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The legal status of the Indies within the Spanish Empire -the messianic concept of the Spanish monarchs*

ABSTRACT

The legal history of the Spanish Empire is not taught at the Legal History Departments of the Hungarian Universities, only its general history at the Early Modern History Departments. The investigation on the Spanish rule in America is mostly from the aspects of the economy and society, but never the legal status of the Americas within the Spanish Empire. This study tries to focus on the most relevant legal questions, and to give answers on the basis of the most relevant legal sources.

KEYWORDS: Habsburg, Spanish Empire, Catholicism, America, Indies

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Introduction

The Spanish rule in America and Philippines – the so called ‘Indies’ in Spanish primary sources – is usually interpreted as *colonialism*, and the Indies as *colonies* in international historiography. Vocabularies offer similar definitions for the term ‘colony’, according to this, it is a territory subject to a foreign power, which rules the territory and its indigenous peoples separated from the foreign rulers, the colonizer, and their metropole. Metropoles at their centres, making colonies neither annexed or even integrated territories, nor racial or cultural mixture. But is that conception fit for to determine the Spanish Empire, the Spanish rule in the Americas? Will we find these aspects in primary legal sources? What was the legal status of the Indies within the Spanish Empire exactly? What did influence the legal thought of the Spanish monarchs during the 15th and 17th centuries? I try to answer to these questions in present study.

First of all, we must distinguish between the (legal) nature of the primary sources. The most important and relevant legal sources for this topic are the papal bulls,¹ the laws and royal orders of the kings of Castile, also called king of Spain.² There is a huge collection of the laws of the Indies, published by King Charles II of Spain at the end of the 17th century, which includes all the laws and orders of the Indies issued during the 16th and 17th centuries.³ The testaments of the monarchs, mainly Queen Isabel I of Castile’s one,⁴ and the Habsburg rulers’ last wills⁵ must be taken into account as well. We must count the contracts made between the Crown and the various explorers or conquistadors among the prominent primary sources as well. The most known is the contract firmed by Isabel I of Castile (1474–1504) and Ferdinand II of Aragon (1479–1516) and the explorer and navigator Christopher Columbus at Santa Fé in 1492 before his voyage to the Indies.⁶ The other famous one, is the deal between Emperor Charles V and Francisco Pizarro at the court of Toledo in 1529,⁷ although the document itself was signed by Empress Isabel due to the absence of Emperor Charles V, he had left Spain by that time. The privileges granted to the various individuals from the part of the monarchs, like in the cases of Hernán Cortés – giving him the hereditary title Marquess of the Oxaca Valley⁸ – for conquering Mexico, or Francisco Pizarro – granting him the hereditary title Marquess of the Conquest – after having conquered Peru, are also important sources.⁹ And finally we can talk about the other category of the sources, particularly the chronicles from the Early Modern Ages written by eyewitnesses where we can also read about the Spanish concept on the rule of the Indies.¹⁰

I. Papal donations and the ‘*bulas alejandrinas*’

After the first new discoveries in Africa led by the Portuguese at the beginning of the 15th century, the Holy See granted licences to the Crown of Portugal to conquer in Africa. It was in accordance with the consequent Medieval legal thought that the pope has power and right to donate a

¹ Hernaez, Francisco Javier : *Colección de Bulas, Breves y otros documentos relativos a la Iglesia de América y Filipinas I*, Bruselas, Imprenta de Alfredo Vromant, 1879, 12.

² *Cortes de los antiguos reinos de Castilla y León*, Madrid, Real Academia de la Historia, 1882.

³ *Recopilación de las Leyes de los Reynos de las Indias*, Madrid, 1681.

⁴ The full text is available: https://es.wikisource.org/wiki/Testamento_de_Isabel_la_Cat%C3%B3lica

⁵ Fernández Álvarez, Manuel, *Testamento de los reyes de la Casa de Austria*, Madrid, Editora Nacional, 1982.

⁶ Fernández Sotelo, Rafael Diego, *Capitulaciones Colombinas (1492–1506)*, Michoacán, El Colegio de Michoacán, 1987.

⁷ *Cedulario del Perú, siglos XVI, XVII y XVIII, (1529–1534)* Tomo I, Lima, Departamento de relaciones culturales del Ministerio de relaciones exteriores del Perú, 1944, 18–24.

⁸ *Colección de documentos inéditos para la historia de España*. Tomo I, Madrid, Imprenta de la Viuda de Calero, 1842, 103–108.

⁹ Cordero Alvarado, Pedro, *El escudo de armas de Francisco Pizarro reflejo de la conquista del Perú*, Madrid, Academia Asociada, 1999, 27.

¹⁰ For example: Oviedo, Gonzalo Fernández de, *Sumario de la natural historia de las Indias*, 1526, López de Gómora, Francisco, *Historia general de las Indias*, 1553, Cieza de León, Pedro, *Cronica del Perú*, 1554, Pizarro, Pedro, *Relación del Descubrimiento y Conquista de los Reinos del Perú*, 1571.

territory to an individual or to a state, and it was based on the ancient concept of the *Donatio Constantini*. During the Middle Ages various donations were made by the Holy See, maybe the most widely known is linked to the Norman Conquest of England led by William the Conqueror in 1066. The Duke of Normandy got the previous authorization from Pope Alexander II before the conquest.¹¹ While the siege of Rhodes in 1310, the Order of Saint John asked Pope Clement V to give to the Order the Island, the Supreme Pontiff finally made the donation.¹² In the middle of the 14th century a Spanish-French aristocrat, Luis de la Cerda, the Prince of Fortuna asked Pope Clement VI to give him an authorization to conquer the Canary Islands.¹³ In the course of the discoveries and exploration in Africa reached by the Portuguese Crown from 1415, the popes gave various privileges to the Portuguese kings.¹⁴ In the second half of the 15th century the biggest challenge for the Christianity was the unstoppable growing power of the East, the Ottoman Empire, the Ottoman conquest of Constantinople in 1453 was a real shock for the Holy See and the Iberian Kingdoms. In the very hour of the need a Spanish cardinal, Alonso de Borja – the former professor of the University of Lérida – was elected Supreme Pontiff as Callixtus III (1455–1458). Both Alonso and his nephew, Rodrigo de Borja (known as Borgia in international historiography), the future Pope Alexander VI (1492–1503) were educated and well prepared jurists, Rodrigo was a student of the University of Bologna, the legal thought was essential in their policy.¹⁵ Both Borgia Popes granted fundamental privileges to the Crowns of Portugal and Castile during their pontificates. The purpose was to looking for new lands and nations, those who potentially could be converted to the Catholic faith and thus to unite as much power and as many people as it was possible to be able to resist the coming Ottoman threat or conquest. I wrote a study about this context.¹⁶

For us, the most relevant documents are the bulls issued by Pope Alexander VI after that Columbus had returned from his voyage to the Indies in 1493, the famous ‘*bulas alejandrinas*’.¹⁷ In the Bull Breve Inter caetera the pope granted the newly discovered territories to the kings of Castile and Aragon and their successors with his plenitude of apostolic power:

‘We of our own motion, and not at your solicitation, nor upon petition presented to Us upon this subject by other persons in your name, but of our pure free will and certain knowledge, and with the plenitude of apostolic power, by the authority of God omnipotent granted to Us through blessed Peter, and of the vicarship of Jesus Christ, which we exercise upon earth, by the tenor of the presents give, concede, and assign for ever to you, and to the kings of Castile and Leon, your successors, all the islands and main-lands discovered and which may hereafter be discovered, towards the west and south, with all their dominions, cities, castles, places, and towns, and with all their rights, jurisdictions, and appurtenances, whether the lands and islands found or that shall be found, be situated towards India, or towards any other part whatsoever’.¹⁸

Although the demarcation line had done by the Borgia Pope in these bulls, it was modified later by the the Portuguese and Spanish monarchs at the meeting in Tordesillas in 1494 to the favour of the Portuguese Crown.¹⁹ Very interesting that Pope Alexander VI recognized never that modification since

¹¹ Morton, Catherine, Pope Alexander II and the Norman Conquest, *Latomus*, 34, Fasc. 2 (AVRIL-JUIN 1975), 362–382.

¹² Luttrell, Anthony, The Hospitallers at Rhodes, 1306–1421, In Setton, Kenneth M – Hazard, Harry W. (eds.): *A History of the Crusades, Volume III: The Fourteenth and Fifteenth Centuries*, Madison and London: University of Wisconsin Press, 1975, 278–313.

¹³ *Monumenta Henricina*, Vol I, Coimbra, 1960, 207–214.

¹⁴ Onyemehi Adiele, Pius, *The Popes, the Catholic Church and the Transatlantic Enslavement of Black Africans 1418–1839*, Georg Olms Verlag, Hildesheim – Zürich – New York, 2017.

¹⁵ Schüller Piroli, Susanne, *Los papas Borgia Calixto III y Alejandro VI*, Valencia, 1991, 83.

¹⁶ Líktor, Zoltán Attila, *Recuperata fuit Hispania, Jogtörténeti Szemle*, 2024/1.szám, 18–28.o.

¹⁷ Dawson, Samuel Edward, *The lines of demarcation of Pope Alexander VI and the Treaty of Tordesillas A.D. 1493 and 1494*, Toronto, 1899.

¹⁸ Dawson, 533.

¹⁹ Ribot García, Luis Antonio – Carrasco Martínez, Adolfo – Adão da Fonseca, Luis (ed.), *El Tratado de Tordesillas y su época*, Junta de Castilla y León, 1995.

he interpreted it as a kind of harm of his sovereign decision, Pope Julius II finally gave his consent to it in 1506.²⁰

The donation's aim was a special mission marked by a clear messianic thought, the task of the propagation of the Catholic faith in the entire World. This was specifically emphasized in the text of the bull:

‘We therefore, highly commending in the name of God your holy and laudable resolution, and wishing that it may be conducted to the desired end, and the name of our Saviour introduced into those parts, exhort you warmly in the Lord, and by the holy baptism you have received, by which you subjected yourselves to the apostolic commands, and by the bowels of the mercy of our Lord Jesus Christ, earnestly intreat you to proceed in taking up and prosecuting completely this expedition, the zeal for the orthodox faith continuing in you, you will and ought to induce the people, who inhabit the foresaid islands and continents, to embrace the Christian religion’.²¹

The process of the evangelization was started with an emblematic act, when Columbus returned to Spain in 1493 he brought Indians to Iberia from the New World to the royal court, the first six newly converted Indians' Godfathers were the royal couple and the heir to the throne.²² Queen Isabel stipulated in her testament in 1504 that the main obligation of her successors was the propagation of the Catholic faith and the evangelization of the Indians.²³ If we read the laws of the Indies, we can notice that this was the main obligation of the viceroys, governors, bishops as well.²⁴ This messianic vision was widely known in the society as well, the chronicle of Francisco López de Gómora starts with this rhetoric.²⁵ By the Mid-16th century, a good part of the Indians were converted to the Catholic faith,²⁶ very interesting the data Toribio de Benavente, a Franciscan friar (one of the ‘Twelve Apostles of Mexico’) mentions in his chronicle that by 1536 (the year he wrote his chronicle) ‘more than four millions of souls were converted to the Holy Catholic faith’.²⁷ In Peru the very first convents and churches were founded by the Inca elite, like the Iglesia de San Cristóbal in 1546, established by Huascar Túpac Paullu Inca converted to the Christianity, or the Convento de la Merced de Trujillo, founded by Francisca Pizarro Yupanqui, the daughter of Francisco Pizarro and an Inca princess, Quispe Sisa. Numerous paintings from the 16th and 17th centuries show the baptism of the Indians or Catholic Processions led by the Indian elite.²⁸ This was the primary task of the Spanish monarchs, and it was fundamental in the interpretation of the Spanish Crown, in the laws of King Philipp IV, the monarch stated the following: ‘with the

²⁰ *Alguns documentos do Archivo Nacional da Torre do Tombo acerca das navegações e conquistas portuguesas publicadas por ordem do governo de Sua Magestade Fidelissima ao celebrar-se a comemoração quadricentenaria do descobrimento da America*. Lisboa, Imprensa Nacional, 1892, 142–143.

²¹ Dawson, 532.

²² *Historia general de las Indias* Cap. XVII.

²³ Codicilo de Isabel ‘por quanto al tiempo que nos fueron conçedidas por la sancta Se Apostólica las Yslas e Tierra Firme del Mar Océano, descubiertas e por descubrir, nuestra prinçipal yntençión fue, al tiempo que lo suplicamos al papa Alexandro Sexto, de buena memoria, que nos hizo la dicha conçesión, de procurar de ynduzir e traer los pueblos dellas e les conuertir a nuestra sancta fe cathólica, e enbiar a las dichas Islas e Tierra Firme prelados e religiosos e clérigos e otras personas doctas e temerosas de Dios, para ynstruir los vesinos e moradores dellas en la fe cathólica, e les enseñar e doctrinar buenas costunbres, e poner en ello la diligencia deuida, segund más largamente en las letras de la dicha conçesión se contiene, por ende suplico al rey mi señor muy afectuosamente, e encargo e mando a la dicha prinçesa, mi hija, e al dicho prinçipe, su marido, que así lo hagan e cunplan, e que este sea su prinçipal fin, e que en ello pongan mucha diligencia, e no consientan nin den lugar que los yndios, vesinos e moradores de las dichas Yndias e Tierra Firme, ganadas e por ganar, reçiban agrauio alguno en sus personas ni bienes, mas manden que sean bien e justamente tratados, e si algund agrauio han reçebido lo remedien e provean por manera que no se exceda en cosa alguna lo que por las letras apostólicas de la dicha conçesión nos es iniungido e mandado’.

²⁴ *Recopilación...* Libro I, Título I, Ley V (1563).

²⁵ *Historia general y natural de las Indias*, Libro II, Cap. VII, 29.

²⁶ Chiva Beltrán, Juan, El Corpus y el Imperio hispánico. Autoridades, naturales y usos de la devoción al cuerpo de Cristo. In Mínguez, Víctor – Rodríguez, Inmaculada (ed.): *La Piedad de Casa de Austria*, Valencia, 2018, 63–86, 73.

²⁷ *Historia de los Indios de la Nueva España*, Parte II, Cap. II.

²⁸ <https://escriturasvirreinales.wordpress.com/2014/02/11/museo-de-arte-religioso-del-palacio-arzobispal-de-cusco/>

responsibility and obligation by which we are the Masters of the Indies, our wish is to convert all the Indians to our Holy Catholic Faith'.²⁹

II. The legal status of the Indies

Pope Alexander VI donated the Indies to the kings of Castile, and Queen Isabel wrote in her testament that 'the Indies shall be full part of the Crown of Castile'. Royal chaplain to Queen Isabel, Juan Rodríguez de Fonseca was entrusted by the sovereigns with the organisation of the administration of the Indies from as early as Columbus' second voyage to America in 1493.³⁰ Fonseca's main duty was to ensure the propagation of the Catholic faith in the Indies, the evangelization of the Indians. By the early 1510 the Greater and the Lesser Antilles were discovered and conquered, the administration of the new lands – thanks to its territorial expansion – needed to be more institutional than ad-hoc, and thus a new institution, the Junta de Indias was created under the chair of Rodríguez Fonseca in 1511. The Junta worked within the Council of Castile until 1524 the death of Rodríguez Fonseca. Because of the massive expansion of the Empire in Mesoamerica and the Caribbean at the beginning of the 1520, it was needed the Junta to be reorganised into an independent Council, the Council of the Indies.

From the very beginning, the Crown paid particular attention to the papal wish that the Indians to be treated well and justly by the Spaniards, and tried to act decisively against any abuses. The rumours and accusations against Columbus about his 'errors' and 'crimes' were enough to remove him from his dignity as viceroy and to arrest him, later he could clear himself of the charges though, the monarchs denied to restore his authority in the Indies. In the 1500 the sovereigns created new provinces (Veragua, Castilla del Oro, Cuba etc.) step by step as the new territories were discovered. The Junta de Indias made a comprehensive proposal to the remedy of the abuses committed by the encomenderos,³¹ which was issued by Queen Joanna of Castile and his father, Governor Ferdinand of Aragon during the Cortes of Burgos in 1512, these are known as The Laws of Burgos.³² These rules became the very basis of the policy of the Spanish Crown that manifested by the end of the 17th century in an enormous law compilation as I have mentioned it above.

The papal bull granted the Indies to the Crown of Castile and Leon, but the other Spanish kingdoms like Aragon, Valencia, Catalonia etc. had no right to take part in the discoveries and conquest, although a kind of division between Isabel and Ferdinand could be existed. King Ferdinand II of Aragon declared her daughter, Joanna as his 'successor universal' in his testament in 1516, mentioning the Indies among his domains as well.³³ Charles of Habsburg – as co-ruler of Castile and Aragon together with his mother Queen Joanna – in his inauguration oath in Valladolid in 1518 and during his presence in Barcelona in 1519 stated that the Kingdoms of the Indies should never be separated from the Crown of Castile.³⁴ Thus the Spanish monarchs considered the Indies as kingdoms full part of their Crown of

²⁹ *Recopilación...* Libro II, Título II, Ley VIII (1636).

³⁰ Fernández-Prieto Domínguez, Enrique D. Juan Rodríguez de Fonseca delegado regio en los asuntos de Indias (1493–1524), *Hidalguía: la revista de genealogía, nobleza y armas*, 268-269, 1998, 435–447.

³¹ Sagarra Gamazo, Adelaida, La reina Juana y don Juan de Fonseca ¿una hoja de servicios con precio político?, *Revista de estudios colombinos*, 6, 2010, 13–23.

³² *Cortes de los antiguos reinos de Castilla y León*. Tomo IV, Madrid, 1882, 235–244.

³³ Manzano, Juan, ¿Por qué se incorporaron las Indias a la Corona de Castilla? *Revista de Estudios Políticos* I. (1941) 95–124, 104.

³⁴ *Recopilación...* Libro III Título I Ley I (1519) 'Por donación de la Santa Sede Apostólica y otros justos títulos, somos Señor de la Indias Occidentales, Islas, y Tierra firme del Mar Océano, descubiertas, y por descubrir, y están incorporadas en nuestra Real Corona de Castilla. Y porque es nuestra voluntad, y lo hemos prometido y jurado, que siempre permanezcan unidas para su mayor perpetuidad y firmeza, prohibimos la enagenacion de ellas. Y mandamus, que en ningún tiempo puedan ser separadas de nuestra Real Corona de Castilla, desunidas, ni divididas en todo, o en parte, ni sus Ciudades, Villas, ni Poblaciones, por ningún caso, ni en favour de ninguna persona. Y considerando la fidelidad de nuestros vasallos, y los trabajos que los descubridores y pobladores pasaron en su descubrimiento y poblacion, para que tengan mayor certeza y confianza de que simper estarán y permanecerán unidas a nuestra Real Corona, prometemos, y damos nuestra fe y palabra Real por Nos, y los reyes nuestros sucesores, de que para siempre jamas no serán enagenadas ni apartadas en todo, o en parte, ni sus Ciudades ni

Castile, as we can read in their laws and orders ‘*the Kingdoms of the Indies and the Kingdom of Castile are from the same Crown*’³⁵ and they treated the Indians as their subjects (‘*vasallos*’) similarly to their other Spanish subjects of the Crowns of Castile and Aragon for example.³⁶ The Indies had the same government system as the European states of the Spanish monarch had. The Spanish monarchs never visited the overseas territories, so viceroys represented the royal authority there. It was the same level as in their European domains in Navarre, Aragon, Catalonia, Valencia, Portugal or Naples, in the Low Countries or in Milan governors only.³⁷

III. Columbus, Cortés, Pizarro and the Crown of Castile

The messianic policy urged by Pope Alexander VI was totally in accordance with the Crusader Medieval concept of Isabel of Castile and her husband King Ferdinand of Aragon. The Spanish Monarchs wanted to fulfil this idea, to build a ‘New Jerusalem’ in the Americas. During the second voyage of Columbus, the Spaniards founded the first town in Santo Domingo in 1496 and they started to convert the inhabitants of the islands of the Caribbean Sea to the Christianity, for which the Borgia Pope granted the title ‘Rex Catholicus’ to the Spanish Monarchs to ‘stimulate other Christian Princes with their example’.³⁸ This concept and legal thought proved to be fundamental for the Spaniards during the conquest of the Indies.

After the Reconquista had been fulfilled in 1492, Isabel and Ferdinand could accept Columbus’ offer and could support him on his voyage to the undiscovered West, a contract was made with him at Santa Fé in 1492 just before he would have left towards the unknown New World. Due to the contract, Columbus – and his successors as well – was to become the hereditary viceroy and governor of all the lands to discover.³⁹ The Spanish Monarchs considered the Indies the full part of the Crown of Castile. Alexander VI’s Bull gave the Indies to the Castilian monarch, Isabel I of Castile wrote in her Testament in 1504 that ‘the Indies shall be fully incorporated to this Crown of Castile as the Bull of Pope Alexander VI requires it, just as the Kingdom of Granada or the Canary Islands were incorporated before’. So the new lands were not treated as alien territories. Emperor Charles V stated that in the lack of the special laws for the Indies, the laws of Castile should be used, particularly the Laws of Toro, which regulated the various aspects of the private law.⁴⁰ The Laws of King Philip II stated that the procedural rules of the Castilian royal courts should be used in the royal courts of the Indies as well.⁴¹ These laws show that the Indies were not Castile’s colonies in America, those territories were fully part of the Crown of Castile in every sense.

In one hand, Columbus and his successors narrowly understood the text of the contract, that all the newly discovered lands would be under their direct power and their public offices as viceroys and governors would be hereditary for their family. The opposite was Rodríguez de Fonseca, who preferred the broadly understood of the contract, saying that the Crown can grant licence freely to anyone for new expeditions and conquest, and that the right and privilege to discover and conquer was not given exclusively to Columbus and his successors.⁴² Rodríguez de Fonseca opposed Columbus’ claims, as he noticed, that he was trying to gain too much power and self-determination from the royal authority. During his third voyage to the Indies, the monarchs, influenced by Rodríguez de Fonseca, decided to remove Columbus from his office as viceroy of the newly discovered overseas lands. Simultaneously,

Poblaciones por ninguna causa, o razon, o en favour de ninguna persona; y si Nos, o nuestros sucesores hiciéramos alguna donación o enagenacion contra lo susodicho, sea nula, y por tal declaramos’.

³⁵ *Recopilación...* Libro II, Título II, Ley XIII (1636).

³⁶ *Recopilación...* Libro III, Título XIII, Ley XV (1618).

³⁷ Rivero Rodríguez, Manuel, *La edad de oro de los virreyes. El virreinato en la Monarquía Hispánica durante los siglos XVI y XVII*, Madrid, 2011.

³⁸ Rey, Eusebio, „La bula de Alejandro VI otorgando el título de ‘católicos’ a Fernando e Isabel”. I. Evolución del tema y texto, *Razón y Fe*, No. 146 (1952) 59–75.

³⁹ Fernández Sotelo op. cit. 301–303.

⁴⁰ *Recopilación...* Libro II, Título II, Ley II (1530).

⁴¹ *Recopilación...* Libro II, Título XV, Ley XVII (1570).

⁴² Fernández-Prieto Domínguez, Enrique, D. Juan Rodríguez de Fonseca delegado regio en los asuntos de Indias (1493–1524), *Hidalguía: la revista de genealogía, nobleza y armas*, 268–269, 1998, 435–447.

various navigators and explorers were allowed to go to the undiscovered islands and mainland towards the West. Of course, Columbus' successors tried to assert their 'privileges' against the Crown and litigated unsuccessfully for decades, these were the famous 'Pleitos colombinos'.⁴³ Although Christopher Columbus' son, Diego was nominated – and not inherited from his father as – viceroy of the Indies in 1511, parallel to this, the first royal court of the Indies (Real Audiencia de Santo Domingo) was established too (however effectively was erected only after that Diego had died in 1526), as a clear sign that his power is subject to the royal authority. After his death, his successors were unable to reclaim their 'rights' over the Indies.⁴⁴ The House of Trade (*Casa de Contratación*) was established by Queen Isabel in Seville in 1503, which became the most important public institution to organize the expeditions, and to control the trade, the circulation of the people and the goods between the Peninsula and the Indies under the observation of the Crown.⁴⁵ This new institution was organized and supervised by Rodríguez Fonseca, the aim was the conquest of the New World to be under public order and strong ecclesiastical control.

A good part of the conquistadors were Castilian noblemen, among them numerous personalities well prepared and educated, thus they knew perfectly how to legalize their actions. Hernán Cortés' expedition in Mesoamerica and the campaign against the Mexica was with no consent of the governor of Cuba. That is why Cortés and his company founded a new community (Veracruz) based on the Laws of Alfonso X of Castile (Las Siete Partidas) and a local council (cabildo)⁴⁶ which elected Cortés its captain and chief justice thus they could go out of the jurisdiction of the governor of Cuba.⁴⁷ The Council of Veracruz wrote a letter to the monarch in 1519 in which the Spaniards described the local conditions and the importance of the messianic visions of the Crown for the Indies, the very need of the propagation of the Christianity because of the infernal costumes, like the massive cannibalism or the human sacrifices.⁴⁸ Cortés, after he had managed to unite the various Indian tribes to march together against the Mexica successfully in 1519 and stabilized the Spanish rule there in 1521, he figured out *New Spain* (*Nueva España*), as we can read this in his letters to the monarch.⁴⁹ Emperor Charles V entrusted him 'to propagate the Catholic faith among the Indians in all the newly conquered lands'.⁵⁰ In Cortés' new coat of arms appeared the double-headed eagle of the ruling House of Habsburg and a city built on a lake, Tenochtitlan, the symbol of the newly conquered land. The scenario was very similar to Columbus' case. Cortés' rivals tried to discredit him at the imperial court with cruelty, usurpation of power, under-payment of taxes etc. so he had to return to Spain in 1528 to face with the law, but he could ask personal audience from the monarch and finally could clear himself of the charges. Emperor Charles nominated Cortés the captain in chief of New Spain in 1529, and granted him the title of marques, he became the Marqués del Valle de Oaxaca,⁵¹ and gave him new licence to discover and conquer new territories for the Crown.⁵² Cortés – similarly to Columbus – was an extraordinary talent and organiser, and with time this talent became a potential threat for the Crown. So after having discovered and conquered a good part of Mesoamerica, but the growing complains against him, fearing from his potential striving for independence, the monarch finally decided to reorganize the administration of the new lands and nominated an unconditionally loyal aristocrat, Don Antonio de Mendoza as the first viceroy of New Spain in which Cortés had no public power anymore.⁵³ Cortés

⁴³ Villapalos, Gustavo, La naturaleza procesal de los pleitos colombinos. *Anuario Jurídico* II-III, 1977, 285–305.

⁴⁴ Sagarra Gamazo, Adelaida, La trastienda atlántica: hombres del Rey en Tierra Firme y Mar del Sur (1514–1540), *Anuario de Estudios Atlánticos*, 60, 2014, 67–95.

⁴⁵ Serrera Contreras, Ramón María, La Casa de la Contratación en el Alcázar de Sevilla (1503–1717) *Boletín de la Real academia Sevillana de Buenas Letras: Minervae Baeticae*, No. 36 (2008) 133–168.

⁴⁶ A cabildo or ayuntamiento was a Spanish administrative council that governed a municipality.

⁴⁷ *Colección de documentos inéditos para la historia de España*. Tomo IV, Madrid, 1844, 5.

⁴⁸ *Cartas y relaciones de Hernán Cortés al Emperador Carlos V*, 25.

⁴⁹ He uses the term New Spain in his letters, let see: *Colección de documentos inéditos para la historia de España* Tomo I, Madrid, 1842, 12.

⁵⁰ The monarch responded in October 1522, let see: *Colección de documentos inéditos...* 97–100.

⁵¹ *Colección de documentos inéditos...* 103–108.

⁵² *Colección de documentos inéditos...* 109.

⁵³ Scott Aiton, Arthur, *Antonio de Mendoza, first viceroy of New Spain*, Duham, Duke University Press, 1927, 34, An interesting thing, Antonio de Mendoza was the personal envoy and represent of Emperor Charles V in the

finally returned to Spain, although he tried to reclaim his former positions and restore his reputation at the imperial court, but he failed against the policy of the Crown.

Francisco Pizarro – Cortés' close relative – from the 1500 took part in the discoveries and conquests in the Caribbean.⁵⁴ Rumours about a mysterious and rich empire in the South came from time to time to the Spaniards. Pizarro returned to Spain to ask licence from the monarch to go to the South for an expedition and conquer that mysterious empire. Pizarro – thanks to his relative, the famous and influent Cortés – he could reach a personal audience from the emperor and finally convinced him to give consent to let start a new expedition towards the South in America. Emperor Charles accepted the proposal and gave his consent to the new expedition, but the contract was signed by Empress Isabel due to the emperor had left Spain before the end of the negotiations. Pizarro was nominated governor and captain in chief of Peru, the cleric in his company was nominated the bishop of Tumbes, the Spaniards had explored the town earlier, and was titled the 'universal protector of the Indians in Peru'.⁵⁵ After having conquered Peru, Francisco Pizarro – similarly to Cortés – got the title marquess from the emperor in 1537 and his coat of arms was modified with the symbols of the conquest of Peru.⁵⁶ The unclear lines of the power and territory of the new conquest led to discord between the Spaniards which led an open warfare among them after the conquest of Peru. In 1541 Francisco Pizarro was killed by Spaniards, led by the son of his former companion-in-arms, Diego de Almagro, who took immediately his public office. The news of the disorder and chaos came to the imperial court too, so Emperor Charles decided to reorganise the status and the administration of the recently conquered, but enormous new lands. Promulgated a degree, the New Laws (Leyes Nuevas) in 1542 in which he regulated the entire system, including the confirmation of the more effective protection of the Indians too. Charles V, had authorized, in Barcelona, the laws presented by the Junta of Valladolid for the regulating of the Council of the Indies, and to create new audiencias in America, among others that of Los Confines, comprising Guatemala with Honduras and Nicaragua. This tribunal was charged to judge criminal and civil affairs, reserving to the Council of the Indies in Spain the final resolution of such judgments.⁵⁷ The New Laws affected negatively the very interests of the encomenderos, the Spanish nobles in America. Emperor Charles nominated a loyal aristocrat, Count Blasco Núñez de Vela as the first viceroy of Peru in 1544 but as he started to govern and enforce the new order with iron hand, it provoked an open rebellion against him.⁵⁸ Gonzalo Pizarro – the younger brother of late Francisco – denied to respect the decision of the sovereign, and took the governorship illegally and in the Battle of Iñaquito, his men killed the viceroy, as we can read it in the chronicle of the eyewitness, Pedro Cieza de León.⁵⁹ The viceroy embodied the royal power, thus his killing was an open attack on the royal authority as well. The emperor decided to send a well prepared cleric, soldier and diplomat, Pedro de la Gasca to break down the rebellion and make peace in Peru. Officially he was nominated the president of the Royal Court of Lima (Real Audiencia de Lima) and thus he exercised the power as an interim governor in Peru (1546–1550) and played a key role in the abolish of the rebellion: Gonzalo Pizarro opposed his arrival and mission, his followers from Lima sent a letter to la Gasca in October 1546 in which they tried to convince la Gasca to not come.⁶⁰ In the letter to the Council of the Indies la Gasca informed the members that Gonzalo wanted Viceroy Núñez de Vela to be sent back to Spain and hold the office of governor and no Royal Court in Peru or if, being him it's president.⁶¹ It was the question of power of course, very

coronation ceremony of his younger brother King Ferdinand I of Hungary in 1527 in Székesfehérvár. His person was a special connection between Hungary and the Americas at the beginning of the Spanish rule in the Indies.

⁵⁴ Busto Duthurburu, José Antonio del, *Francisco Pizarro, el marqués gobernador*, Madrid, 1966, 15.

⁵⁵ *Cedulario del Perú, siglos XVI, XVII y XVIII, (1529–1534)* Tomo I, Lima, 1944, 18–24.

⁵⁶ Cordero Alvarado, Pedro, *El escudo de armas de Francisco Pizarro reflejo de la conquista del Perú*, Madrid, 1999, 27.

⁵⁷ Saville, Marshall H., Some unpublished letters of Pedro de la Gasca relating to the conquest of Peru, *American Antiquarian Society*, 1917, 336–357, 337.

⁵⁸ Calvete de Estrella, Juan Cristóbal, *Rebelión de Pizarro en el Perú y vida de D. Pedro Gasca*, Tomo I-II, Madrid, Imprenta y Fundación de M. Tello, 1889, 42.

⁵⁹ Cieza de León, *Chronicle of Peru*, 1553, Cap. XXXIX.

⁶⁰ *Documentos inéditos* 10.

⁶¹ *Documentos inéditos* 81.

interesting the attempt that Gonzalo tried to legitimize his usurpation.⁶² Calvete de Estrella wrote in his chronicle that Gonzalo tried to become king of Peru.⁶³ The following months were spent with military preparations, la Gasca took a last attempt to convince Gonzalo to step down and to abolish the open rebellion,⁶⁴ but failed, Pizarro sent a letter in which he threatened la Gasca to death.⁶⁵ La Gasca used his diplomatic skills to divide the rebels, announced a general pardon – he had the power to do so – for all who is ready to leave the army of Pizarro, a good part of the soldiers deserted Gonzalo. Of course Pizarro denied to step down and finally la Gasca had to abolish the rebellion by force. In a battle in April 1548 the rebels were defeated, Gonzalo was killed too. This victory proved to be the key to resolve the problem. La Gasca's interim governorship was replaced with the nomination of Don Antonio de Mendoza as the second viceroy of Peru, on la Gasca's own suggestion.⁶⁶ After the pacification of Peru, the will of the monarch was not questioned anymore. Although the most of the navigators and explorers like Columbus, Cortés or the Pizarro were adventurers, and tried to expropriate the New World for their families, the Spanish overseas territories – the Indies – from the beginning was and remained under the direct jurisdiction of Crown of Castile.

Columbus, Hernán Cortés and Francisco Pizarro like all the other navigators and explorers acted under the licence of the Spanish Crown. The spontaneous and autonomous actions were not welcomed in the Spanish court, Philipp II in his Order of 1573 on the exploration and conquest declares in the first article that '*no one shall go to explore and conquer new territories without previous royal licence*'.

Conclusion

The Spanish monarchs considered the Indies never colonies, we can find no such a word or expression (colonia). They considered the Indies as states and kingdoms (Estados y Reynos de las Indias), from the very beginning after the discoveries in their titles appears that they are the kings of the Indies (rey de las Indias, islas y Tierra Firme del Mar Océano) among the titles of Castile, Aragon, Jerusalem etc. This system proved to be fundamental, the monarch did not allow to expropriate the New World to these explorers, so the Indies remained full part of the Crown of Castile in accordance with the Papal Bulls the *bulas alejandrinas*. Even though there were attempts from time to time to expropriate the new lands from the part of the various individuals like in the cases of Columbus or Gonzalo Pizarro, but the Spanish Crown took obvious and strict actions against such efforts, like Pedro de la Gasca's mission shows it. Both Columbus and Pizarro brought a lawsuit against the Crown in which they tried to defend their interests, the contracts could be interpreted in different ways, these circumstances led to the conflict between them and the Crown.

⁶² Drigo, Ana Laura, Tentativas jurídicas de legitimación del proyecto pizarrista en Perú (1544–1548), *Fronteras de la Historia* 11 (2006) 331–353.

⁶³ Calvete de Estrella, Tomo I, 83. 'se hizo por fuerza Gonzalo Pizarro Gobernador, y usurpó la gobernacion de las provincias del Perú con intencion de no parar hasta perder el temor á Dios, é ir contra las leyes y quebrar el juramento y pleito homenaje, que ya juró en su ánimo de no guardarle, y violar la fidelidad y hacerse rey si pudiese'.

⁶⁴ *Documentos inéditos* 347.

⁶⁵ *Documentos inéditos* 277.

⁶⁶ Scott Aiton, 189.

Bibliography

1. Alguns documentos do Archivo Nacional da Torre do Tombo acerca das navegações e conquistas portuguesas publicadas por ordem do governo de Sua Magestade Fidelíssima ao celebrar-se a comemoração quadricentenaria do descobrimento da America. Lisboa, Imprensa Nacional, 1892.
2. Calvete de Estrella, Juan Cristóbal, Rebelión de Pizarro en el Perú y vida de D. Pedro Gasca, Tomo I-II, Madrid, Imprenta y Fundición de M. Tello, 1889.
3. Cartas y relaciones de Hernan Cortés al Emperador Carlos V.
4. Cedulaire del Perú, siglos XVI, XVII y XVIII, (1529–1534) Tomo I, Lima, Departamento de relaciones culturales del Ministerio de relaciones exteriores del Perú, 1944.
5. Cieza de León, Pedro, Cronica del Perú, 1554,
6. Colección de documentos inéditos para la historia de España. Tomo I, Madrid, Imprenta de la Viuda de Calero, 1842.
7. Cortes de los antiguos reinos de Castilla y León, Madrid, Real Academia de la Historia, 1882.
8. Dawson, Samuel Edward, The lines of demarcation of Pope Alexander VI and the Treaty of Tordesillas A.D. 1493 and 1494, Toronto, 1899.
9. Fernández Álvarez, Manuel, Testamento de los reyes de la Casa de Austria, Madrid, Editora Nacional, 1982.
10. Hernaez, Francisco Javier, Colección de Bulas, Breves y otros documentos relativos a la Iglesia de América y Filipinas I, Bruselas, Imprenta de Alfredo Vromant, 1879, 12.
11. López de Gómora, Francisco, Historia general de las Indias, 1553,
12. Monumenta Henricina, Vol I, Coimbra, 1960, 207–214.
13. Oviedo, Gonzalo Fernández de, Sumario de la natural historia de las Indias, 1526,
14. Pizarro, Pedro, Relación del Descubrimiento y Conquista de los Reinos del Perú, 1571,
15. Recopilación de las Leyes de los Reynos de las Indias, Madrid, 1681.

Books, articles

1. Busto Duthurburu, José Antonio del, Francisco Pizarro, el marqués gobernador, Madrid, 1966.
2. Chiva Beltrán, Juan, El Corpus y el Imperio hispánico. Autoridades, naturales y usos de la devoción al cuerpo de Cristo. In Minguez, Víctor – Rodríguez, Ínmaculada (ed.): La Piedad de Casa de Austria, Valencia, 2018, 63–86.
3. Cordero Alvarado, Pedro, El escudo de armas de Francisco Pizarro reflejo de la conquista del Perú, Madrid, Academia Asociada, 1999.
4. Drigo, Ana Laura, Tentativas jurídicas de legitimación del proyecto pizarrista en Perú (1544–1548), Fronteras de la Historia 11 (2006) 331–353.
5. Fernández Sotelo, Rafael Diego, Capitulaciones Colombinas (1492–1506), Michoacán, El Colegio de Michoacán, 1987.
6. Fernandez-Prieto Domínguez, Enríque D. Juan Rodríguez de Fonseca delegado regio en los asuntos de Indias (1493–1524), Hidalguía: la revista de genealogía, nobleza y armas, 268-269, 1998, 435–447.
7. Fernandez-Prieto Domínguez, Enríque, D. Juan Rodríguez de Fonseca delegado regio en los asuntos de Indias (1493–1524), Hidalguía: la revista de genealogía, nobleza y armas, 268-269, 1998, 435–447.
8. Líktor, Zoltán Attila, Recuperata fuit Hispania, Jogtörténeti Szemle, 2024/1.szám, 18–28.
9. Luttrell, Anthony, The Hospitallers at Rhodes, 1306–1421, In Setton, Kenneth M – Hazard, Harry W. (eds.): A History of the Crusades, Volume III: The Fourteenth and Fifteenth Centuries, Madison and London: University of Wisconsin Press, 1975, 278–313.
10. Manzano, Juan, ¿Por qué se incorporaron las Indias a la Corona de Castilla? Revista de Estudios Políticos I. (1941) 95–124.
11. Morton, Catherine, Pope Alexander II and the Norman Conquest, Latomus, 34, Fasc. 2 (AVRIL-JUIN 1975), 362–382.

12. Onyemechi Adiele, Pius, *The Popes, the Catholic Church and the Transatlantic Enslavement of Black Africans 1418–1839*, Georg Olms Verlag, Hildesheim – Zürich – New York, 2017.
13. Rey, Eusebio, „La bula de Alejandro VI otorgando el título de 'católicos' a Fernando e Isabel”. I. Evolución del tema y texto, *Razón y Fe*, No. 146 (1952) 59–75.
14. Ribot García, Luis Antonio – Carrasco Martínez, Adolfo – Adão da Fonseca, Luis (ed.), *El Tratado de Tordesillas y su época*, Junta de Castilla y León, 1995.
15. Rivero Rodríguez, Manuel, *La edad de oro de los virreyes. El virreinato en la Monarquía Hispánica durante los siglos XVI y XVII*, Madrid, 2011.
16. Sagarra Gamazo, Adelaida, *La reina Juana y don Juan de Fonseca ¿una hoja de servicios con precio político?*, *Revista de estudios colombinos*, 6, 2010, 13–23.
17. Sagarra Gamazo, Adelaida, *La trastienda atlántica: hombres del Rey en Tierra Firme y Mar del Sur (1514–1540)*, *Anuario de Estudios Atlánticos*, 60, 2014, 67–95.
18. Saville, Marshall H., *Some unpublished letters of Pedro de la Gasca relating to the conquest of Peru*, *American Antiquarian Society*, 1917, 336–357.
19. Schüller Piroli, Susanne, *Los papas Borgia Calixto III y Alejandro VI*, Valencia, 1991.
20. Scott Aiton, Arthur, *Antonio de Mendoza, first viceroy of New Spain*, Duham, Duke University Press, 1927.
21. Serrera Contreras, Ramón María, *La Casa de la Contratación en el Alcázar de Sevilla (1503–1717)* *Boletín de la Real academia Sevillana de Buenas Letras: Minervae Baeticae*, No. 36 (2008) 133–168.
22. Villapalos, Gustavo, *La naturaleza procesal de los pleitos colombinos*. *Anuario Jurídico II-III*, 1977, 285–305.