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Alfonso de Cartagena on the affair of the Canaries (1436–37): Humanist rhetoric and the idea of the nation-state in fifteenth–century Castile[*]

On Thursday 28 July 1763, after supper at the Turk's Head coffee-house, Dr Johnson encouraged Boswell to perambulate Spain. It would amuse him to get a letter postmarked from Salamanca; 'I love the University of Salamancha,' he said with great emotion and generous warmth, 'for when the Spaniards were in doubt as to the lawfulness of their conquering America, the university of Salamancha gave it as their opinion that it was not lawful' (Boswell 1970, 371). The Doctor was referring to the episode which Lewis Hanke called the Spanish struggle for justice in the conquest of the New World, the process by which the Crown of Castile submitted its colonial dominion to an examination of conscience.[1]

The ensuing debate on the 'affair of the Indies' rested in large part on the precedent of medieval disputes on the just war. The arguments put forward by Bartolomé de las Casas and others in defence of the rights of Amerindians had already been used all over Europe since the fourteenth century to question the justice of such enterprises as expropriating Muslims in Iberia or forcibly baptizing pagans in the Baltic.[2] When John Mair declared from the Sorbonne in 1510 that Aristotle's concept of natural slavery (*Politics* 1254a17–1255b15) held out a new argument for invading the Indies, royal publicists welcomed his thesis as a possible solution to the Crown's dilemma over its conquest; but the Salamanca theologian Francisco de Vitoria soon disabused them, returning with renewed vigour and acumen to the familiar medieval canonist and theological doctrines on the laws of war.[3] These antecedents of the

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[*] This paper was first read at the annual conference of Medieval Historians of Iberia in the University of Birmingham, 19–20 September 1989. Though unpublished, the typescript has been cited on several occasions and so is made available here. To this end the talk's argument and style have been left intact, but footnotes and a bibliography have been added to take account of salient scholarship in the intervening 25 years, particularly on Cartagena; for this I am specially indebted to the people mentioned in the first sentence of n47, below.

[1] Hanke 1949 and 1959 trace the story of Las Casas's forty years of consultations, *juntas*, and pamphlets leading up to the *Leyes nuevas* of 1552.

[2] Pennington 1970. For philosophical analysis of the theory see Barnes 1982; for its legal history, Brundage 1976; Muldoon 1979.

[3] *De Indis* and *De iure belli* (1539), in Vitoria 1991, 231–327. The decisive shock to just war theory was to come not from these debates but Las Casas's account of atrocities and the rise of the novel concepts of civilian genocide and war-crimes (see for example the bibliography in Lawrance 2009).

affair of the Indies are exemplified by a case which predated the discussions of Vitoria and Las Casas by almost a century, an incident in the colonization of the Canary Islands between 1403 and 1496 on which, in 1436–37, the bishop of Burgos Alfonso de Cartagena wrote the treatise that is the subject of this study.[4] The issue arose from a diplomatic dispute between Castile and Portugal, first at the papal curia in Bologna and later at the Council of Basel, over their respective territorial and commercial rights to exploitation of the islands, on which Portugal sought papal arbitration.[5]

The Canaries or Fortunate Isles, sixty miles off the African coast, had been known to Europeans in classical times and were visited by French, Genoese, Portuguese, Castilian, and Majorcan slavers and missionaries—'pirates and apostles', in Elías Serra's phrase (1990: 21), though now we might regard them all as pirates—for a century before 1436.[6] A first-hand account was penned by the Genoese mariner Niccoloso da Recco in 1341; his portrayal of the indigenous Guanche way of life as 'savage' but 'natural' elicited from Petrarch, then resident at Clement VI's papal curia in Avignon, the same mixture of romantic pastoral nostalgia and incomprehension as was later evinced at Amerindian customs by writers such as Pietro Martire d'Angera and, more sceptically, Michel de Montaigne.[7] Meanwhile, Clement's bulls of 1344 granting the title of 'princeps insule Fortunie' to the admiral of France Louis de la Cerda, notably *Tue devotionis sinceritas* of 15 November (*MH*, I, 207–14, §89), laid out the arguments that the papacy would use for the next 150 years to justify colonizing (but not killing or enslaving) Canarians for the good of their souls.[8]

For the participants in the episode of 1434–37, then, discussion of the Canarian conquest already had a long history. Nevertheless, Cartagena's *Allegationes super conquesta insularum Canarie contra Portugalenses* purposely stepped outside the age-old debate on the just war. Other documents in the affair expounded canon and civil law concerning the *dominium* of popes, princes, and barbarians; Cartagena took a different line. He was unconcerned with the rights of the pagan Guanches, whom he dismissed in a single passing mention as 'perhaps the

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[4] The links are pointed out by Rumeu de Armas 1969, 7–34 (Pt I 'Doctrina y precedentes'); Russell 1978.

[5] For the background see Suárez Fernández 1960a and 1963.

[6] See Serra Ráfols 1961; Fernández-Armesto 1987, 152–85, 203–17, 223–33; Aznar Vallejo 1994.

[7] *De vita solitaria* (1346), Bk II.xi, in Petrarca 1975, 498–99 'gentem illam pre cuntis ferme mortalibus solitudine gaudere, moribus tamen incultam adeoque non absimilem beluis ut, nature magis instinctu quam electione sic agentem, non tam solitarie vivere quam in solitudinibus errare seu cum feris seu cum gregibus suis dicas'. Niccoloso's 'De Canaria et insulis reliquis ultra Ispaniam in Occeano noviter repertis', copied *c.* 1351 by Petrarch's friend Boccaccio in a note-book (*Zibaldone Magliabechiano*, Firenze, Biblioteca Nazionale Centrale, ms. Banco Rari 50), is in Almeida & others 1960–74 (*Monumenta Henricina*, henceforth *MH*), I, 201–06, §88. On the topic of the noble savage see Pagden 1986, and for the parallels cited, Martyr Anglus 1516, ff. A3–B4^{v} (*Dec*. I.i–iii); Montaigne 1962.

[8] The full story is told by De Witte 1953–58.

most uncivilized, rude, and unpolitic people in the world, little better than wild animals', and so relegating traditional arguments about the sovereignty of barbarians and the laws of war to the sidelines.[9] Cartagena's studious avoidance of these topics is the work's most arresting feature, and I shall argue that, just as the enduring effect of Vitoria's relections proved to be their contribution to a theory of political authority grounded on natural and international law rather than any immediate practical amelioration of the plight of Amerindians, so Cartagena's *Allegationes* may be regarded as throwing a more original light on the history of political thought in late-medieval Castile than on the disputed colonization of the Canaries.[10]

Quentin Skinner describes the development of political theory from the late thirteenth to the end of the sixteenth century as a 'process by which the modern concept of the State came to be formed', marking a 'decisive shift [...] from the idea of the ruler "maintaining his estate"—where this simply meant upholding his own position—to the idea that there is a separate legal and constitutional order, that of the State, which the ruler has a duty to maintain'.[11] This implies that the evolution from prince's 'estate' to 'the State' involved among other things a conceptual change in the meaning of the word *status*, a view that foregrounds the role of language in the history of ideas, if by 'language' we mean the 'intellectual matrix out of which works arose [...], the context of earlier writings and inherited assumptions about political society, the nature and limits of the normative vocabulary available at any given time'. Both sides in the contest over the Canaries in 1436 were constrained by language in this sense. Prince Henrique, 'anxious to exhibit as legitimate' a course of action which he wanted

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[9] *Super conquesta Canarie*, in *MH*, VI, 139–99, §57 (henceforth *Alleg*.; the full title is from a copy made for Isabel the Catholic, Real Biblioteca de San Lorenzo de El Escorial (henceforth Esc.), Ms. a.iv.14, ff. 1–52), at p. 162 'forte in toto mundo non est similis incultura et ruditas seu asperitas policie sicut ibi ; [...] vivunt sub mirabili asperitate, *fere ad modum silvestrium animalium*' (henceforth, all emphases mine). The Guanches' bestial way of life was one of the mainstays of Prince Henrique of Portugal's claim to the islands (*MH*, V, 256, §129 (Lucena's *Petitio*, see n17, below) 'Has indomiti *silvestres fere homines* inhabitant, qui nulla religione coagulati, nullis denique legum vinculis irretiti, civili conversatione neglecta, in paganitate *veluti pecudes vitam agunt*; iis navale comercium, literar[u]m exercicium, genus aliquod metali aut numismatis nullum est, habitacio denique nulla et amictus corporis nullus')—an argument which implied the novel thesis that Christians have a right not just to convert but also to civilize savages (Russell 1978, 22–24). Cartagena nonchalantly grants the point, and then ignores it. Later his protégé Alfonso de Palencia, as *comisario* in the conquest of Gran Canaria in 1478–83, would write *Canarorum in insulis Fortunatis habitantium mores atque superstitiones*, now lost; to judge by his other writings it adopted his mentor's stance towards Guanche *incultura* (cf. *Gesta Hispaniensia*, XXV.4, blaming Portugal for the fact that 'usque hac [...] Christianam religionem haud colant, immo *superstitiose feralique ritu degant*', in Salamanca, Biblioteca Universitaria, ms. 2559; see López de Toro 1970).

[10] On Vitoria see Skinner 1978, II, 135–84; Pagden 1986, 64–108 and 1987. He offered no practical solution to the problem of injustice against Amerindians, concluding only that, though Spain patently had no right to them, the Indies could not be abandoned without 'intolerable loss' to the exchequer (Vitoria 1991, 291).

[11] This and the succeeding quotations in this paragraph are all from Skinner 1978, I, pp. ix–xii; their application to the case of Prince Henrique is mine.

to take, used the vocabulary in a 'purely instrumental' way. His true motives were commercial greed and an ambition to carve out, at the expense of neighbouring rulers of any colour or creed, a territorial domain of which he might call himself king; but these were aims for which no legitimizing discourse was available. He professed instead to be motivated by principles that served to describe what he was doing in acceptable terms, representing his designs on the Canaries as a knightly enterprise to honour his royal lineage and glorify God and the military Order of Christ of which he was Master. It would be naïve, however, to conclude from such self-interested uses of the concepts of chivalry and crusade that the political discourse of Henrique's day was humbug. Normative vocabulary is not passive in this way; it exerts a reciprocal pressure on action and ideas. On one side, Henrique no doubt believed in chivalric ideals, just as the Spanish Crown would believe in its mission to evangelize the Americas; on the other, existing concepts of what is legitimate bring the corollary that some courses of action cannot be legitimized. The problem for a man in Henrique's position is never simply that of 'tailoring his normative language in order to fit his projects', notes Skinner; 'it must in part be the problem of tailoring his projects in order to fit the available normative language' (pp. xii–xiii). But there is a third way for political language to interface with action: this happens when men of affairs, obliged like Cartagena to legitimize specific regimes or policies, are confronted with situations that require some leap of thought, some new principle. Something of this kind, I shall argue, is what we see at work in *Allegationes*.[12]

The context was as follows. In 1424 Prince Henrique conceived the idea of invading Gran Canaria. A fleet carrying 2,500 soldiers and 120 horse was despatched under Fernando de Castro, and though the prince's chronicler Gomes Eanes de Zurara skims over the expedition in his *Crónica da Guiné* because it was a humiliating failure, the scale of the operation was a foretaste of what was to become Henrique's life-long obsession with establishing for himself a colonial Atlantic kingdom.[13] The action caused consternation in Castile, which had maintained its toehold on the neighbouring islands of Lanzarote, Fuerteventura, and El Hierro since the 1402 expedition of Béthencourt and de la Salle, undertaken originally under the auspices of the king of France but licensed and taken over in 1403 by Enrique III of Castile. However, in the 1420s alliance with Portugal was a lynchpin of Juan II of Castile's foreign policy for countering the threat to his throne posed by his fractious cousins, the Infantes of Aragon. In November 1424, therefore, a Castilian legation was sent to Portugal to negotiate a

[12] Despite a life spent in politics, Cartagena wrote no work of political theory unless we count *Memoriale virtutum*, a mirror of princes written for Prince Duarte during a visit to Portugal in 1424–25 that 'compiles' (abridges and glosses) Aristotle's *Nicomachean Ethics* to show the ruler's duty to be virtuous. To get deeper we must examine his paratexts (Fernández Gallardo 2001) and the interplay of theory and practice in texts like *Allegationes*, following the lead of Fernández Gallardo 2002, 321–417 ('Pensamiento político y social') and 2007.

[13] Russell 1979, 32–35. The men had to travel 900 miles by sea from Lisbon to Gran Canaria.

truce.[14] The chief ambassador was Alfonso de Cartagena, who had maintained cordial relations with the Portuguese court since 1421; he was entrusted with the delicate task, as he says in the preamble to *Allegationes* (pp. 143–47), of making complaint to João I about his son's interference in the Canaries. All reproofs were vain; by 1432 Henrique was pressuring his father to finance further schemes, which apparently included attacking Granada in the hope of controlling 'grande parte de Castela [...] e as ilhas da Canária'.[15] He even went so far as to petition Juan II himself for a licence to invade the uncolonized islands of the Canaries—an impolitic admission of Castile's prior claim, as Cartagena was swift to point out in 1436–37.[16] While João I lived such demands were met with firm negatives; but after his death on 15 August 1433 Henrique persuaded the new king, his brother Duarte, to mount another expedition against Gran Canaria. A landing was made in 1434, but when the Guanches' resistance proved warlike the fleet retreated and instead plundered the Christian missions in Lanzarote and Fuerteventura. The latter operation called forth strong protests to the papal curia from the Castilian bishop of San Marcial del Rubicón in Lanzarote and his superior, the archbishop of Seville, about the tyrannical behaviour of the Portuguese 'pirates'. The result was the issue of two papal letters patent, *Regimini gregis* (29 September 1434, *MH*, V, 89–93, §38) and *Creator omnium* (17 December 1434, *MH*, V, 118–23, §52), in which, on pain of excommunication, Eugenius IV forbade any further raids on the Canaries and ordered the immediate manumission of all Christian converts enslaved during the attack.

So we come to Henrique's attempt to mount another expedition in 1436. He was careful to present his request in proper normative language, as a campaign to convert heathen; his scheme was to mount a two-pincered assault on the Canaries and Tanger. By overlooking the fact that the Guanches were not Muslim and linking his proposal to a crusade against the 'Moors'—their father's dying wish—Henrique was able once more to secure the compliance of Duarte. It only remained to remove the obstacle of *Regimini gregis* and *Creator omnium*. In July–August 1436 Duarte instructed his other brother, Afonso count of Ourém, whilst in Bologna to deliver Portugal's formal annual speech of fealty as papal fief, to present Eugenius IV with a petition to revoke the offending bulls. Duly delivered by the king's orator Vasco de Lucena, the *Petitio* gave a cynically sanitized account of the 1434 expedition and listed the Portuguese titles to the remaining Canaries: namely (*a*) prior occupation or the 'finders keepers' rule; (*b*) the common-law principle of *vizinhança*, the islands' proximity to Portu-

[14] Suárez Fernández 1960a, 38–64; these negotiations would lead to the Treaty of Medina del Campo (1431).

[15] Russell 1979, 40 (all reverses 'deixaram o Infante impassível'); the quotation is from an over-enthusiastic *conselho* ('uma série de mirabolantes sonhos', exclaims its editor) on Henrique's proposal to ally either with Castile or with the Infantes of Aragon to achieve his ends, sent to Prince Duarte by their nephew the Count of Arraiolos on 26 April 1432 (*MH*, IV, 99–108, §21, at pp. 102–03 & n6).

[16] *Alleg*., pp. 149, 187 ('Verdadeiramente este passo [...] não foi bem pensado', bemoans the editor, n406).

guese territory (meaning Guiné, not Portugal); and (*c*) the barbarous paganism of the natives, justifying Henrique's desire to baptize and civilize them (n9, above). Lucena ended with a calculated appeal to the pope's own claim to universal temporal *plenitudo potestatis*: 'for "the earth is the Lord's, and the fulness (*plenitudo*) thereof" [Ps. 24.1, 1 Cor. 10.26], and He has bequeathed to Your Holiness plenary power over the whole world (*plenariam totius orbis potestatem*)'.[17]

The Vicar of Christ replied with the bull *Romanus pontifex* of 15 September 1436 declaring that *Regimini gregis* and *Creator omnium* referred only to islands already occupied by Christians and therefore granting Duarte, by his aforesaid universal power, the conquest and dominion 'ad propagationem fidei' of the remaining four islands 'per paganos habitatas':

> In view of the fact that (as is asserted) no one has made any allegation concerning this undertaking of yours [...] *and no Christian prince so far claims to have any right in these same islands of pagans*, by these present we grant you, by apostolic authority and from the plenitude of power given to us from heaven, the conquest of the said Canary Islands, except those already possessed by Christians.[18]

It was the italicized phrase disregarding Castilian claims that fired Juan II to instruct his ambassador at the Curia, Dr Luis Álvarez de Paz, to sue for the revocation of *Romanus pontifex*.

The ever-tortuous Eugenius IV was to be driven to the end of his tether by the ensuing fray. Barely a month after *Romanus pontifex*, two lengthy *dictamina* on the case were presented by the Bologna law faculty, one by a civilist, Antonio Minucci da Pratovecchio, the other by a canonist, Antonio Roselli. Minucci's subscription, dated 17 October 1436, proves that these were not *consilia* (consultations prior to a bull's redaction); nonetheless, both are officially signed and sealed by their authors. A possible explanation is that they were *consulta* commissioned by the Castilian legation.[19] Rehearsing familiar texts, each concluded that war could be just in certain circumstances, but not for forcible conversion or the other aggressive

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[17] *MH*, V, 254–58, §129 (henceforth Lucena, *Petitio*); De Witte 1953, 715–17, App. I, and on the pope's role, pp. 698–703. Ourém's *oratio obedientiae*, delivered by Lucena on 28 July, is noted in an anonymous *Diário da jornada que fez o Conde de Ourém ao Concílio de Basilea* (Sousa 1739–48, V, 573–630, at p. 592).

[18] *MH*, V, 281–82, §137, p. 282 'attendentes quod (sicut asseritur) nullus in hoc tuo incepto in aliquo reclamavit [...] *neque aliquis Christianus princeps in eisdem insulis paganorum ullum ius adhuc se habere pretendit*, prefatas Canarie insulas, illis exceptis quae antea per Christianos possidebantur, auctoritate apostolica et de plenitudine potestatis nobis desuper tradite tibi concedimus in conquestam et eas [...] tibi subiicimus per presentes.'

[19] *MH*, V, 285–320, §140 (henceforth Minucci; for his signed subscription see ibid., Plate Est. VII) and 320–43, §141 (henceforth Roselli). As Muldoon (1976) points out, the only concrete indication that these texts formed part of the curia's deliberations is that they are copied after Lucena's *Petitio* in Biblioteca Apostolica Vaticana (henceforth BAV), Ms. Vat. lat. 1932, ff. 99–122. A *consilium* does survive (BAV, Ms. Chig. E.VII.208, f. 453; *MH*, V, 266–69, §132); it noted that a previous *cruzata* granted to João I by Martin V in 1418 had caused only trouble ('cum summa difficultate, et utinam non fuisset factum nec guerre incepte cum Sarracenis [...], postquam molesti non erant'), and therefore advised Eugenius to refuse Dom Henrique's meddlesome request.

reasons proffered by the Portuguese; and both refuted any notion that the law could be got round by recourse to the papal *plenitudo potestatis*. Under pressure, Eugenius IV responded with the bull *Romani pontificis* of 6 November 1436 cancelling the concession he had granted the Portuguese Crown and stating that he had intended no prejudice to Castile's rights in the Canaries; shortly after, he wrote a brief to Duarte, *Dudum cum ad nos*, explaining that he had done this to fend off Juan II, who 'multum apud nos per suos oratores et litteras conquestus fuerit' (*MH*, V, 345–49, §§143–44). On 30 April of the following year Eugenius issued a further bull, *Dominator Dominus*, subordinating all Portuguese conquests in Africa to the eventual rights of Castile (*MH*, VI, 41–43, §21). De Witte traces the ensuing flurry of letters from Duarte which led Eugenius once again to change his mind and issue *Preclaris tue devotionis* on 25 May 1437 licensing the Portuguese expansion (*MH*, VI, 59–61, §30). At this point events overtook the dithering pope. On 12 July 1437 a crusade was solemnly proclaimed in Lisbon, but Duarte's proud letter to the pope announcing the despatch of his army to Tanger in September crossed in the post with news of its immediate and catastrophic defeat. To save himself and the remnant of his force, Prince Henrique had to hand over his youngest brother Fernando, the Infante Santo, who died in captivity in Fès in 1443.[20]

It was during these events of 1436–37 that Cartagena, at that time a Castilian delegate at the Council of Basel, was asked, because of his expertise on the affair dating back to the legation of 1424, to prepare *Allegationes* as a brief for Castile's envoy at the Curia, Álvarez de Paz.[21] Its arguments respond to Lucena's *Petitio*; it seems that, far away in Basel, Cartagena had not seen the *consulta* of the two Bolognese jurists. It is nevertheless worth looking briefly at their texts because they illustrate the standard approach, the 'normative' language of the day, and this will help to highlight the novelty of Cartagena's solution.

The civilist Minucci is the less original of the two. He presents the problem as an abstract point at law, without referring to Portugal or the Canaries by name:

> A certain Catholic prince or king who recognizes no superior wishes to declare war on Saracens who do not possess or occupy lands belonging to this prince, but occupy lands that once belonged

[20] Russell 2001, 135–94 gives an account of Henrique's catastrophic handling of the affair, stripped of the accretions of hagiographic legend about the involuntary martyrdom of the unfortunate Príncipe Constante.

[21] The year is contested. The best witness, a register of Basel *acta* made for the Castilian chancery (Archivo General de Simancas, Estado, Francia, K-1711, ff. 131–56), has in the top right margin of the first leaf, in a contemporary hand, 'Copia scripture composite per episcopum Burgensem super conquesta Canarie, que fuit miβa per eum ex Basilea ad Bononiam Ludovico Alvari de Pace xxvii[a] Augusti anno XXXVII[o]' (see plate Est. III in *MH*, VI, at p. 144). The copy in BAV Ms. Vat. lat. 4151, ff. 18–37[v] is undated; Esc. Ms. a.iv.14 gives 'anno Domini MCCCCXXXV'. De Witte (1953, 703–04 & n) and Suárez Fernández (1963, 18–20) split the difference, opting for 27 August 1436, i.e. after Lucena's *Petitio* but before *Romanus Pontifex*; the editor of *Alleg*., António Domingues de Sousa Costa, keeps '1437', i.e. after the fiasco at Tanger (pp. 139–43 n1), I think rightly. For the present purpose it matters very little, so long as we agree that Lucena came first.

to other Christians, as in Barbary.[22]

His enquiry is divided into six *dubia* or questions, the main one being the third: whether such a prince can justly invade Saracen lands *papali auctoritate et licentia* 'even if they never belonged to Christians' (pp. 300–05). Since at that time Europeans had not yet set foot in any part of mainland Africa not formerly Roman, this could only mean the Canaries, even though the Guanches were not 'Saracens' (Russell 1978, 26–27). Minucci's *responsum* cites Gratian's discussion of *bellum iustum* in *Decretum* C.23.8 to show that there are three types of war, for defence, recovery, or invasion, this third being 'decried by all laws as unlawful except on the authority of a higher jurisdiction'; such authority could be vested only in the emperor or pope, and Minucci proves from Bartolus and Roman law that it was not vested in the emperor.[23] As for the pope, Minucci falls back on a *locus classicus*, Innocent IV's *Apparatus* on the decretal *Quod super his* (X.3.34.8), which states that though Matt. 5.45 ('He maketh his sun to rise on the evil and on the good, and sendeth rain on the just and the unjust') implies that infidels have dominion of their own lands, it seems to be contradicted by Christ's promise to Peter in Matt. 16.19 ('I will give unto thee the keys of the kingdom of heaven, and whatsoever thou shalt bind on earth shall be bound in heaven'), which makes all people in the world, faithful and infidel, subject to Peter's successors, the popes. The solution to this apparent contradiction, said Innocent, is that the papacy's plenitude of power is *de iure*, not *de facto*; therefore the pope may not license a war of invasion to deprive unbelievers of their rightful dominion unless it be for reasons of natural justice—that is, if they sin against the law of nature (*contra legem nature*), in which case he may sanction subjugation by some prince, just as God destroyed Sodom and Gomorrah for unnatural vice.[24] But what constitutes sinning against natural law? Evidently not unbelief *per se* (citing Gratian again, D.45.5 *De Judaeis*); just cause can only be such behaviour as violently preventing peaceful attempts to

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[22] Minucci, pp. 285–320 (p. 287) 'Quidam princeps seu rex Catholicus non recognoscens superiorem vult inducere bellum contra Sarracenos non possidentes nec detinentes terras ipsius regis sed detinentes terras que fuerunt aliorum Christianorum, quemadmodum in Barbaria.' The expression 'recognizing no superior' was part of Innocent IV's definition of legitimate authority to wage war, which he limited to a monopoly of superior powers (see below). In fact Portugal did recognize a feudal superior: the pope himself (Afonso Henriques made his dukedom of Portugal a papal fief in 1143 to help make it independent of León; such enfeoffments were common in the twelfth and thirteenth centuries, other cases being Aragon, Castile, England (Ullmann 2003, 214–15). On Minucci and Roselli's arguments see further Muldoon 1976; Rojas Donat 2007 and 2008.

[23] Minucci, pp. 291–98 ('De tertio genere similiter omnia iura clamant non licere, nisi auctoritate superioris', p. 293). His last point includes a tendentious denial that cities in the Romagna—i.e. Bologna—owed allegiance to the emperor (pp. 297–98); this highlights the academic milieu of Minucci's and Roselli's *dictamina*, which read more like lectures to their fellow jurists than specific verdicts on the Portuguese petition.

[24] Innocentius IV 1570, ff. 429^{v}–430^{v}, *ad* X.3.34.8 *Quod super his*; trans. in Reichberg, Syse, & Begby 2006, 148–55. Minucci adduces Innocent's gloss at pp. 301–02.

preach the Gospel. 'Even the pope', Minucci concludes, 'cannot declare war unless it be against people who act against natural law or refuse to admit missionaries when called upon to do so.'[25] In sum: the Portuguese crusade to conquer the Canaries could only be licensed by papal authority, yet such licence could not lawfully be given because the forcible conversion of pagans was beyond the pope's jurisdiction. The only just title would be the barbarians' unnatural vices, or refusal to allow peaceful evangelization.

Minucci's verdict was unhelpful to Henrique, but for a man as unprincipled as him it would no doubt have been a simple matter to manufacture evidence of 'unnatural' vice. Roselli's *responsum* was more awkward. He too took it as axiomatic that unbelievers have dominion in their own land, but located the question firmly in the ambit of natural law, adducing Aristotle's dictum that self-preservation is a natural right of societies as well as individuals and asserting that in the law of nations (*ius gentium*) all men are by nature born free.[26] Only after this preamble did Roselli turn to divine law, advancing the proposition, supported by citations of Augustine (*De civitate Dei* XIX.1) and Cicero (*De officiis* I.22–23), that to defend one's person, *libertas*, and homeland is an act of charity. In making this intriguing argument, which suggested that if the Guanches were to resist invasion they might act no less in accordance with God's will than their Christian aggressors, he was influenced not only by the humanist revival of ancient thought but also by the civic patriotism of contemporary Italian city-states.[27]

On all these counts, concluded Roselli, pagans have a right to the free use of their own possessions. A corollary is that they may not be forcibly converted, but this again he demonstrated in an unexpected way, not by deploying standard theological dogmas on free will and faith but by citing canon and civil laws that put the peaceful preservation of universal human

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[25] Minucci, p. 305 'Bellum etiam papam inducere non posse, nisi illis contra legem nature operantibus vel predicatores a papa monitis non admittentibus.' Minucci also cites another standard gloss on the same decretal, Hostiensis 1512, II, ff. 124^{r}–125^{r}.

[26] Roselli, pp. 323–24 ('omnes homines naturaliter liberi nascuntur', p. 324); he also points out, as if to chide his civilist colleague's deficiencies, that civil law likewise regards self-defence as an inalienable right. That 'the end of war is peace', and waging it justified only for self-defence, reprisal, or reparation, was the view of Antiquity (e.g. Livy V.49 'omnia quae defendi repetique et ulcisci fas sit'; Isidore, *Etym*. XVIII.1 'In *Republica* dicit Cicero [...] "extra ulciscendi aut propulsandorum hostium causam bellum geri iustum nullum potest"'). Aquinas, following Aristotle, also declared this to be natural law (*Summa theol*. I-II.94.2 in c.); 'the mild and manly spirit of Christianity, reprobating [...] every degree of revenge, [...] restricted the right of hostility simply to resistance', remarks John Gillies (1797, 210–12), but adds that history shows this right has always been constituted, 'by an apprehension of remote and improbable contingencies', to include 'whatever our avarice, our ambition [...] supposes essential to our well-being'.

[27] Roselli, p. 325. The arguments about liberty, by which Roselli meant, in classic Italian Quattrocento style, freedom from a feudal overlord (Skinner 1978, I, 6–12, 41–65), and also about property (n28, below), were novelties in this debate, attributable to the Bolognese context; for the humanist aspect see Hankins 1996.

fellowship above all other aims (‘conservatione universitatis humane et unitatis tranquillitate et pace’, p. 326). Turning to the problem of *dominium* (ownership), he distinguished several types, divine, natural, civil, and private, each deriving from the one before and thus all good; he too invoked Innocent IV’s commentary on *Quod super his* to prove that unbelievers cannot be deprived of their natural right to their property, even for the good of their souls. Indeed, Roselli denied that property can ever be taken away; not even, as Bartolus opined, by enacting a statute. On the contrary, ‘human law is law only insofar as it derives from natural law’, so no lord can deprive his own subjects of their *dominium*, much less the pope deprive infidels of theirs. Any enactment to the contrary would be tyrannical, and the victims would have the right to resist.[28]

Having brought his argument to this point, Roselli asks, as Minucci had done, whether there are any conditions at all under which just war can be waged on infidels. Yes, he replies; as it is lawful to defend the Christian commonwealth, it is licit to strike preemptively those who threaten to attack it in future, or to wage war for the recovery of lands formerly Christian (pp. 333–38). Roselli’s parallels from texts on the Holy Land show that these considerations concerned the proposed Tanger crusade; but what of peaceable lands which, like the Canaries, had never been Christian? Roselli falls back once more on Innocent IV’s commentary on *Quod super his* to assert that such a conquest could only be undertaken on the authority of the pope, and only if the pagans refused to allow missionary work or the celebration of Christian rites (pp. 338–39). He refutes glosses by Hostiensis and Oldrado da Ponte that denied the legitimacy of infidel dominion on the grounds that Christ, whose vicar the pope is, rules ‘from sea to sea, and from the river unto the ends of the earth, and they that dwell in the wilderness shall bow before him and his enemies shall lick the dust’ (Ps. 72.8–9). These authorities ‘are too eager to extend the pope’s powers’, comments Roselli drily, for Christ’s kingdom is not of this world; His vicar can disturb no one’s temporal ownership.[29]

Roselli’s opinion was even less flattering to Portuguese pretensions than Minucci’s. What Prince Henrique needed was a battling papalist of the school of Hostiensis to declare that conquest of the unsuspecting Guanches, if licensed by the pope, would count as a crusade. However, such an advocate was hard to find at that date not only because Henrique’s case

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[28] Roselli, pp. 327–32. This defence of property is again conducted on rational and natural grounds, not canonistic ones (cf. Aristotle, *Politics* 1256b8 (Bk I.iii.6) ἡ μὲν οὖν τοιαύτη κτῆσις ὑπ’ αὐτῆς φαίνεται τῆς φύσεως διδομένη πᾶσιν ‘Property in this sense [i.e. as a means of livelihood] seems to be given to all by nature itself’); Innocent IV is invoked solely to contest the temporal power of the pope.

[29] Roselli, p. 340; cf. Hostiensis *ad* X.3.34.8 (n25, above) and Oldradus de Ponte 1571, f. 27$^{r–v}$, Consilium LXXII ‘De Judæis et Sarracenis’ (*c*. 1330) on the crusade against Muslim al-Andalus, which Oldrado concluded was a just war on the grounds that (*a*) it was preemptive self-defence, since ‘quandocumque ipsi [Saraceni] opportunitatem habebunt, oppugnabunt Christianos’; and (*b*) ‘tota illa provincia Hispaniae fuit Christianorum, [...] et isti Saraceni violenter occupaverunt ea[m]’.

was indefensible but more urgently because while the Council of Basel was in progress even the spiritual authority of the pope, let alone his temporal plenitude of power, was under attack from rebellious conciliarists. Indeed, Eugenius IV himself had pressing need of battling papalists, allies to uphold the principle of papal monarchy against those who would make the pontiff subject to the will of the universal Church. In the pope's struggle Castile held out the carrot of being—for a price—such an ally. This political context gives the key to why Cartagena framed the argument of *Allegationes* in the unexpected way he did. Minucci and Roselli showed that for Castile to rebut the Portuguese case, it would have sufficed to marshal traditional arguments on the just war; Cartagena avoided doing so because such a tactic would have looked like an attack on the papal plenitude of power, and this would have run counter to Castile's diplomatic strategy.[30]

In this sense, what Cartagena does not say is as significant as what he does The whole purpose of the instruction which he supplied to Álvarez de Paz was to shift the discussion away from debate on the powers of the pope. A first clue to his intention is the rhetorical structure and style of *Allegationes*. Instead of being presented as a legal *responsum* like Minucci's and Roselli's, with their series of *dubia* divided, disputed with authorities for and against, and concluded by a verdict, the text is configured as a different kind of discourse: a forensic speech using the Ciceronian scheme of *exordium*, *narratio*, *divisio*, *confirmatio*, *confutatio*, *conclusio* (introduction, statement of facts, division, proof, refutation, and conclusion) and appealing to specifically rhetorical tropes and forms of proof such as *exempla*, historical precedent, philosophical *sententiae*, and legend.[31] Thus the *exordium* is taken up with a

[30] Suárez Fernández 1960b gives a full account. Castile had other interests at stake besides the quarrel with Portugal, notably against the Aragonese, whose king Alfonso V, at odds with the pope over his designs on the throne of Naples, was staunchly conciliarist. Angling for Eugenius's backing against Aragon, Castile offered him its support against the Council. However, the fact that Cartagena and his fellow delegates were not instructed to leave Basel until May 1438—eight months after Eugenius's first move to dissolve and nullify the Basel meeting by transferring it to Ferrara, three months after his suspension by recalcitrant Basel delegates, and only a month before their deposition of him and election of the anti-pope Felix V—shows how conditional Castile's support was. The order to depart came only after the Portuguese, having failed to get from Eugenius what they wanted, presented their case on the Canaries to the Council (9 May 1438). Cartagena succeeded in having it relegated to a committee, which promptly agreed to shelve the question (Suárez Fernández 1960b, 411–12 and 1963, 20–21; Fernández Gallardo 2002, 207–08, who further cites evidence that Cartagena himself did not leave Basel for his ensuing mission to the emperor-elect Albrecht II until September, pp. 209–11).

[31] For the six *partes orationis* see Cicero, *De inventione* I.19 (also ps.-Cicero, *Rhetorica ad Herennium* I.4), the rest of Bk I giving the tropes and argumentation suitable to each; Cartagena had himself translated this work for Duarte of Portugal ten years before (Cartagena 1969). In his preamble Cartagena duly divides *Allegationes* into *particulae*: 'observabo in dicendis hunc ordinem: *primo* inseram factum ex quo questio oritur, [...] *secundo* formabo raciones que pro parte Portugalensium [...] possent allegari, *tercio* fundabo ius domini nostri regis, *quarto* respondebo ad raciones in contrarium allegatas, *quinto* exprimam quid videtur agendum' (p. 147; i.e. proemium + 5 *particulae*, corresponding exactly with the six Ciceronian *partes*).

captatio benevolentiae, a personal account of Juan II's letters of instruction and Cartagena's part in the 1424–25 embassy to Portugal, while the *narratio* consists of a sketch of the *factum*, a brief history of the colonization of the islands complete with such classic tropes of *amplificatio* as a topography, numerous rhetorical and specifically anti-legalistic first-person interjections of the kind 'credo [...] sed de ista non sum ex toto certus', and a closing brevity topos.[32] In the *divisio* ('by which we make clear what matters are agreed and what are contested, and announce what points we intend to take up', *Rhet. ad Herennium* I.4) Cartagena sets out the three grounds of the Portuguese claim to the Canaries listed in Lucena's *Petitio*: (*a*) priority in occupation, since in Roman law *nullius bona occupantis fiunt*, 'things that belong to no one become the property of the first to occupy them' (*Digesta* XLI.1.7, lex *Adeo*, §*insula*; *Institutions* II.1, lex *Insula*), and the Canaries were not occupied—this expression, so shocking to modern ears, meant: 'not occupied by any rival European prince'—at the time of Prince Henrique's first abortive expedition in 1424; (*b*) closer proximity to Portugal (Cartagena speaks of Cape St Vincent in mainland Portugal, mischievously affecting to misunderstand Lucena's meaning, which was Guiné); and (*c*) the evangelization of pagans, on the basis of Mark 16. 15 ('Go ye into all the world and preach the gospel to the whole creation') and Gratian's canons on the just war *Omni timore* and *Legi Siromasten* (*Decretum* C.23.8.9, 13; see *Alleg*., 'Particula 2', pp. 149–152).

This division adroitly shifts the debate, by its mention of two factual arguments not even noticed by Eugenius IV's bulls or the Bolognese jurists, from the fanciful cloud-cuckoo-land of Portugal's rights in relation to Saracens and Guanches (fanciful since Henrique could not muster the military might to conquer either) to the actual matter in hand, Portugal's diplomatic dispute with Castile. Thus far, however, there is little to surprise us apart from the style,

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[32] *Alleg*., proem, pp. 143–47 (cf. Minucci's bald, deliberately uncircumstantial initial statement of the legal point at issue, quoted in n22, above) and 'Particula 1', pp. 147–49 (the quotation, p. 147). In his analysis of *Allegationes* Fernández Gallardo (2002, 185–207, at p. 188 & nn17–18) opines that the work is not a 'pieza oratoria [...], ni mucho menos ajustada a los cánones ciceronianos', but an 'informe jurídico' in the genre of the *consilium* expressed 'bajo la forma de *questio disputata*'. The text was certainly a juridical brief, and there are passages of legal jargon (notably 'Illatio juris', pp. 181–87), but it is explicitly couched in the form of an oration in six parts (n31, above) and is obviously not in any formal sense a *consilium* or *quaestio*, there being no point of generic resemblance to either, structural or discursive. Cartagena used the deliberately non-technical vernacular term *avisamento*, laying repeated stress on its informal nature (p. 147 'iniunctum est ut [...] prefato Ludovico Alvari pro avissamento suo scriberem quid sentirem. Ego vero [...] prout ad memoriam veniunt [...], ut ad presens menti occurrunt, illa [...] exprimere sub forma sequenti decrevi', etc.). Fernández Gallardo's reminder of Cartagena's training as a schoolman and lawyer is nonetheless opportune, since it reminds us of the hybrid of scholastic and humanistic strains in his works (see also Fernández Gallardo 1993, and n34, below); an example is the scholastic word *particula* for *pars* (attested in Cicero and Quintilian for 'clause, part of a sentence' but not 'part of an oration', the nearest case being Cicero, *De republica* I.38 'ut ne qua particula in hoc sermone praetermissa sit'). For his similar use of rhetorical discourse in another political debate see Lawrance 1993.

which is rhetorical rather than technical, mirroring Lucena's *Petitio*. In the next part, *confirmatio* ('presentation of our arguments, together with their corroboration', *Rhet. ad Herennium* I.4), Cartagena springs a greater novelty. He opens the section—by far the weightiest, five times longer than the previous three and two thirds of the whole—with a discussion of the rules of evidence in a case of disputed title such as this one, 'which touches the (e)state of kingdoms and countries (*statum regnorum et provinciarum*)' (*Alleg*., p. 152)—his first use of the key term *status* to which Skinner drew our attention (see above, at n11). Proof in such cases cannot depend, says Cartagena, on the unfounded assertions of witnesses nor on legal deeds and charters, because the titles of kingdoms go back into the mists of antiquity; 'it would be fatuous to use such commonplace proofs in these matters, as if we were arguing merely over some vineyard or mansion', for as Aristotle (*Nic. Ethics* 1094b13) showed, scientific enquiry cannot demand the same kind of certainty or method in all subjects. We must therefore ask at the outset what sorts of proof (*species probationis*) are relevant to a discussion of national title. Cartagena lists five such sorts with precedents in law: chronicles; ancient wisdom and science (*per sapientes antiquos*); the subscriptions of councils of the primitive Church; registers or *libri censuales*; and *populi opinio*, ancient tradition or legends, 'of which there are many examples in every country, such as "Roland did things like this", or "Rodrigo de Bivar surnamed the Cid did such and such"'.[33]

This approach to the affair of the Canaries, so different from the legalistic texts mentioned above, gives much matter for reflection about possible humanist influences on Cartagena's concept of the political role of the *orator* and of the species of proof, from humane and ancient texts, which he considered appropriate to political argument.[34] The immediate concern of his theoretical *excursus*, however, was to validate sources which he already had at his elbow. Of chronicles, for instance, he points out that Justinian's *Digest* is full of proofs from Roman history, 'narrating many ancient facts about the vicissitudes of the Roman state and changes in their constitution and laws' (n33, above). Without dwelling on this second use

[33] *Alleg*., pp. 152–87, Particula 3, at pp. 153–56 'Prima species probandi est per cronicas communiter receptas; hoc patet quia hac specie utitur Jurisconsultus in lege ii, *ff* de origine iuris [*Dig*. I.1.2], per totam legem, ubi narrando multa antiqua que *varietatem status Romanorum et mutacionem policie* ['constitution'] eorum recepcionemque legum concernunt', down to 'Quinta species est per communem populi opinionem, [...] utpote quod "Roldanus fecit talia" vel "Rodericus de Bivar cognominatus Cidus fecit hoc et hoc" et similia que unaquequ provincia habet.' For a jurisprudential commentary see Rojas Donat 1996.

[34] See González Rolán, Hernández González, & Saquero Suárez-Somonte 1994; Rojas Donat 2001. Cartagena's debt to the *studia humanitatis*—bearing in mind that his university training was in law, primarily civil (Fernández Gallardo 2002, 58–69)—has been much discussed since Di Camillo's pioneering study (1976, 128–33, 135–75, 203–26); see for instance Morrás 1995; Fernández Gallardo 1999 and 2008. For his contacts with humanists at the Council of Basel see Morel-Fatio 1896; Birkenmajer 1922; González Rolán, Moreno Hernández, & Saquero Suárez-Somonte 2000.

of the word *status*, we need only note that the deceptively innocent phrase is a signpost to Cartagena's forthcoming argument. Likewise for ancient philosophy: after showing that the *Digest* adduces Aristotle, Homer, Theophrastus, Demosthenes, Cicero, and the Fathers, he singles out Isidore of Seville, 'the greatest authority among the ancients on political geography (*divisiones terrarum*)', who is often cited both by decretists and decretalists and who deserves special reverence and devotion in the present case because he was *precipuus inter sapientes Hispanorum*, 'the Spaniards' most distinguished sage' (p. 155). The apparently nonchalant but calculated use of gentilitial *Hispani* instead of *Hispania*—that is, positing an ethnic continuity between Isidore's Visigothic nation and his own (which happened to include Portugal…), as opposed to the coincidence of their both occupying a more or less coterminous geographic space—is, as we are about to see, another signpost of the same kind.

Only after establishing this methodological point about admissible evidence does Cartagena proceed to his proof that the whole of Rome's North African province of Tingitania once formed part of the Visigothic empire, and hence that, since the Canaries were by proximity part of this province—the dagger of *vizinhança* turned back at Portuguese throats!—, they belonged by right to the direct legitimate heir of the Visigothic monarchy, King Juan II of Castile. The argument was not novel; the Neo-Gothic charter-myth of the Castilian monarchy's inheritance by direct succession of the throne of ancient Hispania, and hence its divine mission to drive Islam from Spanish and North African soil and achieve a *redintegratio regni* of the old Gothic empire, had been used by Alfonso XI to negotiate placing the papal grant of title to Louis de la Cerda under Castile's suzerainty in 1345 (Fernández-Armesto 1987, 173), and was a corner-stone of the political ideology of Juan II's court.[35] Cartagena was a leading proponent of the idea; he had expounded it in his prologues to Prince Duarte of both books of *Memoriale virtutum*, in the glosses to a cycle of translations from the 'Spaniard' Seneca undertaken for Juan II in the early 1430s to enhance the monarchy's prestige by appropriating (or inventing) a classical heritage, and at the Council of Basel in his *Propositio super altercatione praeminentiae sedium inter oratores regum Castelle et Anglie* of 1435, a speech asserting the Castilian crown's precedence over England's. It continued to be the informing theme of his last and most ambitious project, *Anacephaleosis sive Genealogia regum Hispanie* of the 1450s, in which he advocated a single pan-Hispanic state.[36]

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[35] On the Neo-Gothic thesis from its origins to modern times see González Fernández 2004 and 2008; Ladero Quesada 1993; for its role in Castilian propaganda, Maravall 1997, 299–337, 403–73 (*Alleg*., pp. 59, 324–25); González Fernández 1986. In a study of the five kinds of rhetoric—'teológica, jurídica, literaria, pedagógico-moralizadora e histórica'—used to publicize political ideas at the Trastámaran court, Nieto Soria (1993, 189–223) places the Gothic myth in the first, 'theological' category, as a strategy to sacralize the monarchy by attributing to it a 'señorío divinal' and providential mission rooted in the mists of antiquity (p. 195).

[36] See (*a*) *Memoriale virtutum*: Fernández Gallardo 2001, Cartagena 2004; (*b*) *Doce libros de Séneca*: Blüher 1969, 100–25; Fernández Gallardo 1994; (*c*) *Propositio*: Castro 1954, 22–25; Beltrán de Heredia 1957; Fernán-

We need not analyse here the erudite geographical, historical, and etymological arguments expounded by Cartagena in support of his thesis, or his fifth and penultimate 'particle', *confutatio* ('refutation of counter-arguments', *Rhet. ad Herennium* I.4), which demolishes the three titles claimed by Portugal. Only one link in the thread concerns what we may properly call a political theorem; this is the problem posed for the Neo-Gothic thesis by the extinction of the Visigothic empire by the death of King Roderic and the Arab invasion of 711. The *translatio imperii* to Pelayo at this crucial juncture was the lynchpin of the whole argument; but Cartagena's careful preparation of the legal grounds upon which the claim could be made shows that its use involved one of those leaps at the deeper level of political thought that I mentioned earlier (p. 4, above, at n12). He meets the problem head-on, first presenting Roderic's defeat in time-honoured fashion as a divine judgment 'propter peccata populi', but then immediately adds:

> The monarchy of the kings of the Hispani was humbled and its *de facto* power (*potentia*) greatly diminished, but the enemy's violence could not take away the right of the monarchy and its *de iure* power (*potestas*). Though both its population and territory were reduced to the narrowest limits, rulership, insofar as that means the right to rule, remained, as I shall explain below.[37]

This distinction between *potentia* ('effective power') and *potestas* ('legal authority') is picked up when, after nearly twenty pages in the printed text, Cartagena returns as promised ('ut infra dicetur') to the justification of his point. The passage runs as follows:

> Since it is thus established that Tingitania belongs to the monarchy of Hispania, therefore the Canary Islands, which are contiguous to it, do so. And we must hence conclude that since the kingship of Hispania existed by single line of descent (*monarchice*) from King Suinthila [621–31] in succession down to King Roderic [710–11], both Tingitania and its adjacent islands also belonged to the said Roderic. However, when his *de facto* power (*potentia facti*) was usurped by the violence of the Saracens, the whole rights of the Hispanic corporation (*totum ius universitatis Hispaniarum*) were concentrated in the surviving population, since 'the rights of a corporation are preserved in a few or even in one of its members' according to §1–§2 of *Digest* III.4.7; and 'it is called the same people, even when the individuals concerned are fewer in number than the original populace', *Digest* V.1.76. And since the same rule applies to correlatives, and princes and their subjects are types of correlative like father and son or master and slave, it clearly follows that, as the rights of the whole people remained in the remnant of the population insofar as they were that same people, so too the rights of the monarchy remained in the reigning prince, who was

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dez Gallardo 2002, 142–58; Echeverría Gaztelumendi 1992; (*c*) *Anacephaleosis*: Tate 1970b; Espinosa Fernández 1989). Also relevant, if we had it, would be Cartagena's sermon on the death of Juan II in 1454, which traced his lineage back to Alaric, according to his protégé Diego Rodríguez de Almela's *Compendio historial de las crónicas de España* (Madrid, Biblioteca Nacional de España Ms/1525, f. 3[r]; see Nieto Soria 1993, 195).

[37] *Alleg*., pp. 166–67 'Monarchia regum Hispanorum humiliata est, et *potencia facti* magna ex parte diminuta; set tamen *ius monarchie et potestas iuris* non potuit hostium violencia tolli. Nam licet angustarentur tam numerus personarum quam latitudo territorii, principatus tamen, prout est *ius principandi*, remanebat, ut infra dicetur.'

> Pelayo, so that it may be held to be the same kingship. For the sovereign power of a ruler is proportioned according to the nature of the people, because 'universal power is transferred to the prince by the people' according to *Digest* I.1.1, law *Quod principi placuit*, ad init.[38]

What is interesting about this argument can perhaps be made clear by referring again to Skinner's discussion (1978, I, p. x) of the 'shift from the idea of the ruler "maintaining his estate" [. . .] to the idea that there is a separate legal and constitutional order which the ruler has a duty to maintain', where he goes on to say:

> One effect of this transformation was that the power of the State, not that of the ruler, came to be envisaged as the basis of government. And this in turn enabled the State to be conceptualised in distinctively modern terms—as the sole source of law and legitimate force within its own territory, and as the sole appropriate object of its citizens' allegiances.

Under pressure to find arguments to legitimize his monarch's expansionist policy that would not challenge the pope's *plenitudo potestatis*, Cartagena was led in just this direction. To explain the continuity of the Gothic monarchy of Hispania—the keystone of his thesis—he was constrained to argue that the *ius monarchiae Hispaniarum* was in some way separate from the monarch himself, somehow a 'correlative' of the *ius populi Hispani*. To do so he cited one of the famous legal texts in the history of medieval political thought, *Quod principi placuit*, the 'lex regia' by which, according to Accursius and his followers, a people conditionally 'transfers' the power of the commonwealth to its ruler.[39] It is also significant that Cartagena based his idea of where this power is located, and how it may be transferred, upon the medieval theory of corporations (*universitates*)—that is, in Otto Gierke's terms, on a distinction between *societas* 'a partnership' (*Gesellschaft*), which is merely a collective name for all the members of a given group, and *universitas* 'a cooperative' (*Genossenschaft*), which is an

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[38] *Alleg*., p. 183 'Cum ergo constet Tingitaniam pertinere ad monarchiam Hispanie, ergo insulas Canarie, que ei adherent. Opportet igitur concludi quod cum principatus Hispanie fuit monarchice sub rege Suyntilla et deinde subsequenter usque ad regem Rodericum, ergo ad eumdem regem Rodericum pertinuerunt tam Tingitania quam insule eius. Cum autem reclusa potencia facti per violenciam Sarracenorum totum ius universitatis Hispaniarum remansit in illo populo qui remanebat, quia "ius universtatis salvatur in paucis et eciam in uno", ut *ff* quod cuiusque universtatis, le. *Sicut*, §fin.; et "idem populus dicitur licet persone populi sint numero pauciores", *ff* de iudiciis, le. *Proponebatur*. Ac cum correlativorum eadem sit regula, et principes et subditi sint quedam correlativa sicut filius et pater, servus et dominus, bene sequitur quod, sicut iura tocius populi remanserunt in populo remanenti adeo quod idem populus erat, sic iura monarchie remanserunt in principe regnante, qui fuit Pelagius, ita ut idem principatus reputetur. Nam secundum qualitatem populi proporcionatur imperium principantis, quia "a populo in principem est translata universalis potestas", *ff* de constitucione principum, le. 1 in principio.'

[39] On this text Tierney (1963) built up his seminal thesis—eagerly embraced by medievalists—on the medieval origins of the nation state. Need one point out that in both Skinner and Tierney, 'modern' is best read as 'early modern'? For many, the word 'modern' applied to political constitutions may still evoke nineteenth-century notions of democracy, civil society, and liberal capitalism, but the kind of state foreseen by Cartagena and his ilk—the Habsburg empire—was absolutist and had more in common with what we should call totalitarianism.

ideal *persona ficta* with certain artificial or juridical proprietary rights independent of the natural or real persons who are its members.[40] A *universitas* cannot be charged with delict or punished, and may continue to exist even though it no longer has even one member, but it is nevertheless a real legal organism with a body and a will of its own, a *Gesamtwille* which can act. It is in this light that one returns to Cartagena's words quoted earlier about the 'varietatem status Romanorum et mutacionem policie eorum recepcionemque legum' (*Alleg*., p. 153), but with renewed uncertainty as to whether or not, in using the word *status,* he had in mind simply the 'estate' or situation of the Romans or was already thinking ahead to the problem of a *translatio iuris populi,* the continuity of a depersonalized sovereign nation state under enemy occupation.

Cartagena's idea of an enduring Hispanic *politia,* though based on the theory of *ius populi* and the transfer of its *potestas* to a prince, contained no hint of that other medieval contribution to political theory, the concept of representation; he nowhere expresses the view that 'transferring its right' to the sovereign entitles the 'people' to express any opinions as to how the 'power' should be exercised. Nor did his argument involve the doctrine of the king's two bodies; the distinction between royal person and royal office was irrelevant to his point, which was about whether 'succession' can take place without any genetic or legal right of inheritance or any due process of election, acclamation, blessing, or coronation. This was why he needed to add to the jurists' account the pseudo-logical terminology of 'correlation' and a discussion of what proportion of a 'people' must remain in order to constitute a continuous *principatus*. The idea that even a 'remnant' can do so, and that the 'transfer' of its *ius principandi* may take place unconsciously, without any tangible act or instrument expressing its volition, has an ominously mystical air which not even the smokescreen of *correlativa* can dispel. Nevertheless, to revert to Skinner's terms, Cartagena's discourse contained in embryo both the concept of a 'separate constitutional order which the ruler has a duty to maintain', and also the distinctive idea of the nation as the sole continuous 'source of legitimate power within its own territory'. It is hardly a coincidence that Cartagena made Isidore of Seville one of his authorities (p. 14, above), since Isidore is credited with a parallel concept of the nexus between *gens*, *patria* and *regnum Gothorum*, the nation as an 'entité constituée par le territoire et le peuple que le roi gouverne et personnifie'.[41]

Of course, a brief passage in a text like *Allegationes* could never constitute a decisive contribution to political thought. It is better seen as a symptom, not a cause, of change. In an earlier passage Cartagena suggests that the unbroken succession of the Castilian monarchy, 'perhaps the most singular to be found in all Europe', was a gift of divine grace 'which we

[40] Gierke 1900; see especially Maitland's 'Introduction' and 'Analytical Summary' (pp. vii–lv).

[41] Le Morvan 2009, para. 6 of 46, citing Teillet 1984, 7–8 on the 'passage de l'idée d'empire à celle de nation' in late Antiquity. See further Rucquoi 1992; Armogathe 1992.

hope God will deign to preserve till the surcease of all temporal kingdoms'.[42] He had already made similar messianic claims two years previously in his speech on the precedence of Castile over England at the Council of Basel, and would again invoke the notions of *universitas* and a pan-Hispanic commonwealth a decade later in *Defensorium unitatis Christianae*, a lengthy treatise provoked by the anti-monarchical communitarian revolt of Toledo in 1449.[43] More to the point, parallel views were upheld in many contemporary works.[44] Such ideas would play their role in the imperial ideology of the Catholic Monarchs and Charles V, and come to form what Anthony Pagden called 'the ideological armature of what [...] has some claims to being the first early-modern nation state', once the Habsburg monarchy 'had effectively secured the consensus of its own political nation'.[45]

Consensus was, to be sure, one feature strikingly absent from the faction-ridden, ethnically and religiously divided, geographically fragmented political history of fifteenth-century Spain.[46] Yet the theoretical concept of a pan-Hispanic national state and empire that should be (to quote Skinner one last time) 'the sole source of law and legitimate force within its own territory and [...] sole appropriate object of its citizens' allegiances' had already been placed on the agenda by such works as Cartagena's *Allegationes*, albeit at the prompting of different concerns to do with legitimating an expansionist overseas policy at the expense of a neighbouring Iberian power. My purpose here has been to suggest that, in elaborating the transformations in the normative vocabulary and language of political thought which this task

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[42] *Alleg*., pp. 167–68 'semper est continuatum regnum in eadem domo et genere regio sine aliqua interpollacione, quod ita singularissimum est ut in tota Europa forte non valeret simile reperiri [...]; de quo inmense gracie Deo agende sunt, in cuius misericordia speramus quod hoc donum nobis dignabitur conservare quoad finis mundi adveniat et, regnis temporalibus cessantibus, coram eterno rege et judice [...] universi compareamus.'

[43] See n36, above, and Parra García 2002. *Defensorium* also used a rhetorical style of argumentation to range beyond its instrumental remit, including political as well as theological discussions, e.g. on *dominium* and the natural rights of subjects (Lawrance 1993; García-Jalón 1992 and Castilla Urbano 2010; Verdín-Díaz 1992; Fernández Gallardo 2002, 243–46, 403–16).

[44] Besides Tate 1970a see, for Castile, Deyermond 1988; Nieto Soria 1992, and the essays in Nieto Soria 1999; Monsalvo Antón 2011; and, more generally, the great cycle of works on this topic by Maravall (e.g. 1954 and 1972). As Tate was at pains to point out, speculations on a pan-Hispanic messianic state that would outdo the Roman empire were by no means confined to Castile; the contributions of the Crown of Aragon and Portugal were equally significant (for a recent study, see Stacey 2011).

[45] Pagden 1987, 79–80. Pagden's careful formulation should be noted; to argue that Spain was the first 'modern' state, though now a cliché of time-worn pedigree (see, for example, Díez del Corral 1976; S. de Dios 1988), can be misleading for the reason stated in n39, above, though it still provides a useful antidote to the older, even less convincing cliché of Spain's 'cultural belatedness' in relation to the Italian Renaissance.

[46] Nieto Soria (2010) nevertheless shows that consensus in these senses was also a subject of speculation at the time, though focussing chiefly on internal Castilian social issues, not the broader Peninsular national fissures that would later concern the Catholic Monarchs.

entailed, Cartagena found it convenient, like most of his contemporaries, to draw in equal measure not only upon the discourses of scholastic theology and law, but also upon the rhetorical and antiquarian disciplines of the *studia humanitatis*.[47]

Manchester 1989/Nottingham 2013

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ABBREVIATIONS

Alleg.	Alfonso de Cartagena, *Allegationes super conquesta insularum Canarie contra Portugalenses*, 27 August 1436 or 1437, in *MH*, VI, 139–99, §57
BAV	Biblioteca Apostolica Vaticana
Esc.	Real Biblioteca del Monasterio de San Lorenzo de El Escorial
Lucena, *Petitio*	Vasco de Lucena, *Petitio Eduardi regis Portugaliae ad Eugenium IV*, August 1436 (BAV, Ms. Vat. Lat. 1932, f. 99), in *MH*, V, 254–58, §129
MH	*Monumenta Henricina*, ed. by Manuel Lopes de Almeida & others, 15 vols (Coimbra: Commissão Executiva das Conmemorações do V Centenário da Morte do Infante D. Henrique, 1960–74)
Minucci	Antonio Minucci da Pratovecchio, *Dictamen* on the conquest of the Canaries, 17 October 1436 (BAV, Ms. Vat. Lat. 1932, ff. 100–113^{v}), in *MH*, V, 285–320, §140
Roselli	Antonio Roselli, *Dictamen* on the conquest of the Canaries, October 1436 (BAV, Ms. Vat. Lat. 1932, ff. 114^{r}–122^{v}), in *MH*, V, 320–43, §141

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