

# The *Requerimiento* in the Old World: Making Demands and Keeping Records in the Legal Culture of Late Medieval Castile

---

YANAY ISRAELI

The *requerimiento* (requirement) was among the most famous legal instruments of Spanish colonization in the Americas, a legal ritual of conquest designed to both assert and legitimate rule over others.<sup>1</sup> Upon first contact with indigenous groups, invading parties would read a written statement

1. For useful introductions and summaries, see Silvio Arturo Zavala, *Las instituciones jurídicas en la conquista de América* (Madrid: Imprenta helénica, 1935), 90–94; Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* (Philadelphia: University of Pennsylvania Press, 1949), 31–36; Alfonso García-Gallo, *Manual de historia del derecho español*, vol. 1 (Madrid: Artes Gráficas y Ediciones, 1977), 667–69; James Muldoon, *Popes, Lawyers and Infidels: The Church and the Non-Christian World, 1250–1550* (Philadelphia: University of Pennsylvania Press, 1979), 140–42; Francisco Morales Padrón, *Teoría y leyes de la conquista* (Madrid: Ediciones Cultura Hispánica del Centro Iberoamericano de Cooperación, 1979), 331–37; Paja Faudree, “Reading the *Requerimiento* Performatively: Speech Acts in the Conquest of the New World,” *Colonial Latin American Review* 24 (2015): 456–78, at 456–57; Andrew W. Devereux, “Declared Enemies and Pacific Infidels: Spanish Doctrines of ‘Just War’ in the Mediterranean and Atlantic,” *Republics of Letters* 5 (2018): 1–17; Tamar Herzog, *A Short History of European Law: The Last Two and a Half Millennia* (Cambridge, MA: Harvard University Press, 2018), 156–57; David Abulafia, “Servants, Slaves or Subjects? Jews, Muslims and Indians as Royal Property,” in *From Al-Andalus to the Americas (13th to 17th Centuries): Destruction and Construction of Societies*, ed. Thomas F. Glick, Antonio Malpica, Félix Retamero, and Josep Torró (Leiden & Boston: Brill, 2018), 359–82, at 376–77.

---

Yanay Israeli is an assistant professor of Spanish and Latin American Studies at the Hebrew University of Jerusalem <[yanay.israeli@mail.huji.ac.il](mailto:yanay.israeli@mail.huji.ac.il)>. The author gratefully acknowledges the help of Gautham Rao and the anonymous reviewers of *Law and History Review*. He also thanks Ari Bryen, Teresa Davis, Yonatan Glazer Eitan, Thomas Green, Daniel Hershenzon, Claudia Kedar, Ron Makleff, Sara McDougall, Morten Oxenboell, Sonya Özbey, and Shai Zamir, as well as Miranda Brown and Ian Moyer and the other participants in a workshop hosted by Fragments: Interdisciplinary Approaches to the Study of Ancient and Medieval Past at the University of Michigan, where an initial version of this project has been presented.

*Law and History Review* February 2022, Vol. 40, No. 1

© The Author(s), 2022. Published by Cambridge University Press on behalf of the American Society for Legal History. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted re-use, distribution, and reproduction in any medium, provided the original work is properly cited.

doi:10.1017/S0738248021000602

asserting Spanish sovereignty over the “islands and mainland of the ocean sea,” granted by the pope, by dint of his universal jurisdiction, to the kings of Spain. The statement, whose recitation had to be recorded by a notary, demanded that the addressees obey Spanish rule and allow preachers to indoctrinate them in the Catholic faith. If they did so, the text promised that they would be spared and offered protection as free vassals of the crown; if they did not, war would be waged upon them and they could legally be subjected to a variety of punishments, including enslavement and death.<sup>2</sup> The instruction to perform the *requerimiento* was officially given following the *Junta* of Burgos, which had been convened by Fernando the Catholic in 1512 to address increasing criticism—most notably from the Dominicans—of the Spaniards’ treatment of the *indios*, and to counter growing concerns over the legality of conquest.<sup>3</sup> As Tamar Herzog describes it, the *requerimiento* “sought to transform Indian resistance to the invasion of their lands into an act of legal disobedience that would validate the launching of just war.”<sup>4</sup> Along similar lines, Paja Faudree has proposed considering the *requerimiento* as a performative speech act. Once recited, the statement imposed a new status on indigenous groups, who could now be regarded as usurpers of jurisdiction, while at the same time transforming the relationship between these groups and the Spaniards into one of just war.<sup>5</sup>

2. A copy of this text has survived at the Archivo General de las Indias, Audiencia de Panamá, Leg. 233, lib. 1, fol. 49–50v. The text is also cited by Gonzalo Fernández de Oviedo y Valdés, *Historia general y natural de las Indias*, Vol. 3 (Madrid: Real Academia de la Historia, 1853), 29–30. For a modern edition and other sixteenth-century descriptions of the *requerimiento*, see García-Gallo, *Manual*, Vol. 2, 655–58; and Morales Padrón, *Teoría*, 338–45.

3. For this context, see Hanke, *The Spanish Struggle*, 17–30; Morales Padrón, *Teoría*, 305–10; and Patricia Seed, “‘Are These Not Also Men?’ The Indians’ Humanity and Capacity for Spanish Civilisation,” *Journal of Latin American Studies* 25 (1993): 629–52. As Morales Padrón, *Teoría*, 333, notes, there are indications that, on certain occasions, Spanish captains encountering indigenous groups would make similar demands and threats even before the *Junta* of Burgos. The *requerimiento* composed after this *Junta* created a standard and more thorough version that was meant to be used routinely and widely. The author of this text was probably the Spanish jurist, Juan López de Palacios Rubios. For the latter, see Silvio Zavala’s introduction in Juan López de Palacios Rubios, *De las islas del mar Océano* (Mexico City: Fondo de Cultura Económica, 1954). See also Anthony Pagden, *The Fall of Natural Man: The American Indian and the Origins of Comparative Ethnology* (Cambridge: Cambridge University Press, 1986), 50–56.

4. Herzog, *A Short History*, 156.

5. Faudree, “Reading the *Requerimiento*,” 460. See also Paja Faudree, “How to Say Things with Wars: Performativity and Discursive Rupture in the *Requerimiento* of the Spanish Conquest,” *Journal of Linguistic Anthropology* 22 (2012): 182–200. It is important to note that the concept of just war not only rendered the expropriation of indigenous land legal, but also helped to legitimize indigenous slavery, since captives taken in a just war could legally be sold as slaves. In fact, labeling campaigns against indigenous groups as

While acknowledging the crucial role that the *requerimiento* came to play in the process of Spanish colonization, this article traces its roots back to the legal culture of late medieval Castile. To do this, I focus not on the content of the statement read by the Spaniards in the Americas, but on what I see as the ritual core of the *requerimiento* as a legal act; namely, the presentation of a demand or warning to an addressee and its official recording. Drawing on a range of archival, normative, and narrative sources, I demonstrate that in late medieval Castile, the *requerimiento* was primarily known as a ritual of demand making and record making used in diverse processes of dispute management. Indeed, long before it emerged as a tool for justifying rule over native Americans, the *requerimiento* was practiced among Castilians—elites and ordinary people alike—in the context of civic disputes. As a legal ritual, the Castilian *requerimiento* of the later Middle Ages reflected contemporary understandings of lawful conduct, of fairness and appropriateness in conflict, and of the role of speech acts and documents in constituting social relations.

Links between the *requerimiento*, as practiced in Spanish America, and certain medieval legal traditions have been the subject of a number of scholarly works. According to one hypothesis, the *requerimiento* originated in Islamic rituals of war. Patricia Seed, the main proponent of this argument, has pointed out a series of similarities between the *requerimiento* and the ritualized warning that Muslims were instructed to perform before waging jihad.<sup>6</sup> According to Seed, the main idea of the *requerimiento*—“summoning people to acknowledge a superior religion or be attacked”—was similar to “the core of the summons as understood in the Islamic legal tradition of the Iberian Peninsula.”<sup>7</sup> The similarities between these rituals extended to the model of conquest that they prescribed, which offered the occupied protection as long as they acknowledged the invaders’ rule and paid tribute. Seed has suggested that Iberian Christian kings appropriated the Islamic model and applied it in their conquests of Muslim territories. They then, in the sixteenth century, extended this model and adapted it for use in the colonies.<sup>8</sup>

---

“just war” became a standard practice through which Spanish raiding parties justified the trafficking of *indios* along American coasts, a trade that remained prosperous well into the 1530s. See Nancy van Duesen, *Global Indios: The Indigenous Struggle for Justice in Sixteenth-Century Castile* (Durham: Duke University Press, 2015), 160.

6. Patricia Seed, *Ceremonies of Possession in Europe’s Conquest of the New World, 1492–1640* (New York: Cambridge University Press, 1995), 69–99.

7. *Ibid.*, 78.

8. Many scholars of Spanish America have accepted seed’s hypothesis as plausible. For examples, see José Rabassa, *Writing Violence on the Northern Frontier: The Historiography of Sixteenth-Century New Mexico and Florida and the Legacy of the*

Other scholarly interpretations have connected the *requerimiento* to ongoing discussions within Christendom about papal jurisdiction, the *dominium* of non-Christians, and the conditions for just war.<sup>9</sup> From a legal point of view, one of the challenges associated with the Spanish conquests in the Americas was how to explain the enslavement of the *indios* and the appropriation of their lands, given the precepts of Roman law according to which such actions were legal only when carried out in the context of a “just war”—with the latter being understood as defensive in nature.<sup>10</sup> In a tract titled “On the islands of the Ocean Sea,” the Spanish jurist Juan López Palacios Rubios, who was also credited with formulating the language of the *requerimiento*, offered a solution to this conundrum. Asserting the position that “the pope possessed dominium over both secular and spiritual matters, and that this could be exercised over both Christians and non-Christians,”<sup>11</sup> Palacios Rubios argued that the inhabitants of the newly “discovered” islands did, in fact, exercise dominium over their lands. But this was the case only until they were informed of the arrival of Christianity. From that moment forward, they had to accept the authority of the church. If they resisted, just war could be waged upon them.<sup>12</sup> Seen in this light, the *requerimiento* operated as a device through which Native Americans were to be formally informed about Christianity.<sup>13</sup>

Without negating the *requerimiento*'s legal and ideological functions in the Spanish conquests in the Americas, this article draws attention to the

---

*Conquest* (Durham and London: Duke University Press, 2000), 84–85; Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History* (Cambridge: Cambridge University Press, 2002), 52; Matthew Restall, *Seven Myths of the Spanish Conquest* (New York, Oxford University Press, 2004), 164; Joanne Rappaport and Tom Cummins, *Beyond the Lettered City: Indigenous Literacy in the Andes* (Durham and London: Duke University Press, 2012), 29–30; and Faudree, “Reading the Requerimiento,” 456. However, as Devereux has recently pointed out in “Declared Enemies,” Christians in the medieval Mediterranean did not see themselves as legally obliged to warn Muslims before attacking them, considering them to be declared enemies who had already rejected Christianity. A similar point is made by Herzog in *A Short History*, 156.

9. Zavala, *Las instituciones*, 91–2; Padrón, *Teoría*, 331–33; James Muldoon, “John Wycliffe and the Rights of the Infidels: The *Requerimiento* Re-Examined,” *Americas* 36 (1980): 301–16; Muldoon, *Popes, Lawyers and Infidels*, 140–42; Antonio García y García, “El *requerimiento* y las conquistas españolas en America,” in *Amar, Sentir y Viver a História*, ed. Joaquim Veríssimo Serrão (Lisbon: Edições Colibri, 1995), 83–103; Anthony Pagden, “The School of Salamanca, the *Requerimiento*, and the Papal Donation of Alexander VI,” *Republics of Letters* 5 (2018):1–10; Herzog, *A Short History*, 154–57; and Devereux, “Declared Enemies.”

10. On these issues, see Herzog, *A Short History*, 15–16.

11. Pagden, “The School of Salamanca,” 2.

12. Devereux, “Declared Enemies,” 6.

13. *Ibid.*

significance and role of this procedure in the social life of late medieval Castile. Situating the *requerimiento* within the world of the Castilian town or village, I analyze how it was deployed by disputants of varied social ranks and what meanings and functions it assumed. The article shows that, in Castile, the *requerimiento* was an integral element of a range of political and judicial processes, including petitioning the monarch for redress. Moreover, as a tool of dispute management, it often served as a means to circumvent violence, providing parties with a formal and legally recognized venue from which to assert social and political claims or pressure opponents and local officials. Reflecting upon this context expands and gives texture to existing juridico-intellectual accounts of the *requerimiento* and, in turn, produces a more complex and socially grounded understanding of its transformation in the colonial setting. Rather than morphological continuity—from Iberian to American conquest—the story this article sets out to tell is one of change over time, as a legal ritual known to many from local conflicts in their towns and villages acquired new uses and meanings in the process of colonial domination.

In this sense, the extension of the *requerimiento* to Spanish America provides a perfect example of the general pattern that Anthony Stevens-Arroyo has identified as “a perceived need to legitimate Spanish society by referring to established medieval practice.”<sup>14</sup> Borrowing from Stevens-Arroyo, the *requerimiento* can be seen as pertaining to “a kind of political language that employs the grammar of the medieval experience, but with words which have acquired new lexical meanings.”<sup>15</sup> In short, the *requerimiento* is one example of a broader process in which established Castilian norms were re-signified in the context of conquest and colonial othering. This article thus contributes to a more general rethinking of the legal history of Spanish conquest, one that looks to the shifting meanings of legal practices as they traveled back and forth to the colonies.

What follows is organized around five interlocking arguments: first, that the *requerimiento* of the later Middle Ages was a ritual of claims making used in a wide array of social and political contexts—not solely in contexts of conquest or just war; second, that although it was performative, the *requerimiento* in Castile also had an important dialogical component expressed in the production of a public record, in which the response of the addressee was also incorporated; third, that the *requerimiento* was not confined to the world of the nobility, but was, in fact, performed

14. Anthony Stevens-Arroyo, “The Inter-Atlantic Paradigm: The Failure of Spanish Medieval Colonization of the Canary and the Caribbean Islands,” *Comparative Studies in Society and History* 35 (1993): 515–43, at 528.

15. *Ibid.*

regularly by ordinary people—for example, as part of the popular recourse of petitioning; fourth, that disputants in Castile employed the *requerimiento* for a range of purposes, such as publicizing claims, threatening opponents, or putting pressure on local judges and officials; and fifth, that the late medieval *requerimiento* should be situated against the backdrop of a Romano-canonical procedural tradition of judicial warnings extended to adversaries in civic disputes. In the concluding section, I return to the colonial setting to suggest that when the Spaniards introduced the *requerimiento* to the Caribbean, they emptied it of some of its original meanings, while also imbuing it with new ones.

### 1. In Late Medieval Castile, the *Requerimiento* Was a Ritual of Claim Making Used in Various Social and Political Contexts

That the *requerimiento* in late medieval Castile was a ritual of claim making is primarily attested to by the existence in various Castilian archives of notarial acts dating from the fourteenth and fifteenth centuries that record this ritual.<sup>16</sup> Known in Castilian as *testimonios de requerimiento* (“testimonies of requirements”), these documents shed light on the basic features of this procedure. To begin with, they show that the *requerimiento* had to consist of a physical encounter between a claimant and an addressee, in the course of which the former presented the latter with a demand and requested their compliance. Claimants had to conduct this act themselves, or they could employ a procurator to whom full powers of attorney had been delegated. Moreover, the *requerimiento* had to be carried out in the presence of at least two witnesses and a notary (*escribano*). The latter would authenticate and read aloud any document presented by the claimant, as well as attest to the act of claim making by drawing up the *testimonio*, a document that functioned as a record of the encounter.

Like its colonial successor, the late medieval *requerimiento* was characterized by an interplay of oral utterances and written records. In fact, in many cases, it involved the presentation and reading of several documents. A *requerimiento* conducted in November of 1468 in the castle of Zafra in Extremadura provides a good illustration.<sup>17</sup> On this occasion, the nobleman Pedro Fernández de Velasco appeared on behalf of Princess Isabel of Castile before the warden of the castle and displayed three documents: a notarized letter of attorney that appointed him to serve as the princess’ procurator, a

16. For relevant examples from different archives, see the documents cited in notes 23–27.

17. Archivo General de Simancas (hereafter AGS), Cámara de Castilla (hereafter CCA), Diversos de Castilla, leg. 40, no. 43.

royal decree of King Enrique IV that affirmed a recent pact made with Isabel according to which the castle of Zafra shall be surrendered to her, and a third document, “a deed of requirement” (*escritura de requerimiento*) specifying Fernández de Velasco’s intention to take control of the castle on behalf of his mistress.<sup>18</sup> The *testimonio de requerimiento*, a record found today in the royal archives at Simancas, indicates that Fernández de Velasco was accompanied in this act by a notary from a nearby village, and that a number of witnesses—a few men from the castle, as well as one of Fernández de Velasco’s own servants—were also present. During the encounter, the notary read the three documents aloud, one after the other. He then recorded the act of claims making and drew up the *testimonio*. Copies of the three documents were incorporated into this record.<sup>19</sup>

Other *testimonios* describe similar sequences. This suggests that the display, reading, and production of documents was at the very heart of the *requerimiento* as a ritual. In fact, like Fernández de Velasco, many claimants and procurators would prepare a written statement of demands in advance. In the act itself, they would hand over this document to the notary to be read to the addressee and then copied into the *testimonio*. “A deed of requirement” (*escritura* or *escrito de requerimiento*),<sup>20</sup> “a deed of requirement written in paper” (*escrito de requerimiento escrito en papel*),<sup>21</sup> “a requirement written in paper” (*requerimiento escrito en papel*),<sup>22</sup> and

18. *Ibid.*

19. *Ibid.*

20. Archivo Histórico de la Nobleza, Osuna, C.379, D.23-24; Archivo Municipal de Sevilla, Sección X, 1443, Noviembre-Diciembre, fol. 6v; Agustín Gómez Iglesias, *Libro de acuerdos del Concejo Madrialeño (1464–1600), tomo II (1486–1492)* (Madrid: Ayuntamiento de Madrid, 1970), 110; Carmelo Luis López y Gregorio del Ser Quijano, *Documentación medieval del Asocio de la Extinguida Universidad y Tierra de Ávila, Vol. I* (Ávila: Institución Gran Duque de Alba, 1990), 817; Jesús Ángel Solórzano Telechea, *Colección diplomática del Archivo Municipal de Santander* (Santander: Fundación Marcelino Botín, 1995), 254; and Bonifacio Palacios Martín y Carlos de Ayala, *Colección diplomática de la orden de Alcántara: 1157–1494* (Madrid: Editorial Complutense, 2000), 829.

21. Archivo Histórico de la Nobleza, Baena, C.422, D.1-2; Archivo Histórico de la Nobleza, Baena, C.253, D.328; Solórzano Telechea, *Colección*, 130; Blas Casado Quintanilla, *Documentación del Archivo Municipal de Ávila, Vol. 4 (1488–1494)* (Ávila: Institución Gran Duque de Alba, 1999), 40; and Javier Enríquez Fernández, Concepción Hidalgo de Cisneros Amestoy y Adela Martínez Lahidalga, *Colección documental del Archivo Histórico de Bilbao, 1473–1500* (San Sebastian: Eusko Ikaskuntza, 1999), 804.

22. AGS, CCA, Personas, leg. 3, no. 41; Elisa Álvarez Llopis, Emma Blanco Campos y José Ángel García de Cortázar, *Colección diplomática de Santo Toribio de Liébana* (Santander: Fundación Marcelino Botín, 1994), 471; and Balbino Velasco Bayón, *Colección documental de Cuéllar, 934–1492* (Cuéllar: Ayuntamiento de Cuéllar, 2010), 531.

“a letter of requirement” (*carta de requerimiento*),<sup>23</sup> were the main terms used in the records to refer to these statements. In other cases, we are told that parties “made a requirement” (*fizieron un requerimiento*) or simply “required,” without mentioning whether such acts included the reading of a written statement.<sup>24</sup> In yet other cases, the language used in the sources creates the impression that the claimant presented the demand orally. In any event, the word “*requerimiento*” stands in these records both for the document stating the demand and for the ritual of claims making itself.

As the example of Princess Isabel’s *requerimiento* suggests, the *requerimiento* was part of the Castilian world of diplomacy and high politics. Royal chronicles from the fifteenth century provide multiple examples of this. According to the chronicle of Juan II, this king sent messengers to the city of Ávila to “require” control over certain towers held by the supporters of his cousin and rival, the king of Navarra.<sup>25</sup> In another episode, Juan II sends his procurators, including one of the chief royal notaries, to the courts at Navarra and Aragon in order to “require and warn” (*requiesen é amonestasen*) his cousins not to enter his kingdom accompanied by troops.<sup>26</sup> King Enrique IV, we read in another chronicle, sent messengers to deliver a *requerimiento* to a group of nobles and churchmen who declared their allegiance to his half-sister, Isabel, demanding that they return to his service.<sup>27</sup> Similar descriptions are found in other contemporary chronicles as well.<sup>28</sup>

23. Irune Zumalde Igartua, *Colección documental del Archivo Municipal de Oñati (1149–1492)* (Donostia: Eusko Ikaskuntza, 1994), 115; and Antonio Gomariz Marín, *Colección de documentos para la historia del reino de Murcia, vol. 20: Documentos de los Reyes Católicos (1492–1504)* (Murcia: Academia de Alfonso X el Sabio, 2000), 697.

24. Ángel-Luis Molina Molina, *Colección de documentos para la historia del reino de Murcia, Vol. 7–8: Documentos de Pedro I* (Murcia: Academia de Alfonso X el Sabio, 1978), 398; Mateo Bautista Bautista, María Teresa García García y María Isabel Nicolás Crispín, *Documentación medieval de la iglesia catedral de León* (Salamanca: Universidad de Salamanca, 1990), 69; Tomás Sobrino Chomón, *Documentación del archivo municipal de Ávila, Vol. 2 (1436–1477)* (Ávila: Institución Gran Duque de Alba, 1999), 267; Luis Vicente, and Díaz Martín, *Colección documental de Pedro I de Castilla, 1350–1369, Vol. 4* (Valladolid, Junta de Castilla y León, Consejería de Educación y Cultura, 1997), 130; Carmelo Luis López, *Documentación del archivo Municipal de Ávila, Vol. 3 (1478–1487)* (Ávila: Institución Gran Duque de Alba, 1999), 74; Casado Quintanilla, *Documentación*, 45; and Velasco Bayón, *Colección*, 1207.

25. “Crónica de Juan II,” in *Crónicas de los Reyes de Castilla*, ed. Cayetano Rosell, Biblioteca de Autores Españoles, 68 (Madrid: Rivadeneyra, 1887), 559.

26. *Ibid.*, 452.

27. Aureliano Sánchez Martín, ed., *Crónica de Enrique IV de Diego Enríquez del Castillo* (Valladolid: Universidad de Valladolid, 1994), 308. See also *ibid.*, 366.

28. For examples, see Pedro López de Ayala, “Crónica del rey don Pedro,” in *Crónicas de los Reyes de Castilla*, ed. Cayetano Rosell, Biblioteca de Autores Españoles, 66 (Madrid:



On some occasions, *requerimientos* were performed prior to waging war on an enemy. The chronicle of Juan II reports that when the king received news that the king of Navarra and his followers were approaching Medina del Campo “to make certain *requerimientos*,” he ordered the citizens of the town to take up arms and prepare for battle.<sup>29</sup> According to an account written in Burgos toward the end of the fifteenth century, in the beginning of the Castilian succession war, when King Fernando II came to the city to lay siege on its castle, he first “ordered to require and he indeed required” the warden to surrender it.<sup>30</sup> *Requerimientos* of this kind may have also been presented to the Muslim defenders of certain castles in the war against Granada.<sup>31</sup>

Yet, as a legal ritual, the *requerimiento* clearly encompassed other types of claims and circumstances. Thus, after winning a lawsuit against the Count of Medinaceli, the noblewoman Elvira de Ayala sent her procurator to “require” the count to comply with the court’s ruling, which granted her control over the village of Gibraleón. The *testimonio* suggests that the procurator and the notary surprised the count while he was traveling. The ritual took place in a street in Salamanca, in the presence of some local witnesses, a number of the counts’ squires, and the count himself, who “sat on the back of his mule.”<sup>32</sup> In a similar way, the procurator of the noble Diego Fernández de Quiñones traveled to the town of Astorga to perform a *requerimiento* to another noble, Pedro Álvarez Osorio. Fernández de Quiñones heard that Álvarez Osorio was collecting the purveyance rights (*yantar*) from a certain village, whose lordship he had recently purchased. On behalf of Fernández de Quiñones, the procurator had a notary read Álvarez Osorio “a written deed of requirement” that informed him of the purchase of the village and demanded that he cease collecting tribute.<sup>33</sup>

---

Rivadeneira, 1875), 554; Pedro López de Ayala, “Crónica del rey don Juan, primero de Castilla e de León,” in *Crónicas de los Reyes de Castilla*, ed. Cayetano Rosell, Biblioteca de Autores Españoles, 68 (Madrid: Rivadeneira, 1887), 77; Juan de Mata Carriazo, ed., *Crónica del Halconero de Juan II, Pedro Carillo de Huete* (Madrid: Espasa-Calpe, 1946), 48–49, 406, 490, 492; Juan de Mara Carriazo, ed., *Hechos del Condestable don Miguel Lucas de Iranzo* (Madrid: Espasa-Calpe, 1940), 147; and Diego de Valera, *Crónica de los reyes Católicos*, ed. Juan de Mata Carriazo (Madrid: José Molina, 1927), 172–73.

29. “Crónica de Juan II,” 583.

30. Archivo Municipal de Burgos, Sección Histórica, no. 3097.

31. According to the chronicler, Andrés Bernáldez, on a number of occasions, King Fernando II sent messengers to require certain Muslim fortresses and towns to surrender. See his *Historia de los Reyes Católicos, Vol. I* (Granada: José María Zamora, 1856), 156, 170, 196.

32. Archivo Histórico de la Nobleza, Osuna, c.379, no. 23–4.

33. Archivo Histórico de la Nobleza, Baena, C.253, D.328.

In the following pages, we shall look more closely into some of the functions and meanings that *requerimientos* assumed within processes of dispute management. For now, let us just distinguish between two basic scenarios in which late medieval Castilians conducted this ritual. The first involved a claimant demanding that an addressee comply with a royal decree or judicial ruling issued in his or her favor. The second consisted of a demand to desist from infringing on the claimant's rights, to make amends for injuries that the addressee had caused, or to act in some other way so that the claimant's rights could be preserved. In this scenario, no official ruling or decree was needed. Essentially, the *requerimiento* functioned here as a sort of a warning, a signal that the claimant intended to take further action, often of a legal nature, against the addressee.

## 2. The Late Medieval *Requerimiento* Was Performative, but It also Had an Important Dialogical Component

In her study on the *requerimiento* in Spanish America, Faudree writes that: "in formal terms, the *requerimiento* appears to be quintessentially performative: as it is read, speech becomes action as social relations between the Indians and the Spaniards are transformed."<sup>34</sup> The *requerimiento* in late medieval Castile needs to be understood along similar lines. It was performative because it rendered a claim official in a way that transformed the status of the relations between claimants and addressees. Once a *requerimiento* had been conducted, the addressee could not pretend to be ignorant of the demand, and could be considered as having been given a fair opportunity to make amends. In this sense, the *requerimiento* established a social fact that, as will be discussed in further detail below, could have both moral and legal significance. Yet, the *requerimiento* was not just a speech act. While its performative effect certainly depended on an oral communication of the demand to its addressee, the recording of this communication—that is, the production of the *testimonio*—was equally important. In fact, at least from a legal point of view, the lack of a *testimonio* could render the entire procedure meaningless, preventing the claimant from demonstrating that a *requerimiento* had indeed been conducted. The presence and collaboration of the notary were therefore crucial: When notaries refused to record *requerimientos* or to provide the *testimonio* to the claimant—something that happened on occasion, whether because the addressee was a powerful or fearful individual or due to some other partisan propensity or hostility on

34. Faudree, "Reading the *Requerimiento*," 460.

the part of the notary—they essentially neutralized the performative effect that the *requerimiento* was meant to generate.

According to Faudree, sixteenth-century critics had already questioned the performativity of the *requerimiento* in America. What authors like Bartolome de Las Casas argued in this regard was that the conditions needed for the *requerimiento* to function as a performative speech act in fact never existed in the New World, both because in many cases the *indios* could not understand the text recited to them and because they did not receive the proper opportunity to respond.<sup>35</sup> Such criticisms are imbued with new meaning if we remember that, in fifteenth-century Castile, *requerimientos* did have an important dialogical component. As noted, upon presentation of the demand to the addressee, the latter was requested to declare whether or not they were willing to fulfil it. Furthermore, the notary was obliged to document the addressee's response and incorporate it into his testimony.

Evidence from the fifteenth century indicates that Castilians normally responded to the *requerimientos* addressed to them, and that many of them took such responses quite seriously. For example, when Princess Isabel's procurator demanded control over the castle of Zafra, the warden showed his obedience to the royal decree by ceremoniously placing the document on his head and blessing the king, a reaction that the notary made sure to record.<sup>36</sup> This, however, did not mean that the warden intended to surrender the castle to the procurator. In fact, he rejected the latter's demand, presenting a written statement of his own, in which he declared his intention to turn to the monarch and ask him to reconsider his decree.<sup>37</sup> Revealed here is an awareness of the importance of the written representation of the *requerimiento*. While the warden had no problem disregarding the royal command, he still cared about the depiction of his response in the record, assuming that it might be examined at some point by his superiors. Following the ceremonial protocol and ensuring that it was recorded by the notary allowed him to avoid coming across as categorically insubordinate.

In certain cases, addressees requested time before declaring their official response to the *requerimiento*, which allowed them to consider their course of action and sometimes to seek legal counsel. In 1417, when the procurator of one of his rivals appeared at his house in Seville accompanied by a

35. *Ibid.*, 469.

36. AGS, CCA, Diversos de Castilla, leg. 40, no. 43, fol. 496v.

37. *Ibid.*, fol. 498r. In effect, the warden invoked the famous Castilian precept of "obedience without compliance." Regarding this concept, see Benjamín González Alonso, "La fórmula 'Obedézcase pero no se cumpla' en el Derecho castellano de la Baja Edad Media," *Anuario de historia del derecho español* 50 (1980): 469–88.

notary and presented him with a *requerimiento*, the Andalusian lord Alonso Pérez de Guzmán called his own notary and instructed him to draw up a statement of response. The latter was then read to the procurator and incorporated into the *testimonio*. What is interesting about this case is not only the delay in Pérez de Guzmán's response, but also the involvement of two notaries, one from each side. This may indicate that Pérez de Guzmán distrusted the notary hired by his opponent, and it also suggests that the *testimonio* was the product of a process of negotiation. At least in this case, the two parties seem to have participated together in producing the record. Concerns over the representation of demands and responses may also explain why, in so many instances, claimants and addressees employed written statements. Such statements saved time for the notaries who drew up the *testimonios* because they could instantly be copied into the record. At the same time, copying such statements allowed accuracy, affording disputants a greater degree of control over how their words were recorded.

### 3. Ordinary Castilians also Engaged in *Requerimientos*

It is not easy to find evidence for *requerimientos* conducted by non-nobles prior to the final quarter of the fifteenth century, but this has more to do with the kind of sources that have come down to us—typically scanty or sketchy when it comes to the political and legal life of non-elite Castilians—than with the latter's lack of engagement in this practice. Indeed, when a particularly rich municipal archive did survive, it is sometimes possible to trace documentation pertaining to *requerimientos* conducted by commoners earlier in the fifteenth century. Local records from Cúellar, a small town some 50 km southeast of Valladolid, show the people of this town, and particularly the representatives of the municipal council, performing *requerimientos* in various conflicts and negotiations with neighboring communities and lords over issues such as jurisdictional rights, the usage of resources, and the collection of tributes and taxes. Additionally, on various occasions, claimants from outside Cúellar appeared before the municipal council to present their own *requerimientos*.<sup>38</sup>

One principal venue in which ordinary Castilians commonly performed *requerimientos* was in the process of petitioning the monarch for redress. In Castile, as in other late medieval polities, overseeing the administration of justice was regarded as a chief royal duty. Furthermore, it was the

38. Velasco Bayón, *Colección*, 528–30; 531–33; 739–43.

execution of this duty that provided the monarchy with one of its main justifications for interfering in local jurisdictions. Although petitioning the Castilian monarch for redress became a well-established practice as early as the fourteenth century, it is only during the reign of Isabel I and Fernando II (1474–1504) that we can study it in depth, thanks to the survival (for the first time in Castile) of a substantial part of the royal archives, including tens of thousands of royal registers. These records attest to the massive scale of petitioning under the so-called Catholic Kings and to its increasing popularity as a tool for drawing the central government into local disputes. In fact, in certain years during this period, there were thousands of Castilians who traveled to royal centers to present petitions.

In Castile, the main royal institution that handled such complaints was the Royal Council, which functioned as a court of equity and had the authority to administer justice through an expedited procedure.<sup>39</sup> In response to petitions, the Royal Council would issue royal decrees (“letters of justice”) containing commands made in favor of the claimant.<sup>40</sup> The *requerimiento* was integral to the petition-and-response process because, after obtaining a royal decree, the petitioner would have to return to his or her locality, present the document to its addressee, and then “require” their compliance with the royal command. Such *requerimientos* involved notaries and witnesses, and they were conducted according to the same principles previously outlined. Thus, in the final quarter of the fifteenth century alone, the petition-and-response process brought thousands of Castilians to perform *requerimientos* in front of fellow townsmen and villagers. Drawing on the decrees that they obtained, many demanded that their adversaries pay reparations, return property that had been taken, or otherwise desist from injurious behavior. Others “required” the execution of decrees that summoned their adversaries to trial at the Royal Council or ordered local judges and magistrates to perform their duty by investigating complaints, ruling on cases, or cancelling unjust incarcerations.

Most of the *testimonios* that such *requerimientos* produced did not survive, for they were distributed by the notaries to the parties. However, if the addressee refused to comply with the royal command, the petitioner had

39. On the Royal Council, see Gustavo Villapalos Salas, *Los recursos contra los actos de gobierno en la Baja Edad Media. Su evolución histórica en el reino castellano (1252–1504)* (Madrid: Inst. de Estudios Administrativos, 1976); Salustiano de Dios, *El Consejo Real de Castilla (1385–1522)* (Madrid: Centro de Estudios Constitucionales, 1982); and José María Monsalvo Antón, *La construcción del poder real en la Monarquía castellana (siglos XI–XV)* (Madrid: Marcial Pons, 2019), 352–58.

40. These decrees would sometimes lead to a full legal proceeding conducted by judges appointed by the Royal Council. However, they also marked an extrajudicial recourse that could lead to a resolution of the conflict on the basis of the royal command alone.

the right to return to the Royal Council to complain. In such circumstances, to demonstrate that the royal decree had indeed been announced, petitioners would normally submit the *testimonio*. María González, a widow from Cáceres, did so in 1479, after the royal magistrate stationed in her town refused to carry out a letter of justice instructing him to return four of her oxen that he had confiscated.<sup>41</sup> In a case from 1491, the procurator of Gil Paz, a silversmith from Palencia who was imprisoned for debt, appeared before the Royal Council with a *testimonio* showing how the local authorities of Palencia refused to release him, despite being “required” by a letter of justice to do so.<sup>42</sup> The *Cámara de Castilla* section of the *Archivo General de Simancas* retains many similar *testimonios* dating from the end of the fifteenth and the beginning of the sixteenth centuries.<sup>43</sup>

The records also suggest that many petitioners engaged in *requerimientos* prior to taking their cases to the Royal Council. Alfonso Yañez, a citizen of Andújar, petitioned for redress after his mule had been stolen during an urban riot. According to the petition, after the riot, Yañez approached a certain neighbor who had bought his mule and then resold it, and “required” him to pay the value of the animal. Since the neighbor was not willing to do so, Yañez took his complaint to the Royal Council. He requested that the councilors force the man to pay him reparations.<sup>44</sup> In a second petition submitted on the same day, Yañez recounted his efforts to recover a large stock of barley that was also stolen during the same riot. Again, he approached the person who held his barley and “asked and required” him to return it or pay its value. Although Yañez repeated these actions several times, this person also refused to make amends.<sup>45</sup> It was fairly common for petitioners to report that, prior to taking their cases to the Royal Council, they had confronted their adversaries and “required” them to pay reparations. Yucef Arrobas, a citizen of Trujillo, claimed to have contacted the man who had kidnapped him while he was traveling to the market of Medina del Campo, demanding the return of 14,000 maravedís, which he had been forced to pay to his

41. AGS, CCA, Personas, leg. 12.1, González, María.

42. AGS, CCA, Personas, leg. 20.2, Paz, Gil. See also AGS, Registro General del Sello (hereafter RGS), September of 1491, fol. 198.

43. Given the lack of a detailed catalogue for the *Cámara de Castilla*'s documentation, it is difficult to tell how many of these records are extant. In my estimation, which is based on skimming through *legajos* dating from the period between 1475 and 1510, their number is in the hundreds.

44. AGS, RGS, December of 1478, fol. 42.

45. *Ibid.*, fol. 28: “... e diz que como quier que algunas vezes ha pedido e requerido al dicho Luys Navarro que le diese e pagase los mrs. que valya la dicha çevada ... diz que lo non ha querido nin quiere fazer, poyendo a ello sus escusas e dilaciones yndevidas.”

attacker in order to ransom himself.<sup>46</sup> A similar claim was made by a group of merchants from Cuenca and Toledo, who were robbed on their way to the market in Zafra. The knight responsible for the robbery, they argued in their petition, refused to return their goods, despite being “required” to do so many times.<sup>47</sup> The representatives of the village San Roman de la Cuba also claimed to have “required” reparations many times before petitioning the Royal Council. The addressee, in this case, was the warden of a neighboring castle who had seized two mules that belonged to the villagers. According to their testimony, a representative of the community approached the warden and demanded that he return the animals or pay their value.<sup>48</sup>

Did such pre-petition *requerimientos* also involve the production of a notarial record? There are reasons to believe that many of them did. At least in some cases, the *testimonios* of such *requerimientos* have come down to us. In other cases, the royal decree mentions the existence of a *testimonio*.<sup>49</sup> Abraham Abenjamín, a Jewish petitioner from Toro, claimed that, before turning to the Royal Council, he had approached the royal magistrate in his town and “required” him to investigate his complaint against a fellow Jew. According to Abenjamín, when the magistrate had failed to provide him justice, he tried to obtain a copy of the *requerimiento* from the notary who had recorded it, but the latter refused.<sup>50</sup> Although there is no indication that in order to receive a letter of justice petitioners had to perform a pre-petition *requerimiento*—the Royal Council certainly granted letters of justice to parties who mentioned no such *requerimiento*—it appears that, at least on some level, it was expected. According to Abraham Abenjamín, he sought to obtain the *testimonio* of the *requerimiento* because he believed that it would help his petition.<sup>51</sup> It may well be that the presentation of a *testimonio* attesting to an earlier *requerimiento* helped to secure a more favorable response from the Royal Council, because it showed that before turning to this institution, the petitioner had attempted to exhaust other recourses. This could be significant because

46. AGS, RGS, June of 1478, fol. 18.

47. AGS, RGS, March of 1480, fol. 267.

48. AGS, CCA, Pueblos, leg. 17.1, no. 228. For a number of additional examples, in which petitioners claimed to repeatedly demand that their adversaries make amends, see AGS, RGS, February of 1478, fol. 87; AGS, RGS, April of 1478, fol. 22; AGS, RGS, March of 1480, fol. 267; AGS, RGS, January of 1489, fol. 380; AGS, RGS, July of 1501, fol. 457; and AGS, RGS, June of 1501, fol. 354.

49. For a few examples, see AGS, CCA, Personas, leg. 3, no. 41; AGS, RGS, October of 1477, fol. 154; AGS, RGS, June of 1489, fol. 152.

50. AGS, CCA, Personas, leg. 1.2.1, Aben Jamil, Abraham.

51. *Ibid.*

one of the main justifications for the Royal Council's interventions in local settings was the claimant's inability to obtain justice otherwise. Furthermore, in certain contexts, the *testimonio* must have helped disputants gain reliability in the eyes of the councilors. It demonstrated the consistency of the petitioner's claim, showing that it had already been communicated to the addressee via a legally acceptable performance of claims making.

#### 4. Disputants Used the *Requerimiento* to Publicize Claims, Threaten Opponents, and Put Pressure on Local Officials

The late medieval *requerimiento* generated an event in which disputants came into direct contact with one another. The social meanings assumed by this practice should also be considered, therefore, in relation to the confrontational dynamic that such events sometimes entailed, and in light of their potentially public character. There is no doubt that, for some disputants, the *requerimiento* provided an opportunity to publicly assert their rights, a gesture that could carry important consequences with respect to questions of honor and reputation. When they "required" the fulfilment of decrees or judicial rulings granted in their favor, as when they confronted their adversaries and presented them with claims and demands without such documents, disputants signaled that they would not remain silent in the face of the wrongs that they had suffered.

The *requerimiento* was not quite an act of vengeance. However, within the late medieval culture of honor, it could still be registered as a respectable response to a challenge. Indeed, to the extent that the claimant has been unjustly deprived of something, he or she was now demanding it back, a behavior expected from any honorable person. For, in this schema, only the cowardly and the undeserving remained passive when wronged.<sup>52</sup> What this means is that the intended audience for many *requerimientos* was not solely the addressee, nor was it always a particular court of justice. Many of these acts were conducted as performances of claims making that

52. For the workings of honor in the social life of medieval Iberia, including additional references, see Mark Meyerson, "Bloodshed and Borders: Violence and Acculturation in Late Medieval Jewish Society," in *Late Medieval Jewish Identity: Iberia and Beyond*, ed. Carmen Caballero-Navas and Esperanza Alfonso (London: Palgrave Macmillan, 2010), 13–26. See also Samuel A. Claussen, *Chivalry and Violence in Late Medieval Castile* (Woodbridge, Suffolk: The Boydell Press, 2020), 17–19. Although it deals with a later period, Scott K. Taylor, *Honor and Violence in Golden Age Castile* (New Haven: Yale University Press, 2008) offers a series of key insights with respect to the role of judicial practices in contests for status and honor.



were also meant to be seen and talked about by the members of one's community.<sup>53</sup> By publicly confronting opponents and local officials, many claimants may have hoped to affect their own public image.

Of course, the confrontational character that some *requerimientos* assumed meant that the ritual could also come across as a challenge to the addressee, and that it might provoke a hostile and even violent response. A petition presented to the Royal Council in 1489 by the procurators of Ojacastro, a small village in the Rioja region, provides an illustration. In the 1480s, the community of Ojacastro found itself in conflict with the aggressive new lord of the neighboring village, Ezcaray. When the lord's men arrested two villagers for trespassing, the community tried to negotiate their release and, eventually, sought remedy from the Royal Council.<sup>54</sup> Like many other petitioners, the people of Ojacastro related their efforts to resolve the dispute by "requiring" their opponent to desist from wrong, which in this case meant releasing the prisoners. The description of the procedure in the petition is worth quoting in full.

They sent him messengers and other people carrying letters to ask that he would set them free. But he did not wish to do so. And then they sent a procurator with a proper *requerimiento* and a notary, so that he would release the said prisoners. And it is said that when he saw the aforementioned *requerimiento*, he took it in his hands and placed it in his bosom, pronouncing words of menace. And he was on the verge of throwing the said procurator and notary out of the windows.<sup>55</sup>

In this account, the "proper *requerimiento*" clearly works as an escalating move made by the villagers whose attempts to resolve the dispute by means of intermediaries had failed. What seemed to trigger the lord's anger in this interaction was the officializing effect that the *requerimiento* had with respect to the community's demand. The recording of the demand making by the notary was a clear signal that the people of Ojacastro were considering launching a complaint to the monarchs. If the first interaction between the lord and the intermediaries appealed to his good will, the

53. On the politics of public talk and reputation in medieval Europe, see Thelma Fenster and Daniel Lord Smail, eds., *Fama: The Politics of Talk & Reputation in Medieval Europe* (Ithaca: Cornell University Press, 2003); and Chris Wickham, "Gossip and Resistance among the Medieval Peasantry," *Past & Present* 160 (1998): 3–24.

54. AGS, RGS, June of 1489, fol. 152.

55. *Ibid.*: "e que despues de ansy puestos como quiere que con cartas, mensajeros e otras personas, que por ello le enviaron, le fueron a pedir que los quisiese saltar, dis que, non lo quiso fazer. E despues de lo qual, enviaron un procurador con un requerimiento en forma, e con escriuano, para que soltase los dichos presos . . . E que como vio el dicho requerimiento, dis que, lo tomo en sus manos e lo metio en el seno, e que dixera palabras de amenazas, e que estava en punto de echar por las ventanas el dicho procurador e escriuano."

“proper *requerimiento*” was a warning. Certainly, it is possible that the villagers sought to employ this warning as leverage in their negotiation with the lord. The latter, however, clearly perceived the gesture as an affront, an act of defiance that challenged his authority and had to be reciprocated. According to the petition, while the lord eventually did not throw the procurator and the notary out of the windows, he did find a way to make an escalating move of his own: he ordered that the two imprisoned villagers have their heads placed in the stocks.<sup>56</sup> By telling this story, the petitioners from Ojacastró made the point of portraying the lord’s behavior as unjust and unlawful. Whereas they followed the norms of the procedure, their opponent did not. This also suggests that, in the official ideology, the mere performance of a *requerimiento* was not considered a legitimate cause for vengeance.

As the example of Ojacastró demonstrates, the warning underlying the pre-petition *requerimiento* could be used by ordinary Castilians to pressure their superiors. This was certainly true for the interaction between subjects and local officials. In 1486, Pedro Bayle and Juan Martín, citizens of San Martín de Trevejo, directed a *requerimiento* to the judges of their village, in which they demanded the arrest of two citizens who had been spreading false rumors against them.<sup>57</sup> According to the written statement that the notary presented to the judges, if the latter failed to fulfill their duty in this case, Bayle and Martín reserved the right to complain to the monarchs, as one complains against “those who, despite being in charge of it, do not administer justice nor fulfill the service of their highnesses.”<sup>58</sup> In such a case, the statement explains, the judges could expect to be punished and pay all the costs related to the judicial procedure.<sup>59</sup> In a similar way, the archives of various Castilian municipalities retain *testimonios de requerimientos* performed during sessions of the urban council by citizens who demanded that the aldermen correct certain wrongs or guarantee certain rights. For example, in Seville during the 1450s and 1460s, the *jurados*, urban officials representing the parishes, engaged in *requerimientos* of this sort, in which they demanded that the councilmen address a wide range of governmental misconduct and breaches of urban ordinances. Some of these *requerimientos* preceded complaints that were then brought to the

56. Ibid. In response to the villagers’ petition, the Royal Council sent a royal agent to Ojacastró with instructions to conduct an investigation.

57. AGS, CCA, Personas, leg. 3, no. 41.

58. Ibid.: “asy protestamos de nos quexar de vosotros e de cada uno de vos a sus altesas . . . asy como de aquellos que tienen cargo de administrar justicia e non la administren ni cumplan al servicio de sus altesas.”

59. Ibid.: “E que sus altesas tengan recurso a todo tiempo del mundo de se bolver a vosotros e a cada uno de vos por non cumplir aquella que soys obligados de derecho, e de cobrar de vos e de cada uno de vos e de vuestros bienes todas las costas e danos.”

royal court. In 1461, from Madrid, King Enrique IV responded to a series of such complaints, issuing a number of decrees commanding the aldermen of Seville, under the penalty of deposition from office, to attend to a range of pressing problems that the *jurados* had required them to resolve.<sup>60</sup>

Royal judges and magistrates sent by the monarchy to the localities also became targets of pre-petition *requerimientos*. The petitioner Abraham Abenjamín, according to a complaint previously mentioned, “required” a royal magistrate in Toro to investigate his adversary, but could not obtain a record of the *requerimiento* from the notary.<sup>61</sup> Another example is that of Pedro de Escavias, a knight and chronicler from Andújar, who believed that the royal judge stationed in his town was deliberately postponing his ruling in a lawsuit that Escavias was conducting against one of his enemies. In 1477, to support his petition to the Royal Council, Escavias presented a *testimonio de requerimiento*, showing how he had demanded that the judge stop procrastinating.<sup>62</sup> In a third case, from 1490, Francisco de Briviesca, a citizen of León, confronted the investigator sent by the Royal Council to León in response to a complaint made by Briviesca himself. Briviesca thought that the investigator was deliberately failing to carry out the investigation. Appearing before this official with a notary, Briviesca demanded that the investigator take more adequate measures. Briviesca warned the investigator that if he did not comply with this demand, a complaint would be made to the Royal Council in Burgos. This threat was, indeed, fulfilled shortly thereafter, with Briviesca presenting the *testimonio* as evidence to the Royal Council.<sup>63</sup> These examples show how Castilians could employ the *requerimiento* to put pressure on local officials with the aim of negotiating better results for their lawsuits and complaints. When submitted to the Royal Council, *testimonios de requerimiento* helped to establish the need for a direct royal intervention, demonstrating the petitioner’s inability to attain justice from the local branches of government.

### 5. The Pre-Petition *Requerimiento* Can Be Situated within a Romano-Canonical Tradition of Pre-Trial Warnings Associated with Fairness in the Resolutions of Disputes

In contrast to the idea that the *requerimiento* stemmed from the Iberian culture of interfaith conflict, and was a Christian adaptation of an old Islamic

60. See César Olivera Serrano, *Documentos sobre Enrique IV de Castilla y su tiempo. Volumen I* (Madrid: Universidad Carlos III de Madrid, 2016), 568–70.

61. AGS, CCA, Personas, leg. 1.2.1, Aben Jamil, Abraham.

62. AGS, RGS, October of 1477, 154.

63. AGS, CCA, Personas, leg. 4.2, no. 238.

ritual, a range of sources suggest that the late medieval *requerimiento* needs to be situated within a long tradition of dispute management *within* the Christian community. One set of evidence comes from treatises on judicial procedures. In the thirteenth century, as the new culture of the *ius commune* was spreading throughout Christendom, several treatises of this sort circulated in the Iberian Peninsula.<sup>64</sup> The Latin treatise, *Ordo iudicarius ad summariam notitiam* was particularly influential in this regard.<sup>65</sup> It is there that we read that the first stage of a proper legal process—prior to the presentation of a complaint to a judge and the request for the summoning of the defendant—is a warning extended to an adversary accompanied by a demand to pay reparations. The treatise explains that such a warning is a matter of integrity.<sup>66</sup> Justinian’s *Digest* is cited as the source for the instruction.<sup>67</sup>

The *Ordo iudicarius* had a large influence on various procedural treatises written in Castilian. One of those was the *Summa aurea de ordine iudicario*, a mid-thirteenth-century treatise attributed to the jurist Fernando Martínez de Zamora. There, we read that “before we take up a lawsuit against our adversary, we must warn him to make amends for what he owes us.”<sup>68</sup> A similar instruction is given by the jurist Jacobo Junta (de las Leyes) in his widely circulated treatise, the *Flores de derecho*. For this author, such a warning was a matter of “courtesy and good example” (*cortesia e ensinamiento*).<sup>69</sup> The *Margarita de los pleitos*, another

64. On the development of the European *ius commune*, see Herzog, *A Short History*, 75–92. For treatises on judicial procedures and their dissemination in Iberia, see Linda Fowler-Magerl, *Ordines Iudicarii and Libelli de Ordine Iudiciorum* (Turnhout: Brepols, 1994); Antonio Pérez Martín, *El derecho procesal de “Ius Commune” en España* (Murcia: Universidad de Murcia, 1999); and Antonio García y García, “Ecclesiastical Procedure in Medieval Spain,” in *The History of Courts and Procedures in Medieval Canon Law*, ed. Wilfried Hartmann and Kenneth Pennington (Washington: The Catholic University of America Press, 2016), 392–425.

65. A modern edition was published in Antonio Pérez Martín, “El *Ordo iudicarius ad summariam notitiam* y sus derivados: Contribución a la estudio de la literatura procesal Castellana,” *Historia, Instituciones, Documentos* 9 (1982): 327–423, at 330–42.

66. *Ibid.*, 330: “Unam generalem et ex honestate, scilicet, ut antequam adversarium in iudicium trahat, moneat eum sibi satisfaciat...”

67. *Ibid.*

68. Published by Pérez Martín, “El *Ordo iudicarius*,” 354–417, at 354: “La una es general e de la honestidad, conviene a saber, que antes que trayemos nuestro adversario a pleyto devemos lo amonestar que nos emiendo lo que nos tiene.”

69. “Flores de derecho,” published in Rafael de Ureña y Semenjaud and Adolfo Bonilla y San Martín, eds., *Obras del Maestro Jacobo de las Leyes* (Madrid: Biblioteca Nacional de España, 1924), 7–184, at 39 (Título 4, ley 2): “Cortesia es e ensinamiento que se alguno a querella dotro sobre alguna demanda que aya contra el, deve el amonester lo primera mientre que yelo sane o que gelo enmiende; e se fazer nolo quisiere, devesse querellar al iuyz e rogarle que gelo aplaze e que gelo faga venir aderecho.”

treatise from the same period attributed to Martínez de Zamora, dedicates its very first title to a discussion of “how you should warn the one you wish to bring to judgement.” According to this text, “if you wish to demand [of the adversary] some money, warn them to give it to you; and if they refuse, bring them before a judge.”<sup>70</sup> Similarly, “if someone wrongs you or your son or your wife or your servant, you should first warn them to correct it.”<sup>71</sup> Whereas the *Summa aurea* follows the *Ordo iudicarius* by citing the *Digest*, the *Margarita* supports these instructions with references to the canonical tradition, citing clauses from both the *Decretum Gratiani* and the *Decretales Gregorii IX*.<sup>72</sup>

The idea that a demand for amends needed to be extended to an adversary before a plaintiff could approach a judge and initiate a lawsuit continued to inform Castilian works on the judicial procedure, even though—as will be discussed momentarily—it does not appear in the *Siete Partidas* or in the other major royal codes. In the second half of the fifteenth century, to give another example, the work known as *La forma libelandi* of Juan de Infante reiterated a very similar instruction to that of the *Ordo iudicarius*.<sup>73</sup> *La forma libelandi* was a judicial formulary organized according to the different stages of the legal process, which has survived in the form of multiple printed editions from the following century. Relevant to our purpose here is the very first folio of the 1536 edition, printed in Burgos, where the author sets up a model for the initiation of a lawsuit. The model is constructed around a debt recovery case, in which a plaintiff appears before a judge to sue an “adversary, so-and-so.” After the plaintiff recounts how a loan of 300 maravedís that he had given to “so-and-so” was never returned to him, the following words are put in his mouth: “although so-and-so was required (*a seydo requerido*) many times on my behalf to give back and pay me those 300 *maravedís*, he refused and is still refusing to do so.”<sup>74</sup> The resemblance to the pre-petition *requerimiento* discussed above is evident, even though it should be noted that neither *La forma libelandi* nor the other works influenced by the *Ordo iudicarius* suggest that this demand had to be recorded by a notary.

70. Joaquín Cerdá Ruiz-Funes, “La ‘Margarita de los Pleitos’ de Fernando Martínez de Zamora: Texto procesal del siglo XIII,” *Anuario de Historia del Derecho Español* 20 (1950): 634–738, at 679–80.

71. *Ibid.*

72. *Ibid.*

73. García y García, “Ecclesiastical Procedure,” 422.

74. Juan de Infante, *La forma libelandi* (Juan de Junta: Burgos, 1536), fol. 1: “Non embargante que el dicho fulano por mi muchas vegadas a seydo requerido que me diese y pagase los dichos ccc. mrs, el dicho adversario no lo a querido ni quiere hazer...”

It is difficult to tell why the pre-citation warning did not find its way into the procedural discussions of the *Partidas* and the other royal codes of the thirteenth and fourteenth centuries. We do not know whether the authors of these works considered such a warning to be optional, or whether there were other considerations preventing them from including it. Interestingly, the *Partidas* does discuss a number of other situations in which warnings and demands could become part of a judicial procedure. One such instance referred to a husband who suspected that another man planned to commit adultery with his wife: “When anyone suspects another of wronging him, or desiring to wrong him through his wife, and notifies him three times by means of a notice drawn up by the hand of a notary public, and in the presence of witnesses, telling him to avoid associating with her, and warning his wife to avoid speaking with the said man; and if, afterwards, he should find him with her. . . he can kill the said party without any liability to punishment; although he may not be able to prove that he had committed any offence with her.”<sup>75</sup> The law proceeds to explain how, in the case of adjudication for adultery, such a warning might help the plaintiff to establish his wife’s guilt: if a recorded warning has been made, all that was needed for the husband to prove that adultery had been committed was to demonstrate that his wife and the suspected lover had broken his order and convened among themselves.<sup>76</sup>

There is evidence that some Castilian husbands indeed exercised this procedure. For example, in an adultery lawsuit from 1490, Martín Sánchez, a citizen of the village of Gata in Extremadura, argued that he had “warned and required” (*amonestó y requirió*) his wife not to speak to a certain villager, whom he suspected of being her lover.<sup>77</sup> Several witnesses who testified in favor of Sánchez claimed to have been present during this warning, which he conducted “once and twice and several times, before a notary and witnesses.”<sup>78</sup> Significantly, Sánchez did not have reliable eyewitnesses who could corroborate that his wife and her alleged lover indeed had had sex. By claiming to have performed this *requerimiento*, he sought to lower the bar of admissible proof: it would be much easier to establish that the two had convened despite his warning than to demonstrate that they had been intimate.

Another place where the *Partidas* discusses warnings and demands in relation to judicial proceedings is in a section dedicated to excommunication:

75. *Las Siete Partidas del rey don Alfonso el Sabio* (Madrid: Imprenta Real, 1807), partida III, title XIV, law XII. The English translation is taken from Robert I. Burns, ed., *Las Siete Partidas, Volume 3: The Medieval World of Law: Lawyers and their Work*, trans. Samuel Parsons Scott (Philadelphia: University of Pennsylvania Press, 2001), 660.

76. *Ibid.*

77. AGS, CCA, Personas leg. 26, Sánchez de Gata, Martín.

78. *Ibid.*

”For he whose duty is to do this [excommunicate] must first warn the party whom he has to excommunicate, three times, in the presence of good men by whom he can prove it, if necessary; saying that he should make reparation, and desist from doing that concerning which he is admonished, and if he should not be willing to make reparation, he can then excommunicate him.”<sup>79</sup> If this account resembles some of the elements found in the pre-citation warning, as delineated by the procedural treatises mentioned, it resonates even more clearly with the canonical procedure known as the evangelical denunciation (*denunciatio evangelica*). This procedure was developed by the canonists on the basis of the precept of fraternal correction, as delineated in *Matthew* 18:15–17: “If another member of the church sins against you, go and point out the fault when the two of you are alone. If the member listens to you, you have regained that one. But if you are not listened to, take one or two others along with you, so that every word may be confirmed by the evidence of two or three witnesses. If the member refuses to listen to them, tell it to the church.”

The evangelical denunciation permitted ecclesiastical judges to adjudicate cases against sinners on the basis of a complaint made by another member of the community, insofar as the sinner had been warned and was given the opportunity to desist from wrong or pay reparations.<sup>80</sup> Although the *denunciatio* was primarily designed to correct sinners, not to offer redress to the aggrieved, by the thirteenth century it had become a central mechanism of dispute management that allowed claimants to attain reparations.<sup>81</sup> This process also contributed to the extension of ecclesiastical jurisdiction. As Brian Tierney has noted, “by virtue of the authority inhering in his office as judge, a bishop could hear any complaint involving an alleged sin and could provide a remedy without the plaintiff bringing a formal action.”<sup>82</sup> The *denunciatio* was supplementary to ordinary jurisdiction, whether ecclesiastical or secular.<sup>83</sup> It involved a summary legal process and was often presented as particularly suited for the poor, as well as for those instances in which it

79. *Las Siete Partidas*, partida I, title IX, law XII. The English translation is taken from Robert I. Burns, ed., *Las Siete Partidas, Volume 1: The Medieval Church: The World of Clerics and Layman*, trans. Samuel Parsons Scott (Philadelphia: University of Pennsylvania Press, 2001), 141.

80. For this procedure, see Helmut Coing, “English Equity and the Denunciatio Evangelica of the Canon Law,” *Law Quarterly Review* 71, 282 (1955): 223–41; James Brundage, *Medieval Canon Law* (London and New York: Routledge, 1995), 143; Wim Decock, *Theologians and Contract Law: The Moral Transformation of the Ius Commune (ca.1500–1650)* (Leiden: Brill, 2013), 86–96.

81. Decock, *Theologians and Contract Law*, 90–94.

82. Brian Tierney, *The Idea of Natural Rights* (Atlanta: Emory University Press, 1997), 74.

83. Coing, “English Equity,” 231.

was difficult to attain justice through an ordinary accusatory process. In the fourteenth century, the Italian jurist, Bartolus de Saxoferrato, provided a description of the *denunciatio*, arguing that this procedure was a matter of everyday life (*quotidiana est*).<sup>84</sup> According to him, a claimant must approach his adversary alone, specifying how the latter had wronged him and what the adversary needed to do in order to make amends. If the adversary refused, the action must be repeated, this time in the presence of a witness or two. Only then, after the adversary's second refusal, was it permissible for the claimant to turn to the judge.<sup>85</sup>

In a seminal study on the relationship between the evangelical denunciation and the English Court of the Chancery, Helmut Coing has argued that this ecclesiastical procedure served as a model for the chancellors when they came to construct their judicial forum.<sup>86</sup> A similar argument can be made for the Castilian Royal Council, an institution that actually shared a number of similarities with the English Court of the Chancery. As we have seen, the Royal Council offered Castilians an opportunity to resolve disputes and gain reparations through a supplementary procedure that did not require a full legal process. When cases did come to be adjudicated before the Royal Council, they were handled using the summary legal procedure. By and large, the proceedings of the Royal Council, like those initiated through the *denunciatio*, were considered fitting for cases in which justice was unlikely to be attained otherwise.

It would be superfluous, in the present context, to demonstrate that the pre-petition *requerimiento* performed by petitioners to the Royal Council was modeled on the evangelical denunciation. What the examples discussed in this section are intended to illustrate is that the Castilian *requerimiento* of the fifteenth century can be situated within a broader Christian tradition of demand making and judicial warnings. In this tradition, claimants were expected to confront their adversaries prior to a judicial escalation of a dispute, demanding that the adversary desist from wrong or pay reparations. Lastly, in some treatises, this warning was associated with a moral value, and presented as the appropriate thing to do.

## Conclusion

The evidence presented in this study challenges the notion of the *requerimiento* as an old ritual of war that migrated from one side of the

84. Cited in *ibid.*, 227.

85. *Ibid.*

86. *Ibid.*



Atlantic to the other. Instead, it traces this practice to the more mundane context of late medieval mechanisms of conflict management among Christians. While the content of the colonial *requerimiento*—the demand that native Americans turn themselves into obedient vassals of the Spanish monarchy and allow missionaries to instruct them in the Catholic faith—reflected canonical doctrines of sovereignty and just war, the acts of demand making and record making that constituted the core of this ritual were primarily known to the Spaniards from the world of civic disputes. It stands to reason that at least some of the conquistadores engaged in *requerimientos* in their home villages and towns. The notaries who accompanied the conquest expeditions were certainly familiar with the procedure.

The transposition of the *requerimiento* from the world of local conflicts to that of conquest and colonization overseas needs to be thought of in relation to the legitimizing effect that this ritual had within the legal culture of late medieval Castile. As we have seen, in Castile, the *requerimiento* consisted of the presentation of an official demand to an addressee, which then required compliance. The legitimizing effect of this act rested on the view that opponents were entitled to be given an opportunity to “do the right thing”—to obey a legal command, correct their ways, or pay reparations—before any disciplinary action could be taken against them. There was a medieval tradition that associated granting this opportunity with due process, fairness in conflict, and, to some extent, with being a good Christian. In the first decades following the Castilian invasion of the Caribbean, when criticism of the ill-treatment of the *indios* began to mount, the monarchy introduced the *requerimiento* as a mechanism of legitimation intended to portray the colonial encounter in more legal, fair, and Christian colors. In some sense, the Spanish monarchy’s claim to sovereignty over the Indies called for something like the *requerimiento*. For if the inhabitants of the Indies were indeed subjects of the Catholic monarchy, then they ought to be treated according to the principles of due process.

However, within the colonial setting, the *requerimiento* came to be stripped of some of its original meanings. In Castile, parties engaging in *requerimientos* tended to belong to the same political community. When one citizen directed a *requerimiento* to his or her adversary, the meanings of this act were often shaped by the existence of public spectators for whom the ritual signified something within a particular context of a dispute. To be sure, many employed the *requerimiento* in order to bring the law and its agents to bear upon social relations. But they also used it to render claims official, to publicize conflicts, to challenge and threaten their opponents, and to enact their identities as honorable citizens standing up for their rights. Such functions depended on shared values and

understandings, which were largely lost as the *requerimiento* was inscribed into the process of Spanish expansion and colonization.

Furthermore, as we have seen, despite the combative character that it often assumed, the late medieval *requerimiento* had an important dialogical component. It was not only that some addressees presented written statements and insisted that they be incorporated into the official record of the encounter. Just as importantly, the production of the official *testimonio* was often a process that involved some degree of negotiation. Thus, in many instances, the late medieval *requerimiento* represented a significant element in an ongoing dialogue between disputants, marking a way to avert rather than justify physical violence. The colonial *requerimiento* was also meant to be dialogical, as indicated by a number of royal instructions emphasizing that the demand should not only be recited to the *indios*, but also translated into their native languages.<sup>87</sup> However, it is doubtful that such instructions were actually fulfilled. Judging by the accounts that have come down to us, it seems that many believed that the performative capacity of the colonial *requerimiento* depended on the recitation of the document alone.<sup>88</sup>

Finally, we should draw attention to the different roles of records in the late medieval as opposed to the colonial *requerimiento*. In Castile, *testimonios de requerimiento* were regularly submitted as evidence at court. A claimant's ability to initiate a judicial process was sometimes contingent on the production and presentation of such records. When parties could not demonstrate that they had properly communicated a royal decree to an adversary, the court might send them to conduct a second *requerimiento*. This did not seem to be the case for the colonial *requerimiento*. There, when notaries participating in expeditions against indigenous populations took pains to record the recitation of the *requerimiento*, they did so primarily because record making was seen as an important part of the ritual protocol. It is not clear at all that these records ever ended up in courts, or that there was a real judicial procedure in which they were examined or used to support claims. Like other elements of the colonial *requerimiento*, the ultimate function of record making was self-legitimation.

87. For a few concrete examples, see Richard Konetzke, *Colección de documentos para la historia de la formación social de Hispanoamérica, 1493–1810, Vol. I (1493–1592)* (Madrid: Consejo Superior de Investigaciones Científicas, 1953), no. 42, 46, 77.

88. Faudree, "Reading the *requerimiento*."