

PAPAL ARBITRATION? ALEXANDER VI AND THE PORTUGUESE AND SPANISH DISCOVERIES OF THE 15TH CENTURY

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ABSTRACT

The article asks for the aim of Pope Alexander VI around the so-called *Alexandrian bulls*. Our purpose is to prove that the Pope did not act as an arbitrator about the Iberian disputes given that he always acted from his capital position as Vicar of Christ and supported by the Medieval cannonists' doctrine about Lordship of the World. Four aspects are analysed: the historians' views; the position of Christian princes to conquer territories inhabited by infidels; pontifical action *motu proprio* according to canon law; and the expendable intervention according to the circumstantial convenience of the Portuguese and Castilian Crowns.

KEYWORDS

Alexandrine bulls, Papal arbitration, Omni-insular theory.

CAPITALIA VERBA

Bullae Alexandrinae, Arbitrium Papae, Speculatio omniinsularis.

1. Introduction¹

At the end of the Middle Ages, there was a process of absolutisation of the papal government manifested in a powerful centralisation of decisions and the deployment of a humanistic diplomacy in the relations between the papacy and the monarchies. This was especially evident in the customary and formalised entreaty of the monarchs to the pope. In this framework, Jacques Verger proposed an interesting theoretical interpretation 30 years ago, which postulates that in the last centuries of the Middle Ages there would have been a transfer of the organisational model of the pontificate to the reigning monarchies. The genesis of the modern state regarding monarchy-papacy relations can be found in this theory.² This process of the concentration of power exercised by the pope became the model for the French and Castilian kingdoms to imitate in building a government by the grace of God. José Manuel Nieto Soria noted this in the case of Castile, especially evident with the emergence in 1474 of the *Chamber of Castile*, an institution that was to endure the whole modern era and became a typical representative institution of royal absolutism.³

Europe was a society in transition in the late Middle Ages. The concept of catholicity underwent a transformation of immeasurable consequences over the course of medieval to modern times since the medieval idea of *orbis christianus* or “christianity” evolved into the idea of *Europe*. The withdrawal of the papacy from its temporal possessions led it to demand respect for the legitimacy of its temporal sovereignty.⁴

The basis of this legitimacy and the recovery of the signs of ancient Rome and the political nature of the new pontifical monarchy have been analysed in depth by Paolo Prodi with an extensive bibliography.⁵ The author described the political evolution that the figure of the pope underwent with his attempt to play a role in early modern Europe; this action had a politically less prominent tone than

1. The article is part of a research project entitled “El fin del Papado medieval. El Papado ante Portugal y Castilla por el dominio del Atlántico (siglos XIV y XV)” financed by the Vice-rectorate for Research, Innovation, and Postgraduate Studies of the Universidad del Bío-Bío, Chile (DIUBB 183224 4/R 2018-2019).

2. Verger, Jacques. “Le transfert de modèles d’organisation de l’Église à l’État à la fin du Moyen Age”, *État et Église dans la genèse de l’État Moderne*, Jean-Philippe Genet, Bernard Vincent, coords. Madrid: Casa de Velázquez, 1986: 31-40. Dios, Salustiano de. *Gracia, merced y patronazgo real. La Cámara de Castilla entre 1474-1530*. Madrid: Centro de Estudios Políticos y Constitucionales, 1993.

3. Nieto Soria, José Manuel. “Relaciones con el pontificado, Iglesia y Poder real en Castilla en torno a 1500. Su proyección en los comienzos del reinado de Carlos I”. *Studia Historica: Historia Moderna*, 21 (1999): 19-48 (especialmente 46).

4. Guenée, Bernard. *L’Occident au XIV^e et XV^e siècles*. Paris: Presses universitaires de France, 1991: 57; Bellini, Piero. *Repubblica sub Deo. Il primato del Sacro nella esperienza giuridica della Europa preumanista*. Florencia: Le Monnier, 1981.

5. Prodi, Paolo. “Alessandro VI e la sovranità pontificia”, *Alessandro VI e lo Stato della Chiesa. Atti del Convegno (Perugia, 13-15 marzo 2000)*, Carla Frova, Maria Grazia Nico Ottaviani, dirs. Rome: Roma nel Rinascimento, 2003: 311-338.



previously between mediations and some attempts at intervention or doctrinal and ecclesiastical censorship.⁶

The practice of arbitration and mediation has a long history. Its origins can be traced to antiquity, the Old Testament, to India, and especially to ancient Greece where lies the true source of international arbitration in the Western culture. Roman history also has many such testimonies.⁷

During late antiquity and the Middle Ages, the papacy mediated countless cases involving a variety of religious and political situations and constantly sought harmony and peace between the parties in conflict. The reform initiated by Gregory VII during the 11th century sought to place the pope in the position of head of the Church and Christianity, bestowing on him a spiritual and universal superiority over the Christian princes that allowed him to act as *arbiter* in their recurrent disputes. This action frequently took the somewhat imprecise form of an arbitration, the basis for which cannot be found in the law but rather in an authoritative jurisdiction. Established on canon law imposed on the whole Church, this jurisdictional *auctoritas* was not always freely accepted by the parties or based on a treaty or commitment to arbitration. This right to intervene in a problem or conflict, sometimes as *mediator* or sometimes as *arbiter*—which in a way implied “judging”—was considered a direct and inalienable attribute of the supreme apostolic power that Christ granted to Peter and was afterwards transmitted to his successors. In the Middle Ages, nothing was left out of this moral jurisdiction because the total power of the pope (*plenitudo potestatis*) encompassed the whole of reality, that is, matters of religion and morality (*in spiritualibus*) and all the political and social affairs of society (*in temporalibus*).

It must be said that pontifical arbitrations in medieval times were not *stricto sensu* because the pope did not really act as arbiter. Although he judged on many occasions, says Jean Gaudemet, he did so as a pontiff and not as a private person appointed by the parties for that purpose. This is why references to the “arbitrations” of the pope are due to the more or less lax use of the concept that is sometimes confused with “mediation”.⁸

The modern world then began, and a discourse inherited from medieval prerogatives was revived in Rome; it was a mixture of solemn complaints against the temporal powers that ignored the sovereignty the papacy had had. Wishing to find a role as arbiter in the midst of European tensions, the papacy focused on fighting against growing regalism that was holding back its actions and on defending itself against intellectual erudition. Left with nothing but doctrinal and ecclesiastical

6. Prodi, Paolo. *Il sovrano pontefice. Un corpo e due anime: la monarchia papale nelle prima età moderna*. Bologna: Il Mulino, 1982.

7. Clay, Thomas. *L'Arbitre*. Paris: Dalloz, 2001: 4 and following; Buono-Core, Raúl. *El Mediterráneo y la diplomacia en la Antigua Grecia*. Valparaíso: Ediciones Universidad de Valparaíso, 2012; Taube, Michel de. “Origines de l'Arbitrage international. Antiquité et Moyen Age”. *Académie de Droit International. Recueil des Cours*, 42 (1932): 4-5.

8. Gaudemet, Jean. “Le rôle de la Papauté dans le règlement de conflits entre les états aux XIII^e et XIV^e”. *Recueils de la Société Jean Bodin*, 15 (1961): 79-106.



ensorship, Bruno Neveu has said that the evolution of the international role of the papacy will force the pope to retreat to his own spiritual base.⁹

In later times, the negotiations on the Roman question in the 19th century propelled the papacy into a new era of some moral authority, freed from the thorny temporal issues that had consumed its energies in the past. Established on new political and moral foundations, Pope Leo XIII implemented a pacifist policy by offering mediations that found a productive and effective path in line with the widespread desire for peace.¹⁰

Based on the recognition as a subject of international law by the Lateran Treaty of 1929, the pope has intervened in international relations in the 20th and 21st centuries. He has tried to establish himself as a moral figure through very active pontifical diplomacy on many different areas of society, which is expressed in relevant speeches and trips of high political and ecclesiastical impact.

2. Opinions

A large part of the extensive nineteenth-century bibliography on the Alexandrine bulls does not address the problem of their content or meaning, but rather mentions them in a general and summary manner, barely indicating the promulgation of a papal bull.¹¹

We have not been able to verify if it is true that at the beginning of the 16th century there was the first mention of the arbitration thesis by the chronicler Peter Martyr d'Anghiera. However, this was affirmed in the 17th century by the jurist Hugo Grocio, who understood that the pope had acted as an international arbiter with the aim of settling differences between the Iberian kingdoms and separating the respective spheres of Spanish and Portuguese jurisdiction¹². In the 19th century, several scholars reaffirmed this idea of the arbitrary nature of the intervention of the pope, such as Joseph Hergenröther¹³ and Jean Gosselin.¹⁴ However, Ludwig von Pastor was the most enthusiastic admirer of the role of this pope because, in

9. Neveu, Bruno. *Érudition et religion aux XVII^e et XVIII^e siècles*. Paris: Albin Michel, 1994: 235.

10. Ticchi, Jean-Marc. "Bons offices, médiations, arbitrages dans l'activité diplomatique du Saint-Siège de Léon XIII à Benoît XV". *Mélanges de l'École française de Rome. Italie et Méditerranée*, 105/2 (1993): 567-612.

11. Baragona, Alessandro. "La polémica historiográfica sulle bolle alessandrine relative alle grandi scoperte", *Miscellanea di storia delle esplorazioni*. Genoa: Fratelli Bozzi, 1977: II, 31-47.

12. Grotius, Hugo. *De mare libero*, ed. Robert Feenstra. Leiden: Brill, 2009: III, 37-49; Staedler, Erich. "Hugo Grotius über die 'donatio Alexandri' von 1493 und der Metellus-Bericht". *Zeitschrift für Völkerrecht*, 25 (1941): 257-274; Ladero Quesada, Miguel Ángel. "Los debates sobre el Mare Clausum". *Cuadernos de Historia de España*, 74 (1997): 233-254; Ittersum, Martine Julia van. *Profit and Principle: Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies, 1595-1615*. Leiden: Brill, 2006.

13. Hergenröther, Joseph. *Catholic Church and Christian State*. London: Burns and Oates, 1876: II, 149-154.

14. Gosselin, Jean Edmé Auguste. *The Power of the Pope during the Middle Ages*. London: Dolman, 1853: II, 240-243.



his opinion, he peacefully decided on a series of thorny borderline issues, and these decisions must be considered as one of the glories of the papacy.¹⁵ The most accepted and upheld idea has been the “division of the world”¹⁶ or the division of areas of influence between the two powers.¹⁷

There was another nineteenth-century variant that pointed out that the Borgia pope would not have acted as an arbiter in the conflict between Spain and Portugal, but rather his role would have been that of a sort of “supreme judge of Christianity” or guardian of peace. Samuel Edward Dawson and Henry Harrise concurred¹⁸, while Edward Bourne applied himself to showing the efforts made by the pope to satisfy both parties, which would reveal a combined action of arbiter and mediator.¹⁹ John Tachter also pointed it out when asking, where would they have found a more suitable arbiter with the consent of both parties? By dividing the territories, the pope was acting as arbiter.²⁰

Meanwhile, Ernest Nys adopted a very different and radical stance when he stated that the role of the pontiff was invalid because the bulls neither contained an arbitral decision nor could any attribution of sovereignty be inferred from them for any of the parties.²¹

Excluding the controversial figure of the Borgia pope, research has been directed, on the one hand, to the internal study of the texts, making known new copies or more perfect editions, and therefore, more reliable versions of the texts of interest, namely Paul Gottschalk and Erich Staedler.²² Both authors have highlighted the direct intervention of the Portuguese in the development and processing of the Alexandrine bulls.

15. Pastor, Ludwig von. *The History of the Popes*. London: Kegan Paul, Trench, Trübner and Co., 1901: VI, 159-162.

16. Peschel, Oscar. *Die Theilung der Erde unter Papst Alexander VI und Julius II*. Leipzig: Duncker and Humblot, 1871: 13 and following; Llorens Asensio, Vicente. “Dos bulas de Alejandro VI sobre la posesión de las Indias y la división del mundo”. *Boletín del Centro de Estudios Americanistas*, 6 (1915): 1-24.

17. Oppliger, Friedrich. *Geschichte der kolonialen Demarkation zwischen Spanien und Portugal (1494-1750)*. Berlin: Buchdr, 1913: 27.

18. Dawson, Samuel Edward. “The line of Demarcation of Pope Alexander VI., 1493, and the Treaty of Tordesillas, 1494”, *Proceedings and Transactions of the Royal Society of Canada*, ed. John Bourinot. Montreal: The Gazette Printing Company, 1899: series II, V, 467, 490, 495; Harrise, Henry. *The Diplomatic History of America*. London: B. F. Stevens, 1897: 32, 35, 39.

19. Bourne, Edward Gaylord. “The Demarcation Line of Alexander VI”. *The Yale Review*, 1 (1892): 35-55. Reprinted in Bourne, Edward Gaylord. *Essays in Historical Criticism*. New York: Charles Scribner’s Sons, 1901: 198-201, 203.

20. Thacher, John. *Christopher Columbus, his life, his work, his remains*. New York: G. P. Putnam’s Sons, 1903: II, 84.

21. Nys, Ernest. *Études de Droit International et de Droit Politique*. Brussels-Paris: A. Castaigne, 1896: 193; Goyau, Georges. “L’Église catholique et le droit des gens”, *Recueil des Cours*. The Hague: Académie de Droit International de la Haye, 1925: VI, 177-178.

22. Gottschalk, Paul. *The earliest diplomatic documents on America: the papal bulls of 1493 and the Treaty of Tordesillas*. Berlin: Gottschalk, 1927: 19, 26-28, 39, 45; Staedler, Erich. “Die donatio Alexandrina und die divisio mundi von 1493”. *Archiv Für katholisches Kirchenrecht*, 117 (1937): 363-402; Staedler, Erich. “Die Urkunde Alexanders VI zur westindischen Investitur der Krone Spanien von 1493”. *Archiv für Urkundenforschung und Quellenkunde des Mittelalters*, 15 (1938): 145-158.



On the other hand, research has turned to analysing the content of the bulls and also specifying their scope. Researchers who have dealt with the subject consider that the concessions of the bulls must be situated in the era and be related to the dominant legal principles of the era as well as to the political, economic, and other problems that arose.

The first to address this issue globally was Pedro de Leturia in 1930, who summarised a complex process, revealing that the bulls granted to Portugal in its expansion in West Africa and the bulls granted to the Catholic Kings were related to the missionary and international policy of the popes.²³ Silvio Zavala, John Lanning, John Parry, and Gilberto Sánchez Lustrino discussed the issue at that time and generally followed the approach taken by de Leturia.²⁴ Our subject was considered very incidentally by Joseph Lecler regarding Spain and France and by Ken MacMillan about the consequences for British imperialism.²⁵

Almost simultaneously, Erich Staedler studied the feudal character of the concessions of Alexander VI and related them to other similar cases of that time.²⁶ Joseph Höffner, who considered the *Inter caetera* of 1493 to be a deed of enfeudation, adhered to it fully because the obligation attached to the fief was specified, that is, the evangelisation of the New World; no tribute was demanded and the *protection* enjoyed by the fief consisted in the *ipso facto* excommunication of all those who dared to interfere with its use.²⁷ This idea was also supported by Silvio Zavala, and Jaime Brufau later agreed that the *Inter caetera* had the meaning of a true and authentic concession of temporal dominion, which was understood from the outset.²⁸ However, these ideas had previously been rejected by Herman Vander Linden.²⁹

23. Leturia, Pedro de. "Las grandes bulas misionales de Alejandro VI, 1493". *Bibliotheca Hispana Missionum*, 1 (1930): 209-251.

24. Zavala, Silvio. *Las instituciones jurídicas en la conquista de América*. Madrid: Imprenta Helénica, 1935: 34-41; Lanning, John. "Colonial international relations, Mare clausum and the theory of effective occupation", *Colonial Hispanic America*, Alva Curtis Wilgus, ed. Washington DC: George Washington University Press, 1936: 351-382; Parry, John Horace. *The Spanish Theory of Empire in the Sixteenth Century*. Cambridge: Cambridge University Press, 1940: 1-11; Sanchez Lustrino, Gilberto. *Caminos cristianos de América*. Rio de Janeiro: Zelio Valverde, 1942: 210-250.

25. Lecler, Joseph. "Autour de la donation d'Alexandre VI (1493)". *Études*, 237 (1938): 5-16; Macmillan, Ken. *Sovereignty and Possession in the English New World. The Legal Foundations of Empire, 1576-1640*. Cambridge: Cambridge University Press, 2009: 70-78.

26. Staedler, Erich. "Die westindischen Investituredikte Alexander VI, ein völkerrechtliche Studie", *Niemeyers Zeitschrift für Internationales Recht*, Theodor Niemeyer, ed. Leipzig: Duncker & Humblot, 1935: 315 and following; Staedler, Erich. "Die westindische Raya von 1493 und ihr völkerrechtliches Schicksal". *Zeitschrift für Völkerrecht*, 22 (1938): 165; Staedler, Erich. "Die westindischen Lehnseidikte Alexander VI (1493)". *Archiv für katholische Kirchenrecht*, 118 (1938): 379 and following.

27. Hoeffner, Joseph. *La Ética Colonial española del siglo de oro. Cristianismo y dignidad humana*. Madrid: Cultura Hispánica, 1957: 266-270.

28. Zavala, Silvio. *Ensayos sobre la colonización española en América*. Buenos Aires: Emecé editores, 1944: 44-61 (especialmente 52-55); Brufau Prats, Jaime. *El pensamiento político de Domingo de Soto y su concepción del poder*. Salamanca: Universidad de Salamanca, 1960: 208.

29. Vander Linden, Herman. "Alexander VI and the demarcation of the maritime and colonial domains of Spain and Portugal, 1493-1494". *The American Historical Review*, 22 (1916): 1-20; Vander Linden, Herman.



Erich Staedler proposed that Alexander VI would not have intervened in the process of the bulls, either personally or as an arbiter, and that it is very likely that he was not even aware of the matter. Moreover, when the drafts of the bulls had been prepared by the Spanish chancery, granting them could not have the character of an arbitral decision.³⁰ Joseph Höffner shared this opinion, indicating that Alexander VI did not deal with the matter and did not sign the texts and had no knowledge of them. Silvio Zavala agreed with this opinion.³¹

Although authors of different languages took an interest in the Alexandrine concessions, Spanish authors have been the most involved in the subject due to their historical closeness.³² Unconcerned with the external history of the documents, Juan Manzano examined their content on several occasions.³³ Meanwhile, Antonio Rumeu de Armas tried to specify the nature and scope of the bulls within the framework of fifteenth-century Castilian and Portuguese politics.³⁴

The subject of apostolic power became fashionable in the 1940s, particularly the one exercised by Alexander VI on behalf of the Catholic Kings. Based on a previous study by Herman Vander Linden, essentially followed by Adolf von Rein and Pedro de Leturia³⁵, Manuel Giménez Fernández addressed the problem of the bulls in its entirety, characterising the environment, people, and especially the steps taken to obtain them; he legally qualified the texts, offered meticulous editing, and noted the parallelism of some of them.³⁶ His approach to the *successive granting* of the bulls,

“La prétendu inféodation du domaine maritime et colonial de l’Espagne par Alexander VI en 1493”. *Bulletin de la Classe des Lettres et des Sciences Morales et Politiques de l’Académie de Belgique*, 26 (1938): 428-435.

30. Staedler, Erich. “Die donatio Alexandrina...”: 370-371, 396, 402; Staedler, Erich. “Die westindischen Investituredikte...”: 377.

31. Hoeffner, Joseph. “La Ética Colonial...”: 269-270; Zavala, Silvio, “Ensayos sobre la colonización...”: 46-47, 50.

32. Filesi, Teobaldo. *Esordi del colonialismo e azione della Chiesa*. Como: Pietro Cairoli, 1968: 163-167 (“Nota bibliográfica relativa alle Bolle Alessandrine”); Borromeo, Agostino. “El pontificado de Alejandro VI: corrientes historiográficas recientes”, *El Tratado de Tordesillas y su época*, Luis A. Ribot García, Adolfo Carrasco Martínez, Luis Adao da Fonseca, coords. Madrid: Junta de Castilla y León, 1995: II, 1133-1151; Fernández de Córdoba Miralles, Álvaro. “El pontificado de Alejandro VI (1493-1503). Aproximación a su perfil eclesial y a sus fondos documentales”. *Revista Borja. Revista del Institut Internacional d’Estudis Borgians*, 2 (2008-2009): 201-309.

33. Manzano, Juan. “El Derecho de la Corona de Castilla al descubrimiento y conquista de las Indias de Poniente”. *Revista de Indias*, 3 (1942): 397-427; Manzano, Juan. “El sentido misional de la empresa de las Indias”. *Revista de Estudios Políticos*, 1 (1941): 103-120; Manzano, Juan. “¿Por qué se incorporaron las Indias a la Corona de Castilla?”. *Revista de Estudios Políticos*, 2 (1942): 95-124; Manzano, Juan. “Los justos títulos en la dominación castellana de Indias”, *Revista de Estudios Políticos*, 4 (1942): 267-309; Manzano, Juan. “La adquisición de las Indias por los Reyes Católicos y su incorporación a los reinos castellanos”. *Anuario Historia del Derecho Español*, 21-22 (1951-1952): 5-170; Manzano, Juan. *La incorporación de las Indias a la Corona de Castilla*. Madrid: Cultura Hispánica, 1948.

34. Rumeu de Armas, Antonio. “Colón en Barcelona”. *Anuario de Estudios Americanos*, 1 (1944): 433-524.

35. Rein, Adolf von. *Der Kampf Westeuropas um Nordamerika in 15 und 16 Jahrhundert*. Stuttgart-Gotha: Perthes, 1925: 275-279; Leturia, Pedro de. “Las grandes bulas misionales...”: 241-247.

36. Giménez Fernández, Manuel. *Nuevas consideraciones sobre la historia, sentido y valor de las bulas alejandrinas de 1493, referentes a las Indias*. Sevilla: Consejo Superior de Investigaciones Científicas-Escuela de Estudios Hispano-americanos, 1944: 28-29, 70-117.



namely that they should be understood as texts granted in succession and annulling one another, was described by Alfonso García Gallo as *la más genial y minuciosa*³⁷ of all those proposed at that time and was therefore very controversial. As expected, there were those who accepted his vision, such as Juan Manzano and Florentino Pérez-Embid³⁸, but others strongly disagreed, such as Constantino Bayle, José Zunzunegui, and Vicente Sierra. The illustrious historian responded to all of them.³⁹

Meanwhile, Armando Pirotto stated that the first *Inter caetera* had guaranteed the Castilian rights to conquer America; Giménez Fernández later claimed the bulls were generally documents for the Portuguese and Castilians that endorsed and guaranteed their rights over the ocean.⁴⁰ As for the *Inter caetera* of 3 May 1493, Armando Pirotto described it as *feudalizante, una real investidura feudal*,⁴¹ coinciding with the thesis formulated by Erich Staedler, which Ruggiero Romano later reformulated on a similar note.⁴² Alfonso García Gallo objected to this interpretation, arguing that the term *investiture* found in the first *Inter caetera* had disappeared in the second *Inter caetera* to prevent the donation from being understood as enfeudation. Álvaro Fernández de Córdoba has said that there was perhaps an attempt by the Holy See to enfeoff the discovered lands, but it is evident that such a purpose did not succeed because subsequent pontiffs never demanded from the Castilian kings the provision

37. "the most brilliant and meticulous".

38. Manzano, Juan. *La incorporación de las Indias...*; Pérez-Embid, Florentino. *Los descubrimientos en el Atlántico y la rivalidad castellano-portuguesa hasta el Tratado de Tordesillas*. Sevilla: Escuela de Estudios Hispano-americanos, 1948.

39. Bayle, Constantino. "Las bulas alejandrinas de 1493, referentes a las Indias". *Razón y Fe*, 132 (1945): 435-443; Bayle, Constantino. "Algo más sobre las Bulas alejandrinas". *Razón y Fe*, 134 (1946): 226-239; Zunzunegui, José. "Las bulas alejandrinas de 1493". *Revista de Derecho canónico*, 1 (1946): 249-252; Sierra, Vicente. "En torno a las Bulas alejandrinas de 1493". *Misionalia Hispanica*, 10 (1953): 72-122; Giménez Fernández, Manuel. "Algo más sobre las bulas: I. Rectificación de erratas y equivocaciones. II. Réplica al artículo del Rvdo. P. Bayle, S. I. III. Nuevos elementos a favor de nuestra tesis". *Anales Universidad Hispalense*, 8 (1945): 37-86; Giménez Fernández, Manuel. "Réplica al Sr. Zunzunegui". *Anales Universidad Hispalense*, 9 (1946): 115-126; Giménez Fernández, Manuel. "Todavía más sobre las letras alejandrinas de 1493, referentes a las Indias: réplica a D. Vicente D. Sierra". *Anales Universidad Hispalense*, 14 (1953): 241-301.

40. Pirotto, Armando. "La bula de Alejandro VI como título a la conquista de América". *Segundo Congreso Internacional de Historia de América*. Buenos Aires: Academia Nacional de la Historia, 1938: IV, 331-339; Giménez Fernández, Manuel. "América, 'Ysla de Canaria por ganar'". *Anuario de Estudios Atlánticos*, 1 (1955): 309-336; Antunes de Moura, Américo. "La posesión de la mer dans les Bulles d'Alexandre VI". *Actes du XXVIII^e Congrès International des Américanistes*. Paris: Musée de l'Homme-Société des Américanistes, 1947: 149 and following; Prien, Hans-Jürgen. "Las bulas alejandrinas de 1493". *Tordesillas y sus consecuencias: la política de las grandes potencias europeas respecto de América Latina. 1494-1898*, Karin Schüller, Bernd Schröter, eds. Frankfurt: Vervuert Iberoamericana, 1995: 11-28.

41. "feudalising, a real feudal investiture". Giménez Fernández, Manuel. "América, 'Ysla de Canaria por ganar...': 314; Pirotto, Armando. "La bula de Alejandro VI...": IV, 331-339.

42. Giménez Fernández, Manuel. "América, 'Ysla de Canaria por ganar...': 314; Staedler, Erich. "Die donatio alexandrina...": 363-402; Romano, Ruggiero. "Las bulas alejandrinas y el Tratado de Tordesillas: en los orígenes del feudalismo americano". *El Tratado de Tordesillas y su época*, Luis A. Ribot García, Adolfo Carrasco Martínez, Luis Adao da Fonseca, coords. Madrid: Junta de Castilla y León, 1995: III, 1541-1552.



of feudal vassalage for American donations, as they did from King Ferdinand for the kingdom of Naples.⁴³ However, there is no mention of arbitration.

Fernando Campo del Pozo does mention arbitration, although very incidentally because his work has a different focus. Contradictorily, he states that the bull did not constitute an act of simple arbitration, but later on classifies the intervention of Alexander VI as such.⁴⁴ With the same tenor, José Uriel Patiño Franco states it in a work of general nature, which is why we cannot expect him to be precise on the subject. He first points to the mediation of the pope as a sort of approval of the agreements between the two crowns, but then he expressly speaks of the arbitration of the Church between Castile and Portugal.⁴⁵ Carmen Monterilla Talens believes that it was a *mediación* in the dispute over some territories not occupied by Christian princes.⁴⁶

A study by Luis Weckmann was very interesting and comprehensive. He did not pay attention to the arbitration thesis, but postulated the theory of pontifical power or supremacy of the pope over all the islands (omni-island theory). However, he dealt with our subject at the beginning of his book by rejecting the arbitration thesis because historiography up to the first half of the 20th century was fundamentally flawed, namely it was placed in a modern perspective. Concepts such as arbitration, sovereignty, and international law only represent realities of the modern world. He felt it was necessary to historically frame the Alexandrine bulls with their numerous antecedents and unforeseen consequences given that the existence of a new continent was not foreseen at the time; this is why none of the protagonists could have imagined that the bulls could affect a new world and that their significance would become so great.⁴⁷

Commenting on such an international decision, it is clear that any arbiter is in no position of judicial superiority over the parties who have requested the intervention. Of course, it is deduced from this premise that the pope would have been empowered by the two peninsular kings to stand above their kingdoms in order to settle the dispute. It is also inferred that the arbitral agreement would not be a source of international law in itself, but that its quality as a judicial source would be limited only to the intervening parties that declared their consent to

43. García Gallo, Alfonso. "Las bulas de Alejandro VI y el ordenamiento jurídico de la expansión portuguesa y castellana en África e Indias". *Anuario de Historia del Derecho español*, 27-28 (1958): 288; Fernández de Córdova Miralles, Álvaro. *Alejandro VI y los Reyes Católicos. Relaciones político-eclesiásticas (1492-1503)*. Rome: Università della Santa Croce, 2005: 489.

44. Campo del Pozo, Fernando. *Los agustinos en la evangelización de Venezuela*. Caracas: Universidad Católica Andrés, 1979: 160.

45. Patiño Franco, José Uriel. *La Iglesia en América Latina. Un acercamiento histórico al proceso evangelizador eclesial en el Continente de la esperanza. Siglos XVI-XXI*. Bogotá: San Pablo, 2011: 71, 77.

46. "mediation". Morenilla Talens, Carmen. "Aristóteles, América y los Borja". *Desde las tierras de José Martí. Estudios lingüísticos y literarios*, Carmen Morenilla Talens, María Julia Jiménez Fiol, eds. Valencia: Universitat de València, 2001: 155.

47. Weckmann, Luis. *Las bulas alejandrinas de 1493 y la teoría política del papado medieval. Estudio de la supremacía papal sobre islas. 1091-1493*. México DF: Fondo de Cultura Económica, 1992: 19-26; García Gallo, Alfonso. "Las bulas de Alejandro VI...": 478.



submit themselves to the decision, whatever it might be. This would allegedly be a contract entered into by the kingdom of Castile and the kingdom of Portugal, which perfected by the subsequent ruling would be a source of law of a merely bilateral nature for the parties to the agreement.

With this understanding of the status of an arbiter, Weckmann believes that Alexander VI did not act as an arbiter and therefore rejects this interpretation. He says that a simple examination of the text of the two bulls is enough to realize that the pope appears as a *fons iuris* ("source of law"), and makes a concession, a donation, and a land endowment, more precisely of islands, in favor of Spain and Portugal. Antonio García y García also expressed similar opinions, although with some reservations.⁴⁸ As Antonio Rumeu de Armas has said, this interpretation must necessarily be put into context. In the medieval legal system, the pope enjoyed special consideration and honour based on dogmatic and historical arguments that the *orbis christianus* accepted, a doctrine developed by the medieval canonists that is known as *Dominium Mundi*. This doctrine defended the power of the pope to graciously grant and bestow the lands of infidels, provided that no Christian prince had acquired any rights over them.⁴⁹

It was later argued by Charles de Witte that pontifical intervention obeyed three principles, the origin of which predated the 15th century: first, the direction of the struggle against bellicose Islam; second, the authority of the pope over the members of the *Respublica christiana* and the concern for the expansion of the Church; and third, the mission of preaching the Gospel.⁵⁰ This orientation was also followed by José María Font Rius.⁵¹

Subsequently, far from the controversies unleashed by the ideas of Giménez Fernández and the responses of his opponents, historiography has had a more balanced tone, including Wilcomb Washburn, Francisco Mateos, German Monroy, and Paulino Castañeda.⁵² They followed the conclusions of Alfonso García Gallo with nuances, which we discuss below.

48. Weckmann, Luis. *Las bulas alejandrinas...*: 20-21; García y García, Antonio. "Las donaciones pontificias de territorios y su repercusión en las relaciones entre Castilla y Portugal", *Las relaciones entre Portugal y Castilla en la época de los descubrimientos y la expansión colonial*, Ana María Carabias, ed. Salamanca: Ediciones Universidad de Salamanca, 1996: 293-310; García y García, Antonio. *La donación pontificia de las Indias*. Salamanca: Universidad Pontificia de Salamanca, 1992. Incluido en García y García, Antonio. "La donación pontificia de las Indias", *Iglesia, Sociedad y Derecho*. Salamanca: Universidad Pontificia de Salamanca, 2000: IV, 481-501.

49. Rumeu de Armas, Antonio. *Colón en Barcelona*. Sevilla: Consejo Superior de Investigaciones Científicas-Escuela de Estudios Hispano-americanos de la Universidad de Sevilla, 1944: 7.

50. Witte, Charles de. "Les bulles pontificales et l'expansion portugaise au XV^e siècle". *Revue d'histoire ecclésiastique*, 48 (1953): 456-457.

51. Font Rius, José M. "En torno a la justificación de la dominación española en Indias". *Esto vir*, 1 (1953): 145-149.

52. Washburn, Wilcomb. "The meaning 'discovery' in the Fifteenth and Sixteenth Centuries". *The American Historical Review*, 68 (1962): 1-21; Mateos, Francisco. "Bulas portuguesas y españolas sobre descubrimientos geográficos". *Misionalia Hispanica*, 19/55 (1962): 5-34; 19/56 (1962): 129-168; Pinilla Monroy, Germán. "El justo título en la conquista de América". *Revista del Colegio Mayor de Nuestra Señora del Rosario*, 461-462 (1963): 37-53; Castañeda Delgado, Paulino. "La doctrina de la teocracia pontifical y



The in-depth study by García Gallo proposes the thesis of the *simultaneous concession* of the bulls as opposed to the previous thesis of the *successive concession* by Giménez Fernández. This interpretation indicates that the royal project on the discoveries is inserted in the continuity and cohesion of the whole history of the royal and papal interventions in the Atlantic since at least the middle of the 14th century. García Gallo opposed this arbitral thesis. Later in the present work, his arguments are mentioned in detail. In several contemporary works, Alberto de la Hera followed the line proposed by the previous scholar, and Silvio Zavala finally accepted his conclusions.⁵³ What doctrine has appreciated and received from this hypothesis is precisely this logical connection between the Portuguese precedents and the new Castilian realities.

Subsequently, the arbitration thesis has again been defended with more or less nuances. Gaetano Catalano, partly accepting this interpretation, has mentioned that the actions of Pope Alexander VI would be a pseudo-arbitration.⁵⁴ On the basis of the medieval doctrine of the lordship of the world and the dominion the pope had of the two swords (spiritual and temporal), José María Pérez Collados has indicated that a supreme authority would have been generated to act as an impartial and competent arbiter in the resolution of conflicts arising between the prince and his people, as well as between states. In this mission as a sovereign arbiter, several popes gradually developed a canonical order that Pérez Collados calls pontifical census law; it would regulate the right of the Holy See to collect regular taxes, but would also legalise the distribution of political influence in specific geographical areas between various states and specifically between Castile and Portugal.⁵⁵

Recently, María de Lourdes Bejarano Almada has relied on the previous work of Pérez Collados to express very incidentally that the pope became an impartial arbiter to solve inter-state conflicts during the 16th century. The author does not explain her reasons for this opinion, probably because her study has a different focus, that is, the origins of evangelisation in the American world.⁵⁶

The bulls would be interpreted by the Hispanic jurists of the modern era according to the strong royalism prevailing in Spain, which was based on the theory of the papal lordship over the world. The basis of the powers of the Crown of Castile over the Indies would be the Alexandrine bulls. However, the attack on these documents

su influencia en la controversia sobre los justos títulos de la conquista americana". *Revista de la Universidad de Madrid*, 12/48 (1963): 807-808; Castañeda Delgado, Paulino. "Las bulas alejandrinas y la extensión del poder indirecto". *Missionalia Hispanica*, 28 (1971): 215-248.

53. Hera, Alberto de la. "El vicariato regio de Indias en las bulas de 1493". *Anuario de Historia del Derecho Español*, 29 (1959): 317-349; Hera, Alberto de la. "El tema de las bulas indianas de Alejandro VI". *Estudios Americanos*, 19 (1960): 257-267; Zavala, Silvio. "La partición del mundo en 1493". *Memorias de El Colegio Nacional*, 6/4 (1969): 23-53.

54. Catalano, Gaetano. "Arbitrato pontificio", *Enciclopedia del Diritto*, Francesco Calasso, ed. Milan: Giuffrè, 1958: II, 994 and following.

55. Pérez Collados, José María. "En torno a las bulas alejandrinas: las bulas y el derecho censuario pontificio". *Anuario mexicano de Historia del Derecho*, 5 (1993): 239.

56. Bejarano Almada, María de Lourdes. "Las bulas alejandrinas: detonates de la evangelización en el Nuevo Mundo". *Revista de El Colegio de San Luis*, 6/12 (2016): 224.



by foreign writers began in the 18th century, especially those who participated in enlightenment thought, as studied by José María Mariluz Urquijo.⁵⁷

In the 18th century, there would clearly be a surge of acid criticism by foreigners towards the Spanish world. The Netherlander Cornelius de Pauw said that the bulls were the fruit of the “opportunism” of Alexander to ingratiate himself with Ferdinand and Isabella by *il se hâta de leur donner l’Amérique sans savoir encore où elle étoit située*; this is why the Alexandrine bulls constituted *l’extravagance inaudite d’un ecclésiastique ultramontain*.⁵⁸ For the French abbé Guillaume-Thomas Raynal, the bulls came from a *Par la suite de ce pouvoir universel et ridicule que les Pontifes de Rome s’étoient arrogé depuis plusieurs siècles, et que l’ignorance idolâtre de deux peuples également superstitieux, prolongeoit encore pour associer le ciel à leur avarice*.⁵⁹ However, there is no mention in enlightenment criticism of the alleged arbitration of the pope, but rather a general discrediting.

Neither does José María García Añoveros address the subject because he considers that the Alexandrine bulls were not spontaneously created, but rather respond to a whole tradition, style, spirit, and meaning that can be detected in the bulls granted during the 15th century to the Portuguese kings, as already indicated by Alfonso García Gallo.⁶⁰ Specialists who have recently dealt with the subject, such as Cayetano Bruno, Enrique Dussel, Ismael Sánchez Bella, and Antonio García y García, have insisted on the acceptance of the same thesis by relating the Portuguese and Castilian cases.⁶¹

Likewise, Josep Hernando dedicates several pages to our subject, which we summarise as follows. He states that the role of the Alexandrine bulls was secondary and subsidiary and was related to the pretensions of Portugal. It does not appear that the Catholic Kings admitted the supposed theocratics of the pope as the only and main judicial title to their dominion over the new islands and lands. They attributed a subsidiary role to the bulls, a defensive weapon, safe and effective against other papal privileges of the Portuguese kings. This is confirmed by the Treaty of

57. Mariluz Urquijo, José María. “La valoración de las bulas alejandrinas en el siglo XVIII”. *Anuario mexicano de Historia del Derecho*, 5 (1993): 167-177.

58. “giving them America without even knowing where it was”, “the unprecedented extravagance of an ultramontane ecclesiastic”. Pauw, Cornelius de. *Recherches philosophiques sur les américains ou mémoires intéressantes pour servir à l’histoire de l’espèce humaine*. Berlin: Georges Jacques Decker, 1768 : I, 79 and following.

59. “universal and ridiculous power that the popes of Rome had claimed for several centuries and the idolatrous ignorance of two equally superstitious peoples that still persisted in associating heaven with their avarice”. Raynal, Guillaume-Thomas. *Histoire philosophique et politique des établissements et du commerce des européens dans les deux Indes*. Genoa: Jean-Leonard Pellet, 1781: III, 62-63; Mariluz Urquijo, José María. “La valoración de las bulas alejandrinas...”: 171-172.

60. García Añoveros, Jesús María. *La monarquía y la Iglesia en América*. Valencia: Asociación Francisco López de Gomara, 1990: 31.

61. Bruno, Cayetano. *El derecho público de la Iglesia en Indias*. Salamanca: Instituto San Raimundo de Peñafort, 1967: 93-94, No. 4; Dussel, Enrique. *Historia General de la Iglesia en América latina*. Salamanca: Sígueme, 1983: I/1, 214; Sánchez Bella, Ismael. *Iglesia y Estado en la América española*. Pamplona: Ediciones Universidad de Navarra, 1990: 20; García y García, Antonio. “La donacion pontificale des Indes”. *Recherches de Science Religieuse*, 80 (1992): 491-512.



Tordesillas that was signed without the pope as well as the bull of confirmation of this treaty that none of the parties considered urgent. Hernando concludes that the concession of sovereignty was the obligation to evangelise, that is, the conversion of the infidels.⁶²

To a lesser extent, Enrique Alcántara Granados, with no knowledge of any decisive studies and therefore without analysis, has reaffirmed the arbitral actions of Alexander VI.⁶³ Ana María Carabias has followed this line with variations, expressing that in the conflicts between Christian monarchs during the late Middle Ages, the popes claimed to be the only arbiter. In some cases they adopted a neutral position, such as Eugene IV in 1443 with the bull *Rex regum*, and in other cases were openly favourable to Portugal, such as the emblematic bull *Romanus pontifex* (1455) by Nicholas V. The conception of arbitration is not considered here in a technical but very broad manner. Although the papacy granted itself legislative and judicial authority over Christianity in the case of the Alexandrine bulls, the author notes that the bulls of Alexander VI over the Indies had little practical effect on international relations, as neither France nor England recognised the universal “coercive” jurisdiction of the papacy, especially in temporal matters. Nevertheless, the author states that the pontiff established himself as árbitro y garante de la política colonial europea.⁶⁴

Citing a study by Pérez Fernández(?), María de Lourdes Berajano indicates that the action of Alexander VI was a donation *ad rem* and not *in re*, which means that he granted lordship over some lands and their inhabitants of which the recipients were not yet real lords. It was not therefore an actual subjugation that the Catholic Kings already had of those lands and people, but their decision to subjugate them.⁶⁵

This interpretation is corroborated by the news provided by the chronicler Antonio de Herrera (quoted below) that the prevailing opinion in the court of the Spanish monarchs was that the intervention of the papacy was not necessary to own the islands and lands discovered by Columbus. The chronicler does not refer to the arguments for this possible determination. The reason for this is none other than the recourse to *ius commune* because the Catholic Kings could have justified

62. Hernando, Josep. “Cristiandad, Conquista y Evangelización. De la obligación de evangelización al derecho al control de las instituciones evangelizadoras”, *Alessandro VI. Dal Mediterraneo all’Atlantico. Atti del convegno*, Maria Chiabò, Anna Maria Oliva, Olivetta Schena, eds. Rome: Pubblicazioni degli archivi di stato, 2004: 324 and following.

63. Alcántara Granados, Enrique. *Stigma “Indio”. Zur Struktur und Semantik Indigener Exklusion in Mexiko*. México DF: Transcrit Verlag, 2014: 59.

64. “arbiter and guarantor of European colonial policy”. Carabias, Ana María. “Política, economía y derecho en los orígenes de la globalización”, *De nuevo sobre los juristas salmantenses*, Javier Infante, Eugenia Torrijano, eds. Salamanca: Ediciones Universidad de Salamanca, 2015: 231-254 (especially 238-240).

65. I was not able to find the work of the scholar with the surnames “Pérez Fernández” that Bejarano Almada refers to in Bejarano Almada, María de Lourdes. “Las bulas alejandrinas...”: 238-239, n. 22. Is it Giménez Fernández? It was not found in the final bibliography either. Perhaps it is a citation of the author referred to at the end of the paragraph, that is, Pérez-Amador Adam, Alberto. *De legitimatione imperii Indiae Occidentalis. La vindicación de la empresa americana en el discurso jurídico y teológico de las letras de los siglos de Oro en España y los virreinos americanos*. Madrid: Vervuert Iberoamericana, 2011: 68.



their right to discover and occupy new islands and lands on the basis of this legal *ratio*, considering the lands as *res nullius*.

Ramón Valdivia Giménez states that the legitimacy of the colonisation of the Indies was implicit in the papal bulls. The donation was not an absolute but rather a conditional donation under the commitment to convert its inhabitants to the Catholic faith, which is why the title of pontifical donation was essentially missionary and for the extension of the faith.⁶⁶ Antonio García y García also expressed the view that the Alexandrine donation can be explained from the dualistic theory according to which the pope could do everything necessary to fulfill the spiritual mission of the Church in the world in its double aspect: the salvation of Christians and the evangelisation of those who were not yet Christians.⁶⁷

Mario Tedeschi deems that the only explanation for these documents is the preventive legitimisation of the occupation of the non-Christian territories to prevent controversies within the Catholic world (in fact, with Portugal). They were a political rather than a legal remedy based on the supremacy of the Church within the *respublica christiana*.⁶⁸

José Goñi Gaztambide is of the opinion that Alexander VI made a *donación liberal y onerosa*.⁶⁹ It was neither an arbitration nor the granting of a fiefdom nor a mere missionary division. It was not the application of the omni-insular pontifical theory, but rather the application of the conception that the pope was the lord of the world.⁷⁰ Gabriella Airaldi should be included in this line; she considers that Alexander VI was the person with the broadest jurisdiction at that time based on canon law that then covered the area and would later be called international law. However, the bulls were of relative value for the Iberian kingdoms until the treaties of Alcáçovas and Tordesillas were established. The bulls were based on the theocratic theory then in force, but were also influenced by the Spanish interests of a pope who had many ties to his country of origin.⁷¹

Luis Adão da Fonseca argues that not only are there many bonds, but the Alexandrine bulls must be placed in the context of several scenarios in which the pope expressed concern, such as the Turkish problem, the situation in Morocco, the Mediterranean gold economy, slaves, and maritime navigation. As for the bilateral differences, he indicates that the bulls manifest a spirit of formal equality, namely

66. Valdivia Giménez, Ramón. *El llamado a la misión pacífica: la dimensión religiosa de la libertad en Bartolomé de las Casas*. Madrid: Consejo Superior de Investigaciones Científicas, 2010: 130, 187, 344.

67. García y García, Antonio. "La donación pontificia...": 43; García Villoslada, Ricardo. "Sentido de la conquista de América según las bulas de Alejandro VI (1493)". *Antologica Annuia*, 24-25 (1977-1978): 381-452.

68. Tedeschi, Mario. "Le bolle alessandrine e la loro rilevanza giuridica". *Esplorazioni geografiche e immagine del mondo nei secoli 15 e 16*, Simonetta Ballo Alagna, ed. Messina: Grafo editor, 1993: 131-151.

69. "liberal and onerous donation". Goñi Gaztambide, José. "Bernardino López de Carvajal y las bulas alejandrinas". *Anuario de historia de la Iglesia*, 1 (1992): 108.

70. Goñi Gaztambide, José. "Bernardino López de Carvajal...": 108.

71. Airaldi, Gabriella. "Il ruolo di Alessandro VI nelle scoperte geografiche", *Roma di fronte all'Europa*, Maria Chiabò, Silvia Maddalo, Massimo Miglio, eds. Rome: Ministero per i Beni e le Attività Culturali, 2001: I, 220.



that the actions of the pope would have been progressively oriented towards an equidistant position between the two peninsular monarchies.⁷²

Without specifically referring to our subject, Fernando Della Rocca reasons that the Alexandrine bulls were particularly relevant pontifical that respond to the value and nature of constitutions.⁷³ León Lopetegui says that these documents are in line with an ideological tradition, which was invoked in cases of requests from Christian princes since the late Middle Ages.⁷⁴

Massimo Miglio has recently expressed that the Catholic Kings requested the intervention of the papacy not so much as a recognition of the theocratic presuppositions of papal power but rather as a counterpoint to the pontifical privileges to the Portuguese Crown. In his opinion, the geographical discoveries that characterised the 15th century later articulated the relations between the peninsula and the Church and gave the papacy a role as arbiter.⁷⁵

We have not found any new specific studies on the subject that convenes us.

3. Analysis of the Alexandrine intervention

3.1 Intervention provoked by the Christian princes

The intervention of Pope Alexander VI in the problem of the Indies was not spontaneous but rather provoked by the Catholic Kings, which is demonstrated by their correspondence with Columbus (4 August 1493) when he prepared his second voyage. Together with other documents, it directly alludes to the request made to the Holy See at a difficult time when it was foreseen that the lands discovered by him would be under Portuguese sovereignty: *Ya sabéis cómo habíamos enviado a Roma por una bula sobre esto de las islas e tierra que habéis descubierto y está por descubrir; agora nos es venida y vos enviamos un traslado della autorizado.*⁷⁶

72. Fonseca, Luis Adão da. "Alexandre VI e os descobrimentos portugueses". *Roma di fronte all'Europa*, Maria Chiabò, Silvia Maddalo, Massimo Miglio, eds. Rome: Ministero per i Beni e le Attività Culturali, 2001: I, 247; Fonseca, Luis Adão da. "Alessandro VI e l'espansione oceanica: una riflessione", *Alessandro VI. Dal Mediterraneo all'Atlantico. Atti del convegno*, Maria Chiabò, Anna Maria Oliva, Olivetta Schena, eds. Rome: Pubblicazioni degli archivi di stato, 2004: 232-233.

73. Della Rocca, Fernando. "Bolla", *Novissimo Digesto Italiano*, Antonio Azara, Ernesto Eula, eds. Turin: Unione Tipografico-Editrice Torinese, 1964: II, 442-443.

74. Lopetegui, León. "A propósito de la teocracia pontificia y la conquista de América". *Estudios de Deusto*, 19 (1971): 131-151; Castell, Vicente. "Las bulas alejandrinas: precedentes, génesis y efectos inmediatos", *Alejandro VI, papa valenciano*, Ángel Sánchez, Vicente Castell, Mariano Peset, eds. Valencia: Generalitat Valenciana, 1994: 35-81.

75. Miglio, Massimo. "Continuità e fratture nei rapporti tra Papado e Spagna nel Quattrocento", *En los umbrales de España. La incorporación del Reino de Navarra a la monarquía hispana. Actas de la XXVIII Semana de Estudios Medievales de Estella (18 al 22 de julio de 2011)*. Pamplona: Gobierno de Navarra, 2012: 295.

76. "You know how we had sent to Rome for a bull about the islands and land that you have discovered and are about to discover; it has now come to us and we are sending you a transfer of the authorised". Fernández Navarrete, Martín. *Colección de los viajes y descubrimientos que hicieron por mar los españoles, con*



We also have the letter that the Catholic Kings wrote on 7 June 1493 to their ambassadors in Rome —Bernardino López de Carvajal, Bishop of Cartagena and Juan Ruiz de Medina, Bishop of Badajoz— asking them to request from the pope the granting of a bull together with the Latin text of the preces that had to be presented for the bull *Piis Fidelium*.⁷⁷

As for the bulls *Inter caetera* —that of the *donation* on 3 May 1493 and the *partition* on 4 May 1493— both explain at length the missionary zeal of the Catholic Kings as well as the discovery itself, but do not in any way allude to a request on their part.⁷⁸ On the contrary, the text says that the donation was spontaneously made by the pontiff without anyone petitioning for or requesting it. However, this necessity to make it so explicitly clear that it occurs spontaneously reveals that there has been a petition: *Debemus [...] vobis etiam sponte et favorabiliter concedere [...] motu proprio, non ad vestram vel alterius pro vobis super hoc nobis oblate petitionis instantiam*.⁷⁹

The promulgation of the papal bull *inter* dated 4 May, known as *partition*, must have surprised the Catholic Kings, who saw that the line proposed by them had been moved one hundred leagues to the West. Although it has been suggested that Alexander VI acted as arbiter by dividing the Atlantic in two, it must be emphasised that he acted under the unilateral arrangement of Castile; it is clear that this line does not divide the ocean, but rather delimits the lordship of the Indies.⁸⁰

Neither did Alexander VI literally express that his intervention had been requested to promulgate the other two bulls in favor of the Catholic Kings: the *Eximie devotionis* and *Dudum siquidem*. Nevertheless, the historian knows that both documents were requested by the Spanish kings.

In contrast, when King Don Manuel of Portugal asked the same pope, with the help of the Cardinal of Lisbon, to obtain the bull *Ineffabilis* in 1497, we are reminded of the request to which he was willing to accede:

Sane pro parte tua nobis nuper per venerabilem fratrem nostrum Georgium, episcopum Albanensem, Sanctae Romanae Ecclesiae cardinalem Ulixbonensem nuncupatum, expositum fuit, quod tu, qui more tuorum progenitorum intendis infidelium expugnationi vacare, desideras, si forsan contingeret aliquas civitates, castra, terras et loca seu dominia infidelium ditioni tuae subiici seu tributum solvere, et te in eorum dominum cognoscere vellet

varios documentos inéditos concernientes a la marina castellana y a los descubrimientos españoles en Indias. Madrid. Imprenta Nacional, 1825: II, 90 (doc. No. 62).

77. Torre, José de la. “Unos documentos de 1494 sobre la raya o línea en el mar Océano”. *Anuario de Estudios Americanos*, 5 (1948): 744-745.

78. Bull *Inter caetera* (3 May 1493). Rumeu de Armas, Antonio. *El Tratado de Tordesillas*. Madrid: Mapfre, 1992: 269. Bull *Inter caetera* (4 May 1493). Remesal, Agustín. *La raya de Tordesillas*. Salamanca: Junta de Castilla y León, 1994: 135.

79. Bulls *Inter caetera* (3-4 May 1493). García Gallo, Alfonso. “Las bulas de Alejandro VI...”: appendix 16, § 3, § 8.

80. Rumeu de Armas, Antonio. *El Tratado de Tordesillas...:* 123; Llorens Asensio, Vicente. “Dos bulas de Alejandro VI...”: 1-24; Prien, Hans-Jürgen. *Christianity in Latin America*. Leiden-Boston: Brill, 2013: 21-22.



[...] *Quare pro parte tua nobis fuit humiliter supplicatum, ut tibi in praemissis opportune providere de benignitate apostolica dignaremur.*⁸¹

Both kingdoms later committed themselves during the negotiations of the Treaty of Tordesillas not to resort to the pope to introduce modifications to any of the already promulgated bulls. However, a strange clause was included, which requested papal intervention to confirm the agreements or *capitulations*. Pedro Borges has said that this petition came from John II of Portugal, who was interested that the transfer of the line of demarcation of the jurisdictions in the Atlantic stand firm, but it did not come to pass due to the bad relations that he had with the pontiff. After the death of John II in 1495, circumstances changed with the arrival of Don Manuel on the Portuguese throne, who maintained good relations with the Catholic Kings, making the urgent confirmation of the treaty unnecessary. Finally, the Portuguese request was induced when, after the death of Queen Isabella, Ferdinand the Catholic planned an expedition for spices in 1505.⁸²

It was then that Don Manuel asked the Holy See to confirm the Treaty of Tordesillas, as can be seen in the bull issued for this purpose in 1506 called *Ea quae pro bono pacis*, which states:

*Exhibita siquidem nobis nuper pro parte carissimi in Christo filii nostri Emanuelis, Portugalie et Algarbiorum regis illustris, petitio continebat quod [...]. Quare pro parte prefate Emanuelis regis nobis fuit humiliter supplicatum [...]. Nos igitur [...] huiusmodi supplicationibus inclinati [...].*⁸³

3.2 The pontifical action *motu proprio*

Studies of the documentary formulae of the papal chancery have revealed very interesting political undertones. With the expressions *motu proprio* and *certa scientia*, evident connections have been established with the absolutist pretensions of the kings; this can be seen in Jacques Krynen's study to demonstrate the transposition

81. Bull *Ineffabilis* (1 June 1497). Hernáez, Francisco Javier. *Colección de bulas, breves y otros documentos relativos a la Iglesia de América y Filipinas*. Brussels: Imprenta de A. Vromant, 1879: II, 836-837.

82. Borges Morán, Pedro. "La anómala ratificación pontificia del Tratado de Tordesillas", *Historia y Humanismo: Estudios en honor del profesor Dr. D. Valentín Vázquez de Prada*, Jesús María Usunáriz Garayoa, ed. Pamplona: Ediciones Universidad de Navarra, 2000: I, 317-329.

83. Bull *Ea quae pro bono pacis* (24 January 1506). Hernáez, Francisco Javier. "Colección de bulas...": II, 837-838; García, José Manuel. "O Tratado de Tordesillas e a política papal face à expansão ibérica", *Comemorações do V Centenario do Tratado de Tordesillas na Santa Sé*. Lisboa: Comissão Nacional para as Comemorações dos Descobrimientos Portugueses-Embaixada de Portugal junto da Santa Sé, 1994: 9-43; Vas Mingo, Marta Milagros del. "Las bulas alejandrinas y la fijación de los límites a la navegación en el Atlántico", *El Tratado de Tordesillas y su época*, Luis A. Ribot García, Adolfo Carrasco Martínez, Luis Adao da Fonseca, coords. Madrid: Junta de Castilla y León, 1995: II, 1071-1089.



produced in France, which is very similar to what happened in Castile a quarter of a century later.⁸⁴

It is symptomatic that the intervention of the pontiff has been *formally* presented as spontaneous and unprovoked since the mid-fifteenth century. Even when a request that is known to have occurred is silenced, the pope declares that he is acting “spontaneously” or *motu proprio*, as it was then technically indicated.

With this expression—and others that are repeated in the documents—we want to emphasise that the pontiff does not act under pressure or against his will and even less so by recognising a pre-existing right of some of the parties for which he is asked to make a declaration. On the contrary, he spontaneously intervenes in such a way as to imply that even without a request (*preces*) he would have taken the same decision.

As Alfonso García Gallo has rightly expressed, this same spontaneity was employed by the Roman Curia in the Middle Ages when it created obligatory legal precepts or independent legal principles, although this action was not motivated by an immediate request or proposal and did not therefore constitute an answer to a previous question. It was then that the Roman form of the rescripts was preferred because it better suited this intervention modality. The decision with the *motu proprio* formula indicates a direct and immediate jurisdiction according to Arthur Giry, and it was therefore rejected in France because it was considered to be an attack on the freedoms of the Gallican Church.⁸⁵

In the bulls conceded to the Catholic Kings by Alexander VI in 1493 concerning the Indies, very similar expressions are used to indicate the spontaneous intervention of the pontiff, although we undoubtedly know that it was induced. The bulls *Inter caetera* of 3 and 4 May 1493 express: *motu proprio, non ad vestram vel alterius pro vobis super hoc oblate petitionis instantiam, sed de nostra mera liberalitate et certa scientia ac de apostolice potestate plenitudine*.⁸⁶ The bull *Eximie devotionis* of 3 May 1493 is stated in the following terms: *motu proprio et de certa scientia ac de apostolice potestatis plenitudine [...] motu simili, non ad vestram vel alterius pro vobis super hoc oblate petitionis instantiam, sed de nostra mera liberalitate ac eisdem scientia et apostolice potestate plenitudine*.⁸⁷ The bull *Dudum siquidem* by the same pope and in the same year does so with concepts taken almost literally from the previous ones: *Motu proprio et de certa scientia ac de apostolice potestatis plenitudine*.⁸⁸

84. Krynen, Jacques. “De nostre certaine science... Remarques sur l’absolutisme législatif de la monarchie médiévale française”, *Renaissance du pouvoir législatif et genèse de l’État*, André Gouron, Albert Rigaudière, dirs. Montpellier: Publication de la Société d’histoire du droit écrit et des institutions des anciens pays de droit écrit, 1988: 131-144.

85. Giry, Arthur. *Manuel de Diplomatie*. Paris: Félix Alcan, 1925 : II, 703; Fresne, Charles du. *Glossarium mediae et infimae latinitatis*. Graz: Akademische Druck-u Verlagsanstalt, 1954 (1883-1887): V, 533; García Gallo, Alfonso. “Las bulas de Alejandro VI...”: 655.

86. García Gallo, Alfonso. “Las bulas de Alejandro VI...”: appendix 16, § 8, 802.

87. García Gallo, Alfonso. “Las bulas de Alejandro VI...”: appendix 17, § 3-4, 808-809.

88. García Gallo, Alfonso. “Las bulas de Alejandro VI...”: appendix 19, § 2, 814-815.



Manuel Giménez Fernández, with his usual critical spirit and —needless to say— extraordinary knowledge of the sources, noted that the formula *motu proprio* was no more than a stylistic clause, one of the many rhetorical resources of the chancery; it was therefore not appropriate to have included it in the two *Inter caetera* and in the *Eximiae devotionis* because the bulls were requested.⁸⁹ Alfonso García Gallo, accepting the argument of the actual request, tried to find the explanation for this formula in the apostolic doctrine of the papacy in the technical formality that must be found in the theological-dogmatic sphere because the papal decision under this *motu proprio* clause reveals that what is granted is created by virtue of the free decision of the pope, or at least that is how the Apostolic See intends it to appear. What is requested can be and is often provoked; however, technically it does not constitute a response or resolution to what is being solicited. In other words, it is a tradition rooted in the procedures of the Apostolic Chancery.

The fact that the bulls have been *antedated* would probably be related to this appearance of a lack of solicitation. The authors who follow Herman Vander Linden, who was the first to draw attention to antedating, have given no explanation other than the fact that such action sought to antedate the effects of the concession vis-à-vis Portugal. This implies that the Catholic Kings would have attempted to display some older titles so that acts subsequent to the bull would benefit from pontifical sanction. The truth is that it is not easy to understand the usefulness of antedating the bulls of Alexander VI.⁹⁰

To summarise, in line with the previous texts, the pontiff generally expresses that he intervenes in the following way: firstly, with full knowledge of the matter (*ex certa scientia*) and with prior deliberation (*maturaque prius desuper deliberatione prehabita*), although we know that he has been informed by the parties because his intervention in these cases refers to situations that are beyond his natural sphere of affairs, such as the donation of land or the delimitation of geographical areas. Secondly, he also does it out of mere liberality (*de nostra mera liberalitate*), which means generously. Finally, he does so by virtue of the full power of the Holy See (*apostolice potestatis plenitudine*), namely as Vicar of Christ and lord of the world.⁹¹

The *motu proprio* clause was only used in those documents in which the pope conceded, confirmed, or delimited the temporal rights of the Christian princes, such as in the Portuguese papal bulls *Romanus pontifex* in 1455 by Nicholas V and *Aeternis Regis* in 1481 by Sixtus IV, and in the Castilian papal bulls, the two *Inter caetera*, *Eximiae devotionis*, and *Dudum siquidem*, all of them promulgated by Alexander VI in 1493. By contrast, this expression was not included in cases involving matters of ecclesiastical discipline or in those in which the intervention of the pontiff went through the strict channels of canon law; for example, when it was a question of granting crusading privileges or rights in spiritual matters to the churches in the

89. Giménez Fernández, Manuel. *Las bulas alejandrinas de 1493 referentes a las Indias*. Sevilla, Consejo Superior de Investigaciones Científicas-Escuela de Estudios Hispano-Americanos, 1944: 133.

90. Vander Linden, Herman. “La prétendue inféodation...”: 434; García Gallo, Alfonso. “Las bulas de Alejandro VI...”: 570.

91. García Gallo, Alfonso. “Las bulas de Alejandro VI...”: 653-659.



discovered places, as in the Portuguese bull *Inter caetera* in 1456 by Calixtus III, or of dispensing with the canonical prohibition on trading with infidels mentioned in *Preclaris tue devotionis* in 1437 by Pope Eugene IV.

Without a doubt, the *motu proprio* formula reveals that Alexander VI did not intervene as arbiter, that is, with power granted by the kings of Portugal and Castile to rule on a dispute, but his action was adjusted to strictly diplomatic formulations and gestures that show him acting spontaneously.

Finally, it is noted that this expression *motu proprio* does not exactly correspond to reality, as was already studied, but is rather a formula designed to emphasise the independence of the papacy with regard to any request. His intervention in the claims presented by the kingdoms of Castile and Portugal in the process of overseas expansion is based on an apostolic power received from God and the apostles Peter and Paul, as vicar of God on earth. He therefore has his own power and not the power bestowed on him by men.

3.3 *Dispensable intervention*

The Christian kings requested the intervention of the pope, but it was not always considered necessary or indispensable and therefore did not occur in many situations, as was the case in the 14th and 15th centuries not only with the Portuguese and Castilians, but also with the Italians, Catalans, Mallorcans, and French, who sailed, traded, and occupied places in the Atlantic without requesting any intervention from the popes. In all these cases, the lords or princes considered that their rights were founded on the superiority of the *orbis christianus* over the infidels and in the first discovery and occupation of their lands. Clearly, these rights predated the pontifical sanction and were based on their status as Christians and/or Christian princes.

To understand these behaviours, one has to consider the validity of fully established customary practices applied in these cases that made custom a source of law and which could also prevail over the law. As Alfonso García Gallo has accurately stated, the influence of this mentality leads one to ask whether the bulls gave rise to the right to acquire dominion over territories inhabited by infidels, therefore making them necessary and indispensable, or whether they only confirmed a prior right.⁹²

Although unnecessary, the pontifical concession was convenient because it strengthened and extended the rights of the Christian princes over the discovered territories inhabited by infidels under their power; it was logical that recognition by the pope gave rise to an unquestionable certainty. As Paulino Castañeda Delgado has said, the title established on the bulls prevailed over that of invention (discovery)

92. García Gallo, Alfonso. "Las bulas de Alejandro VI...": 612.



and occupation, which was a legitimate title to acquire them according to the law of the time.⁹³

The discovery and settlement of the Azores and Madeira by the Portuguese kings did not require the intervention of the pope with a bull to ensure the possession and dominion of those islands. It must be understood that the acquisition of these islands was considered legitimate by way of discovery and occupation; therefore, a bull was considered unnecessary in the face of these prior rights.⁹⁴

When the news of the discovery of the Indies by Columbus arrived in 1493, the chronicler Antonio de Herrera expressed that in the Court of the Catholic Kings *grandes letrados tuvieron opinión que no era necesaria la confirmación ni donación del pontífice para poseer justamente aquel orbe*.⁹⁵ Horst Pietschmann stated that it was not necessary because a donation bull had no legally binding force that could match the international treaties, referring to the Treaty of Alcáçovas.⁹⁶

However, if until then the monarchs had shown little interest in pontifical intervention, the Catholic Kings promptly went to Alexander VI to request all at once, according to Alfonso García Gallo, three bulls to equalise the privileges previously granted to Portugal in Africa.⁹⁷ That interpretation is known as the *simultaneous concession* of those documents, which precludes another called *successive concession* supported by both Manuel Giménez Fernández and Juan Manzano, claiming that the Alexandrine bulls were obtained successively.⁹⁸

Giménez Fernández argued that the bulls were mere pragmatic resources for the Catholic Kings to remove the obstacles to their projected political monopoly on the economic benefits of the discovery of Columbus. These obstacles were the greedy Andalusian sailors and lords as well as John II of Portugal who wanted this same monopoly. Christopher Columbus was also an obstacle with his ambitious project

93. Castañeda Delgado, Paulino. "La interpretación teocrática de las bulas alejandrinas". *Anuario mexicano de Historia del Derecho*, 5 (1993): 31; Castañeda Delgado, Paulino. "Las bulas alejandrinas y el Tratado de Tordesillas. Trayectoria jurídica de la expansión luso-castellana". *Communio. Commentarii Internationales de Ecclesia et Theologia*, 27 (1994): 35-62.

94. Rojas Donat, Luis. "Posesión de territorios de infieles: las Canarias y las Indias". *Coloquio de Historia Canario-Americana*, 10 (1994): 107-140; Rojas Donat, Luis. "Dos análisis histórico-jurídicos en torno al descubrimiento de las Indias: la acesión y la ocupación". *Revista de Estudios Histórico-jurídicos*, 19 (1997): 153-166; Manzano, Juan. "La adquisición de las Indias...": 99-110; Morales Padrón, Francisco. "Descubrimiento y toma de posesión". *Anuario de Estudios Americanos*, 12 (1955): 321-380.

95. "great scholars had the opinion that neither the confirmation nor the donation of the pontiff was necessary to possess that land". Herrera, Antonio de. *Historia general de los hechos de los castellanos en las Islas y Tierra Firme del Mar Océano*. Madrid: Real Academia de la Historia, 1934: década I, book II, chapter 4, 138.

96. Pietschmann, Horst. *Staat und staatliche Entwicklung am Beginn der spanischen Kolonisation Amerikas*. Münster: Aschendorff Verlag, 1980: 61; Hera, Alberto de la. "La primera división del océano entre Portugal y Castilla", *El Tratado de Tordesillas y su época*, Luis A. Ribot García, Adolfo Carrasco Martínez, Luis Adao da Fonseca, coords. Madrid: Junta de Castilla y León, 1995: II, 1051-1070.

97. García Gallo, Alfonso. "Las bulas de Alejandro VI...": 653.

98. Manzano, Juan. "Nuevas hipótesis sobre la historia de las bulas de Alejandro VI referentes a las Indias", *Memoria del IV Congreso Internacional de Historia del Derecho Indiano*. México DF: Universidad Nacional Autónoma de México, 1976: 327-359.



expressed in the excessive demands made in the Sante Fe Capitulations. Finally, the ambitious Alexander VI considered the bulls as answers to the political and economic benefits that King Ferdinand had made in favour of his sons. With all these arguments, it was to be expected that the thesis of Giménez Fernández would ignite the well-known controversy in his time.⁹⁹

4. Conclusion

The Alexandrine bulls are one of the manifestations of the decline of the theory of the lordship of the world attributed to the medieval pontificate. Francisco de Icaza Dufour states that granting the sovereignty of the Indies to the Crown of Castile was the last demonstration of the universal power of the papacy, marking the end of the Middle Ages and the beginning of the modern era. For this reason, its doctrinal foundation is in the Middle Ages, but its consequences are projected onto the modern world.¹⁰⁰

The thesis of the Alexandrine arbitration is today completely superseded because it assumes that when the pontiff acts as arbiter he would do so with power received from the parties appointing him. As indicated by Antonio García y García, the arbitration theory is based on the unproven and undemonstrable assumption in the current state of research that the two parties in dispute (the kings of Portugal and Castile) submitted the dispute to the arbitration of Pope Alexander VI.

According to the arguments by Alfonso García Gallo, we believe that this thesis is untenable for the following reasons: firstly, the bulls were not always considered necessary or indispensable even though they were convenient. Secondly, in the case of the *Alexandrine bulls*, these were arranged only by Castile, that is, by one of the parties. Thirdly, Portugal recognised the authority of the pope but not fully in accordance with the *Inter caetera* of 4 May 1493; for this reason it bilaterally sought and succeeded in modifying the provisions of the Treaty of Tordesillas of 1494. Finally, the pontiff used language that is not proper for an arbiter, as can be seen in the expressions *concedimus et donamus*, but for one who decides independently. In other words, he did not proceed, as it is referred to legally, ruling in justice, as if he were obliged to declare or establish a right that the intervening parties each prejudged in favour of themselves.

The Catholic Kings turned to the pope and did not consider him to be a political arbiter between them and the Portuguese monarch, but rather as the authority legitimising some previously acquired rights by virtue of the discovery or as a donor of lands on which a certain title of ownership already existed. They went to Rome to confirm the rights to the discovered and undiscovered territories, regardless

99. Giménez Fernández, Manuel. "Nuevas consideraciones...": 171 and following.

100. Icaza Dufour, Francisco de. "Idea cortesiana de la bula". *Anuario Mexicano de Historia del Derecho*, 5 (1993): 151; Hera, Alberto de la. "El tema de las bulas...": 257-267; Hera, Alberto de la. *Iglesia y Corona en América española*. Madrid: Mapfre, 1992: 39.



of what reasons they considered to favour them, whether the donation or the discovery. However, this request also benefited the pope by confirming his moral authority and temporarily positioning him within the *orbis christianus* because, with agreements and disagreements, the Christian nations recognised him as having a certain jurisdictional supremacy according to the political circumstances.

The interventions that we have studied can only be considered inadequate as acts of arbitration because the essential and typical elements of the arbitral institution are not found. The freedom of choice of the arbiter is absent, and clearly the binding force of his decision is also lacking; his decision does not derive from the agreement between the parties but from the general principles of canon law. This body of norms conferred upon the pontiff the power to intervene in temporal affairs either because of sin (*in temporalibus ratione peccati*) or a lack of justice (*ratione defectus iustitiae*).

The decisions of the Holy See *inter gentes* assumed the nature of the acts of higher authority in the exercise of its powers, which, in other words, meant that it acted not as a private arbiter devoid of coercive power but rather as a legitimate authority. The proceedings were shrouded in a content of moral authority (*apostolica auctoritate*), especially when the parties confronted each other. Far from acting as an arbiter, in these cases the pope constituted himself as a mediator whose actions were aimed at inducing the parties to a direct settlement. In fact, the papal interventions were known to take place outside the jurisdictional channels of canon law, namely the pope was asked to intervene to obtain, for example, the appropriation of land.

Finally, Alexander VI favoured the Catholic Kings with many political advantages, especially in the newly discovered lands given that in the face of possible Portuguese claims, he supported the legitimacy of the Castilian discovery of the Indies. On this point, the Borgia pope introduced a novelty of incalculable consequences, that is, he did not follow the tradition of his predecessors who favoured the spirit of the Crusade. Enlightened by a universal missionary outlook, he imposed on the Catholic Kings the evangelisation of the indigenous population of the Indies by sending missionaries. Although the Spanish monarchs requested to have the same prerogatives in the new lands that Portugal enjoyed in Africa, namely the spirit of the Crusade, the truth is that Alexander VI changed the tenor of the concession. Moving away from the policy of holy war against the infidel that had characterised the Portuguese bulls, the *Alexandrine bulls* of 1493 on the Indies emphasised the missionary spirit.

