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Introduction: International Relations Beyond Westphalia

The modern age . . . begins in the Renaissance and Reformation when the nations defied the universal authority of the church.¹

The universal “rights of man” and the international “system of states” often appear as the crowning achievements of the Western political imagination for modern international relations. The quelling of religious wars across Europe under a stronger policy of toleration and the rise of territorial sovereignty set the tone for a form of international relations breaking free from Latin Christendom and the grip of the papacy. Yet long-standing scholarly attention on political citizenship and national sovereignty within Reformation Europe after the iconic 1648 Peace of Westphalia often disregards the ideological underside of universal natural rights claims in extra-European contexts of imperial conquest and colonial settlement. European assertions of a natural right to punish and subjugate populations deemed unfit to govern themselves and an exclusive right to private property in foreign lands, bolstered by biblical and theological justifications, provided legal armor to early modern and modern expansion in the Americas, Africa, and Asia.²

The development of universal rights, along with international law, has a checkered colonial past admitting both Western imperial aggression against non-Europeans but also its critique by Europeans extending the same concepts of universal rights and international law to all.³ That ambivalence marking modern international relations has sometimes inhabited single

¹ Reinhold Niebuhr, *The Structure of Nations and Empires* (Charles Scribner’s Sons, 1959), p. 148.

² Camilla Boisen and David Boucher, “The Medieval and Early Modern Legacy of Rights: The Rights to Punish and to Property,” in *Medieval Foundations of International Relations*, ed. William Bain (Routledge, 2017), pp. 149–50.

³ For attention to the ambivalent European legal concepts of *res nullius* and *ius gentium*, respectively, see Andrew Fitzmaurice, *Sovereignty, Property and Empire, 1500–2000*

individuals, such as eighteenth-century Swiss jurist Emer de Vattel, whose treatise *The Law of Nations* (*Droit des gens*) received popular transatlantic acclaim. Vattel adamantly endorsed an international society comprised of free and equal states in possession of autonomous independence. On this principled basis, he saw the Spanish conquest of the Inca and Aztec empires as a “notorious usurpation.”⁴ However, when it came to “savage nations,” prone to war and theft, the rules of conduct in the law of nations did not apply to them as they deserved punishment and even extermination by a confederacy of more civilized nations.⁵ The ambivalence of defending equal liberty and supporting colonial subjugation in the history of international relations typically rested, as in Vattel’s case, on a distinct category of otherness for uncivilized non-Europeans. Recognition of political equality and universal rights only held among civilized nations, not savage ones outside the law of nations.

Before savages occupied Western thinking about international relations beyond Europe in ambivalent terms, there were the infidels of Latin Christendom. *Infidels and Empires in a New World Order* argues that the ambivalence of modern international relations identified here had its ideological roots in the Western European past of Christian–infidel relations. Through the prism of the infidel other in frontier colonial settings, the ambivalent nature of universal rights inscribed in a world order comes into sharper focus during the early modern period of European expansion, especially in Spain. The infidel other, a legal category and not merely a moral or rhetorical designation, was distinct from the “barbarian foreigner” or “natural slave” of ancient Greco-Roman cultures. It was also distinct from the “uncivilized savage” of modern Western European societies even as both shared some overlapping features.

Because infidels were a robust legal category in the Latin Christian tradition, they were the political subjects of rights in a manner unlike classical barbarians or natural slaves. The notion of infidel rights offers a unique vantage point for investigating how early modern European Christians, indebted to Roman classical and medieval scholastic-juristic notions of natural law and the law of nations, conceptualized humanity and its proper due beyond religious, cultural, and political borders. This book examines the extension and application of infidel rights to the native peoples of the New World justifying both their political freedom and their political dispossession.

(Cambridge University Press, 2014), and Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press, 2018).

⁴ Emer de Vattel, *The Law of Nations*, eds. Béla Kapossy and Richard Whatmore (Liberty Fund, 2008), Book 1, chap. 7, p. 130.

⁵ Vattel, *The Law of Nations*, Book 3, chap. 3, p. 487.

By focusing on Christian–infidel relations outside Europe as constitutive of international relations, this study decenters the dominant Westphalian narrative of international society that moves from Europe outward.⁶ It thereby introduces a different story from the colonial margins about the emergence of international relations and its ambivalent legacy for Western legal thought.

Most Anglophone treatments of early modern/modern rights for infidels in the Christian tradition explore north transatlantic debates about the toleration of Christian heretics, wherein the right of individual conscience against papal power or established state religion became a crucial catalyst for modern democratic liberties and sovereign independence. John Locke’s protracted epistolary debate with Jonas Proast and Roger Williams’s rhetorical battle with John Cotton are key historical examples from England and colonial America about liberty’s struggle against religious coercion. Alternatively, *Infidels and Empires in a New World Order* widens the analytical lens by turning to an unprecedented sixteenth-century Spanish debate about the rights of those outside Latin Europe: unbaptized indigenous peoples across the Atlantic who had never before encountered Europeans, much less heard of Christianity.

The anchor point of this overlooked Iberian past of international legal thought was the sixteenth-century junta in Valladolid, Spain between Bishop Bartolomé de las Casas and the imperial humanist Juan Ginés de Sepúlveda. The main contention of the debate under imperial auspices, which was moderated by theologian of the Second Scholastic Domingo de Soto, concerned the alleged lawfulness of making religious war against idolatrous infidels to bring about their widespread conversion to the Christian faith. Although both sides of the debate acknowledged infidels as human beings, the account of natural law and universal world order informing each diverged greatly. Natural law and the law of nations could serve as a basis for both affirming and denying the rationality of Amerindians and, correlatively, their rights of jurisdiction and sovereignty. The Valladolid junta brought into relief the historically contested politics and strategic uses of natural law and the law of nations in the European Christian encounter with infidels. As this book demonstrates, the Spanish debate about infidel rights exposed the inherent yet seldom recognized ambivalence marking the emergence of international relations with non-Europeans in the West.

⁶ *The Expansion of International Society*, eds. Hedley Bull and Adam Watson (Oxford University Press, 1984), p. 1. Consider the opening words of this influential study: “The purpose of this book is to explore the expansion of the international society of European states across the rest of the globe, and its transformation from a society fashioned in Europe and dominated by Europeans into the global international society of today.”

When European Protestant natural lawyers and philosophers in the latter half of the sixteenth and seventeenth century reconfigured international relations along a legal humanist axis instead of scholasticism and canon law, the doctrine of infidel rights receded into the background along with the exposed ambivalence won at Valladolid. These international thinkers retained conflicting aspects of Spanish views on infidels represented at the Valladolid junta, recognizing the natural rights of non-Europeans but also the superiority of European civilization. International thinkers such as Locke, but also Hugo Grotius and Alberico Gentili, characteristically discarded the ongoing foundational role of the universal Church and papacy in safeguarding world order. Juridical independence from papal power generated new claims to freedom of trade, commerce, and settlement against European competitors by inaugurating a political discourse about universal natural rights in frontier colonial spaces lacking a sovereign judge. These thinkers also increasingly denied idolatry a critical role in the moral grammar of their international thought. On the one hand, this had the advantage of eliminating idolatry as a cause of interconfessional strife within Europe, and wars against infidels outside Europe, like in North America. On the other, the dwindling discourse of idolatry in English colonization would have the adverse effect of weakening the overall self-critique of westward expansion and wealth accumulation. As the idolatrous infidel diminished from later seventeenth-century international thinking, the savage and nonindustrious Indian would proliferate in its absence.

The Dominican theologians considered in this book, by contrast, continued to apprise themselves of the moral category of idolatry as a reflexive device to rebuke the voracious thirst for wealth and profit plaguing Spanish colonization of the Indies. They also restricted idolatry as a lawful cause for waging war against non-Christians. From a different geopolitical and confessional standpoint than Protestant humanists and natural lawyers, the Spanish theologians engaged in this book similarly rejected the logic of coercion undergirding religious war endorsed by papal theocracy and imperial tyranny. Moreover, they did so on the basis of *human* natural rights supporting the rationality and political authority of non-Christian peoples more than a century prior to Westphalia. Remarkably, their reformatory resistance to overreaching claims of Pope and emperor in temporal matters recognized the autonomous polity as a boundary to empire without abandoning the definitive role of Christian belief in the promotion of justice and solidarity among peoples of the world. The normative claim of this book is that the Spanish theologians developed reliable ethical principles for international thought to chasten empire, repudiate colonial abuses, promote solidarity with non-Europeans, and empower

indigenous political agency. They did so not by eliding their religious convictions, but by creatively affirming them in a New World context responsive to bringing the Gospel peacefully to all nations.

THEOLOGY AND THE UNIVERSAL CHURCH

Infidels and Empires in a New World Order features the historic legacy of the sixteenth-century theological conception of world order articulated by Spanish Dominicans (members of the Order of Preachers) responding to “the affair of the Indies.” During the reign of Emperor Charles V, Las Casas, Soto, and Francisco de Vitoria, among others, appropriated and expanded a scholastic-juristic account of natural law and the law of nations chiefly indebted to St. Thomas Aquinas and the medieval *ius commune* tradition to promote the basic rights and freedoms of individuals and peoples under God. In an unprecedented way, they appealed to a universal juridical order and ecclesiastical forum transcending Spanish imperial power to protect non-Europeans from unjust political aggression and colonial oppression.

Their scholastic-theological conception of world order hinged on the belief that the divine image belonged to all human beings, even infidels, as spiritual and rational creatures. The image of God naturally impressed upon every individual, and restored to perfection through Jesus Christ, punctuated an objective safeguard and horizon for expressing the subjective rights of non-Christian peoples. It affirmed a universal natural law protected and vindicated by the rule of Christ over the Church and creation. As theologian Oliver O’Donovan has suggested, this belief signaled “the last and greatest of the legal accomplishments of Christendom,” which was “the conception that there exists, not merely as an ideal but in fact, an international law, dependent on no regime and no statute.”⁷

Extending Richard Tuck’s treatment of “scholasticism” in his foundational study of international thought and Annabel Brett’s comprehensive work on the “Dominican moment” of the Catholic Second Scholastic, this book considers the ideas and practices informing the political judgments about the Indies by Spanish theologians.⁸ The book mines the political context and canon legal

⁷ Oliver O’Donovan, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge University Press, 1996), p. 236.

⁸ Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford University Press, 1999); Annabel S. Brett, *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge University Press, 1997) and *Changes of State: Nature and the Limits of the City in Early Modern Natural Law* (Princeton University Press, 2011).

background of the Indies affair to elucidate Christian theological contributions of the Dominicans. In particular, the Valladolid debate, which receives insufficient treatment in histories of international thought, contextualizes the book's organizing theme on the rights of infidels as constitutive of a new world order in contrast to the theory and practice of empire. The enigmatic slaveholder-turned-lawyer advocate of the Amerindians, Fray Bartolomé de las Casas (1484–1566), provides the microhistorical reference point for this wider narrative of infidel rights focused on Valladolid and the early modern development of international relations.

Despite Las Casas's signal theological and legal contributions to international thought, he has been woefully underappreciated if not disregarded by historians of international political thought, even those attentive to Spanish scholastics.⁹ Perhaps this has been due to a reduction of him to that of propagandist because of his usable history for the Black Legend by European colonial competitors with Spain. Or perhaps it is because scholars who have seen his importance remain unconvinced that he was a foremost legal thinker and political theorist in his own right. *Infidels and Empires in a New World Order* rectifies this inadequacy and places Las Casas in conversation with his Dominican confreres Vitoria, Soto, and Melchor Cano, and his main interlocutors and opponents, in order to appreciate both his singularity and the broader Spanish contributions to international legal thought.

The Valladolid junta represented the culmination of a decades-long conflict about the proper method of spreading the Gospel to the native peoples of the Indies. It also symbolized a centuries-long Christian debate about missionary war against infidels within Latin Christendom. This was indeed a great moment of evangelical and political crisis for the Dominicans resulting in the development of a Spanish theological conception of world order reliant on the scholastic tradition of Thomas Aquinas. Without attention to the intricacies of this moment of crisis, the Dominican theological response to the whole affair risks envelopment under grand narratives and genealogies that purportedly trace the origin of modern liberal internationalism, modern capitalism, or modern racialized

⁹ Consider the dismissal by Andrew Fitzmaurice when he writes, "Las Casas was not a Salamanca theologian and his arguments did not employ the same natural law reasoning." *Sovereignty, Property and Empire*, p. 61. Even though Georg Cavallar treats Las Casas in colonial context, he, too, concludes that Las Casas offers, at best "the rudimentary elements of a theory of aggression, of collective self-determination or political independence, and of self-defense" more fully developed in Vitoria. See his *The Rights of Strangers* (Ashgate Publishing, 2002), p. 80.

colonialism.¹⁰ Instead, our focus on the conflicting Christian accounts of world order yields a richer analysis of the normative contribution of Spanish Dominicans, and their critical interlocutors, for international relations in Western Europe.

Four scholastic theses help theorize the Spanish theological conception of world order considered throughout this book: (1) The spiritual transcendence of temporal political powers by ecclesiastical authority. (2) The recognition of the political integrity and right of peoples as a boundary to empire. (3) The natural and mystical unity of all persons made in the divine image. (4) The moral defense and juridical protection of innocent and dispossessed non-Christian peoples. All the aforementioned theses operated within a theological political framework according to the Thomistic dictum: *grace does not abolish nature, but perfects it*.¹¹ This Thomistic axiom distinctly outlined a scholastic theological approach to world order emerging from the crisis of the Indies by affirming the reality of divine grace from Christ through the universal Church, but also the universal integrity of natural reason. Las Casas had this axiom precisely in mind when he argued for infidel rights at Valladolid: “[T]he law of grace perfects the acts of nature; it does not overturn or abolish them. This is the teaching of all the schools, all theologians, and all doctors. And thus it is lawful for pagan rulers to protect their borders as well as to exercise jurisdiction, since, in this respect, their jurisdiction is no less natural than the jurisdiction of Christian rulers.”¹²

Although the Thomistic axiom and scholastic theses provided a common repository for international thought among the Spanish Dominicans, it did not mean that each theologian’s moral ideas were identical or that they arrived at the same political judgments concerning the Indies affair. Neither did it preclude the evolution of their ideas and opinions during their lives due to changing circumstances and maturation of thought. Jointly, however, the sixteenth-century Spanish theologians opted for an ethical commitment to world order over the imperial jurisdiction of the Crown. It rested on the spiritual authority of Christ and the Church, and natural law and the law of nations derived from human reason. They did not conceive of a political unit

¹⁰ Respectively, see James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* (Clarendon Press, 1934); Alejandro A. Chafuen, *Faith and Liberty: The Economic Thought of Late Scholastics* (Lexington Books, 2003); Walter D. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press, 2011), chap. 2.

¹¹ Thomas Aquinas, *Summa theologiae* (ST hereafter) I, q. 1, a. 8 ad 2.

¹² Bartolomé de las Casas, *In Defense of the Indians*, trans. Stafford Poole (Northern Illinois University Press, 1992), chap. 9, p. 83.

of empire that could legitimately hold universal political power in its classical or medieval sense.¹³ Neither did they adhere to a curialist conception of universal dominium that granted excessive or unbecoming latitude to the papacy in temporal political matters.

Although the Church and the papacy had to retain a certain extraordinary measure of power from Christ to intervene on behalf of pressing spiritual matters as defined in canon law, this presupposed a recognition of the integrity of temporal political powers and the limits of Christian jurisdiction over infidels. The prospect of unjust intervention on the world stage of non-European peoples prompted the Spanish theologians to place still greater emphasis on the moral constraint of states, rather than greater freedom of states to act against one another.¹⁴ They generated Christian political arguments derived from theology, canon law, and Roman law, for restraining empire and condemning European colonial domination. Most prominent among their colonial repertoire for protecting native sovereignty and property were redeployments of the canon legal principle of infidel (or outsider) immunity from political judgment and the Roman law of occupation.

The Spanish Dominicans articulated a scholastic theological conception of world order that could properly chasten the conceits of both European imperialism and theocratic papalism. They did so by locating the temporal authority over the newly traversed Atlantic world in its indigenous occupants, not in the papacy or empire of Latin Christendom.¹⁵ Their reliance on the medieval legal tradition in both its scholastic and canonistic expressions enabled them to take measure of an alternative “world order defined not as a universal government but as a unified law,” anchored in theological convictions rather than imperial might.¹⁶ O’Donovan has further identified the normative importance of this scholastic-juristic tradition inherited and appropriated by the Spanish theologians, which elevated Christ as sole ruler of the nations without erecting a world government in his place yet giving his rule a clear institutional witness through the Church.¹⁷

The moral stance of Spanish Dominicans in the New World during the early colonial period suggests another theological basis for world order resting

¹³ Brett, “Scholastic Political Thought and the Modern Concept of the State,” in *Rethinking the Foundations of Modern Political Thought*, eds. Annabel Brett and James Tully with Holly Hamilton Bleakley (Cambridge University Press, 2006), p. 144.

¹⁴ Tuck, “Grotius, Hobbes, and Pufendorf on Humanitarian Intervention,” in *Just and Unjust Military Intervention: European Thinkers from Vitoria to Mill*, eds. Stefano Recchia and Jennifer Welsh (Cambridge University Press, 2013), p. 102.

¹⁵ O’Donovan, *The Ways of Judgment* (Eerdmans Publishing, 2005), pp. 216–217.

¹⁶ O’Donovan, *The Desire of the Nations*, p. 267.

¹⁷ O’Donovan, *The Desire of the Nations*, pp. 267–268.

on infidel rights as a counter to the ancient practice of unjustly making empire through dispossession. In a momentous shift in Roman ecclesiastical policy, Pope Paul III (1534–1549) communicated such an inclusive vision of world order in his letters addressing the affair of the Indies.¹⁸ These papal letters of 1537, directed to the universal Church and specific bishops, outlined the proper method of evangelizing extra-European nonbelievers based on respect of their fundamental rights as rational creatures capable of receiving the Christian faith. The Pope undermined preceding medieval papal doctrine and the practice of spreading Christianity through an aggressive civilizing mission. He also gave clear ecclesial witness by requiring bishops in the New World to withhold sacraments from any Christian who refused to set free oppressed infidel peoples.

The most well-known of Paul III's letters, the encyclical *Sublimis Deus*, targeted Satan's corruption of those within the Church – namely, European Catholics who employed fear, greed, war, and enslavement to convert those outside the Church by subjugation and dispossession. As the Vicar of Christ on earth, Paul III believed his papal duty was to protect all of Christ's sheep, especially “the Indians of the West and South” beyond the visible fold of the Church.¹⁹

Those Indians (and all other peoples who will be discovered by Christians in the future), although they are outside the faith, should not be deprived of their freedom and their ownership of things. Indeed, they can use, control, and enjoy their liberty and ownership freely and lawfully. Nor should they be reduced to slavery. If the contrary were to happen, it would be void and useless, having neither force nor influence. We declare that those same Indians and other peoples should be attracted to the proper faith of Christ by the preaching of God's word and by good example.²⁰

For historian Helen Parish, Pope Paul III's letter *Sublimis Deus* marked “the true beginning of international law in the modern world: the first inter-continental proclamation of the inherent rights of all humans and the liberty of peoples.”²¹ Even if this overestimated the papacy's historical role for

¹⁸ The following letters of Paul III addressing the Amerindian question coincided in 1537 over the course of three consecutive months: *Pastorale officium* (May 29), *Sublimis Deus* (June 2), *Altitudo divini consilii* (July 1).

¹⁹ Jn 10:16, where Jesus as the Good Shepherd teaches his followers: “I have other sheep that do not belong to this fold. I must bring them also, and they will listen to my voice. So there will be one flock, one shepherd.”

²⁰ *Sublimis Deus*, in *Las Casas en México*, Helen Rand Parish and Harold Weidman (Fondo de Cultura Económica, 1992), Appendix 14 in Latin and Spanish translation, p. 310.

²¹ Parish, *Las Casas en México*, p. 18. Historian Lawrence Clayton has also referred to the letter as “the magna carta of Indian rights.” See his *Bartolomé de las Casas: A Biography* (New York: Cambridge University Press, 2012), p. 239.

international law, Paul III's threefold commitment to the right of freedom, self-rule, and property stemming from a recognition of the dignity of the rational creature was a watershed moment in Christian–infidel relations outside Europe. So was his threat to excommunicate Christian oppressors in defense of a peaceful method of evangelization. This point was not lost on the founder of modern Catholic social teaching, Pope Leo XIII, who commemorated Paul III in 1888 to celebrate Brazil's abolition of slavery.²² Remarkably, Spanish Dominican missionaries and theologians were the direct inspiration of Pope Paul III's views on the Indies affair.

The juridical locus of international society for Pope Paul III and the Spanish Dominicans was not the issue of heresy and interconfessional strife within Reformation Europe, but instead the European encounter with infidels in a New World. From this theological standpoint, the moral basis for the juridical unity of humankind was the mystical Body of Christ, comprised of individuals scattered among the nations. And yet, the dominant origin story of international relations and the modern states system has made Christian theological contributions to world order and universal rights exceedingly inconsequential, outmoded, or a mere antecedent to thinkers of the modern political canon. Its narrative premise about formal anarchy among nations jettisons the complex theological heritage of Christian thinking about world order.

INTERNATIONAL RELATIONS, WESTPHALIA, AND ANARCHY

The Roman Church's support of international right may seem an irony of history when considering that the papacy extricated itself from the most symbolic founding event of international law – the 1648 Peace of Westphalia ending the Thirty Years' War. The treaties between equal French, German, Dutch, and Swedish states seeking greater independence from the authority of the Holy Roman Empire and the Roman papacy revolutionized the politics of sovereignty and national legitimacy in the West.²³ Pope Innocent X declared the treaties underlying the iconic origin of the modern states system legally null, void, and invalid for all times due to the Protestant incursion on traditional ecclesiastical authority and property.²⁴ The papacy zealously sought to

²² Pope Leo XIII, *In plurimis* (1888), §16.

²³ Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton University Press, 2001), chap. 5; Ian Clark, *Legitimacy in International Society* (Oxford University Press, 2005), p. 49, and chap. 3.

²⁴ Pope Innocent X, *Zelo domus Dei* (1648), in *Church and State through the Centuries*, eds. Sidney Ehler and John Morrall (Newman Press, 1954), pp. 194–198.