was considered to be outside their line of duty. Here, the viceroy was limited by the institution of the audiencia in the administration of justice. Ironically, the personal representative of the man who was the fountain of all justice in society was excluded from participation in all judicial functions in the viceroyalty. The viceroy in America did not represent the king, at least supremely, in the administration of justice, but in some other way. Although the viceroy was the king’s personal representative in the New World, he did not possess all the qualities the king possessed in the Old World. In other words, the viceroy represented only some of the qualities the king possessed. He did not represent every quality. This is clear from the division of powers established between the audiencia and the viceroy. The administration of justice ultimately resided in the audiencia, and the viceroy was to only act as its president.

There is a theoretical explanation for this division that can be attributed to ideas of kingship found in Aquinas and Vitoria. For Aquinas, the king was to give form to his kingdom and promote its temporal and spiritual welfare in the same manner God gave form to and cared for his earthly creations. Vitoria does not deviate from Aquinas, but expands in greater detail that the king is not only to act as a judge, but as a governor. He is, above all else, a person who directs the members of his community to their temporal and spiritual ends. “Partnerships cannot exist without some overseeing power or governing force,” said Vitoria in his reductio De potestate ciuili, “If all members of society were equal and subject to no higher power, each man would pull in his own direction as opinion or whim directed, and the commonwealth would necessarily be torn apart.” This is proven by analogy of the human body, which “cannot remain healthy unless some ordering force (uis ordinatrix) directs the single limbs to act in concert with the others to the greatest good of the whole.” It was in this sense that the viceroy represented

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29 Francisco de Vitoria, Political Writings, 9.

30 Vitoria, 9-10.
the king in the New World. He represents the king in a directive function that pertains to the calmness and tranquility of the American provinces, and he brings order and directs the limbs of the members of the body politic. The king is the head of the corporate body of the community, and presides over a city in the same manner God watches over the earth. The faculties of the king which the viceroy represents are precisely those that Aquinas and Vitoria deemed the fundamental characteristics of kingship: direction and ordination. The king was by simulation a minister of God. The same applied to the viceroy, who acted in place of the king. He was a minister of the king.

Spanish political culture exhibited the profound belief that the more invisible and distant an object is from man, the more reverence and veneration ought to be paid to it. Contemporaries argued that this was evident in the case of God, who was made present through the Eucharist. It is for this reason that the Host was kept in the tabernacle, to limit its exposure to the flock, thereby increasing the mystery that surrounded it. The same applied for the relationship between the king and the viceroy. As Solórzano y Pereyra argued in his *Política Indiana*,

Wherever there is an image of someone, there is a true representation of that one whose image is brought or represented ... and ordinarily this representation is even the more brilliant the farther removed the viceroys and magistrates are from the masters who influence it and communicate it to them, as Plutarch rightly noticed with the example of the moon, which gradually gets bigger and more resplendent the more she is separated from the sun, which lends it splendor to her.\(^{31}\)

As God was inconceivable and incomprehensible to man, because of his separation from earthly affairs, so was the king to inhabitants of the New World. Along these lines, contemporaries conflated divine and human language to bridge the spiritual and the temporal as well as to establish the expected conduct of rulers in both realms.\(^{32}\) If the king claimed to be God’s vicar, then the viceroy was his archangel, who as a *nuncio* or messenger, came from the most intimate chambers of the king.\(^{33}\) In the Thomist account of kingship, the king ruled the earth in the same

\(^{31}\) Quoted in Cañeque, 25.


manner God ruled heaven. Every Christian king ought to have strove for a form of divine impersonation or mimesis. The king was to play the role of guardian to guide his subjects to virtue and perfection. While the king mimicked God, the viceroy mimicked the king in this chain of command. What was present in America, then, was a mysterious and inexplicable authority made present by the viceroy.34

Art and written works of this period, therefore, were not only intended to strike awe in the king’s subjects, but also aimed at influencing the conduct of the viceroy while in office. If the viceroy was to bear the royal person, it was absolutely necessary for him to mimic or personify the king as closely as possible. This meant that he had to embody the same virtues the king was expected to possess; prudence and justice being the most fundamental, but also mercy and pity among an array of others. The viceroy, then, was not only to re-present the royal presence in the ordination of the community. He was also to bear as much resemblance as possible to the character and nature of the royal person. This was not only through the virtues the viceroy was hoped to possess, but through the way he was received upon his inauguration. In the traditional Old World fashion, the viceroy was given a royal entry from Veracruz to Mexico City. The treatment of the viceroy like royalty, however, ran the serious risk of idolatry, that was, the possibility of the subjects of New Spain confusing the viceroy for the royal person. This was a serious risk to the person of the king who entrusted his state of affairs to a representative. In fact, royal authorities sent to assess the conduct of the viceroy would make this critique time after time again. The royal officials Jorge Juan y Santacilia (1713-1773) and Antonio de Ulloa (1716-1795) commented on the viceroy of Peru in 1747, “From the moment a viceroy is received in Peru and takes possession of his office, he begins to be mistaken with royalty.”35 To visiting peninsulares, unaware of American political rituals, the viceroys appeared to be mistaken for royalty.

34 Ibid., 40-45
35 Quoted in Ibid., 237.
The early political history of the kingdom of Naples provides a wonderful point of comparison to elucidate early issues pertaining to questions of representation in the viceregal system. The kingdom of Naples, at least as it began to be administered under the auspices of the Castilian crown, was established during the same period the crown was building its own presence across the Atlantic and the Portuguese were attempting to strengthen their presence in India. The first viceroy, Don Ramón de Cardona, was appointed in 1509, and as early as 1521 the crown was made aware of the discontents of the viceregal administration in Naples through a royal report written by the first tutor and lifelong, confidential adviser of Charles, Mercurino da Gattinara. This was the same year, it should be said, that Hernán Cortés finished his conquest of Tenochtitlan and its environs against the orders of his own superior, the governor of Hispaniola Diego Velazquez. Corruption and disrespect for royal authority was occurring rampantly on both sides of the Atlantic at the very beginnings of the imperial project. According to Gattinara, Cardona had disregarded imperial orders and sought nothing but his own gain while in office. He had frivolously used royal funds to his own interest, and greatly failed in the administration of royal justice. “Obedience to justice is already in decline,” wrote Gattinara, “its ministers are badly treated, beaten and insulted, and malefactors are allowed to go unpunished.” The barons of the kingdom, who possessed full and mixed judicial powers (merum et mixtum imperium) since the reign of Alfonso the Magnanimous, retained control over the administration of justice to the dismay of the crown. Cardona, so he himself claimed, made decisions based upon what he believed to be appropriate and expedient in the interest of the king (the perennial problem of representing another person and conducting affairs in his or her place). Cardona additionally expressed that the crown was unaware of local conditions, and was therefore ignorant of what

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37 Quoted in Galasso, 25.
38 Ibid., 18, 29.
was necessary to the **buen gobierno** of Naples. To make matters worse for the monarchy, Cardona embraced the independent attitude of the Neapolitan nobles. This was not something the viceroy would do in America until the administration of the Conde de Moctezuma, who was in a way, an ardent champion of the pre-Hispanic past, and even then there were considerable limitations in his predilections. Cardona positioned himself in a rather complicated place between the crown and the barons. Although he was intended to represent the person of the king, it would seem he catered local interests in his realm more than he did those of his superior. He was far more removed from Charles than he was from the nobles with whom he interacted with at court on a daily basis. This all had to have been taken into consideration by the crown, that symbolically conferred the title of viceroy to Columbus, but delayed the actual institutionalization of the office until Mendoza in 1535. These problems were laid out in the open in these early years, and were closer to home than American developments. What would happen when these magistrates were thousands of miles from home, and largely out of royal control?

We must ask if the indigenous peoples of the Americas shared in the concept of representation, or if it was one newly introduced by the Spanish. The letters of Cortés (1519-1526), the *Historia general de las cosas de Nueva España* (1575-77) of Bernardino de Sahagún (1499-1590), and the *Vocabulario en la lengua castellana y mexicana* (1555) of Alonso de Molina (1513-1579) suggest that representation was not a foreign concept to the Indians of central Mexico. However we should proceed with caution as most of what we know about these cultures comes from Spanish sources. The Spanish, as they so often did, could have been falsely attributing qualities to the Indians that they really did not possess. But even if the inhabitants of the Valley of Mexico did not possess the concept, the Spanish were eager to translate it into Nahuatl dictionaries, histories, and letters that documented indigenous political beliefs and practices. The Spanish felt the concept so essential to politics, that it was the central piece of the

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39 *Ibid.*, 28-29. This was a common complaint made in Spanish America. See, for example, the “Representación que hizo la Ciudad de México al rey don Carlos III en 1771 sobre que los criollos deben ser preferidos a los europeos en la distribución de empleos y beneficios de estos reinos” in Juan E. Hernández y Dávalos, *Colección de documentos para la historia de la guerra de independencia de México de 1808 a 1821* (México: INEHRM, 1985).
fictional account of Moctezuma’s donation of his kingdom to Cortés. The *translatio imperii* reveals more than anything else Cortés’s aspirations to preside as a placeholder of Charles across the Atlantic in his own New World kingdom. Quetzalcoatl, the god whom the Mexica purportedly believed to be Cortés, was said to have once ruled the kingdom of Moctezuma ages ago. One day he retreated to the east and left his kingdom to man to rule in his absence. It was believed that one day, someday, he would return to reclaim the throne that was rightfully his. The line of Mexica kings who ruled in his absence, Moctezuma included, were therefore considered to be the lieutenants or substitutes of Quetzalcoatl. The text of the infamous exchange made between Cortés and Moctezuma is as follows:

> So because of the place from which you claim to come, namely, from where the sun rises, and the things you tell us of the great lord or king who sent you here, we believe and are certain that he is our natural lord, especially as you say that he has known of us for some time. So be assured that we shall obey you and hold you as our lord in place of that great sovereign of whom you speak; and in this there shall be no offense or betrayal whatsoever. And in all the land that lies in my domain, you may command as you will, for you shall be obeyed; and all that we own is for you to dispose of as you choose. Thus, as you are in your own country and your own house, rest now from the hardships of your journey and the battles which you have fought.40

At this precise moment, *dominium* could have been said to have transferred to Cortés in the absence of his majesty, Charles V. Cortés was now, or so it seemed, and so he hoped, the latest ruler of this New World kingdom in the greater Spanish monarchy. The conviction that Cortés and his descendants were the rightful rulers of the land persisted uninterrupted throughout the sixteenth century to the dismay and fear of royal authorities. One night in the years 1565–1568, when royal authorities were most fearful of a *conquistador* insurrection, two *conquistadores* dressed as Mexica nobles led a procession through the streets of Mexico City. They visited the house of Martín Cortés, the son of the conqueror. When Cortés opened the door, he was presented with a crown with an inscription that read “do not fear to fall for by this act you shall rise higher.” He ceremoniously accepted the crown and withdrew back into his home. The Ayuntamiento of Mexico City commented on the affair: “The entire *fiesta* was meant to indicate

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40 Cortes, 86.
that the Marqués was to be the king of the land.” In Sahagún’s account of the event of the *translatio imperii*, Montezuma is recorded to have said to Cortés:

> ya a la tierra tú has llegado. Has arribado a tu ciudad: México. Aquí has venido a sentarte en tu solio, en tu trono. Oh, por tiempo breve te lo reservaron, te lo conservaron, los que ya se fueron, tus sustitutos. Los señores reyes, Itzcoatzin, Motecuhzomatzin el Viejo, Axayácatl, Tizoc, Ahuitzotl. Oh, que breve tiempo tan sólo guardaron para ti, dominaron la ciudad de México.

It was, therefore, possible for the Indian to understand that the viceroy was the placeholder of a distant, absent king. This, however, was not the only example of representation among the Mexica. As Cortés was advancing on Tenochtitlan, ambassadors of Moctezuma brought the regalia and clothing of four deities as gifts to the Spanish. The ambassadors attempted to place headdresses of these deities (historically worn on religious festivals by men of rank to personify deities) on Cortés. The Mexico, then, possessed two significant representative qualities: delegation and personification.

Molina translated *representación* in his *Vocabulario* (1555) as *tepanquiçaliztli*, *teixiptlatiliztli*, *tetlayeyecalhuiliztli*. *Tetlayeyecalhuiliztli* can be defined as “imitación, acción de copiar o de remedar a alguien.” *Tepanquiçaliztli* and *teixiptlatiliztli* strikingly refer to the split between the actor and the theatrical person they purport to represent. This could suggest

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42 Fray Bernardino de Sahagún et al, *Visión de los Vencidos: Relaciones Indígenas de la Conquista*, trans and ed. Ángel María Garibay K. and Miguel León-Portilla (México, D.F.: Universidad Nacional Autónoma de México, 2011), 81. The English translation reads, “Thou hast come to arrive on earth. Thou hast come to govern thy city of Mexico; thou hast come to descend upon thy mat, upon thy seat, which for a moment I have watched for thee, which I have guarded for thee. For thy governors are departed – the rulers Itzcoatl, Moctezuma the Elder, Axayacatl, Tizoc, Auitzotl, who yet a very short time ago had come to stand guard for thee, who had come to govern the city of Mexico.” Although the translators omit the word substitute, the representative nature of the relationship between Quetzalcoatl and the Mexica rulers still stands. Fray Bernardino de Sahagún, *Florentine Codex: General History of the Things of New Spain, Book 12 – The Conquest of Mexico*, trans and ed. Arthur J.O. Anderson and Charles E. Dibble (Salt Lake City: The University of Utah Press, 2012), 44.


44 Alonso de Molina, *Aquí comienza un vocabulario en la lengua castellana y mexicana* (Mexico City: Juan Pablos, 1555). Located at the UCLA Young Research Library Special Collections.


that the Mexica recognized the inherent tension in the concept of representation, that is, the problematic and conflicting gap between the representative and the represented. If they did not, the Spanish wished for their new subjects to recognize the paradox of simultaneous absence and presence, as its recognition was essential to the proper conceptualization of viceregal power. A part of the colonial project meant not only making legal subjects out of the Indians, but subjects that perceived in the manner the way the Spanish perceived.

Representation understood as feigning or mimesis finds historical support during the conquest, when Moctezuma dispatched Tzihuacpopoca, a nobleman, to present gifts to the Spanish who were advancing on the capital. As Tzihuacpopoca approached the Spanish, Cortés and his men asked their Indian allies, the Tlaxcalans and Cempoalans, if the nobleman was Moctezuma. They replied to the Spanish, “No es él, señores nuestros. Ése es Tzihuacpopoca: está en representación de Motecuhzoma.” The Spanish proceeded to ask Tzihuacpopoca if he was the great lord of Tenochtitlan, to which he responded “Sí; yo soy tu servidor. Yo soy Motecuhzoma.” Knowing this was all a lie, the Spanish exclaimed,

¡Fuera de aquí!... ¿Por qué nos engañas? ¿Quién crees que somos? Tú no nos engañarás, no te burlarás de nosotros. Tú no nos amedrentarás, no nos cegarás los ojos. Tú no nos harás mal de ojo, no nos torcerás el rostro. Tú no nos hechizarás los ojos, no los torcerás tampoco. Tú no nos amotazarás los ojos, no los atrofiarás. Tú no echarás lodo a los ojos, no los llenarás de fango. Tú no eres... ¡Allá está Motecuhzoma! No se podrá ocultar, no podrá esconderse de nosotros.47

En representación de in this case implies mimesis, impersonation, and personification. The representative nature of this exchange, however, is missed once again in the English translation.48 Evidently, Tzihuacpopoca was not merely acting as a delegate of Moctezuma (although formally dispatched as one). Tzihuacpopoca was pretending to be Moctezuma, and the

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48 “And when they saw Tzihuacpopocatzin, they said: ‘Is this one perchance Moctezuma?’ They spoke to those who were among them, their watchers, the Tlaxcallans, the Cempoallans. Thus they secretly questioned them. These said: ‘Not this one, O our lords. This one is Tzihuacpopocatzin; Motecuzuma is delegating him. [The Spaniards] said to him: ‘Art thou perchance Moctezuma?’ He replied: ‘I am your governor; I am Moctezuma.’ And then these said to him: ‘Go thou hence. Why dost thou lie to us? Who dost thou take us to be? Thou canst not lie to us; thou canst not mock us; thou canst not sicken our heads; thou canst not flatter us; thou canst not make eyes at us; thou canst not trick us; thou canst not turn our heads; thou canst not make us turn back; thou canst not annihilate us; thou canst not dazzle us; thou canst not cast mud into our eyes; thou canst not touch our faces with a muddy hand — not thou. For Moctezuma is there; he will not be able to hide from us; he will not be able to take refuge.’” Sahagún, Florentine Codex, 31-32.
word representation was the most fitting to express the exchange as understood by the Mexica. Moreover, delegation and mimesis were not synonymous or interchangeable concepts.

Throughout Cortés’s march to Tenochtitlan, Moctezuma sent numerous ambassadors like Tzihuacpopoca to present gifts, gather intelligence, and speak on his behalf. This was the only occasion when a delegate pretended to be someone he was not.

These instances in which the Mexica exhibited an understanding of representation are important, because it meant that they were capable of understanding the representative relationship between the viceroy and the king. Or at least, the Spanish wished for them to be capable of such a conceptual understanding. And although the Indians may not have held seats in the audiencia (the highest court of appeal in the realm and immediate consultative body to the viceroy), they had their own town councils and petitioned requests to the king via the viceroy. These town councils were composed of the valentiors pars, the wisest individuals who represented the interests of the community to the viceroy. Some groups were privileged enough to bypass the viceroy in their communication to the king. In 1585, Philip II issued the following royal decrees that would eventually form Book VI, Title I, Laws XXXIX-XXXXV of La Recopilación de las Leyes de los Reynos de las Indias (1680). The viceroy of New Spain were to honor and favor the peoples of Tlaxcala (XXXIX), and uphold their existing ordinances (XXXX). The Alclade Mayor of Tlaxcala was to be elevated to the status of Governor (XXXXI), and the Governors were to be naturales (natural born inhabitants) of Tlaxcala (XXXXII). The Tlaxcalans were to be urged not to work outside Tlaxcala (XXXXIII). Above all, the Tlaxcalans were granted the privilege to bypass the viceroy, the audiencia, and the Council of the Indies to write directly to the king (XXXXV). All of this was accomplished, in large part, through their communication to the king through pictorial representations. Representation, therefore, penetrated all aspects of Amerindian society, before and during Spanish rule, from the micro- to the macro-level. Moreover, since there were no general assemblies, all relationships with royal

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authority were made between individual towns and the viceroy, as opposed to the aggregate of towns represented in the Spanish cortes.\textsuperscript{50} The personal relationship between ruler and subject in America stayed true to its medieval roots. The Indians were not only legal subjects, but they were also competent and active spectators of representational politics.

Catarina Madeira Santos believes that the delegation of royal powers to a magistrate like a viceroy should interest us because it was part of the historical development of a more complex bureaucracy distributed by centralized institutions, which she defines as a feature of the modern state.\textsuperscript{51} This has been the opinion of political historians of Spanish America toward the viceregal system for some time, according to Alejandro Cañeque. In his most recent book, *The King’s Living Image: The Culture and Politics of Viceregal Power in Colonial Mexico* (2004), Cañeque endeavors “to recover the colonial political culture that explains the existence of the viceroys,” and proposes to do so through eliminating the language of the state from his analysis, which he correctly observes is one of the “most frequently used terms and, at the same time, one of the least investigated” in the history of Spanish America.\textsuperscript{52} Cañeque argues that using the language of the state to explore power relations in colonial history “obscures more than illuminates these relations.” The book is therefore “an investigation of the political beliefs and practices that constituted viceregal power and the Spanish imperial system of rule ... the idea of the ‘state’ as the essential concept that unified and gave cohesion to the political community had not yet entered the political imagination of the Spanish polity. Spanish domination was based on different principles, and it is the main purpose of this study to uncover those principles ... we can understand the workings of the system only if we make an attempt to understand it

\textsuperscript{50} Simpson, Griffiths and Borah, “Representative Institutions in the Spanish Empire of the Sixteenth Century,” 253–254.

\textsuperscript{51} Santos, “Los virreyes del Estado de la India en la formación del imaginario imperial portugués,” 94.

\textsuperscript{52} Cañeque, 3-4.
according to its own principles, not ours.\textsuperscript{53} The concept of the state that Cañeque has in mind is the Weberian concept of monopolized, centralized, and rationalized bureaucratic power, which he shows has been the traditional model applied by historians to analyses of colonial government. This is the concept of the state he wishes for us to remove from our ideological repertoires when studying Spain and its world, and I cannot agree anymore with putting this anachronistic concept to rest in our historical work on the political history of the Spanish empire. The subject of viceregal power has indeed been mistreated in that it has not been viewed, at least satisfactorily, through the lenses of the political ideas of the day that informed its materialization. However, we saw in the first chapter of this thesis that the concept of the state was indeed a profoundly meaningful and pervasive part of Spanish political thought in the sixteenth and seventeenth centuries. “The city (\textit{ciuitas}) is,” as Vitoria said, “the most natural community, the one which is most conformable to nature.”\textsuperscript{54} However, this form of political association was not the Weberian concept of the state, but the state as conceived by the preeminent jurists and theologians of the day. The crown was directly exposed, through constant moral and legal consultation, to the intellectual project of the Salamanca theologians, which neither wholly developed nor remained to expire in the lecture halls of the university. We cannot properly understand how the peninsula thought about its relationship with its American possessions and vice versa without first acknowledging how the crown thought about itself as a distinct juridical entity amid other juridical entities, and among competing tiers of human communities to which membership and varying degrees of obligation were due. It is from this starting point that we may then understand the place of the viceroy as the head of the kingdom of New Spain in the Spanish monarchy. The state, for the theologians of the School of Salamanca, is precisely the essential concept that unified and gave cohesion to all human relations. As good Aristotelians, a human could not rightfully identify as a human without it. The state is essential to understanding the existence of viceregal power in the first place, and to

\textsuperscript{53} \textit{Ibid.}, 7.

\textsuperscript{54} Vitoria, 9.
dismiss its place in our analysis of power relations places us all on the wrong foot when writing about the political history of Spanish America. This state was, of course, not a Weberian state. It was the *polis*, the *civitas*, or the *respublica*. State-making was therefore fundamental to the colonial project, because there was, according to most contemporary observers, no existing state to be found among the American Indians. If there was a state among their number, it was still believed to be lacking in a critical way.

The crown did indeed attempt to bring the state to the New World, to transplant or make new a *perfect community* that was the kingdom of New Spain and that was headed by the king’s substitute, the viceroy, and that fitted into the greater composite monarchy. The conception of New Spain as a *perfect community*, to use the words of Vitoria, as a commonwealth “which is not part of another commonwealth”; or, in the Mexican statesman Fray Servando Teresa de Mier’s (1765-1827) words, a community that contains its own historic constitution, had a long shelf life throughout the colonial period. The Spanish overseas political communities never officially fell under the title of an empire. The crown never wanted this identification and neither did the schoolmen of the second scholastic.

Vitoria and his colleagues were *anti-imperialists* in that they regarded empire as an unnatural and unjust perversion of the political community. According to the scholastics, lawful *imperium* could only be exercised in areas small enough where its authority could be derived (this was precisely Vitoria’s objection to the erroneous claim that the Spanish possessed *dominium* in the New World by virtue of Charles V’s title as emperor of the world). Lawful *dominium* was not possible in an empire since the authority of all peoples under its reach could not logistically be attained. Moreover, the care of all subjects under the charge of the prince could not be maintained in such a massive state.55 “The governor of one commonwealth is not obliged, indeed ought not, to look after the good of another commonwealth, even a greater good,

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if it is to the harm of his own commonwealth. Not even a private individual, indeed, is bound to undergo a loss of his own goods for the benefit of other men’s commonweal,” declared Vitoria in De potestate ecclesiae Prior (1532). In this situation, the king could not distribute justice to all of his subjects in such a large state. Additionally, empire was unnatural in the sense that it was beyond man’s telos. In the Aristotelian thesis of the origin of cities to which Vitoria subscribed, human beings did not move from a family to a village, to a community, to an empire, but stopped in his natural progression at the polis. Humans were political animals in the sense that their end was the polis, the city. The anti-imperial thread of Spanish political thought seldom receives the attention it deserves, but it was precisely this strand of thought that underpinned the political arrangements of the greater monarchy, J.H. Elliott’s composite monarchy thesis, in the early modern period. It was this reluctance toward empire that informed the theory and practice of the viceregal system in the New World.

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56 Vitoria, 90-91.
Conclusion
The stumbling of an ambitious Genoese seafarer upon an unknown, thickly populated landmass in search of the riches of Cathay shook the foundations of European and American Indian civilizations, and ushered the world into the modern era. The discovery and conquest of that geographical entity christened “America” has long since been considered one of the most cathartic and tumultuous events in human history. Francisco Lopéz de Gómora (1511-1566), one of the earliest Spanish historians to write on the subject, fervently expressed in his Historia de las Indias y conquista de México (1552), that the discovery was “The most important event after the creation of the world, with the exception of the reincarnation and death of its Creator.”

Centuries later the Scottish philosopher Adam Smith (1723-1790), too, marveled at its magnificence in The Wealth of Nations (1776), stating that “the discovery of America, and that of a passage to the East Indies by the Cape of Good Hope, are the two greatest and most important events recorded in the history of mankind.”

While Gómora viewed the event as an act of divine providence resulting in the aggrandizement of Spain and the salvation of Indian souls, Smith interpreted it as the dawn of revolutionary European commercial activities abroad. These contrasting interpretations, made centuries apart from one another, not only demonstrate the gravitating appeal toward the event by Europeans, but also the contentious, ambiguous, and enigmatic nature of America’s place in the Western tradition.

This thesis began and finished with Vitoria. The colonial state, just as the state of the mother country, was only conceivable and capable of realization once a representative presided over it. The kingdoms of New Spain and Peru, and later those of Nueva Galicia and Rio de la Plata, only came into being through the selection of distinguished men who represented the royal person. These viceroys, like the king in his own kingdom, also represented the body politic in that they provided for the viceroyalty’s defense and served as its source of ordination. So,

those historians who have ascribed a “modern” quality to the viceregal system are correct in a way. But to say that there is something “modern” about the colonial state is not to say that it precipitated the intensive centralization and bureaucratization that would later characterize the state in the nineteenth century. The viceregal system instead embraced the principle that Vitoria, and eventually Hobbes, proposed about the necessity of representation for political existence. It is in this sense that we can find a hint of “modernity” in the political arrangements of the Habsburgs. The Spanish discovery and settlement of the Western hemisphere left for future overseas empires this important lesson to grasp: that there could be no empire without representation.

The whole point of this exercise has been to show how representation is a concept that underpins a wide range of aspects of human life in a fundamental and sometimes crucial way. It is a concept that has been taken for granted, perhaps because of its pervasiveness in all areas of our lives, and for that reason requires sustained investigation to understand its place in our political arrangements as well as our lives outside of politics. The concept underpins a range of our activities and behaviors; from envisioning a state, to building an empire, to justifying or opposing the existence of that empire, to ensuring the preservation of that empire, and to exalting that empire through art. This thesis has provided, if anything at all, only vignettes of the historical examples of representation I have found to be most interesting and important to the subject of state-building overseas. That being said, there is still much to be written on the role of representation in the building of the Spanish empire and on the history of representation itself.

In the sixteenth century the crown attempted to re-present the society it had known across the Atlantic, but how much resemblance did its representation bear to the original? This is a question that requires an answer which cannot fit within the scope of this thesis, but it is worthy of consideration for any study that endeavors to shed light on the historical relationship of the New World to the Old. America was, and will forever be, an unusual place. For it is the artifact of Europe. “The being of things is not something they contain within themselves, but something that is assigned or granted to them,” wrote Edmundo O’Gorman in his classic study
The Invention of America.” The New World was carefully and selectively made in the image of its creator. But only in its image, for no representation can ever honestly depict the original.

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3 Edmundo O’Gorman, The Invention of America: An inquiry into the historical nature of the New World and the meaning of its history (Bloomington: Indiana University Press, 1961), 41.
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*La Recopilación de las leyes de los Reynos de las Indias*. From online facsimile available at the Archivo Digital de la Legislación en el Peru: https://archive.today/20120629195154/www.congreso.gob.pe/ntley/LeyIndiaP.htm


“Representación que hizo la Ciudad de México al rey don Carlos III en 1771 sobre que los criollos deben ser preferidos a los europeos en la distribución de empleos y beneficios de estos reinos.” In Juan E. Hernández y Dávalos, Colección de documentos para la historia de la guerra de independencia de México de 1808 a 1821. México: INEHRM, 1985.


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